

LOCAL LAW No. 1 of 2022

TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK

**A LOCAL LAW TO AMEND THE TOWN OF TUSTEN ZONING LAW AND  
SUBDIVISION LAW**

*Be it enacted by the Town Board of the Town of Tusten as follows:*

Section 1. Legislative Intent.

The Town of Tusten enacts this local law pursuant to Section 10 of the Municipal Home Rule Law and Article 16 of the Town Law to provide for the orderly development of the Town and to protect the health safety and welfare of its residents and rural character of the Town. The law includes revisions to Articles II, III, IV, VI, VIII, XI and XII of the Zoning Law and adjustments to the Subdivision Law.

The law revises and clarifies Article III, Establishment of Zoning Districts and Zoning Map. The law also amends the zoning map by adding several parcels to the Roadside Business and Downtown Business Districts.

The law includes a revised schedule of district regulations in Article IV, District Regulations, reflecting recent changes to the zoning law in the areas of conservation subdivision, accessory and multiple family dwellings, and camping. The schedule also includes several updates and adjustments to improve its usability.

The law integrates several improved standards into Article VI of the Zoning Law (Supplementary Regulations Pertaining to Specific Uses and Districts). These improved standards include lowered disturbance thresholds for town review of clear-cutting activities, enhanced landscaping and parking requirements, inclusion of standards for best management practices for timber harvesting, and adjustments to stormwater protection regulations to be consistent with NYSDEC procedures and requirements. Adjustments have also been incorporated to allow accessory buildings in front yards; and, correspondingly, the definition of Front Yard in Article II has been amended.

Minor adjustments in Article VIII, Special Use and Site Plan Review Criteria, are made in the law to strengthen language for the protection of water quality. Article VII is also amended to enable the Planning Board to waive parking requirements partially or wholly in the Downtown Business District for uses subject to Site Plan Review and Special Use Permit. This waiver is coordinated with related amendments to Article VI.

A revision of Article XI, Appeals, Variances and the Zoning Board of Appeals, improves its consistency with state statutes.

A new section, Application and Review Fees, is added to Article XII, General Provisions, to help ensure that the town has sufficient resources to cover the costs of processing and reviewing applications.

The law’s minor changes to the Subdivision Law encourage the use of vegetated riparian buffers.

Section 2. Amendment to Article II, Section 2.1 of the Zoning Law:

Two new definitions are added as follows:

“ENCLOSED STORAGE: Any structure used for commercial purposes for storage or shelter and not falling within the definition of “private garage” as herein established.

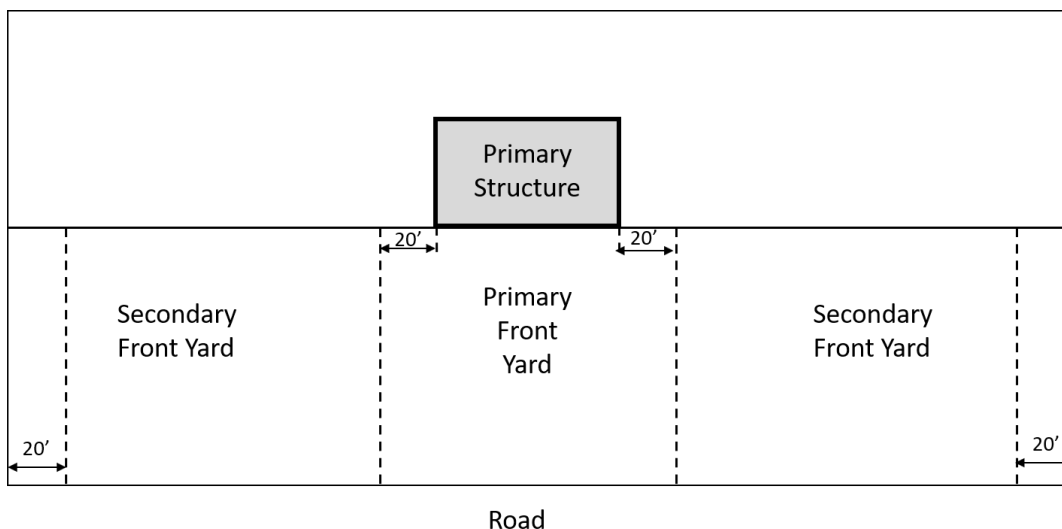
FUELING/ CHARGING STATION: a public or private facility for the dispensing of natural gas, including but not limited to Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG), or a charging facility with equipment for the purpose of transferring electric energy to a battery or other energy storage device in an electric vehicle.”

The definition of YARD, FRONT is hereby removed and replaced with the following:

A. YARD, FRONT — An open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward, except as herein permitted. A front yard is further defined to consist of two parts:

PRIMARY FRONT YARD – The open space of the front yard extending from the points of a buffer located twenty (20) feet from the front corners of the principal building to the front lot line, as shown in the diagram below.

SECONDARY FRONT YARD – The open space of the front yard not including and adjacent to the primary front yard extending to the front lot line and to the twenty- (20) foot setback with adjacent properties.



The following definition of Gasoline Service Station replaces the existing definition for Gasoline Service Station:

“GASOLINE SERVICE STATION: Any building, structure, premises, area of land or any portion thereof that is used for the sale or dispensing of gasoline, oil or any other motor vehicle fuel and/or other lubricating substance or related products, which may also include the sale of food and household items or may be an accessory use to a convenience store. Any business or industry dispensing gasoline and servicing vehicles only for its own use will not be deemed to be a service station.”

The existing definition for “Service Station” is removed in its entirety.

Section 3. Article III, Section 3.0 Establishment of Districts, of the Zoning Law is hereby deleted and replaced as follows:

### 3.0 ESTABLISHMENT OF DISTRICTS

The TOWN OF TUSTEN is hereby divided into the following types of zoning Districts:

- SR - Scenic River District
- RR - Recreational River District
- R-1- Rural Residential District
- R-2- Rural Development District
- GR - General Residential District
- RB - Roadside Business District
- DB - Downtown Business District

Additionally, two zoning overlay districts are hereby established. A zoning overlay district is drawn on a map over a specific area, usually an area where there is a significant resource such as a shoreline, historic area or a mountain ridge. An overlay district supplements other land use regulation.

The first overlay zoning district is the Scenic Overlay (SO) District, which shall extend to two-hundred and fifty (250) feet on each side of the boundary of the Route 97 right-of-way. The intent of the SO Overlay District is to further enhance the scenic and recreational features of the Delaware River and river corridor in the Scenic River (SR) and Recreational River (RR) Zoning Districts, in accordance with the Final River Management Plan: Upper Delaware Scenic and Recreational River, 1986. Article VI, Section 6.17 sets forth standards applicable to this overlay district as well as to the Scenic River (SR) and Recreational River (RR) Districts.

The second overlay zoning district is the Wellhead Protection Area (WHP), which was established via the Town of Tusten, Local Law 1 in 2001. As noted in Local Law 1, the purpose of establishing the Wellhead Protection Area (WHP) is to facilitate the adequate provision of

water through the elimination or prevention of groundwater contamination in the vicinity of public drinking water supply wells operated by the Narrowsburg Water District. Section 4.17 of Local Law 1 delineates the WHP overlay district and the map of said overlay district is included in Appendix D of this zoning law.

In addition to requirements of this zoning law, portions of the Town have been mapped as “Special Flood Hazard Areas” by the National Flood Insurance Program (NFIP) under the auspices of the Federal Emergency Management Agency (FEMA). The Special Flood Hazard Areas are officially mapped on the Flood Insurance Rate Maps (F.I.R.M.), available at the Town offices via the Code Enforcement Officer. The Regulations for the Special Flood Hazard Areas are incorporated in the Town Code, Chapter 152 Flood Damage Prevention.

Portions of the Town of Tusten also lie within the congressionally-designated Upper Delaware Scenic and Recreational River Corridor, which is delineated in Appendix C. This area, which encompasses the Scenic Overlay District noted above, is defined by the National Park Service River Management Boundary in the Final River Management Plan: Upper Delaware Scenic and Recreational River, 1986. This boundary extends through the Scenic River, General Residential, Downtown Business, and Rural Residential, and Recreational River Districts beginning from the edge of the Delaware River and extending .5 to .75 miles into each of the aforementioned zoning districts. Areas within the boundary must conform to the standards established by Final River Management Plan: Upper Delaware Scenic and Recreational River, 1986.

Section 4. Article III, Section 3.1, Zoning Map, is hereby deleted and replaced as follows:

The Zoning Districts established by Section 3.0 of this Zoning Law, and the two Overlay Districts, are shown on the "Official Zoning Map of the TOWN OF TUSTEN," which, along with all explanatory matter thereon, is hereby made a part of this Zoning Law and shall be kept on file in the office of the Town Clerk. Unofficial reproductions of these maps are appended to this law for reference purposes only. The Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency, are available at the Town offices via the Code Enforcement Officer (CEO).

Section 5. The Official Zoning Map of the Town of Tusten is hereby amended as follows and as shown on the revised Official Zoning Map attached to this law as Attachment A:

The following parcels, formerly of the General Residential District and comprising approximately 7.11 acres, are hereby added to Downtown Business District:

10.-1-14; 10.-1-13; 10.-1-12; 10.-1-11; 10.-1.10.3; 10.-3-1; 10.-3-18; 10.-3-17; 12.-2-1; 12.-2-2; 12.-2-3; 12.-3-2; 12.-3-3; 12.-16-5.4

The following parcel, formerly of the Recreational River District and comprising approximately 4.78 acres, is hereby added to Roadside Business District:

4.-1-4

The following parcels, formerly of the General Residential District and comprising approximately 28.59 acres, are hereby added to Roadside Business District:

8.-2-13; 8.-2-14; 8.-2-15; 8.-4-5; 10.-2-2; 10.-2-5.1; 10.-2-5.2; 10.-2-7; 10.-2-8; 10.-2-10; 10.-2-12; 10.-2-11; 10.-2-18; 10.-2-17; 10.-2-15; 10.-2-13

Section 6. Amendment to Article IV

The second paragraph in Section 4.0, Schedule of District Regulations, is hereby deleted and replaced as follows:

In accordance with 4.2 of these regulations, any use not specifically set forth as a permitted use, accessory use, or special use in any district shall be expressly prohibited in that district. See Article XIV of this law, regarding certain uses that are explicitly prohibited anywhere and everywhere throughout the Town. Other uses, e.g. Mass Gatherings, may be regulated separately by the Town Board. Uses defined in section 8.0 of this chapter involving the initial or cumulative disturbance of 43,560 or more square feet of soil surface area or any use involving the initial or cumulative construction, installation and/or replacement of 21,780 square feet or more of buildings, structures or other impervious surface areas require a special use permit in all zoning districts. Special use permit is required in all zoning districts for clearcutting greater than one acre pursuant to section 6.19.

The Schedule of Uses is hereby amended to read as follows: with **bold/ underlined** text indicating additions and ~~striketrough~~ indicating deletions:

<b>SCENIC RIVER DISTRICT – SR</b>			
INTENT: The SR-Scenic River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) corridor as defined and designated as a "Scenic Segment" in the November 1986, Upper Delaware Final River Management Plan (RMP) prepared by the Conference of Upper Delaware Townships in cooperation with the National Park Service. This District is further intended to preserve the scenic character of the corridor which is presently undeveloped.			
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES [1]	DEVELOPMENT STANDARDS
1-family dwellings units on slopes of <del>10%</del> or less <del>(not included manufactured homes)</del> <b><u>Campsite – Tent Commercial</u></b> <b><u>Forest Management (2)</u></b> <b><u>Wildlife Management</u></b>	<b><u>Accessory Dwelling</u></b> <b><u>Campsite – Tent Commercial</u></b> <b><u>Cemetery - private</u></b> Carport Customarily Accessory uses (i.e. deck, patios, outdoor fireplace, see definition) <b><u>Enclosed Storage</u></b> <b><u>Farmstand (seasonal)</u></b> <b><u>Greenhouse (Private)</u></b> HBHO Keeping of not more than 3 dogs over 4 months old Private Garage Private Stable Private Swimming Pool Satellite Dish Antennae accessory to a residential structure	1-family dwellings units on slopes greater than <del>10%</del> Agribusiness Agricultural/ On-Site Processing Agricultural/Farm Operations  Bed & Breakfast Establishment <b><u>Campgrounds or RV Park</u></b> Cemeter <del>y</del> <del>ies</del> <b><u>Clearcutting (2)</u></b> <b><u>Day Care Center</u></b> <b><u>Farmer’s Market</u></b> Farm Stand <b><u>(Year Round)</u></b> Greenhouse <b><u>(Commercial)</u></b> Group Homes Hunting/Fishing/Sportsmen Club Hunting Preserve Nursery (Commercial) <b><u>River Access Facility</u></b>	The following minimum standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area                   5 acres Lot width                   300 feet Minimum River & Road frontage   300 feet <b><u>(each)</u></b> Minimum yard dimensions: Front yard                   50 feet Side yard                   35 feet Rear yard                   50 feet Maximum permitted building height   35 feet <del>Minimum Sq. ft. 500 sq. ft.</del> Lot clearing <b><u>(max.)</u></b> 20%

	Shed Signs in association with an approved use <b>Small Scale Solar Energy System</b>	<del>Accessory Apartment/Family Based Forest Management Sawmill Value-Added Wood Processing Wildlife Management</del>	Lot coverage 10% maximum; also see <b>River Management Plan</b> (RMP).
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NOTES:

(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board.

**(2) See Section 6.6.2**

~~(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.~~

~~(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.~~

### Recreational River District -RR

INTENT: The RR River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) as defined and designated as "Recreational Segment" in the November 1986, Upper Delaware Final River Management Plan (RMP) prepared by the Conference of Upper Delaware Townships in cooperation with the National Park Service. This District is further intended to preserve the scenic character of the corridor which is presently undeveloped.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
1 & 2 family dwellings units on slopes of <b>10%</b> or less <b>Campsite – Tent Commercial Farmstand (seasonal) Forest Management (2) Wildlife Management</b>	<b>Accessory Dwelling Campsite – Tent Commercial</b> Carport Customary accessory uses establishments Essential Services <b>Enclosed Storage Home Greenhouses Greenhouse (Private) HBHO</b> Keeping of not more than 3 dogs over 4 months old Private Garage Private Stable Private swimming pool Satellite Dish Antennae accessory to a residential structure Shed Signs in association with an approved use <b>Small Scale Solar Energy System</b> Cemetery - <b>private</b> Canoe liveries <del>Bed &amp; Breakfast Establishment</del>	1 & 2 family dwellings units on slopes greater than <b>10%</b> <b>Day Care Center</b> Agribusiness Agricultural/Farm Operations Agricultural/ On-Site Processing Bed & Breakfast establishment Campground <b>or RV Park</b> <del>Canoe Livery</del> Cemetery <b>Clearcutting (2)</b> Commercial Recreation <b>Communications Tower Farmers Market (seasonal) Forest Management Farm Stand (Year-Round) Greenhouse (Commercial)</b> Group Home Hunting/Fishing/Sportsmen Club Hunting Preserve <b>Large scale solar energy system</b> Public Uses River Access Facility Sawmill Small Hotel/Motel Value-Added Wood Processing	The following minimum standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area 3 acres Lot width 300 feet Minimum river or Road frontage 300 feet Minimum yard dimensions: Front yard 50 feet Side yard 35 feet Rear yard 50 feet Maximum permitted building height 35 feet <del>Minimum Sq-Ft 500 ft sq</del> Lot clearing <b>maximum</b> 20% Lot coverage maximum 10%; also see <b>River Management Plan</b> (RMP).

NOTES:

(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board.

**(2) See Section 6.6.2**

~~(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.~~

~~(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.~~

<b>Rural Residential District-R1</b>			
INTENT: The R1-Rural Residential District is intended to provide for low-density residential development in combination with compatible commercial activities appropriate to rural areas of the Town of Tusten.			
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
1 & 2 family dwellings units on slopes of 15% or less. Agriculture/Farm Operation <u>Campsite – Tent Commercial</u> <u>Farmstand (seasonal)</u> <u>Flea Market (seasonal)</u> <u>Forest Management (2)</u> (except sawmills) Places of Worship Public School Public Uses <u>Studio</u> Wildlife Management	<u>Accessory Dwelling</u> <u>Campsite – Tent Commercial</u> Carport <u>Cemeteries – private</u> Customary Accessory Uses Enclosed Storage /PODS Greenhouse (Private) HBHO Keeping of not more than 5 dogs at least 4 months old Private Garage Private Stable Private Swimming Pool Satellite Dish antennae accessory to a residential structure Shed Signs in association with an approved use <u>Small Scale Solar Energy System</u>	1 & 2 family dwellings units on slopes greater than 15% <del>Accessory Apartment/Family Based</del> <del>Adult Oriented businesses</del> Agribusiness Agricultural On-Site Processing Automotive, Vehicle & Equipment Sales <u>Bed &amp; Breakfast Establishment</u> <u>Campground or RV Park</u> Cemetery <u>Clearcutting (2)</u> Day Care Center Club Commercial Recreation <u>Communications Tower</u> Eating and Drinking Establishment <u>Farmers Mrkt. (Year-Round)</u> <u>Farmstand (Year-Round)</u> <u>Flea Mrkt. (Year-Round)</u> Gasoline Service Station <u>Fueling/ Charging Station</u> Greenhouse <b>(Commercial)</b> Group Home Hunting/Fishing/Sportsmen’s Club Hunting Preserve Kennel (Commercial) <u>Large Scale Solar Energy System</u> Light Industry Manufactured Home <b>Park</b> Mineral Extraction (mining) <u>Motel and Hotel</u> Motor Vehicle Repair Public Utilities and Facilities <u>Recreational Facility (public)</u> <u>Retail Shop</u> Sawmills Seasonal Residence Summer Camp Value-Added Wood Processing	The following minimum standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area            3 acres Lot width            300 feet Minimum river & Road frontage    300 feet (each) Minimum yard dimensions: Front yard            50 feet Side yard            35 feet Rear yard            50 feet Maximum permitted building height    35 feet <del>Minimum Sq Ft 500 sq ft</del> Lot clearing maximum 20% Lot coverage maximum 43,560 sq. ft. or 25%, whichever is less
(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board. <u>(2) See Section 6.6.2</u> (2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.			

(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.

**Rural Development District-R2**

INTENT: The R2-Rural Development District is intended to provide for moderate-density rural residential neighborhoods in combination with essential commercial support activities.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
<p>1 &amp; 2 family dwellings units on slopes of 15% or less  Agriculture/Farm Operations  <b>Campsite - Tent Commercial</b>  <b>Farmers Market (seasonal)</b>  <b>Farmstand (seasonal)</b>  <b>Flea Market (seasonal)</b>  <b>Forest Management (2)</b>  <b>Wildlife Management</b>  Group Home  Museum</p>	<p><b>Accessory Dwelling</b>  <b>Campsite - Tent Commercial</b>  Carport  <b>Cemetery - private</b>  Customary Accessory Uses  <b>Enclosed storage</b>  Farmstand (seasonal)  Farmers Market (seasonal)  Greenhouse (Private)  HBHO  Keeping of not more than 5 dogs at least 4 months old  Private Garage  Private Stable  Private Swimming Pool  Satellite Dish antennae accessory to a residential structure  Shed  Signs in association with an approved use  <b>Small Scale Solar Energy System</b></p>	<p>1 &amp; 2 family dwellings units on slopes greater than 15%  Agribusiness  Agricultural, On-Site Processing  Automotive, Vehicle &amp; Equipment Sales  <b>Bed &amp; Breakfast Establishment</b>  Building Supply Stores  <b>Campground or RV Park</b>  <b>Cemetery</b>  <b>Clearcutting (2)</b>  <b>Clubs</b>  <b>Communications Tower</b>  Commercial Recreation  Day Care Center  Eating and Drinking Establishment  Educational Institution  Farm <b>Stand (Year-Round)</b>  <b>Farmers Market (Year-Round)</b>  <b>Flea Market (Year-Round)</b>  Gasoline Service Station  <b>Fueling/ Charging Station</b>  <b>Greenhouses (Commercial)</b>  <b>Group Home</b>  Hotel and Motel  <b>Hunting Club</b>  <b>Large Scale Solar Energy System</b>  Light Industry  Manufactured Home  Motor Vehicle Repair  Multiple Family Dwelling  <b>Museum</b>  Public Utilities &amp; Facilities  <b>Recreational Facility (Public)</b>  Retail Store  <b>Service Establishment</b>  <b>Studio</b>  <b>Veterinary Clinic</b>  <b>Wholesale Business/ Wholesale Distribution</b>  <b>Professional Office</b>  Value-Added Wood Processing</p>	<p>The following minimum standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area 3 acres  Lot width 300 feet  Minimum river &amp; Road frontage 300 feet  <b>(each)</b>  Minimum yard dimensions:  Front yard 50 feet  Side yard 35 feet  Rear yard 50 feet  Maximum permitted building height 35 feet  Lot clearing <b>max.</b> 20%  Lot coverage <b>max.</b> 43,560 sq. ft. or 25%, whichever is less</p>
<p>NOTES:</p>			



(1) Special uses are subject to site plan review by the Town of Tusten Planning Board.  
**(2) See Section 6.6.2**  
~~(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.~~  
~~(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.~~

**General Residential District-GR**

INTENT: The GR-General Residential District is intended to provide for higher-density residential neighborhoods where public water and sewer infrastructure is available, along with other essential public services.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
1 & 2 family dwellings units on slopes of 15% or less <b>Forest Management (2)</b> <b>Wildlife Management Public Uses</b>	<b>Accessory Dwelling</b> Carport Customary accessory uses <b>Enclosed Storage</b> Greenhouse (private) HBHO Keeping of not more than 3 dogs over 4 months old Private Garage Private Swimming Pool Satellite Dish Antennae accessory to a residential structure Shed <b>Small Scale Solar Energy System</b>	1 & 2 family dwellings units on slopes of greater than 15% <b>Clearcutting (2)</b> Day Care Center <b>Ground Mounted Solar Panel</b> Multiple Family Dwelling Senior Housing	The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area 15,000 sq ft Lot width 100 feet Minimum yard dimensions: Front yard 40 feet Side yard 25 feet Rear yard 50 feet Maximum permitted building height 28 feet Lot clearing maximum <b>20%</b> Lot coverage maximum 25%

NOTES:  
(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board.  
**(2) See Section 6.6.2**  
~~(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.~~  
~~(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.~~

**Roadside Business District-RB**

INTENT: The RB-Roadside Business District is intended to provide for commercial activity at relatively higher density in areas with substantial highway access and public sewer services.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
<del>Arts, crafts &amp; antique shops</del> 1 & 2 family dwellings units on slopes of 15% or less <b>Forest Management (2)</b>	<b>Accessory Dwelling</b> Carport Customary accessory uses <b>Enclosed Storage/PODS</b> HBHO Keeping of not more than 3 dogs over 4 months old Signs in association with an approved use Satellite dish antennae accessory to a residential structure Shed <b>Small Scale Solar Energy System (only Roof-</b>	Adult oriented businesses Agricultural, On-Site processing Agribusiness Automotive, Vehicle & Equipment Sales Bed and Breakfast Establishment <b>Campground or RV Park</b> Car Wash Cemetery <b>Clearcutting (2)</b> Commercial Parking Crematorium <b>Day Care Center</b>	The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area 20,000 sq ft Lot width 150 feet Minimum yard dimensions: Front yard 40 feet Side yard 25 feet Rear yard 30 feet Maximum permitted building height 35 feet Lot clearing <b>max.</b> 50% Lot coverage <b>max.</b> 65%

	<p><b><u>Mounted and Building Integrated)</u></b>  Private Garage  <del>Bed &amp; Breakfast Establishments</del></p>	<p><b><u>Eating and Drinking Establishment</u></b>  Farmers Market  Flea Markets  Farm Stand (year-round)  <b><u>Fueling/ Charging Station</u></b>  Gasoline Service Station  <b><u>Greenhouses, Commercial</u></b>  Group Home  Hotel and Motel  Light Industry  Medical Office  Motor Vehicle Repair  Multiple Family Dwelling  Multiple Occupant  Commercial Building <b>(3)</b>  <b><u>Museum</u></b>  Professional Office  Recreational Facility,  Tourist  Retail Shop  Senior Housing  Service Uses/Establishment  Studio  <b><u>Theater</u></b>  Wholesale Business/  Wholesale Distribution  Veterinary Clinic  <del>Cell Sites</del>  HBHO</p>	
<p>NOTES:  (1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board.  <b><u>(2) See Section 6.6.2</u></b>  <b><u>(3) Street level units may only be used for commercial, non-residential purposes.</u></b></p>			

<b>Downtown Business District-DB</b>			
INTENT: The DB-Downtown Business District is intended to accommodate existing high density commercial activity located along Bridge, Main, and Fifth Streets and Erie Avenue adjacent thereto, higher density residential development and associated service activities.			
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
1 & 2 family dwellings units on slopes of 15% or less. Arts, crafts and antique shops	Carport Customary accessory uses <b><u>Enclosed storage/POD</u></b> HBHO Keeping of not more than 3 dogs over 4 months old Satellite dish antennae accessory to a residential structure Private Garage Private Stables Signs in association with an approved use Shed	<del>Art, crafts &amp; antique shop</del> Bakeries Bed and Breakfast Establishments Commercial Parking Lot Farmers Market <b><u>(Year-Round)</u></b> <b><u>Day Care Center</u></b> Eating and Drinking Establishment Farmstand <b><u>(Year-Round)</u></b> Flea Market <b><u>(Year-Round)</u></b> <b><u>Greenhouse (Commercial)</u></b> Hotels	The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:  Lot area      20,000 sq ft Lot width      150feet Minimum yard dimensions: Front yard      40 feet Side yard      25 feet Rear yard      30 feet Maximum permitted building height 35 feet

	<b>Small Scale Solar Energy System</b>	Light Industry Mixed Use <b>(2)</b> Museum Post Office Professional Office Recreational Facility Retail Shop <del>Restaurant</del> <del>, no drive and/or</del> <del>drive through</del> River Access Facility Senior Housing Service Establishment Studio Theater Wholesale Business/ Wholesale Distribution	Lot clearing maximum 50% Lot coverage maximum 65%
NOTES: (1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board <b>(2) Street level units may only be used for commercial, non-residential purposes.</b>			

Section 7. The title of Article VI of the Zoning Law, “Supplementary Regulations Pertaining to Specific Uses” is hereby amended by adding to the end of the title the following:

“and Districts”

Section 8. Article V of the Zoning Law, 5.7 Accessory Buildings, is hereby amended by adding the following to the end of the section:

A permitted accessory building may be located in any Secondary Front Yard\* provided:

3. Such building conforms to the height requirements relevant to the zoning district where it is located as specified in the schedule of district regulations in Article VI of this law.
4. Such building is set back twenty (20) feet from any side lot line and conforms to all other requirements for the district it is located within.

(\* see diagram under YARD, FRONT in Article II, Definitions)

Section 9. Article VI, Section 6.6 of the Zoning Law is hereby deleted and replaced with the following new Section to read as follows:

## 6.6 FOREST MANAGEMENT

### 6.6.1 Forest Management Permit

Any person proposing to engage in commercial logging or forestry operations within the Town of Tusten shall first obtain a permit from the Town Code Enforcement Officer for each project. A Forest Management Permit is also required for the selective removal of more than 30% of the trees and/or vegetation or clearcutting of any lot/parcel or portion of any lot/parcel in excess of

10,000 square feet within the Town of Tusten. Such permit shall be good for six (6) months duration but may be extended by the Code Enforcement Officer for successive periods of six (6) months each, provided the operation continues to comply with all requirements contained herein. The permit application shall be made on forms to be developed by the Code Enforcement Officer and shall be accompanied by a fee, which fee amount may be adjusted from time to time by resolution of the Town Board. The application shall require the following information: (1) names, addresses and phone numbers for the property owner and commercial logger; (2) the dates between which timber harvesting will take place; and (3) a location map depicting where the logging will take place, the site of any landing and the proposed access to the public highway system. Activities conducted under the permit shall comply, to the extent practicable, with the New York State Forestry Best Management Practices for Water Quality – BMP Field Guide.

#### 6.6.2 Clearcutting Provisions.

All clearcutting is subject to the lot clearing limits as stated in the schedule of regulations of the Town of Tusten Zoning Law. A special use permit is required for clearcutting which involves more than one (1) acre of land disturbance not performed in connection with an approved building permit, special permit or site plan. This provision prohibits segmentation of environmental review by the applicant and requires consideration of all phases and cumulative impacts of clear cutting of a parcel/tract of land. Accordingly, the applicant shall disclose all current and future phases of clearing activities to allow the Planning Board to assess the cumulative impacts of the entire project before approval is granted and to include specific mitigation measures as may be necessary as a condition of the special use permit.

#### 6.6.3 Logging Roads.

Logging roads constructed to provide access to County, State or Town roads shall be improved with crushed stone at the entrance for a minimum distance of one-hundred (100) feet into the property being logged to reduce the tracking of mud and debris onto such roads except where the amount and duration of the activity is, in the judgment of the Code Enforcement Officer, so small as to not warrant such measures.

#### 6.6.4 Periods of Operation.

During the period of operation, the operator shall comply with New York State Department of Environmental Conservation Forest Practice Board standard practice requirements and timber harvest guidelines and no operations shall take place without a permit from the Town in accordance with 6.6.1, or while such a permit is revoked.

#### 6.6.5 Repairs to Town Roads.

The purpose of this permit system shall be to ensure repairs, where necessary, to any Town roads and compliance with good forest practice as defined by the New York DEC Forest Practice Board. All activities subject to a Forestry Management Permit shall also be subject to the requirements of the Town of Tusten Local Road Use and Preservation Law. The Code Enforcement Officer shall be authorized to immediately revoke the permits of any commercial logger who shall not comply with these requirements until such compliance is secured and

failure to comply shall require the permanent cessation of all activity by said logger within the Town of Tusten. Commercial loggers who shall fail to comply with these requirements shall also be ineligible for any future logging permits within the Town and may be subject to enforcement action.

Section 10, Amendment of Article VI, Section 6.7

The title of Section 6.7 is amended to read as follows:

It is the intent of this Section 6.7 to regulate the operation of home occupations in order to preserve the residential character of the neighborhood in which the home occupation is operated. Home occupations as set forth in Section 6.7.1 shall be considered accessory uses in all Districts.

The title of Section 6.7.1 is amended to read as follows:

6.7.1 Home Based Businesses/Home Occupations (HBHO)

The first sentence of Section 6.7.1 is amended to read as follows:

Proposed home occupations which comply with all provisions of this Section 6.7.1 and other applicable standards of this Zoning Law shall be permitted as accessory uses in all Zoning Districts.

A new subsection is added to 6.7.1 as follows:

K. Prohibited Uses - The following uses shall not be permitted as home occupations:

1. Commercial stables.
2. Commercial kennels.
3. Vehicle or equipment service operations.
4. Veterinarians.

Section 6.7.2 Home Occupations is deleted.

Section 11. Article VI, Section 6.12.1 of the Zoning Law is hereby deleted and replaced with the following new Section to read as follows:

**6.12.1 Off-Street Parking**

In all districts in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or enlarged, any land is used, or a change in use of land or structure, off-street parking spaces open for vehicles of employees, residents and/or patrons in accord with the requirements of this section.

- A. Size of Spaces - Each off-street parking space shall have an area of not less than two-hundred (200) square feet, exclusive of access drives or aisles, and shall measure ten (10) by twenty (20) feet.
- B. Number of Spaces and Uses Not Listed Below - The number of required off-street parking spaces set forth in the schedule below are both the minimum and maximum requirements. In the case of any use, building, or structure not specifically mentioned herein, the parking requirements shall be set by the Planning Board, who shall take into consideration similar uses in the schedule.

<b>USE</b>	<b>PARKING SPACES REQUIRED</b>
Dwellings	3 per dwelling unit
Homes for handicapped or infirm, nursing homes, group care homes, and similar uses	3 per every 5 beds
Hotels, motels, boarding and tourist houses, bed and breakfast establishments and other uses providing overnight accommodations	1 per bedroom, and 1 for each employee on a peak shift
<b>Sales and rental of goods, merchandise and equipment:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Retail establishments	1 per 200 SFGFA open to the public
2. Wholesale establishments	1 per 400 SFGFA
<b>Offices, research facilities and services not primarily related to goods:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Serving customers or clients on premises such as attorneys, physicians, insurance and travel agents	1 per 200 SFGFA
2. Drive-in banks	1 per 200 SFGFA plus reservoir lane capacity equal to 5 spaces per drive-in window
3. Serving little or few customers or clients on premises, such as corporate offices	1 per 400 SFGFA
<b>Manufacturing, processing, renovating, assembling goods, merchandise and equipment</b>	1 per 400 SFGFA
<b>Educational, cultural, religious social, fraternal uses:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Public and private schools	1.75 per classroom for elementary and middle schools; and 5 per classroom for high schools
2. Trade and vocational schools, colleges	1 per 100 SFGFA
3. Churches, synagogues and temples	1 per every 4 seats used for services
4. Libraries and museums, social, fraternal clubs and lodges; and similar uses	1 per 300 SFGFA
<b>Recreation, amusement and entertainment:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Bowling alleys	1 per every 3 persons of fully utilized design capacity; otherwise 1 per 200 SFGFA
2. Movie theaters	1 per every 4 seats

3. Public and private outdoor recreation facilities such as golf courses	1 per 200 SFGFA plus 1 per every 3 persons of fully utilized design capacity
Hospitals, clinics and other medical treatment facilities	2 per bed or 1 per 150 SFGFA, whichever is greater
Restaurants, bars, taverns and other eating establishments	1 per 100 SFGFA plus reservoir lane capacity equal to 5 spaces per drive-in window
<b>Vehicle related uses:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Sales, service, repair	1 per 200 SFGFA
2. Gas sales	1 per 200 SFGFA plus sufficient parking area at pumps which does not interfere with other required spaces
3. Car and truck wash	1 per 100 SFGFA plus 2 reservoir spaces in front of each stall for self-serve and 5 reservoir spaces for conveyor type
Warehousing and storage	1 per 4,000 SFGFA
<b>Miscellaneous uses:</b>	<b>Spaces per Square Feet of Gross Floor Area (SFGFA)</b>
1. Veterinary	1 per 200 SFGFA
2. Open air sales used for display or sales	1 per 1,000 square feet of lot area
3. Nursery schools and day care	1 per 150 SFGFA
4. Greenhouses	1 per 200 SFGFA
5. Emergency services	1 per 200 SFGFA
6. Junk and scrap yards	1 per 200 SFGFA
7. Post office	1 per 200 SFGFA
8. Home businesses/occupations (HBHO)	1 per employee
Note: SFGFA means "square feet of gross floor area." Gross floor area is the sum of the total horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for vehicles, or any space where the floor-to-ceiling height is less than six feet.	

C. Reduction of Parking Spaces - Should the applicant provide evidence that the number of parking spaces required by this Section is not necessarily required to meet the immediate needs of the proposed use, the number of spaces provided may be reduced provided a sufficient and suitable area is reserved for future parking, as feasible, to meet the normal standards in this Section and the applicant shall agree in writing to install the parking at the direction of the Planning Board (in accordance with Article VIII of this zoning law) or Code Enforcement Officer. All reserve parking areas shall be included in the calculation of lot coverage area and designed and approved as part of site plan review application, as applicable.

- D. Waiver of parking requirements. In the DB District only, for all uses requiring Site Plan Review and Special Use Permit, and as may be applicable to the site, the applicant shall demonstrate to the Planning Board that sufficient parking to satisfy the parking standards set forth in this section cannot be satisfied. Based on the information provided by the applicant, the Planning Board may waive partially or totally the parking requirement of the zoning law. The Planning Board shall make a finding supporting the waiver or stating why the waiver was not granted. For uses not requiring Site Plan Review and Special Use Permit in the DB District, the Code Enforcement Officer may waive partially or wholly parking requirements upon a demonstration by the applicant that the required parking cannot be met.
- E. Number of Parking Spaces – The numerical parking requirements for each use set forth in the above schedule are both the minimum and the maximum requirement. Should an applicant for a Site Plan Review and Special Use Permit provide evidence that the number of parking spaces required by this Section is insufficient to meet parking needs, the Planning Board shall consider such evidence and demonstrated need and may, in its discretion, permit an increase or decrease in the number of spaces to the minimum extent necessary to meet the demonstrated need. The Planning Board shall set forth its rationale for increasing or decreasing the number of permitted parking spaces in writing.
- F. Shared Parking - Shared parking arrangements between private lots and businesses are encouraged and are preferred in situations where two adjacent land uses have different peak times (e.g., a movie theater and a supermarket) or, conversely, if they share the same patrons (e.g., a dry cleaner and a deli). The applicant shall provide evidence of either or both situations, or other circumstances, in order for the Planning Board to approve a shared parking requirement as part of a Site Plan Review or Special Use Permit. Further, the applicant shall present a contractual agreement between sharing property owners that ensures the proper maintenance and functioning of the shared parking arrangement in form, substance and manner of execution acceptable to the attorney for the Town. Unless specified for a shorter period, the shared parking arrangement shall expire upon cessation of one of the two involved uses. The remaining active use shall submit an amendment to the original site plan review approval, if applicable, or provide to the Code Enforcement Officer a parking plan that meets the requirements of this section.
- G. Water Quality Protection and Stormwater Runoff Mitigation – innovative design techniques, also referred to as green infrastructure practices, including porous paving and bioretention devices, are encouraged. Requirements for parking lot landscaping are detailed in 6.13.12 and stormwater control requirements for special uses, including green infrastructure references, are set forth in 6.13.13.

Section 12. The title and paragraph under Article VI, Section 6.13 of the Zoning Law is hereby deleted and replaced as follows:



## **6.13 PERFORMANCE STANDARDS FOR SPECIAL USES, COMMERCIAL AND INDUSTRIAL USES**

The intent of this Section 6.13 is to regulate the development, operation, and potential impacts of all non-residential uses in the Town and to protect the environment and the public health, safety, and general welfare. The following performance standards shall apply to all proposed new or expanded Special Uses, commercial, and industrial uses.

Section 13. Article VI, Sections 6.13.12 and 6.13.13 of the Zoning Law are hereby deleted and replaced as follows:

### **6.13.12 Landscaping**

To ensure acceptable buffers are located between adjacent residential and non-residential uses; to mitigate impacts of stormwater runoff; and to help create a healthy, safe, and aesthetically pleasing environment in the Town, the planning board shall require a landscaping plan as part of site plan approval for any proposed Special Use. For larger or more complex projects, the planning board may require that the landscaping plan be developed by a licensed landscape architect. The landscaping plan shall include: the overall design of the landscaping proposed; delineated areas including entries, parking areas, walkways, and areas adjacent to buildings; the type and size of vegetation to be utilized; the details of installation; and a maintenance program. A landscaping plan shall meet the following minimum design standards:

1. Preservation of existing resources - To the extent practicable, landscaping plans shall preserve existing undisturbed areas, buffers, and sensitive areas. Plans shall also indicate areas of restoration and reuse of topsoil.
2. Disturbed areas - All disturbed areas of the site shall be included in the landscaping plan, and those areas immediately adjacent to buildings and walkways shall be given extra consideration.
3. Pedestrian Walkways - Adequate pedestrian walkways shall be provided for access to and from parking areas and to and from common use areas and shall be an integral part of the landscaping plan. Such walkways shall be consistent with the architectural type of the project and shall be ADA compliant.
4. Plant Type - Plants shall be of a variety proven successful in the Town's climate, unless otherwise approved by the Planning Board. Native species shall be used to the extent practicable. Invasive plant species shall not be used.
5. Buffers - Where landscaping is required to serve as a buffer (e.g., between the project and adjoining properties or between buildings and parking areas) the plants used shall be of such variety, size and arrangement of height and spacing to effect the required buffer in a reasonable period of time as determined necessary by the Planning Board. The width of the landscaped buffer shall generally not be less than ten (10) feet in all required yards, unless the applicant can demonstrate to the Planning Board that the buffer can be affected by other means such as soil mounding and/or fencing. Buffers of greater width may also be required as a condition of approval to address specific requirements of particular uses.

6. Parking Areas – In order to help optimize natural infiltration of rainwater, intercept and manage stormwater runoff, and enhance aesthetics, the following standards shall apply to parking area design.
  - (A) In proposed developments with parking areas of ten (10) or more spaces, a minimum of 15 percent of the total off-street parking area(s) shall be landscaped with a mixture of trees, shrubs, vines, ground cover, hedges, flowers, bark, chips, decorating cinders, gravel, and similar material. Such required landscaped or open space may be provided in the form of islands, aesthetic landscape treatments, or pedestrian refuge/oasis areas and combinations thereof. A minimum of one-third of the required landscaping shall be distributed within the interior of the parking facility. Perimeter buffers between the parking lot and adjacent streets may be included as required landscaped or open space.
  - (B) Developments with proposed parking areas of twenty-five (25), or more spaces, in addition to the requirements of 6.13.12.6. (A) above, shall provide landscaped islands of a minimum width of nine feet (9') and eighteen feet (18') in length throughout the parking area, planted with a mix of shrubs and trees. Such islands shall be situated to define entrances and exits, to separate long rows of spaces, and to separate pedestrian walkways from driving aisles. All landscaped islands shall be situated below the grade of the parking area so as to serve as bioretention filters for stormwater runoff. Grading plans shall be designed to direct and disperse stormwater evenly to the landscaped islands. Curbing may be used to partially enclose islands and direct stormwater to the interior of the islands. Plant species within islands shall be able to withstand both temporarily saturated and prolonged dry conditions.
7. Landscape Materials - The variety of landscape materials shall be consistent with building architecture, the surrounding area and plant type shall be appropriate for the size and location of the space it is to occupy.
8. Natural Features - Attractive natural features of the site, including mature trees, shall be preserved to the greatest extent possible.
9. Artificial Materials - Plastic and other artificial landscape materials shall not be permitted with the exception of permeable weed control material.
10. The minimum branching height for all shade trees shall be six (6) feet.
11. Shade trees shall have a minimum caliper of two and one-half (2-1/2) inches (measured one foot above grade) and be at least twelve (12) feet in height when planted.
12. Evergreen trees shall be a minimum of six (6) feet in height when planted.
13. Shrubs shall be a minimum of 24" in height when planted. Hedges shall form a continuous visual screen within two (2) years after planting.
14. All lot area (except where existing vegetation is preserved) shall be landscaped with grass, ground cover, shrubs, or other appropriate cover.
15. The preservation of mature shade trees shall be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Planning Board determines the purpose of this section is achieved.
16. Where it is determined that a proposed Special Use would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified but not be waived unless no new construction is involved.
17. A performance guarantee in the amount of one-hundred-twenty-five percent (125%) of the cost of materials and installation may be required to assure that all landscaping

survives in a healthy condition for a minimum of one (1) full year or more, as determined by the Planning Board, and any required fencing is properly maintained. The Planning Board shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Code Enforcement Officer shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned or infested plant materials. The requirement to maintain such fencing and landscaping shall continue beyond the period of the guarantee and the Code Enforcement Officer may proceed as provided herein to remedy any deficiencies in this regard.

18. All applicable requirements of these landscaping regulations shall be fully met prior to the Code Enforcement Officer granting a Certificate of Occupancy for a new building or use subject to these regulations.
19. Maintenance - All landscaping, including hardscape elements, shall be maintained in good growing condition by the property owner with plants that have died being replaced with similar plants.

#### 6.13.13 STORMWATER MANAGEMENT AND SOIL EROSION CONTROL

In accordance with NYS stormwater permit requirements, and prior to commencing construction activity, the owner or operator of a construction project that will involve soil disturbance of one or more acres must obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity.

When construction activities subject to the NYS stormwater permit are part of a Special Use Permit or Site Plan Review permit being considered by the Town, the Town Planning Board must assure that the NYS stormwater requirements are met prior to approval of such Special Use Permit or Site Plan Review permit. The Planning Board shall request that all materials submitted to NYS be submitted as part of the Special Use Permit or Site Plan Review permit.

Section 14. Article VI, Sections 6.17.7, 6.17.10, 6.17.10 A, and 6.17.10 B, of the Zoning Law are hereby deleted, and the remaining subsections of 6.17 are hereby renumbered accordingly.

Section 15. Article VI, a new Section 6.19 is hereby added to the Zoning Law to read as follows:

#### 6.19 Timber Clearcutting, Land Clearing, and Development on Steep Slopes

To assure impacts on soil, water, vegetation and wildlife resources are minimized, the following activities in all zoning districts shall be considered Special Uses and are subject to Site Plan Review approval. The requirements of this section shall apply in addition to Article VIII and any other applicable sections of this Zoning Law.

A. Clearcutting of timber or land clearing for development, construction or other purposes in excess of one (1) acre in size or in excess of 50% of the area of a lot – whichever of the two is the smaller. This standard shall apply to cumulative clearcutting within a three-year period of a single lot or a combination of adjacent lots.

B. All uses proposed on steep slopes. Steep slopes shall be defined as slopes in excess of fifteen (15) percent. Slope shall be determined by the Code Enforcement Officer (CEO) from United States Geological Survey (USGS) topographic maps or U.S.D.A. Soil Conservation Service maps. In cases where the slope cannot be specifically determined by said means, the Code Enforcement Officer (CEO) shall require the applicant to provide certification from a Professional Engineer or Land Surveyor of the slope in question. Slope shall be measured at the points where any earth will be disturbed or where structures or other improvements are proposed.

### C. Submission Requirements

Prior to review by the Planning Board, the Code Enforcement Officer shall determine that the following materials have been submitted, as applicable:

#### 1. For Timber Clearcutting:

A. An accurate base map prepared by a Professional Surveyor using two (2) foot contours intervals showing property boundaries, streams, wetlands, extent of vegetative cover, and other significant features such as stone walls and rock outcroppings.

B. A timber-harvesting plan prepared by a professional forester showing haul roads, landing areas and points of ingress/ egress at public roads.

C. A description of the planned reclamation of the site to include but not be limited to stabilization, regrading, and surface treatment of roadways and landings; management and diversion of overland water flow; and removal of temporary bridges and culverts.

#### 2. For Land Clearing and Development of Steep Slopes in excess of one acre:

A. An accurate base map prepared by a Professional Surveyor using two (2) foot contours intervals showing property boundaries, streams, wetlands, extent of vegetative cover, areas subject to landslides and other significant features such as stone walls and rock outcroppings.

B. A Stormwater Pollution Prevention Plan in accordance with applicable NYS DEC requirements and in accordance with the performance standards of the NYS Stormwater Design Manual published by DEC.

C. A Grading Plan showing existing and proposed ground surfaces, proposed drainage devices, plans for walls or cribbing, etc. and schedule for completion of work.

#### 3. For Land Clearing activities and Development on Steep Slopes less than one acre in size:

A. An Erosion and Sedimentation Control Plan prepared in accordance with the performance standards of the NYS Stormwater Management Design Manual. The plan shall illustrate those measures to be employed as may be necessary to prevent loss of soil from erosion and to prevent resulting property damage, siltation and contamination of water courses or impoundments.

B. A Grading Plan showing existing and proposed ground surfaces, proposed drainage devices, plans for walls or cribbing, etc. and schedule for completion of work.

#### D. Performance Standards

##### 1. Timber Clearcutting and Land Clearing

A. Stream Buffer - Timber harvesting in that area within one-hundred (100) feet of the normal high water mark of the Delaware River or any stream, shall be of the selective cut method only and not less than fifty percent (50%) of the overhead canopy shall be maintained.

B. Vegetative Buffers – To the extent practicable, retain a minimum of 10% of the site’s existing vegetation. Preserved vegetation should be of environmental value for supporting biological diversity or wildlife habitat, maintaining shade, or keeping connections with adjacent biotic communities. Preserved vegetation can also be used to create screening with adjacent properties or enhance building envelopes.

C. Optimal Timing – Whenever possible, clearcutting and land clearing should be conducted during periods when disturbances to soils can be limited. Such periods include when the ground is frozen and snow cover is minimal, or during the warmer season when conditions are dry.

D. Debris Disposal – Excess material is properly handled so as to not create a hazard or nuisance, and care is taken not to induce the spread of invasive species.

E. Building Sites - Where building construction is intended or new lots are being created, the site plan, consistent with the goal of protecting the forested character of the river valley, shall designate a specified building envelope within which all construction, including driveways and clearing for other purposes such as lawns shall take place.

F. Activities conducted under this section shall comply, to the extent practicable, with the New York State Forestry Best Management Practices for Water Quality – BMP Field Guide.

G. Impervious surfaces are kept to a minimum.

H. Disturbance of steep slopes is minimized.

I. Stormwater protection measures contain runoff within the site, minimize erosion and sedimentation, and not adversely affect adjacent properties or public roads or facilities.

In its review of plans submitted with timber harvest applications, the Planning Board may seek assistance from a Forester, Professional Engineer, Soil & Water Conservation District Technician, or other qualified professional. The Planning Board shall also consider whether any alterations to elements in the site plan would provide further protection or advantages in minimizing potential adverse impacts or meeting the purposes of this law.

##### 2. Development on Steep Slopes

- A. Impervious Surfaces - Impervious surfaces are kept to a minimum
- B. Percentage of Disturbance – The disturbance of steep slopes shall be limited to no more than 25% of the area of the total project site; however, if the nature of the site and the project necessitate a greater percentage of disturbance, the project shall be phased and plans shall indicate how the first phase(s) will be reclaimed and protected to a degree satisfactory to the Planning Board before the disturbance associated with the next phase is initiated.
- C. Maximum Grade - No finished grade where fill is used shall exceed a fifty (50) percent slope.
- D. Erodible Soils - Soils characterized by the Soil Conservation Service as highly susceptible to erosion shall be avoided.
- E. Improvements - Roads and utilities shall, to the greatest extent possible, be installed along existing contours.
- F. High Water Tables - Any steep slope areas also characterized by seasonal high-water tables shall be avoided.
- G. Vegetation and Habitat - Natural vegetation and areas of wildlife habitat shall be preserved to as great a degree as possible.
- H. Structures - In cases where structures are proposed, the applicant shall submit plans to the Planning Board detailing how the limitations of slope will be mitigated by the design of the structure(s). Said plans shall be prepared and certified by a Professional Engineer or Registered Architect.
- I. Certification - Prior to the issuance of a Certificate of Occupancy the Applicant shall provide to the Code Enforcement Officer (CEO) a certification by a Professional Engineer or Registered Architect that the property has been developed and structures have been constructed in accord with the approved certified plans.

In addition to the above performance standards, the planning board shall determine if the slope disturbance can be effectively mitigated; what the potential impacts on nearby properties are; and whether a reduction in the allowable lot coverage for a specific lot or lots as determined by the Planning Board would alleviate the impact to the sloped area. A determination by the Planning Board that a reduction in lot coverage is necessary to alleviate the impact to the sloped area or nearby properties would need to be agreed upon by the applicant to avoid the requirement to apply for an area variance in accordance with article XI of this zoning law.

Section 16. The title of Article VIII of the Zoning Law, “Special Use and Site Plan Review Criteria” is hereby amended to read as follows:

“Special Use Permit and Site Plan Review Criteria”

Section 17. Article VIII, 8.1.4 Waiver of Requirements, is hereby amended by adding the following sentence to the end of the existing text:

Additionally, the Planning Board is authorized to waive parking requirements in accordance with 6.12.1.D.

Section 18. Article VIII, Section 8.2.5(F) of the Zoning Law is hereby deleted and replaced with the following:

F. Sufficiency of protection for wetlands through stormwater and drainage facilities, grading plans, vegetated riparian buffers, or other means;

Section 19. Article VIII Subsections 8.2.5 G- L of the Zoning Law are hereby deleted and replaced with new subsections G-M to read as follows:

G. Adequacy of water supply and sewage disposal facilities.

H. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the Applicant's and adjoining lands, including the maximum retention of existing vegetation.

I. Adequacy of fire lanes and other emergency zones and the provision of fire protection facilities.

J. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

K. The potential for the creation of nuisances such as, but not limited to, noise, vibration, odor and glare.

L. The effect on the value and future development of neighboring properties.

M. Such other factors as may reasonably be related to the health, safety and general welfare of the community.

Section 20. Article VIII, Section 8.3.3 D. of the Zoning Law is hereby deleted and replaced with the following:

D. Existing watercourses, and state and federal wetlands (State wetlands are shown on the NYSDEC Environmental Resource Mapper, and Federal wetlands are shown on US Fish and Wildlife Wetlands Mapper);

Section 21. The Town of Tusten Subdivision Law, Section 241-14 B. (24) is hereby amended as follows:

“vegetated riparian buffers,” is inserted between “slope stabilization sites,” and “and stormwater management facilities.”

Section 22. The Town of Tusten Subdivision Law, Section 241-20 D. is hereby amended to add the following new sentence between the two existing sentences:

The use of vegetative buffers along watercourses and around wetlands is encouraged and may be required by the Planning Board.

Section 23. Article XI, Sections 11.0 – 11.5.1 of the Zoning Law are hereby deleted and replaced as follows:

## **ARTICLE XI - APPEALS, VARIANCES AND THE ZONING BOARD OF APPEALS**

### **11.0 ZONING BOARD OF APPEALS**

Pursuant to § 267, 267-a, and 267-b of New York State Town Law, a Zoning Board of Appeals (ZBA) is hereby established in the TOWN OF TUSTEN. The ZBA shall perform all the duties and have all the powers prescribed by the above sections of Town Law and as herein provided.

#### **11.0.1 Membership**

The ZBA shall consist of five (5) members to be appointed by the Town Board, retaining the Board as presently constituted. The term of each Board member is five years, staggered so that one member's term expires each year.

#### **11.0.2 Vacancies**

Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Such appointment to fill vacancies shall be made in the same manner as the original appointment. The ZBA may continue to legally operate while vacancies are waiting to be filled, provided there are enough members to constitute a quorum.

#### **11.0.3 Quorum**

Three members of the ZBA shall, regardless of the number of members at a given point in time, be a quorum for purposes of conducting any business. The concurring vote of three (3) of the members of the ZBA shall be necessary to reverse any order, requirement, decision or determination of the enforcement officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this Law or to effect any variation of this Law.

### **11.1 SPECIFIC POWERS AND DUTIES**

The ZBA shall have the powers and duties authorized by the New York State Town Law and shall have the following specific powers and duties:

#### **11.1.1 Orders, Requirements, Decisions, Interpretations, and Determinations**

The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this Zoning Law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.



### **11.1.2 Area Variances**

The ZBA shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer (CEO), after public notice and hearing and in accordance with the requirements of law and this Law, to grant area variances as defined herein.

Notwithstanding any provision of law to the contrary, where a proposed site plan or subdivision plat contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance without the necessity of a decision or determination of the CEO.

### **11.1.3 Use Variances**

The ZBA shall have the power, upon an appeal from a decision or determination of the CEO, after public notice and hearing and in accordance with the requirements of law and this Law, to grant use variances as defined herein.

### **11.1.4 Interpretations**

The ZBA shall, upon request from or appeal of a decision or determination by the CEO, decide any question involving the interpretation of any provision of this Law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

## **11.2 GENERAL PROCEDURES**

The ZBA shall act in strict accordance with the procedure specified by the New York State Town Law and by this Zoning Law. All appeal, variance and interpretation applications made to the ZBA shall be in writing on forms prescribed by the ZBA or provided for herein. Every application shall refer to the specific provision of the Law involved and shall exactly set forth the interpretation that is claimed, the use which is involved or sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the ZBA shall be by resolution, each of which shall contain a record of the findings of the ZBA in the particular case. (General information on the Zoning Boards of Appeals in New York State is available from the NYS Department of State, Division of Local Government Services.)

## **11.3 USE VARIANCES**

### **11.3.1 Use Variances**

The ZBA, on appeal from the decision or determination of the CEO, shall have the power to grant use variances, as defined herein. If the use variance is granted, the developer shall obtain site plan review approval from the Planning Board, if applicable, prior to commencing the use or obtaining a building permit.

### **11.3.2 Required Findings**

No such Use Variance shall be granted by the ZBA without a showing by the applicant that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located,

- (A) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (B) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (C) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (D) that the alleged hardship has not been self-created.

**11.3.2.1 In order to assist the ZBA in making the above findings, the ZBA shall consider the following:**

- (A) Reasonable Rate of Return. In evaluating whether the applicant cannot realize a reasonable rate of return, the ZBA must find that the applicant has clearly demonstrated, by detailed “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed development project, as applicable) and for each and every permitted use in the district (including those uses permitted by Special Use Permit).

**B. Unique Hardship.**

- (B) The ZBA must find that the parcel possesses unique characteristics that distinguish it from other properties in the area.
- (C) Essential Character of the Neighborhood. In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the ZBA shall consider factors that are of vital importance to the citizens of the Town including: the rural, residential, and historic character of the Town; the irreplaceable recreation and tourism sites, impacts of the use including health, socio-economic, and environmental impacts; and impacts on property values.
- (D) Self-Created Hardship. For example, the ZBA may find that the applicant suffers from a self-created hardship in the event that the board finds that:
  - (i) The applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

- (ii) The above events are illustrative only and not intended to cover every situation where the ZBA may determine the existence of a self-created hardship.

### **11.3.3. Additional Submission Requirements**

An application for a Use Variance shall also contain a typewritten narrative explaining what the application is for, and how it meets all of the criteria for a Use Variance, including:

(A) **Competent Financial Evidence.** Competent financial evidence containing reasonable specification of the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed project is a part):

- (i) Date of acquisition
- (ii) The purchase price;
- (iii) Present value of the property;
- (iv) The amount of real estate taxes;
- (v) The amount of mortgages or liens and other expenses;
- (vi) The asking price for the property when it had been offered for sale;
- (vii) The costs of demolishing any existing structures on the property;
- (viii) Cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit);
- (ix) Efforts to market the property; and
- (x) A schedule of all other property in common ownership at either the date of the enactment of this law or thereafter.

Competent financial evidence must include "dollars and cents proof" such as appraisals, economic studies, and any other evidence supporting the developer's contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes of this section, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the any of the applicants, whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

(B) **Unique Nature of the Property.** The applicant must provide evidence demonstrating the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.

(C) **Alteration of the Essential Character of the Neighborhood.** The applicant must demonstrate that the proposed development project will not change the essential character of the neighborhood with regard to physical, economic, social and environmental elements. Adverse impacts to the

essential character of the neighborhood include, but are not limited to, decreased quality or increased quantity of storm water runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

(D) Hardship Not Self-Created. The applicant must demonstrate that the hardship is not self-created.

#### **11.3.4. Minimum Variance**

The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

#### **11.3.5. Conditions**

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

#### **11.3.6 Additional Submission Requirements Regarding Appeals or Applications Respecting Explicitly Prohibited Uses**

See Section 11.5.3 of this Law for certain additional submission requirements pertaining to Use Variance Applications Regarding Explicitly Prohibited Uses.

### **11.4 AREA VARIANCES**

#### **11.4.1. Area Variances**

The ZBA shall have the power, upon an appeal from a decision or determination of the CEO, to grant Area Variances as defined herein.

#### **11.4.2. Required Findings**

Area Variance shall mean the authorization by the ZBA for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the board shall consider each of the following factors:

(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 Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(E) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Zoning Appeals, but which consideration shall not necessarily preclude the granting of the Area Variance.

### **11.4.3. Minimum Variance**

The ZBA, in the granting of Area Variances, shall grant the minimum Area Variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

### **11.4.4. Additional Submissions**

In addition to the information required for all applications set forth herein, applications for an Area Variance shall contain a typewritten narrative explaining what the application is for, and how the application addresses all of the criteria for an Area Variance.

### **11.4.5. Conditions**

The Zoning Board of Appeals shall, in the granting of Area Variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such Area Variance may have on the neighborhood or community.

## **11.5 GENERAL PROVISIONS APPLICABLE TO VARIANCES AND APPEALS: PROVISIONS APPLICABLE TO EXPLICITLY PROHIBITED USES**

### **11.5.1. Applications**

Every appeal and application for a Variance shall be in writing and on forms prescribed by the ZBA. Six (6) copies of the appeal or application and supporting documentation shall be filed with the Zoning Officer, accompanied by a fee in the amount set from time to time by resolution of the Town Board.

Section 24. A new section is added to Article XII, General Provisions as follows:

### **12.6 Application and Review Fees**

At the time an application for a site plan review permit, special use permit, variance, or any other permit application specified in this chapter or the Town of Tusten Code, an application fee shall be paid to the Town by the applicant; such fee to be determined from a schedule of fees as adopted by the Town Board by resolution. Additional fees may be imposed to cover the costs of inspections, professional reviews and consultants, and SEQRA compliance, as well as the expenses connected with notices and hearings. (See Article XII, Section 12.5.)

### Section 25. Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgement shall be confined in its operation to the part of provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town hereby declares that it would have passed this Local Law or the remained thereof had such invalid application or invalid provision been apparent.

### Section 26. Supersession.

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and is intended to supersede any provisions of the New York State Town Law, the Town of Tusten Zoning Law and the General Municipal Law which are inconsistent with the provisions of this Local Law.

### Section 27. Effective Date

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Attachment A, Proposed Zoning Map

