

## TOWN OF PHILIPSTOWN DRAFT ZONING LAW

### TOWN OF PHILIPSTOWN

Review Draft, for transmittal to the Town Board: May 21, 2008

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## **TOWN OF PHILIPSTOWN ZONING LAW**

### **TOWN OF PHILIPSTOWN, NEW YORK**

*Town Board Review Draft: June 2008*

#### **ARTICLE I TITLE, SCOPE, AND PURPOSES**

##### **§175-1 TITLE**

This Chapter is known and may be cited as "The Philipstown Zoning Law."

##### **§175-2 INTRODUCTION AND USER GUIDE**

This Zoning Law enables Philipstown to protect the diverse character of the Town while also giving landowners a range of options and choices for the use, development, and conservation of their land. It is designed to achieve the community's goals as expressed in the Town's Comprehensive Plan while respecting the property interests of landowners and providing a development approval process that is predictable, efficient, and fair.

##### **A. Overview**

This section provides a brief overview of what is in the Zoning Law.

1. This Law divides the Town into land use districts and establishes rules for the use of land in each district. The text is accompanied by a Zoning Map which shows where the various districts are located.
2. The Use Table in Article III (§175-10) tells what uses are allowed in each district. The definitions in §175-74 explain what the different use categories in the table mean. Several of the uses are also regulated by "supplementary regulations" in Article VII, which are referenced in the Use Table.
3. Article III, §175-11, contains dimensional regulations for each district, covering lot size, setbacks, and other requirements about the permissible amount, size, type, and location of development on a lot.
4. Article IV (§§175-13 through 175-18.1) covers "overlay" districts, which are special districts designed primarily to protect special resources from inappropriate development and to maintain the Town's character and natural resources. Some of these overlays also allow uses that are not allowed in the underlying district, including mobile home parks and gravel mining. The provisions of these districts apply in addition to those of the "underlying" land use district.
5. Article V contains options for flexibility in development patterns, particularly the use of "conservation subdivisions," which preserve open space by concentrating development on a portion of a parcel.
6. Article VI contains rules for allowing the continuation of buildings and uses that were legal under previous regulations but do not conform to this Zoning Law. This is sometimes referred to as "grandfathering."
7. Supplementary regulations in Article VII contain additional requirements for specific types of uses and structures (such as home occupations, signs, and parking), as well as performance standards for all development.
8. Articles VIII and IX explain the procedures for obtaining various types of permits from the Town, including zoning permits from the Code Enforcement Official, Site Plan and Special Permit approval from the Planning Board, Special Permits from the Town Board, and Special Permits, Appeals, and Variances from the Zoning Board of Appeals.
9. Article X contains the procedures for the Town Board and Planning Board to follow in amending this Zoning Law to change the map or the text.

##### **B. How To Use This Zoning Law**

Landowners and others who use this Zoning Law are encouraged to meet with the Code Enforcement Official to discuss how this Zoning Law applies to their property. For any large-scale development (a large business or a development of

several homes) it is also a good idea to consult the Town's Comprehensive Plan to understand how to make a proposed development fit within the Town's vision of its future. The usual sequence of steps in using this Zoning Law is as follows:

1. Check the Zoning Land Use District Map to determine what land use district(s) your land is in.
2. Check the Overlay District Maps to see which of the overlay districts apply to your land. Review the provisions of applicable overlay districts in Article IV to see how they may affect what you can do with your land.
3. Consult the Use Table and text in §175-10, along with any relevant definitions, to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also check the specific sections that deal with the district your land is located in as well as any supplementary regulations in Article VII that may apply to your proposed use. (These are referenced in the Use Table.)
4. Consult the dimensional table in §175-11 to see which setbacks and other dimensional standards apply.
5. If your land is in the RC, RR, or SR districts, review the requirement of a conservation analysis and the various development options provided in §§175-19 through 175-22 to determine which you want to pursue.
6. If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, check §§175-23 through 175-28 to determine what you can do with it.
7. If the Use Table indicates that your proposed use or structure can go forward with just a building permit or a zoning permit, refer to Article VIII. If the use will require a Special Permit or site plan approval, turn to Article IX for the procedures to follow.
8. If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in §175-59) or a Zoning Amendment from the Town Board (as provided in §175-69). These options should be discussed with the Code Enforcement Official before they are pursued. Any zoning amendment must be consistent with the Comprehensive Plan.

### **§175-3 SCOPE, AUTHORITY, AND PURPOSES**

This Chapter regulates the location, design, construction, alteration, occupancy, and use of structures and the use of land in the Town of Philipstown, dividing the Town into land use districts. This Chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq., and the Consolidated Laws of the State of New York, Chapter 62, Article 16. This Chapter is enacted in accordance with the updated Town of Philipstown Comprehensive Plan, adopted by the Town Board on March 9, 2006 (as it may be modified from time to time), in order to implement the community's goals as expressed in the Town of Philipstown Comprehensive Plan.

### **§175-4 INTERPRETATION OF PROVISIONS**

All provisions of this Chapter shall be construed to advance the goals and strategies of the Comprehensive Plan.

### **§175-5 SITING AND DESIGN GUIDELINES**

To help ensure that development will be compatible with the existing character of the Town, a reviewing board may consult as advisory guidelines the illustrated design guidelines published by the New York Planning Federation in 1994, entitled *Hamlet Design Guidelines, Building Form Guidelines, and Rural Development Guidelines* (hereinafter "the Guidelines"), any successor guidelines, or such other guideline documents as the Town Board may adopt. The "Design Handbook" adopted by the Philipstown Planning Board, and last revised on August 3, 1993, shall also serve as advisory guidelines for development in the Route 9 Corridor.

### **§175-6 OTHER LAWS; SPECIAL AGREEMENTS**

The provisions of this Chapter shall be considered the minimum requirements for the promotion of the public health, safety, convenience, comfort, and general welfare. It is not intended by this Chapter to interfere with or abrogate or annul

any easement, covenant, or other agreement between parties; provided, however, that when this Chapter imposes a greater restriction on the use of structures or land or on the heights of structures, or requires larger open spaces, or imposes any higher standards than are imposed or required by any easement, covenant, or agreement, the provisions of this Chapter shall control. Where the requirements of this Chapter differ from the requirements of another statute, law, ordinance, rule, or regulation, the more restrictive standard shall govern, unless this Chapter specifically states otherwise.

## **ARTICLE II LAND USE AND OVERLAY DISTRICTS**

### **§175-7 ESTABLISHMENT OF DISTRICTS**

The Town of Philipstown is hereby divided into the following land use and overlay districts. Overlay districts are intended to provide additional protection of important environmental resources and/or to permit certain types of economically productive uses that would not otherwise be allowed in a particular land use district. Overlay districts may overlap different land use districts, but they do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this Chapter.

#### ***Rural Conservation District (RC)***

The purpose of this district is to promote land conservation, agriculture, forestry, recreation, and the preservation of open space, as well as other compatible rural uses, by encouraging such activities and by discouraging large-scale residential development, while allowing low-density residential uses.

#### ***Institutional Conservation District (IC)***

The purpose of this district is to preserve existing institutional uses of property that maintain significant amounts of contiguous open space and/or historic structures.

#### ***Rural Residential District (RR)***

The purpose of this district is to allow residential uses in a rural setting at a lower density than is allowed in the hamlets.

#### ***Hamlet Mixed-Use District (HM)***

The purpose of this district is to allow the creation and expansion of hamlets in the traditional scale, density, architectural style, and mixed-use character of the existing hamlets of Garrison and Garrison Landing and of the Villages of Cold Spring and Nelsonville.

#### ***Hamlet Residential District (HR)***

The purpose of this district is to maintain the traditional scale, density, and character of residential hamlets such as Manitou and Continental Village, as well as residential neighborhoods surrounding designated hamlet mixed use areas.

#### ***Suburban Residential (SR)***

The purpose of this district is to maintain the character of existing suburban density residential developments and to allow a limited extension of suburban growth patterns.

#### ***Highway Commercial District (HC)***

The purpose of this district is to allow commercial uses that rely heavily on automobile and truck access and that would not be compatible with a hamlet mixed-use area.

#### ***Office/Commercial/Industry Mixed-Use District (OC)***

The purpose of this district is to allow areas for light industrial, service commercial, office, and research facilities. Such districts may also include, where compatible, housing and limited retail commercial development intended to support the primary uses or to provide adaptive reuses for existing commercial or industrial buildings.

***Industrial/Manufacturing District (M)***

The purpose of this district is to allow industrial and related uses and adult entertainment uses that are not compatible with most commercial, office, or residential uses, in isolated and well-buffered locations.

***Floodplain Overlay District (FPO)***

The purpose of this Overlay District is to control development within the 100-year floodplain in order to minimize flood damage and protect water resources. This district also incorporates by reference the Town's existing Floodplain Protection Law, Chapter 90 of the Town Code. See §175-13.

***Cold Spring Watershed Overlay District (WSO)***

The purpose of this Overlay District is to protect the water supply of the Villages of Cold Spring and Nelsonville, which includes the entire watershed of Foundry Brook. See §175-14

***Scenic Protection Overlay District (SPO)***

The purpose of this overlay district is to protect the character of scenic resources in the Town, including designated scenic road corridors and the Hudson River viewshed. See §175-15.

***Aquifer Overlay District (AQO)***

The purpose of this Overlay District is to protect groundwater resources that provide drinking water for private wells and that may be used in the future to provide public water supplies. See §175-16.

***Soil Mining Overlay District (SMO)***

The purpose of this Overlay District is to provide appropriate locations for soil mining to occur where landowners can achieve a reasonable return on their land from sand and gravel mining without adversely impacting their neighbors. See §175-17.

***Open Space Conservation Overlay District (OSO)***

The purpose of this Overlay District is to afford special protections to tracts of land that have been identified in the Town of Philipstown Open Space Index and that are 50 acres or more in size. See §175-18.

***Mobile Home Park Overlay District (MHO)***

The purpose of this Overlay District is to provide appropriate locations for mobile home parks, consistent with the requirements of §175-44.

**§175-8 ZONING MAPS**

A. The boundaries of the land use and overlay districts are hereby established on maps entitled "Town of Philipstown Land Use and Development Overlay Districts Zoning Map," showing all of the land use districts as well as the SMO and MHO overlay districts, and "Town of Philipstown Resource Protection Overlay Districts Zoning Map," showing the SPO, OSO, WSO, and AQO overlay districts, adopted and certified by the Town Clerk, which accompany and are hereby declared to be a part of this Chapter. Unofficial reductions of these maps are appended to this Chapter for reference purposes only.

B. The official Zoning Maps shall be kept in the office of the Town Clerk, and shall be reviewed for accuracy and updated by the Town Board or its designee at least once annually. Changes may be made in district boundaries or other matters portrayed on the Zoning Maps only by a zoning amendment adopted by the Town Board pursuant to Article X of this Chapter. Such changes shall be noted by the Town Clerk on the official Zoning Maps promptly after the Town Board adopts an amendment.

C. In the event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the controlling authority as to the current zoning status of lands, structures and uses in the Town.

D. An unauthorized map change made by any person shall be considered a violation of this Chapter, punishable under §175-57 of this Chapter.

E. Where the boundary of a district divides a lot which existed on the effective date of this Chapter or on the effective date of any amendment of this Chapter establishing such boundary, the Zoning Board of Appeals may grant a special permit to authorize a use of land, buildings, and other structures permitted in one district to be extended into the other district, where such use would otherwise not be permitted, for a distance of not more than 50 feet in accordance with the provisions of Article X. This provision does not apply to overlay districts.

**§175-9 INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of districts shown on the Zoning Maps, the following rules apply:

- A. Boundaries indicated as approximately following the center lines of streets, highways, or railroad tracks shall be construed to follow such center lines. If such lines change, the boundaries shall be construed to follow the new lines.
- B. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
- C. Boundaries indicated as following shorelines of ponds and lakes shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.
- D. Boundaries indicated as following centerlines of streams shall be construed to follow such centerlines and, in the event of change in the centerline, shall be construed as moving with the actual centerline.
- E. Boundaries indicated as parallel to or extensions of features indicated in Subsections (A) through (D) above shall be so construed. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.
- F. Where overlay district boundaries are based upon natural features such as topographic contour lines or aquifer and aquifer recharge areas, such boundaries may be more precisely established through field investigation by a qualified professional.
- G. Where a question arises as to exact boundaries of a district, the Town Board shall by resolution determine the location of the boundary, giving due consideration, among other factors, to the indicated location of the boundary on the Zoning Map, the scale of the Zoning Map, and the expressed intent and purposes of this Chapter.

**ARTICLE III LAND USE DISTRICT REGULATIONS**

**§175-10 ALLOWABLE USES**

A. No structure or land shall be used except as provided in the Use Table below, and as may be limited by any restrictions imposed by an overlay district requirement (see Article IV) or supplementary regulation (see Article VII). See §175-74 for definitions of the use categories. Where a use may fit into more than one category, the Code Enforcement Official shall determine which category is most appropriate and consistent with the intent and purpose of this Chapter. In the event that a

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particular proposed use does not fit into any of the categories shown on the Use Table and is not prohibited by the Use Table or by §175-10C below, it may be allowed by Special Permit issued by the Town Board. In reviewing applications for Special Permits and Site Plan approval, the reviewing board shall impose any reasonable conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings and shall deny any proposed use which does not satisfy the criteria in this Chapter.

**B.** The meaning of the symbols on the Table is as follows:

- P Designates a use permitted by right. Usually requires a zoning permit or a building permit and a Certificate of Occupancy from the Code Enforcement Official, but does not require review by any municipal board.
- PS Designates a use permitted by right, subject to Site Plan review by the Planning Board (see §§175-65 through 175-68).
- P/S Designates a use permitted by right in some circumstances and by Special Permit in others. See the relevant section reference for criteria.
- S, ST Designates a use permitted by Special Permit issued by the Planning Board (S) or Town Board (ST) respectively (see §§175-60 through 175-64).
- Designates a prohibited use.

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USE TABLE

USE CATEGORY	USE DISTRICTS								REFERENCE	
	RC	IC	RR	HM	HR	SR	HC	OC	M	
<b>RESIDENTIAL USES</b>										
Single-family Dwelling	P*	P#	P*	P*	P*	P*	S	S	--	
Two-family Dwelling	S	P#	S	P	P	P	S	S	--	175-12
Multi-family Dwelling (conversion)	S	P#	S	PS	S	--	S	S	--	175-12
Multi-family Dwelling (new)	S <sup>1</sup>	P#	S <sup>1</sup>	PS	S	--	S	S	--	175-12
Accessory Apartment	P/S	P#	P/S	P/S	P/S	P/S	P/S	P/S	--	175-12
Mobile Homes/ Mobile Home Parks			See § 175-44							
Upper-floor Apartments in Mixed-use Building	--	P#	--	PS	PS	--	S	S	--	
<b>BUSINESS USES<sup>2</sup></b>										
Adult Entertainment Use	--	--	--	--	--	--	--	--	ST	175-48
Agriculture	P	P	P	P	P	P	P	P	P	175-37
Bed & Breakfast	PS	P#	PS	PS	PS	PS	PS	PS	--	
Camp	S	P#	S	--	--	--	--	--	--	175-45
Craft Workshop	S	P#	S	PS	S	--	P	P	PS	
Communications Tower				See § 175-46						
Home Occupation	P/S <sup>4</sup>	P#	P/S <sup>4</sup>	P/S <sup>4</sup>	P/S <sup>4</sup>	P/S <sup>4</sup>	P/S <sup>4</sup>	P/S <sup>4</sup>	-	175-41
Kenel	S	S	S	--	--	--	S	S	S	175-49B
Light Industry	--	--	--	S	--	--	S	S	S	175-50
Lodging Facility	--	S	--	PS	S	--	PS	--	--	
Office	S <sup>3</sup>	P#	S <sup>3</sup>	PS	S	--	S	PS	S	
Public Utility Facility	S	S	S	S	S	S	S	S	S	
Recreational Business, Indoor	--	P#	--	SP	S	--	S	S	--	
Recreational Business, Outdoor	S	P#	S	--	S	--	S	--	--	
Residential Care Facility	--	P#	S	S	S	--	--	--	--	175-52
Restaurant	S <sup>3</sup>	P#	S <sup>3</sup>	PS	S	--	S	S	--	
Retail Business (not listed elsewhere)	S <sup>3</sup>	P#	S <sup>3</sup>	PS	S	--	S	S <sup>5</sup>	--	
Service Business (not listed elsewhere)	S <sup>3</sup>	P#	S <sup>3</sup>	PS	S	--	S	S	S	
Soil Mining	ST <sup>6</sup>	--	ST <sup>6</sup>	--	--	--	--	ST <sup>6</sup>	ST <sup>6</sup>	175-17
Timber Harvesting				See Chapter 159 of the Town Code						
Veterinary Hospital	S	--	S	S	--	--	PS	PS	PS	
Warehouse/Wholesale Business	--	--	--	--	--	--	--	--	S	
Riding Academy	PS	P#	PS	--	--	--	--	--	--	
<b>COMMUNITY/INSTITUTIONAL USES</b>										
Cemetery	S	S	S	S	S	S	--	--	--	
Educational/Charitable/Religious	PS	PS	PS	PS	S	S	PS	PS	--	
Health Care Facility	S	S	S	PS	S	--	S	S	--	
Institutional Use	S	P	S	S	S	S	--	--	--	175-10J
Membership Club	S	S	S	S	S	--	S	S	--	
Municipal	PS	PS	PS	PS	PS	PS	PS	PS	PS	

(\*) Site Plan review required when footprint area exceeds 3,000 square feet.

(#) Permitted by right if operated in conjunction with the primary institutional use as defined in §175-74; otherwise a special permit is required. See §175-10J.

(1) Only permitted in a Conservation Subdivision (see §175-20).

(2) Subject to limitations on building footprint in the Dimensional Table.

(3) Only as provided in §175-10I.

(4) Requires a Special Permit if more than one non-resident employee or 30% of dwelling unit floor space. See §175-41.

(5) Retail use shall not exceed 20% of floor area and shall include only sale of items produced on the premises and customary accessories to such items.

(6) Only within the Soil Mining Overlay District.

**C. Prohibited Uses**

Any use, whether or not listed in the Use Table, is prohibited if it does not satisfy the standards and criteria in §§175-40 and 175-63. The following uses are prohibited under all circumstances: heavy industry, junkyards, manufacture of concrete or asphalt, facilities for disposal of hazardous or radioactive material, and, except as provided in §175-50, solid waste management facilities as defined in Article XII, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a "beneficial use designation" from DEC) as fill. Existing uses listed above, if they were legal when they began operation, may be continued pursuant to the nonconforming use provisions of Article VI.

**D. Accessory Uses**

Uses customarily incidental and subordinate to principal uses shown on the Use Table shall be allowed on the same terms as the principal uses unless otherwise indicated on the Use Table. Such accessory uses may be on the same lot, on adjoining lots, or on lots that face each other across a street. Non-commercial recreational uses shall be permitted as an accessory use in all districts, provided that they do not create noise, traffic, dust, odor, or other impacts that exceed those normally associated with single-family residential uses. If there is no principal use on a residential lot, a use that is typically a residential accessory use, such as a residential garage, swimming pool, tennis court, or tool shed, may be allowed by special permit granted by the Zoning Board of Appeals. Attached or detached garages associated with single-family residences shall not exceed 1000 square feet in footprint area. Solar and wind energy conversion systems producing electricity and/or heat primarily for on-site use, including those with net metering, shall be considered customary accessory uses to all principal uses, except that wind energy conversion systems which exceed otherwise applicable height limits shall be considered major wind energy conversion systems allowable only by Special Permit from the Zoning Board of Appeals.

**E. Mixed Use**

The Town of Philipstown encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Permit and/or Site Plan reviews for the same project shall be consolidated into one proceeding before the Planning Board (except where the Town Board or Zoning Board of Appeals has jurisdiction over a Special Permit).

**F. Change of Use or Structure**

A change of use is the initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A mere change of ownership, tenancy, or occupancy is not a change of use. (An expansion of a use shall be reviewed according to the provisions of the use table for that particular use.) Once a Special Permit has been granted, it shall run with the land and apply to the approved use, as well as to any subsequent use of the property in the same use category. Any change to another use allowed by Special Permit shall require the granting of a new Special Permit or a Special Permit amendment.

**G. Rebuilding, Replacement, and Expansion of Structures and Revision of Special Permits and Site Plans**

1. Except as provided in subsection J and subsection G(2) and (3) below, any revision of an approved special use permit or site plan, and any reconstruction, enlargement, extension, moving, or structural alteration of an approved special permit or site plan use or structure shall require submission of an application of the same type as the original application.
2. The rebuilding or replacement on the same footprint of any structure for a use which requires Site Plan review and/or a Special Permit shall require only Site Plan review. However, the rebuilding or replacement on the same footprint of any structure for a use which requires Site Plan review and/or a Special Permit shall be allowed by right if it is the same use and, if visible off of the property, it is similar in height and appearance.
3. Institutional, educational, charitable, and religious uses not located within the IC District (see Subsection J for special rules that apply within the IC District) may be issued a building permit for any reconstruction, enlargement, extension, moving, or structural alteration by the Code Enforcement Official without a new special use permit or site plan approval application if the proposed project meets all of the following criteria.

- (a) It is less than 1,000 square feet in footprint area; this may be permitted no more than twice on any property covered by this section, for a cumulative maximum total of 2,000 square feet.
- (b) It does not add to the housing capacity of the institution.
- (c) It does not require the construction of new roads or parking facilities.
- (d) It does not generate additional traffic entering or exiting the institution.
- (e) It does not require new wastewater facilities or water supply wells.
- (f) It is not within 150 feet of any street or property line.
- (g) It conforms with all applicable bulk, use, and other requirements of the district, or those established as part of an approved site plan.
- (h) It is not sited on environmentally sensitive lands as defined in §85-3 of the Philipstown Code.
- (i) It does not add any new exterior lighting unless required by Federal or State Law, Code, Rule or Regulation.

A statement addressing compliance with the foregoing criteria shall be submitted to the Code Enforcement Official with the building permit application. If in the discretion of the Code Enforcement Official any of the above criteria are not met or are in question, the application shall be referred to the Planning Board and shall require submission of a new special permit or site plan application.

#### **H. Special Site Design and Operational Considerations in the OC District**

1. The purpose of the OC District is to allow larger-scale non-residential uses that contribute to the Town's tax base and provide jobs for local residents, while protecting the Town's treasured scenic and rural qualities using open space buffers. Impervious surfaces are limited to 60% of total project area, requiring 40% to be maintained as open or undeveloped "green space." This green space shall be arranged in a manner that adequately buffers buildings and parking areas from public roads and neighboring properties, while protecting wetlands, watercourses, and scenic views.
2. Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The Planning Board may modify or waive this requirement where environmental or topographic constraints or unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas.

#### **I. Small-Scale Business Uses in the RC and RR Districts**

Residential structures in existence as of the date of adoption of this zoning law (*date*) may be used for business purposes by Special Permit, if allowed under footnote 3 of the Use Table, provided that their exterior appearance is not significantly modified and that the business use does not occupy more than 5,000 square feet of floor area. New structures not exceeding 5,000 square feet in floor area may be built that comply with this section, provided that they maintain a residential appearance and that all parking areas are screened from view from adjoining properties and public roads. Any changes to an existing structure or construction of a new structure shall be made with consideration of the design guidelines referred to in §175-5. The uses allowed by this subsection I may only be permitted if they have frontage on and access to a state highway.

#### **J. Institutional Conservation District and Institutional Uses**

1. Institutional uses in the Institutional Conservation District legally in existence on the effective date of this Chapter shall be permitted by right and shall be allowed to expand by right up to a cumulative total of 1,000 square feet of floor area per year, up to a maximum cumulative total of 4,000 square feet in any 5-year period, provided that any such expansion complies with the requirements of the Dimensional Table in §175-11. Expansion beyond 1,000 square feet per year or 4,000 square feet in any 5-year period, or conversion to another institutional use shall require Site Plan Approval by the Planning Board. Any development proposal which

involves the addition of more than 20,000 square feet of floor area or the disturbance of more than two additional acres of land shall require a special permit. Once a new site plan approval and/or special permit has been granted, the "expansion by right" options listed above shall be available again up to the stated maximum amounts. This paragraph does not supersede any site plan review requirements that are triggered by being within the Scenic Protection Overlay District.

2. In the event that a property in the IC District ceases to be operated as an institutional use as defined in §175-74, permitted uses shall be those permitted in the RC District. The dimensional requirements shall be as shown on the Dimensional Table for the IC District in §175-11.
3. A new institutional use that was not in existence when this Section was adopted shall not be eligible for inclusion in the Institutional Conservation (IC) District and shall be regulated as an institutional use according to the district in which it is located. Once it has been approved and constructed as an institutional use within the appropriate district and has operated for a period of at least five years, it may be rezoned by the Town Board to the IC District if it meets the use and dimensional criteria for inclusion in the IC District.
4. Where an institutional use that is not in the IC District fits the definition of an educational, charitable, or religious use, it shall be regulated as an educational, charitable, or religious use.

## §175-11 DENSITY AND DIMENSIONAL REGULATIONS

### A. Purpose

The regulations in this section are intended to encourage the preservation of Philipstown's open space, while providing opportunities for needed housing and business uses. This is accomplished by clustering development in nodes surrounded by open space and, where practical, in the traditional compact pattern found in the Town's hamlets. This Chapter contains flexible regulations for density and lot dimensions and encourages the use of Open Development Area (ODA) development and conservation subdivision as an alternative to conventional subdivision to preserve significant amounts of open space. See Article V for standards for conservation subdivision.

### B. Dimensional Table

The following table is hereby adopted and will be referred to as the "Dimensional Table." This table is designed to encourage conservation subdivisions by allowing conservation subdivisions to occur at a higher density than conventional subdivisions in the RC and RR districts. The number of units in a conventional subdivision is regulated by **minimum lot size**, while in conservation subdivisions it is regulated by a **maximum density**, as further described in Article V.

Town Board Review Draft, Philipstown Zoning Law, May 21, 2008

**DIMENSIONAL TABLE**

	DISTRICT									
	RC	RR	HM	HR	SR	HC	OC	M	IC	
Maximum density (conservation) (1)	5 ac/du`	3 ac/du	--	--	1 ac/du	--	--	--	20ac/du	
Minimum lot size (conventional/ODA) (2)	10 ac.	5 ac.	(4)	(4)	1 ac.	1 ac.	2 ac.	5 ac.	20 ac.	
Minimum lot size (conservation) (3)	(4)	(4)	--	--	(4)	--	--	--	(4)	
Minimum road frontage for conventional subdivision (5)										
Town road	250	250	40	40	200	200	200	200	200	
County/State road	300	400	50	50	200	300	200	200	200	
Open Development Area ROW	100	100	--	--	--	--	--	--	--	
Minimum front yard setback										
Town Road (6)	60	60	25	25	50	25	50	100	50	
County/State road (6)	60	60	30	40	75	35	150	200	100	
Minimum side yard setback	30	30	10 <sup>(11)</sup>	15 <sup>(11)</sup>	30	15 <sup>7</sup>	20 <sup>7</sup>	50	50	
Minimum rear yard setback	50	50	15	15	50	50 <sup>7</sup>	50 <sup>7</sup>	75 <sup>7</sup>	50 <sup>7</sup>	
Setback in Conservation Subdivision	See §175-20E				See §175-20E			See §175-20E		
Maximum impervious surface coverage (8)	10%	10%	50%	30%	20%	60%	60%	30%	10%	
Maximum height (9)	40	40	40	40	40	40	40	40	40	
Maximum footprint (in square feet) for non-residential structures (10)	6,000	4,000	10,000 <sup>(12)</sup>	5,000	5,000	40,000	200,000	--	--	

**ALL DIMENSIONS IN FEET UNLESS OTHERWISE INDICATED.**

- (1) The abbreviation "ac/du" stands for "acres per dwelling unit." This figure is also used as the minimum lot size for purposes of a "yield plan." See Article V.
- (2) For conventional subdivision as described in §175-19A. See §112-33B of the Land Development Regulations for ODA lots.
- (3) Conservation subdivision as described in §175-19B. Minimum lot size is determined under the provisions of §175-11, not this table.
- (4) Varies based upon availability of municipal water and sewer services; see §175-11D.
- (5) Flag lots and lots in conservation subdivisions may have shorter frontages. See §175-20 and §175-22. Minimum frontage on a cul-de-sac is 25 feet.
- (6) Measured from centerline of the traveled way as it existed at the date of the building permit (or of construction if built before a building permit was required). Front yard setbacks may be adjusted by the Planning Board or Zoning Board of Appeals to prevailing setbacks in the immediate neighborhood on all roads; a maximum setback or "build-to line" may be established to maintain the "street wall" in the HM and HR Districts.
- (7) 100-foot setback with wooded buffer required if lot abuts a residential district.
- (8) See definition in §175-74; applies to each lot and to an entire subdivision, including new roads and other public areas (see §175-20F); in Conservation Subdivisions applies to entire subdivision only. This requirement may be waived by the Planning Board for lots in the HM District and shall not apply to pre-existing non-conforming lots. For flexibility provisions, see subsection E below.
- (9) Also no more than three stories. For height exceptions, see §175-30E.
- (10) Excluding agricultural structures and all structures legally completed or granted a building permit, Special Permit, Site Plan approval, or variance prior to the adoption of this Chapter. The purpose of this requirement is to maintain the historic scale and character of development in Philipstown. The intent of this provision shall not be evaded through the placement of multiple large buildings on the same site or otherwise in a pattern that is inconsistent with the scale and character of the Town.
- (11) May be 0 for party-wall or zero-lot-line buildings.
- (12) May be increased up to 60,000 square feet for a supermarket, movie theater, or other use deemed important to the economic viability of the hamlet and if all special permit impact criteria are satisfied.

**C. Minimum Floor Area**

The minimum floor area of a dwelling unit shall be 720 square feet and the minimum for an accessory apartment shall be 500 square feet.

**D. Minimum Lot Sizes in the HM and HR Districts and in Conservation Subdivisions**

Minimum lot sizes in the HM and HR Districts and in conservation subdivisions shall be as shown below, provided that such lots comply with all applicable public health requirements and that all common water and sewage disposal facilities are managed by entities which the Planning Board deems adequate to protect public health on a long-term basis. Minimum lot sizes for such lots shall be:

1. With common or municipal water supply but no common or municipal sewage disposal services: 40,000 square feet.
2. With common or municipal sewage disposal services only: 20,000 square feet.
3. With common or municipal water supply and sewage disposal: 4,000 square feet.
4. Without common or municipal water supply or sewage disposal services: 40,000 square feet

**E. Impervious Surface Flexibility**

In the course of site plan, special permit, area variance, or subdivision approval, an applicant may request permission to exceed the maximum impervious surface requirements through the use of partially permeable materials that allow for some infiltration of water into the ground. Such permission may be granted by the reviewing board only if the applicant demonstrates that the use of such materials will result in at least as much groundwater infiltration and no more stormwater run-off from the site than would occur if the applicant complied with the limitations in the Dimensional Table using impervious materials.

**§175-12 MULTIPLE AND ACCESSORY DWELLINGS**

**A. Two-family Dwellings**

1. In the HM and HR Districts, two-family dwellings shall be permitted by right on all conforming lots (with County Health Department approval).
2. In all other districts, lots containing two-family dwellings shall be at least twice the minimum lot size in the district, except as provided in Subsection (C) below.
3. On lots created as part of a Conservation Subdivision, two-family dwellings may be approved as part of the approval process for the Conservation Subdivision, consistent with the overall density requirements for the Conservation Subdivision in Article V.

**B. Multi-Family and Senior Citizen Dwellings**

1. Buildings in existence as of January 1, 2008 may be converted to multi-family use if permitted in the Use Table. Maximum density shall be established by the Planning Board based upon applicable review criteria and the characteristics of the existing building. Conversions to mixed residential and compatible non-residential uses are encouraged.
2. For congregate senior citizen housing, including assisted living facilities, and residential care facilities, each bedroom shall be counted as ½ of a dwelling unit. For multi-family units a studio dwelling unit shall be counted as .5 dwelling unit, a one-bedroom dwelling unit shall be counted as .67 dwelling unit, a two-bedroom unit shall be counted as .75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as 1 dwelling unit.
3. The maximum density for new multi-family dwellings in the HR and HM Districts shall be two units per acre with municipal water or sewer service, twelve units per acre with municipal water and sewer service, or one unit per acre with no municipal water or sewer service. In the HM and HR Districts, multi-family dwellings shall face an existing or new street, with parking behind the buildings or off-site.
4. The maximum density for multi-family dwellings in the OC District shall be determined in each case by the Planning Board based upon all relevant Special Permit and Site Plan review criteria. New residential development

shall not exceed 20% of the total floor space in any development project in the OC District.

5. Apartments located above non-residential uses shall be allowed at the same density as multi-family dwelling units, except that for each lot, one apartment not exceeding 800 square feet may be located above a non-residential use by right as an accessory apartment pursuant to Subsection C below.

**C. Accessory Apartments**

1. One accessory apartment per lot may be located as follows:
  - a. As a use permitted by right on a conforming residential lot with direct access to a State highway, County road, or Town street or highway, where all structures are conforming structures.
  - b. As a use allowed by Special Permit granted by the Zoning Board of Appeals, without a separate site plan review, on a conforming residential lot which is accessed by a private right of way or easement, on a non-conforming residential lot that has at least 75% of the required lot area, on a lot with non-conforming structures where there will be no increase in the non-conformity of any structure, and/or on a conforming lot not used for residential purposes.
2. The accessory apartment shall not be counted as a dwelling unit for purposes of determining density.
3. No permit shall be granted for an accessory apartment without certification by the Putnam County Health Department no more than one year prior to the application for the accessory apartment of the adequacy of the septic system. The accessory apartment and the dwelling with which it is associated shall comply with all applicable New York State codes.
4. An accessory apartment shall have a maximum of two bedrooms and a minimum of one off-street parking space per bedroom. Accessory apartments within a dwelling shall be installed in a manner that does not alter the single-family appearance of a dwelling when viewed from a street.
5. If an accessory apartment is created on a lot which is accessed by a private right of way or easement, for which there is a written maintenance agreement, no special use permit shall be issued unless the maintenance agreement is amended to require the owner of the dwelling with the accessory apartment to pay an increased proportionate share of the cost of maintaining said right of way or easement to reflect the existence of the accessory apartment.
6. If an accessory apartment is created on a lot which is accessed by a private right of way or easement for which there is no written maintenance agreement, sub-paragraph 5 above shall not apply.

**D. Multiple Residences on a Lot**

A lot may contain more than one principal residential structure and accessory apartment, provided that the lot has sufficient acreage to comply with applicable density requirements. Such a lot may not be later subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed. If a lot is proposed to have more than two principal residential structures, site plan approval shall be required from the Planning Board. No lot of any size may have more than 4 residential units on it except in an approved multi-family development or in a condominium subdivision as described in §175-65A(3).

**ARTICLE IV OVERLAY DISTRICT REGULATIONS**

**§175-13 FLOODPLAIN OVERLAY DISTRICT (FPO)**

**A. General**

The provisions of the Philipstown Town Code, Chapter 90, "Flood Damage Prevention," are incorporated herein by reference and shall apply in addition to any other applicable zoning or building regulations.

**B. Boundaries**

The Floodplain Overlay District shall be the floodplain as defined in Article XII.

**C. Restrictions**

In addition to any restrictions, requirements, or permits imposed or required by Chapter 90, no new structure intended for residential use and no new septic tank, leach field, or other sanitary sewage system shall be located within the Floodplain Overlay District. This shall not prevent the replacement of existing facilities.

## **§175-14 COLD SPRING RESERVOIR WATERSHED OVERLAY DISTRICT (WSO)**

### **A. Findings and Purpose**

The Town of Philipstown finds that the drinking water quality of the Cold Spring reservoirs represents an essential economic and environmental resource. The Comprehensive Plan establishes a sound justification and framework for protecting the quality of the reservoirs' water. It is the purpose of this section to establish regulations on land uses within the Cold Spring Reservoir Watershed to assure the protection of the quality of the water resource. The Town desires to achieve such protection by cooperating with the Villages of Cold Spring and Nelsonville.

### **B. Boundaries**

The boundaries of the Watershed Overlay District are shown on the Resource Protection Overlay Districts Zoning Map and are intended to encompass all land draining into the Cold Spring Reservoirs.

### **C. Effect of District**

Within the WSO District, all underlying land use district rules remain in effect, except as they are specifically modified by this §175-14. In addition, within the entire WSO District, the Village of Cold Spring Watershed Rules and Regulations shall apply and be enforceable by the Town, regardless of whether a permit or approval is requested from the Town.

### **D. Prohibited Uses and Practices**

The following uses, when conducted at a scale greater than is legally permitted for an ordinary household, shall be prohibited in the WSO District:

- (1) Disposal of hazardous material or solid waste.
- (2) Treatment of hazardous material, except rehabilitation programs authorized by a government agency for treating hazardous material that existed on the site prior to the adoption of this land use law.
- (3) Production of hazardous material.
- (4) Dry-cleaning, dyeing, printing, photo processing, and any other business that stores, uses, or disposes of hazardous material, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous material.
- (5) Disposal of septage or septic sludge.
- (6) Automobile service stations.
- (7) Petroleum product pipelines, exclusive of natural gas.
- (8) Junkyards.
- (9) Truck terminals.
- (10) Clearing of more than 2,000 square feet of vegetation or construction of any dwelling unit, septic system, leach field, or driveway, where any portion of such clearing or construction is within 200 feet of Foundry Brook or either of the Cold Spring reservoirs.

### **E. Procedures**

- (1) A copy of any application for a building permit, zoning permit, area variance, use variance, special permit, site plan approval, zoning amendment, subdivision sketch plan, preliminary subdivision plat or (final) subdivision plat, occurring partly or wholly within the WSO District shall be submitted, simultaneously with its submission to the Town, to the Village of Cold Spring water department. Such submission shall be the applicant's responsibility.
- (2) The reviewing board or Code Enforcement Official shall incorporate all conditions and mitigation measures recommended by the Village to ensure compliance with the Village's Watershed Regulations.
- (3) The Town shall send the Village copies of all permits or approvals granted by the Town pursuant to this §175-14E, including the rationale for granting such permits and all conditions and mitigation measures imposed. The

Town shall also send the Village copies of all denials of permits or approvals, including any reasons given for such denials. This Subsection E(3) shall not apply to actions taken on building permits or subdivision sketch plans.

**F. Performance Criteria**

- (1) Compliance with Village Watershed Regulations. All development in the WSO shall comply with the Village of Cold Spring's Watershed Regulations and Putnam County Health Department regulations.
- (2) In evaluating applications for any development within the Watershed Overlay District, the reviewing board or official shall ensure that:
  - (a) Non-point source pollution is prevented to the extent practicable, by taking into account slope gradient, soil erosivity, intensity and amount of pollutant application, and exposure and season of soil and/or pollutant exposure.
  - (b) Travel time to watercourses is sufficient for those pollutants whose potential impact is neutralized by delayed contact with the reservoirs.
  - (c) Pollutant loadings will not damage any watercourse.
  - (d) Grading and removal of vegetation is minimized.
  - (e) All sewage disposal systems will be monitored, inspected, and maintained regularly, to ensure proper functioning and protection of the water quality of the reservoirs, Foundry Brook, and their tributaries.
- (3) In order to fulfill the purposes of this §175-14, the reviewing board or official shall designate acceptable areas for site disturbance and construction on all subdivision plats and site plans (including site plans and surveys associated with building permits and zoning permits). Outside such areas, site disturbance may occur only as minimally necessary for construction of driveways, utilities, fences, septic systems, and other structures that cannot practically be located within the acceptable area. The acceptable area of land disturbance for building a single-family residence and accessory structures shall not exceed 30,000 square feet. An applicant may be permitted to disturb more than 30,000 square feet upon a showing that the long-term run-off characteristics of the property will not be altered.

**G. Conditions and Findings**

- (1) Before granting approval of any subdivision, special permit, site plan, variance, or zoning amendment that includes land wholly or partially located within the WSO District, the reviewing board shall impose appropriate conditions and make a written finding that the proposed development has been designed in a manner that retains pre-development run-off characteristics and minimizes damage to water resources.
- (2) Such conditions may include a requirement that a conservation easement (as provided in §175-21) be granted by the applicant to protect all or a portion of the land within the WSO District. Such conditions shall not deprive the applicant of economically viable use of the property and must bear a reasonable relationship to the fulfillment of the purposes of this §175-14.

**§175-15 SCENIC PROTECTION OVERLAY DISTRICT (SPO)**

**A. Findings and Purpose**

Special protection of the Hudson River corridor and scenic road corridors is necessary to preserve the attractive rural and historic quality of the Town. The purpose of this Section is to regulate land uses within designated scenic corridors to protect the Town's scenic beauty and rural character. This Section is intended to apply to those sections of road and river corridors that are visible to the public and that substantially retain their scenic character.

**B. Boundaries**

The SPO District includes all land shown on the Resource Protection Overlay Districts Zoning Map as part of the SPO District, including land lying between the Hudson River shoreline and New York State Route 9D and land lying within 500 feet of the right-of-way of all State, County and Town roads, excluding land lying within a SR, HM, or HR District.

**C. Regulatory Effect on Land Uses**

Within the SPO District, all of the underlying land use district regulations remain in effect, except as they are specifically modified by this Section.

#### **D. Site Plan Approval Requirement**

Within the SPO District, Site Plan approval shall be required for the following, even if such activities or uses are allowed by right without site plan review in other parts of this Chapter:

- (1) Construction of any structure greater than 500 square feet in footprint area or 20 feet in height or any addition to a structure greater than 500 square feet in footprint area or 20 feet in height, including residential structures.
- (2) Land disturbance of more than 5,000 square feet within any one-year period or more than 10,000 square feet in total over any time period, in any location that is visible from a publicly accessible place (as defined in §175-74) when there are no leaves on the trees.

#### **E. Site Plan Approval Exemptions**

Within the SPO District, the Site Plan approval requirement shall not apply to:

- (1) Agricultural uses, except for agricultural structures with a footprint exceeding 10,000 square feet.
- (2) The repair and maintenance of existing structures.
- (3) Activities carried out pursuant to a Site Plan or Special Use Permit approved prior to the enactment of this Section.
- (4) Clearing and grading associated with construction of unpaved hiking trails.
- (5) Any other activity not included in (D) above.

#### **F. General Standards**

Within the SPO District, Site Plan approval may only be granted if, with appropriate conditions attached, the proposed activity:

- (1) Will minimize degradation of scenic character and will satisfy the requirements in Sections G through J below, except where site features are screened from public roads or trails.
- (2) Will minimize the removal of native vegetation, and avoid such removal if it would permit any structure to become visible from publicly accessible places. This shall not prevent trimming or removal of vegetation, either to open up small "keyhole views" from private property or to protect public visibility of scenic views and panoramas from publicly accessible places.
- (3) Will locate and cluster buildings and other structures in a manner that minimizes their visibility from publicly accessible places.

#### **G. Landscape**

- (1) A continuous green buffer, consisting of existing vegetation or new landscaping, at least 100 feet deep along Routes 9 and 9D and the Hudson River, and at least 50 feet deep along the other scenic roads or trails, shall be maintained, except where the land is not visible from the scenic road or River. This buffer shall consist of native trees and shrubs, as well as fields, meadows, and lawn areas. Bikepaths and/or sidewalks may be constructed within this landscaped buffer. This buffer requirement shall not apply in the immediate area around existing residences located within the buffer area. This buffer requirement may be modified by the Planning Board in the course of site plan review where the Planning Board determines that it is unnecessary, does not serve the purposes of this Section, or would be impractical to implement.
- (2) Shade trees shall be provided within 25 feet of the right-of-way at intervals averaging every 50 feet. An applicant for Site Plan or Special Permit approval shall not be required to plant more than one shade tree per 1,000 square feet of floor area proposed to be developed on the parcel.
- (3) To the maximum extent practicable, existing trees, lawns, and shrubs shall be preserved, unless they are proposed to be replaced by native trees or other native vegetation deemed appropriate by the Planning Board.
- (4) Trees and shrubs shall be planted as deemed necessary by the Planning Board to reduce visibility of new structures from public roads or trails.
- (5) Existing stone walls and historic mileposts lying within 100 feet of a road right-of-way shall be preserved, except

that portions of stone walls may be removed where necessary for driveway entrances, provided that the remaining portions of such walls are properly reconstructed.

(6) The Route 9D Scenic Byway Corridor Management Plan (2006) shall be consulted for guidance in compliance with the requirements in this subsection as applicable to Route 9D.

#### **H. Architecture**

(1) Existing structures with historic or architectural significance, as determined by any historic or architectural survey approved by the Town Board or by the eligibility criteria for listing on the National or State Register of Historic Places, shall be retained to the extent practicable. Alterations to such structures shall be compatible with the architecture of the existing structure. New structures shall be compatible with the historic structures in their vicinity.

(2) Buildings visible from public roads or trails, including canopies for accessory facilities, shall have peaked roofs with a slope of at least 8:12, except that hip roofs with a slope of at least 4:12 and flat roofs that are hidden by a raised cornice shall also be permitted.

(3) Windows shall be vertically proportioned and balanced on facades that are visible to the public, with width to height ratios ranging from 1:2 to 3:5. Horizontal windows may be used just below roof eaves ("eyebrow" windows) and as first-floor display windows.

(4) The Planning Board shall consult the building form guidelines referred to in §175-5 in considering any applications under this Section.

#### **I. Fences**

Chain link and white vinyl fences are prohibited where visible to the public. Stockade or other fence designs that block visual access to land in a scenic road corridor shall be prohibited, unless such fences are necessary to screen a pre-existing use that does not conform to the requirements of this Section.

#### **J. Ridgeline and Hillside Protection**

See §175-36C.

#### **K. Rural Siting Principles**

New development in the SPO District shall comply with the Rural Siting Principles in §175-31 to the extent practicable.

### **§175-16 AQUIFER OVERLAY DISTRICT (AQO)**

#### **A. Legislative Findings, Intent, and Purpose**

The purpose of the Aquifer Overlay (AQO) District is to protect the health and welfare of residents of the Town of Philipstown by minimizing the potential for contamination and depletion of the Town's aquifer system. The Town of Philipstown contains an aquifer system that covers the entire Town and, for purposes of this Section, has been divided into two areas described in Subsection B. This aquifer system provides drinking water to private wells as well as groundwater and surface water that is essential to the maintenance of healthy aquatic and terrestrial ecosystems. The Town has determined that a limiting factor on the carrying capacity of the land is its capability to provide water in sufficient quality and quantity so that water use by some users does not adversely affect other users. Another limiting factor on the carrying capacity of the land is its ability to absorb wastewater without adversely affecting the quality or quantity of groundwater and surface water necessary for water supplies and other needs of the natural and human environment. The purposes of this Section 175-16 are to protect public health and safety by safeguarding the Town's groundwater aquifer system, to provide the most protective standards to those areas of the aquifer at greatest risk of contamination, and to manage development so that groundwater supplies are not depleted or degraded.

#### **B. Delineation, Effect, and Applicability of District**

1. The Aquifer Overlay (AQO) District encompasses the entire Town of Philipstown and is divided into two subdistricts to protect different types of aquifer conditions, as follows:

- a. The Clove Creek Aquifer (CCA) subdistrict, which is extensively developed and fully dependent on groundwater as a source of water supply, and
  - b. The Regional Aquifer (RA) subdistrict, which covers the remainder of the Town. Within the RA subdistrict, most areas depend upon groundwater as the primary source of potable water supply.
2. The CCA and RA subdistricts are delineated on the Aquifer Overlay District Map adopted as part of this Chapter. These subdistricts may subsequently be divided by zoning amendment into additional protective areas. These may include Buffered Clove Creek Aquifer (BCCA) subdistricts, which will cover any areas within the CCA which may be served by a significant public water supply in the future, and Regional Aquifer Wellhead Protection (RAWP) subdistricts which will provide wellhead protection for community water system wellfields that may be developed within the RA subdistrict. The BCCA and RAWP subdistrict categories have been established in this Section for possible future mapping in the event that circumstances require.
  3. The official AQO District Map is located at the Town offices with the other official Zoning Maps. A reduction of this map is attached to this Chapter for reference purposes only. The Aquifer Overlay (AQO) District map and any amendments to it must be reviewed and approved by a hydrogeologist working for the Town prior to adoption by the Town Board.
  4. The official AQO District Map shall be used to determine the boundaries of subdistricts within the AQO District. In case of a question or dispute as to the exact location of a boundary on a specific parcel of land, the Town may retain a qualified hydrogeologist at an applicant's expense to make such a determination in the field based upon the criteria in this §175-16. An applicant may challenge the Town's determination by retaining a qualified hydrogeologist to make such determination independently based upon these criteria. In the event of such a challenge, the Town's hydrogeologist shall review the report of the applicant's hydrogeologist at the applicant's expense and shall make the final determination as to the location of the specific boundary. Any such boundary delineation shall not, by itself, effect a change in the AQO District Map. The AQO District Map may only be changed by action of the Town Board as provided in Subsection 175-16H.
  5. Within the AQO District, all of the underlying land use district rules shall remain in effect except as specifically modified by this §175-16. In case of a conflict between this §175-16 and the underlying use regulations, the more restrictive shall control. Nothing in this §175-16 shall be construed to allow uses that are not permitted by the underlying land use district.
  6. With the exception of the prohibition on underground fuel tanks in §175-16E(1), this §175-16 does not apply to any single-family, two-family, or multi-family residential use of land on a single lot containing five or fewer dwelling units, to any residential subdivision creating four or fewer new lots, or to any home occupation unless such residential use or home occupation includes one of the activities listed in Subsection E below. This Section does apply to all other subdivisions of land.
  7. This §175-16 shall not apply to farm operations covered by the agricultural zoning exemptions in §175-37E.

### **C. Definitions**

For purposes of this §175-16, the following definitions shall apply:

**Action:** A project or physical activity as defined in the SEQR Regulations of the NYS Department of Environmental Conservation, 6NYCRR Part 617, including all actions subject to SEQR that are covered by this Chapter, as well as subdivision applications and other actions requiring local government approval under SEQR.

**Aquifer:** A consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant or economically useful amount of groundwater to wells, springs or infiltration galleries.

**Aquifer Overlay (AQO) District Map:** The Town's overlay map showing Aquifer Overlay District subdistricts.

**Buffered Clove Creek Aquifer (BCCA) Subdistrict:** Areas which may be delineated in the future as Buffered Clove Creek Aquifer (BCCA) subdistrict on the Aquifer Overlay AQO District Map. As defined or approved by a hydrogeologist working for the Town, the BCCA consists of areas within the Clove Creek Aquifer CCA served by community water systems, where the sources of water supply for the community water system and for any other wells would not be substantially threatened by a contaminant release occurring within the BCCA. No portion of the BCCA may lie in a location that is hydrogeologically upgradient of any wells, including wells used by the community water system.

**Clove Creek Aquifer (CCA) Subdistrict:** The area delineated as the Clove Creek Aquifer (CCA) subdistrict on the Aquifer Overlay AQO District Map.

**Community Water System:** A public water system regulated by the New York State Department of Health that serves at least five service connections used by year-round residents or regularly serves at least 25 year-round residents.

**Conditionally Exempt Small Quantity Generators:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites which generate less than 100 kilograms per month of listed and /or characteristic wastes, which store less than 1000 kilograms of listed and /or characteristic wastes, and which generate less than 1 kilogram per month of acutely hazardous waste and store less than 1 kilogram of acutely hazardous waste.

**Consumption of Water:** The net loss of water from a watershed through evaporation and transpiration processes caused by any human activities and associated land uses, including evaporative losses from septic system leaching lines. The definition of Consumption of Water includes the use of water in diluting wastewater discharges so that groundwater quality at the property line downgradient from the discharge will be 50% or less of the New York State Department of Environmental Conservation's Title 10 Part 703 Groundwater (GA) Water Standards, i.e. the DEC's groundwater contamination standards.

**Discharge:** Any intentional or unintentional action or omission resulting in substances or materials entering the waters of the State either directly or by passing through other land, or in any other way resulting in damage to the lands, waters, or natural resources of the State.

**Generator of Hazardous Waste:** Any person or site whose act or process produces hazardous waste.

**Groundwater:** Water contained in interconnected pores and fractures in the saturated zone in an aquifer.

**Hazardous Substance:** Any substance, including any petroleum by-product, which may cause harm to humans or the environment when improperly managed. A complete list of all hazardous substances except for petroleum by-products can be found in 6 NYCRR Part 597.2(b) Tables 1 and 2 and amendments thereto.

**Hazardous Waste:** See 6 NYCRR Part 371 and amendments thereto for the identification and listing of hazardous wastes.

**Herbicide:** Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including those substances defined as herbicides pursuant to Environmental Conservation Law § 33-0101, and amendments thereto.

**Large Quantity Generator:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites either (1) generating more than 1000 kilograms per month of listed and/or characteristic hazardous wastes, or (2) generating or storing more than 1 kilogram per month of acutely hazardous waste.

**Major Oil Storage Facilities:** Facilities with a storage capacity of 400,000 gallons or more of petroleum.

**Natural Recharge:** The normal rate at which precipitation replenishes groundwater, without interruption or augmentation by human intervention.

**Non-point Discharge:** Discharges of pollutants not subject to SPDES (State Pollutant Discharge Elimination System) permit requirements.

**Pesticide:** Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, including any substances defined as pesticides pursuant to Environmental Conservation Law § 33-0101 et seq. and amendments thereto.

**Petroleum:** Oil or petroleum of any kind and in any form including but not limited to oil, petroleum fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, and kerosene, as defined in 6 NYCRR Part 597.1(7) and amendments thereto.

**Point Source Discharge:** Pollutants discharged from a point source as defined in Environmental Conservation Law §17-0105 and amendments thereto.

**Pollutant:** Any material or byproduct determined or suspected to be hazardous to human health or the environment.

**Radioactive Material:** Any material that emits radiation.

**Regional Aquifer (RA) Subdistrict:** The area delineated as the Regional Aquifer (RA) subdistrict on the AQO District Map. As defined or approved by a hydrogeologist working for the Town, the RA subdistrict consists of all areas on the AQO District Map not included in the CCA, BCCA, or RAWP subdistricts.

**Regional Aquifer Wellhead Protection (RAWP) Subdistrict:** Areas to be delineated in the future as a Regional Aquifer Wellhead Protection (RAWP) subdistrict on the AQO District Map. As defined or approved by a hydrogeologist working for the Town, RAWP areas will consist of wellhead protection areas for community water system wells not located within the CCA subdistrict. At a minimum, wellhead protection areas enclose all lands situated within 60-days travel time (seepage velocity) from the community water system's wells, and enclose sufficient land that average annual Natural

Recharge in the RAWP area matches the average water demand of the community water system.

**Small Quantity Generator:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites that do not qualify as Conditionally Exempt Small Quantity Generators and that generate less than 1000 kilograms per month of listed and /or characteristic wastes and store less than 6000 kilograms of listed and /or characteristic wastes , and that generate or store less than 1 kilogram per month of acutely hazardous waste.

**Solid Waste:** Generally refers to all putrescible and non-putrescible materials or substances, except domestic sewage, sewage treated through a publicly owned treatment works, or irrigation return flows, that is discarded or rejected as being spent or otherwise worthless, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, and discarded automobiles, as defined in 6 NYCRR Part 360-1.2(a) and amendments thereto.

**State Pollutant Discharge Elimination System (“SPDES”):** The system established pursuant to Article 17 Title 8 of Environmental Conservation Law for issuance of permits authorizing discharges to the waters of the state of New York.

**Wastewater:** Aqueous-carried solid or hazardous waste.

**Watershed:** That land area that includes the entire drainage area contributing water to the Town water supply and which includes the Aquifer Protection Overlay District.

**Water Supply:** The groundwater resources of the Town of Philipstown, or the groundwater resources used for a particular well or community water system.

**Well:** Any present or future artificial excavation used as a source of public or private water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, driven wells, infiltration galleries, and trenches with perforated piping, but excluding ditches or tunnels, used to convey groundwater to the surface.

#### **D. General Provisions of the Aquifer Overlay District Applicable in all Subdistricts**

1. Non-Degradation Standard: No use shall degrade the quality of the groundwater in a manner that poses a potential danger to public health or safety and no permits or approvals shall be issued for any use which violates this standard. Compliance with applicable standards, requirements, and permit conditions imposed by federal, state, or county agencies shall be deemed to constitute compliance with this standard.
2. The manufacture, use, storage, or discharge of any products, materials, or by-products subject to these regulations, such as wastewater, solid waste, hazardous substances, or any pollutant, must conform to the requirements of these regulations.
3. Usage of water for proposed actions within the AQO District shall be examined pursuant to SEQRA in accordance with the methodology in Subsections F and G of this §175-16.
4. In addition to the list of Statewide Type I Actions contained in §617.4(b) of 6 NYCRR, all proposed actions resulting in discharges exceeding standards provided in 6 NYCRR Part 703.6(e) and amendments thereto (groundwater contamination standards), and all proposed actions where Water Consumption exceeds Natural Recharge, as defined in Subsections F and G herein, shall be designated as Type I Actions under the Implementing Regulations of the State Environmental Quality Review Act (6 NYCRR Part 617), unless the action is listed as a Type II action under such regulations.

#### **E. Prohibitions, Restrictions, and Permit Requirements in the Aquifer Overlay District**

In accordance with Article IX of this Chapter, “Special Permits and Site Plan Review,” the Planning Board shall review and act upon Special Permit applications within the AQO District. If the uses listed below are regulated by any state or federal agency, the definitions and regulations of such uses contained in applicable state or federal laws and regulations shall apply.

1. Prohibited Uses Throughout the Town
  - a. Installation of an underground fuel tank or tanks, whose combined capacity is less than 1,100 gallons. This applies to all uses throughout the Town, including single-family, two-family, and multi-family dwellings.
  - b. Land application of septage, sludge, or human excreta, including land application facilities defined in 6 NYCRR Part 360-4. This prohibition shall not apply to land application of treated wastewater for irrigation when duly approved by county, state, or federal agencies with regulatory jurisdiction.
  - c. Junkyards and junk car lots.

2. Prohibited uses within the CCA and RAWP subdistricts only:
  - a. Municipal, private, and construction and demolition landfills as defined in 6 NYCRR Part 360-2 and 6 NYCRR Part 360-7.
  - b. Disposal, by burial, of any hazardous waste, as defined in 6 NYCRR Part 371
  - d. Large Quantity Generators of Hazardous Waste.
  - e. Gas stations and Major Oil Storage Facilities.
  - f. On-site dry cleaning.
3. Special Permits within the Clove Creek Aquifer (CCA) and Regional Aquifer Wellhead Protection (RAWP) subdistricts. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Permit within the CCA and the RAWP subdistricts:
  - a. Photo labs;
  - b. Auto repair facilities and truck terminals, including engine repair and machine shops
  - c. Furniture stripper/painter, metal works, wood preservers
  - d. Printers and the use of printing presses
  - e. Small Quantity Generators and Conditionally Exempt Small Quantity Generators
  - f. Solid waste management facilities not involving burial, including incinerators, composting facilities, liquid storage, regulated medical waste, transfer stations, recyclables handling & recovery facilities, waste tire storage facilities, used oil, C&D processing facilities, each as defined in 6 NYCRR Part 360.
  - g. Salt storage facilities
  - h. Uses and land subdivisions where Consumption of Water exceeds Natural Recharge as described in Subsections F and G.
  - i. Cemeteries, including pet cemeteries
  - j. Veterinary hospitals and offices
  - k. Funeral parlors
  - l. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation that is covered by the exemptions in Section 175-37E.
4. Special Conditions for proposed uses within the CCA and RAWP subdistricts requiring a Special Permit:
  - a. Storage of chloride salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
  - b. Generators of Hazardous Waste shall provide the Town with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
  - c. Any projects where Consumption of Water exceeds Natural Recharge, as defined in Subsections F and G herein, shall demonstrate through SEQRA how such impact will be mitigated. Mitigation measures may include identifying compensatory recharge to permanently prevent adverse impacts to water supply on adjoining and downgradient land. Such compensatory recharge may be located either upgradient or downgradient of the project. Where the project is located adjacent to a wetland, watercourse, parkland, or other land that is permanently protected from development, the recharge or dilution capacity of such adjacent protected land may be counted toward the required mitigation of the impact of the project, provided that such recharge capacity is not claimed in connection with another project.
5. Special Permits within the RA and BCCA subdistricts. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Permit within the RA and BCCA:
  - a. Gasoline service stations
  - b. Major Oil Storage Facilities
  - c. Salt storage facilities
  - d. Small Quantity Generators and Conditionally Exempt Small Quantity Generators
  - e. Large Quantity Generators
  - f. Disposal of any hazardous waste, as defined in 6 NYCRR Part 371, by burial.
  - g. Cemeteries, including pet cemeteries
  - h. Veterinary hospitals and offices

- i. Funeral parlors
  - j. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation that is covered by the exemptions in §175-37E.
  - k. Uses and land subdivisions in the RA subdistrict where Water Consumption exceeds Natural Recharge as described in Subsections F and G.
6. Special Conditions for proposed uses within the BCCA areas and the RA subdistricts requiring a Special Permit:
- a. Gasoline service station operators shall provide the Town with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
  - b. Junkyard operators shall drain fuels, lubricants, and coolants from all cars stored on site to properly permitted above-ground holding tanks, provide to the Town copies of all applicable permits provided by State and/or Federal regulators and copies of all annual and incident reports, provide the Town with an annual summary of numbers of vehicles on site and total gallons of various classes of fluids drained from vehicles and disposal manifests or other documentation of disposition of such fluids.
  - c. Storage of chloride salts, coal, and/or cinders is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
  - d. Generators of Hazardous Waste shall provide the Town with copies of all applicable permits provided by State and Federal regulators and copies of all annual, incident, and remediation-related reports.
  - e. Within the RA subdistrict, any projects allowed hereunder where Consumption of Water exceeds Natural Recharge, as defined in Subsections F and G herein, shall demonstrate through SEQRA how such impact will be mitigated. Mitigation measures may include identifying compensatory recharge to permanently prevent adverse impacts to water supply on adjoining and downgradient land. Such compensatory recharge may be located either upgradient or downgradient of the project. Where the project is located adjacent to a wetland, watercourse, parkland, or other land that is permanently protected from development, the recharge or dilution capacity of such adjacent protected land may be counted toward the required mitigation of the impact of the project, provided that such recharge capacity is not claimed in connection with another project.
- 7 Application Requirements for Special Permits: In addition to the Special Permit application requirements set forth in Article IX, applicants proposing actions listed in Subsections (3) and (5) above shall identify the following as part of their applications:
- a. The source of water to be used
  - b. The quantity of water required
  - c. Water use minimization measures to be implemented
  - d. Water recycling measures to be implemented
  - e. Wastewater discharge measures
  - f. Grading and/or storm water control measures to enhance on-site recharge of surface water;
  - g. Point Source or Non-Point Discharges;
  - h. A complete list of any Hazardous Substances to be used on site along with quantity to be used and stored on site; and
  - i. A description of Hazardous Substance storage or handling facilities and procedures.

**F. Determination of a Parcel’s Natural Recharge**

The natural recharge rate for a parcel shall be determined by identifying the soil types on the property, classifying them by hydrologic soil groups (A through D, A/D and C/D), and applying a recharge rate of 20.2 inches/year for A and A/D soils, 14.7 inches/year for B soils, 7.6 inches/year for C and C/D soils, and 4.2 inches/year for D soils, and multiplying the recharge rate(s) by the number of acres in the parcel for each soil group.

**G. Consumption of Water**

The following table establishes the method to calculate projected consumption of water, as defined in §175-16C:

<u>Use</u>	<u>Gallons per day</u>	<u>Multiplied by</u>	<u>Consumption/day</u>
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*Town Board Review Draft, Philipstown Zoning Law, May 21, 2008*

		<u>Dilution factor</u>	
Irrigated Lands (non-agricultural)	Irrigated Acres x 4,000 <sup>(1)</sup>	x 1	= _____
Uses with Surface Water Discharge	Site activity use x 0.2	x 1	= _____
Residential Uses with Subsurface Water Discharge <sup>(2)</sup>	70 gpd/capita	x 6	= _____
Nonresidential Uses with Subsurface Water Discharge <sup>(2)</sup>	Daily Use	x 6	= _____

(1) Applicable for vegetation requiring 1 inch/week irrigation. May be adjusted for vegetation with other water requirements.

(2) Calculate use per NYSDEC intermediate wastewater disposal guide. Discharge must not exceed NYSDEC Title 10, Part 703 effluent limits.

**H. Map Changes**

1. The Aquifer Overlay District Map may be modified by the Town Board to reflect changed circumstances, such as the installation of a community water system or a public water supply well, or to take account of new or more accurate geological or hydrological information, provided that the Town’s hydrogeologist reviews and approves any map modification.
2. Any new areas or revisions of boundaries made pursuant to this Subsection H shall be placed on the Aquifer Overlay District Map pursuant to the Zoning Map amendment process in Article X.

**I. Reporting of Discharges**

Any person or organization responsible for any discharge of a Hazardous Substance, Solid Waste, Hazardous Waste, petroleum product, or radioactive material shall notify the Town Clerk of such discharge within 24 hours of the time of discovery of the discharge. This notification does not alter other applicable reporting requirements under existing law and applies to all uses, whether conforming or non-conforming in any respect.

**J. Non-conforming Uses, Structures, and Lots**

See Article VI of this Chapter. For any non-conformity which requires a special permit to expand or change, all requirements of this §175-16 shall apply to such expansion or change.

**§175-17 SOIL MINING OVERLAY DISTRICT (SMO)**

[Pending zoning amendment to be inserted]

**§175-18 OPEN SPACE CONSERVATION OVERLAY DISTRICT (OSO)**

**A. Findings and Purpose**

Special protection of large tracts of land identified as important for conservation by the Town’s Open Space Index is necessary to preserve the Town’s natural resources and attractive rural quality. The purpose of this Section is to afford special protection to such tracts by reducing potential development and ensuring that the important resource values of these areas are preserved.

**B. Boundaries**

The OSO District includes all land shown on the Resource Protection Overlay Districts Zoning Map as part of the OSO District. The OSO district shall include land shown in the Open Space Index that is located on tracts of 50 acres or more, as such tracts existed on September 1, 2007. The OSO district shall consist of only the land shown on the Index, which may be a portion of a larger tract. Only that portion of a tract which has been mapped on the Open Space Index shall be included in the district. As used in this paragraph, “tract” shall include contiguous parcels which are in one ownership or under common control, as defined in Chapter 112, “Land Subdivision Regulations.” Any land not mapped by the Town

Board as part of the OSO district shall not be part of the district, and the map shall take priority over any conflicting language in this paragraph.

**C. Regulatory Effect on Land Uses**

Within the OSO District, all of the underlying land use district regulations remain in effect, except that:

1. The maximum density for a conservation subdivision shall be 20 acres per dwelling unit;
2. Conventional subdivisions shall be prohibited; and
3. The minimum percentage of open space to be preserved in a conservation subdivision shall be 90%.

**D. Institutional Uses**

The restrictions in (C) above shall not apply to institutional uses.

**E. Use of Open Space Index**

The conservation resource values identified in the Open Space Index shall be preserved to the maximum extent practicable in any development approval.

**§175-18.1 MOBILE HOME OVERLAY DISTRICT (MHO)**

See §175-44 for regulations that apply to the MHO District.

**ARTICLE V OPEN SPACE DEVELOPMENT**

*(Note: implementation of this Section will require amendments to the Land Development Regulations)*

**§175-19 OPEN SPACE DEVELOPMENT OPTIONS**

**A. Purpose and Applicability; Requirement of Conservation Analysis**

1. The purpose of the open space development options in this Article is to preserve large tracts of open space land in order to maintain the rural appearance and environmental resources of the Town of Philipstown. These options are intended to offer development alternatives to landowners that avoid the uniform pattern of conventional subdivision (see definition in §175-74), sometimes referred to as “suburban sprawl.” To avoid this pattern, which conflicts with the goals of the Philipstown Comprehensive Plan, the Town of Philipstown encourages the following three options: Conservation Subdivision, Open Development Area (ODA) Subdivision, and flag lots. The Town wishes to discourage conventional subdivisions where they would detract from the Town's rural landscape and natural resources.
2. Any applicant for a conventional subdivision creating four or more new building lots in the RC, RR, IC, or SR districts shall submit to the Planning Board a conservation analysis as described in §175-20A below. If the Planning Board determines, based upon the conservation analysis, that a proposed conventional subdivision may adversely affect the Town's rural landscape or natural resources or that a conservation subdivision would produce a better result, the Planning Board may require the applicant to submit a plan for a conservation or ODA subdivision (see Subsections B and C below) and may require that such a plan be approved as an alternative to a conventional subdivision.
3. The Planning Board may, in its discretion, require a conservation analysis for a subdivision creating fewer than four new building lots.

**B. Conservation Subdivision**

The Town encourages Conservation Subdivisions as an alternative to conventional subdivisions. In Conservation Subdivisions, units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Conservation Subdivisions may include a variety of lot sizes, ranging from large farm or estate lots to small hamlet-size lots. Conservation Subdivision results in the preservation of contiguous

open space and important environmental resources, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions. Conservation Subdivisions must satisfy the standards in §175-20.

### **C. Open Development Area Subdivision**

An Open Development Area (ODA) subdivision is a low-density subdivision with a private right-of-way serving no more than four lots without frontage on an existing road. Rules for ODA subdivisions are in Part 2 of the Land Development Regulations.

### **D. Flag (Rear) Lots**

Flag lots are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, flag lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new Town roads. For regulations on flag lots, see §175-22. Flag lots may be included as a component of a conventional, conservation, or ODA subdivision.

## **§175-20 STANDARDS FOR CONSERVATION SUBDIVISIONS**

In order to approve a Conservation Subdivision, the Planning Board must find that the proposed subdivision meets the standards in this Section. Conservation Subdivisions are permitted in the RC, RR, IC, and SR Districts and are intended to allow design flexibility while preserving important natural attributes of the land.

### **A. Conservation Analysis**

1. As part of any Sketch Plan submission for a Conservation Subdivision (or as required for a conventional subdivision in §175-19A above), an applicant shall submit a conservation analysis, consisting of inventory maps, description of the land, and an analysis of the conservation value of various site features. The conservation analysis shall follow applicable criteria and recommendations in the Philipstown Natural Resources and Open Space Plan. Applicants are encouraged to consult with the Hudson Highlands Land Trust, Philipstown Conservation Board, and the Putnam County Soil and Water Conservation District when preparing a conservation analysis. The Planning Board may waive some of the requirements below for portions of a property where no development will occur or where the collection of information listed below would be unreasonably burdensome to the property owner. The Planning Board may also waive any requirements that, in its sole discretion, it deems unnecessary for a complete conservation analysis. The conservation analysis shall show lands with conservation value on the parcel and within 200 feet of the boundaries of the parcel, including but not limited to the following:
  - a. Wetlands, watercourses, slopes of 20% - 35% and slopes greater than 35%, measured as described in §175-36B(6).
  - b. Farmland, trail corridors, scenic viewsheds, public water supply wellheads, park and recreation land, unfragmented forestland, and historic and archaeological sites, if such areas are specifically identified in the Comprehensive Plan or the Town's Natural Resources and Open Space Plan.
  - c. Designated overlay zones for scenic protection, stream corridors, aquifers, and floodplains.
  - d. Buffer areas necessary for screening new development from adjoining parcels.
  - e. Stone walls and individual trees or forested areas containing trees that are 18" diameter at breast height (dbh) or larger.
  - f. If identified by the Planning Board or the Town's planning consultant in the course of pre-application discussions, other land exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic, or other natural resource value.
2. The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site identified in (1) above. It shall also take into account land that has been disturbed, developed, or altered in the past and which may therefore be more suitable for development. In the course of pre-application conferences and initial Sketch Plan review, the Planning Board shall indicate to the applicant which of the lands identified as being of conservation value are most important to preserve.
3. The outcome of the conservation analysis and the Planning Board's determination shall be incorporated into the

Sketch Plan showing land to be permanently preserved by a conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land. The Sketch Plan shall also show preferred locations for intensive development as well as acceptable locations for less dense development.

4. The final determination as to which land has the most conservation value and should be protected from development by conservation easement shall be made by the Planning Board, which shall make written findings supporting its decision (the "conservation findings"). The Planning Board shall not endorse any application that does not include a complete conservation analysis sufficient for the Board to make its conservation findings.

*[Note: This section above will require procedural amendments to the Land Development Regulations to formalize the sketch plan stage of subdivision approval, since the conservation analysis takes place at this early stage.]*

## **B. Density Calculation**

The maximum number of dwelling units in a Conservation Subdivision is based upon either a "yield plan" or a "density formula" that subtracts constrained land from the parcel's acreage and divides the "net acreage" by the minimum lot size in the district. This "density formula" method is intended to simulate, in a more efficient manner, the lot count that would result from preparing a conventional subdivision "yield plan" for the same property. An applicant may elect either to prepare a "yield plan" pursuant to Subsection (2) or to use the "density formula" pursuant to Subsection (1). The calculation of the number of permitted dwelling units may be done at either the Sketch Plan or Preliminary Plat stage of the application, at the applicant's election.

1. To calculate the permitted number of dwelling units using the "density formula" method:
  - a. Determine the unconstrained acreage by subtracting from the total (gross) acreage of the proposed development parcel the acreage of "constrained land." Constrained land consists of wetlands as defined in §175-74, watercourses, floodplains, cemeteries, and slopes of 20% or greater.
  - b. Multiply the unconstrained acreage by a "development loss factor" of .85 (to account for roads and lot shape irregularities).
  - c. Divide the resultant area by the maximum density for a Conservation Subdivision in the district. Fractional units of .5 or less shall be rounded down and fractional units greater than .5 shall be rounded up.
  - d. The result of this calculation, as reviewed and approved by the Planning Board, establishes the maximum number of units permitted in the Conservation Subdivision using the density formula method.
  - e. For lots in more than one district, the permitted number of dwelling units for land in each district shall be computed separately, but the units may be located in the manner that best fits the character of the land.
2. To calculate permitted number of dwelling units using the "yield plan" method:
  - a. The applicant shall prepare and submit an application that satisfies all of the requirements for a preliminary plat in the Land Development Regulations, complying with all applicable bulk requirements and other requirements of this Zoning Law, as well as with all standards and requirements of the Land Development Regulations, other Chapters in the Town Code, and all applicable requirements of the Putnam County Health Department, New York State Department of Environmental Conservation, United States Army Corps of Engineers, and any other agency with jurisdiction over the project as shown on the yield plan. The maximum density figure as shown on the dimensional table shall be used for purposes of determining minimum lot size in the layout of a yield plan.
  - b. The applicant shall be required to show compliance with the requirements listed in (a) by submitting road profiles, soil and percolation test results, well test results, and any other information the Planning Board deems necessary to conduct an adequate review of an application as if it were being proposed for approval as a conventional subdivision.
  - c. Based upon its review and analysis of this information, which shall be conducted at the applicant's expense, the Planning Board shall make a determination as to how many lots it could approve as buildable lots if such application were submitted for approval as a conventional subdivision. In making this determination, the Planning Board shall take into consideration the economic feasibility of construction of roads and driveways shown on the yield plan. The number of lots determined to be allowable and feasible by the Planning Board shall be the maximum number of units permitted in the Conservation Subdivision using the "yield plan" method.
3. An applicant may increase the permitted number of dwelling units (using either method) by the use of density

bonuses granted at the discretion of the Planning Board. The following density bonuses may be permitted:

- a. If the applicant increases the percentage of open space preserved by conservation easement beyond 60%, the Planning Board may grant the applicant an increase in the permitted number of dwelling units of up to 5% for every 10% of additional open space protected above the minimum required for the entire parcel.
- b. If the applicant allows public access to the protected open space on the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as a trail connector or access to an important natural area), the Planning Board may grant an increase in the permitted number of dwelling units of up to 15%.

4. The maximum number of units, whether derived from the density formula or a yield plan, and the density bonuses described in Subsection (3) shall not be considered an entitlement. The applicant must also demonstrate compliance with all applicable criteria and standards of the Zoning Law, Land Development Regulations, and other applicable laws and regulations. These requirements may result in an actual approvable unit count that is less than the maximum allowed by Subsections (1), (2), or (3) above. If the Planning Board has a reasonable basis to believe that the number of units that would result from a yield plan would be substantially less than the number allowed by the density formula, it may require the submission of a yield plan which shall be the basis for determining the allowable unit count.

5. For purposes of applying the density calculations in this Section, a studio dwelling unit shall be counted as .5 dwelling unit, a one-bedroom dwelling unit shall be counted as .67 dwelling unit, a two-bedroom unit shall be counted as .75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as 1 dwelling unit. All dwelling units which are treated as less than one full dwelling unit under this Section shall be required to have permanent deed restrictions, in a form acceptable to the Planning Board, limiting them to the approved number of bedrooms. This shall not prevent an applicant from building a dwelling unit of less than three bedrooms and counting it as a full dwelling unit for density purposes, in which case no deed restriction shall be required and future expansion of the dwelling or dwelling unit shall be permitted.

### **C. Minimum Lot Size**

The limiting factor on lot size in Conservation Subdivisions is the availability of water and sewer infrastructure and the impacts of nitrate loading on well water supplies. Therefore, minimum lot sizes are based upon the availability of such infrastructure, including consideration of nitrate loading concerns and the use of preserved open space for individual or common leach fields, and are the same as indicated for the hamlet districts in §175-11D.

### **D. Arrangement of Lots**

Lots shall be arranged in a manner that protects land of conservation value and facilitates pedestrian and bicycle circulation. The lot layout shall be designed with consideration of applicable portions of the Rural Design Guidelines and Hamlet Design Guidelines published by the New York Planning Federation (1994), or such other guidelines as may be adopted by the Planning Board. Lots shall also be arranged to maximize protection of wells from nitrate loading problems (see Subsection I.).

### **E. Front, Side, and Rear Yards and Road Frontage**

Appropriate minimum yard setbacks in a Conservation Subdivision will depend upon the lot sizes, the type of road frontage (State, County, Town, or private) and the character of the subdivision (hamlet, suburban, or rural). Accordingly, yard requirements shall be established at the time of plat approval and shall be shown in a chart on the plat. Minimum yard and road frontage requirements shall be same as in the HM District for lots on Town roads.

### **F. Impervious Surface Coverage**

The amount of pavement and building area is a major factor in determining the impact of a development. Therefore, limiting impervious surface coverage, as defined in §175-74, is critical in maintaining environmental integrity. The limitation on impervious surface coverage for each district shown on the Dimensional Table in §175-11B applies to the entire area to be subdivided, including all open space areas. Thus, individual lots may be allowed higher impervious surface coverage allotments, as long as the total coverage is within the limits prescribed. Conservation Subdivision plats

shall show on a table the impervious surface coverage limit for each building lot in order to establish compliance with this Subsection. Driveways, roads, and parking areas that are unpaved or surfaced with porous pavement shall be considered impervious surfaces, unless the Planning Board determines, upon the recommendation of the Town's Engineer, that such surfaces are only partially impervious. In such cases the permitted coverage by such materials may be adjusted upward based upon the Engineer's recommendation, provided that a note is placed on any approved plat indicating requirements for maintaining the permeability of such surfaces.

#### **G. Accessory Uses**

Residential and nonresidential accessory uses may be combined in a Conservation Subdivision provided that the applicant complies with all residential density, impervious surface, and open space requirements. Permitted non-residential uses that may be included in a Conservation Subdivision include:

1. Common buildings for meetings, dining, recreation, and for entertaining and lodging guests of the residents.
2. Childcare facilities for residents of the development as well as those outside the development.
3. Office space for use by administrators of the development as well as for use by residents of the development in the conduct of their own businesses, provided that such offices do not occupy more than 10% of the total floor area of the development.
4. Storage facilities, which may be used for the needs of the development and its residents.
5. Recreational facilities for use by residents and their guests.
6. Convenience store not exceeding 5,000 square feet in floor space, providing goods for use primarily by residents of the development and the immediate neighborhood.

#### **H. Minimum Area and Configuration of Open Space**

1. Since one of the major purposes of a Conservation Subdivision is to preserve open space, conservation subdivisions shall preserve at least 60% of the land as open space. The requirements for preserving such open space are described in §175-21.
2. Preserved open space may be included as a portion of one or more large lots or may be contained in a separate open space lot. Such open space may be owned by a homeowners' association, private landowner(s), a nonprofit organization, or the Town or another governmental entity, as long as it is protected from development by a conservation easement and does not result in fragmentation of the open space land in a manner that compromises its conservation value. The required open space land may not include private yards located within 100 feet of a principal structure. At least 75% of the land counted toward the 60% requirement must be buildable land.

#### **I. Prevention of Excess Nitrate Loading**

In any conservation subdivision containing 10 or more dwelling units which is not served by a common or municipal sewage disposal facility, the applicant shall provide an analysis of the impact of nitrate loading on groundwater and surface water and shall take all necessary measures to prevent any adverse impacts on water resources. Such measures may include grouping the development into smaller clusters of eight or fewer units, requiring lots larger than the minimums otherwise required, arranging lots along the contours of a hillside rather than up and down the hillside to prevent septic leachate from flowing downhill into wells, and/or the use of enhanced on-lot wastewater treatment systems, common wastewater treatment systems, or community water systems.

#### **J. Recreation Land or Fee**

In applying the provisions of §112-43 of the Town Code pertaining to parks and open space, the Planning Board shall apply the standards in Section 277(4) of the Town Law to determine whether or not the preserved open space land in a conservation subdivision qualifies as the parkland required under Section 277(4) for playgrounds or other recreational purposes within the Town. In the event that the Planning Board finds that the proposed development will generate demand for playgrounds or other recreational facilities which will not be satisfied by the preserved open space in the proposed development plan, the Planning Board shall require the payment of money in lieu of land pursuant to §112-43A of the Town Code.

**§175-21 PRESERVATION OF OPEN SPACE BY CONSERVATION EASEMENT**

**A. Conservation Easement Requirement**

Open space set aside in a Conservation Subdivision, or as a condition of any special permit or site plan approval, shall be permanently preserved by a conservation easement. Such land may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land pursuant to Subsection (3) below, and provided that the Planning Board approves such configuration of the open space as part of its approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land as established in the conservation analysis required by §175-20A above.

1. Conservation value of open space. The open space protected must include all the land determined pursuant to §175-20A(4) to have the most conservation value and, subject to §175-20H, as much other land having conservation value as possible (as established by the conservation analysis and conservation findings). Examples of lands with conservation value include view corridors along scenic roads, agricultural land, ridgelines, steep slopes, designated Critical Environmental Areas, large areas of contiguous mature forest, wetlands, watercourses, and stream corridors. Prime and statewide important agricultural land, even if suitable for development, shall be considered land of conservation value.
2. Notations on plat or site plan. Preserved open space land shall be clearly delineated and labeled on the final subdivision plat or site plan 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. The plat or site plan shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a notation indicating the deed reference of any conservation easements or deed restrictions required to be filed to implement such restrictions.
3. Requirements for conservation easements.
  - a. A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation, protection of natural resources, or similar conservation purposes, pursuant to §247 of the General Municipal Law and/or §§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 or other governmental body acceptable to the Planning Board. Such conservation easement shall be approved by the Planning Board and shall be required as a condition of approval. The Planning 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. In the case of subdivisions of less than five lots and minor projects, a deed covenant enforceable by the Town may be substituted for a conservation easement. Applicants are encouraged to consult with a qualified conservation organization in preparing a conservation easement.
  - b. The conservation easement shall protect the conservation values identified in the conservation analysis. It shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry and recreation) and shall not be amendable to permit such use. Access roads, driveways, local utility distribution lines, subsurface wastewater disposal systems, trails, temporary structures for outdoor recreation and agricultural structures shall be permitted on preserved open space land, provided that they do not impair the conservation value of the land. Dwellings may be constructed on parcels that include protected open space land, provided that the dwellings are not constructed on the portion of the parcel that is protected by the conservation easement. The configuration of the open space land and dwellings shall not result in fragmentation of the open space land in a manner that interferes with its proper management and protection of its conservation values. (See the Rural Development Guidelines referred to in §175-5 for a fuller explanation of this.)
4. Ownership of open space land.
  - a. Open space land may be owned by a homeowner's association (HOA), dedicated to Town, county, or state governments, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value, based upon the conservation analysis.

- b. If the land is owned by an HOA, such HOA shall be established in accordance with the following:
- [1] The HOA must be set up before the final subdivision plat is approved and must comply with all applicable provisions of the General Business Law.
  - [2] Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance and maintenance of common open space, private roads and other common facilities.
  - [3] The open space restrictions must be in perpetuity.
  - [4] The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.
  - [5] Property owners must pay their pro rata share of the costs in Subsection b(4) above, and the assessment levied by the HOA must be able to become a lien on the property.
  - [6] The HOA must be able to adjust the assessment to meet changed needs.
  - [7] The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
  - [8] Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
  - [9] The attorney for the Planning Board shall find that the HOA documents presented satisfy the conditions in Subsections b[1] through [8] above and such other conditions as the Planning Board shall deem necessary.

**B. Maintenance Standards**

- 1. 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 the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.
- 2. If the Town Board finds that the provisions of Subsection B(1) above are being violated such that the condition of the land constitutes a public nuisance, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

**§175-22 FLAG (REAR) LOTS**

Flag lots, also known as rear lots, are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, such lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new Town roads. Flag lots with or without access strips running to public or private roads may be created within the RC, RR, and SR districts, provided that they will not endanger public health and safety and will help preserve natural, historic, and scenic resources. The following requirements apply to flag lots:

- A. Each flag lot shall have a minimum frontage of 25 feet on an improved public or private road and an access strip or a deeded right-of-way easement over other lands providing legally adequate and physically practical access to a public or private road. Such access strip or deeded right-of-way easement shall be at least 25 feet wide for its entire length from the road frontage to the portion of the lot where building is permitted.
- B. Minimum lot sizes for flag lots shall be three times the size required for conventional subdivision lots in the dimensional table in Section 175-11. The area of the access strip shall not be counted in the calculation of minimum lot size.
- C. Except as indicated in Subsection (B) above, flag lots shall meet all other dimensional requirements for a conventional subdivision lot in the applicable district. Minimum lot width shall be the same dimension as the minimum required road

frontage. The minimum setbacks shall be 50 feet from all property lines.

D. There shall be no more than two adjoining access strips, which shall share one common driveway. The common driveway shall be subject to a recorded maintenance agreement approved by the Planning Board. No more than three lots may be served by a common driveway.

E. All flag lots shall have safe access for fire, police, and emergency vehicles.

F. The proposed flag lots shall not result in degradation of important natural resource and landscape features, including but not limited to ponds, streams, steep slopes, ridgelines, and wetlands.

G. When necessary to satisfy the criteria in Subsection (F) above, the Planning Board may require the applicant to grant a conservation easement or restrictive covenant enforceable by the Town that designates where the house, driveway, and utilities may be constructed on the flag lot, and requires preservation of the remainder of the lot as open space.

## **ARTICLE VI NON-CONFORMING USES, STRUCTURES, AND LOTS**

### **§175-23 GENERAL**

The purpose of this Article VI is to establish rules that apply to uses and structures initiated legally under previous land use regulations but that no longer comply with this Chapter 175, "Zoning," as it has been amended. There are three types of nonconformity: nonconforming uses, nonconforming structures, and nonconforming lots. In any given situation, more than one of these types of nonconformity may apply to a particular land use or structure, in which case the applicable rules for each type of nonconformity must all be followed. As used in this Chapter, the three types of nonconformity are (these are also defined in Article XII):

**Nonconforming Use:** Any use lawfully existing at the time of the adoption or amendment of this Chapter or any preceding zoning law or ordinance, where such use has continued but is not permitted by or does not conform with the use regulations of this Chapter for the district in which it is located. A pre-existing lawful use which is allowed only by Special Permit under this Chapter shall be considered a conforming use unless it fails to comply with the site plan standards of Article IX.

**Nonconforming Structure:** A structure which does not satisfy the dimensional requirements of this Chapter for the district in which it is located, but which was not in violation of applicable requirements when constructed.

**Nonconforming Lot:** A lot of record which was created legally but which no longer complies with the area, shape, frontage, or locational provisions of this Chapter for the district in which it is located.

#### **A. Continuation**

Any use, any building or other structure, or any lot, which existed lawfully (including by variance), on the effective date of this Chapter or any amendment thereto, and which fails to conform to one or more of the provisions of this Chapter or such amendment thereto may be continued, subject to the provisions and limitations hereinafter specified.

#### **B. Enlargement**

Nonconforming uses of land shall not be enlarged or extended and conforming or nonconforming buildings or other structures or parts thereof devoted to a nonconforming use shall not be enlarged, extended, or structurally altered, except to change to a permitted use or where the result of such changes is to reduce or eliminate the nonconformity. Nonconforming uses located in a building or other structure shall not be extended to occupy land outside such building or other structure. Nonconforming buildings or other structures shall not be enlarged, extended, or structurally altered, except where the enlargement or extension does not increase the nonconformity. The height of a nonconforming principal building that encroaches into a required front setback area may not be increased within the setback area.

#### **C. Moving**

Nonconforming uses of land shall not be moved to another part of a lot where such uses would also be nonconforming. Nonconforming uses of a building or other structure shall not be moved or extended to any part of the building or other

structure not manifestly designed and arranged for such use at the time the use became nonconforming. Nonconforming buildings or other structures shall not be moved unless the result of such move is to eliminate the nonconformity.

**D. Change in Use**

Nonconforming uses of land, buildings, or other structures shall not be changed to any use which is substantially different in nature and purpose from the existing use unless the new use is permitted by this Chapter and any required permits are obtained.

**E. Reduction or Elimination of Nonconformity**

Any nonconformity that has been reduced or eliminated shall not be increased or reestablished.

**F. Discontinuance and Resumption**

Nonconforming uses of land, buildings, or other structures which have been discontinued or inactive for a continuous period of at least two years from the time such uses became nonconforming shall not thereafter be resumed. Uses that were discontinued or that became inactive before zoning changes made them nonconforming may resume within two years of their discontinuance or within one year of the zoning change that made them nonconforming, whichever period is longer. When a structure is vacant, its use shall be deemed to be discontinued for the period of vacancy.

**§175-24 SPECIAL PROVISIONS AND LIMITATIONS FOR CERTAIN USES.**

In addition to the foregoing, the following special provisions and limitations shall apply to particular nonconformities:

**A. Signs**

Signs that are nonconforming under §175-39 shall be considered nonconforming structures under this Chapter, and any increase in size, illumination, motion, or flashing of such signs shall be deemed to be an enlargement or extension producing an increase in nonconformity. Any nonconforming sign which is damaged or destroyed by fire or other casualty to an extent greater than 50% of the value of the sign as determined by the Code Enforcement Official shall not be restored, reconstructed, or replaced except by a sign which conforms to this Chapter.

**B. Soil Mining** (To be written based upon the pending soil mining amendment)

**C. Mobile Homes and Mobile Home Parks**

Any mobile home lawfully existing on the effective date of this Subsection and used or occupied as a dwelling may continue to be so used or occupied. New mobile homes may be installed only within the MH Overlay District.

**D. Site Development and Landscaping**

Where existing site development, including landscaping, fails to conform to the requirements of Article IX, the use and structures on the lot shall not be enlarged, extended, changed, or moved unless the nonconformity is eliminated; provided, however, that the Philipstown Planning Board may authorize continuation or reduction of the nonconformity under §175-28.

**E. Moving of Road Centerline**

If a structure becomes nonconforming as a result of the moving of the centerline of a traveled way, such structure shall be treated as a conforming structure with respect to any resulting nonconformity.

**F. Planned Development Districts**

Any development approved as a Planned Development District (PDD) under prior zoning shall be permitted to continue as approved under such zoning rules, including all conditions of such approval. Any change in the site plan, where no change in the permitted uses, intensity, or density is involved, shall be permitted by site plan approval. Changes in use

may be allowed by special permit if such changes do not increase the impact of the development or allow uses not authorized in the original PDD approval. Any other change to a PDD shall require a zoning amendment by the Town Board to modify the terms of the PDD approval.

**§175-25 ADDITIONAL PROVISIONS**

Notwithstanding the foregoing provisions of this Article, the following shall apply to nonconformities:

**A. Casualty**

If any nonconforming building or other structure, or any building or other structure containing a nonconforming use, shall be damaged or destroyed by fire or other casualty, such building or other structure may be restored or reconstructed and the use thereof resumed, provided that such restoration or reconstruction does not extend the nonconformity and is commenced within one year after the date of the fire or other casualty and is completed within two years after such date, which periods may be extended by the Zoning Board of Appeals for good cause shown.

**B. Title**

Changes of title, possession, or right of possession shall not affect the right to continue a nonconforming use, building, or other structure.

**C. Repair**

Nothing in this Article shall be deemed to prohibit work on any nonconforming building or structure when required by law to protect the public health or safety, provided that such work does not increase the nonconformity. Nothing in this Article shall prohibit ordinary repair and maintenance of a nonconforming building or structure or replacement of existing materials with similar materials or materials of higher quality.

**D. Special use permits and site plans**

The lack of an approved special use permit or site plan, as required for particular uses under this Chapter, shall not be deemed a nonconformity as to such lawfully existing uses established prior to the effective date of this Chapter.

**§175-26 LOTS**

Nothing in this Chapter shall prevent the use of a nonconforming lot or the construction, enlargement, extension, or structural alteration of a building or other structure on such a lot, as defined in §175-74, provided that all of the following standards and conditions are satisfied:

- A. The use, building, or other structure shall conform to all other requirements of this Chapter;
- B. If used for a dwelling, the lot shall contain a minimum area of 5,000 square feet; and
- C. The owner of the lot does not own a contiguous lot or lots with which the nonconforming lot could be merged to reduce the nonconformity of the lot.

**§ 175-27 EFFECT ON APPROVED PERMITS, CERTIFICATES, OR APPLICATIONS**

Unless otherwise specifically provided in this Chapter, nothing in this Chapter shall require any change in the use of any land, buildings, or other structures for which a valid certificate of occupancy has been issued by the Code Enforcement Official. Nothing in this Chapter shall require any change in the plans, construction, or use of any land, buildings, or other structures for which any required building permit has been lawfully issued and an application for a certificate of occupancy lawfully approved by the Code Enforcement Official under this Chapter as it may be amended from time to time. If an amendment to this Chapter renders such permit and/or application nonconforming, actual construction begun in good faith prior to the effective date of such amendment may continue, provided that it is diligently completed within two years following the date of such amendment. The term "actual construction begun" means that construction materials have been placed in a permanent position fastened permanently to the ground, as authorized by such permit

and/or application. A use or structure which is not completed within this two-year period shall be deemed a violation of this Chapter.

**§175-28 APPROVAL STANDARDS FOR NONCONFORMING USES OR STRUCTURES**

The Planning Board may grant Site Plan approval for the construction, reconstruction, enlargement, extension, moving, and/or structural alteration of buildings and structures on a lot where existing site development, whether or not the subject of the application, fails to conform to the standards of this Chapter, provided that the Planning Board finds that the following standards are met:

- A. The proposed construction will result in a general improvement of the lot with regard to safe access, sight lines along the street, suitable drainage, architectural quality, and adequate landscaping.
- B. Nonconforming signs and lighting will be brought into a conforming or more nearly conforming condition.
- C. Landscaping will be improved within the required setback area adjoining a residential district boundary line.
- D. There will be no increase in any nonconformity.

**§175-29 RESERVED**

**ARTICLE VII SUPPLEMENTARY REGULATIONS**

**§175-30 SUPPLEMENTARY DIMENSIONAL REGULATIONS**

**A. Wetlands and Watercourses in Lot Area Calculations**

In computing minimum lot sizes for new lots pursuant to the Dimensional Table, the area of wetlands and watercourses shall be subtracted from total acreage in the lot area calculation.

**B. Corner Lots and Through Lots**

Wherever a side or rear yard is adjacent to a street, the front setback shall apply to such side or rear yard. Corner lots shall be deemed to have two front yards, two side yards, and no rear yard.

**C. Projections into Required Setback Areas**

- 1. The following projections into required setback areas shall be permitted:
  - a. Steps and stairs: four feet into any required setback area.
  - b. Awnings or movable canopies: six feet into any required setback area.
  - c. Cornices, eaves, and other similar architectural features: three feet into any required setback area.
- 2. Carports, porches, and decks. An open or enclosed carport, porch, or deck shall be considered a part of the building in determining compliance with setback requirements.

**D. Driveways**

Driveways on lots with 100 feet or more of road frontage shall be set back at least 10 feet from side lot lines, except that common driveways may occupy any part of a side yard adjoining the lot of another user of the common driveway. On lots with less than 100 feet of frontage, no side yard setback shall be required for driveways.

**E. Height Exceptions**

- 1. The height limitations in the Dimensional Table shall not apply to any flag pole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet or railing, water tank, or any similar non-habitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than 10% of the roof area. Such structures shall be limited to the minimum height and area necessary to accomplish their intended purposes and shall not cause the building height to exceed fifty-five feet except for spires associated with religious institutions. Such structures shall not be accessible to any person for purposes other than the repair and

maintenance thereof.

2. Solar energy systems, communications towers, and wind energy conversion systems may exceed height limits in the Dimensional Table, provided that they comply with applicable Sections of this Article VII. Any wind energy conversion system that exceeds 40 feet in height shall require a special permit from the Zoning Board of Appeals.
3. This Subsection E shall not be construed to permit any structure that is not allowed elsewhere in this Chapter.

#### **F. Setback Exceptions**

1. Any accessory structure attached to a principal building, and any detached barn, garage, stable, tennis court, or swimming pool shall comply with the minimum setback requirements of this Chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas provided that they:
  - a. Are not used for human habitation;
  - b. Have a footprint no larger than 150 square feet;
  - c. Do not exceed 16 feet in building height;
  - d. Do not occupy more than 10% of a rear setback area;
  - e. Are set back at least 10 feet from side or rear lot lines.
  - f. Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, bus shelters, and similar roadside structures with less than 100 square feet of footprint, as well as ornamental structures such as entry pillars and statues;
  - g. Are not used for housing animals.
2. For corner lots, the setback from all streets shall be the same for accessory structures as for principal buildings.
3. For watercourse setbacks within the WSO district, see §175-14D (10).
4. Signs shall be subject to the minimum setback requirements for buildings, except that one free-standing sign shall be permitted to have a minimum front setback of 10 feet. For non-residential uses, signs that are closer to the street line than the required front building setback shall not be more than four feet in height, 24 square feet in area, and six feet in any dimension.
5. No setback is required from a railroad right-of-way or an established pierhead line along the Hudson River.
6. The minimum front setback for a building not exceeding 300 square feet in floor area and a height of 15 feet and used solely as a guardhouse, gatehouse, or security building shall be 10 feet.

#### **G. Setbacks Involving Irregular Buildings and Lot Lines**

Where structures or lot lines are irregular or unusual in configuration, all points on the structure shall satisfy the minimum setback requirements from that point on the lot line which is the shortest distance from the structure.

#### **H. Fences and Walls**

1. The setback requirements of this Chapter shall not apply to retaining walls of any height or to fences less than six feet high in any side or rear yard, except where corner clearances are required for traffic safety.
2. The setback requirements of this Chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher.

#### **I. Reduction in Lot Area**

No conforming lot shall be reduced in area in a manner that violates the dimensional requirements of this Chapter.

#### **J. Center Line of U.S. Route 9.**

The center line of U.S. Route 9 is a line established by the New York Department of Transportation for the purposes of highway design. (It is noted that this line was intended by the New York Department of Transportation to be along the center of the travelway or pavement as originally constructed.) Where that center line is not so determined, an alternative setback measurement may be made from either a line along the center of the travelway or from a line that is as near to the mean distance between the right-of-way lines as practicable without field survey, whichever results in the greater setback. The alternative setback measurement shall be made at the time of approval of a site plan or grant of a special

use permit and otherwise by the Code Enforcement Official at the time of approval of an application for a certificate of occupancy.

#### **K. Minimum Buildable Area**

In addition to any applicable requirements of Chapter 85 of the Town Code, "Environmentally Sensitive Lands," any residential structure, residential accessory structure, or non-residential structure exceeding 500 square feet in floor area shall be built within a "buildable area" as defined in Chapter 85.

### **§175-31 RURAL SITING PRINCIPLES**

The following principles are recommended for consideration in the siting of buildings and site improvements in all districts other than the HM and HR districts. **These are in addition to and are not intended to replace or supersede more specific or more restrictive provisions in this Chapter.**

- A. *Wherever feasible, retain and reuse existing old farm roads and lanes*** rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls.)
- B. *Preserve stone walls and hedgerows.*** These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.
- C. *Avoid placing buildings in the middle of open fields.*** Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.
- D. *Use existing vegetation and topography to buffer and screen new buildings*** if possible, unless they are designed and located close to the road in the manner historically found in the Town. Group buildings in clusters or tuck them behind treelines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.
- E. *Minimize clearing of vegetation along roads and driveways,*** clearing only as much as is necessary to create driveway entrances with adequate sight distance. Use curves in the driveway to increase the screening of buildings.
- F. *Site buildings so that they do not protrude above treetops and crestlines of hills*** as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, any opening up of views should be by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees. More specific preservation measures for ridgelines and hillsides are contained in Section 175-36.
- G. *Minimize crossing of steep slopes with roads and driveways.*** When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

### **§175-32 STORMWATER MANAGEMENT**

See Chapter 147A of the Town Code, entitled "Stormwater Management and Erosion & Sediment Control," and Chapter 147B of the Town Code, entitled "Stormwater – Illicit Discharges, Activities, and Connections to Separate Storm Sewer System."

**§175-33 SANITARY DISPOSAL AND WATER SUPPLY**

**A. Sanitary Disposal**

No person shall construct any structure in the Town without meeting applicable requirements of the Town, the Putnam County and New York State Departments of Health, the New York State Department of Environmental Conservation, and other governmental authorities that regulate water supply and sewage disposal systems. Issuance of a Certificate of Occupancy shall be subject to sanitary system inspection and certification by the Putnam County Department of Health, and compliance with all conditions imposed by any other governmental authority.

**B. Water Supply**

The Planning Board may require an applicant for any subdivision, Special Permit, or Site Plan approval to provide evidence of water availability, and may require test wells and professional hydrological studies sufficient to establish that a proposed development will have adequate supplies of potable water and will not adversely affect any aquifer resource or the supply or quality of drinking water in the surrounding area. (See §175-16.)

**§175-34 EXCAVATION, FILLING, GRADING, AND CLEARCUTTING**

**A.** Excavation, filling, and grading necessary for the construction of a structure for which a Building Permit has been issued shall be permitted, provided that it does not change the run-off characteristics of the property or otherwise adversely affect natural drainage or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety.

**B.** In the event that construction of a structure is stopped prior to completion and the Building Permit expires, the premises shall be promptly cleared of any rubbish or building materials by the property owner, and any open excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced, or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

**C.** The Planning Board may, in connection with a Major Project Site Plan, require an applicant to furnish an irrevocable letter of credit, certified check, or other form of security to guarantee reclamation of areas to be excavated or graded if a project is abandoned. Such security shall be for an amount reasonably related to the potential cost of such reclamation, and shall be in a form deemed acceptable by the Town Attorney.

**D.** For regulation of Soil Mining, see §175-17 of this Chapter.

**E.** No excavation, filling, or grading and no clearcutting of 2,000 square feet or more in preparation for site development shall be undertaken prior to the grant of any Special Permit, Site Plan, or subdivision approval required for such development.

**F.** Excavation, clearcutting, or grading of any area exceeding 2,000 square feet and/or filling with more than 100 cubic yards of material shall require a zoning permit from the Code Enforcement Official, unless such excavation, grading, filling, or clearcutting is performed pursuant to an approved Site Plan, Special Permit, subdivision plat, Building Permit, or timber harvesting plan, or as a normal and customary activity conducted in conjunction with a farm operation (as defined in Article XII). The Code Enforcement Official shall not issue a zoning permit for such activities unless the applicant has demonstrated that the activities will not alter the run-off characteristics of the property or otherwise adversely affect natural drainage or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety. Any land disturbance involving more than 20,000 square feet of land that is not performed in connection with an approved building permit, special permit, or site plan, shall require a special permit from the Planning Board.

**G.** Excavation and grading activities shall comply with applicable requirements for erosion and sediment control in the

Town Code.

H. No person, firm or corporation shall strip, excavate or otherwise remove topsoil for sale, or for use other than on the premises from which it is taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

I. Any land disturbance which violates this §175-34 shall be remedied by restoring the land to its condition prior to the violation by order of the Code Enforcement Official. A land disturbance committed in violation of this Chapter shall preclude the issuance of any type of permit for development of the parcel on which such violation occurs for a period of one year from the date the Code Enforcement Official determines that disturbance has been remedied.

#### **§175-35 WETLAND AND WATERCOURSE PROTECTION**

See Chapter 93 of the Town Code, entitled "Freshwater Wetlands and Watercourses."

#### **§175-36 STEEP TERRAIN AND RIDGELINE PROTECTION REGULATIONS**

*(Note: This Section incorporates and revises much of Chapter 147, "Steep Terrain." When this is adopted, Chapter 147 will have to be repealed, and references to it and to its definitions of slope types in other Chapters (e.g. Ch. 85) will have to be changed.)*

##### **A. Purpose and Applicability**

The purpose of this Section is to identify, protect, and provide for the proper management of steep terrain, ridgelines, and hillsides. This Section shall apply throughout the Town, in all zoning districts, and to all uses that involve land disturbance, including all land use permitting decisions under this Chapter as well as under Chapter 112, Land Development, and other Town of Philipstown land use laws and regulations. The exact locations of slopes, ridgelines, ridgeline protection areas, and hillside protection areas shall be based upon site-specific field surveyed topography.

##### **B. Slope Restrictions**

1. Except as provided in Subsection (7) below, on slopes of 20% or greater, land disturbance shall be restricted to only those areas clearly needed for the following:
  - (a) Streets and highways shown on a plat approved under Chapter 112 and proposed for acceptance by the Town of Philipstown.
  - (b) Open development area private rights-of-way or easements of access shown on a plat approved under Chapter 112.
  - (c) Motor vehicle driveways running from the principal building site area to the street providing access to the lot.
  - (d) Footpaths and essential utility corridors.
  - (e) Boat launch access driveways.
  - (f) Retaining walls, drainage ways, culverts, and other ancillary structures required in connection with (a) through (e) above.
2. On slopes greater than 35%, and within steep terrain wetland/watercourse transition areas, land disturbance shall be further restricted to only those areas clearly needed for footpaths, essential utility corridors, and for soil mining and timber harvesting as permitted by Subsection 3 below.
3. On any slope of 20% or greater (including slopes greater than 35%), land disturbance also may occur in connection with permitted soil mining or timber harvesting operations conducted in a manner that avoids adverse effects of land disturbance on such slopes and provides for appropriate site restoration.
4. Activities, uses, and construction which involve land disturbance on slopes 20% or greater and within steep

terrain wetland/watercourse transition areas and which are subject to authorization or approval under this Chapter 175 and Chapter 112 shall be referred to the Philipstown Conservation Advisory Council/Conservation Board for review and advice with regard to the effects of the land disturbance, alternatives for development, and mitigation measures consistent with the purpose of this Chapter.

5. Land disturbance on slopes of 20% or greater that is within special flood hazard areas is subject to permit under Chapter 90. Land disturbance on slopes of 20% or greater within watercourses and controlled wetlands and their buffer zones is subject to permit under Chapter 93.

6. Slopes shall be measured by utilizing two-foot contours, which can contain a rectangle on a horizontal plane having a length of 50 feet and a width of 25 feet, and exclusive of areas which cannot contain such rectangle.

7. The Planning Board may grant a special permit allowing the disturbance of slopes of 20% or greater for a purpose other than those listed in Subsection (1) above, provided that the Board makes a written finding that the proposed development would involve less land disturbance and have less overall impact on soils, vegetation, scenic views, and water resources than would development in compliance with Subsection (1) of this Section B. An example of proper application of this Subsection (7) would be to allow building on a site which has a slope exceeding 20% but which is at a relatively low elevation on a property and requires a short access driveway, as compared to a less steep site located at a higher elevation accessed by a longer driveway crossing slopes exceeding 20%. The latter may have a greater impact on the hillside both because of locating the building at a higher elevation and because the longer driveway across steep slopes would involve more land disturbance.

### **C. Ridgeline and Hillside Protection**

The purpose of this Subsection C is to maintain the scenic beauty and rural character of the Town by minimizing visual intrusions into the landscape and preserving the important aesthetic, scenic, and ecological character of the Town's ridgelines and adjacent hillsides.

1. Visible Ridgeline No-Build Area. The "Town of Philipstown Resource Protection Overlay Districts Zoning Map, Sheet # \_\_\_" designates "Significant Ridgelines" for protection. This map further indicates which side or sides of a given protected ridgeline are visible from certain key viewpoints in the Town that were used to generate the map. The "Visible Ridgeline No-Build Area" consists of all land within 50 feet, measured vertically (*i.e.*, all land whose elevation is within 50 feet of the elevation of the ridgeline), from such ridgelines on the "visible" side or sides of such ridgelines. No land disturbance, other than the creation and maintenance of footpaths and the construction and repair of fences, shall be permitted within the Visible Ridgeline No-Build Area.
2. Hillside Protection Area. The Hillside Protection Area shall consist of the following areas:
  - a. All land lying 500 feet downslope, measured horizontally, from the edge of the Visible Ridgeline No-Build Area, and
  - b. All land lying 50 feet downslope, measured vertically, below the ridgeline on the "non-visible" side of the ridge, as indicated on the map.
3. Within the Hillside Protection Area, any structure containing 500 square feet or more of floor area or which is more than 25 feet in height, and any land disturbance of 1,000 square feet or more, shall be subject to site plan review. Structures built within the Hillside Protection Area shall neither project vertically into the Visible Ridgeline No-Build Area nor be more than 30 feet in height notwithstanding the provisions of §175-30E. Where such structures are located on the non-visible side of the ridgeline, they shall not project above such ridgeline when viewed from the key viewpoints used to establish the visible side of such ridgelines on the map. Structures within the Hillside Protection Area shall use natural or natural looking non-reflective exterior materials and colors that blend into the surrounding vegetation, shall not have windows on more than 20% of any façade visible from off of the property, and shall have roof slopes that generally follow the natural contours of the land. Vegetative screening shall be required as necessary to minimize visibility from publicly accessible places.
4. Cutting or removal of trees (including cutting of trees below the 1,000 square foot thresholds for "clearcutting" and "land disturbance" as defined in this Chapter) shall be prohibited in any location where such cutting or removal would alter the appearance of the crest line of a ridge when that crest line is viewed from publicly accessible places.

**§175-37 PROTECTION OF AGRICULTURE**

**A. Agricultural Buffers**

Wherever residential uses are established abutting an existing agricultural use, the applicant for the residential use shall provide buffers to reduce its exposure to odors, noise, and other potential nuisances associated with the agricultural operation. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features. This provision shall not apply to building on individual residential lots in existence prior to the adoption of this Section 175-37 (DATE).

**B. Required Disclosure**

In the case of any proposed residential development that abuts agricultural uses, the Planning Board shall require the applicant to issue a disclosure to potential purchasers of lots or dwelling units as follows: "This property adjoins land used for agricultural purposes. Farmers have the right to apply approved chemical and organic fertilizers, pesticides, and herbicides, and to engage in farm practices which may generate dust, odor, smoke, noise, and vibration." This disclosure shall be required as a note on a subdivision plat or Site Plan, and may also be required to be made through other means reasonably calculated to inform a prospective purchaser, such as by posting, distribution of handbills, inclusion in an offering plan or real estate listing information sheet, or letter of notification. This Section may also be applied to any commercial development at the discretion of the Planning Board.

**C. Agricultural Data Statement**

Any application for a Special Permit, Site Plan approval, use variance, or subdivision approval requiring municipal review and approval by the Town Board, Planning Board, or Zoning Board of Appeals that would occur on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in §175-74. The reviewing board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

**D. Keeping Livestock as an Accessory Use**

Subsections A through C above shall not apply where farm animals are kept on residential properties as an accessory use and are not part of a farm operation. See §175-49.

**E. Agricultural Zoning Exemptions**

Within an agricultural district as defined in Article 25AA of the New York State Agriculture and Markets Law, adopted by the County and certified by the State, the following exemptions from provisions of this Zoning Law shall apply to land and buildings on farm operations:

1. There shall be no height limits on agricultural structures, including but not limited to barns, silos, grain bins, and fences, as well as equipment related to such structures, as long as they are being used in a manner that is part of the farm operation.
2. Lot line setback restrictions on agricultural structures shall be 30 feet from all property lines, except that setbacks from lots that are either not within the agricultural district or lots that have existing residential uses shall meet generally applicable setback requirements of this Chapter. Agricultural structures containing animals, animal feed, or animal waste shall be set back at least 150 feet from watercourses and from lots that have existing residential uses, whether or not such residential lots are within an agricultural district. This setback requirement shall not apply to pre-existing non-conforming structures.
3. Agricultural structures and practices shall not require site plan review or special permit approvals, except that agricultural structures with a footprint greater than 10,000 square feet shall require minor project site plan approval pursuant to §175-67.

§175-38 OFF-STREET PARKING AND LOADING

**A. Off-Street Parking**

1. Purpose

The Town finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots damage the historic layout and architectural fabric of hamlet areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However, the Town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The Town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking, and to avoid the negative impacts of excessive parking lot construction.

2. Minimum Parking Required for Residential Uses

- a. For single-family or two-family dwelling: Two spaces per dwelling unit.
- b. For multi-family dwelling: One-and-one-half spaces per dwelling unit.
- c. These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed use development, or other appropriate circumstances if the Planning Board determines that such reductions are warranted.

3. Parking Requirements for Non-residential Uses

The number and layout of parking spaces for non-residential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic, and scenic resources. Since non-residential uses vary widely in their need for off-street parking, parking requirements shall be based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection (3)(a) below shall be applied and may be varied by the Planning Board according to the criteria in Subsection (3)(b) below.

a. Provisional Parking Standards

- (1) Retail or service business uses: Four spaces per 1,000 square feet of enclosed floor space, excluding space used for storage.
- (2) Industrial/warehouse uses: One space per 1,000 square feet of enclosed floor space.
- (3) Office uses: Three spaces per 1,000 square feet of floor space.
- (4) Lodging Facility: One space for each bedroom plus one space for each non-resident employee and one space for every 200 square feet of floor space for meetings and functions.
- (5) Restaurants, theaters, and other places of public assembly: One space for every three seats.
- (6) Uses not listed above: As appropriate to the circumstances.

b. Criteria for Applying Provisional Standards

In applying or modifying the provisional parking standards for any proposed use, the Planning Board shall consider:

- (1) The maximum number of vehicles that would actually be parked at the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking, bicycling, or carpooling to the proposed use shall be taken into consideration.
- (2) The size of the structure(s) and the site.
- (3) The environmental, scenic, or historic sensitivity of the site (including applicable limitations on impervious surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning Board may require a reduction in the size of the structure so that the available parking will be sufficient.
- (4) The availability of safely usable on-street parking.
- (5) The availability of off-site off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant dedicates such off-site land for public parking or demonstrates a legal right to shared use.
- (6) The requirements for parking for the disabled as prescribed by the Americans with Disabilities Act.

c. Set-aside for Future Parking

The Planning Board may, as a condition of reducing the provisional parking standards, require an applicant to set

aside land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being developed for parking in the future.

d. Parking Lot as Accessory Use to Residential Dwelling

Parking spaces may be made available for non-residential uses on residential lots in the HM District by Special Permit. Such spaces shall be screened from adjoining properties and roads, and shall not exceed five spaces per lot.

f. Fee in Lieu of Parking Space

Where the required spaces cannot be provided on-site and are not currently available on the street and/or in municipal parking lots, the applicant shall pay a fee in lieu of one or more required spaces, in an amount established by the Town Board sufficient to cover the estimated cost of providing additional public parking spaces. Such fee shall be kept in a dedicated fund for municipal parking purposes and shall be used for such purposes within three years or returned to the applicant (or the applicant's successor).

4. Design, Layout, and Construction of Parking Areas for Non-Residential and Multi-family Residential Uses

a. Location and Screening

(1) All off-street parking shall be located behind or to the side of the principal building, except as provided in Subsections (2) and (3) below. The Planning Board may modify or waive this requirement on lots that are located in the OC, M, and HC Districts only, where unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.

(2) Within any District, parking may be located anywhere on the site if it is screened from public roads and adjoining properties, or if it is part of a commercial or institutional development which is not visible from any public road, public recreation area, public building, or residential property.

(3) Within the HC District only, a maximum of one row of on-site parallel, perpendicular, or diagonal parking may be located in front of the principal building, but not within the required front yard. If any parking spaces are located in front of the principal building, the minimum front yard setback shall be increased by 30 feet and shall be planted with alternating double rows of trees or, if wooded, left in its natural state.

(4) If a parking lot containing ten or more spaces lies within or borders the SR, RC, or RR Districts, a buffer zone at least 50 feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in the HC, OC, or M Districts or contain a non-residential use.

(5) Parking layouts in the HM and HR Districts shall follow the *Hamlet Design Guidelines* cited in §175-5.

b. Construction of Parking Areas

Parking areas shall be surfaced with a suitable durable surface appropriate for the use of the land, with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impervious pavement and run-off. Overflow or peak period parking surfaces shall be permeable. Oil traps may be required for larger paved parking lots. Parking areas shall comply with all applicable requirements of the Americans with Disabilities Act.

c. Landscaping

Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles by breaking them into separate parking lots divided by tree lines, alleys, pedestrian areas, or buildings. Parking lots containing more than 20 spaces shall be divided into smaller areas by landscaped islands at least 15 feet wide located no more than 120 feet apart. All islands shall be planted with 3-inch minimum caliper shade trees at a density of at least one tree for every 20 linear feet of island. Parking lots containing fewer than 40 spaces shall provide at least one 3-inch minimum caliper shade tree per eight spaces.

d. Lighting

Lighting within parking lots shall comply with §220-40L.

e. Non-conforming parking lots shall be brought into conformity with this Subsection (A)(4) to the extent practicable whenever a Site Plan or Special Permit application is filed for an expansion or change of the use.

**B. Off-Street Loading**

1. General Requirement

Loading docks and service access areas shall be located in a manner that minimizes visual intrusion on public spaces and ensures pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features designed to blend them with the architecture of the building. Adjacent buildings shall be sited to allow shared access to loading docks through the use of common loading zones or service alleys.

2. Exception for Hamlet Mixed Use District

The need to maintain the traditional layout and historic character of the Town's hamlets may preclude the establishment of modern loading facilities in some older buildings in the HM District. In such situations, the requirements of Subsection (1) above shall not apply and on-street loading shall be permitted.

**§175-39 SIGNS**

**A. Purpose**

The purpose of this Section is to control the location, size, quantity, character, and lighting of signs in order to maintain the attractive appearance of the Town and avoid conditions of clutter and unsightliness. Through these regulations the Town seeks to:

1. Protect public health and safety by ensuring that signs do not create dangerous conditions, obstruct vision necessary for traffic safety, or confuse, distract, or mislead motorists, bicyclists, or pedestrians; and
2. Promote the general welfare by creating a more attractive visual environment that preserves the Town's historic and rural character, protects property values, encourages economic growth, enables businesses and other establishments to identify themselves, and minimizes negative impacts of signs on adjoining properties.

**B. Exempt Signs**

The following types of signs may be erected and maintained without zoning permits, board review, or fees, provided that these signs comply with the general regulations in §175-39D and with all other requirements of this Chapter. As used in this Subsection B, the term "residential uses" shall include mixed-use lots on which at least 50% of the floor space is residential.

1. Permanent Signs

- a. Signs not exceeding one square foot in area and bearing only property numbers, postal route box numbers, or names of occupants of premises.
- b. One sign, not exceeding 32 square feet in area, designating a farm.
- c. Flags and insignia of any government, except when displayed in connection with commercial promotion.
- d. Noncommercial information signs. Signs providing noncommercial information to the public, including community service information signs, public utility information signs, safety signs, danger signs, no trespassing signs, signs indicating scenic or historic points of interest, traffic control signs, directional parking signs, and all signs erected by a public officer in the performance of a public duty.
- e. One on-premises sign, either freestanding or attached, in connection with any residential building, for permitted home occupations, not exceeding three square feet and set back at least 10 feet from the traveled way or at the right-of-way, whichever is greater. Such signs shall state name and occupation only and shall not be illuminated.

2. Temporary signs

- a. Temporary non-illuminated "For Sale" or "For Rent" real estate signs and signs of similar nature concerning the premises upon which the sign is located. For residential uses, one sign per lot, not exceeding six square feet on each side. For non-residential uses, one sign per lot, not exceeding 12 square feet, set back at least 15 feet from all property lines. All such signs shall be removed within three days after closing of the sale, lease, or rental of the

premises.

- b. Temporary non-illuminated window signs and posters not exceeding 25% of each window surface. (Such signs are normally used to advertise specific products or sales and are removed or replaced on a regular basis.)
- c. Two temporary signs for a roadside stand selling agricultural produce grown on the premises in season, provided that such signs do not exceed 32 square feet each, are set back at least five feet from the public right-of-way, and are removed at the end of the selling season.
- d. On-premises signs for garage sales and auctions, not exceeding four square feet, for a period not exceeding seven days.
- e. Posters, banners, and signs, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, for a period not exceeding 60 days.
- f. One sign, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, listing the architect, engineer, contractor, and/or owner, on premises where construction, renovation, or repair is in progress, limited to the duration of the construction period.
- g. Signs, portable or otherwise, advertising special events for nonprofit organizations, such as firemen's field days, church bazaars, bake sales, etc. Such signs shall not exceed 24 square feet in area and shall not be displayed for more than 30 days.
- h. Signs required to be posted in connection with hearings on development applications, as provided in §175-62F(3).
- i. Signs marking areas of highway or utility construction, repair, or maintenance.

### **C. Prohibited Signs**

- 1. No off-premises commercial signs shall be allowed, except that signs not exceeding four square feet directing the public to specific establishments may be allowed with site plan approval by the Planning Board.
- 2. No exterior sign shall be illuminated internally, and no sign shall contain flashing, intermittent, rotating, or moving lights, except that one neon sign not exceeding three square feet may be allowed inside the window of a business establishment.
- 3. Portable signs that are mounted on wheels, including motor vehicles or trailers parked in one location for more than 30 days in any calendar year and functioning primarily as signs, shall be prohibited.
- 4. No permanent sign or any part thereof shall contain or consist of any moving, rotating, or revolving device.

### **D. General Sign Regulations**

All signs that are not prohibited by Subsection C above are regulated by this Section. Signs that are not exempt under Subsection B shall require building permits. However, if signs are proposed in connection with any special permit or site plan application, such signs shall be reviewed and approved under applicable criteria for the principal uses and shall not require a separate building permit if constructed pursuant to an approved plan.

- 1. Permit applications. Applications for new signs or proposed changes in existing signs shall include a scaled drawing showing the type of lettering, sign dimensions, colors, materials, and method of illumination, if any, and a plan showing the location of the sign on the building or property. A building permit shall be required for any change in the size, shape, lighting, materials, or location of an existing sign. No building permit shall be required if only the words or images on the sign are changed.
- 2. Location and maintenance
  - a. Signs shall be erected, constructed, and maintained in a manner that does not obstruct traffic movement or visibility or cause any hazard to public safety.
  - b. No signs shall be placed, painted, or drawn on utility poles, bridges, culverts, or other road or utility structures or signposts, or on trees, rocks, or other natural features, except that signs not exceeding one square foot posting property may be placed on trees. No signs shall be placed on municipally owned property without permission of the Town Board.
  - c. All signs shall be kept in good repair. Painted surfaces shall be kept neatly painted at all times.
  - d. Signs shall be subject to the minimum setback requirements for buildings, except that on any lot, one free-standing sign shall be permitted to have a minimum front setback of 10 feet from the street line. For non-

residential uses, signs that are closer to the street line than the required front building setback shall not be more than four feet in height, 24 square feet in area, and six feet in any dimension.

3. Sign area and height

a. Freestanding signs. Individual freestanding signs shall not exceed 16 square feet in area nor 10 feet in height above finished grade level. Freestanding signs that are grouped together on one sign structure shall not exceed a cumulative total of 50 square feet per structure, and the individual components of such groupings shall be large enough to be read safely by passing motorists traveling at the speed limit.

b. Projecting signs. Projecting signs shall not exceed 12 square feet in area and shall not project more than four feet from the side of the building. The bottom of such signs shall be no nearer to the ground than 10 feet and no higher than 15 feet above the finished grade.

c. Wall-mounted signs. Wall-mounted signs shall not exceed 32 square feet, extend more than one foot from the surface of the wall, cover more than 10% of the front surface of a building, cover a window, obscure architectural detailing, interrupt a roofline, or be placed on the roof of a structure.

d. Window signs. Signs placed in windows shall not cover more than 25% of the window area.

e. Awning signs. The valance portion of an awning may be used as a sign, with a maximum of 12 square feet of sign area. The bottom of the awning shall be at least eight feet above the finished grade.

f. Sign area bonuses. To encourage design excellence, the maximum sizes for individual signs specified above may be increased if the criteria below are satisfied. Sign bonuses shall not apply to exempt signs or to freestanding signs that exceed six feet in height. Although a separate increase is granted for compliance with each of the criteria and the total is cumulative, each percentage increase is based on the original sign size limitation. Maximum sign sizes shall be allowed to increase as follows:

[1] Fifteen percent when the sign is made of wood.

[2] Fifteen percent if the sign is designed to contain only the identification of the establishment without advertising any products sold on the premises.

[3] Twenty percent if the sign is the only sign identifying the establishment or its principal product.

[4] Twenty percent if the sign is not designed or used with illumination.

[5] Thirty percent if the Planning Board finds that the sign has special aesthetic merit or that additional size is necessary or appropriate due to such circumstances as the sign's distance from the road, the design speed of the road, or the size of the building on which the sign is placed. In order to take advantage of this Subsection D (3)(f)[5], an applicant not otherwise subject to site plan or special permit review may file a site plan application with the Planning Board. The content and review of such application shall be limited to consideration of signs.

g. Maximum cumulative sign area per lot. The maximum amount of total sign area per lot shall be one square foot of total sign area for every two linear feet of lot frontage on a public street.

h. Maximum area per sign. Notwithstanding any provision of this Section to the contrary, no sign or grouping of signs shall be greater than 100 square feet in size.

4. Illumination. No illuminated sign or lighting device shall be placed or directed so that its light is directed or beamed:

a. Toward a residence;

b. Upon a public street, highway, sidewalk, or adjacent premises in a manner that causes glare or reflection sufficient to constitute a nuisance or a traffic hazard; or

c. upward toward the sky.

5. Sign design manual. The Town Board may adopt a sign design manual developed specifically for the Town of Philipstown or published for the general public or for another municipality. If such a sign design manual is adopted, it shall be incorporated by reference into this Chapter.

6. Non-conforming signs

Signs that do not conform with this §175-39 and that were legally in existence prior to the adoption of this Section (*date*) shall be permitted to continue for an amortization period that terminates September 1, 2013, at which time they must either be replaced by conforming signs that have valid permits or be removed. Such signs may be altered only if the alterations increase their conformity with this Section. This five-year amortization period may be extended by a temporary variance granted by the Zoning Board of Appeals, provided that the applicant demonstrates that the five-year

amortization period is confiscatory as applied to the specific sign. The period of the variance shall be the minimum reasonably necessary to avoid confiscation. Signs that were not in compliance with the sign regulations of the Town of Philipstown existing prior to the enactment of this §175-39 shall not be considered protected non-conforming structures and shall be treated as violations.

**E. Removal of Signs**

1. Signs advertising an establishment or institution that has permanently closed shall be removed within one month of such closure.
2. The Code Enforcement Official shall notify in writing the owner of any sign which no longer serves the purpose for which it was erected, or which poses a safety hazard to the public or is otherwise in violation of this Section. The Code Enforcement Official shall order such owner to remove or correct the unsatisfactory condition of such sign within 20 days from the date of such notice.
3. Upon failure to comply with such notice within the prescribed time, the Code Enforcement Official is hereby authorized to secure, repair, remove, or cause the removal of such sign. All costs of securing, repairing, or removing such sign, including related legal fees and expenses, shall be assessed against the land on which the sign is located and shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of a special ad valorem levy.
4. Where it reasonably appears that there is imminent danger to life, safety, or health or imminent damage to property unless a sign is immediately repaired, secured, or demolished and removed, the Town Board may, by resolution, authorize the Code Enforcement Official to immediately cause the repair, securing, or demolition of such unsafe sign. The expense of such remedial actions shall be a charge against the land on which the sign is located and shall be assessed, levied, and collected as provided in Subsection (3) above.

**§175-40 ENVIRONMENTAL PERFORMANCE STANDARDS**

**A. Compliance with Performance Standards**

No use shall hereafter be established, altered, moved, or expanded unless it complies with the performance standards set forth in this Section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy. This §175-40 shall not apply to farm operations engaged in customary agricultural practices, except where necessary to protect public health and safety.

**B. Purpose of Performance Standards**

Consistent with the general purposes of this Chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:

1. Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor, or other atmospheric pollutants outside the building in which the use is conducted.
2. Control noise and light perceptible beyond the boundaries of the site of the use.
3. Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.
4. Limit the dissemination of vibration, heat, or electromagnetic interference beyond the immediate site on which the use is located.
5. Limit physical hazard by reason of fire, explosion, radiation, or any similar cause.
6. Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion, and excessive noise in the streets.

**C. Noise**

The following standards apply to noise.

1. Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.
2. No person, firm, or corporation shall allow the emission of sound which, as measured at the property lines, has a

sound level in excess of:

- a. 50 decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; or
  - b. 40 decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m; or
  - c. 5 decibels above the ambient noise at the point on the boundary of the lot where measured, whichever is greater.
3. Sounds emitted at levels lower than those prohibited by Subsection(C)(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive, or in continual disharmony with the character of an adjoining or nearby residential neighborhood.

4. Exemptions

The following shall be exempt from the noise level regulations:

- a. Noises not directly under the control of the property user.
- b. Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.
- c. The noises of safety signals, warning devices, emergency pressure-relief valves, or other emergency warning signals.
- d. Bells or chimes from a church or other place of worship.

**D. Vibration**

1. Method of Measurement

For the purpose of measuring vibration, a three-component measuring system approved by the Town Engineer shall be employed.

2. Maximum permitted steady-state and impact vibration displacement. No activity shall cause or create a steady-state or impact vibration displacement by frequency bands in excess of that indicated in the following table:

**VIBRATION DISPLACEMENT**

<b>Frequency (cycles per second)</b>	<b>Steady-State (inches)</b>	<b>Impact (inches)</b>
Under 10	0.0005	0.0010
10-19	.0004	.0008
20-29	.0003	.0006
30-39	.0002	.0004
40 and over	.0001	.0002

**E. Smoke, Dust, and Other Atmospheric Pollutants**

1. General Control

The emission of smoke and other particulate matter shall not be permitted in violation of applicable regulations of the New York State Department of Environmental Conservation (DEC), including but not limited to 6 NYCRR Part 201. Pollutants that are not regulated by DEC shall not be emitted if they pose a substantial risk to public health, safety, or welfare.

2. Method of Measurement of Smoke

For the purpose of grading the density of smoke, the Ringelmann Smoke Chart or EPA methods 9 or 22 shall be used to determine the total smoke emitted. Where the Ringelmann method is used, a reading shall be taken every minute for an hour or, if less than an hour, until the total smoke emitted exceeds that allowed by these regulations. Each reading shall be multiplied by the number of minutes during which it was observed and the product added.

3. Maximum Permitted Emission of Smoke

There shall be no measurable emission of smoke, gas, or other atmospheric pollutant, except as authorized by a permit granted pursuant to applicable state and federal regulations. The emission of one (1) smoke unit per hour and smoke with discernible density of No. 1 on the Ringelmann Smoke Chart shall be prohibited.

4. Maximum Permitted Emission of Dust

- a. The emission of dust related to combustion for indirect heating from any source shall not exceed thirty-hundredths (0.30) pounds of dust per thousand pounds of flue gas adjusted to fifty-percent excess air for combustion.
- b. There shall be no measurable emission of dust or other particulate matter not related to combustion for indirect heating.
- c. Properties shall be suitably improved and maintained with appropriate landscaping, paving, or other materials to minimize windblown dust and other particulate matter.

**F. Odor**

No land use shall be permitted which emits any discernible obnoxious odor outside the lot on which the use is conducted.

**G. Toxic or Noxious Matter**

No use shall be permitted which will cause the release of toxic or noxious fumes or other matter outside the building in which the use is conducted.

**H. Radiation**

The handling, storage, or disposal of radioactive materials or waste by-products shall be conducted strictly in accordance with applicable federal and state standards.

**I. Electromagnetic Interference**

No operation shall be permitted which produces any perceptible electromagnetic interference with normal radio or television reception in any area, unless federal or state regulation requires such operation to be permitted.

**J. Fire and Explosion Hazard**

All activities involving the use or storage of flammable or explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion, with adequate firefighting and fire suppression equipment and devices standard in the industry. Such activities shall comply with all applicable requirements of the New York State Uniform Fire Prevention and Building Code, DEC regulations, and the National Fire Protective Association (NFPA) Code. Copies of SARA forms filed with the Putnam County Emergency Response Agency shall also be filed with the Code Enforcement Official.

**K. Heat**

There shall be no emission of heat which would cause an air temperature increase in excess of one degree Fahrenheit along any adjoining lot line.

**L. Lighting, Exterior Illumination, and Glare**

1. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of five-tenths (0.5) footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs, or other uses shall be directed away from adjoining streets and properties. The Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.
2. Exterior lighting fixtures shall be shielded and directed downward to prevent light from shining directly onto neighboring properties or public ways or upward into the night sky. Light standards shall not exceed 20 feet in height.
3. Lighting within parking lots shall be on poles of 12 feet maximum height, with color-corrected lamps and full cut-off luminaires designed to minimize glare and light pollution. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining streetscape treatment. Sidewalks leading from parking lots shall be lit with bollard lighting and indirect illumination of buildings and vegetation.
4. All lighting above 2000 lumens shall be restricted to full cutoff luminaires.
5. Gasoline canopy lights shall be fully recessed with an average of no more than 20 footcandles.

### **M. Liquid and Solid Wastes**

The discharge of any or all wastes shall be permitted only if in complete accordance with all standards, laws, and regulations of the Putnam County Health Department, New York State Department of Environmental Conservation, or any other regulatory agency having jurisdiction. Facilities for the storage of solid waste shall be so located and designed as to be screened from the street or from any adjoining property and so as to discourage the breeding of rodents or insects.

### **N. Traffic**

For the purpose of preventing congestion in the streets, promoting the safe and efficient use of public transportation, protecting air quality, promoting fuel conservation, and otherwise protecting the public health, safety, and welfare, the following specific traffic standards are hereby established to serve as a guide for Town officials and agencies in the review of applications for development approvals:

1. The proponent of any development shall provide the Planning Board with information pertaining to potential traffic generation. If the Planning Board determines that it is necessary, the Planning Board may require the submission of a Traffic Impact Study (TIS) prepared by a qualified traffic engineer.
  - a. The TIS shall evaluate potential impacts to roadway and intersection operating conditions at locations and peak hours to be determined by the reviewing agency.
  - b. The latest available version of the Highway Capacity Manual and/or Highway Capacity Software shall be used to conduct the TIS.
  - c. The TIS shall be based on traffic volume data not more than three years old.
  - d. Significant adverse traffic impacts requiring project mitigation shall be defined as any of the following occurring within the first year of operation of full build-out of the proposed project or, in the case of phased construction, during the first year of operation of each phase for which approval is sought:
    - [1] Any reduction in Level of Service (LOS) to less than LOS D at a street intersection that operates at LOS D or better without the proposed project.
    - [2] Any increase in delay times for intersections operating at LOS E or below.
    - [3] Introduction of new traffic volumes that will cause the overall volume of the roadway to exceed the design capacity of the mainline (nonintersection) highway sections within the TIS study area.
  - e. If the outcomes listed in (d) above would occur in any case due to other planned projects or background growth in the area that would affect that intersection or roadway segment, then the proposed project may be approved, provided that adequate mitigation plans are made to ensure safe and efficient operating conditions at the affected intersection(s).
2. Any development application for which a TIS is not submitted shall provide sufficient information to ensure safe entering and exiting conditions (e.g., sight distance, driveway width, and grade) at all proposed ingress and egress points.
3. In projecting future levels of service and the capacity of mainline highway sections, accepted traffic engineering procedures, as determined satisfactory by the Planning Board, shall be utilized, using the following requirements as a guide:
  - a. Base-year traffic conditions, including peak-hour traffic volumes and turning movements, must be documented either through direct field surveys or from other available current data sources.
  - b. Projected volumes must include estimated traffic generation from the proposed development during peak hours of on-site traffic activity as well as peak hours of street system activity.
  - c. Daily trip generation estimates must be provided. Information published by the Institute of Transportation Engineers (ITE) will generally be relied upon as a basis for estimating trip generation, although the Planning Board may allow or require a departure from the use of specific ITE averages where the board determines that such departure is warranted by unique characteristics which may be present in the proposed project.
  - d. Allowance shall also be made for traffic which is expected to be generated by other projects already approved or under construction within the Town or within neighboring communities, as well as an additional allowance for general regional traffic volume changes.
  - e. Estimated traffic generation must be distributed throughout the access network in accordance with clearly stated distribution assumptions determined acceptable by the Planning Board.
  - f. The capacity analysis of the intersections or mainline highway section roadway system shall be calculated both with

and without site-generated traffic. In analyzing such capacity, the applicant shall use methods generally recognized by national authorities, such as the Transportation Research Board of the National Academy of Sciences, and/or methods accepted by the New York State Department of Transportation. Traffic capacity estimates may take into account improvements planned by the applicant or by others, provided that, in either case, a specific commitment to construct such improvements has been made.

g. In determining overall intersection level of service at signalized intersections, optimum practical signal timing may be assumed. Overall intersection level of service shall be determined, for both signalized and unsignalized intersections, based upon a volume-weighted average of each intersection approach level of service.

h. Where a mixed-use pedestrian-oriented project is planned using Traditional Neighborhood Development (TND) design principles, the analysis shall take into account trip reduction and internal capture of trips within the development attributable to such TND design.

#### **O. Review Procedures**

As a part of site plan review of an application for the establishment of a use which, in the Planning Board's judgment, could have potentially objectionable external aspects and therefore be subject to these performance standards, the Planning Board may require the applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

### **§175-41 HOME OCCUPATIONS**

#### **A. Purpose and Intent**

The conduct of small-scale low-impact business and professional uses on residential properties shall be permitted under the provisions of this Section. It is the intent of this Section to:

1. Ensure the compatibility of home occupations with other uses;
2. Maintain and preserve the rural and historic character of the Town; and
3. Allow residents to engage in gainful employment on their properties while avoiding excessive noise, traffic, nuisance, fire hazard, and other possible adverse effects of non-residential uses.

#### **B. Criteria and Standards**

##### **1. Home Occupation as Use Permitted by Right**

Home occupations shall be permitted uses if they are in compliance with the following criteria and standards:

- a. The home occupation may be conducted only by residents of the dwelling unit plus no more than one non-resident assistant or employee at any one time. A home occupation may be conducted within a dwelling unit and/or within accessory structures. An area no larger than 30% of the floor space of the primary dwelling unit may be occupied by home occupations, up to a maximum of 1,000 square feet, including screened exterior storage space.
- b. A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes. It shall be conducted in a manner which does not give the outward appearance of a business, does not infringe on the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units, and does not alter the character of the neighborhood.
- c. Signs used in conjunction with a home occupation shall not be animated or illuminated and shall not exceed three square feet.
- d. Parking shall be adequate for non-resident employees and customers or clients. No business vehicle larger than 12,000 pounds gross vehicle weight may be parked regularly in a location visible from a public road or neighboring properties.
- e. Automobile and truck traffic generated shall not be greater than the volume of traffic that would normally be generated by a residential use, unless the residence is located on New York State Route 9.
- f. There shall be no exterior storage of materials, equipment, vehicles, or other supplies used in conjunction with a home occupation, unless screened from the road and from other properties.
- g. No offensive appearance, noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances in a manner which may endanger public health or safety or which pollute the air or water shall be

prohibited.

h. More than one home occupation may be conducted on a lot, provided that the combined impact of all home occupations satisfies these criteria and standards.

2. Home Occupation by Special Permit

a. A home occupation occupying an area greater than that permitted in Subsection (B)(1)(a) above or employing more than one non-resident employee may be allowed by Special Permit, provided that it satisfies all criteria for granting of Special Permits as well as all other criteria and standards in Subsections (B)(1)(a) through (h) above. Such criteria shall become standard conditions of the Special Permit. In no case shall the area occupied by home occupations allowed by special permit exceed the lesser of 40% of the floor space of the primary dwelling unit or 2,000 square feet, including screened exterior storage space.

b. A Special Permit granted for a home occupation shall include a condition requiring the operator to obtain an annual operating permit from the Code Enforcement Official at a cost of \$75 per year beginning in the second year of operation. Such operating permit shall be granted after the Code Enforcement Official inspects the premises and finds the home occupation to be in compliance with all conditions of the Special Permit.

**§175-42 WORKFORCE HOUSING**

In any development in which workforce housing is provided in order to obtain a density bonus (see §175-20B(3)) or where workforce housing is mandated by any other provisions of this Chapter, including Subsection P below, or by other provisions of law, such housing shall comply with the following requirements.

**A. Purpose and Intent**

The Town Board recognizes that people with moderate incomes who live or work in Philipstown and/or provide volunteer services to the Town require affordable housing. The Town Board recognizes that there is a need to encourage the construction of housing units that will be affordable for rental or sale to moderate income residents and the local workforce. There is also a need to ensure that these units remain affordable in perpetuity to enable current and future residents and their families to continue to reside in the Town. To that end, this §175-42 establishes a workforce housing program administered by a Housing Board or designated employee or contractor described in Subsection L below.

**B. Definition of Workforce Housing Units**

As used throughout this Section, the term “workforce housing unit” refers to a single or multi-family housing unit that is owned or rented by an eligible household, as defined herein, and priced to be affordable to moderate income households whose members live and/or work in the Town of Philipstown and who cannot otherwise afford market-rate housing.

**C. Development Standards**

1. Physical Integration: All workforce housing units must be physically integrated into the design of the development and constructed with the same quality building materials as the market-rate units. The exterior finishes for workforce housing units shall be indistinguishable from all other units. The developer may, however, substitute different appliances and interior hardware or other interior finishes where such substitutions would not adversely impact the livability of the unit. All electrical appliances shall bear the “energy star” rating.
2. Dwelling Unit Type and Size: Workforce housing units may be located in multi-family, single-family attached, or single family detached dwellings, and may be studio, one-, two-, three- or four bedroom units. The types of workforce housing units shall be proportionate to the market rate units in the same development in terms of the number of bedrooms per unit; however, the workforce housing units may be in attached or two-family structures even if the market rate units are predominantly single-family.
3. Minimum Floor Area: The minimum interior floor area per workforce housing unit, excluding any common areas, shall be:

<b>Unit Type</b>	<b>Minimum Floor Area</b>
Studio	400 square feet

*Town Board Review Draft, Philipstown Zoning Law, May 21, 2008*

1 Bedroom	500 square feet
2 Bedroom	700 square feet
3 Bedroom	1,000 square feet
4 Bedroom or more	1,200 square feet

The Housing Board may increase the minimum floor area requirements if necessary to ensure that the workforce housing units produced under this Section reflect market conditions and that such units are marketable at the prices prescribed herein.

4. Phasing: For any project that will be built in phases, the following schedule shall apply for all workforce housing units:

<b>Percentage of Market Rate Units Receiving Certificates of Occupancy</b>	<b>Percentage of Workforce Units Receiving Certificates of Occupancy</b>
Up to 25%	0 (none required)
25% +1 unit	At least 10%
50%	At least 50%
75%	At least 75%
100%	100%

Certificates of occupancy shall be issued for market rate units when the required percentage of workforce housing units for the respective phase has been completed and a certificate of occupancy has been issued for the workforce housing units.

5. Waiver of Recreation Fee and other requirements: When a recreation fee is calculated in lieu of an approved reservation of recreation lands, the Planning Board may calculate such fee based on the total number of dwelling units exclusive of those which are workforce housing units.

#### **D. Determining Household Eligibility**

1. Income Limits: To be eligible to purchase or rent a workforce housing unit, the household's aggregate annual income shall be a minimum of 80% and a maximum of 100% of the Putnam County median for owner-occupied units, and a minimum of 50% and a maximum of 80% for rental units, based upon the Putnam County median household income. The Housing Board shall establish annually the exact minimum and maximum income requirements for a household to be considered eligible for the workforce rental and ownership housing programs.

2. Other Assets:

- Any household with net assets exceeding 50% of the purchase price of a two-bedroom workforce housing unit shall be ineligible to own or rent a workforce housing unit.
- Any non-income producing assets may be assigned an income producing value and included as income by the Housing Board when determining eligibility.
- The limitations in (a) and (b) shall not apply to any household consisting of only senior citizens over the age of 65, provided that the household meets the income qualifications. For purposes of this income calculation, 2% of the members' net assets shall be counted as income.

#### **E. Selection priorities**

Once a household is determined to be eligible to participate in the workforce housing program based on income limits as set forth above, preference will be given to households according to the following priority scoring system. A "household" includes any and all household members who have reached the age of majority and who will occupy the workforce housing unit as his/her primary residence. Households seeking preference based on voluntary service or employment must provide a certification letter from an authorized person within such organization attesting to the

person's length of volunteer service or employment. In establishing a household the score, the scores of all permanent residents of the household shall be added together, except where a maximum number per household is stated below.

1. Volunteer Fire Department or Ambulance Corps members serving the Town of Philipstown, with a minimum of 6 months consecutive active service. (3 points) maximum 6 points per household
2. Paid emergency service personnel serving the Town of Philipstown, including police, fire and emergency medical services, with a minimum of 6 months employment. (2 points) maximum 4 points per household
3. Town of Philipstown full-time municipal employees, minimum of 6 months. (2 points) maximum 4 points per household
4. School district employees for any schools that provide educational services to students who live in Philipstown, minimum of 6 months employment. (2 points) maximum 4 points per household
5. A current or honorably discharged member of the US Armed Services. (1 point) maximum 2 points per household
6. Persons employed in the Town of Philipstown. (1 point) maximum 3 points per household
7. Residents of the Town of Philipstown who have lived in Philipstown for at least three years. (1 point plus 1 point for every ten additional years) maximum 6 points per household
8. Former residents of the Town of Philipstown who can document that they lived in Philipstown for at least five years. (1 point) maximum 2 points per household
9. Putnam County residents for at least three years, not residing in Philipstown. (1 point) maximum 1 point per household

In the event that two or more households have the same priority score, a lottery shall be held to determine the priority ranking among the households.

**F. Occupancy Requirements**

1. Standards: To prevent overcrowding or underutilization of workforce housing units, at the time of purchase or rent, the following schedule of occupancy shall apply:

<b>Number of Bedrooms</b>	<b>Maximum/Minimum Number of Persons</b>
0 (studio)	1/1
1	2/1
2	4/2
3	6/3
4	8/4

2. Residency: All workforce housing units shall be the primary residence of the owners or renters, except that this restriction shall not apply to the developer of the workforce housing units. Owners may not rent their unit to others and renters may not sublet their unit, except that one-year subleases shall be permitted if the household is required to move temporarily for reasons of employment, health, or family emergency, not to exceed a total of two years. Temporary occupants under this Section must meet the same income and eligibility requirements as the owner or tenant, and the rent may not exceed the amount specified herein. All leases and subleases under this Subsection (2) shall be reviewed and approved by the Housing Board.

**G. Initial Sale and Resale of Workforce Housing Units**

1. Calculation of initial sale price: Maximum sale price shall be set by resolution of the Town Board, based upon a recommendation by the Housing Board, on an annual basis after review of relevant information that may be provided by federal, state, and county housing agencies, as well as by developers. The initial sale price of a unit shall be calculated such that the annual cost of the sum of principal, interest, taxes (including fire, water, and library district taxes) and insurance (PITI), and common charges, as applicable, shall not exceed 30% of

minimum household income for eligible households. Maximum sale prices shall be set in such a manner that eligible households will have sufficient income to qualify to purchase such units.

2. Resale of workforce housing units:

- a. Workforce housing units shall only be resold to eligible moderate income households of similar size, consistent with the Town's point system for establishing priority.
- b. The owner of a workforce housing unit shall notify the Housing Board of his or her intent to sell prior to contact with any realtor or purchaser and shall follow resale procedures prescribed by the Housing Board for the resale process.
- c. The maximum base resale price shall be set by resolution of the Town Board on an annual basis. The maximum base resale price shall be calculated to include the purchase price of the workforce housing unit adjusted for any increase in the median income. The current owner will not be required to sell below the owner's purchase price for the home should this calculation result in a price lower than the owner's purchase price. In addition to the base purchase price, the maximum permitted resale price shall also include the cost of permanent fixed improvements made by the homeowner (not to exceed 5% of the maximum base resale price) and necessary resale expenses.
- d. The original deed and any subsequent deeds or instruments used to transfer title to a workforce housing unit shall include a provision indicating that the housing unit is a workforce housing unit subject to perpetual restrictions on occupancy and resale. The following paragraph must be included in all deeds and other transfer instruments:

"This dwelling has been constructed for use by moderate income families pursuant to a special workforce housing program established under the Philipstown Town Code. All future sales, resale, or rental of this dwelling in perpetuity must be to a person who is determined to be eligible pursuant to the criteria and priority system set forth in the Philipstown Town Code and at a price determined in accordance with the Town's workforce housing program."

**H. Initial Lease and Renewals of Workforce Housing Rental Units**

1. Calculating permissible rent: Maximum monthly rent, including utilities (heat, hot water, and electric), shall be set annually by resolution of the Town Board, based upon a recommendation by the Housing Board, for each type of rental unit (studio, 1 bedroom, 2 bedroom, etc.), for each household size, and shall be amended from time to time after review of relevant information that may be provided by federal and state housing departments, as well as by developers. Rent for a workforce housing unit shall include an estimated cost for utilities and the rent plus utilities shall not exceed 30% of the minimum household income allowed for such unit. Maximum rent shall be set in such a manner that the eligible households will have sufficient income to qualify to rent such units.
2. Lease terms and renewal: Applicants for workforce housing rental units shall, if eligible and selected for occupancy, sign leases for an initial term of one year. As long as the household remains eligible and has complied with the terms of the lease, the household shall be offered a one-year renewal every year. If at the time of renewal the household's annual gross income exceeds the maximum income limit as set by the Town Board, such household shall be offered a market rate rental unit in the development, if available. If no such unit is available at a rental price that the household can afford, the household may renew the lease at the workforce housing rental rate for one more year, subject to the condition that should a market-rate unit become available, the household shall be required to move to such unit. At the end of the lease for such additional year, the household shall have no further right to reside in the workforce housing unit at the restricted workforce housing rent. At that time, the landlord shall rent the vacated unit to an eligible household or, if not able to do so, have the option of increasing the rent of the unit to a market rate for one year, with the difference in rent paid into the Town of Philipstown Workforce Housing Trust Fund. At the end of that lease year, the unit shall be placed back into the

workforce housing rental program.

3. Town Board review: All lease terms shall be reviewed and approved periodically by the Town Board or the Housing Board if designated by the Town Board.

#### **I. Maintenance, Upkeep, and Repairs**

1. All workforce housing units shall be maintained in a satisfactory manner as prescribed by the Town Board, or by an appropriate department as may be designated by the Board. Neither owners nor renters of workforce housing units shall make any improvements which require a building permit without prior written permission from the Town Board or an appropriate department as may be designated by the Board. Under no circumstances shall the Town Board or any agency or department approve any addition in size to the structure. The original square footage of the unit shall be maintained throughout the unit's existence.
2. All workforce housing units shall be maintained at least at the original builder's specification level. At the time of resale, the Town Board may determine that the unit has not been properly maintained and shall be authorized to impose such assessments as necessary to reasonably return the unit to its original condition. Said assessment shall be deducted from the seller's proceeds resulting from the sale of the unit.

#### **J. Tax Assessment**

The Town Assessor shall consider the limited resale value of workforce housing units when determining the appropriate assessment on such units.

#### **K. Incorporation of Conditions of Approval**

Any special permit, site plan, or subdivision approval involving the creation of workforce housing under this §145-42 shall include specific conditions referencing the requirements of this Section which shall also be noted on any approved site plan or subdivision plat and incorporated in any deeds, as required by Subsection G above.

#### **L. Administration**

The Town Board shall appoint a Housing Board to administer the workforce housing program. The Town Board may, either in lieu of the Housing Board or in addition thereto, hire staff or contract with Putnam County, another Town, or a qualified not-for-profit organization, government agency, or private consultant to administer all or a portion of the workforce housing program. As used in this Chapter, "Housing Board" refers to the Housing Board and/or any other designated workforce housing program administrator. The Housing Board shall have the following responsibilities and duties:

1. Accept and review applications
2. Maintain an eligibility priority list, annually certify and re-certify households
3. Establish lottery procedures for selecting households that have equal priority
4. Assist Town Board/Planning Board in determining and reviewing applications to build workforce housing units
5. Recommend annual maximum income limits; rental prices; resale values
6. Review certifications from owners and lessors of rental units that units are occupied by eligible households
7. Maintain list of all workforce housing units in the Town
8. Review all deed restrictions for workforce housing units
9. Review all lease terms for workforce housing units
10. Promulgate rules and regulations as necessary
11. Such other responsibilities as the Town Board may assign

#### **M. Appeals**

Any person aggrieved by a decision of the Housing Board or program administrator may appeal such decision to

the Town Board.

**N. Fee Paid to Trust Fund in Lieu of Providing Workforce Housing**

The Town Board shall establish a Workforce Housing Trust Fund, and shall establish and annually adjust, a fee to be paid into such Trust Fund as an alternative to the construction of workforce housing where such housing is either mandated or available as a condition of a density bonus. Such fee shall be in an amount sufficient to cover the cost of land acquisition, planning and soft costs, and construction of a workforce housing unit. The decision as to whether to require construction of the workforce housing units or to accept a fee in lieu shall be made at the time of development approval by the reviewing board.

**O. Exception for On-Site Employee Housing**

An applicant may satisfy the workforce housing requirements of this §145-42 by providing housing for persons or households who have at least one member employed on the same property or on another property under the same ownership within Philipstown. In such a case, the income and other eligibility requirements in this §145-42 shall not apply to such employees. However, in order for such employee housing to qualify as workforce housing under this Section, the applicant must place a restrictive covenant on the property declaring that in the event the housing is not used for on-site employee housing, it shall be subject to all of the requirements in Subsections D through I of this §145-42.

**P. Mandated Workforce Housing**

1. In any subdivision or development of two or more dwelling units, the applicant shall pay a fee of 10% of the cost of a workforce housing unit, as described in Subsection N above, for every dwelling unit constructed. This fee shall not be required for accessory apartments or units which are restricted as workforce housing as provided in this §175-42. The applicant may also elect to construct a workforce housing unit or units on-site in lieu of paying this fee. Each workforce housing unit constructed shall relieve the applicant of paying the fee for up to ten dwelling units.
2. The applicant may, instead of paying the fee or building such workforce units on-site, substitute one or both of the following alternative measures, if such measures are consistent with the Town of Philipstown Comprehensive Plan and the purposes of this Section 175-42 and are approved by the reviewing board:
  - a. Construct the required housing units in another location.
  - b. Place a restrictive covenant that satisfies the requirements of Subsection G(2)(d) above on one or more existing dwelling units located on the same property or on adjoining property.
3. An applicant whose application has been approved must construct the required workforce housing (or first phase workforce housing if the project is phased), or pay the required fee, prior to receiving a certificate of occupancy for the associated market rate housing. In the case of subdivisions, the fee must be paid, or the workforce housing constructed, prior to conveyance of any lots other than lots restricted for workforce housing.

**§175-43 DRIVEWAYS AND DRIVE-UP WINDOWS**

- A. New driveway entrances (including the conversion of farm roads into residential or commercial driveway entrances) shall require permission from the Town Superintendent of Highways for Town roads, the Putnam County Department of Public Works for county roads, or the New York State Department of Transportation for state roads.
- B. Drive-up windows shall require Site Plan review. Street access points and queuing areas shall be sited in a manner that does not create safety hazards to pedestrians or motorists and that does not increase traffic congestion on existing streets.
- C. Drive-up windows shall be permitted only in the HC district.
- D. Restaurant drive-up or drive-through windows shall be prohibited.

**§175-44 MOBILE HOME AND CONSTRUCTION TRAILER REGULATIONS**

**A. Mobile Home Parks**

1. New mobile home parks shall be permitted only within mapped MHO districts.
2. Existing mobile home parks not located in an MHO district may be continued as provided in Article VI and new mobile homes may be installed pursuant to plans approved before the enactment of this §175-44. The expansion of an existing mobile home park shall be allowed by special permit provided that the mobile home park is included in a mapped MHO district.
3. New mobile home parks may be permitted in the MHO district provided that they obtain a Special Permit from the Planning Board and fully comply with all standards for Conservation Subdivisions, except as follows:
  - a. The number of permitted homes in any mobile home park shall be determined as provided by the formula in §175-20B, using three dwelling units per acre as the maximum allowable density.
  - b. The minimum protected open space shall be 30%.
  - c. The development shall provide playground and recreational facilities for the use of residents.
  - d. The maximum number of mobile homes in any mobile home park shall be sixty.
  - e. The minimum parcel size shall be 10 acres.
  - f. All mobile homes shall be screened from view from public roads and other publicly accessible land.
  - g. All mobile homes shall be set back at least 100 feet from property lines.
4. All new mobile home parks and expansions of existing mobile home parks shall be required to comply with all applicable state and federal regulations and all applicable special permit and site plan review standards and criteria in this Chapter. If the mobile home park will involve the creation of separate lots, the Town of Philipstown Subdivision Law (Chapter 105) shall apply.

**B. Individual Mobile Homes Outside of Mobile Home Parks**

1. Individual mobile homes permanently located outside of mobile home parks shall be prohibited, except in connection with farm operations as provided in Subsection E.
2. Non-conforming mobile homes may be replaced by mobile homes that comply with currently applicable federal and state building standards.

**C. Temporary Mobile Homes**

An owner of land located within the Town of Philipstown and who intends in good faith to construct a dwelling thereon for his own occupancy, may be granted a permit to place a mobile home on such land during the construction of the dwelling not to exceed a period of one year. A mobile home may also be temporarily placed on any lot for a period not to exceed one year in the event of major damage to or destruction of a dwelling located on such lot. To the extent practicable, such temporary mobile homes shall comply with the provisions of this Section, except that such homes may be installed without permanent footings. After one year, the Code Enforcement Official shall send notice to remove the temporary mobile home or to apply for an extension not to exceed one additional year in the event that construction, repair, or reconstruction of the residence has not been completed. No further extension shall be granted, unless the Planning Board, after an examination of the facts and after providing the applicant an opportunity to be heard, may, upon finding a hardship or extenuating circumstances, grant a further extension of the permit if denial would create a hardship. No Certificate of Occupancy for the new dwelling shall be issued until the temporary mobile home has been removed.

**D. Construction Trailers**

Construction trailers may be placed temporarily (without permanent footings) on construction sites for a period not to exceed the construction period, if allowed pursuant to a Special Permit, Site Plan, Variance, or subdivision approval. Such trailers may be used for office, storage, or workshop space, and shall not be used for residential purposes.

**E. Farm Operations**

Mobile homes shall be permitted by right on farm operations, provided that they comply with all state and federal standards and satisfy all applicable health regulations. Such mobile homes shall be located within the boundaries of the farm parcel,

subject to the following conditions:

1. The mobile home shall be used exclusively for the housing of farm employees and the immediate family of such employees.
2. Such employees shall be regularly and gainfully employed in the occupation of the applicant farmer and derive the majority of their annual income from employment in agricultural operations on the farm.
3. The mobile home(s) shall be placed in such a manner and/or position or location that observation by adjoining property owners will be minimized.
4. If the mobile home is not occupied by persons who qualify under 1 and 2 above, the mobile home shall be removed from the premises.

#### **§175-45 CAMPS**

Camps, as defined in §175-74 shall comply with applicable height and impervious surface coverage requirements for the district in which they are located, but shall not be subject to any residential density calculation. Camp structures shall be set back at least 250 feet from property lines, unless the property line is the shoreline of a stream or lake, in which case the setback shall be established pursuant to Chapter 93 of the Town Code. Camps which qualify as institutional uses shall be regulated as such and day camps shall be regulated as educational uses (see definition of "Camp.")

#### **§175-46 COMMUNICATIONS TOWERS**

##### **A. Purpose**

The purpose of this Section is to promote the health, safety, and general welfare of the residents of the Town of Philipstown; to preserve the scenic, historic, natural, and man-made character and appearance of the Town while simultaneously providing standards for the safe provision, monitoring, and removal of wireless telecommunications consistent with applicable federal and state regulations; to minimize the total number of communications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures; to minimize adverse visual effects from communications towers by requiring careful siting and configuration, visual impact assessment, and appropriate landscaping; to provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate, or modify communications towers; and to encourage camouflaging of communications towers.

##### **B. Permit Regulations**

1. Conformance with regulations; governing provisions.
  - a. No communications tower, except those approved prior to the effective date of this Chapter, shall be constructed, maintained, or used unless in conformity with these regulations and this Chapter.
  - b. No communications tower shall hereafter be erected, moved, reconstructed, expanded, changed, or structurally altered unless in conformity with these regulations and this Chapter.
2. The location or collocation of communication equipment on an approved communications tower or a tall structure on property within OC and M Zoning Districts is a permitted use subject to the issuance of a building permit, provided that the Code Enforcement Official determines that the location or collocation does not increase the original approved height of the supporting structure by more than 15%, increase the original approved number of antennas by more than 50%, or increase the original approved square footage of accessory buildings by more than 200 square feet and add new or additional microwave antenna dishes, and that there will be no expansion of the footprint of said support structure and no adverse impacts on the existing support structure or the surrounding area. If the Code Enforcement Official cannot make these findings, site plan approval will be required from the Zoning Board of Appeals in accordance with Article IX, and the Code Enforcement Official shall refer the matter to the Zoning Board of Appeals where the application will be subject to the terms and conditions specified in Subsections F through T below as part of the site plan review process.
3. New communications tower construction within OC and M Zoning Districts is subject to obtaining a special permit from the Zoning Board of Appeals pursuant to Subsection F and Article IX. Such construction and collocation shall also comply with the requirements set forth in Subsections F through T below, as determined by the Zoning Board

of Appeals as part of the special permit process.

4. New communications tower construction or the location or collocation of communication equipment on an approved communications tower or tall structure within the RC, RR, HR, HM, HC, SR, and IC Zoning Districts is subject to obtaining a special use permit from the Zoning Board of Appeals in accordance with Subsection F and Article IX. Such construction and collocation shall also comply with the requirements set forth in Subsections F through T below, as determined by the Zoning Board of Appeals as part of the special permit process.

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

### **C. Collocation Use of Tall Structures or Communications Towers**

At all times, shared use of tall structures and existing or approved communications towers in accordance with Subsection B(2) above shall be preferred to the construction of new communications towers.

1. Applications pursuant to Subsection B(2) shall be made to the Code Enforcement Official and shall include the following:

- a. A completed application for a building permit.
- b. Documentation of consent from the owner of the existing facility to allow shared use.
- c. A site plan in accordance with Article IX. The site plan shall also show all existing and proposed structures and improvements including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
- d. An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
- e. A completed environmental assessment form (EAF) and a completed visual EAF addendum.
- f. A copy of applicable Federal Communications Commission (FCC) license.

2. If the Code Enforcement Official determines that the application is complete in accordance with Subsection C(1), and provided that the Code Enforcement Official determines that the location or collocation does not increase the original approved height of the supporting structure by more than 15%, increase the original approved number of antennas by more than 50%, increase the original approved square footage of accessory buildings by more than 200 square feet, or add new or additional microwave antenna dishes, and that there will be no expansion of the footprint of said support structure and no adverse impacts on the existing support structure or the surrounding area, then a building permit shall be issued; otherwise, site plan approval will be required from the Zoning Board of Appeals in accordance with Article IX. Such application will be subject to the terms and conditions specified in Subsections F through T below as part of the site plan review process. The Zoning Board of Appeals shall conduct a public hearing and process the application pursuant to this Section, the New York State Environmental Quality Review Act (SEQR) and other applicable laws. If the Board concludes that the application complies with this Section, all SEQR requirements and other applicable laws, the Board shall grant site plan approval without further review under this Section.

### **D. New Communications Towers Pursuant to Subsection B(3) or (4)**

The Zoning Board of Appeals may consider a request to locate a new communications tower if the applicant can demonstrate that shared use of existing tall structures and existing or approved communications towers or communications tower sites is undesirable due to structural deficiencies, documented evidence that a site is unavailable because the owner is not willing to participate in a lease or ownership agreement, documented evidence that the site will not work from a technological aspect, or that the applicant's proposed location or collocation on the site would have an adverse impact on the surrounding area. An applicant shall be required to present an adequate report with an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site. The site inventory shall include a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, height of the structure and/or tower, and

accessory buildings on the site of the inventoried location. The report shall outline opportunities for shared use of these facilities as an alternative to a proposed new communications tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

1. The report shall include the following information to permit the Zoning Board of Appeals to evaluate the need for the new communications tower site:
  - a. Information establishing the present need for the proposed tower. Special permits are to be based on actual need and not on speculation of future needs.
  - b. Radial plots depicting the anticipated radio frequency coverage for the proposed site.
  - c. Radial plots depicting evidence that the proposed area to be provided coverage by the proposed new tower is currently deficient in radio frequency coverage.
  - d. The frequency spectrum (output frequency) to be used at the proposed site (cellular, personal communications systems, broadcast frequency, analog or digital, etc.). A copy of a current FCC license that authorizes the applicant to provide service is required.
  - e. The type, manufacturer, and model number of the proposed tower.
  - f. The height of the proposed tower, including the height of any antenna structure above the supporting structure of the tower.
  - g. The number of proposed antennas, and the type, manufacturer, model number, dB gain, size, and orientation on the proposed tower for each.
  - h. Such other information as may be deemed necessary by the Board in order to make a thorough evaluation of the applicant's proposal.

#### **E. New Towers; Future Shared Use**

Applicants shall design proposed new communications towers to accommodate future demand for reception and transmitting facilities. The site shall be designed for the maximum foreseeable possible number of users, with sufficient ground area set aside for accessory structures, landscaping, and screening of the site at full build-out. Applications for new communications towers shall include an agreement committing the owner of the proposed new communications tower, and its successors in interest, to negotiate in good faith for shared use of said tower by other providers of communications in the future. This agreement shall be filed with the Code Enforcement Official prior to issuance of a building permit. Failure to abide by the conditions outlined in the agreement shall be grounds for the revocation of the special permit. The agreement shall commit the communications tower owner and lessee and its successors in interest to:

1. Respond within 45 days to a request for information from a potential shared-use applicant.
2. Negotiate in good faith concerning future requests for shared use of the communications tower by other providers of communications.
3. Allow shared use of the communications tower if another provider of communications agrees in writing to pay reasonable charges. The charge may include but not be 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 as well as all of the costs of adapting the tower or equipment to accommodate shared use without causing electromagnetic interference.

#### **F. Site Plan/Special Permit Review; Submission Requirements**

1. Site plan applications.
  - a. Applications to the Zoning Board of Appeals for site plan approval shall include a site plan in accordance with Article IX. In addition, the site plan shall show all existing and proposed structures and improvements including road, buildings, tower(s), guy wires and anchors, antennas, parking, and landscaping and shall include grading plans and drainage plans for new facilities and roads.
  - b. Supporting documentation. The applicant shall submit a completed long form Environmental Assessment

Form (EAF), a complete visual environmental assessment form (visual EAF addendum) and documentation on the proposed extent and capacity of use as well as supporting the need for the requested height of any tower and for any clearing required. The applicant shall also submit a copy of its FCC license.

2. Special permit applications. Applications to the Zoning Board of Appeals (ZBA) for a special permit shall be made in accordance with Article IX and shall include the following:
  - a. Where shared use of tall structures or existing or approved communications towers is found to be impractical, applicants shall also investigate the possibility of constructing a new communications tower on property occupied by an existing communications tower in accordance with Subsection D above. In such case the ZBA may allow more than one tower on a lot. Any proposal for a new communications tower on an existing communications tower site shall also be subject to the requirements of Subsections F through T.
  - b. The ZBA may consider a new communications tower on a site not previously developed with a communications tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical, and submits a report as described in Subsection D above, and when the ZBA determines that shared use of an existing communications tower site for a new communications tower is undesirable based upon the investigation in accordance with Subsection F(2)(a) above. Any proposal for a new communications tower shall also be subject to the requirements of Subsections F through T below.
  - c. The ZBA may require an applicant to submit information and documentation indicating and identifying areas within the Town where communication coverage by the applicant remains unsatisfactory. Applicants may be required to provide sufficient information to the Town so as to clearly identify and describe the applicant's communications coverage master plan or siting and/or communication coverage plan.
  - d. The ZBA may require the applicant to submit to the Town a qualified engineer's report regarding nonionizing electromagnetic radiation for the proposed site. Such report will provide sufficient information to detail the amount of radio frequency radiation expected from the proposed site. Additionally, the engineer's report will comply with FCC reporting criteria, as amended, for a cumulative report, reporting levels of anticipated exposure from all users on the site. The report must indicate whether or not the proposed communications tower will comply with FCC emission standards.
3. The ZBA may require the applicant to perform emission tests every six months and report the findings to the Code Enforcement Official. The results of the emission test shall be reported to the Code Enforcement Official within 30 days of the test being completed. At the time of the emissions tests a complete safety inspection of the communications tower shall be conducted. The results of that safety inspection shall also be reported to the Code Enforcement Official within 30 days of its completion. The safety inspection shall consist of but may not be limited to an inspection of the condition of the tower, its supports, foundations, anchor bolts, coaxial cable, cable supports, ice shields, cable trays, guy wires and antennas affixed to the tower. Other aspects of the inspection shall include inspection for fire, electrical, natural and other man-made hazards that could pose a potential hazard to the communications tower site or the surrounding area. Unsafe conditions shall be corrected immediately by the applicant.

#### **G. Lot Size and Setbacks**

Each proposed communications tower and accessory structure shall be located on a single lot and shall comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

1. Each lot containing a communications tower shall meet the minimum lot size and road frontage requirements for conventional subdivision lots specified in §175-11 (Dimensional Table) as well as such additional land as may be necessary to meet the setback requirements of this Section.
2. Communications towers shall comply with the following minimum setback requirements within the OC and M Zoning Districts:
  - a. Route 9 street line: height of tower
  - b. Center line of Route 9: height of tower plus 50 feet

- c. Other street line: height of tower
  - d. Side and rear lines: half the height of tower
  - e. Setback from adjoining residential zoning district: height of tower
3. The setback requirements for communications towers located within the RC, RR, HR, HM, HC, SR, and IC Zoning Districts shall be 150 feet from side and rear lot lines or half the height of the communications tower, whichever is greater. The minimum front setbacks shall be:
- a. Route 9 street line: height of tower.
  - b. Center line of Route 9: height of tower plus 50 feet
  - c. Other street line: 150 feet

#### **H. Visual Impact Assessment**

The reviewing board may require the applicant to undertake a visual impact assessment which may include:

1. A Zone of Visibility Map to determine locations from which the communications tower may be seen.
2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town including but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to public, and from any other location where the communications tower is visible to a large number of visitors, travelers, or persons. The reviewing board shall determine the appropriate key sites at a presubmission conference with the applicant.
3. Assessment of alternative communications tower designs and color schemes, described in Subsection I
4. Assessment of the visual impact of the communications tower base, guy wires, accessory buildings, and overhead utility lines from abutting properties and streets.

#### **I. New tower design**

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

1. Any new communications tower shall be designed to accommodate future shared use by other providers of communications.
2. Unless specifically required by other regulations, a communications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
3. Notwithstanding the height restrictions listed elsewhere in this Chapter, the maximum height of any new communications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.
4. The height of a communications tower in OC and M Zoning Districts shall not exceed 195 feet above ground elevation. The height of a communications tower within the RC, RR, HR, HM, HC, SR, and IC Zoning Districts shall not exceed 110 feet above ground elevation.
5. The ZBA may request a review of the application at the applicant's expense by a qualified engineer and/or consultant in order to evaluate the application. Fees for the review of the application by a qualified engineer and/or consultant are in addition to the application fee, shall be the responsibility of the applicant, and shall be deposited with the Town as provided in §175-58.
6. Design of accessory structures, camouflage communications towers.
  - a. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Zoning Board of Appeals to further blend the communications tower and/or its accessory structures into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.
  - b. Accessory structures shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing of equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

7. No portion of any communications 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, except the following. A sign no greater than two square feet indicating the name of the facility owner(s) and twenty-four hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.

8. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of terrain so that, as much as possible, the top of the tower does not protrude over the ridge line, as seen from public ways.

#### **J. Existing vegetation**

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this Section prior to the approval of the special use permit.

#### **K. Screening**

Deciduous or evergreen tree plantings may be required to screen portions of the communications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site adjoins a residential property or public property, including streets, screening shall be required. The applicant shall demonstrate to the reviewing board that adequate measures have been taken to screen and abate site noises such as heating, ventilating, air conditioners, and emergency power generators. Communications towers shall comply with §175-40, Performance Standards, including §175-40C, regarding noise standards and control.

#### **L. Lighting**

Communications towers shall comply with §175-40L, regarding lighting. These standards shall apply to the lighting of the area subject to the application and are not applicable to Federal Aviation Administration (FAA)/FCC required lighting of the communications tower.

#### **M. Access**

1. Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall at all times minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
2. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of communications providers that might use the facility.

#### **N. Parking**

Parking shall be provided to assure adequate emergency and service access. The Zoning Board of Appeals shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

#### **O. Fencing**

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

#### **P. Removal and Repair**

1. The applicant shall submit to the reviewing board an agreement committing the property owner, communications tower owner, lessee, and their successors in interest to keep the tower and accessory structures in good order and repair and in compliance with any approval, and to notify the Code Enforcement Official within 60 days of the discontinuance of use of the tower for its original or any other purpose. This agreement shall be filed with the Code

Enforcement Official prior to the issuance of a building permit under this Chapter. At anytime after 120 days of receiving this notice, the Code Enforcement Official may require removal of the obsolete, unnecessary, or unused communications towers and associated accessory structures or such towers or structures no longer needed for their original purpose by sending a notice to the property owner, tower owner, and any lessee to remove the same. The property owner, tower owner, and any lessee shall remove such towers and/or accessory structures within 45 days of receipt of the notice from the Code Enforcement Official.

2. Failure to notify and/or to remove the obsolete, unnecessary, or unused tower in accordance with these regulations shall be a violation of this Chapter and shall be enforceable according to §175-57, including all of the remedies set forth therein.

#### **Q. Intermunicipal Notification for New Towers**

In order to keep neighboring municipalities informed and to facilitate consideration of an existing tall structure or existing communications tower in a neighboring municipality for shared use, and to assist in the continued development of the county emergency service communications system, the reviewing board shall require that an applicant who proposes a new communications tower shall notify in writing the legislative body of each municipality that borders the Town of Philipstown and the Director of Emergency Management of Putnam County. Notification shall include the exact location of the proposed tower and general description of the project including but not limited to height of the tower and capacity for future use.

#### **R. Notification of Nearby Landowners**

Notice of any public hearing shall be mailed by the applicant directly to all landowners whose property is located within 500 feet of the property line of the parcel on which a new communications tower is proposed. Notice shall also be mailed to the administrator of any state or federal park lands from which the proposed tower would be visible if constructed by the applicant. The applicant shall file adequate proof that the provisions of this Subsection were carried out.

#### **S. Proof of Insurance**

The applicant and the owner of the property where the communications tower is to be located shall provide the Town Clerk with proof of liability insurance in the amount not less than \$3,000,000 to cover potential personal injury and property damage associated with construction and operation, with the Town named as an additional insured.

#### **T. Financial Security**

The applicant shall, as a condition of final approval, provide the Town with financial security acceptable to the Town sufficient to provide for the removal or repair of the tower as described in Subsection P above. Acceptable financial security includes but is not limited to irrevocable bank letters of credit, escrow accounts, and bonds issued by insurance companies.

### **§175-47 TIMBER HARVESTING**

See Chapter 159 of the Philipstown Town Code.

### **§175-48 ADULT ENTERTAINMENT USES**

#### **A. Purpose**

1. The Town hereby finds that certain uses of property, by their nature, have serious objectionable operational characteristics which can lead to a significant impact on the surrounding community. The purpose of this Section is to prevent the unrestricted proliferation of such uses and to ensure that the effects of such uses will not adversely affect the health, safety, and economic well-being of the community by enacting criteria for the establishment of adult entertainment uses.
2. The unrestrained proliferation and inappropriate location of such businesses is inconsistent with existing

development and future plans for the Town of Philipstown in that such businesses often result in influences on the community which increase the crime rate and undermine the economic, moral, and social welfare of the community. The deleterious effects of these businesses change the economic, moral, and social character of the existing business, community, and family life. Special regulation of these uses is necessary to ensure that these adverse affects will not contribute to the blighting or downgrading of the surrounding neighborhoods and land uses.

3. In order to restrict the accessibility of such businesses to minors and ensure that they will not adversely affect the health, safety, and economic well-being of the community, the Town Board of the Town of Philipstown finds it in the public interest to enact these standards to regulate the placement, construction, and permitting of adult entertainment use businesses in the Town of Philipstown.

## **B. Definitions**

For purposes of this §175-48, the following terms will have the following meanings:

**ADULT BOOKSTORE** --- An establishment, whether retail or wholesale, having a substantial or significant portion of its stock in trade in books, magazines, video cassettes, or other periodicals, for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified sexual anatomical areas as defined in this Section.

**ADULT ENTERTAINMENT CABARET** — A public or private establishment which presents topless dancers, bottomless dancers, strippers, male or female impersonators, exotic dancers, or other similar entertainments.

**ADULT ENTERTAINMENT USE** — Any use constituting an adult bookstore, adult motion-picture theater, adult motel, adult entertainment cabaret, or adult massage establishment as those terms are defined herein.

**ADULT MASSAGE ESTABLISHMENT** — Any establishment having a fixed place of business where massages are administered. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of any massage therapist or health care practitioner duly licensed by the State of New York, nor barbershops or beauty salons in which the massages are administered only to the scalp, the face, the neck, or the shoulders. This definition shall not include a volunteer ambulance, fire, or rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, or athletic facilities or facilities for the welfare of the residents of the Town.

**ADULT MOTEL** — A hotel, motel, or similar commercial establishment which:

1. Provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
2. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
3. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

**ADULT MOTION PICTURE THEATER** — An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by primary emphasis on matter depicting, describing or relating to specified sexual activities or sexual anatomical areas for observation by patrons.

**MASSAGE** — A method of treating the external part of the human body by rubbing, stroking, kneading or vibrating with the hand or any instrument.

**MASSAGE TECHNICIAN** — Any individual who administers a massage to another individual at an adult massage establishment. This definition shall not include any massage therapist or other health-care practitioner duly licensed by the State of New York.

**SPECIFIED ANATOMICAL AREAS:**

1. Less than completely and opaquely covered:
  - a. Human genitals, pubic region, or pubic hair; or
  - b. Buttocks; or
  - c. Female breast or breasts below a point immediately above the top of the areola; or
  - d. Any combination of the foregoing; or
2. Human male genitals in a discernibly erect state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES:** Any one or more of the following:

1. Human genitals in a discernible state of sexual stimulation or arousal.
2. Acts of human masturbation, sexual intercourse, or sodomy.

**C. Application for Special Permit for Adult Entertainment Uses**

1. In accordance with the procedures, standards, and conditions herein specified, the Town Board may grant a special permit for the establishment of an adult entertainment use where allowed by the Use Table. All requirements of this Section are in addition to other requirements applicable in the district in which the special permit use is to be located.
2. Application for a special permit under this Section shall be submitted to the Town Clerk in the same manner that an application for a special permit would otherwise be submitted to the Planning Board pursuant to §175-62. All Adult Entertainment Uses shall be reviewed as Major Projects following the procedures in §175-62.
3. Upon receipt of a complete application for a special permit under this Section, the Town Clerk shall transmit the application and accompanying plans to the Town Board. In addition to the procedural requirements in §175-62, all applications for a special use permit under this Section shall be referred by the Town Board to the Philipstown Planning Board for a report thereon prior to the public hearing. If the Planning Board does not submit its report prior to the public hearing, its right to comment shall be deemed to be waived.

**D. Standards and Conditions for Approval**

The Town Board may approve the application for a special permit under this Section if it finds that the proposed special permit use, the proposed site plan, and the proposed buildings and structures will conform to the following general and special standards and conditions:

1. Standard Criteria. Such use, site plan, and buildings and structures shall conform to the standards and conditions set forth in §175-63B.
2. Any adult entertainment use shall be located within an enclosed building, and no more than one adult entertainment use shall be located or permitted on any lot.
3. The proposed use shall meet all other requirements of this Chapter, of other ordinances and local laws of the Town of Philipstown, and of other requirements and laws of any other applicable government or agency.
4. It shall be a condition of any special permit issued for an adult entertainment use that no person under the age of 18 years shall be permitted into the premises.
5. The Town Board may impose such terms and conditions upon the issuance of any special permit hereunder as it deems appropriate to further the aims of this Section, including but not limited to restrictions on advertising, outdoor displays, and the location of merchandise.
6. Inspection requirements.
  - a. Prior to the commencement of any adult entertainment use, or upon any transfer of ownership or control of the entity granted such special permit, the premises must be inspected and found to be in compliance with the New York State Uniform Building and Fire Prevention Code and all other laws, rules, and regulations applicable thereto.
  - b. An applicant or permittee shall permit representatives of the Town or any other government or agency having jurisdiction thereof to inspect the premises containing an adult entertainment use for the purpose of ensuring compliance with applicable laws and requirements at any time it is occupied or open to the public or

for business.

**E. Revisions and Extensions**

Any revision of an approved special permit application and any reconstruction, enlargement, extension, moving, or structural alteration of an approved special permit use or any building, structure, or facility in connection therewith shall require submission of a special permit application as for the original application.

**§175-49 KEEPING OF ANIMALS**

**A. Maintenance of Animals on Residential Properties**

Animals kept on residential properties, not as part of a farm operation as defined in this Chapter, shall be limited as follows:

1. The amount of land required for keeping large animals shall be one acre, allocated to the residence, plus one acre per "large livestock unit" (LLU). One cow, horse, bison, pig, or similar large animal shall be considered one LLU. The following shall be considered as fractional LLUs:
  - a. Deer, llama, alpaca: 1/2 LLU
  - b. Sheep, emu, ostrich: 1/4 LLU
  - c. Goat: 1/6 LLU
  - d. Other large animals: as determined appropriate by the Code Enforcement Official or the Zoning Board of Appeals
2. The number of small animals such as raccoons, mink, rabbits, birds, snakes, geese, ducks, chickens, monkeys, and cats shall not exceed ten on a lot of less than two acres. The number of dogs shall not exceed six on a lot of less than two acres. Pens for such animals shall not exceed 5,000 square feet or 10% of the lot area, whichever is greater. These requirements may be modified by the Planning Board by Special Permit as provided below.
3. The Planning Board may issue a Special Permit for maintenance of animals in greater numbers or larger pens than the maximum set forth above, provided that the applicant meets all conditions and satisfies applicable Special Permit criteria, that the Planning Board finds that adequate open space and facilities for the proper care of such animals are available or will be established, and that maintenance of such animals will not interfere with the reasonable use and enjoyment of the property of others.
4. Buildings, pens, or other structures housing animals shall be located 20 feet from any lot line and 35 feet from any road or highway. No manure may be stored within 250 feet of any property boundary line or watercourse.
5. In maintaining animals on a property, no person shall knowingly interfere with the reasonable use and enjoyment of the property of others.

**B. Kennels**

1. No kennel as defined in §175-74 shall be established within 300 feet of a side or rear property line or within 100 feet of a street line.
2. The minimum lot area required to establish a kennel as defined in §175-74 shall be five acres.
3. This Subsection B does not prohibit or regulate the keeping of dogs as household pets, as permitted in A above.

**§175-50 SOLID WASTE FACILITIES, INDUSTRIAL USES, AND SOIL PROCESSING**

**A. Limitations on Solid Waste Management Facilities**

Solid waste management facilities, as defined in Environmental Conservation Law, §§27-0701 and 6 NYCRR 360-1.2(b)(158), with the sole exception of facilities owned and operated by the Town of Philipstown, are prohibited in the Town.

**B. Processing of Soil**

The processing of soil, dirt, gravel, and rock, including rock crushing, is prohibited in the OC District and on lots of less than 5 acres in the M and SMO Districts. Such processing is prohibited in all other land use and overlay districts.

**C. Standards and Enforcement**

All industrial uses and municipal solid waste management facilities shall satisfy the following requirements.

1. All operations, including loading and unloading, shall occur within fully enclosed buildings with an impervious floor system. Any leachate shall be collected in an impervious collection system and hauled off-site for disposal as required by applicable laws. There shall be no outdoor storage of hazardous materials or of materials regulated under 6 NYCRR Part 360 in a manner that could allow them to become airborne, leach into the ground, or flow into any watercourse.
2. No materials shall be disposed of into the ground, air, or into any watercourse, except pursuant to applicable permits and approvals issued by state and county health and environmental agencies.
3. Procedures shall be in place to inspect all materials upon arrival at the facility to ensure that they are appropriate to the permitted operation and to ensure that deliveries of materials that cannot be safely handled and processed at the facility are not accepted.
4. The operation shall comply with all applicable provisions of this Chapter, including the environmental performance standards in §175-40 and the aquifer protection provisions in §175-15 if the use is located within the Aquifer Overlay District.
5. The applicant may be required to furnish a performance guarantee as determined to be appropriate by the Town. Such performance guarantee shall be in the form of an irrevocable letter of credit, certified check, bond, or other form of security guaranteeing to the Town compliance with the standards in this Subsection B as well as with any other standards, requirements, or conditions of any permit issued by federal, state, county, or local government agencies. The amount of such performance guarantee shall be based upon the estimated potential cost of remediation in case of a violation, as determined by an engineer retained by the Town.
6. In addition to the requirements of Subsection B(5) above, the applicant may be required to pay annually into an environmental inspection fund in an amount sufficient to enable the Town to monitor the facility's performance and compliance with applicable standards using qualified technical experts.

**§175-51 JUNKYARDS AND OUTDOOR STORAGE**

**A. Junkyards**

New junkyards are prohibited. See Chapter 107 of the Code of the Town of Philipstown for provisions on existing junkyards.

**B. Outdoor Storage of Personal Property**

1. Boats, trailers, and seasonal or other recreational vehicles may be stored, maintained, or parked only in side or rear yards, except where environmentally suitable and economically practical access to such yards is not feasible. Contractor's construction equipment and other heavy equipment with a gross vehicle weight of 4,000 pounds may not be stored, maintained, or parked in any location visible from adjoining properties or public roads, except for purposes of loading and unloading. The restrictions of this Subsection (B) shall not apply in the M, HC, and OC districts, except where land in these districts abuts land in other zoning districts.
2. Unless authorized by a Special Permit or Site Plan approved in connection with a business use, no commercial vehicle exceeding 10,000 pounds gross vehicle weight or 20 feet in box length shall be parked overnight in a residential district where it is visible from adjoining properties or public roads. The Planning Board may allow larger vehicles by Special Permit. This provision shall not apply to trucks used in connection with commercial agriculture, provided that parked trucks are set back at least 100 feet from property lines of adjacent landowners.

**§175-52 RESIDENTIAL CARE FACILITIES**

In addition to generally applicable Special Permit and Site Plan review requirements, the applicant shall comply with the following:

**A. Supervision**

Every residential care facility shall provide qualified supervisory personnel on the premises 24 hours a day, seven days a week. Such personnel shall have sufficient education and experience and shall be present in sufficient numbers to meet all

standards of any agency responsible for the licensing or regulation of the residential care facility.

**B. Other Required Approvals**

An applicant for a residential care facility shall demonstrate compliance with all applicable regulations, standards, and licensing requirements of public or private agencies.

**C. Required Information for Application**

An application for a Special Permit for a residential care facility shall satisfy the submission requirements of Article IX and shall also include the following:

1. A list of all agencies which must license or otherwise approve the establishment or operation of the facility.
2. A list of regulations established by the public or private agencies listed in Subsection C(1) above.
3. Copies of applications submitted to the agencies.
4. A written statement explaining the status of such applications stating any facts known to the applicant which might result in the denial or delay of any required approval.
5. A written statement addressing the requirements of Subsection A above and demonstrating that the facility will comply with applicable regulations of licensing agencies and State law relating to minimum required floor area, bathroom facilities, and open space.
6. A map identifying the location of all other residential care facilities in the Town of Philipstown at the time of the Special Permit application.

**D. Findings**

In making its determination upon a Special Permit for a residential care facility, the Planning Board shall, in addition to making the findings required by §175-63, make the following specific findings.

1. That the proposed facility, given its unique nature, will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, and other matters affecting public health, safety, and general welfare.
2. That the proposed facility will be provided with or have ready access to facilities and services necessary and appropriate to the needs of its residents for active and passive recreation, medical care, education, cultural and religious activities, and public transportation.
3. That the proposed facility will not generate a level of traffic which would be burdensome to the neighborhood, considering the number of visitors its residents may expect, truck delivery and loading requirements, and the availability and nature of public or private transportation.
4. That the proposed facility will not result in an undue concentration of residential care facilities in the Town of Philipstown or in the neighborhood of the proposed facility.
5. That the decision made by the Planning Board represents a reasonable accommodation to the needs of persons protected under the Federal Fair Housing Act, if applicable.

**ARTICLE VIII ADMINISTRATION**

**§175-53 ENFORCEMENT OFFICIAL**

The provisions of this Chapter shall be administered and enforced by the Code Enforcement Official, who shall issue building permits and zoning permits. No building permit, zoning permit, Certificate of Occupancy, or other permit or license shall be issued if it would be in conflict with the provisions of this Chapter, Chapter 62 of the Philipstown Town Code entitled “Building Construction and Fire Prevention” or any other applicable local, State, or Federal law or regulation. Applications for site plan review, special permits, and variances may be reviewed initially for completeness by an employee or consultant to the Town, if so designated by the Town Board.

**§175-54 BUILDING PERMITS AND ZONING PERMITS**

**A. Building Permit and Certificate of Occupancy**

Building permits and certificates of occupancy shall be issued pursuant to Chapter 62 of the Town Code. In case of a conflict between this Article VIII and Chapter 62, Chapter 62 shall control, except with respect to matters relating to the interpretation and enforcement of this Chapter 175. If a building permit becomes invalid or expires, any subsequent renewal of such building permit or resubmission of a building permit application must comply with the zoning in effect at the time of renewal or resubmission.

**B. Zoning Permit**

A zoning permit shall be required for land uses that do not require a building permit, including excavation, grading, filling, and clearcutting pursuant to §175-34.

**C. Application for Zoning Permit**

Applications for a zoning permit shall be made on prescribed forms and shall contain the following information:

1. Land: A description of the land on which the proposed use or construction will occur, including deed and filed map references, lot numbers, and tax parcel numbers.
2. Use, occupancy: A description of the existing and proposed use of the land and the location of improvements.
3. Identity of owner, applicant: The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations.
4. Description of work or changes in use: A brief description of the nature of the proposed work or change in use.
5. Valuation of work: The valuation of the proposed construction work, if any.
6. Plans and Specifications
  - a. Each application for a zoning permit shall be accompanied by two copies of a survey (if applicable), and a site development plan or plot plan, drawn to scale, with the following information (unless waived by the Code Enforcement Official):
    - i. The courses, dimensions, and detail of all the boundary lines of the proposed lot of occupancy and the street boundaries adjacent thereto
    - ii. The location and size of any proposed new construction and its distance from lot lines
    - iii. All existing buildings, structures, parking areas, traffic access and circulation drives, open spaces, and landscaping on the site,
    - iv. The nature and character of any work to be performed and the materials to be used,
    - v. The relationship of the property to structures on adjoining property
    - vi. The widths and grades of adjoining streets, walks, and alleys
  - b. Plans and specifications shall bear the signature of the person responsible for the design and drawings and where required by the Education Law or any other applicable statutes, laws, rules, or regulations of the State of New York, the seal of a licensed architect, surveyor, landscape architect, or professional engineer.
7. Additional information: Such other information as may be reasonably required by the Code Enforcement Official to establish compliance with the requirements of this Chapter.

**D. Action Upon Application**

1. The Code Enforcement Official shall promptly review the application and approve or deny it, giving the reason for any denial. A copy of the approved or disapproved application shall be delivered or mailed, return receipt requested, to the applicant within two working days.
2. An application with the approval of the Code Enforcement Official endorsed thereon shall constitute the zoning permit, which shall become effective when the Code Enforcement Official has filed written approval of the permit application in the office of the Town Clerk. A copy of the permit shall be placed in the permanent file for the property.

**E. Invalid Approval**

No zoning permit shall be valid unless it complies with all provisions of this Chapter. Any permit approved in violation of this Chapter shall be void.

**F. Termination of Zoning Permit**

An approved zoning permit shall terminate and become void if there is no commencement of the new use within twelve months of the date of approval. If a zoning permit has been issued and it expires without commencement of the use, any subsequent renewal of such zoning permit or any resubmission of a zoning permit application must comply with the zoning in effect at the time of renewal or resubmission.

**§175-55 STEPS TO OBTAIN PERMITS**

The typical steps to obtain permits to erect, occupy, or change the use of a permitted structure or lot are as follows:

- A. Any person intending to undertake new construction, structural alteration, or change in the use of a building or lot shall apply to the Code Enforcement Official for a building permit or zoning permit by submitting the appropriate application form and paying the required fee. For rules governing changes of use, see §175-10F.
- B. The Code Enforcement Official shall grant or deny the permit as provided in §175-54, or refer the application to the Planning Board (or Town Board or Zoning Board of Appeals if appropriate) if a Special Permit and/or Site Plan approval is required.
- C. If a building or zoning permit is issued, the applicant may proceed to undertake the action permitted. Upon completion of any construction, the applicant shall apply to the Code Enforcement Official for a Certificate of Occupancy (for building permits only).
- D. If the Code Enforcement Official finds that the applicant's action has been taken in accordance with the building permit, the Code Enforcement Official shall issue a Certificate of Occupancy as provided in §175-56 of this Chapter and Chapter 62 of the Town Code, allowing the structure to be occupied.
- E. If the Code Enforcement Official denies a building or zoning permit and does not refer the application to the Planning Board or Town Board, the applicant may appeal to the Zoning Board of Appeals.

**§175-56 CERTIFICATES OF OCCUPANCY**

No building or structure hereafter erected, constructed, enlarged, altered, or moved, and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a Certificate of Occupancy has been issued by the Code Enforcement Official, in accordance with the provisions of Chapter 62 of the Town Code, this Chapter, and any other applicable laws and regulations.

**§175-57 VIOLATIONS AND ENFORCEMENT**

**A. Inspection**

In order to determine compliance with this Chapter, the Code Enforcement Official is authorized, to the extent permitted by law, to enter, inspect, and examine any building, structure, place, premises, or use in the Town of Philipstown.

**B. Notice of Violation**

- 1. Upon finding any construction, improvements, or uses to be in violation of this Chapter, the Code Enforcement Official shall transmit a written Notice of Violation describing the alleged violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, with a copy to the Town Board. The Notice of Violation shall require an answer or correction of the alleged violation to the satisfaction of the Code Enforcement Official within a reasonable time limit set by the Code Enforcement Official. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of the Code Enforcement Official within the time

limit constitutes admission of a violation of this Chapter. The notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made, and that, if a violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate, and that, if it is determined that no violation exists, costs of determination will be borne by the Town.

2. If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Code Enforcement Official, the notation "Violation Corrected" shall be made on the Code Enforcement Official's copy of the notice.

3. If there is no reply within the time limit set (thus establishing admission of a violation of this Chapter) and the alleged violation is not corrected to the satisfaction of the Code Enforcement Official within the time limit set, the Code Enforcement Official shall take action in accordance with Subsection C.

4. A permanent record of all Notices of Violation and their disposition shall be kept in the offices of the Code Enforcement Official.

5. In the event that the Code Enforcement Official finds violations of both this Chapter and Chapter 62 on the same property, the Code Enforcement Official may issue one notice of violation under both Chapters, citing specific violations of each chapter, using the Notice of Violation procedures contained in Chapter 62.

### **C. Abatement of Violations**

The Code Enforcement Official or the Town Board may issue a stop-work or cease-and-desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this Chapter, to prevent the occupancy of premises, or to prevent any activity, business, or use that violates this Chapter. Such legal action may include the issuance of an Appearance Ticket pursuant to the Criminal Procedure Law, Paragraph 150.20.

### **D. Penalties**

1. A violation of this Chapter is an offense punishable by fine not exceeding \$350.00, or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense. Conviction of a second offense, committed within five years of the first offense, is punishable by a fine not less than \$350.00 nor more than \$1000.00 or imprisonment for a period not to exceed 15 days, or both. Conviction of a third or subsequent offense committed within a period of five years is punishable by a fine of not less than \$700.00 nor more than \$1,000.00, or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six months per violation.

2. In addition, any person who violates any provision of this Chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$200.00. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.

3. The imposition of penalties for any violation of this Chapter shall not excuse the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this Chapter shall not prevent the abatement of a violation pursuant to subsection C. The expenses of the Town in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender, and may be recovered in a civil court of appropriate jurisdiction.

4. To the extent that this Subsection D may conflict with Section 268 of the Town Law, the Town Board hereby declares its intention to supersede Section 268 pursuant to Article 2, Section 10 *et seq.* of the Municipal Home Rule Law.

### **E. Complaints of Violations**

Whenever a suspected violation of this Chapter occurs, any person may file a signed written complaint reporting such violation to the Code Enforcement Official. The Code Enforcement Official may also investigate any oral complaint made to his/her office. All complaints, written or oral, shall be properly recorded, filed, and promptly investigated by the Code Enforcement Official, and reported to the Town Board.

**F. Taxpayer Action**

Upon the failure or refusal of the Code Enforcement Official or Town Board to institute an appropriate legal action or proceeding to prevent or remedy a violation of this Chapter for a period of ten days after written request by a resident taxpayer of the Town to do so, any three taxpayers of the Town residing in the zoning district in which such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in the same manner as the Code Enforcement Official or Town Board, as provided in Section 268(2) of the Town Law.

**G. Accountability**

For every violation of the provisions of this Chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists, shall be punishable according to the provisions of this Chapter.

**§175-58 ESCROW DEPOSITS FOR REVIEW AND INSPECTION COSTS**

**A. Deposits in Escrow**

1. In connection with any application for a special permit, site plan or subdivision approval, zoning amendment, variance, or other appeal, the reviewing board may require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of reviewing the particular type of application before it. The reviewing board may consider the professional review expenses incurred by it and neighboring municipalities in reviewing similar applications.

2. Use of funds.

a. The money deposited shall be used to cover the reasonable and necessary costs of reviewing an application, including costs of inspections. Costs may include staff costs or consultant fees for planning, engineering, legal, and other professional and technical services required for the proper and thorough review of an application and project inspections. The reviews governed by this Section shall include but not be limited to all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act (SEQR).

b. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other sections of the Philipstown Town Code.

c. Monies deposited by applicants pursuant to this Section shall not be used to offset the Town's general expenses of professional services for the several boards of the Town or its general administrative expenses.

d. Fees charged strictly for SEQR review shall not exceed the maximum amounts that can be charged by the lead agency pursuant to the SEQR regulations.

**B.** Upon receipt of monies requested for an escrow account, the Town Supervisor shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.

**C.** Upon receipt and approval by the Town Board of itemized vouchers from consultants for services rendered on behalf of the Town regarding a particular application, the Town Supervisor shall cause such vouchers to be paid out of the escrow account, and shall debit the separate record of such account accordingly.

**D. Review of Vouchers; Payment**

1. The Town Board shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications and project inspections. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charges by consultants to the Town for services performed in connection with the review of similar applications. In auditing the vouchers, the Town Board may take into consideration the size, type, and number of buildings to be constructed, the topography of the site, environmental conditions at the site, the infrastructure proposed in the application, and any special conditions the Town Board may deem relevant. A charge or

part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety, or other vital interests of the residents of the Town or to protect public or private property from damage.

2. In no event shall an applicant make direct payment to any Town consultant.

E. If, at any time during the review of an application or the inspection of an approved project under construction, there shall be insufficient monies on hand to the credit of an applicant to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board or inspecting official that such monies will be insufficient to meet vouchers yet to be submitted, the reviewing board or official shall cause the applicant to deposit additional sums as the board or official deems necessary or advisable in order to meet such expenses or anticipated expenses.

F. An applicant shall have the right to appeal to the Town Board the amount of any required escrow deposit or the amount charged to an escrow account by a consultant under this Section.

G. In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit, or certificates of occupancy may be withheld or suspended by the reviewing board, officer, or employee of the Town until such monies are deposited.

H. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within sixty days after the applicant's request.

I. The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town of Philipstown for funds expended to compensate for services rendered to the Town under this section by private engineers, attorneys, or other consultants. In order for a land use application to be deemed complete, the applicant shall provide the written consent of all owners of the subject real property acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the Town. In the event that insufficient funds have been deposited in escrow and the applicant or owners fail to reimburse the Town for such fees, the following shall apply:

1. The Town may seek recovery of unreimbursed engineering, legal, and consulting fees by action in a court of appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.
2. Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal, and consulting fees expended by the Town shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-assessed taxes and shall be applied in reimbursing the fund from which the costs were defrayed for the engineering, legal, and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

#### **§175-59 ZONING BOARD OF APPEALS**

Pursuant to the provisions of §267 of the Town Law, there is hereby established a Zoning Board of Appeals consisting of five members appointed by the Town Board. The Town Board may appoint alternate members for terms specified by resolution, for purposes of substituting as needed for a regular member in the event such member is unable to participate in a particular matter or matters because of a conflict of interest or because of an expected extended absence. The chairperson of the Zoning Board of Appeals may designate one of the duly appointed alternate members to substitute for a regular member where a regular member has a conflict of interest or expects to have an extended absence. Such designation of an alternate member shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution

is made. To the extent that the preceding three sentences may be inconsistent with §267(11) of the Town Law, the Town Board hereby expresses its intention to supersede the Town Law in accordance with Municipal Home Rule Law, Article 2, §10, et seq. The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this Chapter, generally the Code Enforcement Official. An appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town.

**A. Appeals of Orders, Requirements, Decisions, Interpretations, or Determinations**

The Zoning Board of Appeals 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 the administrative official charged with the enforcement of this Chapter. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

**B. Appeals for Variance**

1. The Zoning Board of Appeals shall have the power, upon appeal from a determination by the Code Enforcement Official and after public notice and hearing, to vary or modify the application of any of the provisions of this Chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured, and substantial justice done.
2. All applications for variances shall be submitted to the Code Enforcement Official at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. This requirement may be modified for larger properties to show only those existing structures in the vicinity of the requested variance. An application for a use variance may require submission of an agricultural data statement pursuant to §175-37C.
3. Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within two years of the date of issuance shall automatically lapse.

**C. Use Variances**

1. The Zoning Board of Appeals, on appeal from a decision or determination of the Code Enforcement Official, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this Chapter. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under this Chapter for the district in which the applicant's 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.
2. Failure to demonstrate any one of the requirements in Subsections 1(a) through 1(d) above is sufficient to justify the denial of a use variance.
3. The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to §175-37C.
4. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems 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.
5. In addition to the grounds for granting a use variance in Subsection (1) above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property. In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.

6. If the use variance is granted for a non-residential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

#### **D. Area Variances**

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Official, to grant area variances from the area or dimensional requirements.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making its determination the Board shall also consider:
  - a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
  - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - c. Whether the requested area variance is substantial;
  - d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  - e. Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance.
3. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

#### **E. Imposition of Conditions**

The Zoning Board of Appeals shall, in granting use variances and area variances, 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 Chapter, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

#### **F. Procedures**

1. Application  
Appeals shall be taken by filing a written notice of appeal and any required plans with the Code Enforcement Official and the Zoning Board of Appeals within 60 days after the filing of the order, requirement, decision, interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this Chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Code Enforcement Official shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.
2. Referral to Putnam County Department of Planning and Development
  - a. Requests for variances that require referral to the Putnam County Department of Planning and Development shall be so referred pursuant to General Municipal Law, Article 12-B, §§239-l and 239-m, as amended.
  - b. No action shall be taken on variances referred to the Putnam County Department of Planning and Development until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the 30-day requirement for the Putnam County Department of Planning and Development's review.
  - c. County Disapproval  
A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the Putnam County Department of Planning and Development because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

#### **G. Hearing and Public Notice**

*Town Board Review Draft, Philipstown Zoning Law, May 21, 2008*

1. If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of any variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.
2. The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.
3. The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.
4. At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall publish notice of such hearing in the official newspaper, mail notice thereof to the Planning Board, and send notice by certified mail to all property owners within 200 feet of the property upon which the appeal is taken. The cost of publishing and mailing such notices shall be borne by the appellant.
5. If the application is for a use variance on property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard.
6. At the hearing, any party may appear in person or by agent or by attorney.
7. The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal. If the hearing is adjourned for more than 30 days, the Board may require that it be re-noticed as provided in subsection 4 above.

#### **H. Action**

The Zoning Board of Appeals may reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this Chapter.

1. Any such action shall be decided within 62 days after the close of the hearing.
2. Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by resolution which contains a full record of the findings and rationale for the decision. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the Putnam County Department of Planning and Development, it shall give written reasons for such action.

#### **I. Filing**

Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the appellant within the same five-day period.

#### **J. Court Review of Board Decisions**

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article Seventy-eight of the Civil Practice Law and Rules and §267-c of the Town Law.

#### **K. Expiration of Appeal Decision**

Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve months of the date of such decision.

#### **L. Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Official certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Code Enforcement Official's opinion, cause imminent peril to life or property by reason of facts stated in the

certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Official for due cause shown.

## **ARTICLE IX SPECIAL PERMITS AND SITE PLAN REVIEW**

### **§175-60 PURPOSE AND APPLICABILITY**

**A.** It is the policy of the Town of Philipstown to allow a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the rural and historic character of the Town. Many uses are therefore permitted only upon issuance of a Special Permit by the Planning Board, in order to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this Chapter. Some uses are allowed by right, subject only to Site Plan approval (see Use Table in §175-10). Communication towers require a Special Permit issued by the Zoning Board of Appeals. Adult uses, soil mines, and uses not listed on the Use Table (if not prohibited by §175-10C) require a Special Permit issued by the Town Board. In reviewing Special Permit applications, the Town Board and Zoning Board of Appeals shall follow the procedures and standards established for the Planning Board in this Article IX.

**B.** Accessory uses or structures used in connection with a Special Permit or Site Plan use shall be subject to the same approval requirements as the principal structure or use. Accessory structures used in connection with an institutional use in the IC district are governed by the provisions in §175-10J.

#### **C. Minor and Major Projects**

In order to tailor the scope of a project review to the scale of a project, applications are divided into two categories, major and minor. In recognition of their lesser impact, minor projects involve simpler application materials, a more streamlined review process, and less detailed findings requirements, while major projects undergo a more detailed and rigorous review procedure because of their greater impact. The classification of major and minor only applies to projects that require site plan or special permit review. This classification system does not apply to development allowed by right without review by the Planning Board, Zoning Board of Appeals, or Town Board.

1. A Minor Project is a Special Permit or Site Plan application for a project that does not exceed any of the following thresholds (over a five-year period):
  - a. Construction of four multi-family dwelling units or a lodging facility with six bedrooms.
  - b. Construction of facilities or structures for a non-residential use covering 3,000 square feet of building footprint.
  - c. Alteration of existing structures or expansion of such structures by 1,000 square feet.
  - d. Conversion of existing structures totaling 5,000 square feet to another use.
  - e. Alteration and active use of 10,000 square feet of land, with or without structures.
  - f. Construction of a structure that is 50 feet in height above average grade level (provided that it otherwise complies with this Chapter or is the subject of an area variance).
2. A Major Project is a Special Permit or Site Plan application exceeding any of the Minor Project thresholds.

### **§175-61 REQUIRED SUBMISSIONS FOR SPECIAL PERMIT APPLICATIONS**

Because the impact of Special Permit uses varies, the review procedure and information required to be submitted for a Special Permit varies depending upon whether it is a Major or Minor Project. The numbers of copies of materials to be submitted shall be as required under the procedural policies of the Planning Board.

#### **A. Major Project Special Permit**

An applicant for a Major Project Special Permit shall submit the following:

1. A Major Project application form.
2. A Site Plan, containing the information listed in §175-65B unless submission of certain information has been waived

at a pre-application meeting.

3. A narrative report describing how the proposed use will satisfy the criteria set forth in §175-63, as well as any other applicable requirements relating to the specific use proposed.
4. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.
5. An agricultural data statement as defined in §175-74, if required by §175-37C.
6. The Major Project Special Permit application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.
7. A letter from the Code Enforcement Official stating that there are no outstanding zoning violations on the property.

#### **B. Minor Project Special Permits**

An applicant for a Minor Project Special Permit shall submit the following:

1. A Minor Project application form.
2. A plot plan providing information sufficient to enable the reviewing board to make an informed decision (which may include some of the Site Plan information listed in §175-65B).
3. A brief narrative describing the proposed use.
4. A short-form Environmental Assessment Form (EAF) (unless the Planning Board determines that the proposed Special Permit is a Type I action, in which case a long-form EAF shall be required).
5. An agricultural data statement as defined in §175-74, if required by §175-37C.
6. The Minor Project application fee as established by the Town Board, and an escrow deposit (if required).
7. A letter from the Code Enforcement Official stating that there are no outstanding zoning violations on the property.

### **§175-62 PROCEDURE FOR SPECIAL PERMITS**

#### **A. Pre-application Meetings**

Before filing an application, a preliminary conference with the Code Enforcement Official and/or the Town Planner is required to discuss the nature of the proposed use and to classify it as a Major or Minor Project. If the Code Enforcement Official classifies the project as a Major Project, a preliminary meeting with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan.

#### **B. Mediation Option**

At any point in a project review process the Planning Board may, if it deems appropriate and the parties consent, appoint a mediator to work informally with the applicant, neighboring property owners, and other interested parties to address concerns raised about the proposed Special Permit use. Any party may request mediation. Such mediation may be conducted by any qualified and impartial person acceptable to the parties and the Planning Board. The mediator shall have no power to impose a settlement or bind the parties or the Planning Board, and any settlement reached shall require Planning Board approval to assure compliance with all provisions of this Chapter. With the applicant's written consent, the cost, if any, of such mediation may be charged to the applicant. Such cost may also be paid by the Town, or shared by other parties with their written consent.

#### **C. Application**

1. Application for a Special Permit shall be made to the Planning Board in the manner prescribed by the Board. The Planning Board's consultant or designated Town employee shall make the initial determination as to whether or not the application is complete for the purpose of accepting it for review.
2. If an application is for a parcel or parcels on which more than one use requiring a Special Permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining whether the application is a Major or Minor Project, and for SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.
3. Application for Area Variance

Notwithstanding any provision of law to the contrary, where a proposed Special Permit contains one or more features which do not comply with the dimensional requirements of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §175-59F without a decision or determination by the Code Enforcement Official.

**D. State Environmental Quality Review Act (SEQRA) Compliance**

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

**E. Referral to Putnam County Department of Planning and Development and Town Conservation Board**

1. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Putnam County Department of Planning and Development any application for a Special Permit affecting real property within 500 feet of the boundary of the Town of Philipstown, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County (or which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, §§239-l and 239-m, as amended.

2. No action shall be taken on applications referred to the Putnam County Department of Planning and Development until its recommendation has been received, or until 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the Putnam County Department of Planning and Development's review.

**3. County Disapproval**

A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the Putnam County Department of Planning and Development before the Planning Board takes action. The Planning Board shall by resolution set forth its reasons for such contrary action.

4. Upon receipt of application materials it deems to be complete, the Planning Board shall also refer to the Town's Conservation Board any application for a Major Project Special Permit or any application for a Minor Project Special Permit located within the OSO, WSO, SPO, or FPO Districts, or within a Visible Ridgeline No-Build Area or a Hillside Protection Area, together with any SEQR documents submitted with the application. The Conservation Board shall have 30 days to report its recommendations to the Planning Board after which time the Planning Board may act without receiving a recommendation. The Planning Board shall take the Conservation Board's recommendations into consideration and if it does not follow such recommendations, it shall provide a written explanation of its reasons for not doing so.

**F. Notice and Hearing**

1. If an agricultural data statement has been submitted, the secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Permit application 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. The cost of mailing the notice shall be borne by the applicant.

2. The Planning Board shall hold a public hearing on a complete Special Permit application within 62 days of its submission. The Board shall publish notice of such hearing in the official newspaper at least five days prior to the date thereof. The Board shall also send notices of the hearing by certified mail to owners of properties within 200 feet of the property boundary. This notice requirement to surrounding owners may be modified by the Planning Board, at the applicant's request, in the case of properties of greater than 50 acres where only a small area is being disturbed. In such

cases, notification must be sent to owners of land lying within 1500 feet of the proposed area of land disturbance and within 200 feet of the parcel's road frontage. If the application is for a property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard. The cost of giving all notices shall be charged to the applicant.

3. The applicant shall post a notice on a sign purchased from the Town Clerk stating that there is a pending application on the property, and providing the date, time, and place of the hearing, the place and times the application may be reviewed by the public, and a telephone number to call for further information. This sign shall be posted in public view in a conspicuous location within three days after the Planning Board establishes a public hearing date, shall be updated if more hearing dates are scheduled, and shall remain in place until the day after the hearing is closed.

#### **G. Action**

1. The Planning Board shall grant, deny, or grant subject to conditions the application for a Special Permit within 62 days after the hearing for a Major Project and within 31 days for a Minor Project. Any decision on a Major Project shall contain written findings explaining the rationale for the decision in light of the standards contained in §175-63 below. The time periods above may be extended by the Planning Board with the applicant's consent.

2. In granting a Special Permit, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this Chapter. These conditions may include increasing minimum or decreasing maximum dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to §175-20, specifying location, character, and number of vehicle access points, requiring landscaping, planting, and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guarantees to insure the completion of the project in accordance with the conditions imposed.

3. Every decision on a Special Permit shall be filed in the office of the Town Clerk within five business days after the decision is rendered and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the applicant within the same five-day period.

4. The Special Permit and accompanying Site Plan shall be implemented as provided in §175-68.

#### **H. Expiration, Revocation, and Enforcement**

1. A Special Permit shall expire if the Special Permit use or uses do not commence or cease for more than 24 consecutive months for any reason, if the applicant fails to obtain any necessary Building Permits or fails to comply with the conditions of the Special Permit within 12 months of its issuance, or if its time limit expires without renewal. The Planning Board may grant an extension upon request by the applicant for good cause shown.

2. A Special Permit may be revoked by the Planning Board if the permittee violates the conditions of the Special Permit or engages in any construction or alteration not authorized by the Special Permit.

3. Any violation of the conditions of a Special Permit shall be deemed a violation of this Chapter, and shall be subject to enforcement action as provided in §175-57.

#### **§175-63 FINDINGS REQUIRED**

In granting or denying Special Permits, the Planning Board shall take into consideration the scale of the proposed project and its potential impact on the functioning of nearby farm operations. The Planning Board shall also take account of any proposed conservation easements, architectural restrictions, or other measures that would tend to mitigate potential adverse impacts and preserve or enhance the scenic and historic character of the Town. No special permit shall be granted for any property on which there exists a violation of this Chapter, including a violation of any condition of a previous municipal approval, unless the Planning Board finds that the applicant has no legal right or ability to remedy the violation or that the grant of a special permit is necessary to remedy a condition that poses a risk to public health or safety.

#### **A. Minor Projects**

A Minor Project shall be presumed to be acceptable if it complies with applicable health laws and other specific provisions

of this Chapter. In order to grant a Minor Project Special Permit, the Planning Board must make a general finding that none of the criteria for Major Projects listed in Subsection B below will be violated. The Planning Board shall deny a Minor Project Special Permit if it determines that one or more of these criteria will be violated.

### **B. Major Project Criteria**

Before granting or denying a Major Project Special Permit, the Planning Board shall make specific written findings establishing whether or not the proposed Major Project:

1. Will comply with all land use district, overlay district, and other specific requirements of this and other Chapters and regulations, and will be consistent with the purposes of this Chapter and of the land use district in which it is located.
2. Will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.
3. Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, as well as any improvements proposed to be made to them by the applicant.
4. Will be accessible to fire, police, and other emergency vehicles.
5. Will not overload any public water, drainage, sewer system, or any other municipal facility.
6. Will not materially degrade any watercourse or other natural resource or ecosystem and will not endanger the water quality of an aquifer.
7. Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.
8. Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town.
9. Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering non-residential uses that are incompatible with residential use.
10. Will not adversely affect the availability of affordable housing in the Town.
11. Will comply with applicable Site Plan criteria in §175-65D.
12. If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

### **§175-64 SPECIAL PERMIT AMENDMENTS**

The terms and conditions of any Special Permit may be amended in the same manner as required for the issuance of a Special Permit, following the criteria and procedures in this Section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require Site Plan review only, provided that the use does not change.

### **§175-65 SITE PLAN REVIEW AND APPROVAL**

#### **A. Applicability**

1. Site Plan approval by the Planning Board shall be required for all permitted uses listed on the Use Table as requiring Site Plan approval only. Site Plan review shall be included as an integral part of the Special Permit approval process and no separate Site Plan approval shall be required for uses requiring a Special Permit.
2. The procedures for review of Site Plans for Major and Minor Projects (as defined in Article XII) are described in §§175-66 and 175-67. Agricultural structures with a footprint of over 15,000 square feet shall require Minor Project site plan approval. Agricultural structures with a footprint of 10,000 square feet or less are exempt from site plan approval requirements.
3. Site Plan approval shall also be required for any development which is the functional equivalent of a land subdivision but which is structured for ownership purposes as a condominium project. In such cases, the Planning Board shall apply all relevant review criteria contained in the Land Development Law (Chapter 112 of the Town Code) as well as the provisions of this Chapter.

**B. Required Information for Site Plan**

An application for Site Plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the applicant. Minor Project Site Plans shall contain the information required by §175-67C and other information listed below if the Planning Board deems such information necessary to conduct an informed review. Major Project Site Plans shall be prepared by a licensed professional engineer, architect, surveyor, or landscape architect, and shall include the following (unless waived):

1. A location map drawn at the scale of 2,000 feet to the inch or larger (or other convenient scale acceptable to the Planning Board) that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. A vicinity map shall also be submitted that shows all properties, subdivisions, streets, and easements within 500 feet of the property. Such maps may be superimposed on a United States Geological Survey or New York State Department of Transportation map of the area.
2. An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use such as rock outcrops, single trees eight or more inches in diameter located within any area where clearing will occur, forest cover, soils (including prime and statewide important agricultural soils), and ponds, lakes, wetlands and watercourses, aquifers, floodplains, and drainage retention areas.
3. A Site Plan, drawn at a scale and on a sheet size appropriate to the project. The information listed below shall be shown on the Site Plan and continuation sheets.
4. Name of the project, boundaries, date, north arrow, and scale of the plan. Name and address of the owner of record, developer, and seal of the engineer, architect, surveyor, and/or landscape architect. If the applicant is not the record owner, a letter of authorization shall be required from the owner.
5. The location and use of all existing and proposed structures within the property, including all dimensions of height and floor area, all exterior entrances, and all anticipated future additions and alterations.
6. The location of all present and proposed public and private ways, off-street parking areas, driveways, outdoor storage areas, sidewalks, ramps, curbs, paths, landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.
7. The location, height, intensity, and bulb type (sodium, incandescent, etc.) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
8. The location, height, size, materials, and design of all proposed signs.
9. The location of all present and proposed utility systems including:
  - a. Sewage or septic system;
  - b. Water supply system;
  - c. Telephone, cable, and electrical systems; and
  - d. Storm drainage system including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes, and drainage swales.
10. Erosion and sedimentation control plan required by §175-32 to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable.
11. Existing and proposed topography at two-foot contour intervals, or such other contour interval as the Board shall specify. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the 100-year floodplain, the area will be shown, and base flood elevations given. Areas shall be indicated within the proposed site and within 50 feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards.
12. A landscape, planting, and grading plan showing proposed changes to existing features.
13. Land Use District boundaries within 200 feet of the site's perimeter shall be drawn and identified on the Site Plan, as well as any Overlay Districts that apply to the property.
14. Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and within 100 feet of the site. The Planning Board may, at its discretion, require a detailed traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of §175-40N.

15. For new construction or alterations to any structure, a table containing the following information shall be included:
  - a. Estimated area of structure currently used and intended to be used for particular uses such as retail operation, office, storage, etc.;
  - b. Estimated maximum number of current and future employees;
  - c. Maximum seating capacity, where applicable; and
  - d. Number of parking spaces existing and required for the intended use.
16. Elevations at a scale of one-quarter inch equals one foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.
17. Where appropriate, the Planning Board may request soil logs, percolation test results, and storm run-off calculations.
18. Plans for disposal of construction and demolition waste, either on-site or at an approved disposal facility.
19. Part One of a long-form Environmental Assessment Form or Draft Environmental Impact Statement.
20. Where appropriate, a cultural resource survey of resources with historic or archaeological significance.
21. A letter from the Code Enforcement Official stating either that there are no outstanding zoning violations on the property or that the requested site plan approval is needed in order to correct a violation.
22. Other information that may be deemed necessary by the Planning Board.

### C. Waivers

The Planning Board may waive or allow deferred submission of any of the information required in Subsection B above, as it deems appropriate to the application. Such waivers shall be discussed in the course of pre-application conferences. The Planning Board shall issue a written statement of waivers for all major projects. This statement shall be filed in the permanent record of the property.

### D. Criteria

In reviewing Site Plans, the Planning Board shall ensure that the application complies with all applicable provisions of this Chapter, including the environmental performance standards in §175-40. The Planning Board shall also consider the criteria set forth below. The Planning Board may also refer for non-binding guidance to the three-volume set of illustrated design guidelines published by the New York Planning Federation in 1994, entitled *Hamlet Design Guidelines*, *Building Form Guidelines*, and *Rural Design Guidelines*. The Planning Board may also refer to the "Design Handbook" adopted by the Philipstown Planning Board as advisory guidelines for the Route 9 Corridor as well as any other design guidelines that it adopts from time to time as non-binding advisory material. In applying the criteria contained in this subsection and the reference documents above, the Planning Board shall take into consideration the location, character, and context of proposed development and adapt these criteria to the setting (*e.g.* rural, hamlet, institutional, suburban, industrial) as appropriate.

#### 1. Layout and Design

- a. To the maximum extent practicable, development shall be located to preserve the natural features of the site and to avoid wetland areas, steep slopes, significant wildlife habitats, and other areas of environmental sensitivity. The placement and design of buildings and parking facilities shall take advantage of the site's topography, existing vegetation, and other pertinent natural features. The Planning Board may require that an applicant prepare a conservation analysis as described in §175-20A of this Chapter.
- b. All structures in the plan shall be integrated with each other and with adjacent structures and shall have convenient access between adjacent uses. Structures shall, where practical, be laid out in the pattern of a traditional hamlet.
- c. Except for retail and service businesses that require visibility, the visual impact of structures from public roads shall be minimized through the use of vegetative screening, topography, and colors that blend with the natural surroundings. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, proportion, texture, color, and placement. Building components such as windows, roof lines and pitch, doors, eaves, and parapets shall be compatible with historic structures in the Town. Vertical, double-hung windows and steeply pitched roofs are encouraged. Designs shall avoid flat roofs, large expanses of undifferentiated facades, and long plain wall sections.

Rooftop and ground level mechanical equipment shall be screened from public view using materials harmonious with the building, or shall be located where they are not visible from any public ways.

d. Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

e. The Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.

f. Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the Town or the Building Form Guidelines.

g. Impacts on historic and cultural resources shall be minimized.

h. Newly installed utility service systems and service modifications necessitated by exterior alterations shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.

## 2. Landscaping

a. Landscaping shall be an integral part of the entire project area and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.

b. Landscape plantings of 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 spaces and to maintain landscape continuity within the community. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of community aesthetic character. This shall be accomplished through the use of native plant material and the retention of existing natural vegetation, thereby reducing or eliminating the need for irrigation, pesticides, herbicides, and fertilizers.

c. Existing native tree stock eight or more inches in diameter at breast height shall be protected and preserved to the extent possible to retain valuable community natural resources and promote energy conservation by maximizing the cooling and shading effects of trees. The preservation of mature plant species, hedge rows, wetlands, and woodlots shall be encouraged and included as a design element in the development of the site.

d. Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forestland, or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the project, and the location of improvements on the property.

e. If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall and two-inch caliper shall be planted and maintained at 20- to 40-foot intervals along roads at a setback distance acceptable to the Highway Superintendent.

f. For landscaping parking lots, see Subsection 175-38A(4)(c).

## 3. Parking, Circulation, and Loading

a. Roads, driveways, sidewalks, off-street parking, and loading space shall be safe, and shall encourage pedestrian movement.

b. Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.

c. Off-street parking and loading standards in §175-38 shall be satisfied.

d. Access from and egress to public highways shall be approved by the appropriate highway department, including Town, County, and State.

e. All buildings shall be accessible by emergency vehicles.

f. Parking spaces shall have wheel stops or curbs to prevent injury to trees and shrubs planted in landscaped islands.

g. Bicycle parking spaces and racks shall be provided in an area that does not conflict with vehicular traffic.

Designated van/car pool parking, and other facilities for alternatives to single occupancy vehicle use shall be provided wherever possible.

h. In developments where links to schools, churches, shopping areas, trails, greenbelts, and other public facilities are feasible, or where a trail connection is recommended in the Comprehensive Plan or in a Town Open Space Plan, a trail corridor shall be reserved on the approved Site Plan for this purpose.

## 4. Reservation of Parkland

For any Site Plan containing residential units, the Planning Board may require the reservation of parkland or payment

of a recreation fee pursuant to Town Law, §274-a(6).

**5. Miscellaneous Standards**

- a. Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.
- b. Drainage of the site shall recharge ground water to the extent practicable. The peak rate of surface water flowing off-site shall not increase above pre-development conditions and shall not adversely affect drainage on adjacent properties or public roads.
- c. Applicable requirements for proper disposal of construction and demolition waste shall be satisfied, and any necessary permits or agreements for off-site disposal shall be obtained.
- d. No materials shall be placed below the finished grade of a site other than utilities, sand, gravel, rocks, and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection (e), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.
- e. Structures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties. Similarly, buildings shall be situated to prevent off-site noise from intruding on new development. Methods for blocking noise shall be used where appropriate, and shall include fencing, walls, and natural buffers, such as berms and landscape planting with trees and large shrubs.

**§175-66 PROCEDURE FOR MAJOR PROJECT SITE PLAN APPROVAL**

**A. Applicability**

This §175-66 applies to Major Project Site Plan approval applications where no Special Permit is required. See §175-67 for Minor Project Site Plan applications.

**B. Pre-application Meetings**

Before filing an application, a preliminary conference with the Code Enforcement Official and one Planning Board member designated by the Planning Board Chair is required to discuss the nature of the proposed use and to classify it as a Major or Minor Project. If the Code Enforcement Official classifies the project as a Major Project, a preliminary conference with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan.

**C. Submission**

All Major Project Site Plans shall be submitted, with multiple copies as required by the Planning Board, to the Code Enforcement Official, who shall distribute them to the Planning Board and such other municipal boards, officials, and consultants as the Planning Board deems appropriate. The Planning Board's consultant or a designated Town employee shall make the initial determination as to whether or not the application is complete for the purpose of accepting it for review. In addition to the Site Plan drawings, the applicant shall submit:

1. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.
2. An agricultural data statement as defined in §175-74, if required by §175-37C.
3. The Site Plan application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

**D. Application for Area Variance**

Where a proposed Site Plan contains one or more features which do not comply with the dimensional regulations of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §175-59F without a decision or determination by the Code Enforcement Official.

**E. SEQRA Compliance**

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

#### **F. Public Hearing and Decision**

1. The Planning Board shall hold a public hearing on the Site Plan and shall follow the provisions on notice, agricultural data statements, county review, Conservation Board review, and time limits for Special Permits in §§175-62E through G.
2. Criteria for decisions on Site Plans shall be limited to those listed in §175-65D. In granting Site Plan approval, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this Chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to §175-20, specifying location, character, and number of vehicle access points, requiring landscaping and/or screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and/or requiring performance guarantees to insure the completion of the project in accordance with the conditions imposed.
3. A copy of the decision shall be immediately filed in the Town Clerk's office and mailed to the applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the Planning Board Chairman to stamp and sign the Site Plan upon the applicant's compliance with applicable conditions and the submission requirements stated herein.
4. If the Planning Board's resolution includes a requirement that modifications be incorporated in the Site Plan, conformance with these modifications shall be considered a condition of approval. If the Site Plan is disapproved, the Planning Board may recommend further study of the Site Plan and resubmission to the Planning Board after it has been revised or redesigned.

#### **§175-67 PROCEDURE FOR MINOR PROJECT SITE PLAN APPROVAL**

The procedure for Minor Project Site Plan approval by the Planning Board shall be the same as prescribed in §175-66 for Major Projects, except for the following:

- A. A short-form Environmental Assessment Form (EAF) will normally be required. If the application is classified as a "Type I" action under the State Environmental Quality Review Act, a long-form EAF shall be required. The Planning Board, at its discretion, may require the long-form Environmental Assessment Form for any application categorized as "unlisted" under SEQRA.
- B. A Minor Project application fee established by the Town Board shall be paid, and an escrow deposit may be required to cover review costs at the discretion of the Planning Board.
- C. A Minor Project Site Plan application shall contain the following information. For non-agricultural structures, the Planning Board may request additional information listed in §175-65B if the Board deems it essential to conduct an informed review. Minor Project Site Plan application materials may be prepared by a licensed professional engineer, surveyor, architect, or landscape architect, but the Planning Board shall not require this unless the services of such professionals are necessary to provide accurate information or are otherwise required by law.
  1. A sketch of the parcel on a location map (e.g. a tax map) showing boundaries and dimensions of the parcel and identifying contiguous properties that are within 200 feet of the proposed structure and any known easements or rights-of-way and roadways.
  2. Existing features of the site lying within 200 feet of the proposed structure, including land and water areas, water or

sewer systems, and the approximate location of all structures within 200 feet of the proposed structures.

3. The proposed location and arrangements of structures and uses on the site, including means of ingress and egress, parking, and circulation of traffic.
4. A sketch of any proposed structures (including signs), showing exterior dimensions and elevations of front, side, and rear views; copies of available blueprints, plans, or drawings.
5. A concise description of the project describing the intended use of proposed structures (including signs) and any changes in the existing topography and natural features.
6. The name and address of the applicant and any professional advisors, and the authorization of the owner if the applicant is not the owner.
7. If the parcel contains a stream, wetland, or floodplain, a copy of the floodplain map and wetland map that corresponds with the boundaries of the property.

**D.** No public hearing is required for a Minor Project Site Plan. The Planning Board may, in its sole discretion, hold a public hearing following the procedures in §175-66F. If no public hearing is held, the Planning Board shall give notice to the Putnam County Department of Planning and Development and to farm operators as required in §§175-62E and F and render a decision within 45 days of its receipt of a complete Site Plan application. In order to approve a minor project site plan, the Planning Board must find that the proposal is generally consistent with the criteria in §175-65D and will not adversely affect neighboring properties. A minor project site plan shall be referred to the Conservation Board if it is located within the OSO, WSO, SPO, or FPO Districts, or within a Visible Ridgeline No-Build Area or a Hillside Protection Area. The Conservation Board shall have 20 days to report its recommendations to the Planning Board after which time the Planning Board may act without receiving a recommendation. The Planning Board shall take the Conservation Board's recommendations into consideration and if it does not follow such recommendations, it shall provide a written explanation of its reasons for not doing so.

#### **§175-68 IMPLEMENTATION, REVISION, AND ENFORCEMENT OF APPROVED SITE PLANS**

**A.** Within 6 months after receiving approval of a Site Plan, with or without modifications, the applicant shall submit multiple copies of the Site Plan, as determined by the Planning Board, for stamping and signing. The Site Plan submitted for stamping shall conform strictly to the Site Plan approved by the Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:

1. Record of application for and approval status of all necessary permits from Federal, State, and County officials.
2. Detailed sizing and final material specification of all required improvements.
3. An estimated project construction schedule. If a performance guarantee pursuant to Subsection B is to be provided by the applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.
4. Proof of payment of the Planning Board's reasonable review costs.
5. Upon stamping and signing the Site Plan, the Planning Board shall forward copies of the approved Site Plan to the Code Enforcement Official and the applicant. The Code Enforcement Official may then issue a Building Permit. A Certificate of Occupancy may only be issued if the project conforms to all applicable requirements of the Site Plan Approval.

#### **B. Performance Guarantee**

No Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed, or a sufficient performance guarantee has been posted for improvements not yet completed. The performance guarantee shall be posted in accordance with the procedures specified in §277 of the Town Law relating to subdivisions. The amount and sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Attorney, Code Enforcement Official, other local officials, and its consultants.

#### **C. As-Built Plans and Inspection of Improvements**

No Certificate of Occupancy shall be granted until the applicant has filed a set of as-built plans with the Code Enforcement Official, indicating any deviations from the approved Site Plan. The Code Enforcement Official shall be responsible for

the inspection of site improvements, including coordination with the Town's consultants and other local officials and agencies, as may be appropriate, and shall grant a Certificate of Occupancy upon a finding that the project as built complies in all material respects with the Site Plan. The Code Enforcement Official shall also have the authority to inspect soil mines for compliance with conditions authorized by §175-17D throughout the life of the mine. Costs of any required inspections may be charged to the applicant as provided in section §175-58.

**D. Site Plan Amendments**

An approved Site Plan may be amended by filing an application with the Planning Board for a Site Plan amendment.

1. If the Planning Board finds that such proposed amendment is consistent with the terms of any applicable Special Permit approval (or if no Special Permit is required) and does not represent a substantial change from the approved Site Plan, it shall grant the amendment without a hearing.
2. If the Planning Board determines that the proposed amendment is consistent with the terms of the applicable Special Permit approval (or if no Special Permit is required), but is a substantial change from the approved Site Plan, it shall follow the procedures for Site Plan approval contained in §175-66F and hold a public hearing if the amendment would be considered to be a Major Project.
3. If the Planning Board determines that the proposed amendment is inconsistent with the terms of any Special Permit approval, it shall consider the application to be one for a Special Permit amendment and proceed pursuant to §175-62.

**E. Expiration, Revocation, and Enforcement**

1. Site Plan approval shall expire if the applicant fails to obtain any necessary Building Permits, fails to comply with the conditions of the Site Plan approval, or fails to initiate the use within 24 months of its issuance, or if the Special Permit with which it is associated expires. The Planning Board may grant a one-time six-month extension, and additional extensions, upon a showing of hardship or extenuating circumstances.
2. A Site Plan approval may be revoked by the Planning Board if the permittee violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
3. Any violation of the conditions of a Site Plan approval shall be deemed a violation of this Chapter, and shall be subject to enforcement action as provided herein.

**ARTICLE X        AMENDMENTS**

**§175-69    AMENDMENTS**

**A. Initiation**

The Town Board upon its own motion, upon application by one or more property owners, or upon receipt of a resolution of the Planning Board or Zoning Board of Appeals, may amend this Chapter as provided herein. A property owner or authorized agent may apply for amendment to this Chapter by filing three complete sets of a petition with the Town Board and two complete sets with the Planning Board. The petition shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof, and the applicable filing fee. In the case of a proposed amendment which would apply only to properties which are not immediately identifiable or to a class of properties including six or more identifiable properties, no properties need be identified as affected. The Town Board shall be under no obligation to consider or review a petition for a zoning amendment.

**B. Review by Planning Agencies**

As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town Planning Board and to the Putnam County Department of Planning and Development as required by §§239-1 and 239-m of the General Municipal Law.

1. Referral to Putnam County Department of Planning and Development

No action shall be taken to approve a proposed zoning amendment referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the County and Town agree to an extension beyond the 30-day requirement for the Putnam County Department of Planning and Development's review.

**2. Referral to Town Planning Board**

Every proposed amendment or change initiated by the Town Board or by petition (but not if initiated by the Planning Board), shall be referred to the Town Planning Board for report thereon prior to public hearing. If the Planning Board does not report within 30 days of such referral, the Town Board may take action without the Planning Board report. This period of time may be extended by agreement of the Town Board and Planning Board.

**C. Public Hearing and Notice**

No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. If the Town Board chooses to consider a proposed zoning amendment, it shall, by resolution at a duly called meeting, set the time and place for a public hearing on the proposed amendment, and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities, if necessary.

**1. Publication of Notice in Newspaper**

Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.

**2. Notice to Adjacent Municipalities**

Written notice of any proposed amendment affecting property lying within 500 feet of an adjacent town shall be served in person or by mail upon the Clerk of such municipality at least 10 days prior to the date of public hearing.

Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon, but shall not have the right to review by a court.

**D. Adoption**

The Town Board may adopt amendments to this Chapter by a majority vote of its membership, except in the case of local protest or disapproval by the Putnam County Department of Planning and Development as noted below.

**1. Local Protest**

The favorable vote of three-fourths of the entire Town Board shall be required for passage of any amendment which is subject to a written protest signed by the owners of 20% or more of the land in any of the following areas:

- a. The land area included in the proposed amendment.
- b. The land area immediately adjacent to the area proposed to be changed and extending 100 feet therefrom.
- c. The land area directly opposite the area proposed to be changed and extending 100 feet from the road frontage of such opposite land.

**2. County Disapproval**

A majority-plus-one vote of the entire Town Board shall be required to pass any proposal which receives a recommendation of disapproval from the Putnam County Department of Planning and Development prior to Town Board action, along with a resolution setting forth the reasons for such contrary action.

**E. Effective Date**

Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

## ARTICLE XI MISCELLANEOUS PROVISIONS

### §175-70 SEVERABILITY

If any provision of this Chapter or the application thereof to any person, property, or circumstances is held to be invalid, the remainder of this Chapter and the application of each provision to other persons, property, or circumstances shall not be affected thereby.

### §175-71 APPOINTMENT OF ALTERNATE PLANNING BOARD MEMBERS

The Town Board may appoint alternate members of the Planning Board for terms specified by resolution for purposes of substituting as needed for a regular member in the event such member is unable to participate in a particular matter or matters because of a conflict of interest or because of an expected extended absence. The chairperson of the Planning Board may designate one of the duly appointed alternate members to substitute for a regular member where a regular member has a conflict of interest or expects to have an extended absence. Such designation of an alternate member shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made. To the extent that the preceding three sentences may be inconsistent with Section 271(15) of the Town Law, the Town Board hereby expresses its intention to supersede the Town Law in accordance with Municipal Home Rule Law, Article 2, §10, et seq.

*(Note: The section above should appear not in the zoning but in Chapter 38 of the Town Code, under which the Planning Board is established and its membership provisions are defined. This is necessary because the Planning Board also regulates subdivisions, which are not covered under the Zoning Law. Provision for ZBA alternates is appropriately included in the Zoning Law, in §175-59, because the ZBA is established only through zoning. If the Town Board determines that Planning Board alternates are desirable, it should amend Chapter 38 separately, since this provision does not belong in the zoning. This subsection is included by the ZAC primarily to bring this issue to the Town Board's attention.)*

### §175-72 CONFLICT WITH STATE LAWS

To the extent that any provisions of this Chapter are inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, §§261 through 268, 274-a through 281, the Town Board of the Town of Philipstown hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under Municipal Home Rule Law, Article 2, §10, et seq. of the Consolidated Laws of the State of New York. In particular, to the extent that Article V may be inconsistent with §278 of the Town Law, the Town Board hereby declares its intent to supersede §278.

### §175-73 EFFECTIVE DATE

This Chapter shall take effect upon filing with the New York State Secretary of State.

## ARTICLE XII DEFINITIONS

### §175-74 USE OF WORDS GENERALLY; DEFINED TERMS

A. Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. The word *shall* is always mandatory. The word *may* is permissive. *Building* or *structure* includes any part thereof. The word *lot* includes the word *plot* or *parcel*. The word *person* includes an individual person, a firm, a corporation, a partnership, and any other agency of

voluntary action. The word *he* shall include *she* or *they*. The words *include*, *includes*, and *including* shall be interpreted as though followed by the phrase *without limitation* or *but not limited to*. The phrase *used for* includes *arranged for*, *designed for*, *intended for*, *maintained for*, and *occupied for*. Where the precise meaning of a word is in doubt by any board or official, the Town Board shall make a determination in accordance with the purpose and intent of this Chapter and the Comprehensive Plan. To the extent that this provision conflicts with Town Law Section 267-b, the Town Board hereby expresses its intention to supersede the Town Law in accordance with Municipal Home Rule Law, Article 2, §10, et seq. This power to interpret words shall not change the jurisdiction of the Zoning Board of Appeals to hear an appeal of a decision made by an administrative official pursuant to §175-59.

**B.** In the following definitions, where two words are separated by a slash mark (/), they shall have the same meaning.

**Accessory Apartment:** A dwelling unit occupying the lesser of 800 square feet or 30% of the floor space of an owner-occupied single-family dwelling, a dwelling unit no larger than 800 square feet located in an accessory structure on an owner-occupied residential property, or a dwelling unit no larger than 800 square feet located in a structure on a property not used for residential purposes.

**Accessory Structure:** A structure detached from and subordinate to a principal building on the same lot, with less than one-half of the floor space of the principal building, and which is used for purposes customarily incidental to those of the principal building or use, including parking, storage, recreation, home occupation, and accessory apartment. Barns and structures used for agriculture, whether or not used for housing animals, shall not be subject to the limitation to one-half of the floor space of the principal building.

**Accessory Use:** A use customarily incidental and subordinate to the principal use or building, and located on the same lot, on adjoining lots, or on lots that face each other across a street. (See §175-10D.)

**Adult Entertainment Use:** Any use constituting an adult bookstore, adult motion-picture theater, adult motel, adult entertainment cabaret, or adult massage establishment as those terms are defined in §175-48B..

**Agricultural Data Statement:** An identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which a subdivision is proposed, as provided in §305-a of the Agriculture and Markets Law. An 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 that contains farm operations and is located within five hundred 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 farm operations identified in the agricultural data statement.

**Agriculture:** The commercial use of land and structures for the production, preservation, nonindustrial processing, storage, and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry, or dairy products, not including agricultural industry or farms primarily for the disposal of offal or garbage. Commercial horse boarding operations, as defined herein, and the raising or breeding of horses are agricultural uses, distinguished from the business use of teaching or training people to ride a horse. (See "Riding Academy.") A produce sales facility not exceeding 800 square feet in footprint area and a riding academy operated in conjunction with a farm operation (as defined herein) shall be deemed to be agricultural accessory uses. Agricultural activities on residential parcels of less than seven acres shall be deemed to be not agriculture, but a residential accessory use.

**Alteration:** As applied to a structure, a change to or rearrangement of the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

**Applicant:** Any person, corporation, or other entity applying for a Building Permit, Certificate of Occupancy, Special Permit, Site Plan or subdivision approval, variance, or zoning amendment.

**Assisted Living Facility:** A residential care facility providing residential units accompanied by services for housekeeping, personal care, recreation, and food.

**Automobile Service Station:** Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning, servicing, or repairing

such motor vehicles, including auto body shops.

**Bed and Breakfast:** A dwelling in which overnight accommodations not exceeding five bedrooms and breakfast are provided for transient guests for compensation. A bed and breakfast must be the primary residence of the owner/proprietor.

**Buildable Land:** That portion of a lot which is suitable for building structures and locating septic disposal facilities, i.e. all land excluding wetlands and watercourses, slopes of 20% or greater, and flood hazard areas as mapped on the Federal Emergency Management Agency's Flood Insurance Rate Map.

**Building:** A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

**Building Height:** The vertical distance measured from the average elevation of the finished lot grade measured at ten foot intervals around the perimeter of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck line of a mansard roof; and to the mean height between the eaves and ridge of a gable, hip, or gambrel roof. If an applicant for a building permit has raised the finished grade above the natural grade by more than five feet or has raised the finished grade without first obtaining a zoning permit pursuant to §175-34F (if required), building height shall be measured from the mean average natural grade of the building site.

**Building Lot:** See "Lot/Parcel."

**Building, Principal:** A building or structure containing the principal use of the lot on which it is located.

**Camp:** Any area of land containing recreation facilities and which may contain cabins, tents, recreational travel vehicles, shelters, or accommodations used for what is commonly known as a tent camp, RV park, or "overnight camp." or otherwise designed for seasonal or other temporary recreational and living purposes occupied by adults, children, or any combination of individuals, families, or groups. Where a camp falls within the definition of "institutional use," it shall be deemed to be an institutional use. Day camps not sponsored by or held on the premises of schools or religious institutions are deemed to camps as defined herein. The recreational use of private property for personal use by owners, lessees, or their guests is not a camp as defined herein, and shall be considered to be an accessory use to a residence.

**Cemetery:** Land used or intended to be used for the burial of dead human beings and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

**Change of Use:** The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category on the Use Table, shall not be considered a change of use. See §175-10F.

**Charitable Use:** A use operated by a not-for-profit corporation or association organized for charitable purposes including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

**Clearcutting:** A method of harvesting which removes 75% or more of trees six inches in diameter or greater at breast height (4 1/2 feet) in an area of 1,000 square feet of land..

**Club, Membership:** Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

**Code Enforcement Official/Code Enforcement Official:** The Town official charged with the administration and enforcement of this Chapter and/or Chapter 62 of the Philipstown Town Code.

**Collocation:** The addition of communications equipment to any existing or approved communications tower or tall structure by any persons, corporations, firms, associations, or entities.

**Commercial Horse Boarding Operation:** An agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production.

**Common Driveway:** A driveway serving no more than four lots, owned in common or created by reciprocal easements.

**Communications Tower:** Any structure owned or operated for commercial purposes which is capable of receiving and/or transmitting signals for the purpose of communication.

**Complete Application:** An application for a Special Permit, Site Plan, or subdivision approval, zoning amendment, or variance, found by the reviewing board to satisfy all information requirements of this Chapter and of the New York State Environmental Quality Review Act, for which either a Negative Declaration has been issued or a Draft Environmental

Impact Statement has been accepted as satisfactory pursuant to 6 NYCRR §617.8(b)(1).

**Comprehensive Plan:** The Comprehensive Plan or Master Plan adopted by the Town Board for the future preservation and development of the Town of Philipstown pursuant to §272-a of the Town Law, including any part of such plan separately adopted and any update or amendment to such plan.

**Condominium:** A system of ownership of dwelling units, either attached or detached, established pursuant to the Condominium Act of the State of New York (Art. 9-B of the Real Property Law) , in which the apartments or dwelling units are individually owned.

**Conformity/Conforming:** Complying with the use, density, dimensional, and other standards of this Chapter, or permitted to deviate therefrom by Special Permit, Site Plan approval, or variance.

**Congregate Senior Citizen Housing:** Development for housing persons 55 and over in which residents live in separate bedrooms and have shared facilities for cooking, dining, recreation, and community activities.

**Conservation Easement:** A perpetual restriction on the use of land, created in accordance with the provisions of § 49, Title 3 of the Environmental Conservation Law or §247 of the General Municipal Law, for the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

**Conventional Subdivision:** A land subdivision other than conservation subdivision or Open Development Area (ODA) subdivision.

**Construction Trailer:** A mobile home unit used for non-residential purposes associated with on-site construction.

**Corner Lot:** See *Lot, Corner*.

**Craft Workshop:** A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving. A craft workshop with more than six regular full-time equivalent employees or other staff is considered to be "light industry."

**Day Camp:** Land and structures, tents, and vehicles, occupied on a scheduled basis at any time between June 1 and September 15 in any year by children under 16 years of age, under general supervision, for organized outdoor and indoor group activities, where no provision is made for overnight occupancy by such children. Day camps sponsored by or held on the premises of schools or religious institutions are deemed to be educational or religious uses, respectively, as defined herein. Other day camps are deemed to be camps as defined by this Section.

**Day Care Center:** A service business for the care of pre-school children and/or for before-school and after-school care of school-age children, or for daytime care of adults. A day care center does not provide overnight occupancy for such children or adults. When such a facility is operated by a public or private not-for-profit school or institutional use, it shall be deemed to be an educational use rather than a service business.

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as mining, dredging, filling, paving, excavations, or drilling operations.

**Driveway:** A private way providing vehicular access from a public or private road to a residence or to a commercial or non-commercial establishment.

**Dwelling:** A building designed or used exclusively as living quarters for one or more families.

**Dwelling, Multi-family:** A building containing separate living units for three or more families, including apartment buildings, rowhouses, townhouses, regardless of the form of ownership (condominium, fee simple, rental).

**Dwelling, Single-family:** A detached building designed for the use of one family, in which not more than three boarders may be sheltered and/or fed for compensation.

**Dwelling, Two-family:** A detached building containing two dwelling units.

**Dwelling Unit:** A building or portion thereof providing complete housekeeping facilities for one family.

**Educational Use:** A use of land for the primary purpose of providing educational services to children or adults, including but not limited to primary and secondary schools, nursery schools, colleges and universities, vocational schools, certain day camps as described under the definition of "camp," and facilities designed to provide instruction in any recognized skill or vocation.

**Erosion:** The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

**Excavation:** The removal of any combination of earth, topsoil, rock, gravel, sand, clay, muck, or other natural deposits.

**Family:** One or more persons living together as a single nonprofit housekeeping unit, using all rooms and

housekeeping facilities of a dwelling unit in common and doing their cooking on the premises, as distinguished from a group occupying a boardinghouse or rooming house or lodging facility.

**Farm Operation:** Land used in agricultural production, farm buildings, equipment, and farm residential buildings.

**Fence:** A structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

**Filling:** Any activity which deposits natural or artificial material so as to modify the surface or subsurface conditions of land, lakes, ponds, wetlands or watercourses.

**Flag Lot:** A lot on which the buildable area is located generally to the rear of other lots having frontage on the same road as such lot, and having access to the road via a strip of land that does not have the minimum road frontage ordinarily required in the land use district.

**Floodplain:** That portion of a watercourse adjacent to the channel of the watercourse which is built of sediments deposited during the present regimen of the watercourse and is covered with water when the watercourse overflows its banks at flood stage, such as but not limited to those mapped by the Federal Emergency Management Agency (FEMA) located along Clove Creek, Foundry Brook, Canopus Creek, and the Hudson River.

**Floor Space/ Floor Area:** The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, including habitable finished basements but excluding cellars or unfinished basements.

**Footprint:** Area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered by roofing. In the case of party-wall buildings, each unit shall be considered a separate structure for purposes of measuring footprint area.

**Forestry:** Use or management, including timber harvesting, of a forest, woodland, or tree plantation, and related research and educational activities, including the construction, alteration, or maintenance of roads, skidways, landings, fences, forest drainage systems, barns, sheds, garages, and research, educational, or administrative buildings or cabins directly and customarily associated with forestry use.

**Front:** The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

**Garage:** A non-habitable accessory structure or a portion of a building, used for the storage of vehicles and/or other items, which may be attached or detached from the principal building. A garage structure may have a habitable accessory apartment above the ground level. (See §175-10D.)

**Gazebo:** An unenclosed structure not exceeding 12 feet in height without solid walls, screens, electricity, or plumbing.

**Glare:** Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

**Grading:** The alteration of the slope of surface or subsurface conditions of land, lakes, ponds, wetlands, or watercourses by excavation or filling. (See also §93-4 of the Town Code.)

**Hazardous Substance/Material:** Includes any of the following:

- Petroleum
- Any substance or combination of substances designated as a hazardous substance under §311 of the Federal Water Pollution Control Act (33 USC 1321)
- Any substance listed by the NYS DEC which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

**Hazardous Waste:** All materials or chemicals listed as hazardous wastes pursuant to article twenty-seven of the Environmental Conservation Law (ECL), and all toxic pollutants as defined in subdivision nineteen of § 17-0105 of the ECL.

**Health Care Facility:** A hospital, nursing home, medical clinic, or office building for four or more doctors and other medical personnel.

**Heavy Industry:** Manufacture, assembly, treatment, processing, or packaging of products in a manner that emits or is

likely to emit objectionable levels of smoke, noise, dust, odor, glare, water pollution, or vibration beyond the property boundaries.

**Height:** (See "Building Height.")

**Home Occupation:** An occupation, trade, profession, or other business activity resulting in a product or service for compensation, conducted wholly or partly in a dwelling unit or accessory structure.

**Hotel:** See *Lodging Facility*.

**Impervious/Impervious Surface:** Any roofed or other solid structure or material covering the ground through which water does not readily penetrate, including, but not limited to concrete, oil and stone, tar or asphalt pavement, or compacted soil or gravel. Regardless of the construction materials, any area which is used for driveway or parking purposes, including disturbed grass, ground cover, or dirt, shall be considered impervious. A deck with spaced boards at least 1/8 inch apart, a swimming pool surface, and a patio with a permeable paving system shall not be considered impervious.

**Impervious/Impervious Surface Coverage:** The ratio between impervious surface and total land area of a lot, excluding wetlands, watercourses, floodplains, naturally impervious surfaces such as rock outcroppings, and slopes of 20% or greater, expressed as the percentage of land covered by impervious surfaces.

**Institution/Institutional Use:** The use of at least 20 acres of land by a not-for-profit organization for educational, recreational, artistic, religious, spiritual, scientific, land conservation, health care, or community service programs, including but not limited to summer camps, historic sites, religious retreat centers, monasteries, not-for-profit conference centers, research institutes, conservation organizations, nature preserves, hospitals, schools, and demonstration farms. Facilities for the education, treatment, incarceration, punishment, or rehabilitation of persons with criminal records shall not be considered institutional uses for purposes of this definition.

**Interior Road:** A road constructed off of an existing public street that provides access to the interior of a parcel.

**Kennel:** Any establishment, including cages, dog runs, and structures wherein more than four dogs which are over six months of age are harbored, bred, or boarded producing a gross income of \$150 or more annually.

**Land Disturbance:** Excavation, grading, filling, clearcutting, landscaping, construction of roads or buildings, or any other alteration of natural land contours and vegetation on more than 1,000 square feet of undeveloped land, excluding selective cutting of vegetation for the creation of trails for non-motorized recreation. Land disturbance includes site preparation, consisting of the removal of vegetation and/or the excavation, filling, grading, or removal of earth, soil or rock, or retaining structures, whether by labor, machine, or explosive. Land disturbance is deemed to continue until the area of disturbance is returned to its original state or to a state complying with a permit for such disturbance granted in accordance with the Code of the Town of Philipstown or complying with standards for completion of a land disturbance in accordance with such Code.

**Light Industry:** Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

**Lodging Facility:** A hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests, with or without a dining room or restaurant, excluding bed and breakfast establishments.

**Lot/Parcel:** An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established either by the filing of an approved subdivision plat or by the recording of a deed prior to the adoption of Subdivision Regulations of the Town of Philipstown on June 17, 1968.

**Lot, Corner:** A lot at the junction of and abutting on two or more intersecting roads.

**Lot Lines:** The property lines that bound a lot as defined herein.

**Lot of Record:** Any lot which has been established as such by plat, survey record, or deed prior to the date of this Chapter as shown on the records in the Office of the County Clerk.

**Lot, Rear:** See "Flag Lot."

**Lot, Through:** A lot which faces on two streets at opposite ends of the lot, which is not a corner lot.

**Major Project:** A proposed use that requires a Special Permit or Site Plan approval and that exceeds any of the thresholds for a Minor Project. See Section 175-61.

**Membership Club:** Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

**Minor Project:** A use or combination of uses on a lot or a series of adjoining lots that requires either Site Plan review or a

Special Permit and that, over a five-year period, does not exceed any of the following thresholds:

1. Construction of four multi-family dwelling units or a lodging facility with six bedrooms.
2. Construction of facilities or structures for a non-residential use covering 3,000 square feet of building footprint.
3. Alteration of existing structures or expansion of such structures by 1,000 square feet.
4. Conversion of existing structures totalling 5,000 square feet to another use.
5. Alteration and active use of 10,000 square feet of land, with or without structures (excluding soil mining).
6. Construction of a structure that is 50 feet or higher above average grade level.

**Mixed Use:** Any combination of residential, commercial, or industrial uses on the same lot or in the same building.

**Mobile Home:** A transportable living unit used or designed to be used year round as a permanent residence and containing the same types of water supply, waste disposal, and electrical systems as immobile housing. Recreational vehicles designed to be driven or towed by an automobile or pickup truck, units designed for use principally as a temporary residence, or prefabricated, modular, or sectionalized houses transported to and completed on a site are not considered to be mobile homes.

**Mobile Home Park:** Any court, park, place, lot, or parcel under single ownership which is improved for the placement of two or more mobile homes to be used as permanent residences.

**Multi-family Dwelling:** See *Dwelling, Multi-family*.

**Municipal Use:** Any use conducted by the Town of Philipstown or any department or agency of the Town of Philipstown, or any School District within the Town of Philipstown. Uses located within the zoning jurisdiction of the Town of Philipstown and owned or operated by another municipality, including the Villages of Cold Spring and Nelsonville, shall be deemed not to be municipal uses.

**Non-conforming Structure:** A structure which does not satisfy the dimensional requirements of this Chapter for the district in which it is located, but which was not in violation of applicable requirements when constructed.

**Non-conforming Lot:** A lot of record which was created legally but which no longer complies with the area, shape, frontage, or locational provisions of this Chapter for the district in which it is located.

**Non-conforming Use:** Any use lawfully existing at the time of the adoption or amendment of this Chapter or any preceding zoning law or ordinance, where such use has continued but is not permitted by or does not conform with the use regulations of this Chapter for the district in which it is located. A pre-existing lawful use which is allowed only by Special Permit under this Chapter shall be considered a conforming use unless it fails to comply with the site plan standards of Article IX.

**Office:** A workplace in which manufacturing processes, retail sales, construction, and warehousing do not occur on the premises, including but not limited to professional offices for attorneys, accountants, health care practitioners, architects, engineers, surveyors, consultants, sales representatives, real estate brokers, and financial planners. Office also includes business offices that support or manage manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated in connection with another primary use on the use table shall be considered accessory to that primary use and not a separate use.

**Official Newspaper:** The newspaper or newspapers designated by the Town for the publication of official notices of meetings and public hearings.

**Open Development Area (ODA) Subdivision:** The subdivision of land which is accessed by a private right-of-way and shared access drive pursuant to Part 2 of Chapter 112 of the Town Code, entitled "Open Development Area General Regulations."

**Open Space:** An area of land not developed with structures. (*Permanent Open Space* is defined and discussed in §175-20.)

**Outdoor Storage Area:** Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

**Overlay District:** A type of zoning district or zone that supplements the zoning regulations of the underlying land use district or districts to provide additional protection of important environmental resources and/or to permit certain types of economically productive uses that would not otherwise be allowed in a particular land use district. Overlay districts may overlap different land use districts, but they do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this Chapter.

**Petroleum:** Oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

**Planning Board:** The Planning Board of the Town of Philipstown.

**Plat:** A map or plan submitted to the Planning Board as part of an application for subdivision approval (see Subdivision Law).

**Plot Plan:** A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions, and submitted with an application for a Minor Project Special Permit or a variance.

**Premises:** A lot, together with all the structures and uses thereon.

**Principal Building:** See *Building, Principal*.

**Private Road:** A privately owned road held in common ownership or easement by a homeowners' association.

**Public Utility Facility:** An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high voltage transmission lines, pump stations, water supply wells, water towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities. Communication towers are not public utility facilities.

**Publicly Accessible Place:** Any land or structure, whether or not located in the Town, that is open to the general public, such as a public road, park, public school, recreation area, conservation area, the Hudson River, or place of public accommodation such as a restaurant or hotel, excluding private retail and service businesses, offices, and other private property which is open to the public.

**Radioactive Material:** Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials whose receipt, possession, use and transfer are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or United States Nuclear Regulatory Commission.

**Radiation:** Ionizing radiation; that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

**Rear Lot:** See "Flag Lot."

**Recreational Business:** A business which, for compensation, offers recreational services including but not limited to public stables, golf courses and driving ranges, miniature golf, movie theaters, and other places of public or private entertainment.

**Religious Institution:** A church, synagogue, mosque, temple or other place of religious worship, as well as a monastery or other place of religious retreat.

**Residential Care Facility:** Any building used as a group residence or extended care facility for the care of persons, including assisted living facilities and nursing homes, where compensation and/or reimbursement of costs is paid to an operator, pursuant to State or Federal standards, licensing requirements, or programs funding residential care services. A residential care facility is deemed to be a non-residential use.

**Residential Districts:** The Suburban Residential, Hamlet Residential, Rural, and Resource Conservation Districts.

**Residential Unit:** See *Dwelling Unit*.

**Residential Use:** A use of land and structures in which people live and sleep overnight on a regular basis.

**Retail Business:** An establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, convenience store, and variety store.

**Reviewing Board or Official:** The board that grants a Special Permit, Site Plan, variance, subdivision approval, or zoning amendment, or the Code Enforcement Official reviewing a building permit or zoning permit application.

**Riding Academy:** Any establishment where more than four horses are kept for riding, driving, horseback riding lessons, or stabling for compensation, or incidental to the operation of any club, association, resort, riding school, ranch, or similar establishment. A Riding Academy operated in conjunction with a farm operation shall be deemed to be an agricultural accessory use.

**Restaurant:** An establishment where prepared food is sold for consumption on the premises or as take-out, including a bar or pub or other establishment that sells food and alcoholic beverages for on-premises consumption.

**Road Frontage:** The distance along a street line measured at the front of a lot.

**Screen/Screening:** The location of structures, or the placement of shrubbery or other plant material, in such a manner that the structures are not visible (as defined herein) from a public road or any other public place during the summer months, and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

**Service Business:** A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, automobile service station, business and educational services, catering, day care center (not as part of an educational institution), health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, offices, or other uses separately listed in the Use Table. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered a retail business.

**Setback:** The distance in feet between a structure and a property line, the centerline of a road, or an identified natural feature such as a watercourse.

**Sign:** Any billboard, signboard, inscription, pennant, or other material, structure, exterior painting, or device composed of lettered or pictorial material that is intended for outdoor viewing by the general public (including inside a window), and used as an advertisement, announcement, direction, or for identification.

**Sign Area:** The total area on each side of a sign within which all written and graphic material is contained.

**Sign, Commercial:** A sign advertising a product, use, service, or activity sold or conducted for private financial gain.

**Sign, Freestanding:** A sign and sign-support structure not attached to or part of a building.

**Sign, Illuminated:** A sign lighted by electricity, gas, or other artificial light, including reflective or phosphorescent light, paint, or tape.

**Sign, Interior:** A sign located within the exterior walls of a building which is readily readable from outside the building through a window, door, or other opening.

**Sign, Internally Illuminated:** An illuminated sign that is made of translucent material with internal artificial lighting.

**Sign, Projecting:** Any sign which extends from the exterior of any building more than nine inches.

**Sign, Temporary:** Any sign which is not permanently affixed to a structure or mounted in the ground. Such signs may consist of banners, posters, streamers, or stakes in the ground. Signs that stay in place for more than 30 days or are replaced by similar signs for periods exceeding 30 days shall not be considered temporary signs.

**Single-family Dwelling:** See *Dwelling, Single-family*.

**Soil Mining:** Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in §23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which a zoning permit has been issued.

**Solid Waste:** All putrescent and non-putrescent materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form, and being those wastes defined as solid waste in 6 NYCRR Part 360-1.2. Any solid waste which receives a Beneficial Use Determination (BUD) from the NYS DEC is still considered a solid waste for the purposes of these regulations.

**Solid Waste Management Facility:** Any facility employed to manage or process solid waste beyond the initial waste collection process including, but not limited to, transfer stations, bailing facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolysis of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities, as defined in 6 NYCRR Part 360-1.2.

**State Environmental Quality Review Act (SEQR):** The state law (Article 8 of the Environmental Conservation Law) and regulations requiring environmental review of actions that may have an impact on the environment.

**Steep Terrain/Steep Slopes:** Land having a topographic gradient of 20% or more.

**Steep Terrain Wetland/Watercourse Transition Areas:** Steep terrain located within 50 feet of a watercourse, controlled wetland as defined in Chapter 93, or lands that are regulated by the State of New York pursuant to the

Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law).

**Street/Road:** Any street or highway as described in § 280-a(1) of Article 16 of the Town Law or any private right-of-way or easement approved under the Open Development Area General Regulations of the Town of Philipstown. (See Ch. 112, Land Development, Part 2)

**Street Line:** The right-of-way, easement, or taking line of any street other than a limited-access state highway.

**Strip Commercial Development:** The layout of a commercial use or uses in separated structures more than 50 feet apart along a highway, with parking, gasoline pumps, or other drive-up facilities located between the highway and the commercial building(s), where such parking or drive-ups are visible from the road.

**Structure:** A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin, wall, fence, swimming pool, tennis court, road, driveway, sidewalk, or parking lot.

**Tall Structure:** A structure which complies with the provisions of this Chapter and is of sufficient height to be used as a communications tower. Such structures include but are not limited to water towers, multistory buildings, church steeples, and farm silos.

**Timber Harvesting:** The cutting, removal or harvesting of any timber or trees from any property or lot in the Town of Philipstown, as regulated by Chapter 159 of the Town Code.

**This Chapter:** See *Zoning Law*.

**Town:** The Town of Philipstown unless otherwise indicated.

**Town Board:** The Town Council of the Town of Philipstown.

**Town Law:** The Town Law of the State of New York, Chapter 62 of the Consolidated Laws.

**Two-family Dwelling:** See *Dwelling, Two-family*.

**Use:** The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on a premises, as shown on the Use Table in §175-10.

**Use, Accessory:** A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

**Use, Change of:** See *Change of Use*.

**Variance, Area:** 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 the applicable zoning regulations.

**Variance, Use:** The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. An increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by Special Permit.

**Visible/Visibility:** Able to be seen by a person of average height and with normal vision on a clear day.

**Warehouse:** A structure or structures in which materials, goods, or equipment are stored, including mini-storage and self-storage facilities.

**Watercourse:** Rivers, streams, brooks, ponds, lakes, reservoirs, and waterways, whether running constantly or intermittently, which are delineated on the current edition of the United States Department of Interior, Geological Survey, 7.5 Minute Series (Topographic) maps bearing the date 1981 (Peekskill Quadrangle), 1981 (West Point Quadrangle) and 1979 (Oscawana Lake Quadrangle), covering the Town of Philipstown; and any other streams, brooks, and waterways which are contained within, flow through, or border on the Town of Philipstown, and any additional streams, brooks, and waterways which are delineated on the map as defined in §93-4.

**Wetlands:** A. All areas that comprise hydric soils, as defined in §93-4, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, as defined in §93-4; or lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such conditions can be expected to persist indefinitely, barring human intervention.

B. For the purposes of this Chapter, "wetlands" within 50 meters of each other and hydrologically connected are considered to be one "wetland."

C. Lands and waters substantially enclosed by hydrophytic vegetation, as defined in §93-4, the regulation of which is necessary to protect and preserve the hydrophytic vegetation; and

D. The waters overlying the areas set forth in Subsections A and B above and the lands underlying the waters set forth in Subsection C above.

**Wind Energy Conversion System:** A mechanized system which converts wind energy into electrical or mechanical power.

**Workforce Housing:** Single-family, two-family, or multi-family housing that is owned or rented by an eligible household, as defined in §175-42, and priced to be affordable to moderate income households whose members live and/or work in the Town of Philipstown and who cannot otherwise afford market-rate housing. See §175-42.

**Yard:** An open space on the same lot with a structure.

**Yard, Front:** An open space extending across the full width of the lot between the front of the principal building and the street line.

**Yard, Rear:** An open space extending across the full width of the lot between the rear lot line and the wall of the principal building nearest the rear lot line.

**Yard, Required/Setback Area:** That portion of any yard required to satisfy minimum setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

**Yard, Side:** An open space between a principal building and side line of the lot and extending from the front yard to the rear yard.

**Zoning Board of Appeals (ZBA):** The Zoning Board of Appeals of the Town of Philipstown.

**Zoning Law/This Chapter:** The officially adopted Zoning Law of the Town of Philipstown, together with any and all amendments thereto.

**Zoning Permit:** A permit issued by the Code Enforcement Official, which is required for uses allowed by right that do not involve construction that requires a building permit. See §175-54.