

ZONING ORDINANCE



PREPARED FOR:

THE TOWN OF WILMINGTON

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TABLE OF CONTENTS

ARTICLE I – INTRODUCTORY PROVISIONS.....	1
ARTICLE II - ZONING PERMIT & PROJECT REVIEW	3
ARTICLE III ESTABLISHMENT OF DISTRICTS AND MAPS.....	8
ARTICLE IV - USE REGULATIONS	14
ARTICLE V DIMENSIONAL REGULATIONS.....	19
ARTICLE VI - GENERAL REGULATIONS	24
Accessory Structures and Uses	24
Accessory Dwelling Units.	25
Campground / Group Camp Requirements.....	25
Contracting Business	30
Drive-Through Use	30
Fences	31
Firing Range.....	31
Fuel Supply	32
Home Occupation	32
Industrial Use.....	33
Lighting Standards.....	34
Livestock.....	35
Manufactured Homes.....	36
Off-Street Parking and Loading.....	36
Private Extraction.....	42
Restaurant/Tavern.....	42
Sawmills/Chipmills.....	43
Shoreline Requirements.....	43

Sign Requirements	44
Site Improvements and Screening	53
Swimming Pools	54
Telecommunications Towers	55
Temporary Structures.....	60
Vehicle Repair	61
Vehicle Service	61
Waterfront Overlay District	62
Windmills.....	68
ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION	72
ARTICLE VIII - CONSERVATION SUBDIVISIONS	90
ARTICLE IX - SITE PLAN REVIEW.....	98
ARTICLE X - SPECIAL USE PERMIT REVIEW.....	111
Article XI - VARIANCE AND APPEALS	116
ARTICLE XII ADIRONDACK PARK AGENCY REVIEW	122
ARTICLE XIII - NONCONFORMING USES, STRUCTURES AND LOTS	124
ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT.....	129
ARTICLE XV AMENDMENTS	142
ARTICLE XVI DEFINITIONS	144
ARTICLE XVII REPEALER, SEVERABILITY & EFFECTIVE DATE	166
APPENDIX A- DEVELOPMENT CONSIDERATIONS.....	167

ARTICLE I – INTRODUCTORY PROVISIONS

Title

This chapter shall be known as the "Town of Wilmington Zoning Code" and is hereinafter referred to as (this "Code.")

Enactment & Authority

Enactment of this local law by the Town is pursuant to Article 16 of the Town Law of the State of New York, and Article 27 of the Executive Law of the State of New York and pursuant to Municipal Home Rule Law and the Constitution of State of New York, and the Town Board hereby declares its legislative intent to supersede any provision of any local law rule regulation or provision of the Town Law inconsistent with this Code. The Town Law provisions intended to be superseded include those portions of Article 16 Sections 267 and 271 as they relate to seating alternates on the Planning Board and Zoning Board of Appeals and any other provision of law that the Town may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The Courts are hereby directed to take notice of this legislative intent and apply it in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this Code and superseded such inconsistent provision had the need to do so been apparent.

Purpose & Objectives of the Chapter

The purpose of this chapter is to broadly protect the public health, safety, and welfare of the residents of the Town of Wilmington and to protect their property through the land use regulations under the authority of the New York State Town Law and in accordance with the Town of Wilmington Local Waterfront Revitalization Program and Comprehensive Plan. Revitalization of the Ausable waterfront area, as well as guiding appropriate infill development in the hamlet in order to protect the open lands in the surrounding areas of the community, is the primary objective of this chapter.

It is the further purpose and objective of this chapter to support the conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the community. It is also the purpose and objective of this chapter to preserve the beauty and character of the Adirondack Park setting

to the benefit the Town of Wilmington, its residents, visitors, and business community.

Applicability

Except as hereinafter provided: No new building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with this Code.

Authority of the Adirondack Park Agency

Nothing in this code shall be deemed to supersede, alter or impair the jurisdiction of the Adirondack Park Agency, pursuant to the Adirondack Park Agency Act, to review and approve, approve subject to conditions, or disapprove those developments and subdivisions of land defined by the Adirondack Park Agency Act as Class A and Class B regional projects, or otherwise supersede, alter or impair the statutory function, duties and responsibilities of that Agency with regard to matters involving the Town. The authority of the Adirondack Park Agency cannot, in the context of its Class A and B regional project review, override a decision by the Town to deny a permit for a given land use or development.

Waterfront Consistency Review

All provisions, requirements and procedures included within the Town’s adopted Waterfront Consistency Review Law (Consistency Law), as amended, shall apply. The Consistency Law ensures that proposed actions, as defined within the Consistency Law, are consistent with the Town’s adopted Local Waterfront Revitalization Program (LWRP).

ARTICLE II - ZONING PERMIT & PROJECT REVIEW

Permits

A. Permits Required

No development or demolition may be commenced within the Town without a Permit issued by the Code Enforcement Officer.

(1) Permit Types

(a) Basic permit

All demolition activities and all uses designated with a “P” in the Use Table are permitted uses and require approval and a Certificate of Completion from the Code Enforcement Officer.

(b) All uses designated “S” in the Use Table are subject to Site Plan Review and may be permitted with the approval of the Planning Board and a Certificate of Completion from the Code Enforcement Officer. Uses designated with an “S” shall be subject to the provisions of Article IV.

(c) All uses designated “S/U” in the Use Table are subject to Special Permit Review and Site Plan Review and may be permitted with the approval of the Planning Board and a Certificate of Completion from the Code Enforcement Officer. Uses designated with an “S/U” shall be subject to the provisions of Articles IX and X.

(d) Planned Development Districts

(e) All Planned Development District applications shall be subject to the provisions of Article VII.

(f) Sign Permits

All signs, other than exempt signs, shall require a Building/Use Permit and Certificate of Completion in accordance with the standards and requirements of Article VI.

B. Issuance Of A Notice of Decision

- (1) The Code Enforcement Officer shall issue a Notice of Decision if it is determined that:
 - (a) The development meets the use, area, bulk and height controls set forth in this Code or a variance has been granted for relief from such controls.
 - (b) The development has received Site Plan approval, if applicable, and all conditions of that approval have been met.
 - (c) The development has received Special Use Permit approval, if applicable, and all conditions of that approval have been met.
- (2) The Code Enforcement Officer, and such persons as may be designated by the Code Enforcement Officer, may conduct examinations, tests, and other inspections of the sites for which a Certificate of Completion has been applied, as the Code Enforcement Officer deems necessary and appropriate for the purposes of this Code.
- (3) No issuance of Building Permit until Notice of Decision has been issued.
- (4) Expiration Of Notice of Decision

A Notice of Decision shall expire two years from issuance if the site or structure fails to meet the terms of the Notice of Decision. Work may not thereafter be undertaken or continued unless a new Notice of Decision has been applied for and issued in the same manner and subject to all provisions governing the initial application for issuance of a Notice of Decision, unless the terms of the Notice of Decision provides a different expiration date or there has been a mutually agreed upon extension.

C. Revocation Of Notice of Decision

The Code Enforcement Officer may revoke a Notice of Decision:

- (1) When there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the Notice of Decision was based.
- (2) Where a Notice of Decision was issued in error.
- (3) Where the work performed under the Notice of Decision is not being finished in accordance with the provisions of the application, plans or specifications.

D. Preexisting Violations

No new Notice of Decision shall be issued or additional review conducted on any parcel with an existing violation(s) relative to zoning, construction, sanitation, or subdivision regulations until all violations on that parcel are corrected.

E. Posting Of Permits

All applicants shall display a Town Notice of Decision on the subject premises. The Notice of Decision provided by the Town, shall be clearly visible from a public way, and shall not be removed until all of the requirements of this Code are complied with.

F. Issuance of Certificate of Completion

The Code Enforcement Officer shall issue a Certificate of Completion once all requirements and conditions of the Notice of Decision have been met.

G. Variances

- (1) Area variance. The Zoning Board of Appeals has the power to grant variances from the area or dimensional requirements of this Code. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant

ARTICLE II – ZONING PERMIT & PROJECT REVIEW

if the variance is granted as weighed against the detriment to the health, safety or welfare of the neighborhood or community of such grant.

- (2) Use variances. The Zoning Board of Appeals has the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the Code. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

H. Appeals.

Applicants, or any officer, department, board or bureau of the Town has the right to appeal any order, requirement, decision, interpretation or determination of officials charged with the enforcement of this Code to the Zoning Board of Appeals. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, interpretation or determination being appealed 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 Code, and to that end shall assume all the powers of the administrative official from whose order, requirement, decision or determination the appeal is taken.

I. Fees

- (1) Permit application fees and expenses.
 - (a) Fees required by this Code shall be paid upon the submission of applications and appeals.
 - (b) The fees for applications and appeals shall be established by the Town Board from time to time. A fee schedule shall be posted in the Town Hall.
 - (c) No required fee shall be substituted for any other fee.

ARTICLE II – ZONING PERMIT & PROJECT REVIEW

J. SEQRA

The Town shall comply with the provisions of the New York State Environmental Quality Review Act under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part Six Hundred Seventeen of the New York Codes, Rules and Regulations. Upon receipt of any complete application, the Town or any officer, department, board or bureau of the Town shall initiate the New York State Environmental Quality Review process.

K. Waterfront Consistency Review

All provisions, requirements and procedures included within the Town's adopted Waterfront Consistency Review Law (Consistency Law), as amended, shall apply. The Consistency Law ensures that proposed actions, as defined within the Consistency Law, are consistent with the Town's adopted Local Waterfront Revitalization Program (LWRP).

ARTICLE III ESTABLISHMENT OF DISTRICTS AND MAPS

Districts Classification

- A. For the purpose of this Code, the Town of Wilmington is hereby divided into the following, designated districts:
1. Hamlet – 1 and Hamlet – 2
Hamlet areas provide for a diverse and vibrant mixture of commercial and residential development while retaining the small-town character, reinforcing historic development patterns and remaining pedestrian-oriented. This district is intended to maximize the economic development potential by encouraging infill, reuse and expansion, and by protecting and enhancing a mixture of uses compatible with the surrounding residential neighborhoods.
 2. Moderate Intensity
Areas adjacent to the hamlet, where residential uses mix with tourist accommodations and other commercial uses to enhance the unique character of Wilmington's lower density neighborhoods.
 3. Low Intensity
Residential areas where the natural setting and good access to hamlet areas provide for the ability to develop traditional low density housing and certain compatible commercial uses without changing the area's scenic and water-enhanced characteristics.
 4. Rural Use
Natural areas where special care is taken to restrict development to very low densities in order to protect the open space character or unique landscape characteristics.

ARTICLE III – ESTABLISHMENT OF DISTRICT AND MAPS

5. Resource Management
Areas where the need to protect, manage, and enhance natural and open space resources is important.

- B. NYS Forest Preserve Lands (reference the Adirondack Park Agency Act)
Lands located outside of the areas classified by the Town of Wilmington are considered State Forest Preserve Lands and are regulated by the State of New York in the Adirondack Park State Land Master Plan as amended. The following State Forest classifications can be found in the Town of Wilmington.

1. Wilderness
A wilderness area is defined to mean an area of state land or water having a primeval character, without significant improvement or permanent human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions.
2. Wild Forest
A wild forest area is defined as an area that frequently lacks the sense of remoteness of wilderness, primitive or canoe areas and that permits a wide variety of outdoor recreation
3. Intensive Use
An intensive use area is an area where the state provides facilities for intensive forms of outdoor recreation by the public.

- C. Waterfront Overlay District

1. The Town intends to protect a scenic corridor along the Ausable River and its tributaries, in accordance with the Town of Wilmington Local Waterfront Revitalization Plan. The purpose of the district is to maintain a green, undeveloped corridor along much of the Town's waterfront and to provide a consistent level of protection of the visual, environmental and historic resources within this corridor.

ARTICLE III – ESTABLISHMENT OF DISTRICT AND MAPS

2. The Waterfront Overlay (WO) District is overlaid onto existing zoning districts. All provisions of the underlying districts remain in full force, except where provisions of the WO District differ. In such cases, the more restrictive provision shall apply. The principal control mechanisms of the WO are construction setbacks from the waterline, restrictions on the removal of natural vegetation within an established buffer zone adjacent to the water, and performance standards governing land use activities within the district. Specific requirements of the WO can be found in Article VI – General Regulations.

Boundary Descriptions

- A. The boundaries for each zoning district are the boundaries indicated on the map entitled "Town of Wilmington Zoning Map" which is hereby incorporated and declared to be part of this chapter, and hereinafter referred to as the "Town Zoning Map."
- B. Interpretation of district boundaries. Where uncertainty exists as to the boundaries of districts as shown on the Zoning Map, the following rules shall apply:
 - (1) Boundaries indicated as approximately following the center lines of streets or highways shall be construed to follow such center lines.
 - (2) Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
 - (3) 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.
 - (4) Boundaries indicated as following center lines of streams shall be construed to follow such center lines and, in the event of change in the center line, shall be construed as moving with the actual center line.

ARTICLE III – ESTABLISHMENT OF DISTRICT AND MAPS

- (5) Where district boundaries are not indicated as approximately following the items above, or is not designated on the Zoning Map, the boundary line shall be determined by the use of the scale designated on the Town Zoning Map.
 - (6) Whenever any street, alley or other public way is abandoned in the manner authorized by law, the district adjoining each side of such street, alley or public way shall be automatically extended to the center of the former right-of-way and all of the area included in the abandoned right-of-way shall henceforth be subject to all regulations on the extended districts.
- C. In that further clarification or definition is considered necessary or appropriate, the location of a district boundary shall be determined by the Zoning Board of Appeals.
- D. Parcels located in more than one zoning district

Where an applicant owns a parcel of land located in more than one zoning district, the total number of principal buildings allowable on such parcel pursuant the Dimensional Table herein, may be distributed amongst such districts, provided that:

- (1) No lot is created that is smaller than the minimum lot size permitted in the zone where the lot is proposed pursuant to the Dimensional Table of this Code.
- (2) The total number of principal buildings permitted for the entire parcel as determined by Dimensional Table of this Code is not exceeded.
- (3) All the dimensional requirements in the zone where the lot exists as determined by the Dimensional Table are met.

ARTICLE III – ESTABLISHMENT OF DISTRICT AND MAPS

- (4) Uses prohibited in a district pursuant to Use Table of this code are not located therein.
- (5) Building rights are not transferred across boundaries of land use areas as shown on the Official Adirondack Park Land Use and Development Plan Map adopted pursuant to section 805 of the Adirondack Park Agency Act and incorporated into this chapter pursuant to Adirondack Park Land Use and Development Plan Map; and
- (6) Deed restrictions, scenic or conservation easements or similar devices, approved by the Town Attorney, shall be provided to implement density requirements and principal building limitations.

E. Parcels Divided By Public Rights-Of Way

The division of any tax map parcel by a road does not constitute a defacto subdivision of the tax map parcel.

F. Adirondack Park Land Use and Development Plan Map

The boundaries within the Town of the land use areas established by the Official Adirondack Park Land Use and Development Plan Map, as may be from time to time amended, pursuant to Subdivision 2 of Section 805 of the Adirondack Park Agency Act, are indicated by the separate map entitled "Adirondack Park Land Use and Development Plan Map of the Town of Wilmington" dated with the effective date of this chapter, which accompanies this chapter, and which is hereby adopted and declared to be part of this chapter, and hereafter known as the "Park Plan Map." Any change of the boundaries within the Town of a land use area by an amendment of the Official Adirondack Park Land Use and Development Plan Map pursuant to Subdivision 2 of Section 805 of the Adirondack Park Agency Act shall take effect for the purposes of this chapter concurrently with that amendment without further action, and the Park Plan Map shall be promptly changed in accordance with

ARTICLE III – ESTABLISHMENT OF DISTRICT AND MAPS

that amendment. The amendment provisions of Article XV of this chapter do not apply to the Park Plan Map which is amended only pursuant to the provisions of the Adirondack Park Agency Act. Copies of the Park Plan Map which may from time to time be published and distributed are accurate only as of the date of their printing and shall bear words to that effect.

ARTICLE IV - USE REGULATIONS

Use regulations

A. Permitted uses

All uses listed in the use table below shall be permitted in each zoning district in which the use is listed as a permissible use for that district, provided that all other requirements of this Code are met. All permitted uses are indicated with a "P." All permitted uses requiring Site Plan Review are indicated with an "S." All permitted uses requiring a Special Permit are indicated with an "S/U."

B. Prohibited Uses


Any use not listed in the following table is deemed prohibited unless such principal or accessory uses are expressly permitted elsewhere by this Code, unless a use variance is granted in accordance with the provisions of this Code.

C. Permitted accessory uses

All uses permitted for each district shall be permitted as accessory uses, provided the combination of uses shall meet all of the other provisions of this Code. The larger or more restrictive of the dimensional and area regulations set forth in Article V regarding the uses will be applied in a situation where more than one use is proposed on a site.


ARTICLE IV – USE REGULATIONS

General Regs VI	USES	DISTRICT				
		Hamlet-1 /Hamlet-2	Moderate Intensity	Low Intensity	Rural Use	Resource Management
RESIDENTIAL USES						
x	Dwelling, Accessory	P	P	P	P	P
	Dwelling, Single Family	P	P	P	P	P
	Dwelling, Two Family	P	P	P	P	P
	Dwelling, Multi-family	S	S	S	S	S
x	Dwelling, Manufactured Home			S	S	S
COMMERCIAL USES						
	Agricultural Use, Personal	S	S	P	P	P
	Agricultural Use	S/U	S/U	S/U	S/U	S/U
	Bed & Breakfast/Inn	S/U	S/U	S/U	S/U	S/U
	Boarding House	S/U	S/U	S/U	S/U	S/U
x	Campground, Group Camp	S/U	S/U	S/U	S/U	S/U
	Church	S	S	S	S	S
	Club	S/U	S/U	S/U	S/U	S/U
x	Contracting Business		S/U	S/U	S/U	S/U
	Daycare center	S/U	S/U	S/U	S/U	S/U

Key: P - Permitted Use S - Site Plan Review Required S/U - Special Use Permit and Site Plan Review Required  Use not allowed

ARTICLE IV – USE REGULATIONS

General Regs VI	USES	DISTRICT				
		Hamlet-1 /Hamlet-2	Moderate Intensity	Low Intensity	Rural Use	Resource Management
	Drive-through use	S/U	S/U			
x	Firing Range				S/U	S/U
	Fishing Club	S/U	S/U	S/U	S/U	S/U
	Forestry less than 50 ac.			S	S	S
	Forestry more than 50 ac.	S/U	S/U	P	P	P
	Forestry (with an approved management plan from certified programs such as 480-a; FSC; Tree Farm	P	P	P	P	P
x	Fuel Supply	S/U	S/U	S/U	S/U	S/U
	Funeral Home	S/U	S/U			
	Game Preserve				S/U	S/U
x	Home Occupation I	P	P	P	P	P
x	Home Occupation II	S/U	S/U	S/U	S/U	S/U
	Hotel/Motel	S/U	S/U	S/U	S/U	S/U
	Hunting Club				S/U	S/U
	Indoor Recreation	S/U	S/U	S/U	S/U	S/U
x	Kennel					S/U

Key:
 P - Permitted Use
 S - Site Plan Review Required
 S/U - Special Use Permit and Site Plan Review Required
 Use not allowed

ARTICLE IV – USE REGULATIONS

General Regs VI	USES	DISTRICT				
		Hamlet-1 /Hamlet-2	Moderate Intensity	Low Intensity	Rural Use	Resource Management
	Nursery	S/U	S/U	S/U	S/U	S/U
	Office	S/U	S/U	S/U	S/U	S/U
x	Open Space Recreation	S/U	S/U	S/U	S/U	S/U
	Outdoor Furnace			S	S	S
X	Personal Service	S/U	S/U	S/U		
	Private Extraction	S/U	S/U	S/U	S/U	S/U
	Public, Semi-public facility, Institution	S/U	S/U	S/U	S/U	S/U
	Public, Private Utility	S/U	S/U	S/U	S/U	S/U
	Restaurant	S/U	S/U	S/U		
x	Retail Use	S/U	S/U	S/U		
	Riding Stable			S/U	S/U	S/U
	Roadside Stand	S	S	S	S	S
	Senior Housing	S/U	S/U	S/U	S/U	S/U
	Tavern	S/U	S/U	S/U		
x	Telecommunications Tower	S/U	S/U	S/U	S/U	S/U
	Tourist Attraction	S/U	S/U	S/U	S/U	S/U

Key:
 P - Permitted Use
 S - Site Plan Review Required
 S/U - Special Use Permit and Site Plan Review Required
 Use not allowed

ARTICLE IV – USE REGULATIONS

General Regs VI	USES	DISTRICT				
		Hamlet-1 /Hamlet-2	Moderate Intensity	Low Intensity	Rural Use	Resource Management
x	Vehicle Repair	S/U	S/U	S/U		
x	Vehicle Sales, Rentals	S/U	S/U	S/U		
x	Vehicle Service	S/U	S/U	S/U		
	Veterinary Clinic	S/U	S/U	S/U	S/U	S/U
x	Windmills				S/U	S/U
INDUSTRIAL USES						
	Sand and Gravel Extraction			S/U	S/U	S/U
	Industrial Use			S/U	S/U	S/U
	Light Manufacturing	S/U	S/U	S/U	S/U	S/U
	Mineral Extraction			S/U	S/U	S/U
	Sawmill/Chipmill			S/U	S/U	S/U
x	Warehouse	S/U	S/U			

Note: Reference the Waterfront Overlay District for additional requirements, Article VI – General Regulations.

- Key:
 P - Permitted Use
 S - Site Plan Review Required
 S/U - Special Use Permit and Site Plan Review Required
 Use not allowed

ARTICLE V DIMENSIONAL REGULATIONS

Dimensional Table

District	Density: # of acres per PB	Minimum		Minimum Setbacks (ft)			Shoreline Restrictions			Scenic Overlay Setback (ft)	
		Lot Size (ac)	Lot Width (ft)	Front ³	Rear	Side	Min. Lot Width (ft)	Setback (ft)	Max. Building Height (ft) ¹		Max % Lot Coverage
Resource Management	42.7	8.5	250	50	75	30	200	100	40	15	150
Rural Use	8.5	5	250	50	75	30	150	75	40	15	150
Low Intensity	3.2	3	150	50	75	30	150	75	40	15	150
Moderate Intensity	1.3	1	100	35	20	20	100	75	40	25	150
Hamlet - 1 ²	N/A	1	60	35	10	10	100	75	40	40	150
Hamlet - 2 ²	-	-	60	35	10	10	100	50	40	40	150

PB – Principal Building Unit

¹ 3 story maximum.

² Additional Density
Requirements

³ Front Setback shall be affected from the point at which the width of the lot meets the minimum lot width req.

Note: Reference the Waterfront Overlay District for additional requirements, Article VI – General Regulations.

Density and Lot Calculation

- A. This code regulates density of development separately from lot size. Whenever a parcel of land is subdivided, the proposed subdivision shall comply with both maximum density and minimum lot size requirements of the land use district. The Planning Board shall establish and the applicant shall show on the plat, the number of lots, the number of Principle Building Units and the number of permissible re-subdivisions that may be created on the entire parcel to be subdivided.

- B. Plat notations shall indicate, that either "This lot may contain only one principal building and may not be further subdivided" or "This lot may contain a maximum of {insert number} principal buildings and may, with appropriate approvals, be subdivided into a total of no more than {insert number} lots." Upon re-subdivision of any lot, such notations shall be made for each new lot.

- C. Any individual septic system must meet New York State Health Department requirements.

Additional Density Requirements for Hamlet – 1 (H1)

- A. Tourist Accommodations. The minimum land area required for all tourist cabins or similar unattached units shall be one-tenth of an acre.

- B. Multi-Family Dwellings. The overall minimum land area required for a multi-family dwelling shall be ½ acre per multi-family dwelling unit.

Additional Density Requirements for Manufactured Homes

- A. Manufactured Homes. The minimum land area required for all mobile homes shall be 3 acres.

Additional Hamlet – 2 (H2) Density Requirements

Dwelling Type	Land Required for First Dwelling Unit	Land Required for each Additional Dwelling Unit
Single-Family Residential	20,000 sq. ft.	---
Multi-Family Residential	20,000 sq. ft.	7,500 sq. ft.
Apartments	10,000 sq. ft.	7,500 sq. ft.
Timeshares	20,000 sq. ft.	7,500 sq. ft.
Hotel/Motel	5,000 sq. ft.	1,500 sq. ft.
Commercial	20,000 sq. ft.	10,000 sq. ft.

Scenic Road Corridor

- A. In order to preserve the Town’s rural character the following roads have been designated as scenic road corridors. Development along or adjacent to these roads are subject to the provisions of this section.
 - 1. John Bliss Road - from County Route 19A (Bonnie View Road) to County Route 19 (Haselton Road);
 - 2. Bilhuber Road from County Route 19 (Haselton Road) to State Route 86;
 - 3. Hardy Road from State Route 86 to Springfield Road;
 - 4. State Route 86 from the Town of North Elba line to the Flume Bridge over the AuSable River;
 - 5. State Route 86 from the Town of Jay line to Bilhuber Road;
 - 6. Fox Farm Road from Route 86 to the Springfield Road;
 - 7. Whiteface Mountain Memorial Highway (State Route 431) from Route 86 to the Toll Gate.

- B. No development within one hundred fifty (150) feet from the centerline of the paved portion of a travel corridor designated in this code shall be undertaken unless or until a site plan has been reviewed and approved, or approved with conditions pursuant to Article IX and a land use and development permit has been issued pursuant to this code.

- C. The following general standards shall guide the site plan review for a proposed development along or adjacent to a designated scenic road corridor:
 - a. Vehicular, bicycle and pedestrian traffic access and circulation should be adequate; including safe and well-designed points of ingress and egress that does not impede traffic flow along the corridor.

 - b. Off-street parking and loading areas should be adequate and visually screened from the corridor.

ARTICLE V – DIMENSIONAL REGULATIONS

- c. The proposed development, as detailed in the site plan, should be in harmony with the natural surrounding and existing land uses of the area.
- d. The open space character of the scenic road corridor should be protected to the greatest extent possible through the placement and design of buildings and signs, landscaping and plantings and minimal removal of existing vegetation.
- e. In the case of development involving more than two hundred (200) feet of frontage along either side of a designated scenic road, the number of access points to the street, highway or road should be strictly limited and a vegetative buffer should be in place along at least one-half (1/2) of each such frontage.

ARTICLE VI - GENERAL REGULATIONS

Accessory Structures and Uses

- A. On any lot, accessory structures(s) or use(s) in connection with the principal building or use may be constructed and located subject to the following process:
 - (1) All accessory structures or uses shall require a Land Use and Development Permit unless specifically exempt.
 - (2) Where applicable, such Permit shall be issued conditional upon satisfactory completion and issuance of a Certificate of Occupancy for the principal building or use to which it is accessory. If said Certificate of Occupancy is not issued within one (1) year from the date of issuance of the Permit for the accessory structure or use, the conditions upon which said Permit is issued shall be deemed not to have been complied with and the accessory structure or use shall be considered in violation of this Code.
 - (3) The Codes Enforcement Officer may authorize a one (1) year extension to allow for compliance with the conditions under which the Permit was issued.

- B. Accessory structure(s) or use(s) shall be governed by the following:
 - (1) Accessory structures to a residential use which are not attached to a principal building may be erected in accordance with the following requirements:
 - (a) Front Yard Setback - Not to be located in any required front yard setback except as allowed for under Shoreline Requirements.
 - (b) Rear or Side Yard – Located in accordance with the Dimensional Requirements of this Code.
 - (c) No closer than ten (10) feet from a principal building or other accessory structure.
 - (2) A non-residential accessory structure, whether attached to the principal building or not, shall comply in all respects with the requirements of this Code applicable to the principal building.

Accessory Dwelling Units.

It is recognized that the need for an accessory dwelling unit may occur. To ensure the public safety, health and welfare of the community the following shall apply to accessory dwelling units:

- A. Accessory dwelling units shall be no larger than the principal dwelling.
- B. The owner(s) of the lot upon which the accessory dwelling unit is located shall reside within the principle or accessory dwelling unit.
- C. A homeowner of a lawful single-family use shall be permitted one accessory dwelling unit where permitted according to the Use Table.
- D. Any individual septic system must meet New York State Health Department requirements.
- E. One off-street parking space required per accessory dwelling unit.
- F. An accessory dwelling unit shall constitute a principal building and shall be consistent with the Dimensional Table of this Code.

Campground / Group Camp Requirements

- A. Procedure

All proposed campgrounds and group camps shall be subject to, and be approved and developed under the Special Permit Review process of this Code and as set forth and according to the following requirements.

- B. Standards

- (1) General

Creation and expansion, extension or alteration of any campground or group camp shall be in accordance with the minimum requirements hereinafter set forth.

- (2) Site Considerations shall be as follows:

- (a) Any campground or group camp involving lands designated as a Flood Hazard Area by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development as depicted on the Zoning Map(s) or

ARTICLE VI – GENERAL REGULATIONS

any other land subject to repeated flooding or deemed by the Planning Board to be subject to flood hazard shall be reviewed by the Board in accord with the applicable provisions of the Site Plan Review Section of this Code.

- (b) The campground or group camp shall be located in areas where grades and soil conditions are suitable for location of recreational living units. The campground or group camp shall be located on a well-drained site which is properly graded to insure proper drainage and be free at all times from stagnant pools of water.
- (c) The site shall be at least twenty (20) acres, and shall have access to a public roadway.

(3) Unit Area

Each campground shall have defined and identifiable camping site areas. The total number of unit areas in such campground shall not exceed twelve (12) per gross acre. Each unit area shall have a total area of not less than twenty-five hundred (2,500) square feet with a minimum dimension of thirty (30) feet, or three thousand (3,000) square feet for travel trailer camp areas. Only one recreational vehicle unit, including travel trailers, shall be permitted to occupy any one camp area.

(4) Improved Unit Area

Each designated lot shall have an improved area which will provide for the placement and removal of recreational vehicle or travel trailer and for the retention of each in a stable condition. This improved area shall be of sufficient size to accommodate the dimensions of all anticipated recreational vehicles and travel trailers, and shall be suitably graded to permit proper surface drainage.

(5) Location of Units

A recreational vehicle or travel trailer shall be located at a minimum distance of:

- (a) Seventy-five (75) feet from a stream, brook or river.
- (b) Seventy-five (75) feet from an adjacent unit, in any direction.

ARTICLE VI – GENERAL REGULATIONS

- (c) Seventy-five (75) feet from an adjacent property line.
 - (d) One hundred (100) feet from the edge of the pavement or improved surface area of a public roadway.
 - (e) twenty (20) feet from the edge of any paved or improved surface area of any roadway within the campground.
- (6) Accessibility shall be as follows:
- (a) Each campground or group camp shall be easily accessible from an existing public roadway.
 - (b) Location and number of points of entry and exit shall be approved by the Planning Board according to the terms under which the Permit is authorized. Such entrances and exits shall be designed and strategically located for the safe and convenient movement into and out of the campgrounds, and to minimize conflicts with the movement of traffic on the public roadway. Ease of access and egress and turning movements shall be considered in the design of the roadway system.
 - (c) Each campground or group camp shall have improved roadways to provide convenient access to all camping unit areas and other important facilities within the site. In addition:
 - [1] All roadways shall be fifteen (15) feet for one-way roads, twenty (20) feet for two-way roads, with three (3) inches of rubble or gravel for drainage where necessary.
 - [2] Adequate access shall be provided to each improved camping site area.

(7) Utilities and Service Facilities

All waste water disposal, water and public accommodation facilities provided in any campground or group camp shall be in accordance with the regulations of the N.Y.S. Department of Environmental Conservation or Department of Health as is applicable. In addition, the following utilities and service facilities shall be provided in each campground:

- (a) An adequate supply of pure water for drinking and domestic purposes shall be supplied.

ARTICLE VI – GENERAL REGULATIONS

- (b) Waste from all service buildings and individual lots shall be discharged into an approved public or private sewer system in compliance with the N.Y.S. Department of Environmental Conservation and N.Y.S. Department of Health, and in such a manner so as not to present a health hazard.
 - (c) If other service buildings and facilities are to be provided as deemed necessary for the normal operation of the campground or group camp, all such buildings shall be maintained in a sanitary and safe condition.
 - (d) Refuse disposal shall be the responsibility of the operator of the campground or group camp and such refuse shall be disposed of daily and in a covered can with a plastic bag liner at each site.
 - (e) Where electrical connections or services are provided, they shall be weather-proof connections and outlets which are of a type approved by the New York State Building Construction Code. Proposed electrical service shall be shown on the plan.
- (8) Recreation-Open Space Area
- Each campground or group camp shall provide common open space for the use of the occupants of such campgrounds. Such open space shall be conveniently located in the campground or group camp and shall constitute a minimum of twenty (20) percent of the total campground area, such area to be designated on the site plan in such manner as to be an integral part of any proposed campground or group camp.
- (9) Fireplaces; Campfires
- All fires in any campground or group camp shall be in a designated improved location with at least a stone or other fire-proof enclosure demarcating the usable area from which all vegetative growth or other flammable material which might contribute to the accidental spread of the fire shall be removed.
- (10) Landscaping shall be as follows:
- (a) Lawn and ground cover shall be provided on those areas not used for the placement of individual recreational living

ARTICLE VI – GENERAL REGULATIONS

units and other buildings, walkways, roads and parking areas.

- (b) Plantings shall be provided to the extent needed in order to screen objectionable views, provide adequate shade and to provide suitable settings for the recreational living units and other facilities. Views which shall be screened include laundry facilities, other non-residential uses, refuse storage and collection areas, and all abutting yards of adjacent properties.
- (c) Other planting shall be provided along those areas within the campground which front upon or are visible from existing public roadways so as to substantially screen the campground from public view at all seasons of the year.

(11) Removal of Wheels

It shall be unlawful to remove wheels from any recreational living unit or otherwise permanently affix such unit to the ground. Such removal shall be grounds for the revocation of the Operating Permit for such campground.

(12) Storage of Recreational Living Units

May be permitted on the campground in an area that does not allow occupancy by a registered guest of the campground. This area will not have any utilities or service facilities that will allow a recreational living unit to be occupied. A unit may be stored on the premises for no longer than fifteen (15) consecutive months.

C. Administration and Enforcement

(1) Land Use and Development Permit

(a) Permit Required

No campground or group camp shall be established or expanded, in the Town until a Special Use Permit therefore has been approved by the Planning Board. All Land Use and Development Permits required under the provisions of this Code shall be considered according to the following:

- [1] For the establishment of a campground or group

ARTICLE VI – GENERAL REGULATIONS

camp, the Permit shall be authorized by the Planning Board in accord with the Special Permit Review process of this Code; and

[2] Any alteration or improvement of the site made shall meet the requirements of this Code.

(b) Application

Plans and information shall be as required according to the respective process called for above and set forth in Article II of this Code, and such other information as may be necessary for the Codes Enforcement Officer or other instrument of the Town to render a determination under and provide for the administration and enforcement of this Code.

(c) Notification of Determination

Authorization and issuance or denial of the applied for Permit shall be in accord with the established timeframe of the respective procedures set forth in this Code for consideration of a campground or group camp under Special Permit Review.

(d) Duration of Validity

A Land Use and Development Permit issued under this Code shall be valid for a period of one (1) year from the date of issuance and shall thereafter be deemed null and void; except as application may be made to and considered by the Board of Appeals, which Board may, for due cause shown, authorize a one (1) year extension to the validity of the Permit.

Contracting Business

- A. No heavy equipment or construction materials shall be stored within the front-yard setback.
- B. All storage areas and vehicle and equipment parking areas shall be adequately screened, so as to not be visible from the public right-of-way.

Drive-Through Use

No more than 2 drive-through uses shall be allowed on a single lot.

Fences

- A. Installation of fences shall require a permit. During Site Plan Review, if required, the Planning Board may modify the following standards. Other applicants who wish to modify these standards who are not subject to site plan review must receive a variance from the Zoning Board of Appeals.
- B. Fences shall be permitted without a principle use and may be located in front, side and rear yard setback areas. Fences shall be allowed on any property line provided they comply with all other regulations set forth herein.
- C. The height of fences and all walls for all uses other than industrial uses shall not exceed six (6) feet in side yards, and six (6) feet in rear yards. The height of fences and all walls shall not exceed four (4) feet in front yards, and shall not obstruct vehicle sight lines or interfere in any way with the view corridor from public roadways.
- D. The height of fences and walls installed within 10 feet of the mean high water mark shall be measured from the mean high water mark.
- E. The finished side of the fence shall face neighboring properties or the street.
- F. Fences and all walls shall not encroach on any public right-of-way. Fences shall be set back a minimum of 2 feet from any sidewalk.
- G. The owner of the fence or wall must maintain both sides of the fence or wall in good condition.
- H. Fences and retaining walls along streams, rivers and water bodies may have to meet other regulatory review requirements.

Firing Range

- A. Maintenance shall be in accordance with US EPA best management practices, in order to minimize contamination from lead. A completed Environmental Management Plan shall be required before issuance of a Special Use Permit.
- B. Outdoor firing ranges shall have adequate backstops as recommended by the National Rifle Association.
- C. Outdoor firing ranges shall only operate during daylight hours.

Fuel Supply

All fuel tanks shall be adequately screened so as to not be visible from the public right-of-way.

Home Occupation

A. Home occupations are permitted as shown on the Use Table, in existing and new homes, in outbuildings and in garages, subject to the following criteria and standards.

- (1) All home occupations shall:
 - (a) Be conducted by a resident of the lot;
 - (b) Be compatible with the other uses allowed in the district;
 - (c) Maintain the character of the neighborhood;
 - (d) Ensure the peace, privacy, quiet, and dignity of the area; and
 - (e) Avoid excessive noise, traffic, nuisance, fire hazard, and other adverse effects of business uses.

- (2) Home Occupation Level One
 - (a) Home occupations shall be conducted in a manner which does not give the outward appearance of a business.
 - (b) Home occupations shall be conducted within the home or accessory structure. Such use shall not alter the external appearance from a residential character.
 - (c) Home occupations shall not generate automobile or truck traffic that would exceed the volume of traffic that would otherwise be generated by typical residential use.
 - (d) Home occupations shall have no external storage of materials, equipment, containers, finished products or associated vehicles outside the home, outbuilding or garage other than that which is normally associated with residential use.
 - (e) Home occupations shall be incidental and secondary to the use of a dwelling unit for residential purposes. The space occupied by the home occupation itself does not necessarily have to be in the habitable area.
 - (f) Home occupations shall be limited to one (1) per lot and shall not have any non-resident employees.
 - (g) Home occupations shall not provide any additional off-street parking above and beyond the parking already required.
 - (h) Home occupations that require the storage of heavy

ARTICLE VI – GENERAL REGULATIONS

equipment or tractor trailer parking shall be considered Level Two home occupations.

(3) Home Occupation Level Two

- (a) Home occupations shall be limited to two (2) per lot.
- (b) Home occupations shall be incidental and secondary to the use of a dwelling unit for residential purposes. The space occupied by the home occupation itself does not necessarily have to be in the habitable area.
- (c) Each home occupation shall have only one sign which shall not exceed two (2) square feet.
- (d) Home occupations shall allow no more than two (2) non-resident assistants, interns, or employees at any one time per home occupation.
- (e) Home occupations shall provide off-street parking for any and all anticipated increase in vehicles at the dwelling above and beyond the parking already required by the provisions of this Code.

Industrial Use

- A. Materials stored outside shall be screened and buffered so as to not be visible from the public right-of-way.
- B. No activities that will become noxious or offensive due to the emission of noise, smoke, dust, odors, gas or light shall be conducted without Site Plan Review or Special Permit approval by the Planning Board.

Kennel

- A. For all outdoor kennel uses, vegetative or architectural screening shall be provided to screen the parking from the public Right-of-Way and/or neighboring residential uses.
- B. All animal and medical wastes shall be disposed of in a sanitary and environmentally safe manner, consistent in all respects with all state and federal requirements.
- C. Shall not be less than 200 ft from centerline of any roadway, 100 ft from any side or rear lot line. A 200 ft setback shall be required from any existing occupied structure on an adjoining parcel.

Lighting Standards

A. Purpose

It is the intent of these regulations to minimize glare, prevent or reduce light pollution, and provide the minimum light levels necessary for safe use of property.

B. Applicability

These regulations shall apply to all outdoor light fixtures.

C. Light levels

The minimum light level necessary to promote safe use of property shall be used. The trespass of light across property lines is prohibited except where it can be demonstrated that it is necessary for safety or security purposes.

- (1) Light levels at the boundaries of commercial lots that abut or adjoin lots with residential uses shall not exceed 0.1 foot-candles.
- (2) Light trespass between commercial lots is permitted in situations in which visibility between lots is necessary to promote safety, such as shared parking areas.
- (3) The light levels at commercial lot lines shall not exceed those found elsewhere on the lot.

D. Light Direction

- (1) No light shall be emitted from light fixtures in an upward direction except when illuminating the American Flag.
- (2) Fixtures shall be shielded and have cut-offs to direct light toward the ground or a structure to avoid light pollution.
- (3) The light source within the fixture shall not be visible.

E. Light Poles

- (1) On commercial lots, public spaces and sidewalks shall feature pedestrian-scaled lighting. Poles shall be no higher than 14’.

ARTICLE VI – GENERAL REGULATIONS

- (2) Parking lot light poles shall be no higher than 20' or the height of the primary structure, whichever is less.

Livestock

- A. The purpose of this section is to protect the health, safety and general welfare of the citizens of the Town, as well as to provide for the safety and health of horses and livestock other than household pets.
- B. In any zone in the Town wherein the keeping of livestock is allowed, the following regulations shall be complied with:
 - (1) A lot or parcel of at least one (1) acre shall be required for the keeping of horses, ponies or other livestock.
 - (2) Within the pasture or field there must be provided a barn or similar three-sided lean-to with a roof to provide shelter for the horses, ponies or other livestock. Such structure shall be sized to accommodate the type and number of proposed animals.
- C. Location
 - (1) All barns, stables and/or similar three-sided lean-tos with roofs for the purpose of sheltering horses, ponies or similar livestock shall be located a minimum of 100 ft from the road centerline or shoreline, or any neighboring dwelling.
 - (2) Pasture or field fencing may be placed at any point up to the property line. Said fencing shall be a minimum of fifty feet (50') from a neighboring dwelling.
- D. All pasture or field fences shall be constructed of such material and in such a manner as to prevent and preclude an escape of livestock.
- E. All fences, barns, three-sided lean-tos or similar structures must be maintained in a state of repair.
- F. Stables and similar enclosures must be built and maintained to avoid the creation of offensive odors, fly breeding or other nuisances.

Manufactured Homes

- A. Purpose. The purpose of this section is to promote the health, safety, and general welfare of the community, including the protection and preservation of the property of the Town of Wilmington and of its inhabitants by establishing specific requirements and regulations governing the installation of manufactured homes.
- B. The installation of the manufactured home shall conform to the requirements of the NYS Building Code and the United States Department of Housing and Urban Development.
 - (1) All manufactured homes within the Town of Wilmington shall be installed on a permanent foundation with the wheel and tongue removed.
 - (2) The manufactured home shall have an approved metal, wood, or other suitable skirting or framing, properly ventilated and attached, which shall enclose the area from the bottom of the floor line of the mobile home to the ground, and which shall be installed within thirty (30) days of the installation of the mobile home.

Off-Street Parking and Loading

- A. Off-street parking. Off-street parking spaces shall be required for all buildings constructed, expanded or engaged in new use after the effective date of this Code, except building alterations or additions that will not increase the gross floor area of the existing structure within any two year period by more than 5000 square feet or 25%, whichever is less.
 - (1) Parking spaces required in all districts shall be located in the side or rear yard on the same lot as the principal use unless otherwise permitted by the Planning Board.
 - (2) All square footage requirements refer to the gross floor area of the building or portion thereof dedicated to the use in question.
 - (3) Screening
 - (a) Off-street parking areas for all non-residential uses and apartment buildings located within 50 feet of single family, two family or multi family building dwellings shall be shielded by wall, fencing or other suitable material which shall serve to screen noise and uncontrolled entrance.
 - (b) Parking lots shall be screened from all street or rights-of-way in such a manner as to facilitate adequate site

ARTICLE VI – GENERAL REGULATIONS

distance at points of egress.

- (4) Parking spaces in residential districts shall be used only for parking directly related to a permitted use in such district and shall not be located in any required front yard.
- (5) Improved parking area requirements
 - (a) All parking areas shall be improved with stone, asphalt, pavers, or similar treatment.
 - (b) No improved parking areas shall be comprised primarily of dirt.
- (6) Parking or storage in any residential district of recreational vehicles or boats out-of-doors shall be confined to the rear or side yard and not within ten (10) feet of any lot line. No unlicensed, inoperable motor vehicle shall be parked or stored out-of-doors or other than in a fully enclosed structure in any residential district for a period to exceed six (6) months.
- (7) Parking lot landscaping requirements.
 - (a) Buffer planting shall be installed between the parking lot and adjacent properties.
 - (b) Buffer planting shall be installed between the parking lot and the street.
 - (c) If existing trees and vegetation are left on the site, these may be used in lieu of new plantings.
- (8) Parking lots with more than 40 (Forty) cars shall be designed in accordance with the following:
 - (a) One tree planted on the perimeter of the parking lot for every 10 cars or fraction thereof.
 - (b) One tree planted in the interior of a parking lot (on traffic islands) for every 10 cars or fraction thereof.
 - (c) Internal planted traffic islands shall be included to reduce the impact of the parking area and provide safety for vehicles moving within the area.

ARTICLE VI – GENERAL REGULATIONS

- (9) New plantings shall comply with the following sizes:
- (a) Major tree 3-1/2" caliper
 - (b) Flowering tree 2-1/2" caliper
 - (c) Evergreen tree 4-6' height
 - (d) Shrub 2-3' height or spread
- (10) Parking space size.
- (a) All requirements of with the Americans with Disability Act (ADA) shall apply to handicap parking spaces.
 - (b) Perpendicular parking (90°)
 - [1] Each parking space shall be a minimum of nine feet by eighteen feet (9' x 18').
 - [2] The minimum aisle width shall be twenty-four feet (24') for two-way traffic.
 - [3] The minimum aisle width shall be twenty-two feet (22') for one-way traffic.
 - (c) Angled parking (60°)
 - [1] Each parking space shall be nine feet by twenty-two feet (9'x 22').
 - [2] The minimum aisle width shall be twenty-three feet (23') for two-way traffic.
 - [3] The minimum aisle width shall be eighteen feet (18') for one-way traffic.

B. Off-Street Parking Schedule		
Use	Hamlet	Moderate Intensity, Low Intensity, Rural Use, Resource Management
Residential Uses		
Dwelling, Accessory	1 per dwelling unit	1 per dwelling unit
Dwelling, Single Family	2 per dwelling unit	2 per dwelling unit
Dwelling, Two Family	1.5 per dwelling unit	1.5 per dwelling unit
Dwelling, Multi-Family	1.5 per dwelling unit	1.5 per dwelling unit
Commercial Uses		
Agricultural Use, Personal	N/a	None
Agricultural Use	N/a	None
Bed & Breakfast/Inn	1 per guest room	1 per guest room
Boarding House	1 per guest room	1 per guest room
Campground, Group Camp	N/a	Per SPR
Church	1 per 10 seating spaces in main assembly room	1 per 10 seating spaces in main assembly room
Club	1 per 2 people at rated capacity	1 per 2 people at rated capacity
Contracting Business	1 per 1000sf GFA	1 per 1000sf GFA
Daycare Center	1 per 5 clients plus 1 per employee	1 per 5 clients plus 1 per employee
Drive-through Use	N/a	N/a
Firing Range	N/a	Per SPR
Fishing Club	1 per 10 members at maximum membership	1 per 10 members at maximum membership
Fuel Supply	N/a	Per SPR
Funeral Home	1 per 500sf GFA	1 per 500sf GFA
Game Preserve	N/a	1 per employee
Home Occupation I	None	None
Home Occupation II	1 per employee	1 per employee
Hotel/Motel	1 per guest room plus 1 per every 2 employees	1 per guest room plus 1 per every 2 employees
Hunting Club	N/a	Per SPR
Indoor Recreation Facility	N/a	Per SPR
Kennel	N/a	1 per employee
Nursery	1 per 400sf of retail sales area	Per SPR

ARTICLE VI – GENERAL REGULATIONS

Office	1 per 500sf GFA	1 per 500sf GFA
Open Space Recreation Use	Per SPR	Per SPR
Outdoor Furnace	N/a	N/a
Private Extraction	N/a	None
Public, Semi-Public, Institution	Per SPR	Per SPR
Public, Private Utility	Per SPR	Per SPR
Restaurant	Per SPR	1 per 200sf GFA
Retail Use	1 per 300sf GFA	1 per 300sf GFA
Riding Stable	N/a	Per SPR
Roadside Stand	Per SPR	Per SPR
Senior Housing	1 per dwelling unit	1 per dwelling unit
Tavern	Per SPR	1 per 200sf GFA
Telecommunications Tower	N/a	N/a
Tourist Attraction	Per SPR	Per SPR
Vehicle Repair	Per SPR	Per SPR
Vehicle Sales, Rentals	Per SPR	Per SPR
Vehicle Service	Per SPR	Per SPR
Veterinary Clinic	1 per 1000sf GFA	1 per 1000sf GFA
Windmills	N/a	N/a
Industrial Uses		
Sand and Gravel Extraction	N/a	1 per employee
Industrial Use	N/a	1 per employee
Light Manufacturing	1 per employee	1 per employee
Mineral Extraction	N/a	1 per employee
Sawmill/Chipmill	N/a	Per SPR
Warehouse, Storage	1 per 1000sf GFA	1 per 1000sf GFA

GFA: Gross floor area

SPR: Special permit review

N/a: Not applicable

None: No requirements

Sf: Square feet

Rated capacity: Fire capacity

C. Stacked and tandem parking restrictions

- (1) Except as otherwise provided herein, stacked parking is not allowed.
- (2) Stacked or valet parking may be allowed at the discretion of the Planning Board if an attendant is present to move vehicles. If stacked parking is used for required parking spaces, a written guarantee must be filed with the Town ensuring that an attendant will always be present when the lot is in operation. The requirements for minimum or maximum spaces continue to apply for stacked parking.
- (3) Tandem Parking is allowed for single-family detached dwelling units and two-family dwelling units.

D. Waivers

- (1) The total number of parking spaces required by this Code may be reduced by the Planning Board to the extent that the applicant can demonstrate that the regulation is unnecessarily stringent for reasons of:
 - (a) Unique use times;
 - (b) Shared or dual use;

- (2) Waiver Limits

During Site Plan Review, the Planning Board may waive up to fifty percent (50%) of the required spaces. If no Site Plan Review is required a Variance must be received from the Zoning Board of Appeals.

E. Off-Street Loading

- (1) At least one off-street loading space shall be provided for each commercial or industrial establishment hereafter erected and/or substantially altered to have a gross floor area in excess of 10,000 square feet. Space for off-street loading shall be in addition to space for off-street parking. The Planning Board may require an off-street loading space for commercial or industrial

ARTICLE VI – GENERAL REGULATIONS

uses that are less than 10,000 square feet or additional off-street loading spaces during review if it determines that such space is needed by the commercial or industrial use.

- (2) Each off-street loading space shall be subject to the following minimum requirements:
 - (a) Each berth shall be not less than 12 feet wide, 40 feet long and 14 feet in height when covered.
 - (b) Off-street loading space (or spaces) located within 50 feet of residential property shall be shielded by wall, fencing, or other suitable material which shall serve to screen noise and uncontrolled entrance.

Private Extraction

The following provisions apply to private extraction:

A. Excavation

- (1) Slopes caused by the excavation shall not exceed 30%.
- (2) Depth of excavation shall approach no closer than five feet to the average high point of the groundwater table measured annually.
- (3) Stockpiled material shall not exceed 35 feet in height.
- (4) The entry into the excavated area shall be curved so as to prevent a direct view from the public right-of-way.

B. Buffer Zones

- (1) A one hundred-foot no cut buffer zone shall surround the excavation within the limits of the property.
- (2) A one hundred-foot no cut buffer zone shall separate the excavation from any stream bed.

Restaurant/Tavern

- A. Ground-mounted utilities and dumpsters shall be screened with solid fencing and/or landscaping consistent with the architectural style of the structure. The use of enclosed structures for trash storage that complements the project architecture is encouraged.

- B. Dumpsters shall not be located within 20’ of any property lines.

Sawmills/Chipmills

There shall be a minimum setback of 400 feet from any existing dwelling unit.

Shoreline Requirements

In addition to all other requirements of this Code, the following shall apply to any navigable stream, river, lake or pond and to all property fronting on or having access to such body of water in the Adirondack Park.

- A. Lot Width

The minimum lot width along the shoreline shall be measured according to the Adirondack Park Land Use and Development Plan as follows:

<u>Category</u>	<u>Lot Width</u>
Hamlet	One hundred (100) feet
Moderate Intensity Use	One hundred (100) feet
Low Intensity Use	One hundred five (150) ft.
Rural Use	One hundred fifty (150) feet
Resource Management	Two hundred (200) feet

- B. Setback

The minimum setback of all principal and accessory buildings or structures in excess of one hundred (100) square feet, other than docks, boat houses or swimming floats hereinafter regulated, shall be a minimum distance from the mean high-water mark as follows for the respective classifications of the Adirondack Park Land Use and Development Plan:

<u>Category</u>	<u>Setback</u>
Hamlet & Moderate Intensity Use	Fifty (50) feet
Low Intensity & Rural Use	Seventy-five (75) feet
Resource Management	One hundred (100) feet

C. Cutting Restrictions on Shoreline Lots

- (1) Within 35 feet of the mean high water mark, no vegetation may be removed, except that up to a maximum of 30% of the trees in excess of six inches in diameter at 4 1/2 feet above ground elevation existing at any time may be cut over any ten-year period.
- (2) The above cutting standards shall not be deemed to prevent the removal of diseased vegetation or of rotten or damaged trees or other vegetation that presents safety or health hazards.
- (3) There shall be neither removal of vegetation nor any grading within 10 feet from the top of the slope of any stream bed or drainageway.

Sign Requirements

A. Applicability

The location, placement, painting, alteration, extension, installation or other erection of any sign other than an exempt sign as hereinafter defined shall require a Building/Use Permit in accordance with the standards and requirements as set forth hereunder. A permit is not required for maintenance, repair or repainting of a legal, existing sign so long as the size, configuration, location and message content are not altered.

B. General Provisions

(1) Construction

- (a) All signs shall be constructed of durable materials, maintained in good condition and not allowed to become dilapidated or in a state of disrepair.
- (b) The back or reverse side of a single-face sign visible from any public right-of-way shall be finished.

(2) Location

- (a) Signs, other than an official traffic sign, shall not be

ARTICLE VI – GENERAL REGULATIONS

located within ten (10) feet of the outside edge of the shoulder in the road bed.

- (b) No sign shall project more than three (3) feet from the wall of any building.
- (c) No sign shall be located on any roof.
- (d) No sign shall be located within ten (10) feet of any side or rear lot line, except where such sign is attached to and does not project more than eighteen (18) inches from the face of the building.
- (e) No sign shall be so located, erected or attached in a manner that obstructs either partially or wholly, the vehicular sight area which shall be maintained free from visual obstructions for a distance of twenty-five (25) feet in both directions from a street corner and a distance of ten (10) feet in both directions from a curb cut along a public right-of-way, so as to provide safe sight distance for both vehicles and pedestrians.
- (f) No sign shall be placed upon or be supported by any tree, rock or other natural object other than the ground; except for a "no trespass" or "posted" sign.
- (g) Fences, outbuildings and appurtenant structures shall not be considered a sign.

(3) Prohibited Signs

- (a) Portable signs as defined in this Code.
- (b) No signs visible from a navigable waterway.

C. Temporary Signs Not Requiring a Permit

- (1) Temporary commercial signs for special events may be displayed for no more than 14 days before such event and must be removed within 24 hours after such event.
- (2) Temporary commercial signs including, "Grand Opening," "End of

ARTICLE VI – GENERAL REGULATIONS

Season," "Closeout," and "Going Out of Business" or signs with similar messages, provided that they are no more than fifteen 15 square feet with no single dimension greater than five feet, shall be permitted for no more than 14 consecutive days within any thirty (30) day time period.

- (3) Temporary Commercial Directional and Informational Signs
 - (a) Shall be removed within 24 hours after the event or purpose for which they were displayed has been terminated.
 - (b) Such signs shall not attach to trees or be placed in a position that will obstruct or impair vision or traffic or in any manner create a hazard or disturbance to the health and welfare of the general public.
 - (c) Each business property site is allowed only three (3) such signs at a time.
- (4) Temporary municipal signs indicating a public event.

D. Temporary Signs Requiring a Permit

All other temporary signs require a permit and must comply with the following regulations:

- (1) Each Certificate of Compliance shall not exceed 30 days.
- (2) The sign shall be no more than 24 square feet with no single dimension greater than six feet.
- (3) Such signs shall not project more than 15 inches from the face of the building wall nor extend beyond the outer edge of the wall to which it is attached.
- (4) Such signs shall not be attached to trees or be placed in a position that will obstruct or impair vision or traffic or in any manner create a hazard or disturbance to the health and welfare of the general public.
- (5) Placement of temporary signs shall not hinder pedestrian traffic.

ARTICLE VI – GENERAL REGULATIONS

- (6) Each business property site is allowed only one such sign at a time. Each such sign shall be located on the property designated in the permit application.

E. Signs Not Requiring a Permit

The following signs do not require a Permit from the Town:

- (1) Any sign required by New York State Law.
- (2) Directional Signs
 - (a) Directional signs of a public or quasi-public nature identifying or locating a town, hospital, public building, parking lot, church, college, service or civic club, educational, cultural or public recreational building.
 - (b) In any district, a directional sign designating the location of an institution of public or quasi-public nature or the location of a community facility, or similar signs may be erected, provided that they not exceed six (6) square feet in area and shall not extend over any property line or within ten (10) feet of the outside edge of the shoulder in the road bed.
- (3) Commercial Incidental Signs

A commercial incidental sign such as a single name plate indicating professional services, the accessory use of a dwelling for a home occupation or permitted use such as a restaurant in a club, institution or other non-residential building, may be erected without a permit, provided that such sign shall not exceed two (2) square feet.
- (4) Real Estate Signs
 - (a) Not more than one (1) sign twelve (12) square feet in area located on the individual lot and/or building and/or buildings being offered for sale or lease thereof.
 - (b) Real estate signs advertising property for sale shall be removed within thirty (30) days of the sale of the property.

ARTICLE VI – GENERAL REGULATIONS

- (c) Signs advertising yard or garage sales, etc. may be displayed two (2) days prior to the sale and the day of the sale. Such signs must be removed the day after the sale. Additionally, such signs may not be displayed for more than three (3) consecutive days.
- (5) "Warning," "Private Drive," "Posted" or "No Trespassing" signs, not to exceed two square feet.
- (6) Historical tablets, memorial plaques or emblems installed by governmental agencies or religious or legally recognized not-for-profit.
- (7) During construction, repair or renovation, a single non-illuminated project sign denoting the developer, architect, engineer, subcontractors or contractor on the premises or a sign advertising the sale or development of a tract of land is permitted. The size of the sign shall not exceed 32 square feet. Such sign shall be 25 feet from the edge of pavement or improved travel surface of the roadway. Such sign shall be removed promptly upon completion of the work.
- (8) Signs designating credit cards accepted may be displayed, but such signs shall not occupy more than two square feet of the building façade.
- (9) Freestanding A-Type sign. One portable sign (sandwich board), one or two sided; not exceeding ten square feet per side in area may be displayed, per store front. Such signs must be placed so as not to interfere with pedestrian or vehicular traffic and must be removed during non-business hours.

F. Signs Requiring a Permit

The following signs require a permit subject to the limitations provided below.

- (1) Interior signs. No sign, or combination of signs, erected or maintained in the window of a building and visible from any public or private street or highway, shall occupy more than 35% of the window area.
- (2) Wall signs

ARTICLE VI – GENERAL REGULATIONS

Total wall signage shall not exceed one and one-half (1.5) square feet per linear foot of building frontage, ten percent (10%) of the total area of the building façade, or twenty-five (25) square feet, whichever is less.

(3) Projecting Signs

(a) Size

The maximum size of any projecting sign shall be no more than five square feet.

(b) Lighting

Projecting signs may be externally illuminated and may not be internally illuminated.

(c) Attachment

Signs shall be perpendicular to and attached to the building face of the premises which they advertise.

(d) Projection

Signs shall have a minimum projection of six inches and a maximum projection of three feet from the building face.

(e) Clearance

Signs shall have a minimum clearance of eight feet and a maximum clearance of 10 feet from the ground. All measurements of clearance are from the ground to the bottom of the sign.

(f) Encroachment

No sign shall be permitted to overhang the vehicular travel way of any highway, street or other vehicular public right-of-way.

ARTICLE VI – GENERAL REGULATIONS

(4) Awning and Canopy Signs

Awning lettering may contain names, numbers, and graphics limited to the business name or building name upon which the awning is located.

(5) Free-Standing Signs

- (a) Free-standing signs shall not be permitted in a front or side yard where the building in that yard is set back less than ten (10) feet from the property line.
- (b) Free-standing signs larger than eight (8) square feet are subject to the side and rear setback yard provisions in the dimensional table of this code.
- (c) No free-standing sign shall be erected or maintained where any part of the sign is closer than five feet to any existing building.
- (d) No free-standing sign shall have a display area exceeding 120 square feet with a maximum dimension of 12 linear feet on any one side, height or width.
- (e) No free-standing sign or its support shall exceed a height of 16 feet.

(6) Illuminated Signs

- (a) Any illuminated sign or lighting device shall employ only lights of constant intensity and no sign shall be illuminated by or contain flashing, intermittent or moving light or lights. The provisions of this section shall not be applied so as to prohibit a sign changing to show time and/or temperature.
- (b) All exterior lighting shall be downward facing with the light source shielded.
- (c) In no event shall an illuminated sign or lighting device be placed or directed as to illuminate a public street, highway, sidewalk or adjacent premises as to cause glare or reflection or light trespass that may constitute a traffic hazard or nuisance.

ARTICLE VI – GENERAL REGULATIONS

- (d) No lights or string of lights will be used for the purpose of advertising, displaying or otherwise attracting attention to the premises when not part of a sign or approved street or outdoor lighting. This shall not be interpreted to include season or holiday decorations temporarily displayed.
 - (e) No internally illuminated signs are permitted, except
 1. Neon product signs displayed in a window inside a building; and
 2. Neon “No Vacancy” signs with the illuminated lettering limited in size to no more than two square feet.
- (7) Off-Premise Signs
- (a) Off-Premise Signs shall be subject to special permit approval by the Planning Board.
 - (b) Any such business will be limited to two (2) off-premise signs, no larger than 32 square feet in area.
 - (c) No more than one off-premises sign may be located on any individual lot.
 - (d) All off-premises signs shall conform to all applicable requirements of the New York State Department of Environmental Conservation and the New York State Department of Transportation for off-premises signs within the Adirondack Park.
 - (e) A home occupation would not be allowed any off-premises sign other than those which are permitted by N.Y.S. D.O.T.

G. Placement and Number of Permitted Signs

- (1) Placement and Number
 - (a) Individual businesses may be granted a permit for two

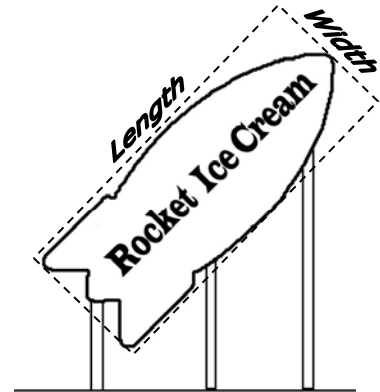
ARTICLE VI – GENERAL REGULATIONS

signs, one free-standing double-faced sign and one sign attached to a building, or two signs attached to a building (wall or projecting).

- (b) Businesses where the principal building is located with frontage on more than one street or public highway will be permitted one wall sign or one projecting sign facing each street and one freestanding sign.
- (c) The Planning Board may consider an application for an alternate arrangement in the number and size of signs when a building, group of buildings or lot under single ownership or management contain more than one distinct business. The total number and size of such signing shall not exceed the combination to which each single business would be otherwise entitled.

H. Measurement of Sign Display Area

In measuring the square foot area of signs permitted under this Code, the entire face of the sign and, in the case of any open sign made up of individual boards, letters, figures or designs shall be measured as one sign. Signs that have a structure that is integral to the message shall be measured as part of the display area. However, if the multiple faces of any sign are separated in any manner other than by being mounted on common posts, they shall be considered as separate signs. Only one (1) side of double faced signs shall be measured when determining the area.



I. Sign Removal

- (1) Any new sign, or temporary sign which does not comply with the regulations established for the issuance of a permit pursuant to this Code or which permit is revoked or which is deemed to be an abandoned sign; or which is not maintained in good and complete condition with lettering and graphics clean, legible, in true alignment and finishes in good repair, is prohibited and shall be brought into compliance.

ARTICLE VI – GENERAL REGULATIONS

- (2) The business, property and/or sign owner of any non-complying sign shall be in violation until such sign(s) is removed or repaired.
- (3) In the case of an unsafe sign which, in the opinion of the Codes Enforcement Officer, is an immediate peril to persons or property, the Code Enforcement Officer may order and arrange for the removal of such sign, without notice to the owner thereof.

J. Amortization of Non-Conforming Signs

Non-conforming signs existing either by variance previously granted or by conformance with the regulations existing when the original permit was granted, shall be removed or brought into compliance with the provisions herein no later than five (5) years after the adoption of this Code. Within one year, all flashing, twirling, moving, and “Mel’s Diner”-type signs shall be removed or brought into compliance.

Site Improvements and Screening

- A. Fencing and Screen-Planting may be required according to the following:
 - (1) Any use required by this Code to be fenced or screened from view shall provide a fence and/or structural or planting screen sufficient to enclose or so as to preclude entry or effectively screen such uses from view from abutting properties and the public right-of-way as is considered appropriate.
 - (2) Plans and site design for the installation of such fencing or screening as are required by this Code shall be reviewed and approved by the Planning Board prior to authorization of a Permit.
 - (3) Any fencing or screening installed in accordance with this Code shall be maintained in good order. Failure to maintain required fencing and screening shall be considered a violation of this Code.

Solar Collectors

- (1) Solar collectors which are not located on the roof or walls of a building, (i.e. free-standing solar collectors) shall be considered

ARTICLE VI – GENERAL REGULATIONS

accessory structures and shall abide by the dimensional requirements for the zone in which it is located.

- (2) Free-standing solar collectors shall be screened from the view of the public right-of-way and shall not obstruct or otherwise impede the views from existing buildings on neighboring properties.

Swimming Pools

Swimming pools may be erected in all districts provided they conform to all state laws and regulations and the following provisions:

- (1) Pools may be installed only as accessory to a residence for the private use of the owners or occupants of such residence and their families and guests, or as an accessory use to a primary lodging use.

- (2) Subject to approval

No work shall be commenced on the construction or installation of any swimming pool, including any excavation or removal of sand, gravel, topsoil or other materials, until and unless the plans and specifications have been approved and a permit has been issued by the Codes Enforcement Officer.

- (3) Pools and pool equipment shall be installed in compliance with the setbacks of this Code.
- (4) Pools shall be completely surrounded by a substantial fence constructed of natural or artificial materials. Such fence shall be in conformity with all New York State and Local rules and regulations.
- (5) No such pool shall adversely affect the character of any residential neighborhood and all lighting or other appurtenances shall be so arranged as not to interfere with neighboring uses.
- (6) Provisions for drainage from the pool will be adequate and will consider the capacity of any public storm water drainage system into which it is to flow.
- (7) A swimming pool to be constructed or installed as an accessory

use to a motel, tourist or like accommodation or as part of any commercial or club facility shall be permitted after application to, and issuance of a Permit therefore by the Codes Enforcement Officer. Such swimming pool shall be so located as not to cause a hazard to public safety or nuisance to adjoining uses and shall be designed and located in accord with acceptable engineering standards and any applicable County or State requirements.

Telecommunications Towers

A. Siting

Where technically feasible, new telecommunications facilities should be sited on existing telecommunications towers or utility distribution lines or properties of the Town of Wilmington designated for such use in order to preserve the aesthetic and scenic value of the Town.

B. Additional Special Use Permit Requirements

Applicants for a special permit to place, construct or modify telecommunications facilities within the Town of Wilmington shall submit the following additional information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:

- (1) Visual Environmental Assessment Form (Visual EAF), landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key viewpoints identified in the Visual EAF, existing tree lines and proposed elevations.
- (2) Preliminary report prepared by a licensed professional engineer describing:
 - (a) Feasibility of co-location on existing structures and telecommunications towers.
 - (b) Applicant's full map and grid coverage in the Town of Wilmington and adjoining towns.
 - (c) Surrounding topography and relation to line of sight transmission.
 - (d) Available road access, electric power and land-based telephone lines and/or microwave link capability.
 - (e) Required improvements or construction activities, including those within the public right-of-way or lands owned or controlled by the Town of Wilmington.

ARTICLE VI – GENERAL REGULATIONS

- (f) Identity of location, ownership and usage of currently existing telecommunications facilities within the Town of Wilmington and adjoining towns.
 - (g) Plans for construction of telecommunications accessory equipment building or structure and landscaping plan.
 - (h) Proposed mitigation measures for visual impacts.
 - (i) Proposed safety measures.
 - (j) Compatibility with existing telecommunications networks, and public safety.
 - (k) Emergency networks, such as fire, ambulance, police and 911.
- (3) In the case of an application for a telecommunications tower, additional information shall be provided describing the telecommunications tower height and design, foundation, including a cross section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of calculation of capacity.
 - (4) Demonstration of need for proposed telecommunications facility showing the impracticality of upgrading or expanding an existing site within the Town of Wilmington and adjoining towns.
 - (5) Demonstration that the proposed site is the most appropriate available site, based on technological feasibility, for the location of the telecommunications facility.
 - (6) Inventory of existing telecommunications facilities within the Town of Wilmington and adjoining towns outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility within the Town of Wilmington and adjoining towns.
 - (7) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
 - (8) A map showing the location of the premises for which the permit is sought and a sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the property boundaries of the proposed location.

ARTICLE VI – GENERAL REGULATIONS

- (9) In the case of an application for a telecommunications antenna or tower to be located on lands owned by a party other than the applicant or the Town, a copy of the lease agreement with the property owner shall be provided to the Planning Board.
- (10) Such other information as may be required by the Planning Board or its engineer.

C. General Requirements.

(1) Separation distance

Telecommunications towers shall be separated from all residential dwellings and building sites by a distance of 500 feet or 1 1/2 times the height of the tower, whichever is greater.

- #### (2) All telecommunications accessory structures shall comply with zoning setback regulations in the affected zone. In any event, a telecommunications tower shall be set back a distance at least equal to its height. Additional setbacks may be required by the Planning Board in order to provide for the public safety.

(3) Minimal visual impacts

All telecommunications towers and telecommunications antennas shall be sited and surrounded by wooded areas so as to have the least possible practical visual effect on the environment.

(4) Lighting

Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.

(5) Material and paint

Telecommunications towers and telecommunications antennas shall be of a galvanized finish, or painted gray above the surrounding tree line and gray or green below the tree line; the mountings of telecommunications antennas shall be non-reflective and of the appropriate color to blend with their background.

(6) Screening

(a) Vegetative screening

The following vegetative screening shall be provided: one row of native evergreen shrubs or trees capable of forming

ARTICLE VI – GENERAL REGULATIONS

a continuous hedge at least eight feet in height within two years of planting shall be provided to effectively screen the telecommunications tower base and accessory facilities. Additional screening may be required by the Planning Board to screen portions of the telecommunications tower from nearby residential property of important views.

(b) Architectural screening

Creative design measures, to camouflage facilities by integrating them with existing buildings and among other existing uses, are preferred.

(7) Height

The size of telecommunications sites shall be limited to the minimum required to provide the proposed area telecommunications services.

(8) Access road

Existing roadways shall be used for access to the site whenever possible.

(9) Telecommunications accessory structures

Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility.

(10) Telecommunications antennas

Due to their high visibility, dish and parabolic telecommunications antennas shall not be used when overland connections are possible. If dish and parabolic antennas are required, they should be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground mounted on slopes below the ridgeline wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes shall be of mesh construction wherever possible.

(11) Utility service

ARTICLE VI – GENERAL REGULATIONS

Electrical and land-based telephone utilities extended to service telecommunications sites shall be underground.

(12) Security provisions

Each site shall have a security program, including physical features such as fencing, anti-climbing devices or elevating ladders on the telecommunications towers.

(13) Safe zone

Telecommunications towers shall be designed so that in the event of failure they will fall within the setback area of the site and/or away from adjacent property.

(14) Noise

Noise producing equipment and towers shall be sited, constructed and/or insulated to minimize noise impacts on adjacent properties.

(15) Annual inspection and report

Telecommunications towers over 100 feet in height, including towers existing on the effective date hereof, shall be inspected annually by a licensed professional engineer, or at any other time upon a determination by the Codes Enforcement Officer that the telecommunications tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Codes Enforcement Officer.

(16) Removal

If the use of the tower for the authorized cellular telephone, voice, data or other forms telecommunications is discontinued for more than one year, its successors and assigns, shall remove the tower from the site within the following year. If the use of the herein authorized antennas for cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, their successors and assigns, shall remove the antenna array from the tower within the following six months. Once the time frames for removal have expired according to this condition, placement of a new tower on the project site or replacement of the antennas on the tower for cellular telephone, voice, data or other forms of wireless communications shall be subject to review and approval by the Agency in the form of a new or amended permit. The

ARTICLE VI – GENERAL REGULATIONS

landowners, their successors and assigns shall allow timely removal of the tower or antenna array pursuant to this condition.

Applicants shall post a bond or other suitable undertaking as a condition of the use permit in order to guarantee removal of abandoned structures.

(17) Post-installation field report

A post-installation field report identifying the facility's coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Town.

D. Proof of insurance

The applicant and the owner of the property where the telecommunications tower and/or antenna are to be located shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

E. Special permit term

Special permits granted pursuant to this section shall be issued for a term of 10 years or the period of time requested by the applicant, whichever is less.

Temporary Structures

- A. A building, mobile home, trailer or other structure, accessory to a construction project for office, storage or related construction use may be permitted upon issuance of a Permit by the Code Enforcement Officer. Such installation shall be temporary and continued only for the duration of the construction project to which it is accessory.
- B. The facility shall not be designed or used for living accommodations except for the non-permanent accommodation of a clerk-of-the-works or night watchman and shall be promptly removed upon completion of the construction project to which it is accessory.
- C. Upon notice from the Code Enforcement Officer, the Permit shall expire and the rights and privileges there-under shall be vacated. Failure to

remove such installation in a prompt manner after notice by the Code Enforcement Officer shall be considered a violation of this Code.

Vehicle Repair

- A. No more than one unlicensed vehicle not being serviced shall be stored on the property at any given time.
- B. Minimum setback of 200 feet from a residential district or any existing residential use.
- C. Any autowash, in addition to meeting the off-street parking requirements, shall provide four stacking spaces per bay on the lot to prevent the waiting of automobiles in the public right-of-way.
- D. All parking and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets. The general landscaping of the site shall be in character with the neighborhood. Such landscaping shall include the preservation of existing trees over eight (8) inches in diameter to the maximum extent possible.

Vehicle Service

- A. No more than one unlicensed vehicle not being serviced shall be stored on the property at any given time.
- B. Minimum setback of 200 feet from a residential district or any existing residential use, except in the Hamlet district where a setback of 25 feet with screening shall be required.
- C. Any autowash in addition to meeting the off-street parking requirements shall provide four stacking spaces per bay on the lot to prevent the waiting of automobiles in the public right-of-way.
- D. All parking and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets. The general landscaping of the site shall be in character with the neighborhood. Such landscaping shall include the preservation of existing trees over eight (8) inches in diameter to the maximum extent possible.

Waterfront Overlay District

A. Purpose and intent.

- (1) The Town intends to protect a scenic corridor along the Ausable River and its tributaries, in accordance with the Town of Wilmington Local Waterfront Revitalization Plan. The purpose of the district is to maintain a green, undeveloped corridor along much of the Town’s waterfront and to provide a consistent level of protection of the visual, environmental and historic resources within this corridor.
- (2) The existing vegetation along the Ausable River is effective in creating a secluded natural experience for waterfront land owners, boaters, hikers and other waterfront users. In addition, a vegetative buffer reduces the velocity and volume of stormwater runoff entering the River, increases infiltration, decreases erosion, and protects water quality. Vegetation filters out pollutants, including nutrients from fertilizers and agricultural pesticides. Therefore protection of the Ausable River waterfront is critical to its users as well as its ecology.
- (3) The Waterfront Overlay (WO) District is overlaid onto existing zoning districts. All provisions of the underlying districts remain in full force, except where provisions of the WO District differ. In such cases, the more restrictive provision shall apply. The principal control mechanisms of the WO are construction setbacks from the waterline, restrictions on the removal of natural vegetation within an established buffer zone adjacent to the water, and performance standards governing land use activities within the district.
- (4) The specific purposes of this district include the following:
 - (a) To preserve natural, scenic, and historic values along the Ausable River.
 - (b) To preserve woodlands, wetlands, and other green space.

ARTICLE VI – GENERAL REGULATIONS

- (c) To regulate uses and structures along the Ausable River to avoid increased erosion and sedimentation.
- (d) To encourage compatible land uses along the Ausable River.
- (e) To recognize areas of significant environmental sensitivity that should not be intensely developed.
- (f) To allow reasonable uses of lands while directing more intense development to the most appropriate areas of the community.

B. Permitted uses; prohibited uses.

- (1) The underlying zoning district determines the permitted principal uses, accessory uses and special permit uses within the Waterfront Overlay District.
- (2) The following uses, however, are specifically prohibited within the WO District:
 - (a) Junkyards and solid waste disposal or processing facilities.
 - (b) Mineral extraction or surface mining.
 - (c) Freight or truck terminals.
 - (d) Bulk fuel storage.
 - (e) Bulk industrial chemical storage or processing.
 - (f) Uses which may be noxious or injurious due to the production or emission of dust, smoke, odor, gases, fumes, solid or liquid waste, noise, light, vibration, or nuclear or electromagnetic radiation or due to the likelihood of injury to persons or damage to property if an accident occurs.

C. Development regulations.

(1) Setback requirements.

- (a) The minimum setback from the high water mark of the river shall be 200 feet for principal and accessory buildings.
- (b) Structures demonstrated to be directly related to the Ausable River may be authorized within the required setback distance; however, the Planning Board shall have the authority to impose additional conditions at the time of site plan review as may be warranted such as buffering or screening.

(2) Riparian area vegetated buffer. Riparian areas shall be maintained with a natural vegetation strip on each parcel or lot between the normal high water mark of the river and a point 100 feet from and perpendicular to the normal high water mark. Removal of vegetation in the riparian area shall require a special permit in accordance with the following requirements:

- (a) No clear-cutting shall be allowed.
- (b) One hundred percent of the vegetation strip may be selectively thinned as follows. No more than 30% of the number of trees six inches in diameter at 4.5 feet above the ground, or larger, shall be cut in any ten-year period. Additional trees may be removed if the applicant can demonstrate one or more of the following conditions:

- [1] It is clearly necessary for traffic safety.
- [2] It is clearly necessary for the development of an approved principal or accessory use or building, street, sidewalk, paved area, driveway, stormwater facility, utility or sewage system.
- [3] It is within 25 feet of the foundation of an approved structure.

ARTICLE VI – GENERAL REGULATIONS

- [4] It is diseased, dead or poses a clear danger to public safety, structure, utility or public improvement.
 - [5] It is related to agricultural activities, such as orchards or cultivation activities.
- (c) Existing soil and organic matter shall not be altered or disturbed within the vegetation strip or within 10 feet of the top of slope except in connection with an activity otherwise permitted.
 - (d) No structures shall be permitted within the vegetation strip, with the exception of docks, boat ramps, bulkhead, pump houses, utilities, pervious walkways, and elevated walkways which provide the property owner with reasonable access to the water. Park-related furnishings (benches, picnic tables, pavilions, refuse containers, etc.) and vehicular parking areas shall be permitted, if associated with public recreation areas or public access to the river.
 - (e) No potentially polluting material, including but not limited to lawn clippings, leaves, garbage, refuse containers, junk cars, junk appliances, or toxic materials, may be dumped or stored within the natural vegetation strip. The vegetation strip shall not contain commercial or industrial storage or display, manufacturing or processing activity, loading and unloading areas or vehicular parking areas.
 - (f) Where there is no preexisting natural vegetation, new development requiring Planning Board approval pursuant to this section or Site Plan Review shall include vegetation which shall screen the proposed development from the water and any existing waterfront trails or pathways. The width of this revegetated strip should be at least 75 feet from the high water mark of the river. The plant material should consist of indigenous trees, shrubs, and grasses.
 - (g) Reasonable efforts shall be taken during construction to ensure that trees protected by this section are not accidentally injured or removed, including root compaction by

ARTICLE VI – GENERAL REGULATIONS

equipment or change in grade level. The developer shall replace any protected trees which are destroyed or injured with mature trees of similar diameter.

(3) Protection of water quality.

- (a) There shall be no disturbance of existing Federal and New York State wetlands as identified by the NYS Department of Environmental Conservation located within this WO District unless appropriate mitigation measures are defined and approved pursuant to a permit from the Department of Environmental Conservation and US Army Corp of Engineers.
- (b) Stormwater and sedimentation control shall be guided by the standards of the New York Standards and Specifications for Erosion and Sediment Control, the New York State Stormwater Management Design Manual and the Town of Wilmington Stormwater Management and Erosion and Sediment Control Law.

(4) Docks and water surface use.

- (a) Not more than one dock shall be permitted per residence.
- (b) Multiple boat slips may be clustered.
- (c) Bulkhead docks or off-channel basins are preferred for permanent docking.

(5) Agricultural activities.

Soil shall not be tilled within 100 feet of the high water mark of the river or within 100 feet of direct tributaries that are within the WO District.

ARTICLE VI – GENERAL REGULATIONS

(6) Additional requirements and standards.

- (a) Parking, fences and signs shall not detract from water views and are subject to regulations contained in Article VI – General Regulations, respectively. The following signs are prohibited within 300 feet of the river:

- [1] Off-premises signs such as billboards.

- [2] Freestanding signs on site with a total height of greater than 12 feet above the surrounding average ground level or a sign area of greater than 40 square feet.

- [3] Signs intended to be towed from one location to another.

- (b) Development shall not interfere with or in any way prohibit, hinder or discourage the public use of waterfront trails.

- (c) New development shall provide opportunities for trail linkages as identified in the Town of Wilmington Local Waterfront Revitalization Plan. Any easement or trail construction should accommodate a pedestrian walkway or pathway having a right of way width of at least twenty (20) feet along the length of and abutting the Ausable River shoreline.

- (c) When located adjacent to historic structures, new buildings shall reflect the architectural character of the existing historic structure.

D. Site plan.

Any proposed principal building or any proposed or expanded paved area larger than 5,000 square feet that would be partially or entirely located within the WO District shall be submitted for review by the Planning Board. Site plan review shall be conducted in accordance with the procedures established in Article IX – Site Plan Review.

Windmills

The following shall apply to personal windmills:

A. Review and Approval

- (1) Windmills shall require a special use permit prior to their erection or use on any property with in the Town of Wilmington.
- (2) In addition to the requirements for special use permits outlined in this code, Windmills shall also be subject to the following requirements.

B. Application Materials

- (1) Location of tower and tower height, including blades.
- (2) Property lines and physical dimensions of the tax parcel.
- (3) Underground utility lines within a radius equal to the proposed tower height, including the blades.
- (4) Dimensional representation of the various structural components of the tower construction, including the base and footings.
- (5) A Full Environmental Assessment Form ("EAF") and a Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act.
- (6) Location, approximate dimensions and types of major existing structures and all uses on tax parcel. Design data indicating the basis of design, including manufacturer's dimensional drawings, installation and operation instructions.
- (7) Certification by a registered professional engineer or manufacturer's certification that the tower designs is sufficient to withstand wind load requirements for structures as established by the New York State Uniform Fire Prevention and Building Code.
- (8) Provide the zoning designations of the immediate and adjacent sites and the locations of any buildings or improvements that are within the "fall zone" of a proposed tower.
- (9) Proof of Liability Insurance at a sum to be determined by Town Attorney.

C. General Conditions

- (1) Number – No more than two Windmills may be located on a single parcel of property.
- (2) Visual Impact

ARTICLE VI – GENERAL REGULATIONS

- a) No windmill shall be installed in a location where it is determined by the Board to have a significant detrimental impact on the neighborhood character.
- b) Windmills shall not be installed in any location that would substantially detract from or block the view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way or publicly owned land within the Town of Wilmington.
- c) All power transmission lines from or to the wind generation and electricity generation equipment shall be located underground.

(3) Broadcast Interference

- a) Windmills shall not be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- b) Windmills shall not be installed in any location where their proximity to existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone will create interference with signal transmission or reception.

(4) Tower Access

- a) The tower-climbing apparatus shall be located no closer than 12 feet from the ground; or
- b) A locked anti-climb device installed on the tower; or
- c) The tower shall be completely enclosed by a locked, protective fence at least six feet high.

D. Dimensional Conditions

- (1) The maximum height of the windmill shall be determined by the Planning Board during the Special Use Permit process.
- (2) No windmill shall be erected in any location where its overall height, including blades, is greater than one and one half the distance from its base to any property line.
- (3) Guy wires and anchors for towers shall not be located closer than 10 feet to any property line.
- (4) No windmill shall be erected less than 100 feet from the centerline of any public road.

ARTICLE VI – GENERAL REGULATIONS

- (5) These setback requirements may be waived where the applicant submits a signed waiver from the owner(s) of the neighboring property, overhead utility lines, or other structures in relation to which the applicant does not meet the setback requirements set forth above.
- (6) Where an applicant proposes to locate one or more Windmills on a site consisting of multiple contiguous parcels owned or leased by the applicant, the term “property lines” shall mean the exterior boundaries of the contiguous parcels, which adjoin parcels not owned or leased by the applicant.

E. Safety

- (1) Each Windmill shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor. The application must include a statement by a New York State registered professional engineer certifying that the rotor and over-speed controls have been designed and fabricated for the proposed use in accordance with good engineering practices.
- (2) The engineer shall also certify the structural compatibility of possible towers with available rotors. This certification would normally be supplied by the manufacturer and include the distance and trajectory of the thrown blade from an exploding turbine or propeller according to the Loss of Blade Theory.
- (3) The minimum distance between the ground and any protruding blades shall not be less than 15 feet as measured at the lowest point of the arc of the blades.

F. Removal and Restoration

- (1) The Windmill shall be removed if it is not used to generate electricity for one continuous year. The property shall be restored within 18 months after the one year period.
- (2) A Removal/Restoration Bond in an amount no less than 125% of the estimated cost of the removal of the tower and restoration of the site shall be provided to the Town.
- (3) The applicant shall include the following information regarding decommissioning and restoring the site:
 - a) The anticipated life of the project;
 - b) The estimated decommissioning costs in current dollars;

ARTICLE VI – GENERAL REGULATIONS

- c) The method and schedule for updating the costs of decommissioning and restoration;
 - d) The method of ensuring that funds will be available for decommissioning and restoration; and
 - e) The anticipated manner in which the project will be decommissioned and the site restored.
- (4) The Town Board shall require the applicant to provide an appropriate and adequate demolition bond for purposes of removing the Windmill. Proof of this bond shall be provided upon request.
- (5) The sufficiency of the demolition bond shall be confirmed at least every five years by an analysis and report of the cost of removal and property restoration to be performed by a New York State licensed professional engineer, the cost of same to be borne by the applicant. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report.

**ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD)
PROVISION**

Intent

- A. Planned Development Districts (PDDs) provide a procedure for allowing flexible use of land use through creative planning and design. PDDs allow development matched to the unique characteristics of the site and allow innovative development techniques that might not otherwise be possible through the strict application of standard use, area, bulk and density specifications.
- B. PDDs recognize the unique environmental, physical, and cultural resources of the project area. PDD legislation adopted by the Town Board will replace the existing zoning for the parcel or parcels becoming PDDs and will become basis for detailed design, review and control of subsequent development.
- C. Planned Development Districts shall advance the goals of the Local Waterfront Revitalization Program and Comprehensive Plan, promote innovation in the design and layout of structures, ensure adequate provision of community services, and preserve significant natural features and permanently protect open space resources.
- D. Planned Development Districts shall encourage a mix of uses on one site which is not attainable through traditional zoning. The intent of PDDs is not to circumvent the variance or traditional zoning amendment process in order to establish single uses which would not normally be allowed by the underlying zoning district.
- E. While flexibility is encouraged, it is intended that conformance with the Local Waterfront Revitalization Program and Comprehensive Plan, municipal service availability and the purposes of this chapter shall ensure that the general welfare is protected through equal treatment under this uniform procedure.

The Town Board shall consider the health, safety and welfare of

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

the residents, as well as the aesthetics of all proposed project approvals.

Objectives

A Planned Development District (PDD) shall achieve the following objectives:

- (1) A development pattern which preserves outstanding natural topography and geological features, scenic vistas, trees, and prevents the disruption of natural drainage patterns.
- (2) An efficient use of land resulting in smaller networks of utilities and streets.
- (3) A development pattern in harmony with the land use intensity, transportation facilities, and community facilities objectives of the Comprehensive Plan and Local Waterfront Revitalization Program.
- (4) The preservation, renovation and/or adaptive reuse of existing structures of historic and/or local significance.
- (5) A maximum choice in housing environment and type, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), lot sizes and common facilities.
- (6) More usable open space and recreation areas and, if permitted as part of a project, more convenience in location of commercial and service uses.
- (7) The maintenance and creation of commercial services at varying scales and intensities essential to the recreation-commercial economy of Wilmington.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

General Requirements for Planned Development Districts (PDD)

A. Minimum project area

The project area of a Planned Development District shall consist of land undivided by roads, utility rights of ways or similar barriers. The minimum acreage and maximum % coverage for a Planned Development District in each Zoning District are as follows:

Zoning District	Minimum Acreage	Maximum Coverage
Hamlet	2 acres	40%
Moderate Intensity	2 acres	25%
Low Intensity	5 acres	15%
Rural Use	10 acres	15%

The Town Board and the Planning Board during their joint meeting described below may consider projects of lesser acreage where the applicant can demonstrate that the characteristics of his holdings meet the purpose and objectives of this section.

B. Project ownership

The project land may be owned, leased or controlled either by a single person, or corporation, or by a group of individuals or corporations. Such ownership may be a public or private corporation. The approved project plan shall be binding on the project land and owner(s).

C. Location of Planned Development Districts

The PDD District shall be available in all zones, where the applicant can demonstrate that the characteristics meet the purpose and objectives of this Code and the objectives of the

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

Local Waterfront Revitalization Program and Comprehensive Plan.

- D. In no case shall a PDD be approved if, in the judgment of the Town Board, the objectives of this section are not realized in the PDD design.
- E. In no case shall a PDD be approved unless a common water supply and/or sanitary sewer system are available to serve the development.
- F. Permitted uses

All uses within a PDD District shall be determined by the following provisions:

- (1) Residences may be of a variety of types, such as single-family dwellings, multi-family dwellings, townhouses and timeshares.
- (2) Commercial uses.
 - (a) Commercial uses may be a variety of scales, types and orientation from commercial recreation to general retail business to commercial retail services to wholesale commercial uses, except that the highway "strip" orientation of such uses shall be discouraged by the town.
 - (b) The height all buildings in a PDD shall not exceed three stories or 40 feet.
- (3) Land use intensity considerations.
 - (a) The overall intensity of a project within the Adirondack Park cannot exceed the amount of available development potential of the individual APA-LUDP Land Use Intensity Zone(s) within which the proposed PDD is located or the underlying zoning district(s).
 - (b) The overall intensity of a project cannot exceed the number of units allowed in the underlying minimum acreage requirements for that zone.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- (4) Common property in Planned Development Districts. Common open space totaling not less than 35% of the total Planned Development District shall be provided in perpetuity. This land shall be configured so as to achieve the intended open space or conservation objectives, and shall be exclusive of any land area used primarily for vehicular modes of transportation, including parking areas, garages, carports and other features. A property owners' association or similar mechanism for the long-term ownership and maintenance of this common open space shall be provided, subject to the approval of the Town Board, and the grant of a Conservation Easement to further ensure the protection of this open space may be required.

Planned Development District Application Procedure and Approval Process

- (1) General. Whenever a PDD is proposed, before any zoning and building permit shall be granted, and before any subdivision plat may be filed in the Office of the County Clerk, the prospective developer or his authorized agent shall apply for and secure approval of such Planned Development District in accordance with the following procedures.
- (2) Sketch Plan Review Procedure.
 - a. Prior to the formal filing of a PDD application, the applicant shall submit a sketch plan of the proposal to the Town Board.
 - b. During Sketch Plan Review, the Town Board, in its legislative capacity, establishes the boundaries of the proposed PDD and set limits on the nature and range of uses, geometric and site controls and overall project planning. Specifically, the Town Board shall review the sketch plan according to the following criteria:
 1. The proposal conforms to the Comprehensive Plan.
 2. The proposal meets local and regional needs.
 3. The proposal meets the intent and objectives and general requirements of this section.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- c. Once the Town Board has accepted a PDD sketch plan for consideration, it shall refer the sketch plan to the Planning Board. Such refusal or acceptance and referral shall take place within thirty (30) days of the submittal of the PDD sketch plan.
- d. The Planning Board, upon receipt of the referral, shall have ninety (90) days to issue an advisory report to the Town Board on the PDD sketch plan. Failure to issue an advisory report within forty-five (45) days shall be equivalent to a neutral recommendation. The advisory report shall make a recommendation as to whether the sketch plan, as submitted, meets the following sketch plan review criteria:
 - 1. The proposal is conceptually sound in that it conforms to accepted design principles in the proposed functional roadway and pedestrian systems, land use configuration, open space system, drainage system, and scale of the elements both absolutely and to one another.
 - 2. There are adequate services and utilities available or proposed to be made available in the construction of the development.
- e. Within forty-five (45) days of the Planning Board action, the Town Board shall take action to approve, with or without conditions, or disapprove the proposed PDD sketch plan, based on the criteria set forth above.
- f. If approved or approved with conditions and accepted, the applicant may proceed to formal PDD application.
- g. The Sketch Plan shall include:
 - 1. A map identifying the boundaries and physical characteristics of the proposed PDD, including uses and ownership of abutting lands.
 - 2. A conceptual development plan including a succinct narrative of the intent and attributes of the proposed district(s) that describes the location, conceptual design, and use of any lots and structures.
 - 3. The proposed amount, location and use of open space.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

4. Any anticipated changes in the existing topography and natural features.
 5. The location of the site with respect to nearby streets, rights-of-way, adjacent properties, easements and other pertinent features within two-hundred (200) feet.
 6. The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.
 7. Preliminary use and dimensional requirements, including:
 - (a) Permitted uses, conditional and accessory uses;
 - (b) Maximum development intensity of residential uses;
 - (c) Floor area ratio for non-residential uses;
 - (d) Lot coverage;
 - (e) Build-to distances from public and private ways;
 - (f) Setbacks for structures and parking areas;
 - (g) Minimum lot size;
 8. In addition, the following documentation shall accompany the sketch plan:
 - (a) Evidence of how the proposed mix of land uses is compatible with the goals of local and area-wide Plans.
 - (b) General statement as to how common open space is to be owned and maintained.
 - (c) Description of ownership of the site.
- (3) Formal application.
- a. After sketch plan review is complete, a formal application for establishment of a Planned Development District shall be made in writing to the Town Board and shall be accompanied by the applicable fee. The application shall also be accompanied by a full environmental assessment form or draft EIS as required by the SEQRA.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- b. The Town Board shall refer the application back to the Planning Board within thirty (30) days. The Town Board shall also refer the application according to the requirements of General Municipal Law 239 -m, -n, and -nn and SEQRA.
- c. The formal application shall describe the proposed physical changes to the project area in a report that includes graphics and a supporting narrative. The application shall contain sufficient facts and information for the Planning Board to make the findings required under this section. However, fully engineered plans and construction details are not required at this stage in the process. The following information is required; however, the level of detail shall be sufficient to provide the Planning Board with enough information to understand the proposed PDD:
 1. The desirability of the proposed land use in the proposed location.
 2. The existing character of the neighborhood.
 3. Access, circulation, parking, and transportation management.
 4. Proposed location, type and size of signs and driveways.
 5. Existing state; county or Town highways that provide access to the area.
 6. Vehicular traffic circulation features, including proposed highways and roadways within the PDD.
 7. Mobility (bikes, pedestrians, etc.) through the district.
 8. The general location of principal and accessory buildings in relation to one another and to other structures in the vicinity.
 9. The conceptual footprint, height and bulk of buildings and the intended use for such buildings.
 10. Other site improvements.
 11. Phasing program if phases are proposed.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

12. General landscaping concept and features.
13. Preservation of open space and natural areas, including the amount and location of open space, recreation area and pedestrian circulation areas and provisions for permanent protection.
14. Infrastructure improvement preliminary plans, including water supply source and delivery, drainage and energy.
15. The general plan for the collection and disposal of sanitary wastes.
16. The proposed safeguards to be provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general (if a full environmental assessment form was provided instead of a draft EIS).
17. Compatibility with the Comprehensive Plan.
18. Permitted uses, conditional and accessory uses.
19. Maximum development intensity of residential uses.
20. Floor area ratio for nonresidential uses.
21. Lot coverage.
22. Build-to distances from public and private ways.
23. Setbacks for structures and parking areas.
24. Minimum lot size.
25. The number, size and location of automobile parking areas and loading areas and the proposed access to such areas.
26. Minimum lot frontages and building massing.
27. Preservation of historic structure(s).

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

Planning Board Action

- (1) The Planning Board may require such changes in the preliminary plans as are found necessary or desirable to protect the established or permitted uses in the vicinity and to promote the orderly growth and sound development of the community.
- (2) The Planning Board shall make the required findings outlined below and recommend approval, approval with modifications or disapproval to the Town Board of such PDD application, and shall report its findings to the Town Board within sixty-two (62) days following the date of referral from said Town Board, unless mutually agreed to by the applicant and the Planning Board.
- (3) Planning Board approval of the preliminary plans shall not constitute nor imply approval of a building project, nor imply a permit for said project.

Required Findings.

The Planning Board shall develop written findings that document the facts and information relied upon to reach its conclusions in rendering a decision on a PDD. The following mandatory findings must be addressed:

- A. That the PDD is consistent with the purpose and intent of this Code including, where applicable, the development program and standards of this Code;
- B. That adequate community facilities and services exist and/or are to be accommodated as part of this planned development;
- C. That the PDD is compatible with the surrounding neighborhood context and character and is in conformance with the policies in the Local Waterfront Revitalization Program and Comprehensive Plan;
- D. That the PDD has mitigated potential undue adverse environmental impact as set forth during SEQRA review to the maximum extent practicable;

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- E. That the PDD will add to the long-term assets of the community and it will not erode the livability or economic viability of existing and neighboring areas;
- F. That the open space and recreation areas and facilities provided are commensurate with the level of development proposed and the pre-development open space resources potentially available for protection;
- G. That the provisions to protect open space resources are sufficiently secured by dedication where appropriate and desirable or legal instruments and/or monitoring programs and/or establishment or use of an existing trust are secured to ensure their continued long-term protection.

Town Board Action.

- (1) PDDs are considered a Class A Regional Project and shall be referred to the Adirondack Park Agency for review.
- (2) Upon receipt of the Planning Board's findings and recommendation, and Adirondack Park Agency's findings and recommendation, the Town Board may then consider the legal establishment of the Planned Development District.
- (3) The Town Board shall hold a public hearing thereon upon such notice as is required by this chapter for a zoning amendment and applicable provisions of the Town Law of the State of New York.
- (4) The Town Board shall render a decision on the application within sixty-two (62) days of the public hearing, unless an extension of time is agreed to by the applicant and Town Board.
- (5) The Planned Development District will be created by the Town Board through an official amendment to the Zoning District Map.

Site Plan Review of Building Projects within an Established PDD

- A. Application for approval of a building project within an established planned development district shall be made in writing to the Planning Board. Application shall be made by the

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

owner(s) or developer(s) of the area to be occupied by the building project.

- B. The applicant shall furnish necessary data, including maps and plans showing topography, building types and layout, setback, off-street parking and loading, ingress and egress, signs, existing and proposed amenities such as screening, planting and ornamental features and such other data and plans as may be required for an understanding of the proposed development.
- C. The data, maps and plans submitted with the application shall be prepared in sufficient detail that the Planning Board will be able to determine, among other things, the following:
 - (1) The specific location of principal and accessory buildings on the site in relation to one another and to other structures in the vicinity;
 - (2) The location and size of playgrounds and recreational areas proposed for the site and the location of such facilities in respect to the proposed buildings to be erected on the site;
 - (3) Existing state, county or town highways which provide access to the site;
 - (4) The vehicular traffic circulation features within the site, including proposed highways to be dedicated to the town, proposed roadways and driveways; and the number, size and location of automobile parking areas and loading areas and the access to such areas;
 - (5) The height, bulk and general architectural style of buildings and the intended use for such buildings;
 - (6) The pedestrian circulation and open space in relation to structures;

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- (7) The location, type and size of display signs, driveways and landscape features;
 - (8) The safeguards to be provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general;
 - (9) The water supply system, the stormwater management system and the sanitary waste collection and disposal system to be installed in the development.
- D. The Planning Board may require that changes be made in the submitted plans that are found necessary or desirable to meet the requirements of this Code and to conform to such other existing regulations of the Town concerning the approval of developments in general. Where a conflict between the PDD and the other land use laws exist the site specific PDD legislation shall prevail.
- E. No permit shall be issued for any project within a PDD until the Planning Board determines that the proposed project is consistent with Site Plan Review and the approved PDD.
- (1) The PDD approved by the Town Board shall guide the planning and design of subsequent projects and/or phases of development within the PDD.
 - (2) A building project within a planned development district shall conform in all respects to the approved plans.
 - (3) The Planning Board, as appropriate, shall document that the following requirements have been met prior to approval of a development project within a PDD:
 - (a) The project is in conformance with the approved development program and the design standards.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- (b) The minimum setbacks required for the underlying zoning district shall apply to the periphery of the project;
 - (c) All other zoning requirements of the district, except those modified or specifically deemed not applicable by the Zoning Enforcement Officer, shall be met;
 - (d) The development plan shall specify reasonable periods within which development of each phase of the planned development may be started and shall be completed.
- (4) The Planning Board shall hold a public hearing on any such proposed building project as finally submitted for approval.
 - (5) After the public hearing, the Planning Board, may approve, approve with modifications, or disapprove the application.

Subdivision Review

Applications for subdivision in a Planned Development District shall be made to the planning board in accordance with the Subdivision Regulations of the Town of Wilmington. In the event of a conflict between such Subdivision Regulations and this Article or any requirement imposed hereunder, the provisions of this Article shall apply.

Conditions to Run With Land

All conditions imposed by the Town and Planning Boards, including those the performance of which are conditions precedent to the issuance of any permit necessary for the development of all or any part of the entire site, shall run with the land and shall neither lapse nor be waived as a result of any subsequent change in the tenancy or ownership of any or all of said area. Such conditions shall further be a part of any certificate of occupancy issued for any use or structure in such development.

Existing Rights Preserved

Any use lawfully occurring in any Planned Development, or PUD district in existence on the effective date of this Code shall be permitted to continue and any buildings, appurtenant structures or facilities

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

accommodating such uses may be renovated, repaired and maintained without being subject to the provisions of this Article, provided that any change in use or new or additional building project shall be subject to the Site Plan Review provisions of this Article. Applications pending on the effective date hereto for a building project in an existing or proposed Planned Development district shall continue to be reviewed and acted upon by the administrative board conducting such review and final action of such board shall be deemed to be a recommendation to the Town Board hereunder.

PDD Amendment Procedure

A. Application

- (1) An application for amendment of an established Planned Development District shall be made in writing to the Town Board and shall be accompanied by the applicable fee. The application shall also be accompanied by a full environmental assessment form or draft EIS as required by the Environmental Conservation Law. The Town Board shall refer the application to the Planning Board within 30 days of the date of application.
- (2) The application shall describe the proposed physical changes to the project area in a report that includes graphics and a supporting narrative. The application shall contain sufficient facts and information for the Planning Board to make the findings required under this section.

B. Planning Board Action

- (1) The Planning Board may require such changes in the preliminary plans as are found necessary or desirable, to protect the established or permitted uses in the vicinity and to promote the orderly growth and sound development of the community.
- (2) The Planning Board shall make the Required Findings outlined below and recommend approval, approval with modifications or disapproval to the Town Board of such PDD application, unless said application is abandoned, and shall report its findings to the Town Board within 62 days following the date of referral from the Town Board, unless

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

an extension is mutually agreed to by the applicant and the Planning Board.

- (3) Planning Board approval of the preliminary plans shall not constitute nor imply approval of a building project for the area included in the application. Planning Board approval of the preliminary plans shall not constitute nor imply a permit for said project.

C. Required Findings

- (1) The Planning Board shall develop written findings that document the facts and information relied upon to reach its conclusions in rendering a decision on a PDD. The following mandatory findings must be addressed:
 - (a) That the PDD is still consistent with the purpose and intent of this ordinance including, where applicable, the development program and standards of this Code;
 - (b) That adequate community facilities and services exist and/or are to be accommodated as part of this planned development;
 - (c) That the PDD is still compatible with the surrounding neighborhood context and character and is in conformance with the policies in the Comprehensive Plan;
 - (d) That the PDD has mitigated potential undue adverse environmental impact as set forth during SEQRA review to the maximum extent practicable;
 - (e) That the PDD will add to the long-term assets of the community and it will not erode the livability or economic viability of existing and neighboring areas;
 - (f) That the open space and recreation areas and facilities provided are commensurate with the level of development proposed and the pre-development open space resources potentially available for protection;

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION

- (g) That the provisions to protect open space resources are sufficiently secured by dedication where appropriate and desirable or legal instruments and/or monitoring programs and/or establishment or use of an existing trust are in place to ensure their continued long-term protection.

D. Town Board Action.

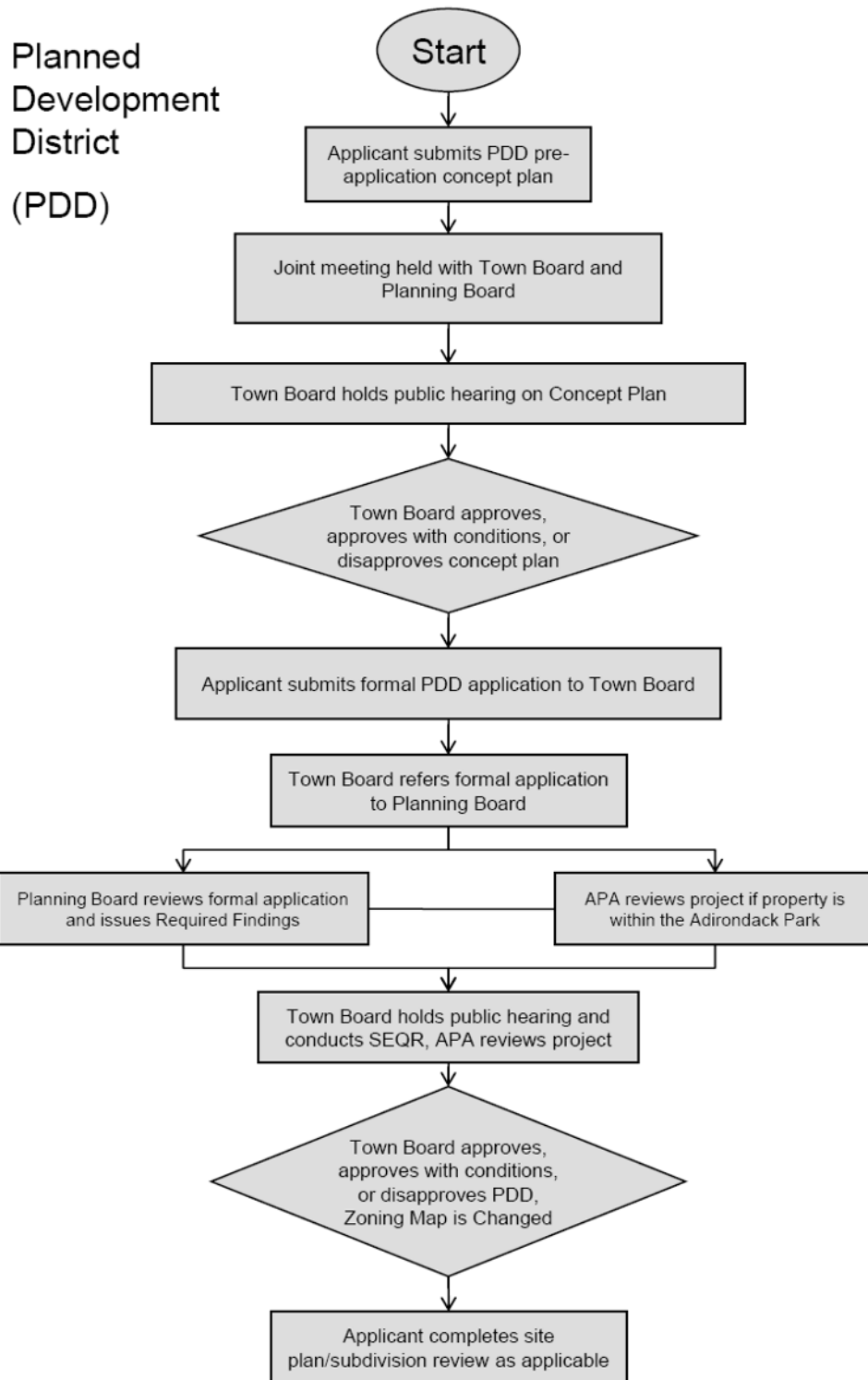
- (1) Upon receipt of the Planning Board's findings and recommendation, the Town Board may then consider the legal modification of the Planned Development District. The Town Board shall hold a public hearing thereon upon such notice as is required by this Code for a zoning amendment and applicable provisions of the Town Law of the State of New York.

Other Provisions

PDD Legislation Repealer. The Town Board shall act to return the property to its prior zoning district classification if it finds that:

- A. Performance requirements which may have been specified by the Town Board in its PDD approval action, such as a time limit for either initiation or completion of improvements and other construction work on the proposed development have not been met, unless the Town Board, upon specific application and for good cause, authorizes an extension of such performance requirement.
- B. The PDD approval has expired by the failure of the project sponsor to make substantial and continuing progress in the development of the project for more than three years from the date of final approval. The determination of substantial and continuing progress shall be determined solely by the Town Board, which may consider any number of factors in making its determination, including the securing of project financing and changed market conditions.
- C. If a Planned Development District expires, any buildings constructed or used may continue as a non-conforming use and such shall continue to be bound by the previous PDD approval.

ARTICLE VII - PLANNED DEVELOPMENT DISTRICT (PDD) PROVISION



ARTICLE VIII - CONSERVATION SUBDIVISIONS

Purpose and Applicability

- A. To allow for greater flexibility and creativity in the design of residential developments;
- B. To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water bodies and wetlands, in a manner that is consistent with the Town of Wilmington Local Waterfront Revitalization Program;
- C. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- D. To minimize the total amount of disturbance on the site;
- E. To further the goals and policies of the Town of Wilmington Local Waterfront Revitalization Program;
- F. To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.
- G. For major subdivisions the Planning Board may require Conservation Subdivisions. In order for the Planning Board to make such a determination, at least one (1) of the following conditions shall be found on the parcel:

- (1) The land contains significant resources with conservation value;



Figure 1 Example of a Conservation Subdivision

ARTICLE VIII - CONSERVATION SUBDIVISIONS

- (2) The parcel adjoins other land that, when combined would result in a substantial amount of land with conservation value, regardless of whether or not the adjoining parcels have been protected as open space.
- (3) That there are unique and extraordinary physical, environmental, or cultural circumstances on the parcel, which demonstrate that conservation subdivision is the most appropriate method of subdivision.

H. The following Conservation Subdivision process may be applied to minor subdivisions at the request of the applicant and the agreement of the Planning Board.

Review Process

The Conservation Subdivision process involves the following steps:

- (1) Conservation Analysis
- (2) Concept Plan
- (3) Preliminary Plat Review
- (4) Final Plat Review

Conservation Analysis

- A. Applicants shall prepare a Conservation Analysis, consisting of inventory maps, survey and topographic maps, written description of the land, and a written analysis of the conservation value of various site features.
- B. The Conservation Analysis shall identify site features with conservation value on the lot, including but not limited to the following:
 - (1) "Constrained land" as defined herein. Constrained land includes:
 - (a) All Wetlands
 - (b) Watercourses/waterbodies with a 100 foot buffer
 - (c) 100-year floodplains
 - (d) Slopes over 15% which are 2,000 square feet or more of contiguous sloped area
 - (2) Active Farmland, Agriculture Districts, Prime Agricultural Soils and/or Soils of Statewide Importance for Farming

ARTICLE VIII - CONSERVATION SUBDIVISIONS

- (3) Significant habitat as defined by the NYSDEC Natural Heritage Program
 - (4) Existing or proposed public trail corridors
 - (5) Scenic viewsheds, as determined through the completion of a NYS Department of Environmental Conservation Visual Environmental Assessment Form, or as otherwise defined in any Natural Resources inventory or similar plan adopted by resolution of the Town Board
 - (6) Unique geological features
 - (7) Documented aquifers and aquifer recharge areas
 - (8) Sites identified as historic on any federal, state, or local register of historic places
 - (9) Public parks and publicly accessible recreation lands
 - (10) Unfragmented forest land
 - (11) Buffer areas necessary for screening new development from adjoining lots and from other publicly accessible areas including roads, parkland, and nature preserves
 - (12) Stone walls
 - (13) Highly erodable soils
 - (14) Trees 8" in average diameter at 4 feet from the ground or larger, except where such trees are part of a larger stand of trees, in which case the entire stand may be identified as a unit
 - (15) If requested by the Planning Board after the initial submission of the Conservation Analysis, other land area exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.
- C. The Conservation Analysis shall result in a composite map (i.e. overlay map) based on the information collected above, and shall identify areas that are suitable for development and those lands which have conservation value and should be protected from development.

Planning Board Action on Conservation Analysis

- A. The Planning Board shall make Conservation Findings.
- B. The Conservation Findings shall be expressed in a written report and express the determinations of the Board as to which areas have

significant conservation value and should be protected from development by conservation easement or deed restriction. These determinations shall be based upon an analysis that weighs the relative importance of the environmental resources on the site. The Planning Board may incorporate information provided by, but not limited to, its own research, site visits, consultants, other qualified experts or agencies or from public comments. If, as a result of the SEQRA review, information arises to cause the Conservation Analysis to change, such change will be made at that time, by the Planning Board, in its sole discretion.

- C. The outcome of the Conservation Analysis and the Planning Board's Conservation Findings shall be used as the basis for Concept Plan Review.

Concept Plan Review

- A. At the conclusion of the Conservation Analysis process a Concept Plan shall be submitted.
- B. The Concept Plan shall show the following:
 - (1) Preferred locations for development.
 - (2) Land to be permanently preserved and recommended conservation uses, ownership, and management guidelines for such land.
 - (3) Land suitable for stormwater management facilities, which may be located within the preserved land area
 - (4) Proposed lot locations and roads.

Open Space Conservation

At least 40% of the total acreage shall be preserved by conservation easement or deed restriction and shown as such on the Concept Plan, based upon the Conservation Analysis.

Preliminary and Final Plat Review

Once the concept plan is approved, the applicant must follow all processes and requirements pertaining to Preliminary and Final Plat for Major

ARTICLE VIII - CONSERVATION SUBDIVISIONS

Subdivisions pursuant to the Subdivision Regulations of the Town of Wilmington.

Lot Sizes in Conservation Subdivisions

- A. The Planning Board shall determine appropriate lot sizes in the course of its review of a Conservation Subdivision based upon the criteria established in this section and the requirements of the NYS Department of Health.
- B. In order to permit a clustered lot configuration, wells and septic systems as well as stormwater management facilities may also be located in areas of protected open space, provided that necessary easements are provided for maintenance of these facilities and the conservation value and/or environmental quality of the protected open space is not diminished.

Other Area and Dimensional Requirements

- A. Compliance with the regulations governing the Adirondack Park:
 - (1) The number of Principle Building Units allowed shall not be exceeded.
 - (2) Building rights are not transferred across boundaries of land use areas as shown on the Official Adirondack Park Land Use and Development Plan Map adopted pursuant to section 805 of the Adirondack Park Agency Act and incorporated into this chapter pursuant to Adirondack Park Land Use and Development Plan Map.
- B. There shall be no required area, bulk, or dimensional standards in a Conservation Subdivision, except building height as stated in the Dimensional Table.
- C. The applicant shall specify dimensional requirements for a proposed Conservation Subdivision by identifying setbacks and other lot dimensions to be incorporated into the Final Plat. The Planning Board may vary bulk requirements to accommodate a Conservation Subdivision.

Permanent Open Space in Conservation Subdivisions

- A. Conservation value of open space.
 - (1) Open space set aside in a Conservation Subdivision shall be permanently preserved as required by this Code. Developed lands shall not impact the conservation value of the permanent open space.
 - (2) The open space protected pursuant to this Code must have conservation value as determined by the Conservation Findings.
 - (3) A significant amount of protected open space should be contiguous and configured in such a manner as to achieve the conservation goals.

- B. Permanent preservation.
 - (1) A permanent deed restriction or a conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources, or similar conservation purposes, shall be granted with the approval of the Planning Board. Such deed restriction or conservation easement shall be approved by the Planning Board and shall be required as a condition of Final Plat approval.
 - (2) The permanent protection shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry, and passive recreation), and shall not be amendable to permit such use. Access roads, driveways, wells, underground sewage disposal facilities, local utility distribution lines, stormwater management facilities, trails, temporary structures for passive outdoor recreation, and agricultural structures shall be permitted on preserved open space land with Planning Board approval, provided that they do not impair or impact the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices.
 - (3) Permanent open space may be preserved as a portion of one large lot held in private ownership or may be contained in a separate open space lot.

ARTICLE VIII - CONSERVATION SUBDIVISIONS

C. Notations on final plat.

Preserved open space land shall be clearly delineated and labeled on the subdivision Final Plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of lots in the subdivision and the public to the open space land. The Final Plat shall clearly show that the open space land is permanently preserved for conservation purposes required by this Code, and shall include deed recording information in the County Clerk's office.

D. Ownership of Open Space Land.

Open space land shall be protected but may be owned in common by a homeowner's association (HOA), offered for dedication to Town, County, or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.

E. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

- (1) The HOA must be a condition of the approval and must be established before the first building permit is issued, and must comply with all applicable regulations of the New York State Attorney General and the provisions General Business Law, and filed with the Town Clerk.
- (2) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
- (3) The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.
- (4) The HOA must be able to adjust the fees to meet changed needs.

ARTICLE VIII - CONSERVATION SUBDIVISIONS

- (5) The applicant shall make an irrevocable, conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may only be accepted upon any one of the following circumstances:
 - (a) upon the failure of the HOA to take title to the open space from the applicant or other current owner, or,
 - (b) upon dissolution of the association at any future time, or,
 - (c) upon failure of the HOA to fulfill its maintenance obligations hereunder, or,
 - (d) upon failure to pay its real property taxes.
- (6) Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
- (7) The Town's Counsel shall find that the HOA documents presented satisfy the conditions in Subsections (1) through (6) above, and such other conditions as the Planning Board shall deem necessary.

F. 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 any purpose or structure prohibited by the conservation easement or for the storage or dumping of any matter, including, but not limited to fill, refuse, junk, or other offensive or hazardous materials.
- (2) If the Town Board finds that the provisions of Subsection F(1) above are being violated, 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.

ARTICLE IX - SITE PLAN REVIEW

A. Purpose of article.

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

1. The objectives of the Town of Wilmington Land Use Code, Comprehensive Plan and Local Waterfront Revitalization Program.
2. Their effect on surrounding properties.
3. The ability of the Town to accommodate the growth resulting from the proposed use without undue adverse effect on the Town and its citizens and taxpayers, and the protection of the environment, health, safety and welfare of the Town and its citizens.

B. Applicability.

Uses requiring site plan approval.

1. New use if designated in the Use Table.
2. Change in use if designated in the Use Table.
3. Proposed development occurring along a Scenic Road as designated in this code and as designated in the Use Table.
4. Expansion of APA Class A and B Regional Projects by 25 percent or more.
5. All new commercial development activities within the Town shall require site plan review and approval before being undertaken.
6. All projects exceeding Type I thresholds of Part 617 of the New York State Environmental Quality Review Act (SEQRA) shall be subject to Site Plan Review and referred to the APA for Class A regional project review concurrent with the Site Plan review process.

C. Site Plan Review Procedure.

ARTICLE IX – SITE PLAN REVIEW

1. Application shall be made to the Planning Board using forms supplied.
 2. Prior to formal submission of a detailed site plan, applicants may schedule an optional Sketch Plan conference.
 3. The purpose of the sketch plan conference is to allow the Planning Board to review the basic site design concept, provide the applicant with constructive suggestions, and generally, to determine the information to be required for the site plan. In order to accomplish these objectives, the applicant shall provide 10 copies of the following:
 - i. A brief narrative and preliminary concept showing the locations and dimensions of principal and accessory structures, parking areas, and other planned features and any anticipated changes in the existing topography and natural features.
 - ii. A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features within 200 feet.
 - iii. A topographic or contour map of adequate scale and detail to show site topography.
 4. If the Planning Board determines that the information submitted for the sketch plan is sufficient, it may, at its discretion, conduct site plan review at the sketch plan meeting without requiring additional information or scheduling a separate site plan meeting.
 5. If additional information is requested by the Planning Board after the sketch plan conference, a complete application shall be submitted to the Code Enforcement Officer. The Code Enforcement Officer shall notify the Planning Board and the Adirondack Park Agency within 10 days and shall provide a copy of the application to each interested body.
- D. Application Content.
1. The Planning Board or the Code Enforcement Officer (CEO) may request that the applicant provide the same information requested at the Sketch Plan conference and

ARTICLE IX – SITE PLAN REVIEW

may further request any of the items listed the site plan checklist below. The Planning Board and CEO are not limited to this list and may request any additional information it deems necessary or appropriate. In determining the amount of information it will require, the Planning Board will consider the type of use, its location, and the size and potential impact of the project.

2. At least two weeks in advance of the scheduled Planning Board meeting date at which a site plan is to be considered, 10 copies of the application for site plan approval shall be submitted to the Code Enforcement Officer.
3. The proposed site plan shall show the information requested by the Planning Board.
4. Site plan checklist:
 - (1) Existing conditions.
 - (a) Legal data.
 - [1] Name and address of applicant and authorization of owner, if different from applicant.
 - [2] Name and address of owner(s) of record, if different from applicant.
 - [3] Name and address of person or firm preparing the plan and map.
 - [4] Ownership intentions, such as purchase options.
 - [5] Current zoning classification of property, including exact zoning boundary if in more than one district.
 - [6] Property boundary line plotted to scale. Distances, angles and area should be shown.
 - [7] North arrow, scale and date.
 - [8] Locations, widths, elevations and names of existing and proposed adjacent streets.
 - [9] Property lines and names of owners of adjoining parcels.
 - [10] Location, width and purpose of all existing and

ARTICLE IX – SITE PLAN REVIEW

proposed easements, setbacks, reservations and areas dedicated to public use within and adjoining the property.

- [11] Description of all existing deed restrictions or covenants applying to the property.
- [12] The identification of any state or county permits required for execution of the project.
- [13] Other requirements which the Planning Board might deem necessary, including but not limited to a licensed survey.

(b) Natural features.

- [1] Geological features, such as depth to bedrock and the location of rock outcrops.
- [2] Topographic features, including a map showing existing slope at two-foot contour intervals.
- [3] Vegetative cover, including existing wooded areas, significant isolated trees and similar features.
- [4] Soil characteristics, such as load bearing capacity and drainage capacity.
- [5] Hydrologic features should include drainage and runoff patterns, flood hazard areas, wetlands and depth to groundwater.

(c) Existing development and infrastructure.

- [1] Location and dimensions of major buildings and structures and their use.
- [2] Location and width of roads and paths, including site access.
- [3] Location, size and flow direction of sewers, water supply lines and culverts. Major electric, fuel and utility lines and appurtenances should also be shown.
- [4] Location of other existing development and uses, including parking and loading areas, fences, trees and landscaping.

(2) New conditions.

(a) Proposed development.

- (1) Grading and drainage plan showing proposed

ARTICLE IX – SITE PLAN REVIEW

topography at appropriate contour intervals. This information shall be combined with the map of existing topography.

- (2) Location, proposed height and use of buildings and other structures, such as retaining walls, fences, outdoor storage tanks, air-conditioning units and waste disposal units.
- (3) Location, proposed use, design and construction materials of improvements not requiring structures, such as parking, loading and outdoor storage areas.
- (4) Location and arrangement of site access and egress, including all paths for pedestrian and vehicular travel within the site. Information should include profiles and cross sections of roadways and sidewalks showing grades, widths and location and size of utility lines.
- (5) Location and size of water and sewer lines and appurtenances. Any means of water supply or sewage disposal other than extensions of existing systems should be described, including location, design and construction materials.
- (6) Location, design and construction materials of all energy distribution facilities, including electric, gas and solar energy.
- (7) Location, size and design and construction materials of all outdoor signs.
- (8) General landscaping plan and planting schedule, including areas of natural vegetation to remain, the treatment of buffer areas and the location and type of trees to be planted.
- (9) Estimated project construction schedule with possible phasing plan for large projects.
- (10) Additional specifications for materials.
- (11) Performance bond, amount, completion schedule, public improvements covered, inspection and bond approval if required.
- (12) Any other requirements which the Planning Board might deem necessary, including but not limited to a licensed survey.
- (13) Environmental Review. Applications for site plan review and approval shall be accompanied

ARTICLE IX – SITE PLAN REVIEW

by a short-form or a long-form Environmental Assessment Form (EAF) or a draft Environmental Impact Statement (EIS), as required by SEQRA.

NOTE: All plans shall be at a scale of one inch equals 40 feet or larger scale showing the proposed development and their immediate environs. When development is proposed for larger lots, those areas left undeveloped may be shown on a site location map at an appropriate scale and level of detail.

E. Planning Board Action.

1. Following receipt of an application for site plan review, the Code Enforcement Officer shall notify the Planning Board and the Planning Board shall determine its completeness at its next scheduled meeting.
2. Notices. Applications that meet the criteria of General Municipal Law (GML) Section 239-m shall be sent to the Essex County Planning Board prior to the Planning Board decision. Applications that meet the criteria of 239-nn shall be noticed to neighboring municipalities.
3. The Planning Board shall comply with Part 617 the SEQRA.
4. Optional Public Hearings. Within 62 days following the determination of a complete application by the Planning Board, the Planning Board may hold a public hearing if a public hearing is deemed necessary. In determining whether a public hearing is necessary, the Planning Board shall be guided by the expected level of public interest in the project and the possibility of an eventual disapproval. Applicants may request a public hearing. When an applicant requests a public hearing, no site plan review project may be disapproved without such a hearing.
5. Public Hearing Notice. The Planning Board shall notice the public hearing by publication in the official newspaper at least five days prior to the date of the public hearing.

ARTICLE IX – SITE PLAN REVIEW

6. A copy of the public notice shall be mailed to the Adirondack Park Agency. The Agency shall be a full party in interest with standing to participate in any and all proceedings conducted pursuant to this section.
 7. Planning Board Decision. The Planning Board shall render a decision within 62 days of receipt of a complete application or within 62 days of the close of a public hearing, if required. Said decision shall be in the form of an approval, approval with conditions, or disapproval based on the criteria of this Code. The decision may be recorded in a Notice of Decision and shall incorporate the specific description and expiration date for any conditions imposed by the Planning Board.
 8. The Planning Board, in conjunction with its approval of any site plan review project, may impose such requirements and conditions as are allowable within the proper exercise of the police power. The Planning Board may impose reasonable conditions to ensure that the project will be adequately supported by services and improvements made necessary by the project, and to ensure that the project will be completed in accordance with the requirements and conditions authorized under this Code. In addition, the Planning Board may require that the Code Enforcement Officer incorporate any such requirements and conditions in any permit issued with regard to such site plan review project.
 9. Filing of decision. The decision of the Planning Board shall be filed within five (5) days of a decision in the office of the Town Clerk and a copy thereof mailed to the applicant. The decision shall contain such findings of fact and conditions as are required by this Code. The decision shall also be mailed to the Adirondack Park Agency.
- F. Criteria for Site Plan Review.
1. The Planning Board shall not approve an application unless it first determines that such site plan review application

ARTICLE IX – SITE PLAN REVIEW

meets the following site plan review objectives and guidelines;

- a. The application complies with all other requirements of this Code and the Town of Wilmington Land Use code, including the dimensional regulations of the zoning district in which it is proposed to be located;
- b. The project would be in harmony with the general purpose and intent of this Code and the Local Waterfront Revitalization Program, specifically taking into account the location, character, and size of the proposed project and the description and purpose of the district in which such project is proposed, the nature and intensity of the activities to be involved in or conducted in connection with the proposed project, and the nature and rate of any increase on the burden of supporting public services and facilities which will follow the approval of the proposed project;
- c. The establishment, maintenance or operation of the proposed project would not create public hazards from traffic, traffic congestion, or the parking of automobiles or be otherwise detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to the property and improvements in the neighborhood or the general welfare of the town;
- d. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space to provide supporting facilities and services made necessary by the project - taking into account the commercial, industrial, economic, educational, residential, recreational or other benefits that might be derived from the project. In making this determination, the Planning Board shall consider those factors pertinent to the project contained in the development considerations set forth hereof, and in so doing, the Planning Board shall make a net overall evaluation of the project in relation to the

ARTICLE IX – SITE PLAN REVIEW

- development objectives and general guidelines set forth in this Code; and
- e. The Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general and residents of the immediate neighborhood.
2. In considering the approval of the site plan, the Planning Board shall find that the proposed development meets all the following standards and requirements.
- a. Relationship to adjacent and nearby land uses both public and private.
 - b. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - c. Visual compatibility with surroundings and aesthetics.
 - d. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 - e. Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - f. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic, and overall pedestrian convenience.
 - g. Adequacy of stormwater and drainage facilities.
 - h. Adequacy of water supply and sewage disposal facilities including the relationship to existing and proposed water supply, sewage disposal.
 - i. 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.
 - j. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - k. Relationship to the community's ability to provide adequate recreation, education, fire protection and similar facilities and services to its residents and visitors.

ARTICLE IX – SITE PLAN REVIEW

- i. Rivers and corridors of rivers designated to be studied as wild, scenic or recreational in accordance with the Environmental Conservation Law.
 - ii. Rare plant communities.
 - iii. Habitats of rare and endangered species and key wildlife habitats.
 - iv. Alpine and sub-alpine life zones.
 - v. Wetlands.
 - vi. Elevations of 2,500 feet or more.
 - vii. Unique features, including gorges, waterfalls, and geologic formations.
 - f. Fish and Wildlife
 - g. Aesthetics.
 - i. Scenic vistas.
 - ii. Natural and man-made travel corridors.
3. Consideration of Historic site or Structures.
4. Site development considerations.
 - a. Natural site factors.
 - i. Geology.
 - ii. Slopes.
 - iii. Soil characteristics.
 - iv. Depth to groundwater and other hydrological factors.
 - b. Other site factors.
 - i. Adjoining and nearby land uses.
 - ii. Adequacy of site facilities.
5. Governmental considerations.
 - a. Governmental service and finance factors.
 - i. Ability of government to provide facilities and services.
 - ii. Municipal school or special district taxes or special district.
 - b. In considering the approval of columbariums, the Planning Board shall require reasonable conditions or provisions to ensure the continued maintenance of the columbarium facility in perpetuity.
 - c. Considerations of Conformance with other governmental controls.

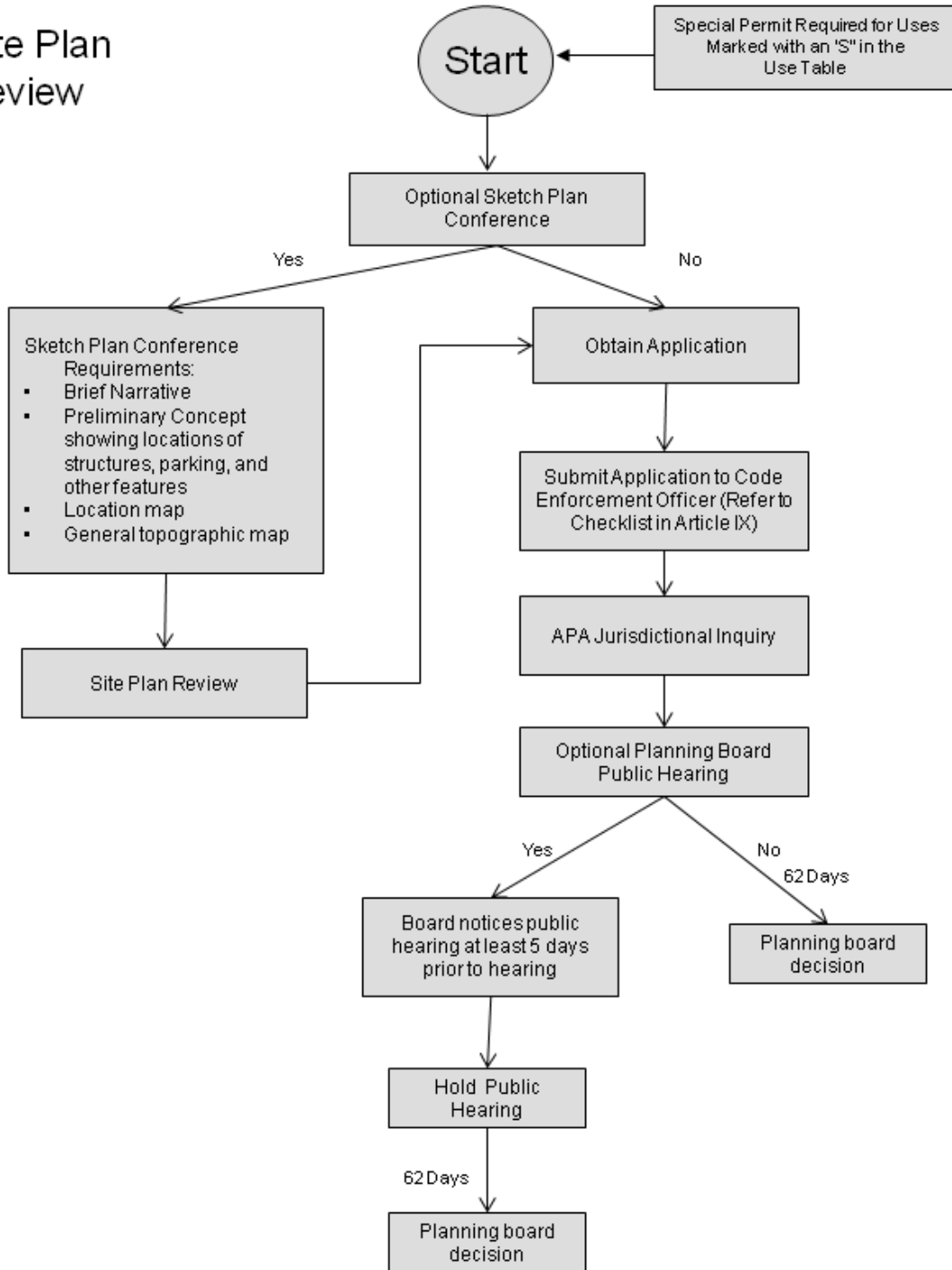
ARTICLE IX – SITE PLAN REVIEW

H. Waterfront Consistency Review

- A. All provisions, requirements and procedures included within the Town's adopted Waterfront Consistency Review Law (Consistency Law), as amended, shall apply. The Consistency Law ensures that proposed actions, as defined within the Consistency Law, are consistent with the Town's adopted Local Waterfront Revitalization Program (LWRP).

ARTICLE IX – SITE PLAN REVIEW

Site Plan Review



ARTICLE X - SPECIAL USE PERMIT REVIEW

Special Use Permit Review Process

A. Intent

The intent of this Article is to set forth additional requirements which shall apply to certain land uses and activities which due to their characteristics, or the special characteristics of the area in which they are to be located, require special consideration so that they may be properly located and planned with respect to the objectives of this Code and their effect on the surrounding properties and community character.

The primary purpose of Special Use Permit review is to ensure compatibility with the surrounding neighborhood and to ensure the long-term benefit of the use to the Town.

B. Application Content

All special use permit review and approval shall occur as a part of any applicable Site Plan review. Applicants shall refer to Article IX - Site Plan Review, for application content.

C. Criteria

The Planning Board shall consider the following criteria when making a determination for a special use permit:

- (1) Compatibility of the proposed use with the principles of the district, the purposes set forth in this Code, and the goals of the Local Waterfront Revitalization Program (LWRP).
- (2) Compatibility of the proposed use with adjoining properties and with the natural and man-made environment.
- (3) Adequacy of parking, vehicular circulation, and infrastructure for the proposed use, and its accessibility to fire, police, and emergency vehicles.
- (4) The overall impact on the site and its surroundings considering environmental, social and economic impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances.

ARTICLE IX – SITE PLAN REVIEW

- (5) Restrictions and/or conditions on design of structures or operation of the use (including hours of operation) necessary either to ensure compatibility with the surrounding uses or to protect the natural or scenic resources of the Town.
- (6) Consistency of the location of the proposed use with the goal of creating a healthy mix of uses that enhances the viability of the hamlet and Town.
- (7) Compatibility with the historic character and use of the structure or structures and the historic character of the site and in the surrounding area, if applicable.

D. Site Plan approval

Site plan approval is required in the consideration of all special use permits. Such site plan review shall be carried out either in conjunction with or after these special use permit procedures.

- (1) In cases where special use permits involve the conversion of an existing structure from one use to another with no exterior physical changes to the site or structure Site Plan Review shall not be required.

E. Public Hearing on Special Use Permit.

- (1) The Planning Board will schedule a public hearing within sixty-two (62) days of the date of the meeting at which the application was considered complete by the Planning Board.
- (2) The Planning Board shall advertise notice of the public hearing in the town's official newspaper and at Town Hall at least five before the hearing. If the public hearing is to be concurrent with the public hearing required for Site Plan Review, only one advertisement notice is needed.
- (3) Such notice of hearing shall also be mailed directly by the Town to all land owners within a 500' radius at least ten (10) days prior to the hearing date. In addition, a sign may be posted. The cost of these notices shall be borne by the appealing party and shall be paid to the Board prior to the hearing.

ARTICLE IX – SITE PLAN REVIEW

- (4) After the conclusion of a public hearing for a special use permit, including site plan approval, the Planning Board shall grant, deny, or grant subject to conditions, the special use permit within sixty-two (62) days.

F. SEQRA Compliance

The Planning Board shall comply with the provisions of the State Environmental Quality Review Act (SEQR) under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part Six Hundred Seventeen of the New York Code, Rules and Regulations.

G. Planning Board Action

The Planning Board shall not issue a special use permit unless it makes a recorded finding that the proposed use will satisfy the standards set forth herein. In order to reach positive findings in support of the special use permit, the Planning Board may require conditions of, and/or modifications to, the project. Such conditions must relate to the impact of the project. If the Planning Board does not make a positive finding in support of the special use permit, it shall deny the special use permit. In issuance of such a denial, the record of the Planning Board must address the criteria outlined above and include the facts and reasons upon which such denial was based.

The Planning Board shall issue a Notice of Decision indicating the application request, the approval, and approval with conditions or denial.

- H. The Notice of Decision of the Planning Board shall be filed in the office of the **Town** Clerk within five (5) days, and a copy thereof mailed to the applicant.

I. Special Use Permit expiration, revocation and enforcement.

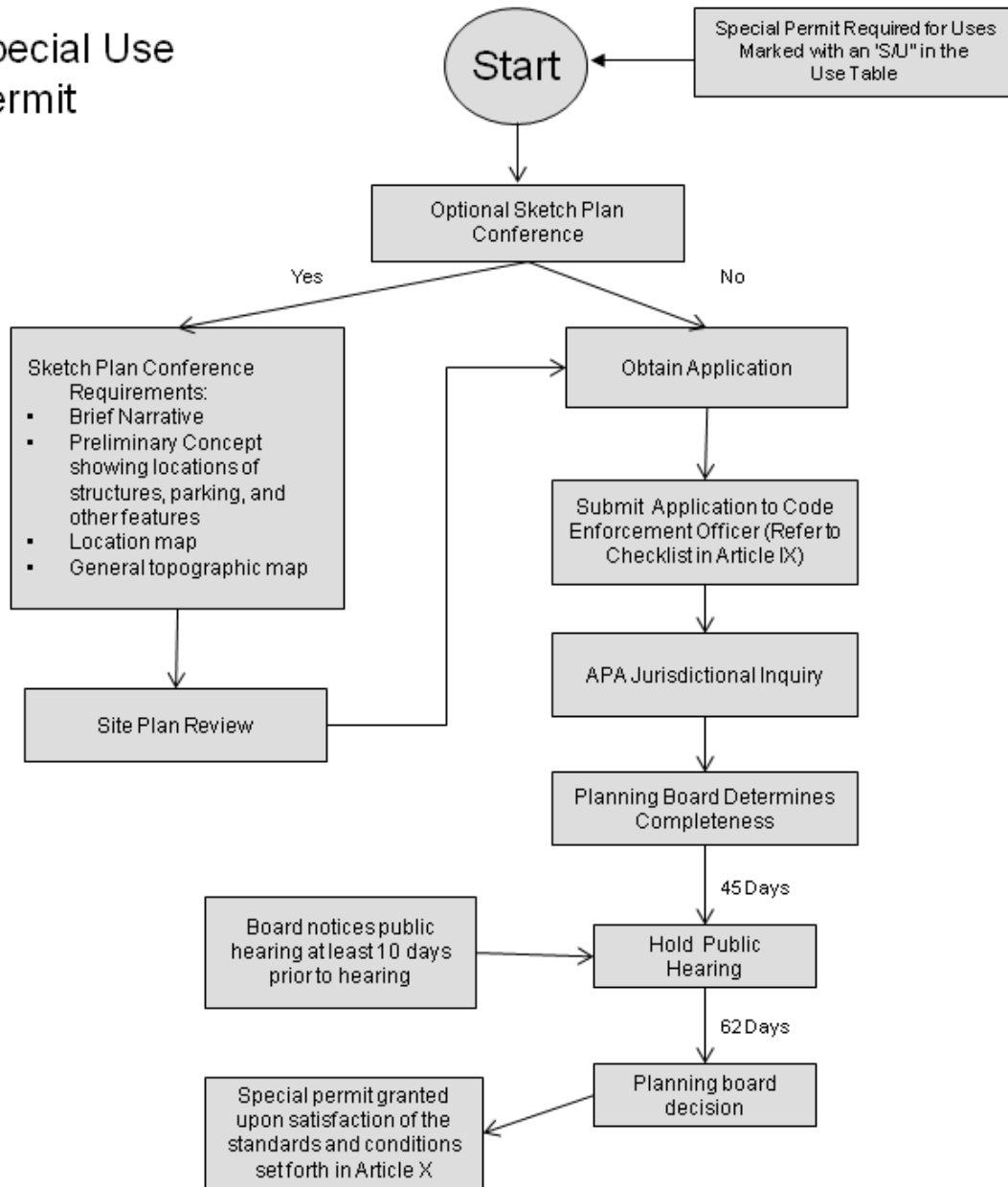
- (1) A conditional special use permit approval shall expire at the end of six months if the conditions have not been satisfied. The Planning Board may, however, consent to an extension of up to six additional months.
- (2) A special use permit shall be deemed to authorize only the particular special use or uses specified therein.

ARTICLE IX – SITE PLAN REVIEW

- (3) A special use permit may be issued as:
 - (a) Permanent, except where the permitted use is discontinued for any reason for a period of two (2) years or more.
 - (b) Temporary, to cease on a specified date and not to be renewable.
 - (c) Renewable within a specified period of time set by the Planning Board.
- (4) A special use permit may be revoked by the Planning Board if the conditions of the special use permit are violated.
- (5) Any violation of the conditions of a special use permit or a violation of any applicable performance criteria of this Code shall be deemed a violation of this Code and shall be subject to enforcement action as provided herein.
- (6) All special use permits shall run with the land and will be transferred to successive property owners provided the permit has not expired and it is not revoked for failure to meet the permit conditions.

ARTICLE IX – SITE PLAN REVIEW

Special Use Permit



Article XI - VARIANCE AND APPEALS

Purpose

- A. Appeals. Applicants, or any officer, department, board or bureau of the Town has the right to appeal any order, requirement, decision, interpretation or determination of officials charged with the enforcement of this Code to the Zoning Board of Appeals. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, interpretation or determination being appealed 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 Code, and to that end shall assume all the powers of the administrative official from whose order, requirement, decision or determination the appeal is taken.

- B. Variances
 - (1) Area variance. The Zoning Board of Appeals has the power to grant variances from the area or dimensional requirements of this Code. In making its determination, the Zoning Board of Appeals shall take into consideration the Area Variance Criteria and Tests as set forth in this Article.

 - (2) Use variances. The Zoning Board of Appeals has the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the Code. In making its determination, the Zoning Board of Appeals shall take into consideration the Use Variance Criteria and Tests as set forth in this Article.

Application

- A. Applications shall be in writing and must be filed with the Zoning Board of Appeals within sixty (60) days after the order, requirement, decision, interpretation, or determination being appealed. Such application shall refer to the specific provisions of this Code involved and shall specify the grounds for the

ARTICLE XI - VARIANCE AND APPEALS

variance requested, the interpretation claimed, or the reversal of an order, requirement, decision, or determination of an administrative official and the relief sought.

- B. The applicant shall supply the Zoning Board of Appeals with:
 - (1) A completed application, on forms provided by the Town.
 - (2) A legal description of the property.
 - (3) A map showing the property and all adjacent and adjoining properties.
 - (4) A "To Scale" drawing of the proposed action.
 - (5) Other drawings or information considered necessary by the Zoning Board of Appeals to make an informed decision.

Hearing on Appeal

- A. The Zoning Board of Appeals shall fix a reasonable time within sixty (60) days of receipt of an appeal for the hearing of an appeal or other matter referred to it and give public notice of such hearing by publication in the official newspaper in the Town and at Town Hall at least five (5) days prior to the date thereof.
- B. Such notice of hearing shall also be mailed directly by the Town to all land owners within a 500' radius at least ten (10) days prior to the hearing date. The cost of these notices shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal.
- C. At least five (5) days before the date of the hearing, the Zoning Board of Appeals Secretary shall transmit to the Planning Board a copy of the application or appeal, together with a copy of the notice of the aforesaid hearing. The Zoning Board of Appeals may request an advisory opinion from the Planning Board on area variance applications, but is not required to do so. The Planning Board shall submit a report of such advisory opinion prior to the date of the scheduled hearing. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal.
- D. The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days after the close of the public hearing. The

ARTICLE XI - VARIANCE AND APPEALS

time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Zoning Board of Appeals. The decision may be recorded in a Notice of Decision and shall incorporate the specific description and expiration date for any conditions imposed by the Zoning Board of Appeals.

- E. The Zoning Board of Appeals may reverse or affirm, wholly or in part, or may modify any order, requirement, decision, interpretation, or determination made by officials charged with the enforcement of this Code. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance.

- F. Imposition of conditions
The Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed appeal. Such conditions shall be consistent with the spirit and intent of this Code and shall be imposed for the purpose of minimizing any adverse impact such appeal may have on the neighborhood or community.

- G. SEQRA Compliance
The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQR) under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part Six Hundred Seventeen of the New York Code, Rules and Regulations

- H. Stay upon Appeal
An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of this Code, from whom the appeal is taken,

ARTICLE XI - VARIANCE AND APPEALS

certifies to the Zoning Board of Appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court with jurisdiction on application, with notice to the administrative official from whom the appeal is taken, and for due cause shown.

I. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Zoning Board of Appeals not previously reheard may be made by any member of the Zoning Board of Appeals. A unanimous vote of all members of the Zoning Board of Appeals then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Zoning Board of Appeals may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Zoning Board of Appeals finds that the rights of persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

J. Default denial of Appeal

In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement or decision or determination of the enforcement official within the time allowed, the appeal is denied. The may amend a failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process set forth in this section.

K. Expiration of Appeal Decision

Unless otherwise specified by the Zoning Board of Appeals and without any further hearing by the Zoning Board of Appeals, a decision on any appeal, including the granting of area and use variances, shall automatically lapse and expire if the applicant

fails to exercise the variance or fails to obtain any necessary building permits within one (1) year of the date on which the decision is filed. Prior to such expiration, an applicant may seek a one-year extension of the variance from the Zoning Board of Appeals, who shall grant such extension if, in consultation with the Code Enforcement Officer, there have been no material changes in the circumstances surrounding the application.

Area Variance Criteria and Standards

- A. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of this Code, to grant area variances from the area or dimensional requirements of this Code.

- B. 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 any detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider the following tests. Not all five tests are required to be met in order to grant the area variance.
 - (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (2) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (3) Whether the requested area variance is substantial;
 - (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

- C. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the

character of the neighborhood and the health, safety and welfare of the community.

Use Variances Criteria and Tests

- A. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of this Code, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this Code.

- B. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - (1) Under applicable zoning regulations, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (4) The alleged hardship has not been self-created.

- C. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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.

ARTICLE XII ADIRONDACK PARK AGENCY REVIEW

Purpose of Article

- A. The purpose of this article is to further the general purposes, policies and objectives of this chapter and the Adirondack Park Agency Act by setting forth the criteria for review of Class A projects by the Adirondack Park Agency (Class A regional projects are defined in section 809 of the Adirondack Park Agency Act and the applicable Agency rules and regulations.)
- B. No person shall undertake a Class A regional project unless and until the Agency shall have reviewed and approved, or approved subject to conditions, such project, and has issued an Agency permit with respect thereto, pursuant to the terms of the Adirondack Park Agency Act and the pertinent Agency rules and regulations.
- C. Class A regional projects shall be subject to the review authority of the Adirondack Park Agency.
- D. Planned Development Districts are Class A regional projects reviewable by the Adirondack Park Agency.

Adirondack Park Agency Review Of Class A Regional Projects

- A. The Adirondack Park Agency shall have jurisdiction to review and approve, approve subject to conditions, or disapprove all Class A regional projects proposed to be located within the town, pursuant to and in accordance with Section 809(9) of the Adirondack Park Agency Act, the applicable Agency rules and regulations, and the criteria in this Code.
- B. The Adirondack Park Agency shall not approve a Class A regional project unless it first determines, after consultation with the Town Planning Board and receipt of the advisory recommendations of the Planning Board relative to the project,

ARTICLE XII – ADIRONDACK PARK AGENCY REVIEW

that the project would comply with all provisions of this Code, including those contained in such other ordinances and regulations that are components of the Town Comprehensive Plan.

- C. In making the determination required by Section 809(9) of the Adirondack Park Agency Act as to the impact of a proposed Class A regional project upon the resources of the Adirondack Park, including the ability of all levels of government to provide supporting facilities and services made necessary by the project, the Agency shall consider those factors pertinent to the project contained in the development considerations set forth in the Additional APA Development considerations set forth in this Code and in so doing shall make a net overall evaluation of the project in relation to the development objectives and general guidelines set forth in herein.

Planning Board Authority Regarding Class A Regional Projects

- A. The Planning Board is hereby designated to consult with the Adirondack Park Agency with regard to Agency review of Class A regional projects. All SPR1 projects are Class A regional projects. Any other project may require Class A regional project review depending on location and size of project as determined by APA thresholds.
- B. Not later than 30 days following receipt by the Planning Board from the Agency of notice of application completion with regard to Class A regional project, the Planning Board shall notify the Agency whether the project meets the pertinent requirements of ordinances and regulations for the Town of Wilmington including the Comprehensive Plan.
- C. Notwithstanding the fact that Class A regional project approval may have been granted by the Adirondack Park Agency, should the Planning Board conclude through Site Plan Review that said project does not comply with the provisions of this Code, the Board may disapprove the project, irrespective of any Agency approval. In such case, the reasons for Planning Board disapproval shall be specified in writing.

ARTICLE XIII - NONCONFORMING USES, STRUCTURES AND LOTS

Nonconforming uses

A. Continuation

Any nonconforming use which existed lawfully at the time of adoption of this local law may be continued, subject to the following provisions.

B. Expansion

A nonconforming use which existed prior to adoption of this Code may be expanded within any portion of an existing structure in which it is located. A nonconforming use shall not be expanded beyond the area of the existing structure in which the use is located. Any deviation requires a use variance and, if required by the terms of the variance granted, Site Plan Review and approval by the Planning Board.

C. Changes

A nonconforming use shall not be changed to any other nonconforming use; nor shall a nonconforming use be modified unless such modification results in a use of the same or a less nonconforming nature. The determination of whether such modification results in an equal or lesser nonconformity shall be made by the Zoning Board of Appeals.

D. Replacement

If a nonconforming use is replaced by another use, the use regulations of the district within which it is located shall apply.

E. Discontinuance

If a nonconforming use is discontinued for a period of 12 consecutive months, such nonconforming use shall expire and be deemed abandoned; and any subsequent use on the same lot shall conform to the use regulations of the district in which it is located.

F. Restoration

(1) If any building or structure in which a nonconforming use is conducted is hereafter removed voluntarily, or destroyed by fire, wind, explosion, structural failure or other natural cause, to the extent of 50% or more of its fair market value at the time of such damage as determined by an independent assessor, the

ARTICLE XIII – NONCONFORMING USES, STRUCTURES, AND LOTS

structure may be reconstructed or restored and the nonconforming use continued.

- (2) Such restoration or reconstruction must not enlarge the structure beyond the original dimensions unless granted a use variance from the Zoning Board of Appeals and, if required by the terms of the variance granted, Site Plan Review and approval by the Planning Board.
- (3) A valid building permit must be obtained within one year of the removal or destruction of the original structure and construction shall be complete and a Certificate of Completion issued within one year of the issuance of a valid building permit. A one year extension within which to complete the project and obtain a Certificate of Completion may be granted by the Planning Board.

G. Removal.

If any building in which any nonconforming use is conducted is hereafter removed, the subsequent use of the land on which such building was located and the subsequent use of any building erected thereon shall conform to the regulations of the district.

Nonconforming Buildings and Structures

A. Continuation.

- (1) Any nonconforming building or structure which existed lawfully at the time of adoption of this local law may be maintained.
- (2) Any building or structure, for which a valid building permit was lawfully issued prior to the adoption of this Code, may be completed and used in accordance with the plans and specifications provided that the building or structure shall be completed and a Certificate of Compliance issued within one (1) year with a one (1) year extension granted by the Zoning Board of Appeals.

B. Modification and replacement.

- (1) Modification.
 - (a) A nonconforming building or structure shall be maintained in such condition as will not constitute a danger to the health, safety, or general welfare of the public.

ARTICLE XIII – NONCONFORMING USES, STRUCTURES, AND LOTS

- (b) A nonconforming building or structure shall not be added to, enlarged, reconfigured or altered in any manner which increases its nonconformity.
- (2) Replacement.
- (a) A nonconforming building or structure may not be replaced or rebuilt, within twenty-four (24) months after its removal, if it is added to, enlarged, reconfigured or altered in any manner which increases its nonconformity.
 - (b) After 24 months from destruction of a nonconforming structure by fire, wind, explosion, structural failure or other natural cause to the extent of 50% or more of its fair market value at the time of such damage as determined by an independent assessor, such nonconforming structure may not be rebuilt but must conform to the regulations of the district in which it is located.

Nonconforming Lots

- A. A permitted use may be constructed or located on any nonconforming lot, providing that the owner of said lot owns no adjoining, unimproved land which, if combined with the lot to be improved, would create a conforming lot, and provided that all dimensional requirements for that use in that district are met.
- B. In instances where an existing lot of record is nonconforming relative to lot size, an area variance to waive these dimensional requirements is not required in order for a building permit to be secured. However, any new construction on a nonconforming lot must comply with all applicable required setbacks.
- C. Buildings and structures located on nonconforming lots may be moved, expanded, enlarged or replaced as long as such change complies with all of the required setbacks of the district in which it is located.

Documentation of Non-Conforming Status

- (1) Purpose. The Town of Wilmington acknowledges that amending land use regulations may cause certain uses, structures, and/or lots to become non-conforming. The following process provides a means by which a landowner or business owner may document the non-conforming status, of a use, structure, or lot.

ARTICLE XIII – NONCONFORMING USES, STRUCTURES, AND LOTS

- (2) Procedure.
- a. Application for documentation of non-conforming status shall be made to the Code Enforcement Officer and shall include:
 1. Submission of a written application on a form provided by the Code Enforcement Officer;
 2. Payment of the application fee; this fee shall be waived if the applicant submits the application within the eighteen months of the adoption of this Chapter;
 3. Proof that the use, structure, or lot was established prior to the effective date of this chapter. The applicant may submit to the Code Enforcement Officer pictures, financial evidence, sworn statements or any other documentary evidence.
 4. The Code Enforcement Officer shall refer the application to the Zoning Board of Appeals with a recommendation stating whether or not the non-conformity was legally established prior to the adoption of this chapter.
 - b. The Zoning Board of Appeals shall make a determination as to the prior legal non-conforming status of the use, structure, or lot. The Zoning Board of Appeals shall make its determination, whether the use, structure, and/or lot is entitled to prior non-conforming status based upon all of the information provided, which may include, documentary evidence submitted, site inspections, interviews with the applicant or any other persons, or any other information that can reasonably be considered relevant.
 1. The Zoning Board of Appeals may hold a public hearing to gather addition information and evidence relevant to the prior non-conforming status of the uses, structures, and/or lot. If a public hearing is held it shall be held within 45 days of the first meeting, of the Zoning Board of Appeals, following the referral from the building inspector.
 2. The determination of the Zoning Board of Appeals shall be made within 45 days of the referral from the

ARTICLE XIII – NONCONFORMING USES, STRUCTURES, AND LOTS

Code Enforcement Officer or within 45 days of the close of the public hearing if a hearing is held; unless said time periods are extended by mutual agreement between the applicant and the Zoning Board of Appeals.

3. A copy of the determination of non-conforming status shall be mailed to the applicant and recoded with the Zoning Board of Appeals clerk and filed in the office of the Code Enforcement Officer.
 - c. A positive determination of non-conforming status by the Zoning Board of Appeals shall create a conclusive presumption of legal non-conforming status.
- (3) Veracity. The filing or submittal of false information, or information that is patently misleading, with the building inspector or the Zoning Board of Appeals, as it pertains to any material matter before the Zoning Board of Appeals shall be a violation of this Chapter.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

General provisions

- A. Notice of public hearing.
- (1) Each notice of hearing upon an application for site plan review, special use permit, planned development district application, the review of a variance application upon an appeal to the Zoning Board of Appeals, or any other public hearing required by this Code, NYS Town Law or SEQRA shall be published once in the official newspaper of the Town and at Town Hall at least five (5) and no more than thirty (30) days prior to the date of the hearing.
 - (2) Such notice of hearing shall also be mailed directly by the Town to all land owners within a 500' radius at least ten (10) days prior to the hearing date.
 - (3) All costs are the responsibility of the applicant, and the applicant shall provide the envelopes with stamps. If subsequent, separate hearings are required by the reviewing board or requested by the applicant, the cost of additional notices and mailings shall be paid by the applicant prior to such notices being sent. This shall not include hearings held open or continued by the reviewing Board.
- B. Referral to County Planning Board (General Municipal Law §239-m).
- (1) Any variance application, site plan review, special use permit or zoning change application within the following thresholds shall be referred to the Essex County Planning Board for their review and comment:
 - (a) Within five hundred (500) feet of the Town boundary.
 - (b) Within five hundred (500) feet of an existing or proposed county or state park or recreation area.
 - (c) Within five hundred (500) feet of a right-of-way of any existing or proposed parkway, thruway,

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

expressway, road or highway.

- (d) Within five hundred (500) feet of any existing or proposed county or state stream or drainage channel or easement.
 - (e) Within five hundred (500) feet of any existing public building or institution.
 - (f) Within five hundred (500) feet of the existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
 - (g) Within five hundred (500) feet of the boundary of a farm operation located in an agricultural district as defined by article 25-AA of the agriculture and markets law.
- (2) Within thirty (30) days after receipt of a full statement of such referred matter, the Essex County Planning Board shall report its recommendations to the Town. If the county fails to report within thirty (30) days, the Town body may act without such report. If the county disapproves the proposal, or recommends modifications, the Town shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members thereof, and after the adoption of a resolution fully setting forth the reasons for such contrary action.
 - (3) Within seven (7) days after final action by the Town, a report of said final action shall be filed with the Essex County Planning Board.

C. Referral to neighboring municipalities (General Municipal Law §239- nn).

- (1) Town of Wilmington shall give notice to an adjacent municipality when a hearing is held by such body relating to:
 - (a) the granting of a use variance on property that is within five hundred (500) feet of an adjacent municipality;

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

- (b) the issuance of a special use permit within five hundred (500) feet of an adjacent municipality;
- (c) site plan review and approval on property that is within five hundred (500) feet of an adjacent municipality; or a subdivision review and approval on property that is within five hundred (500) feet of an adjacent municipality.

- (2) Such notice shall be given by mail or electronic transmission to the clerk of the adjacent municipality at least ten (10) days prior to any such hearing.

D. Records to be retained

The original or a certified copy of all decisions, approvals, rulings and findings of any board under this Code, and of all permits and certificates issued under this article, shall be promptly furnished by the Code Enforcement Officer to the Town Clerk and retained as a permanent Town public record.

E. SEQRA Compliance

The Town Board, Planning Board and Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQR) under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part Six Hundred Seventeen of the New York Code, Rules and Regulations.

Code Enforcement Officer

A. Code Enforcement Officer

The Code Enforcement Officer shall have the power and duty to administer and enforce the provisions of this Code. The Code Enforcement Officer shall be appointed by, and may be removed at the pleasure of, the Town Board. An appeal from an action, omission, decision or rule by the Code Enforcement Officer regarding a requirement of this Code may be made only to the Zoning Board of Appeals. The Town Board may appoint Deputy Code Enforcement Officers to exercise any or all of the duties of the Code Enforcement Officer.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

B. Code Enforcement Officer Duties

The Code Enforcement Officer shall have the power and duty to perform the following tasks:

- (1) Administer, interpret, and apply the provisions of the Zoning Code.
- (2) Conduct pre-application meetings with the applicant, using checklists and/or instructional materials maintained by the Code Enforcement Officer.
- (3) Accept and review all Building Permit, site plan review, special use permit and planned development district applications.
 - (a) Determine completeness of the applications and compliance with the provisions of this Code.
 - (b) Distributes applications to involved entities: Fire, Police, APA (where applicable), Town Attorney, and Town Engineer.
 - (c) Consult/coordinate with experts on technical review and field inspections conducted as part of the application process.
 - (d) Ensure compliance with SEQR.
- (4) Have the authority to make inspections of buildings or lots necessary to carry out the application of this Code.
- (5) Provide notes and supplementary information to all Boards as requested, answer questions regarding the proposed project application to the Planning Board and Zoning Board of Appeals.
- (6) Certificate of Completion. The Code Enforcement Officer shall conduct field inspections to determine whether the conditions of approval and building permit are met. When a project is deemed complete by the Code Enforcement Officer, a Certificate of Completion is issued. The Certificate of Completion includes a copy of the application and all associated conditions of approval as well as the date of inspection.
- (7) Receive complaints of zoning violations from residents, by

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

affidavit if possible. Investigate alleged violations of this Code. Keep an inventory of said violations including dated photographs and/or other evidence in the appropriate file.

- (8) Notify landowners of zoning violations. Assist landowner to attain compliance with appropriate alternative procedure, appeals, or any other administrative remedies necessary.
- (9) Coordinate the enforcement of this Code with the enforcement of other related land use statutes and codes by active cooperation with other appropriate agencies. Testify, as necessary, at public and judicial hearings.
- (10) Ensure compliance with other ordinances per Town Board's direction (i.e., construction activities without a permit or violations of another code including but not limited to stormwater, septic, local health code, junkyards, and noise.)
- (11) Refer all infractions outside of the purview of the Town to the appropriate agency including but not limited to DEC, DOH, or APA.
- (12) Engage in periodic review of approved projects to determine whether the conditions of approval are being carried out.
- (13) Consult with Town Attorney in cases where enforcement of this Code conducted as part of the normal operation of the position is likely to create controversy or create a precedent for the future.
- (14) Maintain files of applications, interpretations, and violations. Master copies of these files are to be retained in office of Code Enforcement Officer at all times.
- (15) Review 'As-of-Right' uses for compliance with this Code.
- (16) Develop recommendations regarding zoning amendments, fee structures, and application forms; and may propose solutions to any problem encountered in administering this Code.
- (17) Create a written punchlist of approval conditions for applicant.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

- (18) The Code Enforcement Officer shall also maintain records, open to the public, including the zoning map, text, and office records. These records shall be kept up-to-date by recording all amendments and retaining all official documents. The Code Enforcement Officer shall also be responsible for the maintenance of files for all actions, applications, interpretations, permits, resolutions, complaints and violations and meeting minutes for the Planning Board and Zoning Board of Appeals. Master copies of these files are to be retained in Town Hall at all times.
- (19) The Code Enforcement Officer shall not issue a Certificate of Completion for the construction of any building or use of any property unless such building or use conforms to all laws and ordinances of the Town.
- (20) The Code Enforcement Officer shall submit to the Town Board for insertion in the Board minutes a written report summarizing for the month all building permits and certificates of occupancy issued as well as complaints of violations and any action taken as a result of such complaints.

Planning Board

A. General Provisions

- (1) The Planning Board shall have all the powers and perform all the duties prescribed by state statute and by this Code. The Planning Board shall have original jurisdiction for all matters pertaining to this Code pursuant to state statute.
- (2) The Planning Board shall consist of five (5) members for staggered five (5) year terms. The terms of the members shall be so fixed that one term shall expire at the end of each calendar year. The members and the Chairperson of such Planning Board shall be appointed by the Town Board. Two alternate members may also be appointed by the Town Board. In the absence of a Chairperson the Planning Board may designate a member to serve as Chairperson.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

(3) Eligibility

No person who is a member of the Town Board or the Zoning Board of Appeals shall be eligible for membership on the Planning Board.

(4) Chairperson duties

All meetings of the Planning Board shall be held at the call of the Chairperson and at such other times as such Planning Board may determine. Such Chairperson, or in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

(5) Service on other Boards

No person shall be disqualified from serving as a member of the Town Planning Board by reason of serving as a member of the town or County Planning Agency.

(6) Vacancy in office

If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

(7) Removal of members

The Town Board shall have the power to remove, after public hearing, any member of the Planning Board member for cause. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training.

(8) Rules and regulations

The Planning Board may recommend to the Town Board regulations relating to any subject matter over which the Planning Board has jurisdiction under this Code or any other statute, or under any Code of the Town. Adoption of any such recommendations by the Town Board shall be by Local Law.

(9) Report on referred matters

The Town Board may seek input from the Planning Board where their input would help the Board make a more informed decision. The Town Board may by resolution

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

provide for the referral of any matter or class of matters to the Planning Board before final action is taken thereon by the Town Board or other office or officer of the Town having final authority. The Town Board may further stipulate that final action shall not be taken until the Planning Board has submitted its report, or after the Planning Board has exceeded the time period set by the Town Board for the Planning Board to submit its report.

- (10) Training and attendance requirements
 - (a) Each member of the Planning Board shall complete, at a minimum, four (4) hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet these requirements. Such training shall be approved by the Town Board.
 - (b) To be eligible for reappointment to such board, such member shall have completed the training.
 - (c) No decision of the Planning Board shall be voided or declared invalid because of a failure to comply with these training requirements.

Zoning Board of Appeals

A. General provisions.

(1) Zoning Board of Appeals

The Zoning Board of Appeals shall have all the powers and perform all the duties prescribed by state statute and by this Code. The Zoning Board of Appeals shall have appellate jurisdiction for all matters pertaining to this Code.

(2) Appointment of members

The Town Board shall appoint a Board of Appeals consisting of five (5) members for staggered five (5) year terms and shall designate the chairperson thereof. The terms of the members shall be so fixed that one term shall

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

expire at the end of each calendar year. Two alternate members may also be appointed by the Town Board. In the absence of a chairperson, the board of appeals may designate a member to serve as acting chairperson.

(3) Eligibility

No person who is a member of the Town Board or the Planning Board shall be eligible for membership on such Board of Appeals.

(4) Training and attendance requirements

(a) Each member of the Board of Appeals shall complete, at a minimum, four (4) hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet these requirements. Such training shall be approved by the Town Board.

(b) To be eligible for reappointment to such board, such member shall have completed the training.

(c) No decision of a Zoning Board of Appeals shall be voided or declared invalid because of a failure to comply with these training requirements.

(5) Vacancy in office

If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

(6) Removal of members

The Town Board shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training.

(7) Chairperson duties

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

All meetings of the Board of Appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

Fines; Penalties for Offenses

- A. It shall be unlawful for any person to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building, structure or premises, or portion thereof, in violation of any provision of the Town of Wilmington Zoning Regulations, or to construct, alter or use and occupy any building, structure or premises in a manner not permitted by or inconsistent with a permit, approval or variance issued pursuant to the aforementioned, or fail to comply with a notice, directive or order of the Code Enforcement Officer or agents thereof.

- B. Any person who owns, controls or manages any building, structure or premises, and who shall fail to comply with a written directive, including a stop-work order of the Code Enforcement Officer or an agent thereof with the time fixed for compliance, and any owner, builder, architect, contractor, subcontractor, construction superintendent or their agents, or any other person assisting in the construction or use of any building or structure, or in the land disturbance on or use of any premises who knowingly violates any of the applicable provisions of the Town of Wilmington Zoning Regulations, or any lawful order, notice, directive, permit, certificate, approval or variance issued hereunder shall be punishable as follows:
 - (1) Criminal sanctions
 - Criminal sanctions are as follows:
 - (a) First offense: fine not exceeding \$350 or six months imprisonment or both.

 - (b) Second offense: fine of not less than \$350 or more than \$700, or up to six months' imprisonment, or both.

 - (c) Third offense or subsequent offense (if committed within five years of first offense): fine of not less than \$700 or more than \$1,000, or up to six months imprisonment or both.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

- [1] Every such person shall be deemed guilty of a separate offense for each week such violations, disobedience, omission, neglect or refusal shall continue. Where the person committing such violation is a partnership, association or corporation, the principal executive officer, partner, agent or manager may be considered to be the "person" for the purposes of this article.

The Code Enforcement Officer or agent may commence criminal proceedings in the justice court by issuing an appearance ticket to any alleged violator and/or by filing any information and supporting deposition pursuant to the New York Criminal Procedure Law. Alternatively, the Code Enforcement Officer or agent, or the Town Board may request the District Attorney to prosecute the violation or to appoint an Attorney as a special district attorney for that purpose.

Alternative or Additional Remedy

The alternative or additional remedy specified herein may be taken in addition to a proceeding for criminal sanctions or civil penalties. The Town Board may negotiate appropriate remediation and restoration measures by entering into an enforceable settlement agreement or consent order with any violator and/or owner. Such agreement or consent order may include the following:

- Payment by the violator and/or owner of a monetary penalty which may include exemplary or punitive damages;
- Recovery of actual costs incurred by the Town in connection with the enforcement proceeding including actual attorneys' fees;
- Reimbursements for the actual costs to be incurred in rectifying any circumstance or condition to restore the premises into compliance.

Failure by the violator and/or owner to voluntarily pay the monetary penalty and/or reimbursements for actual costs will constitute the basis of a lien charge attachable to the premises as a special assessment or charge assessable and collectable on the tax bill associated with the subject premises.

Stop-Work Order

- A. The Town of Wilmington Town Board hereby grants the Code Enforcement Officer plenary administrative responsibility to

Town of Wilmington Zoning

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

- immediately suspend any continuing violations by posting a stop-work order on the premises wherein the violation has occurred.
- B. Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building, structure or development of any premises is being undertaken or continued in violation of the provisions of the applicable building laws or the provisions hereof, or other ordinances, rules or regulations, or not in conformity with the provisions of an application, plans or specifications on the basis of which a permit was issued, or not in conformity with the terms or conditions of a permit, approval or variance, or in an unsafe and dangerous manner, he/she shall notify the owner of the property, or the owner's agent, to suspend all work, and such persons shall forthwith stop such work and suspend all building and development activities until the stop order has been rescinded or superseded by a court order. Such order and notice shall be in writing, shall state the conditions under which the work or development may be resumed, and may be served upon a person to whom it is directed, either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building or premises where the work or development is being performed and sending a copy of the same to him by certified mail at the address set forth in the application for permission for the construction of such building or development of such premises.
- C. Obtaining relief or release from any stop-work order may be obtained in the proper circumstances as follows:
- (1) If all provisions hereof, together with all other reasonable conditions specified by the Code Enforcement Officer or agent, are satisfied, the Code Enforcement Officer may issue an authorization of release or lift a stop-work order .
 - (2) Except in matters pertaining to violations of requirements imposed by site plan review, if a variance is granted by the Zoning Board of Appeals granting permission to maintain violations specified on a stop-work order and to continue such circumstances as thereafter allowable, the administrative determination of the Code Enforcement Officer or agent shall conform or terminate the stop-work order in accordance with the requirements mandated by the Zoning Board of Appeals.

ARTICLE XIV - ADMINISTRATION AND ENFORCEMENT

Suspension of Administrative Review

Processing and review of any application pursuant to the provisions hereof may be suspended and the application deemed incomplete with written notice to the applicant when an application includes a parcel which has a preexisting reported written violation from the Code Enforcement Officer pertaining to any provisions of this Zoning Ordinance, unless and until the same is brought into compliance. Such suspension of application processing may remain in effect pending final resolution of any enforcement action by an order of court or by a negotiated settlement of the pending violations between the responsible parties and the Town Board. In any appropriate case, the Code Enforcement Officer may suspend review of an application.

Misrepresentation

Any permit, variance or approval granted under the provisions hereof which is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstance known, by or on behalf of an applicant, shall be void. This section shall not be construed to diminish the penalties and remedies available to the Town under any enforcement provisions hereof.

ARTICLE XV AMENDMENTS

Purpose of Article

The purpose of this article is to allow for amendment to this chapter whenever the public necessity and convenience and the general welfare require such amendment, by following the procedure of this article.

Referrals

When directed by the Town Board, the Town Clerk shall submit a copy of the proposed amendment to the Adirondack Park Agency for a determination as to whether the proposed amendment is subject to Agency approval under Section 807 of the Adirondack Park Agency Act; the Town Clerk shall simultaneously refer such proposed amendment to the Planning Board, and where required by ~ 239-m of the General Municipal Law, to the Essex County Planning Board having jurisdiction, for the report and recommendations by those bodies to the Town Board.

Hearing and Decision on Proposed Amendment

- A. APA Approval. Adirondack Park Agency approval must be granted prior to Town Board adoption.

- B. The procedure as to the notice of a public hearing on an enactment of a proposed amendment shall follow and be governed by ~ 265 of the Town Law, and ~ 239-l, 239-m and 239-nn of the General Municipal Law, including all subsequent amendments thereto.

- C. Notice of the decision, including the final amendment(s) as adopted, of the Town Board shall be sent promptly to the Adirondack Park Agency.

Records of Amendments

The Zoning Administrator and the Town Clerk shall each maintain records of amendments to the text of this chapter and of the Town Zoning Map and the official APA Land Use and Development Plan.

ARTICLE XVI DEFINITIONS

Definitions. As used in this Code, unless the context otherwise requires, the following terms shall have the meanings indicated. Any term in this Code which is not defined in this or other sections of this Code shall carry its customary meaning.

ACCESS — Entranceway for vehicles to leave or enter a property or lot from a public highway or private road.

ACCESSORY USE – Any use which is incidental and subordinate to a permitted use and located on the same lot and such shall be under the same ownership.

ACCESSORY STRUCTURE – Any building or structure affixed to land or any movable structure in excess of 144 square feet which is incidental, subordinate to, and associated with, a permitted principle structure.

ADIRONDACK PARK AGENCY or AGENCY – The Adirondack Park Agency created by ~ 803 of Article 27 of the Executive Law of the State of New York.

ADIRONDACK PARK AGENCY ACT – Article 27 of the Executive Law of the State of New York, including any future amendments thereto.

ADIRONDACK PARK or PARK – Land lying within the area described in Subdivision 1 of ~ 9-0101 of the Environmental Conservation Law of the State of New York, including any future amendments thereto.

AGRICULTURAL USE – The production, keeping or maintenance, for sale or lease, of plants and animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals including riding stables; bees and apiary products; fur animals; trees, forest products and forestry uses; fruits of all kinds, including grapes, nuts, berries and vegetables. The term includes the sale of products grown or raised directly on such land.

AGRICULTURAL USE, PERSONAL– The production, keeping or maintenance, of plants and animals where the sale, if any, of agricultural products is limited to those products produced on the lot and such sales are only permitted from a single temporary roadside stand or display.

APARTMENT – One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit not owned in fee simple.

BED & BREAKFAST – A dwelling having a resident host in a single-family home with common dining and leisure rooms and up to 12 separate guest lodging rooms for overnight accommodation.

BOARDING HOUSE – An owner-occupied facility providing lodging in which at least two but no more than six units are offered for rent and which may be characterized by common dining facilities and leisure facilities available for use by the lodgers.

BUILDING – Any roofed structure intended for the shelter, housing or enclosure of persons, animals or property.

BUILDING AREA – The total ground floor area of a principal building and accessory buildings exclusive of uncovered porches, steps and terraces.

BUILDING, DETACHED – A freestanding building surrounded by open space on all sides and not physically joined to another building.

BUILDING FRONT – That side of any building facing a public street as designated on any application for a Permit by the applicant providing, however, that any building shall have one designated front for the purpose of computing and applying any applicable requirement or standard under this Code.

BUILDING HEIGHT – The vertical distance measured from the lowest point of the existing grade adjacent to the foundation to the uppermost portion of the structure, excluding chimneys.

BUILDING LINE – The point from which all yard requirements are measured and which is determined by a line formed by the intersection of a horizontal plane of average grade level and a vertical plane that

ARTICLE XVI – DEFINITIONS

extends from the most projected part of the building open to the sky, excluding eaves and other permitted projections.

BUILDING PERMIT – Written permission issued by the Town of Wilmington for the demolition, construction, repair, alteration or addition to a structure and subject to the requirements and procedures specified for the action under consideration.

CAMPGROUND – Any area designated for transient occupancy by camping in tents, camp trailers, motor homes, transient mobile homes, truck campers, or pickup campers or similar facilities designated for temporary shelter.

CERTIFICATE OF COMPLETION – A written document required prior to development, issued for use upon a developer’s compliance with the provisions of this code and any applicable development agreement.

CHURCH – A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

CLASS A AND CLASS B REGIONAL PROJECTS – Land use, development, and subdivisions of land, regulated by the Adirondack Park Agency, as defined under Section 810 of the Adirondack Park Agency Act (1998).

CLUB – Buildings and facilities, owned or operated by a corporation, association, person or persons, for a social, educational, or recreational purpose, to which membership is required for participation and not primarily operated for a profit nor to render a service that is customarily carried on as a business.

COMMERCIAL USE -- Any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale.

CONSERVATION EASEMENT – A voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit

corporation to restrict the development, management, or use of the land for the purpose of retaining or protecting the natural, scenic, or open space values of real property or to assure its availability for agricultural, forest, recreational, or open space use. That agency holds the interest and is empowered to enforce its restrictions against the current landowner and all subsequent owners of the land.

CONSERVATION SUBDIVISION – A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located, in return for the provision of permanent open space.

CONSTRAINED ACREAGE – Land that includes wetlands, watercourses/water bodies with a one-hundred-foot buffer, one-hundred-year floodplains, and slopes over 25% which are 2,000 square feet or more of contiguous sloped area.

CONTRACTING BUSINESS – An office, shop, and/or yard where construction equipment, heavy equipment and materials are stored. This definition does not include the temporary use or storage of equipment associated with and incidental to the approved construction of any improvement upon real property.

DAY-CARE CENTER - A site, building, or place designed and/or operated to provide day care and/or instruction for twelve or more persons and operated on a regular basis for a fee.

DEVELOPMENT – Any change in use, building, construction, expansion, alteration, modification, demolition, but not including interior renovations to a structure.

DISTURBED AREA – An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling. Tree removal without stump removal shall not create a disturbed area, unless it results in a change in the natural cover or topography, by baring soil and rocks that may cause or contribute to sedimentation.

DRIVE-THROUGH USE – An establishment that by design, physical facilities, service or packaging procedures encourages or permits

customers to receive services, obtain goods, or be entertained while remaining in their vehicles.

DRIVEWAY – Any area privately reserved on any lot, plot, site or parcel of land for the purpose of providing vehicular access from an access road or state, county or town highway to a private dwelling or other private principal buildings located on said lot, plot, site or parcel of land, to certain portions of said dwellings or other principal buildings to accessory buildings or to private parking spaces, the use of said area being private to residents or owners of said dwellings, to the occupants or owners of such other private principal buildings and to such other persons as may be designated or permitted to use such private area by the owners thereof.

DWELLING UNIT – One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family or household, which shall not be less than 500 square feet. And there shall be a minimum of 60 square feet of habitable area provided for sleeping accommodations for each person excluding kitchens, bathrooms and hallways.

- a. **DWELLING, SINGLE-FAMILY** – A detached building (not including a manufactured home) which is designed or used exclusively as living quarters for one family or household.
- b. **DWELLING, MULTIFAMILY** – Any building, designed to be occupied in separate dwelling units therein by three or four families; any such building containing three or four separate dwelling units.
- c. **DWELLING, TWO-FAMILY** - A detached building (not including a manufactured home) designed for year-round occupancy by two families living independently of each other.

DWELLING, MANUFACTURED HOME– Homes manufactured post 1976 that are transported as complete homes or in sections on a permanent chassis that can be rapidly assembled. If built prior to 1976 a manufactured home is referred to a Mobile Home. All regulations referring to manufactured homes shall be equally applied to mobile homes.

EASEMENT — The right to use the land of another, obtained through the lawful acquisition of use rights from a landowner, for a special purpose, consistent with the property's current use.

ENVIRONMENTAL MANAGEMENT PLAN (EMP)- An EMP is the action an organization is taking to determine how it affects the environment, comply with regulations, keep track of environment management activities, and meet environmental goals and targets. It also documents key elements of environmental management including the environmental policy, responsibilities, and Best Management Practices (BMP), record keeping, reports, communication, training, monitoring, and corrective action.

EXTRACTION, MINERAL – Any excavation, other than specimens or samples from the land of stone, coal, salt, ore, talc, granite, petroleum products or other materials, except for sand, gravel, or topsoil extraction.

EXTRACTION, SAND AND GRAVEL – Any excavation from the land of sand, gravel or topsoil of more than 750 cubic yards or 1000 tons, whichever is less, in any one year period.

EXTRACTION, PRIVATE – Any extraction from the land of sand, gravel or topsoil by the owner of the land of less than 750 cubic yards or 1000 tons, whichever is less, in any one year period.

FAMILY – One or more persons residing as a family unit sharing living expenses, cooking together as a housekeeping unit, sharing expenses for food, rent, utilities and other household expenses.

FENCE – A structure designed to, or which in fact does divide, enclose or screen a parcel of land or portion thereof.

FIRING RANGE – An outdoor site and any accessory buildings used for the discharge of firearms, including targets or skeet.

FISHING CLUB – Land and necessary appurtenant facilities for use by a membership club or organization and permitted guests for fishing purposes. Such land and buildings need not have frontage on or public access to a public highway or body of water.

ARTICLE XVI – DEFINITIONS

FORESTRY USE/FOREST PRACTICES/LOGGING – Any management, including logging of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of woodroads, skidways, landings, fences and forest drainage systems.

FUEL SUPPLY – A facility used for the storage of chemicals, petroleum products, and other materials in above-ground containers for subsequent retail to distributors or retail dealers or outlets.

FUNERAL HOME – A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation, funeral homes do not include crematories.

GAME PRESERVE – A land area used for the protection of wildlife, usually because of its unique natural character, which provides habitat, food or shelter for wildlife.

GARAGE, PRIVATE RESIDENTIAL – A structure which is accessory to a residential building and which is used for the parking and storage of vehicles owned and operated by the resident thereof, and which is not a separate commercial enterprise available to the general public.

GARAGE, PUBLIC – A building, or portion thereof, other than a private customer and employee garage or private residential garage, used primarily for the parking and storage of vehicles and available to the general public.

GOVERNMENT OFFICE OR AGENCY – Any department, commission, independent agency or instrumentality of the United States, of New York State, of Essex County, and/or the Town of Wilmington.

GROSS FLOOR AREA – A square foot number representing the entire area occupied by a building including common areas, storage, mechanical areas, and space occupied by interior structures and partitions excluding basement area.

GROUP CAMP – Any land or facility for seasonal housing and recreational or educational use by private groups or semipublic groups, such as a Boy or Girl Scout camp, fraternal or service lodge,

ARTICLE XVI – DEFINITIONS

university, college, nature or conservation center or club, or religious camp.

HEAVY EQUIPMENT – Any large operational equipment, including but not limited to trucks, bulldozers, front end loaders, backhoes, engines, compressors, flatbeds, tandems, and tractor-trailer combinations.

HOME OCCUPATION, LEVEL ONE – An occupation or profession carried on within a dwelling unit or an accessory structure that meets the dwelling unit setbacks, and which is clearly incidental to the use of the dwelling unit for residential purposes and does not change the character thereof.

HOME OCCUPATION, LEVEL TWO – A Home Occupation Level Two is the same as a Home Occupation Level One but allows an increased intensity of the use as described in the General Regulations of this Code.

HOTEL/MOTEL – A commercial facility providing transient lodging containing six or more units and where the customary uses such as restaurant facilities, meeting rooms, recreation facilities playgrounds, game rooms, snack bars, and leisure rooms are provided for use by the lodger and the general public, including resorts, tourist cabins. (Excluding travel trailers, travel vehicles or motor homes.)

HUNTING CLUB – Land and necessary appurtenant facilities for use by a membership club or organization and permitted guests for fishing and/or hunting purposes. Such land and buildings need not have frontage on or public access to a public highway or body of water.

INDOOR RECREATION FACILITY – A commercial recreational land use conducted entirely within a building, including arcade, archery, arena, athletic and health clubs, bowling alley, gymnasium, performance theater, pool or billiard hall, skateboard park, skating rink, swimming pool, tennis court and other such recreational uses.

INDUSTRIAL USE – A manufacturing or maintenance facility where any process is used to alter the nature, size or shape of articles or raw materials or where articles are assembled and where said goods or services are consumed or used at another location. Including but not limited to wood and metal fabrication and other light industries.

ARTICLE XVI – DEFINITIONS

INN - A commercial facility, resembling traditional residential character with common access providing transient lodging and meals which is characterized by common dining facilities and leisure rooms available for use by lodgers and limited general public with no more than 25 guest rooms.

KENNEL – A commercial or non-profit establishment that houses more than four (4) dogs, cats, or other domestic animals more than one year of age and where grooming, breeding, boarding, training or selling of animals may be conducted as a business.

KENNEL, PRIVATE – The fenced or enclosed area used to keep household animals.

LIGHT MANUFACTURING – The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

LIVESTOCK – Horses, cows, pigs, sheep, goats, deer, llamas, alpacas, emus, ostriches, chickens, ducks, geese and similar animals and birds.

LOT – A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon as a unit.

LOT AREA – The total area included within front, side and rear lot lines.

LOT, CORNER – A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees. The yard facing the street with the higher capacity shall be designated as the primary frontage.

LOT COVERAGE – That portion of the lot that is covered by buildings and structures. and expressed as a percentage of total lot area.

LOT DEPTH – The minimum contiguous distance measured from the front lot line to the rear lot line.

ARTICLE XVI – DEFINITIONS

LOT LINE – Any line dividing one lot from another or from an established public right-of-way or the shoreline.

LOT, MINIMUM AREA OF – The smallest lot area established by this Code on which a use or structure may be located in a particular district.

LOT, UNIMPROVED – A lot on which no building or structure has been constructed or located and on which no excavation, improved driveway or the installation of water supply or sewage disposal systems have been initiated with the intent to serve a building or use allowed for under the provisions of this Code.

LOT WIDTH – The distance between the side lot line measured along the front building line as determined by the front yard requirement prescribed by this Code.

MANUFACTURED HOME - A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term shall include any structure that meets all of the requirements of Article 21-B of the Executive Law of New York State except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States code. The definition of manufactured homes shall not include self-propelled recreational vehicles, travel trailers, or modular structures.

MEAN HIGH WATER MARK – The line upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

NAVIGABLE WATERWAY – See WATER, NAVIGABLE BODY OF

ARTICLE XVI – DEFINITIONS

NONCONFORMING LOT – Any legally created lot of record on the effective date of this Code which does not meet the minimum lot area and/or lot width requirements of this Code for the zoning district in which such lot is situated.

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

NONCONFORMING USE – Any use which is in existence within a given zoning district on the effective date of this Code, but which is not in conformance with the use regulations for the zoning district.

NOTICE OF DECISION – A note informing that a development has met required criteria and certain approvals. Building permits and Certificates of Completion will not be issued unless a Notice of Decision has been obtained.

NURSERY – Any land or greenhouses used to raise trees, shrubs, flowers, and other plants for sale or for transplanting.

OFFICE – A room or group of rooms used for conducting the affairs of a business, profession, service, industry or government. The term encompasses the terms “MEDICAL OFFICE”, “BUSINESS OFFICE” and “PROFESSIONAL OFFICE”.

OPEN SPACE RECREATION USE – Any recreation use particularly oriented to and utilizing the outdoor character of an area which does not depend on amusement devices or rides. These recreational uses may include a bike trail, cross-country ski trail, hiking and backpacking trail, bicycle trail and horse trail, as well as playground, picnic area, fields, park, and beach for outdoor activities including but not limited to archery, soccer, golf, baseball, football, tennis and water-related activities.

OUTDOOR FURNACE– Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outside, or enclosed in an accessory structure, for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space as accessory to a principle use.

ARTICLE XVI – DEFINITIONS

PARKING LOT -- An open area, other than a road, to be used for the storage of operable passenger automobiles and/or commercial vehicles, and available to the public, whether for compensation, free, or as an accommodation to clients or customers.

PARKING, STACKED – The space specifically designed as a waiting area for vehicles whose occupants will be patronizing a drive-in business.

PARKING, TANDEM – The placement of parking spaces one behind the other, so that the space nearest the driveway or street access serves as the only means of access to the other space.

PARCEL OF PROPERTY – *See LOT.*

PERSONAL SERVICE – An establishment which offers specialized goods and services for purchase by a consumer including barbershops, beauty shops, massage facilities, laundry facilities, tailoring, shoe repair or other similar establishments.

PLANNED DEVELOPMENT DISTRICT (PDD) – An area of land, in which a variety of housing types and/or related commercial and industrial facilities are accommodated in a preplanned environment under more flexible standards than would normally apply under these regulations; the approval of which involves requirements in addition to those of the standard subdivision, such as building design, landscaping, and open spaces.

PUBLIC, SEMI-PUBLIC FACILITY, INSTITUTION – A structure, use or land designated and maintained as a public or municipal facility for education, recreation, transportation, fire and police protection and any other recognized municipal functions.

PUBLIC, PRIVATE UTILITY – A structure, use or land designed and maintained as a public or private utility or service facility in the provision of electric, telephone, radio/television, water and sewer services.

PUBLIC RIGHT OF WAY - A strip of land acquired by reservation, dedication, prescription or condemnation and intended to be occupied

by a street, trails, water line, sanitary sewer and/or other public utilities.

PRINCIPAL BUILDING: Any one of the following:

- (1) A single-family dwelling or manufactured home constitutes one principal building.
- (2) A tourist cabin or similar structure for rent or hire involving 300 square feet or more of floor space constitutes one building.
- (3) Each dwelling unit of a multiple-family dwelling, including each separate dwelling unit used on a time-sharing, leased time or other similar basis whereby more than one person, group of persons or family has a legal right of occupancy at differing times, constitutes one principal building.
- (4) Each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall, each accommodation unit of a tourist home or similar structure, and each tourist cabin or similar structure for rent or hire involving less than 300 square feet of floor space constitutes one-tenth of a principal building.
- (5) Each commercial use structure and each industrial use structure in excess of 300 square feet constitutes one principal building, except that for a commercial use structure which involves the retail sale or rental or distribution of goods, services or commodities, each 11,000 square feet of floor space or portion thereof of such commercial use structure constitutes one principal building.
- (6) All agricultural use structures and single-family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as one principal building.
- (7) Any other structure which exceeds 1,250 square feet of floor space constitutes one principal building.
- (8) A structure containing a commercial use which is also used as a single-family dwelling constitutes one principal building.

ARTICLE XVI – DEFINITIONS

An accessory structure does not constitute a principal building.

RECREATIONAL VEHICLE – A vehicular unit, which is designed as a temporary dwelling for travel, recreational, and vacation use, and which is either self-propelled, or mounted on or pulled by, another vehicle. Examples include but are not limited to a travel trailer, camping trailer, truck camper, motor home, fifth-wheel, trailer, or van, but shall exclude manufactured homes.

REGIONAL PROJECT – Any Class “A” or Class “B” Regional Project as defined by the Adirondack Park Agency Act.

RESTAURANT, FULL SERVICE – An establishment, excluding taverns, where food and drink is prepared, served, and sold for on-premises consumption to patrons seated at tables. Full service restaurants shall not be permitted to have a *drive-through use* as part of their operation.

RETAIL USE – Establishments providing goods, merchandise or services to the general public, for a fee, such as, but not limited to, banks, educational services, gift shop, dry cleaners, laundromats, supermarkets and food stores.

RETAINING WALL – A man-made barrier constructed for the purpose of stabilizing soil, retarding erosion, or terracing a parcel or site.

RIDING STABLES – A place, site or building used for the housing, care and riding of horses or other animals.

ROADSIDE STAND – A direct marketing operation without a permanent structure and only offering open air shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

SAWMILL/CHIPMILL – A facility where logs or timbers are sawn, split, shaved, stripped, chipped, or otherwise processed to produce wood products, not including the processing of timber for use on the same lot by the owner or resident of that lot as an accessory to a residential use.

ARTICLE XVI – DEFINITIONS

SCHOOL – Any building or part thereof which is designed, constructed and used for the education or instruction in any branch of knowledge which includes public or private, elementary, secondary, vocational or religious education.

SCREENING – Vegetation, fencing or earthen materials used to block visibility toward and/or away from a site or to lessen noise impacts from a particular site or from adjacent land uses.

SEASONAL-BUILDING – A structure designed to be used on a seasonal basis by virtue of its construction, or the design or construction of the infrastructure servicing the building. (April 1 through October 31)

SEASONAL USE – A use which occupies continually a building or site for less than nine months of the year. (April 1 through October 31)

SENIOR HOUSING – A facility consisting of three or more dwelling units, where each unit is occupied by at least one person who is 55 years of age or over.

SETBACK – The horizontal separation distance from the property line, highway right-of-way line or, in the case of shoreline property, from the mean high water mark to the building line of the structure. (See definition of "building line.")

SETBACKS - FRONT – A front lot line setback shall be effected from the point at which the width of the lot meets the minimum lot width requirement for that zone. In the case of a corner lot, the yard facing the street with the higher capacity shall be designated as the primary frontage.

SHORELINE – The mean high water mark at which land adjoins the waters of lakes, ponds, rivers and streams within the town.

SHORELINE BUILDING SETBACK – The shortest distance, measured horizontally, between any point of a building and the shoreline of any lake or pond, or the shorelines of any brook, stream or river within the town.

SHORELINE FRONTAGE – The distance measured along the shoreline as it winds and turns between the boundary lines of a lot as they intersect the shoreline of any lake or pond and the shorelines of any

river to be studied as wild, scenic, or recreational river in accordance with the Environmental Conservation Law or any river or stream navigable by boat, including by canoe

SHORELINE LOT WIDTH – The minimum contiguous distance between the side lines of a lot as it winds and turns at the location of the proposed structure.

SIGN – Refers to a name, identification, display, announcement, declaration, device, demonstration or illustration which is affixed to or painted or represented directly or indirectly upon a building, structure or parcel of property which directs attention to an object, product, place, person, activity, institution, organization or business.

- A. ABANDONED SIGN – Any sign which a) is located on a building which becomes vacant; or b) pertains to a time, event, or purpose that no longer applies; or, c) remains in place that no longer advertises a bona fide business or activity; or, d) pertains to a product or service other than the one offered on such lot except for in the case of a permitted “Off-Premises Sign”, shall be deemed to have been abandoned.
- B. ACCESSORY SIGNS – Any sign related to a business or profession conducted, or to a commodity or service sold or offered, upon the premises where such sign is located.
- C. DISPLAY AREA – That area of a sign which circumscribes the border of the message, including structural elements if they are integral to the message.
- D. DOUBLE-FACED SIGNS – Signs designed to be viewed from two directions and which at no point are thicker than 36 inches measured from the exterior surface of each face, and the two faces of the sign are either parallel or the angle between them is 30° or less.
- E. EXEMPT – A sign which may be placed without Permit but which shall otherwise comply with the applicable provisions of this Code. Such signs shall include official traffic signs, posting or trespass notices, temporary signs and any official flag, emblem or insignia of a nation, state or municipality not in connection with a commercial use.
- F. FLASHING – Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all

times when such sign is not in use. For the purpose of this Code any revolving, illuminated sign shall be considered a “flashing sign.”

- G. FREESTANDING SIGN – A sign that is supported by one or more uprights, poles or braces, or by a vase of wood, stone or cement, in or upon the ground. This definition shall not include portable signs.
- H. FREESTANDING "A" TYPE SIGN – A sign that is designed to be movable and is not structurally attached to the ground, a building, a structure or any other sign. Such signs may or may not be in the configuration of an "A."
- I. FRONT or FACE – The outer surface of a building, which is visible from any private or public street or highway.
- J. HEIGHT - The vertical distance measured from the lowest point of the existing grade adjacent to the base of the free-standing sign to the uppermost portion of the sign or its structure.
- K. ILLUMINATED SIGN – Any sign illuminated by electricity, gas or other artificial light, including reflective or phosphorescent matter.
- L. LIGHTING DEVICE – Any light, string of lights or group of lights located or arranged so as to cast illumination on a sign.
- M. MARQUEE – A permanent roofed structure attached to and supported by the building.
- N. MOBILE – A sign attached to or suspended from any type of vehicle which is capable of being moved from place to place, whether actually moved or not, either under its own power or by attachment to any vehicle and intended primarily for the display of such sign. Such sign shall not include lettering, or other graphics painted or attached flush to the side or body of service, deliver or other such vehicles.
- O. NEON SIGN LIGHTING – Self-illuminated sign wherein the light source itself is shaped, and utilized to form all or part of the message.
- P. OFF-PREMISE SIGNS – A sign which advertises an establishment, products, services or entertainment, which are not present, sold or distributed on the lot where the sign is located.

- Q. PORTABLE FREESTANDING SIGN – A sign that by design or construction may be easily moved or relocated for reuse including but not limited to signs mounted upon trailers, benches, wheeled or non-wheeled mobile structures.
- R. PROJECTING SIGNS – A sign other than a wall sign which projects from and is supported by a wall or roof of a building, structure or sign structure.
- S. ROOF SIGN – A sign erected upon a roof or parapet of a building or structure. A sign located between the eaves or projection of the juncture of the ceiling of the uppermost floor and the roof of a building, and the roof line.
- T. SIGN STRUCTURE – The standards, supports, uprights, braces and framework of the sign.
- U. TEMPORARY SIGN – Refers to signs that are limited to short-term display.
- V. WALL SIGNS – A sign permanently or temporarily attached or affixed to any exterior wall or projection of a structure.
- W. WINDOW SIGNS – Signs maintained in or painted upon a window.

SITE ALTERATION – The excavation or significant alteration of the site so as to affect surface drainage, removal of significant tree or soil cover or the provision for new or altered access to; but not to include, landscaping, minor site work or improvements, or tiling the land for agricultural purposes.

SITE PLAN — Maps, drawings, supportive data describing the project proposal or development plan for one or more lots on which are shown the existing or proposed conditions of the lot, submitted to the Planning Board for review and approval.

SITE PLAN REVIEW – The process whereby the planning board, and in some cases the APA, reviews the site plans and maps of the applicant to assure that they meet the stated purposes and standards of the zoning district, provide for the necessary public facilities, and protect and preserve topographical features and adjacent properties through appropriate siting of structures, landscaping and lighting.

SKETCH PLAN — Conceptual maps, renderings, and supportive data

describing the project proposed by the applicant for initial review, which may be used as the basis for preparing the site plans for Planning Board review.

SKETCH PLAN CONFERENCE — Initial Planning Board review of the project proposal with the applicant. The concept plan conference provides an opportunity for an applicant to learn from the Planning Board what the site plan submission requirements be prior to submitting the site plan.

SPECIAL USE PERMIT — A use that would not normally be appropriate generally or without restrictions throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, order, comfort, convenience, appearance, prosperity or general welfare. Such use may be permitted in such zoning district as a special permit use, provided that specific provision for such is made in the district and a permit is obtained in accordance with this Code.

STRUCTURE – Any object constructed, installed or placed on the land to facilitate land use and development or subdivision of land, such as buildings, sheds, single family dwellings, mobile homes, signs, tanks, ski tow or jump, and any fixtures, additions and alterations thereto. Construction must be more than six inches above grade or in excess of 144 square feet to be considered a structure. Landscaping features and fences shall not constitute structures.

STRUCTURE, ACCESSORY – See ACCESSORY STRUCTURE

STRUCTURE, PRINCIPAL – Principal Building

SWIMMING POOL – Any body of water or receptacle for water having a depth at any point greater than two (2) feet, used or intended to be used for swimming, and constructed, installed, or maintained in or above the ground. A swimming pool shall be deemed an accessory structure for all purposes under the provisions of this Code.

TAVERN – An establishment serving alcoholic beverages in which the principal business is the sale of such beverages at retail for consumption on the premises and where food may also be served as

accessory to the principal use and where entertainment may be provided.

TIME-SHARE UNIT – Any multi-family dwelling unit or hotel , which is owned, occupied, or possessed, under an ownership or use agreement among various persons for a specified period of time.

TELECOMMUNICATIONS TOWER – Any structure greater than 35 feet in height which is specifically designed for receiving and/or transmitting signals (for the purpose of communications).

TOURIST ATTRACTION – Any man-made or natural place of interest open to the general public and for which an admittance fees is usually charged, including but not limited to animal farms, amusement parks, replicas of real or fictional places, things or people, and natural geological formations.

TRAVEL TRAILER - A portable vehicle which is designed to be transported on its own wheels, which is designed intended to be used for temporary living quarters for travel, recreational or vacation purposes and which may or may not include one (1) or all of the accommodations and facilities included in a mobile home.

USE – The specific purpose for which a building, structure or land is designed, arranged, intended or for which it is or may be occupied or maintained.

USE, PRINCIPAL – The main or primary purpose or activity conducted on the lot.

VEHICLE RENTAL OR SALES — Establishments primarily engaged in the retail sale or rental of new and used vehicles, including automobiles, recreational vehicles, motorcycles, ATVs and other off-road vehicles, boats, and trailers, where service and repairs are incidental to the use, not to include the sale, service, or repair of commercial vehicles.

VEHICLE REPAIR - Any building, premises, and land in which or upon which a business, service or industry involving the maintenance, servicing, washing, cleaning, repair or painting of vehicles is conducted

or rendered. Automobile repair as defined herein does not include the repair or service of commercial vehicles.

VEHICLE SERVICE – Any area of land, including structures thereon, that is used for the sale of gasoline, oil, other motor vehicle fuels, or products designed to be used for lubricating, washing, cleaning, or otherwise servicing automobiles, including a convenience store, provided that the store is an integral part of the gasoline or service station, but excluding the activities permitted with an automobile repair center, and the use of mechanical car washing equipment.

VETERINARY SERVICE – A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-term boarding and shall be incidental to such hospital use.

WAREHOUSE – A building or part of a building used for the storage and distribution of goods, wares, merchandise, substances, or articles, not intended for subsequent shipment to a retail outlet. Warehousing does include individual/personal/self-storage units, and does not include wholesale or retail sales, or distribution centers.

WASTE DISPOSAL AREA – Any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than an on-site disposal area directly associated with an industrial use.

WASTE TREATMENT SITE – Any building, structure or area where sewage is treated.

WATER, NAVIGABLE BODY OF (also NAVIGABLE WATERWAY)– A lake, river, reservoir, channel, pond, stream or other natural or man-made configuration encompassing a quantity and depth of water which make it navigable under normal conditions by canoe or other like small water craft.

WATERSHED MANAGEMENT or FLOOD-CONTROL PROTECT – Any dam, impoundment, dike, rip-rap or other structure or channelization or dredging activity designed to alter or regulate the natural flow or condition of rivers or streams or the natural level or condition of lakes or ponds.

ARTICLE XVI – DEFINITIONS

WATER SUPPLY SYSTEM – An approved source and connecting supply system for the provision of water for any use required to have such system. Such system may include water derived from approved spring, well, lake or river sources as part of an approved public, community, or individual system as provided for in this Code.

WATERBODY – Any natural or manmade body of water such as a pond, lake, wetland or wet area that does not necessarily flow in a definite direction or course.

WATERCOURSE – A natural or artificial channel for passage of water either continuously or intermittently.

WATER, GROUNDWATER – Water that infiltrates into the ground, accumulating and saturating the spaces in earth material.

WATERSHED – The area which is a drainage basin for a particular freshwater body.

WATER, SURFACE – Water contained in streams, rivers, ponds, wet areas, lakes and other water bodies and watercourses or that drains across land.

WETLANDS – Any land which is annually subject to periodic or continual inundation by water and commonly referred to as a "bog," "swamp," or "marsh," which is either (a) one acre or more in size, or (b) located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

WINDMILL – Shall mean any mechanism designed for the purpose of converting wind energy into electrical energy. A Non-Commercial Windmill is incidental and subordinate to another use on the same parcel, an accessory use, and supplies electrical power for on-site use. When a non-commercial Windmill also receives electrical power supplied by a utility company, excess electrical power generated but not needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by the company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

ARTICLE XVII REPEALER, SEVERABILITY & EFFECTIVE DATE

Repeal of Prior Zoning Ordinance

The Ordinance entitled "Town of Wilmington Zoning Ordinance" adopted as of June 17, 1988, together with all changes and amendments thereto is hereby repealed and declared to be of no effect.

Severability

If any clause, sentence, paragraph, section or part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Effective Date

This ordinance shall take effect 10 days after publication and posting, or immediately upon personal service as provided by ~ 133 of the Town Law.

APPENDIX A- DEVELOPMENT CONSIDERATIONS

The following types of considerations shall be applied, to the extent that they are applicable, in a manner that reflects the size, nature and public interest as these factors relate to any use or project considered under the Subdivision, Planned Development, Special Permit or Site Plan Review processes of this Code.

Adequate information shall be submitted and the responsible Town body shall evaluate the types of development considerations outlined following in order that any undue adverse impact on the natural, physical, social and economic resources of the Town may be avoided. The accompanying Zoning Map is a partial inventory of these features, depicting those most readily mapped natural resource considerations to assist in this assessment.

General Development Considerations

- A. The proposed use or project shall be reviewed to determine:
- (1) The need for the proposed project, including any market or feasibility study that may be appropriate to the proposed project.
 - (2) The extent to which the proposal is consistent with the stated purposes of the Comprehensive Plan and the process according to which the use or project is being considered.
 - (3) The relationship of the proposed project to the standards of the existing zoning district including, but not limited to, overall density and types of uses to be accommodated.
 - (4) The relationship of the proposal to the existing land use make-up and character of areas immediately adjoining or likely to be impacted by the proposal.
 - (5) The relationship of any principal and accessory building(s) on the proposed site to one another and to other structures and uses in the vicinity as well as to the natural features of the site and historic sites or structures in the area.
 - (6) The provision for satisfactory accommodation of all utilities including surface runoff, water supply, sanitary sewage disposal, and any

others that may be anticipated or necessary.

- (7) The provision for open space and any appropriate recreational facilities in the proposed project, including adequate assurances for their maintenance and continuation.
 - (8) The amount of traffic to be generated and the provisions for adequately handling such volumes, as well as traffic circulation features within the site including the amount of, location of, and access to automobile parking and any service areas.
 - (9) The overall sensitivity of the proposed project to the neighborhood and the site and its provision for the location, size and type of any signing, lighting and landscape features.
- B. It shall be the objective of the reviewing body to take into account whether or not the proposed use or project satisfies, to an appropriate degree, the objectives of the Comprehensive Plan and this Code relative to the factors outlined above, and based on their findings, and on the additional development considerations which follow, to render their determination accordingly.

Natural Resource Considerations

The recognition and satisfactory accommodation of important natural and physical limitations and opportunities of the site will be determined and will include consideration of and likely impact on the following:

- (1) Ground and Surface Water Characteristics including water quality, supply, recharge, flow and run-off patterns, water table, sedimentation, siltation and eutrophication.
- (2) Land Forms, Elevation and Slope – including aesthetics, slippage, erosion, fragile ecosystems and drainage patterns.
- (3) Soil and Subsurface Characteristics - including absorption qualities, erosion, depth to bedrock and water table and mineral resources.
- (4) Forest and Vegetative Cover - including commercial forest lands, visual factors and screening, exposure to erosion and wind-throw, wildlife habitat and rare plant communities.
 - (a) Air Quality - including levels of pollution, prevailing wind

directions, natural buffers, abatement devices.

- (b) Noise Levels - including relationship to DEC and EPA Standards, natural buffers and surrounding uses.
- (c) Scenic Views and Visual Considerations - including scenic vistas, travel corridors, relationship between natural and man-made features and screening.