

Chapter 118

ZONING

[HISTORY: Adopted by the Town Board of the Town of New Hartford 6-11-2014 by L.L. No. 4-2014.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 23.

Natural gas exploration and extraction — See Ch. 83

Fire Prevention and Building Code administration and enforcement — See Ch. 65.

Stormwater management — See Ch. 101.

Flood damage prevention — See Ch. 67.

Subdivision of land — See Ch. 104.

Telecommunications facilities — See Ch. 107B.

¹ Editor's Note: This local law also repealed former Ch. 118, Zoning, adopted 5-5-1999 by L.L. No. 2-1999, as amended.

ARTICLE I
Title, Authority, Purpose and Application

§ 118-1. Title.

This chapter shall be known and may be cited as the "Town of New Hartford Zoning Law."

§ 118-2. Legislative authority.

This chapter is enacted pursuant to the enabling provisions of Articles 2 and 3 of the Municipal Home Rule Law and Article 16 of the Town Law.

§ 118-3. Purpose and scope.

This chapter regulates the location, use and occupancy of buildings and the use of land for residential, commercial, recreation and other purposes; regulates the bulk and height of buildings and other structures; and regulates the area of yards and other spaces. This chapter divides the Town into districts within which regulations for the above are set forth; provides for administration and enforcement; and provides for variances from its requirements. The purposes of this chapter are:

- A. To promote and protect the general health, welfare and safety of the residents of the Town of New Hartford.
- B. To promote orderly growth and development.
- C. To protect natural and cultural resources.
- D. To minimize losses from fire, flood, erosion and pollution.
- E. To protect the community from unsightly, obtrusive or offensive land uses.
- F. To protect property values.

§ 118-4. Applicability.

This chapter applies to all structures and uses in the Town of New Hartford. Any structure or use not specifically permitted in this chapter is prohibited. All structures and uses permitted and approved pursuant to this chapter shall also comply with all other applicable local, county, regional, state and federal requirements.

§ 118-5. (Reserved)

ARTICLE II
Permits and Approval Process

§ 118-6. Activities and permitting.

- A. No development may be commenced within the Town of New Hartford prior to the issuance of all relevant permits or approvals. The types of permits and approvals include the following:
- (1) Building permits and certificates of occupancy. The issuing, posting and expiration of building permits and the issuance of certificates of occupancy will be done according to Chapter 65 of the Code of the Town of New Hartford.
 - (2) Planned development districts. All planned development district applications shall be subject to the provisions of Article VII.
 - (3) Site plan approvals. Site plan review and approval shall be required for all proposed uses as listed in Schedule A of this chapter.² The site plan review and approval process is provided in Article X.
 - (4) Special use permits. All special use permit applications shall be subject to the special use permit provisions of Article XI and may be subject to the site plan review provisions of Article X.
 - (5) Variances. All area and use variances shall be subject to the provisions of Article XIV.
- B. Change of use or structure. A change of use is the initiation of a use that is in a different use category, as listed in Schedule A of this chapter, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the change would result in the enlargement of a structure; a change in vehicular circulation on the lot changing ingress or egress from the lot; the addition of 10 or more surface parking spaces; or the addition of four or more parking spaces or a twenty-five-percent increase in parking spaces, whichever is greater.
- (1) Uses by right. Any change of use of land or existing structures to a use permitted by right without site plan review shall not require approval from the Planning Board unless such use is to be located in a structure on a lot that does not meet the minimum lot size and setback requirements of this chapter. (See §§ 118-113, Nonconforming lots, and 118-114, Creation of substandard lots prohibited.) This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Code Enforcement Officer under Chapter 65 of this Code.
 - (2) Uses by right subject to site plan review. Any change of the use of an existing structure to a use permitted by right subject to site plan review (See § 118-90.) shall require site plan review only if it involves the construction or enlargement of a structure; a change in vehicular circulation on the lot changing ingress or egress from the lot; the addition of 10 or more surface parking spaces; or the addition of four or more parking spaces or a twenty-five-percent increase in parking spaces, whichever is greater; or the enlargement or addition of signs.
 - (3) Uses by special use permit.
 - (a) A special use permit shall be required for any change of use from a use that does not require a special use permit to a use that does require a special use permit.
 - (b) Once a special use permit has been granted, it shall run with the land and apply to the approved use and to all subsequent owners, tenants, and occupants engaged in the same use. The special use permit shall also apply to any subsequent use of the property in the same use category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions

2. Editor's Note: Schedule A is included as an attachment to this chapter.

of the special use permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by special use permit shall require the granting of a new special use permit or a special use permit amendment.

- (4) Rebuilding, replacement and expansion of structures. The rebuilding or replacement on the same footprint of any structure for a use which requires site plan review and/or a special use permit shall require site plan review, even if it is a continuation of the same use.

§ 118-7. Fees and expenses.

- A. Fees required by this chapter shall be paid upon the submission of applications and appeals. No application shall be considered complete until such fee is paid.
- B. Fees related to this chapter are set forth § 118-140.
- C. No required fee shall be substituted for any other fee.
- D. The following actions may require fees or reimbursement of expenses:
 - (1) Site plan review.
 - (2) Special use permit.
 - (3) Planned development district.
 - (4) Zoning permit.
 - (5) Zoning variance application.
 - (6) Zoning interpretation.
 - (7) Expense of outside professional services.
 - (8) Zoning chapter or Zoning Map amendment.

§ 118-8. Professional assistance.

The Town Board, Planning Board or Zoning Board of Appeals may, at its discretion, engage the services of planning, engineering, legal, environmental or other professional consultants, at the expense of the applicant, for the review of applications involving significant issues beyond the scope or complexity of normal review. The Planning Board and Zoning Board of Appeals may require costs to be paid in advance into an escrow account to be held and managed by the Town and may deny an application upon failure of the applicant to make such payment in a timely manner. The Town Attorney shall establish the terms of the account in consultation with the Planning Board and/or the Zoning Board of Appeals and shall provide a monthly accounting of the escrow account to the applicant and provisions for further funding of the escrow account when the balance is drawn down to a specified amount.

§ 118-9. Performance bond; letter of credit; escrow account.

- A. Performance bond. Such bond shall be in an amount not to exceed 120% of the cost of installation of improvements. Such bond shall be issued by a financial institution in New York State and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of execution and satisfactory to the Town Board as to surety. The bond shall be released only by resolution of the Town Board when all requirements and completion of improvements have been satisfactorily met by the applicant. The responsibility for determining that improvements have been satisfactorily met shall rest with the Town Engineer, who shall report to the Town Board.

- B. Letter of credit. An irrevocable letter of credit from a bank or other reputable financial institution in New York State may be accepted by the Planning Board in lieu of a performance bond. Such letter of credit shall be satisfactory to the Town Attorney as to form, sufficiency, manner of execution and institution.
- C. Escrow account. The deposit of cash, by the applicant, with the Town or its designated bank is to be held in escrow pursuant to an escrow agreement. The escrow agreement shall be satisfactory to the Town Attorney as to form, sufficiency and manner of execution and financial institution.

§ 118-10. SEQRA.

The Town shall comply with the provisions of the New York State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617, of the New York Codes, Rules and Regulations. Upon receipt of any complete application, the Town or any officer, department or board of the Town shall initiate the New York State environmental quality review process by issuing a determination of significance.

§ 118-11. Referrals under General Municipal Law.

Applications and hearings required by this chapter may be subject to §§ 239-l, 239-m, 239-n and 239-nn of New York State General Municipal Law.

§ 118-12. (Reserved)

ARTICLE III
Definitions and Word Usage.

§ 118-13. Interpretation of terms; word usage.

- A. Unless otherwise expressly stated, the following terms shall, for the purposes of this chapter, have the meanings herein indicated. Words used in the present tense include the future; the singular number includes the plural and the plural number includes the singular; the word "lot" includes the word "plot"; the word "structure" includes the word "building." The term "occupied" or "used" as applied to any given building or land shall be construed to include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased" or "intended to be used or occupied."
- B. Unless otherwise specified, all distances shall be measured horizontally. Elevations shall be measured vertically.
- C. The words "shall" and "must" are mandatory and not optional.

§ 118-14. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY APARTMENT — A dwelling unit within a permitted single-family dwelling that is subordinate to the principal dwelling in terms of size, location and appearance and provides complete housekeeping facilities for one family, who must be directly related to the occupants of the principal dwelling, and which provides independent cooking, bathroom and sleeping facilities and which may have a physically separate access from the principal dwelling.

ACCESSORY BUILDING — A building subordinate to, detached from and smaller than the main building on a lot and used for purposes customarily incidental to those of the main building, including, but not limited to, sheds, garages, barns, gazebos and swimming pools.

ACCESSORY USE — A use, occupancy or tenancy customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building, including, but not limited to, sheds, garages, barns, gazebos, swimming pools, trampolines and swing sets. This definition shall also include the term "customary accessory use."

ADULT ENTERTAINMENT ESTABLISHMENT — Any establishment having operations or merchandise depicting or relating to specified sexual activity or specified anatomical areas as defined below, for purchase or observation by patrons therein. The following applies for the purpose of this definition:

- A. **SUBSTANTIAL OR SIGNIFICANT PORTION** — More than 20% of an establishment's gross sales or more than 20% of an establishment's net floor area.
- B. **SPECIFIED SEXUAL ACTIVITY** — Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
- C. **SPECIFIED ANATOMICAL AREAS** — Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, whether or not covered.

AGRICULTURAL STRUCTURE — Any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use.

AGRICULTURAL USE — Cultivation of land, or raising or harvesting of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training of and management of animals, including the sale of products grown on or raised directly on such land and including the construction, alteration or

maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds on such lands. The term "farm" is included in this definition.

AIRCRAFT LANDING STRIP — Any area of land designated and set aside for the landing and takeoff of aircraft.

AIRPORT — A place where aircraft can land and take off, usually equipped with hangars, facilities for refueling and repair, and various accommodations for passengers.

ALLEY — A service way which affords a secondary public means of vehicular access to abutting property.

ALTERATION — As applied to a building or structure, a change or rearrangement in the structural parts or in the entrance and exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

ANIMAL HUSBANDRY — The keeping of any domestic animals other than customary household pets, including but not limited to livestock, horses, rabbits, llamas, alpacas, chickens, ducks and turkeys and other similar animals.

ANIMAL SHELTER — Any structure or property which houses stray, abandoned or owner-surrendered animals, except for fish, for impoundment purposes for future disposition, including redemption, adoption, sale or disposal. This use may include facilities for the destruction and disposal of animals. Foster home sites and mobile adoption sites may be utilized in the operation of the animal shelter.

AREA AND BULK REGULATION — The combination of controls that establishes the minimum size of a lot and the maximum size of a building and its location on such lot. (See Schedule B of this chapter.³)

AREA, BUILDING — All areas contained within exterior walls exclusive of open courts is the building area or total square footage. The definition actually includes any area under the roof even if they are open, so the portico of a hotel or a covered porch is included in building area. The impacts associated with the size of a development are cumulative and while multistory buildings do not increase the amount of stormwater runoff, the total size of the structure has obvious impacts on highway, domestic water, and police usage. **[Added 10-5-2015 by L.L. No. 7-2015]**

ARENA/STADIUM — An enclosed or partially enclosed facility with seating surrounding or partially surrounding the performance or activity such as a sporting event, concert, or other live performance.

ART GALLERY — An establishment engaged in the sale, loan, appraisal or display of art, books, paintings, sculpture or other works of art.

ARTIST STUDIO — A workshop or workroom for the creation of fine arts and crafts, such as painting, sculpturing, photography or the creation of other handmade pieces of art. The space may include a residential unit, and it may also include a teaching area for small groups of 10 or less. This definition also includes the term "artist loft."

AS-OF-RIGHT — Refers to a use of land that is permitted as a principal use in a zoning district. For example, in a single-family district, the construction of one single-family home is an as-of-right use of the lot.

ASPHALT MANUFACTURING OR STORAGE — The commercial production and storage of asphalt and related materials.

ASSISTED LIVING FACILITY — A residence for the frail elderly that provide rooms, meals, personal care and supervision of self-administered medication. It may provide other services, such as recreational activities, financial services and transportation.

AUTOMOBILE BODY SHOP — A shop in the business of making substantial repairs to the shell or body of an automobile and of major or substantial painting of the shell or body and where the following services may also be carried out: general auto repair; engine rebuilding; rebuilding or reconditioning of motor vehicles; collision service, such as body frame or fender straightening and repair; overall painting and undercoating.

AUTOMOBILE/MOTORIZED VEHICLE RENTAL, SALES AND SERVICE — The use of any building or land

3. Editor's Note: Schedule B is included as an attachment to this chapter.

for the retail or wholesale display and sale of new or used automobiles, boats, trucks or recreational vehicles five or more times in 12 months. This may include the sale of vehicular fuel, the servicing or repair of automobiles and boats and the sale of automobile and boat parts.

AUTOMOBILE REPAIR STATION — A parcel or building thereon where the following services may be carried out: general auto repair; engine rebuilding; and rebuilding or reconditioning of motor vehicles. Automobile repair stations shall not include the offering of collision service or painting and undercoating of motor vehicles. The sale of vehicular fuel may or may not also be carried on.

BAKERY — A facility where breads or pastries are prepared and baked and may be sold for wholesale or retail consumption.

BANK — An institution in which the primary business is the holding, lending transfer and/or investment of money. The term includes credit unions and savings and loan institutions. For purposes of this chapter, drive-through windows are an accessory use which shall only be permitted in certain districts as provided in Schedule A: Permitted Uses.⁴

BAR — A place in which the principal income is derived from the sale or serving of alcoholic beverages for consumption on the premises, with or without live entertainment. Also "tavern."

BASEMENT — The portion of a building having its floor subgrade (below ground level) on all sides.

BED-AND-BREAKFAST — A structure containing up to four sleeping rooms which are designed or intended for occupancy or which are occupied by one or more guests for compensation, but in which no provision is made for cooking in the sleeping room. Separate sanitary facilities may or may not be provided for each room, and one or more meals for each guest may be included at the discretion of the owner, who shall be a resident of the bed-and-breakfast establishment.

BOWLING ALLEY — A structure in which the game of bowling is played.

BROADCASTING FACILITY, RADIO OR TELEVISION — Commercial and public communications uses, including radio and television broadcasting and receiving stations and studios, with facilities entirely within buildings.

BUFFER STRIP — Land area used to visibly separate one use from another or to shield or block noise, light or other nuisances from adjoining or abutting properties.

BUILDABLE AREA — That portion of a lot or parcel in or on which a structure may be located. This area is defined by the minimum setback distances as stipulated herein for the zoning district in which the lot or parcel is located.

BUILDING — A structure wholly or partially enclosed within exterior walls, or within exterior and part walls, and a roof, affording shelter to persons, animals, property, or business activity.

BUILDING HEIGHT — The height of a building shall be measured in feet. The measurement shall be determined from a datum established by the average elevation of paved open spaces which are suitable for the approach of fire department equipment, and curb levels where established, both of which are within 50 feet of the exterior walls of the building; where such distance is exceeded, the height in feet shall be determined. Such height shall be measured from such datum to the highest level of a flat or mansard roof or to the average height of a pitched, gabled, hip or gambrel roof, excluding bulkheads and other roof, except that the highest level of an accessory building or structure shall be measured at the highest peak of the building or structure.

BUILDING LINE — A line parallel to the street line at a distance therefrom equal to the depth of the front yard required for the zoning district in which the lot is located. The building line is identical to the setback line.

BUILDING PERMIT — Written permission pursuant to this chapter issued by the New Hartford Code Enforcement Officer or his/her designee for the construction, repair, alteration or addition to a building or structure and for the excavation, grading or clearing of a lot for construction purposes.

4. Editor's Note: Schedule A is included as an attachment to this chapter.

BUILDING, PRINCIPAL — A building in which is conducted the main or principal use of the lot on which said building is located.

BULK CHEMICAL STORAGE — The storage of bulk chemicals, liquid or solid, in above- or below-ground tanks intended for wholesale distribution or on-premises production.

BULK FUEL STORAGE — The storage of bulk fuels in above- or below-ground tanks intended for wholesale distribution or home delivery.

CAFE — An informal restaurant primarily offering coffee, tea, and other beverages, and where light refreshments and limited menu meals may also be sold.

CAMPGROUND — A parcel of land used or intended to be used or rented for occupancy by campers or for occupancy by camping trailers or tents, of a design or character suitable for seasonal or other temporary living purposes, excluding, however, mobile homes.

CAR WASH — Any structure or land regularly used for washing, cleaning, waxing or polishing of motor vehicles, whether manually or with the use of equipment, for compensation.

CEMETERY — Property used for the interring of the dead. A cemetery includes a mausoleum or similar structure, but does not include a crematory or backyard burials.

CERTIFICATE OF OCCUPANCY OR USE — Official certification issued by the Code Enforcement Officer that a premises conforms to the applicable provisions of this chapter, the New York State Uniform Fire Prevention and Building Code and other applicable regulations, and may be legally used or occupied.

CLUSTER DEVELOPMENT — The modification of the arrangement of lots, buildings, and infrastructure permitted by this chapter to be placed on a parcel of land to be subdivided. The modification permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development, and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas, or agriculture.

CODE ENFORCEMENT OFFICER — The person designated, empowered and paid by the Town Board to enforce the provisions of this chapter.

COLD STORAGE — An establishment where goods are stored under refrigerated, unconditioned or unheated conditions and from which truck deliveries are made.

COLLEGE/UNIVERSITY — An institution other than a trade school that provides full-time or part-time education beyond high school.

COMMERCIAL VEHICLE — Any vehicle connected with a commercial, industrial or educational use or operation due to its size, function or graphics thereon.

COMPREHENSIVE PLAN — A document or series of documents prepared and adopted by the Town setting forth policies for the future growth and development of the Town of New Hartford.

CONCRETE MANUFACTURING — An establishment engaged in the commercial manufacture of concrete and related products.

CONDOMINIUM — A building or group of buildings in which dwelling units are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis via a condominium association.

CONDOMINIUM ASSOCIATION — The community association which has legal authority for and administers and maintains the common property and common elements of a condominium without having title to the common property.

CONGREGATE RESIDENCE — Apartments and dwellings with communal dining facilities and services, such as housekeeping, organized social and recreational activities, transportation services and other support services appropriate for the residents.

CONTRACTOR'S YARD — Any area accessory to and on the same lot with a construction project and used for the storage or processing of materials and supplies used in the actual construction of buildings within a project. Includes contractor's office with storage buildings to enclose all equipment and materials.

CONVENIENCE STORE — Any retail establishment offering for sale prepackaged food products, household items, newspapers and magazines, and sandwiches and other freshly prepared foods for off-site consumption. Convenience stores may include the sale of gasoline, in which case they shall conform to the requirements for gasoline service stations.

CREMATORIUM — A facility where human or animal remains are cremated prior to burial.

CUL-DE-SAC — A street with a single common ingress and egress and with a turnaround at the end.

CULTURAL FACILITY — A library, museum, or similar public or quasi-public use displaying, preserving, and exhibiting objects of community and cultural interest in one or more of the arts or sciences.

DAY CARE, ADULT — Provision of daytime care to adults whose ability to independently perform the normal activities of daily life is limited by age or physical or other impairment but who do not require the level of care provided by nursing homes or medical facilities. Said care shall be provided for a period of time of more than three hours but less than 12 hours on any given day.

DAY CARE, CHILD/FAMILY — A program or facility caring for children. Said care shall be provided for a period of time of more than three hours per day but less than 24 hours on any given day for any given child by an individual, association, corporation, institution or agency whose activities include providing child day care or operating a facility where child day care is provided as defined in § 390 of the New York State Social Services Law.

DENSITY, GROSS — The number of dwelling units per gross acre on a parcel of land.

DEVELOPABLE LAND — Land with slopes less than 15% without wetlands or unusual or unique features or subsoil conditions and outside of designated floodplains.

DRIVE-THROUGH SERVICE FACILITY — Any portion of a building or structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. Any drive-through facility is considered an accessory use for purposes of this chapter. A gasoline service station is not considered a drive-through facility for purposes of this chapter.

DRIVEWAY — That space or area of a lot which is specifically designated and reserved for the movement of motor vehicles from the lot to a public street. Such space or area shall be a minimum of nine feet in width. In no instance shall motor vehicles be parked and stored within any other area of the front yard except in this designated space.

DRIVING RANGE — An area in which golf balls are hit for compensation. A driving range does not include holes for playing.

DRY-CLEANING COLLECTION FACILITY — A facility serving customers directly and operated for the purpose of cleaning garments, fabrics, draperies, etc., with any of various nonaqueous agents used in small quantities.

DUPLEX — See "dwelling, two-family."

DWELLING — A building designed or used principally as the living quarters for one or more families.

DWELLING, ATTACHED — A one-family dwelling with ground floor outside access, attached to two or more one-family dwellings by common vertical walls without openings.

DWELLING, MULTIFAMILY — A building or group of buildings designed for year-round occupancy by more than two families living independently of each other, including apartment houses and group houses but excluding hotels, motels, and rooming houses.

DWELLING, ONE-FAMILY — A detached building, not including a trailer, mobile home or temporary structure,

designed exclusively for year-round occupancy by one family only. The definition includes the term "single-family dwelling."

DWELLING, TWO-FAMILY — A detached building, not including a trailer, mobile home or temporary structure, designed exclusively for year-round occupancy by two families living independently of each other.

DWELLING UNIT — One or more rooms with provision for living, sanitary and sleeping facilities arranged for the use of one family.

EASEMENT — A private agreement between parties granting one or more property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

ELEEMOSYNARY USE OR ORGANIZATION — Any organization of, relating to or supported by charity.

ENTERTAINMENT AND RECREATION, INDOOR, COMMERCIAL — Includes such uses as health/sports club, arcade, bowling alley, theater, table tennis and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor commercial recreation open to the public for a fee.

ENTERTAINMENT AND RECREATION, OUTDOOR, COMMERCIAL — Includes such uses as golf driving range, golf pitch and putt course, par-3 golf course, drive-in theater, batting range, and similar places of outdoor commercial recreation open to the public for a fee. For purposes of this definition, the following uses shall not be considered outdoor commercial entertainment and recreation: outdoor firing ranges, racetracks or recreational courses for the purpose of racing motorized vehicles such as, but not limited to, go-carts and motocross racing.

FAMILY — A group of individuals not necessarily related by blood, marriage, adoption or guardianship living together in a dwelling unit as a single housekeeping unit. For purposes of this chapter, "family" does not include any society, club, fraternity, sorority, association, lodge, federation, or like organizations; or any group of individuals who are in a group living arrangement as a result of criminal offenses.

FARM — See "agricultural use."

FARMSTAND — A temporary structure for the display and sale of farm products.

FAST-FOOD RESTAURANT — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in cars on the premises, or off-premises.

FENCE — Anything other than living plants, trees or shrubs designed to or which divides, encloses or screens a parcel of land or portion thereof and which does not support any roof structure or enclose any covered living space.

FISH AND GAME CLUB — An institution or establishment primarily engaged in hunting or fishing for sport and which may include a firing range and clubhouse as an accessory use.

FLOOD INSURANCE RATE MAP (FIRM) — The official map of the Town of New Hartford on which the Federal Emergency Management Agency has delineated the one-hundred-year and five-hundred-year floodplains.

FLOODPLAIN, ONE-HUNDRED-YEAR — The highest level of flood that, on the average, is likely to occur once every 100 years; that is, that has a one-percent chance of occurring each year.

FLOOD PROTECTION ELEVATION — The one-hundred-year-flood elevation plus one additional foot of elevation.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas required to carry and discharge a flood of a given magnitude without cumulatively increasing the water surface elevation more than the designated height shown in the Town of New Hartford's Flood Insurance Rate Map.

FLOOR AREA, GROSS — The sum of the gross horizontal areas of the several floors of a building measured from the exterior walls, or from the center line of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles or any space where the floor-to-ceiling height is less than six feet.

FREIGHT OR TRUCKING TERMINAL — A facility for the receipt, transfer, short-term storage, and dispatch of goods. Such facility may include the repair or maintenance of vehicles.

FRONTAGE ROAD — A service road, usually parallel to a highway, designed to reduce the number of driveways that intersect the highway.

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 and subject to all pertinent laws regulating such use. This definition shall also include the term "mortuary."

GARAGE, PRIVATE — A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein, nor space therein for more than one car leased to a nonresident of the premises.

GASOLINE SERVICE STATION — A parcel or building thereon where gasoline or any other automobile engine fuel, kerosene, motor oil, lubricants, grease (for operation of motor vehicles) or minor accessories are retailed directly to the public on the premises and where the servicing or minor mechanical repair of motor vehicles or installation of mufflers or other specialty items may occur. Gasoline service stations shall not include the sale or storage of automobiles or trailers (new or used). A gasoline service station is also known as a "gasoline station" or "automobile service station."

GOLF COURSE — A tract of land for playing golf, except a miniature golf course, consisting of at least nine holes, within which the playing area is not artificially illuminated. A golf course may include a driving range.

GREENHOUSE — A business whose principal activity is the growing and selling of plants on the site and having outside storage, growing or display. A greenhouse may also retail plants and flowers grown on and off of the premises. The term includes the term "nursery."

HEALTH CARE FACILITY — A facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

HEALTH/SPORT CLUB — A building or portion thereof designed and equipped for the conduct of sports, exercise, leisure time activities or other customary and usual recreational activities, operated for profit or on a not-for-profit basis, and which can be open only to bona fide members and guests of the organization or open to the public for a fee. See the term "entertainment and recreation, indoor, commercial."

HELIPORT — Any area of land, water or structure which is used or intended to be used for the landing and takeoff of helicopters and any appurtenant areas which are used for heliport buildings or helicopter facilities or rights-of-way, together with all heliport buildings and facilities.

HOME OCCUPATION — Any nonresidential activity or use, done for hobby or profit as an incidental and secondary use of a residential property and which does not alter the exterior of the property or affect the residential character of the neighborhood. This definition shall include utilization of a residential property as a home office for business conducted off-premises or for the storage of inventory and equipment associated with that business. (See also § 118-57 of this chapter for further definition of a Type 1 home occupation and a Type 2 home occupation.)

HOMEOWNERS' ASSOCIATION — A community association other than a condominium association, operating in accordance with the General Business Law, which is organized in a development in which individual owners share common interest in open space or facilities.

HORSE BOARDING — To house or board horses in a stable.

HORSE BOARDING, COMMERCIAL — An enterprise that boards at least 10 horses, regardless of ownership, and receives \$10,000 or more in gross receipts annually from fees generated through the boarding of horses. Under no circumstances shall this definition be construed to include operations whose primary purpose is horse racing.

HOSPITAL — An institution providing primary health services and medical or surgical care to persons suffering from illness, disease, deformity, injury and other abnormal physical or mental conditions and possibly including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices and overnight accommodations.

HOTEL — A building or group of buildings that contains living and sleeping accommodations for transient occupancy and which may provide additional services such as restaurants, meeting rooms, entertainment and

recreational facilities.

HOUSING FOR FARM WORKFORCE — A dwelling intended for occupation by an employee of a farm and his/her family. Said dwelling shall not be occupied by persons other than farm employees and their families.

IMPERVIOUS SURFACE — Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas (paved or gravel), sidewalks, patios and paved recreation areas.

IMPERVIOUS SURFACE COVERAGE — The percentage of the area of a lot that is covered by impervious surface.

INSTITUTIONAL USE — A nonprofit, religious or public use, such as a religious institution, library, public or private school, hospital or government-owned or -operated building, structure or land used for public purpose.

JUNK VEHICLE — Any motor vehicle, boat, trailer or semitrailer which is inoperable and which, by virtue of its condition, cannot be economically restored. In addition, any vehicle may be presumed to be a junk vehicle when valid license plates are not displayed or license plates have been expired for more than 60 days; or valid state-inspection stickers, as required for the use of the vehicle, are not displayed or have been expired for more than 60 days; or the vehicle remains in an inoperable condition for more than 90 days.

JUNKYARD — A lot, land or structure or part thereof used for the collecting, storage and sale of wastepaper, rags, scrap metal or discarded material, or for the collecting, dismantling, storage and salvaging of machinery or vehicles and for the sale of parts thereof. "Automobile junkyard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose. Such terms shall include any place of storage or deposit for any purpose of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles.

KENNEL, BOARDING — Any kennel where pet animals owned by another person are temporarily boarded for pay, trade, barter, commission, or remuneration of any sort. This definition shall also include domestic animal rescue and rehabilitation; provided, however, that this definition shall not apply to zoos or to animal hospitals operated by veterinarians duly licensed under the law.

KENNEL, BREEDING — Any kennel lawfully located on a premises zoned for such use where dogs over the age of six months not licensed as pets are owned, kept, or harbored for the purpose of breeding dogs; provided, however, that this definition shall not apply to zoos or to animal hospitals operated by veterinarians duly licensed under the law.

LANDFILL — Any area for the depositing of refuse in a natural or man-made depression or trench or dumping at ground level, compacting to the smallest practicable volume and covering with earth in a systematic and sanitary manner.

LAUNDROMAT — An establishment providing washing, drying or dry-cleaning machines on the premises for rental use to the general public.

LIBRARY — A structure open to the general public whose principal use is a repository for literary and artistic materials such as books, records, prints, videotapes, etc.

LIVESTOCK — Domestic animals of types customarily raised or kept on farms (i.e., cows, goats, horses, pigs, barnyard fowl, etc.) for profit or other productive purposes. This definition does not include household dogs, cats, and potbellied pigs.

LONG-TERM CARE FACILITY — Any building used as a group residence or extended care facility for the care of persons, including assisted living facilities and nursing homes, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services.

LONG-TERM CARE FACILITY, COMMUNITY-BASED — A facility that is licensed to provide health care under medical supervision for 24 or more consecutive hours to between two and six patients who are not related to the governing authority or its members by marriage, blood or adoption.

LOT — A parcel of land considered as a unit occupied or capable of being occupied by a building or use and accessory buildings or uses or by a group of buildings united by a common use or interest and including such open spaces as are required by this chapter, and having its principal frontage on a public street.

LOT AREA — The total area included within lot lines. No part of the area within a public right-of-way may be included in the computation of lot area.

LOT, CORNER — A lot located at the intersection of and fronting on two or more intersecting streets and having an interior angle at the corner of intersection of less than 135°.

LOT COVERAGE — That portion or percentage of a lot that is covered by an impervious surface.

LOT DEPTH — The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

LOT FRONTAGE — The contiguous length of the front lot line measured at the street right-of-way line. Frontage on a cul-de-sac shall be measured at the front yard setback line. A corner lot shall be considered to have two such frontages.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINES — The lines bounding a lot as defined herein:

- A. **FRONT LOT LINE** — For an interior lot, the line separating said lot from the street. For a corner lot, each line separating said lot from both streets. For a through lot, the line separating said lot from both streets.
- B. **REAR LOT LINE** — The lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line and wholly within the lot.
- C. **SIDE LOT LINE** — Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from the street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

LOT OF RECORD — A legally existing lot at the time of adoption of this chapter, properly filed and recorded in the Oneida County Clerk's office as either an individual parcel of land or part of an approved subdivision.

LOT, THROUGH — A lot having frontage on two parallel or converging streets other than a corner lot.

MACHINERY/EQUIPMENT SALES — The sale and incidental servicing of new and used machinery of any type.

MACHINE/WELDING SHOP — An establishment where metal parts are fabricated or welded for any purpose.

MANUFACTURED HOME — A factory-manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD) Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, transportable in one or more sections, which, in the traveling mode, is eight feet (2,438 mm) or more in width or 40 feet (12,192 mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Federal Department of Housing and Urban Development and complies with the standards established under the national Manufactured Housing Construction and Safety Standards Act of 1974, as amended.⁵ The term "manufactured home" shall not include any

5. Editor's Note: See 42 U.S.C. § 5401 et seq.

self-propelled recreational vehicle.

MANUFACTURED HOME PARK — Any lot, parcel or tract of land or portion thereof, together with the open space and facilities required by this chapter, used, designed or maintained, and having manufactured home spaces as defined herein, held out for hire or lease, to accommodate mobile homes as defined herein, or any premises on which two or more manufactured homes are located and occupied, regardless of whether or not any compensation is provided.

MANUFACTURING — Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products and the blending of materials, such as lubricating oils, plastics, resins or liquors.

MEAN HIGH-WATER MARK — That line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the surrounding areas.

MEDICAL BUILDING OR USE — A building or institution that contains offices and dispenses health services and includes related laboratory equipment, but not including facilities for overnight care of patients. The term shall include dental care facilities.

MEMBERSHIP CLUB/LODGE, PRIVATE — Premises of an organization of persons who meet periodically to promote a social, educational, athletic, service or recreational objective and who cater exclusively to members and their guests, with no vending, merchandising or commercial activities conducted except as required generally for the membership and purposes of the club. The definition includes the term "fraternal club."

MINING/QUARRYING — The mining of sand, gravel, clay, topsoil, mulch, stone or other natural material deposits for commercial use and/or sale, including the construction, alteration or maintenance of mine roads, mine tailings, piles or pumps and mine drainage.

MIXED USE — Occupancy of a building or premises in part for one use and in part for some other use not customarily accessory to the first use.

MOBILE HOME — A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard, transportable in one or more sections, which, in the traveling mode, is eight feet (2,438 mm) or more in width or 40 feet (12,192 mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "mobile home" shall not include travel trailers or any self-propelled recreational vehicle.

MOBILE HOME PARK — Any lot, parcel or tract of land or portion thereof, together with the open space and facilities required by this chapter, used, designed or maintained, and having mobile home spaces as defined herein, held out for hire or lease, to accommodate mobile homes as defined herein, or any premises on which two or more mobile homes are located and occupied, regardless of whether or not any compensation is provided.

MODULAR HOME — A factory-manufactured dwelling unit, conforming to applicable provisions of this chapter and bearing insignia of approval issued by the State Fire Prevention and Building Code Council, which is constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in a manufacturing facility, intended or designed for permanent installation, or assembly and permanent installation.

MOTEL — A building or group of detached or connected buildings designed or used for providing transient sleeping accommodations, where each accommodation unit maintains a separate outside entrance.

NATURAL GAS — Methane and any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other

hydrocarbons.

NATURAL GAS AND/OR PETROLEUM EXPLORATION — Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons, including prospecting, geophysical seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search for and evaluation of natural gas, petroleum or other subsurface hydrocarbon deposits.

NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS — Any solid, semisolid, liquid, semiliquid or gaseous material used in the exploration or extraction of natural gas.

NATURAL GAS AND/OR PETROLEUM EXTRACTION — The digging or drilling of a well for the purposes of exploring for, developing, or producing natural gas, petroleum or other subsurface hydrocarbons, including, without limitation, any and all forms of shale fracturing.

NATURAL GAS EXPLORATION AND/OR PETROLEUM PRODUCTION WASTES — Any garbage, refuse, cuttings, sludge, flow-back fluids, brine, produced waters, or other discarded materials, including solid, liquid, semisolid, or contained gaseous material that results from or is associated with the exploration, drilling, or extraction of natural gas and/or petroleum and any related hydrocarbons, and any natural or non-natural radioactive, carcinogenic, or toxic chemicals or compounds (herein "deleterious substances") used in or for, occurring or arising from, relating to, or produced by any process or operation relating to the exploration for or the extraction or production of, or the processing treatment of, or transportation of, natural gas, petroleum, or any related hydrocarbons, regardless of whether such deleterious substances have and executed as a unit, such as, but not limited to, large subdivisions, business parks (which may include light industrial uses, mobile home parks, and similar types of land uses, and to establish standards by which development in such zones shall occur).⁶

NONCONFORMING BUILDING — A building or portion thereof which was lawfully constructed, converted or enlarged pursuant to building permits issued by the Town prior to the effective date of this chapter, or amendments thereto, and that does not conform to the provisions of the district in which it is located.

NONCONFORMING LOT — A lot of record in existence prior to the effective date of this chapter, or amendments thereto, which does not have the minimum area, lot width or lot frontage required for the district in which it is located.

NONCONFORMING USE — A use which was established, converted or enlarged prior to the effective date of this chapter, or amendments thereto, and that does not conform to the requirements of the district in which it is located.

NONCONFORMING USE OR STRUCTURE, LEGAL — A nonconforming use or structure that was legally permitted prior to the effective date of this chapter.

NURSERY — See "greenhouse."

NURSING HOME — Premises on which are provided lodging, board and continuing nursing care for compensation to convalescent, infirm, incapacitated or chronically ill persons. The term "nursing home" shall include convalescent home, rest home, and long-term care facility.

OFFICE — A building used primarily for conducting the affairs of a business, profession, service, industry or government or like activity, which may include ancillary services for office workers such as a restaurant, coffee shop, newspaper and/or candy stand.

OPEN SPACE — Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment of owners and occupants of land adjoining or neighboring such open space, provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

OUTDOOR STORAGE — The keeping, in an unroofed area, of any goods, junk, material or merchandise determined to be in nonworking order, or any good or material not made for outdoor use, in the same place for

6. Editor's Note: So in original.

more than 24 hours.

OUTDOOR WOOD BOILER — A fuel burning device that is:

- A. Designed to burn wood or other fuels;
- B. Specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and
- C. Used to heat building space and/or water via the distribution, typically through pipes, of a gas or liquid (e.g., water or water/antifreeze mixture) heated in the device.

OVERLAY DISTRICT — A district described by this chapter within which, due to special circumstances and the imposition of a special overlay designation, additional regulations and requirements apply to complement those of the underlying zoning district to which such designation is added.

OWNER — The owner, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation having vested or contingent interest in a building or land.

PARK AND RECREATION, PUBLIC — A tract of land designated and used by the public for active and passive recreation. This term shall include "playground."

PARKING LOT — An off-street, ground-level open area that provides temporary storage for motor vehicles.

PARKING SPACE — An off-street space available for the parking of one motor vehicle and having dimensions of not less than nine feet by 18 feet exclusive of passageways and driveways thereto.

PARKING STRUCTURE — A building or structure consisting of more than one level and used to store motor vehicles. This definition shall also include the term "parking garage."

PAWNSHOP/PAWNBROKER — A store where you can leave possessions in order to borrow money, or buy objects that others have left there and that are now for sale.

PERMITTED USE — A specified use to which land, lots, buildings or structures may be used, occupied or maintained under this chapter as a matter or right.

PERSON — Any individual, corporation, partnership, association, trustee or legal governmental entity.

PERSONAL SERVICE ESTABLISHMENT — Any building where the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. For the purpose of this chapter, "personal service establishment" shall include but need not be limited to barbershops, beauty parlors, hair stylists, laundromats, dry-cleaning pickup establishments, tailors, dressmakers, shoe cleaning and/or repair shops and other similar places of business. The term "personal service establishment" is not to be construed to include offices of physicians, dentists and veterinarians, or dry-cleaning plants, or linen or diaper services.

PHARMACY — A place where drugs and medicines are legally prepared and/or dispensed.

PRE-EXISTING USE — The use of a lot or structure prior to the time of the enactment of this chapter.

PROTECTED STREAM — A stream protected under Article 15 of the Environmental Conservation Law. A permit is required from the New York State Department of Environmental Conservation for any work which will disturb the stream bed or banks.

PUBLIC ASSEMBLY, PLACE OF — Any area where 50 or more individuals collect to participate in or to observe programs or activities.

PUBLIC FACILITY OR USE — Any land, structure or combination thereof owned, used or controlled exclusively for public purposes by any department or branch of the Town of New Hartford, Oneida County, State of New York, or federal government without reference to the ownership of the building or structure and/or the land on which it is situated.

PUBLIC UTILITY — A business or service having an appropriate franchise from the Town of New Hartford, Oneida County, or State of New York, which is engaged in regularly supplying the public with some commodities or services which are of public consequence and need, such as electricity, gas, water, transportation, or communications.

RECREATIONAL VEHICLE/RECREATIONAL TRAILER — A mobile unit, whether self-propelled or intended to be towed, designed for camping, recreational travel or vacation use, which provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment, but not intended for year-round living. The term "trailer" shall include utility trailers intended to be used for hauling boats, snowmobiles or similar equipment.

RECYCLING CENTER — A lot or parcel of land, with or without buildings, upon which used materials are separated and processed for shipment for eventual reuse in new products.

REDEMPTION CENTER — Any person offering to pay the refund value of an empty beverage container to a redeemer, or any person who contracts with one or more dealers or distributors to collect, sort and obtain the refund value and handling fee of empty beverage containers for, or on behalf of, such dealer or distributor under the provisions of § 27-1013 of the New York State Environmental Conservation Law.

RELIGIOUS INSTITUTION — A structure or use in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held. This definition includes churches, temples, parish houses, convent seminaries, retreat houses, and schools affiliated with religious sects.

RESEARCH AND DEVELOPMENT CENTER/RESEARCH LABORATORY — An establishment or other facility for carrying on investigation in the natural, physical or social sciences, which may include engineering and product development.

RESTAURANT — A commercial establishment preparing and serving food to the public for primary consumption on the premises within the principal building thereof. Such establishment may also have pickup service which shall not be construed to include a drive-through window.

RESTAURANT, TAKE-OUT — An establishment where food and/or beverages are sold in a form ready for consumption, where all or a significant part of the consumption takes place outside the confines of the restaurant, and where ordering and picking up food may take place from an automobile. For purposes of this chapter, drive-through windows shall only be permitted where drive-through windows are permitted as an accessory use according to Schedule A.⁷

RETAIL ESTABLISHMENT — Any building where the primary occupation is the sale of merchandise in small quantities, not for resale. All drive-through facilities associated with retail establishments are defined as separate accessory uses for purposes of this chapter and each must be a permitted use in the district in which it exists or is proposed to be located pursuant to Schedule A: Permitted Uses.⁸

RIDING ACADEMY/STABLE — An establishment primarily engaged in the provision of horseback-riding instruction and/or the boarding of horses, including customary accessory buildings and uses.

RIGHT-OF-WAY LINES — Lines which separate private property from existing or dedicated public property containing or proposed to contain publicly owned streets, surfaces, gutters, curbs, planted strips or sidewalks. Where a public street is designated on the major thoroughfare plan, all requirements of this chapter which relate to rights-of-way shall be measured from the indicated proposed right-of-way lines.

ROOMING HOUSE — A dwelling in which one or more rooms are rented for lodging.

SATELLITE DISH ANTENNA — Any parabolic dish and/or other device(s) or equipment, of whatever nature or kind, whose purpose is to receive television, radio, microwave or other such signals or communications from orbiting satellites.

7. Editor's Note: Schedule A is included as an attachment to this chapter.

8. Editor's Note: Schedule A is included as an attachment to this chapter.

SAWMILL, COMMERCIAL — Any building(s), site or place used for the cutting or milling of raw timber into dimensional lumber for compensation.

SCHOOL — Any building or place, or part thereof, which is designed, constructed or used primarily for education or instruction in any branch of knowledge. Schools include public, private or parochial institutions from prekindergarten through secondary-level education. The term includes special education facilities, but does not include day-care facilities, riding academies or other commercial businesses which, in their names or titles, use the term "school."

SELF-STORAGE UNIT FACILITY — A public facility for the temporary storage of personal, household or business property that is serviced by the owner of the stored property or an agent of the owner of the stored property. The term "self-storage facility" shall not be construed to mean "warehouse" and shall not be used for the transfer, shipping or receiving of products or goods in conjunction with a business operation. This definition shall include the term "mini self-storage facility."

SELF-STORAGE UNITS — A building or group of buildings divided into separate units or compartments. Each unit or compartment shall be divided from the floor to the ceiling by a wall and shall have an independent entrance from the exterior of the unit. There shall be no electrical outlets permitted inside any unit. This definition shall include the term "mini self-storage units."

SERVICE ESTABLISHMENT — Establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises such as but not limited to personal service establishments such as salons and barbers, banks and financial institutions, real estate agents and repair shops.

SETBACK — The distance between the building and any lot line.

SHOPPING CENTER/PLAZA — A building with at least 10,000 square feet of gross leasable area. Any group of two or more commercial uses which are designed as a single commercial group, whether or not located on the same lot; are under common ownership or management; are connected by common party walls, partitions, canopies, or other structural members to form one continuous structure, or, if located in separate buildings, are interconnected by walkways and accesses designed to facilitate customer interchange between the uses; share a common parking area; and otherwise present the appearance of one continuous commercial area.

SHOPPING MALL — A shopping center with stores on both sides of an enclosed pedestrian walkway.

SIGN — Any device of any medium affixed to or represented directly or indirectly upon a building, structure or land and which directs attention to an object, product, place of activity, person, institution, organization or business, but not including any flag, badge or insignia of any government or government agency, school or religious group or of any civic, charitable, religious, patriotic, fraternal or similar organization, nor any official traffic device. Each display surface shall be considered to be a sign. See § 118-84 for additional sign definitions.

SIGN, ADVERTISING — A sign which directs attention to a business, commodity or service or to entertainment sold or offered elsewhere than upon the premises where such sign is located or to which it is affixed.

SIGN, BUSINESS — A sign which directs attention to a business or professional service offering, or a commodity or service, or to entertainment sold or offered upon the premises where such sign is located or to which it is affixed. A "for sale" or "to let" sign relating to the lot on which it is displayed shall be deemed to be a "business sign."

SITE PLAN — The map or drawing and all related information submitted to the Planning Board for review in accordance with the requirements and procedure specified in Article X of this chapter.

SMALL ENGINE REPAIR — An establishment that provides repair or maintenance services for machines with typically one-cylinder motors that are light enough to be lifted by one and designed to power a variety of applications such as lawn and garden equipment, chain saws, etc.

SOLAR COLLECTOR — A device, or combination of devices, structures, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes significantly to a structure's energy supply.

SOLAR ENERGY — Radiant energy (direct and/or reflected) received from the sun.

SOLAR ENERGY SYSTEM — A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components for the distribution of transformed energy (to the extent they cannot be used jointly with a conventional energy system). Passive solar energy systems are included in this definition but not to the extent that they fulfill other functions such as structural and recreational.

SOLAR ENERGY SYSTEM, SMALL SCALE — For purposes of this chapter, the term "small-scale solar" refers to solar photovoltaic systems that produce up to 10 kilowatts (kW) per hour of energy or solar thermal systems which serve the building to which they are attached.

SPECIAL USE — A use that is deemed desirable for the public welfare within a given zoning district or districts but that is potentially incompatible with other uses provided therein. The special use shall, therefore, be subject to approval by the Planning Board in accordance with conditions set forth for such use, as well as other applicable provisions of this chapter.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — The law as codified in Article 8 of the Environmental Conservation Law and the implementing regulations codified in Title 6 of the New York Codes, Rules and Regulations, Part 617.

STORY — That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

STORY, HALF — That part of a building between a pitched roof and the uppermost full story and having a floor area at least half as large as the floor below. Space with less than five feet of clear headroom shall not be considered as floor area.

STREET — A road accepted by the Town Board as a public street or highway or a state or county highway or a previously built undedicated roadway or a privately owned roadway used for nonresidential or auxiliary purposes. Streets are classified in the Town of New Hartford Comprehensive Plan.

STREET, PRIVATE — A street that has not been accepted by the municipality or other governmental entity.

STRUCTURAL ALTERATION — Any change to a structure which is not merely a repair or replacement of an existing part or any change which would:

- A. Enlarge or diminish the livable floor area of the structure or any part thereof;
- B. Change the number of dwelling units contained in any structure;
- C. Cause a change in the location or height of the exterior walls or roof of the structure;
- D. Move the structure from one position to another;
- E. Change any exit or entry facilities; or
- F. Change or rearrange the structural parts, including bearing walls, beams, girders or columns.

STRUCTURE — A static construction, or assembly, of materials, the use or occupancy of which requires a fixed location on the ground or attachment to any object having such a fixed location. Structures shall include, but not be limited to, buildings, stadiums, sheds, storage bins, reviewing and display stands, platforms, towers, walls, fences, swimming pools, gasoline pumps, billboards, satellite dishes, signs, mobile dwellings and satellite antennas.

SWIMMING POOL — Any permanent or portable structure, basin, chamber, or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designated to contain, or is capable of containing water more than 24 inches deep at any point. This includes in-ground, above-ground and on-ground pools.

TAVERN — An establishment used primarily for the serving of alcoholic beverages by the glass to the general public and where food or packaged liquors may be served or sold only as accessory to the primary use. "Tavern"

does not include "liquor store." This definition also includes the term "bar."

TEMPORARY STRUCTURE — A structure without any foundation or footings and which is removed when the designated time period, activity or use for which the temporary structure was erected has ceased.

TEMPORARY USE — A use established for a fixed period of time with the intent to discontinue such use upon the expiration of said period of time.

THEATER — A building or portion thereof designed for the enactment of dramatic performances, musical performances and/or showing of motion pictures on a paid admission basis.

THEATER, OUTDOOR — An open lot or part thereof, with its appurtenant structures and facilities, devoted primarily to the showing of motion pictures or theatrical products on a paid-admission basis.

TOOLSHEED — An accessory structure used to store items connected with the maintenance and repair of the principal structure and associated grounds.

TOWN ENGINEER — The person or consulting engineer or engineers designated, empowered and paid by the Town to act as its engineer.

TOWNHOUSE — A row of attached single-family dwellings in which each has its own access to the outside. No unit is located over another unit and each unit is separate from any other unit by one or more vertical common fire-resistant walls.

TOWN PLANNER — The person or consulting planner designated, empowered and paid by the Town to act as its planner.

TRACTOR-TRAILER — A combination trucking unit consisting of a tractor or power unit hooked up to a full trailer or a semitrailer.

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

VARIANCE — A modification of the use and/or area and bulk regulations of this chapter in an individual case where, due to the specific facts and conditions peculiar to a particular property, literal application and strict enforcement would result in undue and unnecessary hardship or practical difficulty that would deprive the owner of reasonable use of the land or structures. Such unnecessary hardship or practical difficulty shall not be construed to include mere inconvenience or a desire to make more money.

VARIANCE, AREA — A variance from the dimensional and physical requirements to allow the use of land in a manner otherwise prohibited in the district.

VARIANCE, USE — A variance from the use regulations to allow the establishment on a specific lot of a use otherwise prohibited in the district.

VETERINARY CLINIC/HOSPITAL — A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. A veterinary hospital may include a kennel or a facility to cremate animals.

WAREHOUSE — A building used primarily for the storage of goods and materials.

WATER TABLE — The uppermost surface of groundwater or that level below which the soil is seasonally saturated with water.

WETLAND — Land meeting either the State of New York or federal regulatory definition of "wetland."

WHOLESALE TRADE ESTABLISHMENT — Any building wherein the primary occupation is the sale of merchandise in gross for resale and any such building wherein the primary occupation is the sale of merchandise to institutional, commercial and/or industrial consumers. A warehouse shall not be deemed a wholesale trade establishment.

YARD — An open space on the same lot with a building, unoccupied or obstructed by a portion of a structure from

the ground upward, except as otherwise provided in this chapter.

YARD, FRONT — An open, unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the main building projected to the side lines of the lot.

YARD, REAR — A space on the same lot as the main building, open and unoccupied except for accessory buildings, extending the full width of the lot and situated between the rear line of the main building projected to the side lines of the lot and the rear line of the lot.

YARD, SIDE — An open, unoccupied space on the same lot with a main building, situated between the side line of the main building and the adjacent side line of the lot and extending from the front yard to the rear yard.

ZONING DISTRICT — An area, section or zone of the Town described on the Zoning Map contained within this chapter⁹ and within which uniform requirements regulate the use of land and the height, bulk, density and setback of structures.

ZONING MAP — The map delineating the boundaries of the zoning districts that, along with the zoning text, comprise this chapter.¹⁰

§ 118-15. (Reserved)

9. Editor's Note: The Zoning Map is included as an attachment to this chapter.

10. Editor's Note: The Zoning Map is included as an attachment to this chapter.

ARTICLE IV
Establishment of Districts and Boundaries

§ 118-16. Zoning districts and purposes.

For the purpose of this chapter, the Town of New Hartford is hereby divided into the following zoning districts:

- A. Parks and Recreation (PR). The Parks and Recreation District represents park and recreation lands and facilities within the Town. The intent of the district is to continue the use of these areas for park and recreational purposes.
- B. Agricultural District (A). The Agricultural District is located in the southeast and southwest corners of the Town. Its purpose is to recognize and preserve the agricultural and open-space character of these areas by limiting the type, density and form of development. Clustering of residential development is encouraged in this district to maintain as much open space as possible.
- C. Residential Agricultural District (RA). The Residential Agricultural District is located in the more southern half of Town adjacent to the Agricultural District. Its purpose is to serve as a transition between lower-density rural areas and higher-density neighborhoods.
- D. Low-Density Residential District (LDR). Low-Density Residential Districts in New Hartford are purely single-family neighborhoods, located at the edge of the Village of New Hartford and intensively developed areas of Town.
- E. Medium-Density Residential District (MDR). Medium-Density Residential Districts are located adjacent to and farther from the Town center than LDR Districts and are developed at higher densities than LDR Districts and also include two-family residential dwellings and townhouses on zero lot lines.
- F. High-Density Residential District (HDR). High-Density Residential Districts encompass apartment complexes and other forms of high-density housing, including townhouses and condominiums, with zero lot lines and are located in the Town's most intensively developed areas.
- G. Mobile Home Park District (MHP). The Mobile Home District designation applies to mobile home parks which are existing or planned and is the only zone which provides for the placement of mobile or manufactured homes.
- H. Mixed-Use District (MU). The purpose of the Mixed-Use District is to preserve existing areas and encourage new development where there is a mix of compatible small-scale neighborhood commercial and residential uses. New commercial development is intended to be at a type and scale compatible with the provision of basic services to nearby residents.
- I. General Commercial District (C-1). The General Commercial District is located along Commercial Drive and portions of Seneca Turnpike and Middle Settlement Road where retail business serving New Hartford and the greater region is located. The purpose of this district is to continue to allow for the orderly development of retail and service uses serving regional needs.
- J. Retail Business (C-2). The Retail Business District is located in areas throughout the Town of New Hartford where local retail, service and other businesses are encouraged. This district includes existing small shopping plazas serving local villages and neighborhoods.
- K. Professional Office District (C-3). The Professional Office District designation applies to areas along major circulation routes where large single-family homes have been converted to offices. The intent of this district is to allow for the conversions of residential structures to offices and permit other smaller-scale professional office and service retail establishments that are generally compatible with residential uses that may still exist in these corridors.

- L. Manufacturing District (M). Manufacturing Districts are devoted to heavy industry. They are primarily found in Chadwicks, north of the Village of New Hartford and City of Utica, and along Middle Settlement Road.
- M. Institutional District (I). Institutional Districts encompass a variety of public and private uses, including schools, health care services, residential care facilities, religious institutions and government buildings and other associated commercial uses that often serve, or are related to, the nearby institutional uses, including general offices and eating establishments.
- N. Natural Environment Overlay Zones. This chapter establishes five overlay districts designed to protect areas of the Town which contain unique or rare natural features or resources. The purpose of the overlay districts is established below, and the development requirements in these overlay districts are discussed in Article VI.
 - (1) Stream Corridor Overlay District (SCOD). This district applies to the one-hundred-year floodplain of Mud Creek and Sauquoit Creek and to areas within 50 feet of the center line of perennial streams.
 - (2) Wetlands Overlay District (WOD). This district applies to all New York State Department of Environmental Conservation mapped and designated wetlands as well as a one-hundred-foot buffer around such wetland areas.
 - (3) Aquifer Overlay District (AOD). The district applies to those portions of the Town underlain by identified aquifers and not serviced by public water and sewer.
 - (4) Steep Slope Overlay District (SSOD). This district applies to all areas having slopes in excess of 15%.
 - (5) Natural Resource Protection District (NRPD). This district applies to those areas of the Town which contain unique or rare natural features or resources. Examples include areas of unique physical features or unique wildlife habitats.
- O. Planned Development Districts (PDD). The purpose of the Planned Development District (PDD) is to provide a mechanism for flexible land use and design 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 strict application of standard use, area, bulk and density specifications. The following PDDs may be established on the Zoning Map with an approved PDD application and Zoning Map amendments:
 - (1) Recreational Activity Planned Development District (RAPDD). The Recreational Activity Planned Development District is intended to allow for the development of a mix of public and commercial recreational activities and their ancillary uses, which may include, but are not limited to, snack bars, clubhouses, and pro shops.
 - (2) Residential Planned Development District (RPDD). The Residential Planned Development District is intended to provide for creative developments which provide for a variety of housing types and styles suitable for a variety of income levels.
 - (3) Mixed Use Planned Development District (MUPDD). The Mixed Use Planned Development District is intended to provide for a mix of compatible residential and commercial uses.
 - (4) Business Planned Development District (BPDD). The Business Planned Development District is intended to provide for a variety of retail, professional office, commercial, and light industrial uses.

§ 118-17. Zoning Map.

The location and boundaries of the zoning districts are shown on the Town of New Hartford Zoning Map. Said map, together with all explanatory material thereon and all amendments thereto, is hereby adopted and is declared to be a part of this chapter.¹¹

§ 118-18. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the zoning districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center line of streets, alleys, highways or railroads, such lines shall be construed to be district boundaries.
- B. Where district boundaries are indicated as approximately following a stream or other body of water, such stream, lake, or body of water shall be construed to be such district boundaries, unless otherwise noted.
- C. Where district boundaries are indicated as following lot lines, such lot lines shall be construed to be said boundaries.
- D. 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 vacation shall then and henceforth be subject to all regulations of the extended districts.
- E. In the event that none of the above rules is applicable or in the event that further clarification or definition is considered necessary or appropriate, the location of the district boundary shall be determined by the Code Enforcement Officer, and this determination may be appealed to the Zoning Board of Appeals pursuant to Article XIV.

§ 118-19. (Reserved)

ARTICLE V
Use, Area and Bulk Regulations

§ 118-20. Applicability.

No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, moved, altered, demolished, reconstructed or enlarged, except in conformance with the regulations herein specified for the district in which it is located or as provided in Article XII, Nonconforming Uses, Structures and Lots.

§ 118-21. Schedules of permitted uses and lot development standards.

The use, area and bulk regulations for the zoning districts are listed in the Schedule A: Permitted Uses, and Schedule B: Lot Development Standards, of this chapter. These Schedules are supplemented, as appropriate, by other provisions of this chapter.¹²

§ 118-22. Permitted uses.

- A. Permitted uses by right. All principal and accessory uses listed in Schedule A¹³ shall be permitted by right in the zoning district where the use is listed as permitted, provided that all other requirements of this chapter are met. All permitted uses are indicated in Schedule A with a "P" when the use is permitted without requiring site plan review. Uses that are permitted by right but require site plan review as defined in this chapter are indicated in Schedule A with an "SPR."
- B. Accessory uses. Any accessory construction attached to a principal building, including being attached by means of a breezeway or a roofed passageway with open or latticed sides, is deemed to be part of such principal building in applying these regulations.
- C. Permitted uses with a special use permit. All principal and accessory uses listed in Schedule A requiring a special use permit shall be a permitted use upon issuance of a special use permit by the Planning Board. All special permit uses are indicated in Schedule A with an "SUP."
- D. Prohibited uses. Uses in this chapter are deemed prohibited unless such principal or accessory uses are expressly permitted in Schedule A or elsewhere by this chapter or a use variance is granted in accordance with the provisions of this chapter. The following uses are expressly prohibited in the Town of New Hartford:
 - (1) Backyard burial of humans.
 - (2) Exploration for or extraction of natural gas and/or petroleum. No land in the Town shall be used to conduct any exploration for natural gas and/or petroleum; to drill any well for natural gas; to transfer, store, process or treat natural gas; or to dispose of natural gas exploration or production wastes; or to erect any derrick, building, or other structure; or to place any machinery or equipment for any such purposes.
 - (3) Natural gas and/or petroleum support activities.
 - (4) Junkyards.
 - (5) Manufactured and mobile homes on individual lots except as housing for a farm workforce meeting the standards of § 118-61.
 - (6) Motorized vehicle racetracks or recreational courses.

12. Editor's Note: Schedules A and B are included as attachments to this chapter.

13. Editor's Note: Schedule A is included as an attachment to this chapter.

- (7) Storage, treatment and disposal of natural gas and/or petroleum exploration and production wastes.
- E. Mixed use structures. Multiple uses may occupy a single building, provided that all applicable area and bulk requirements are met. All special use permit and/or site plan reviews for the same project shall be consolidated into one proceeding before the Planning Board.
- F. One principal dwelling structure per lot. No lot in any A, RA or LDR District shall be used for more than one dwelling structure, except that housing for a farm workforce may be permitted where agriculture is the principal use of the property. The required minimum frontage shall be provided for each dwelling. **[Amended 6-14-2017 by L.L. No. 2-2017]**

§ 118-23. Additional accessory use standards.

- A. Accessory buildings, structures and uses shall be permitted only on the same lot as the principal building to which they are accessory.
- B. An accessory building shall not be constructed on a lot without a principal structure, except for a barn or other agricultural building on a working farm in an Agricultural District as defined by the New York State Agriculture and Markets Law.
- C. Location of accessory buildings, structures and uses.
 - (1) No accessory buildings, structures or uses shall be located in the front yard on any lot, except that parking lots may be allowed in I, C-1, C-2, C-3, and M Districts.
 - (2) Accessory buildings, structures and uses shall be set back at least five feet from the rear and side lot lines, except that swimming pools shall be set back a minimum of 10 feet from all side and rear lot lines. See § 118-69 for additional setback standards related to certain structures used for agricultural purposes.
- D. Accessory buildings, structures and uses shall not alter the character of the premises on which they are located and, except for accessways to accessory parking or loading areas from an adjoining street, shall not encroach upon any front, side or rear yard unless otherwise permitted in this chapter.
- E. In the A, RA, LDR and MDR Districts, the maximum height of an accessory building or structure for a residential use shall be one story or 15 feet, whichever is less. The highest height level shall be measured at the peak of the building. Agricultural uses are exempt.
- F. The accessory structure height limitations of Subsection E above shall not apply to accessory agricultural uses located in an A or RA Zoning District or an Agricultural District as defined by New York State Department of Agriculture and Markets.
- G. There shall be not more than two accessory buildings or structures on a residential lot, except that an agricultural operation shall not be subject to such provisions.
- H. All recreational vehicles, boats and trailers shall not be parked in any front yard setback. If the rear yard is not accessible or large enough to accommodate the vehicle, trailer or boat, it may be placed in the side yard only on a prepared surface.
- I. Trampolines, swing sets and other like apparatus shall not located in any front yard.

§ 118-24. Lot development standards.

- A. Applicability to principal uses and structures.
 - (1) Regulations governing lot area and lot frontage, front, side and rear yards and lot coverage for each district are specified in Schedule B: Lot Development Standards¹⁴ and are supplemented by the regulations in this section and other sections of this chapter.

- (2) No yard or lot existing at the time of the passage of this chapter shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet the minimum requirements set forth in Schedule B and herein.
- (3) No part of a yard or other open space required in connection with any building or use shall be included as part of a yard or other open space similarly required for another building or use.
- (4) Within each district, the regulations set forth by this chapter shall be considered minimum regulations and shall apply uniformly to each kind of building, structure or land.
- (5) Every principal building shall be built upon a lot with minimum frontage upon a public street equal to the lot frontage required for the district in which it is located. Such frontage shall provide actual physical access to and from the lot for emergency vehicle access. Refer to Schedule B for minimum lot frontage requirements.

B. Existing substandard lots.

- (1) Lots of record at the time of adoption of this chapter which are less than the minimum lot size or lot frontage shall be deemed to meet the minimum size regulations of this chapter in the A, RA, LDR, MDR, HDR and MU Districts, provided that such lot may not be used for any use other than a single-family residence and its associated accessory structures. The minimum yard requirements may be reduced in proportion to the size of the lot as compared to the minimum required for the district.
- (2) Substandard lots in all other zoning districts at the time of adoption of this chapter that do not meet the minimum lot size may be built upon but shall meet all other lot development standards of Schedule B and this chapter.

C. Corner lots. On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on each such street. One rear yard shall be provided on each corner lot, and the owner shall designate the rear yard on his or her application for a permit.

D. Front yard exceptions. As required in Schedule B: Lot Development Standards, when the front yard for buildings in the LDR, MDR, HDR, MU, C-1, C-2 and C-3 Districts shall be the prevailing front yard setback, the prevailing front yard setback shall be computed by averaging the front yard setbacks on improved lots on each side of the lot with setback differentials of no more than 10 feet. A vacant lot shall be considered as having the minimum yard required in the district for the purpose of computing such average front yard.

E. Height exceptions.

- (1) The height limitations of this chapter shall not apply to the following:
 - (a) Belfries, church spires, cupolas, penthouses and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, solar collectors, green roof systems, water tanks and necessary mechanical appurtenances usually carried above the roof level; nor to flagpoles, monuments, radio and television antennas or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.
 - (b) Transmission towers and cables shall be a maximum of 100 feet.
 - (c) Structures related to agriculture on a lot on which an agricultural use is the principal use of the lot in the A and RA Zoning Districts or within an Agricultural District as defined by the New York State Agriculture and Markets Law.

- F. Minimum living area. The minimum living area for residential dwellings in the Town of New Hartford shall be as follows:
- (1) Single-family dwelling, one story: 1,100 square feet.
 - (2) Single-family dwelling, two story: 1,600 square feet.
 - (3) Two-family dwelling or duplex: 600 square feet per dwelling unit.
 - (4) Multiple-family dwelling: 600 square feet per dwelling unit.
 - (5) Manufactured or mobile home: 320 square feet.
- G. Projecting architectural features; terraces; porches; fire escapes.
- (1) The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than two feet into any required yard setback.
 - (2) A prepared surface terrace shall not be considered as part of a building in the determination of yard sizes, provided that such terrace is unroofed and without walls, parapets or other forms of enclosure exceeding six feet in height.
 - (3) In determining the percentage of impervious surface or the size of yards for the purpose of this chapter, enclosed porches or porches open at the side but roofed shall be considered a part of the building.
 - (4) An open fire escape may extend into any required yard setback not more than six feet, provided that such fire escape shall not be closer than four feet at any point to any lot line.
 - (5) Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard setback a distance not to exceed six feet.
- H. Transition yard requirements.
- (1) Where two districts abut on the same street between two intersecting streets, and the front yard requirements of one district are less than those of the other district, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary line in the less restricted district a front yard equal in depth to the average of the required depth in the two districts.
 - (2) Where the side or rear yard of a lot in a residential district abuts a side or rear yard of a lot in a business or manufacturing district, there shall be provided along such abutting line or lines in the business or manufacturing district a side or rear yard setback equal in depth to that required in the more restricted district.
- I. Visibility at street corners. On a corner lot in any district where a front yard is required, no fence, wall, hedge or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines.

§ 118-25. (Reserved)

§ 118-26. (Reserved)

§ 118-27. (Reserved)

ARTICLE VI
Natural Resource Overlay Zones

§ 118-28. Purpose; enumeration; boundaries; interpretation of district regulations.

- A. Overlay districts are intended to preserve and protect the Town of New Hartford's natural resources from negative impacts associated with land use activities in order to protect the health, safety and general welfare of the public.
- B. Within the Town of New Hartford there are five overlay districts:
 - (1) Stream Corridor Overlay District (SCOD).
 - (2) Wetlands Overlay District (WOD).
 - (3) Aquifer Overlay District (AOD).
 - (4) Steep Slope Overlay District (SSOD).
 - (5) Natural Resource Protection District (NRPD).
- C. The boundaries of the overlay districts are shown on separate maps which are considered part of the New Hartford Zoning Map for purposes of the Chapter. The overlay districts exist in concert with the underlying zoning districts shown on the Zoning Map.¹⁵
- D. The regulations pertaining to the overlay zones are in addition to those of the underlying zoning districts.

§ 118-29. Overlay district descriptions.

- A. Stream Corridor Overlay District. This district applies to the one-hundred-year floodplain of Mud Creek and Sauquoit Creek and to areas within 50 feet of the center line of perennial streams.
- B. Wetlands Overlay District. This district applies to all New York State Department of Environmental Conservation mapped and designated wetlands as well as a one-hundred-foot buffer around such wetland areas.
- C. Aquifer Overlay District. The district applies to those portions of the Town underlain by identified aquifers and not serviced by public water and sewer.
- D. Steep Slope Overlay District. This district applies to all areas having slopes in excess of 15%.
- E. Natural Resource Protection Overlay District. This district applies to those areas of the Town which contain unique or rare natural features or resources. Examples included are of unique physical features or unique wildlife habitats. (See overlay district map.¹⁶)

§ 118-30. Review and approval of land use activities required; exceptions.

- A. Within the overlay districts, no person shall undertake any land use activity, as hereinafter defined, except pursuant to the review and approval by the Planning Board in accordance with the requirements of this article and all other applicable regulations contained in this chapter.
 - (1) Definition of "land use activity." "Land use activity," for the purpose of this article, means any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of use of land or a structure. Land use activity shall include activities which require a

15. Editor's Note: The Zoning Map and overlay district maps are included as attachments to this chapter.

16. Editor's Note: The Natural Resource Protection Overlay District Map is included as an attachment to this chapter.

building permit or certificate of use or occupancy, except as exempted below.

- (2) General exceptions. All new land use activities within the Town, designated above, shall require review and approval pursuant to the provisions hereof before being undertaken, except the following:
 - (a) Ordinary repair or maintenance of interior alterations to existing structures, provided that there is no change of use.
 - (b) Exterior alterations or additions to structures that are in existence on the date that this chapter is enacted which would not increase the square footage of the existing structure by more than 25% or 500 square feet, whichever is the smaller, provided that there is no change of use.
 - (c) Structures under 100 square feet in size.

§ 118-31. Filing of application.

An application for review and approval under this article shall be filed according to the requirements and procedures set forth in Article X, Site Plan Review.

§ 118-32. Procedure for review and approval.

The procedure for review and approval under this article shall be as set forth in this article and Article X, Site Plan Review.

§ 118-33. Standards and guidelines.

A. General standards and guidelines.

- (1) No land use activity or development will be allowed until it has been determined by the Planning Board that the development or activity will not significantly result in unsafe or unhealthful conditions, erosion or sedimentation, water pollution, degradation of fish and wildlife habitat or conflicts of use and will be protective of the natural resources of the Town.
- (2) The Planning Board shall approve land use activities within overlay districts only where it finds that:
 - (a) The project meets all applicable guidelines set forth in this chapter; and
 - (b) The project will be located, designed, constructed and operated such that it will have no adverse impacts on the environment, public health and/or safety.
- (3) In making findings related to Subsection A(2)(b), the Planning Board shall adhere to the guidelines and regulations set forth in this article and in Articles X and XI, when applicable.

B. Specific standards and guidelines. In addition to the standards and guidelines set forth in Articles X and XI, if applicable, the following standards and guidelines shall apply to each overlay district as detailed below.

- (1) All overlay zones: design principles and standards.
 - (a) The layout of lots and roads shall relate to the form of the land rather than ignore it.
 - (b) The natural character of the site should be maintained.
 - (c) The siting and design of development shall blend with the resource conditions of the site and not, by its massing, be visually intrusive.
- (2) Stream Corridor Overlay Zone.
 - (a) Prohibited activities; exceptions by waiver.

- [1] Within the overlay zone, the following are prohibited:
 - [a] The installation of any septic tank, leach field or other on-site sewage disposal facility.
 - [b] The storage or dumping of any waste material, junk, refuse or other debris.
 - [c] The discharge or application of wastewater or any pollutants, fertilizers, pesticides and herbicides.
 - [d] The relocation of perennial or intermittent watercourses, clear-cutting of timber or the removal of topsoil.
 - [e] Within 35 feet of the mean high-water mark, no vegetation shall be removed. This area shall be maintained as an undisturbed natural buffer strip.
- [2] The provisions in Subsection B(2)(a)[1][d] and [e] above can be waived for construction of bridges, fords, stream crossings and associated roadways, or for impoundments, by approval of the Planning Board and by the concurrent approval of the New York State Department of Environmental Conservation or other responsible agency.

(b) Application requirements; waiver.

- [1] In addition to those application requirements set forth in Article X, the applicant shall also submit:
 - [a] A soil erosion, sedimentation and stormwater runoff control plan. Said plan shall conform to the requirements set forth in § 118-85 unless waived by the Planning Board. Control measures shall apply to all features of the site and shall be instituted during all phases of construction.
 - [b] A reasonable timing schedule indicating the anticipated starting and completion date of the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.
- [2] The Planning Board may waive any of these requirements if it finds them inapplicable to the proposed project.

(c) Design principles and standards.

- [1] The soil erosion, sedimentation and stormwater runoff control plan shall meet the standards set forth in § 118-85 of this chapter.
- [2] To the extent practicable, all parking, loading and service areas shall be constructed of permeable materials.
- [3] Wherever possible, existing vegetation shall be retained and protected.
- [4] When vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

(3) Wetland Overlay Zone.

(a) Prohibited activities; exceptions by waiver.

- [1] Within the overlay zone, the following are prohibited:
 - [a] The installation of any septic tank, leach field or other on-site sewage disposal facility.
 - [b] The storage or dumping of any waste material, junk, refuse or other debris.

- [c] The discharge or application of wastewater or any pollutants, fertilizers, pesticides and herbicides.
 - [d] The relocation of perennial or intermittent watercourses, clear-cutting of timber or the removal of topsoil.
 - [2] The provisions in Subsection B(3)(a)[1][d] above can be waived for construction of bridges, fords, stream crossings and associated roadways, or for impoundments, by approval of the Planning Board and by the concurrent approval of the New York State Department of Environmental Conservation or other responsible agency.
- (b) Application requirements; waiver.
- [1] In addition to those application requirements set forth in Article X, the applicant shall also submit:
 - [a] A soil erosion, sedimentation and stormwater runoff control plan. Said plan shall conform to all requirements set forth in § 118-85. Control measures shall apply to all features of the site and shall be instituted during all phases of construction.
 - [b] A reasonable timing schedule indicating the anticipated starting and completion date of the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.
 - [2] The Planning Board may waive any of these requirements if it finds them inapplicable to the proposed project.
- (c) Design principles and standards.
- [1] The soil erosion, sedimentation and stormwater runoff control plan shall meet the standards set forth in § 118-85 of this chapter.
 - [2] To the extent practicable, all parking, loading and service areas shall be constructed of permeable materials.
 - [3] Wherever possible, existing vegetation shall be retained and protected.
 - [4] When vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- (4) Aquifer Overlay Zone.
- (a) Prohibited activities. Within the overlay zone, the following are prohibited when located on lots wholly or partially located within the Aquifer Overlay Zone:
 - [1] Land spreading of sludge or ash of any kind, including domestic waste water or industrial processes.
 - [2] The creation or manufacturing of any hazardous materials without an approved spill prevention and response plan that is approved by the Town of New Hartford Planning Board and the New York State Department of Health.
 - [3] Dry wells directly connected to any floor drain, garage drain, wash basin or sink.
 - [4] Landfills.
 - [5] All uses listed as special permit uses in the Manufacturing District.

(b) Design principles and standards.

- [1] The proposed project shall not degrade the quality of groundwater through the introduction of sewage waste, stormwater runoff, liquid chemicals, petroleum products, dissolved metal or other toxic or hazardous substances.
- [2] The proposed project shall not substantially alter the subsurface flow of groundwater to private and public water supply wells.
- [3] The proposed project shall not reduce to less than five feet the separation between the surface of the ground and the seasonal high-water table. If, at the time of application, the existing separation between the surface of the ground and the seasonal high-water table is less than five feet, the applicant shall have the burden to prove that the proposed project will not threaten or negatively impact the quality of the groundwater.
- [4] The proposed project shall not increase the long-term risk of groundwater contamination through the siting, establishment or expansion of uses which store, transport or utilize significant quantities of material which are potentially harmful to groundwater quality.

(5) Steep Slope Overlay Zone.

(a) Prohibited activities. Within the overlay zone, the following are prohibited:

- [1] Cut and fill practices on slopes in excess of 15% averaged vertically on the slope across the building site or footprint of the building.

(b) Application requirements; waiver.

- [1] In addition to those application requirements set forth in Article X, the applicant shall also submit information on existing vegetation, the proposed cutting plan and proposed revegetation plan. Specifically, the applicant shall submit the following:
 - [a] Identification of all trees on the subject lot having a diameter of eight inches or more at 4 1/2 feet above the ground.
 - [b] Delineation of the area in which cutting or clearing is proposed to occur.
 - [c] The intended practices for clearing trees and vegetation, including equipment to be used, method of removal and description of material to remain, if any.
 - [d] Species list (names, numbers and sizes), planting schedule and drawn plan for the revegetation of disturbed areas.
- [2] The Planning Board may waive any of these requirements if it finds them inapplicable to the proposed project. The Planning Board may request the Natural Resources Conservation Service or other agencies to review the plan and make recommendations.

(c) Design principles and standards.

- [1] Buildings should be sited to minimize their prominence. When practical, buildings should not be placed at the top of the slope or crest of the hill where they will be seen silhouetted against the skyline and will be visible at a distance. Rather, buildings should be placed down the slope where they will have the hillside for a background. In general, the height of the structures should not exceed the height of the surrounding trees. Buildings should avoid being placed in the middle of open fields, where possible. Rather, buildings should be located in or adjacent to existing vegetation.

- [2] Vegetation/trees shall be preserved to the extent practicable and, when removed, shall be replaced with other vegetation/trees that are equally effective in retarding runoff, preventing erosion and preserving natural beauty.
 - [3] All structures and uses, including accessory structures and parking/loading areas, shall be landscaped in such a way so that the visual impact of the structures is minimized. Vegetative screens of trees and/or shrubs, depending on existing vegetative character, shall be preserved or provided on frontal slopes.
 - [4] Building materials, colors and textures designed to blend with the natural environment are preferred. Buildings, roofs, fences and walls are preferred to be of darker shades.
 - [5] Solar collection devices, and receiving and transmitting devices, such as radio and television antennas and disks, shall be positioned so as to minimize their visual impact.
 - [6] Outdoor lighting shall be kept to a minimum intensity needed for ground and entryway lighting. All outdoor lighting fixtures or lamps shall be shielded in such a manner that the edge of the lamp shield is below the light source, direct radiation (glare) from the light source is confined within the boundaries of the property and direct radiation is prevented from escaping toward the sky. (For the purposes of these provisions, light sources include any refractor, reflector, bulb, tube or globe.) High-intensity discharge lighting is prohibited.
- (6) Natural Resource Protection Overlay District Zone.
- (a) Prohibited activities; exceptions by waiver.
 - [1] Within the overlay zone, the following are prohibited:
 - [a] The installation of any septic tank, leach field or other on-site sewage disposal facility.
 - [b] The storage or dumping of any waste material, junk, refuse or other debris.
 - [c] The discharge or application of wastewater or any pollutants, fertilizers, pesticides and herbicides.
 - [d] The relocation of perennial or intermittent watercourses, clear-cutting of timber or the removal of topsoil.
 - [2] The provision in Subsection B(6)(a)[1][d] above can be waived for construction of bridges, fords, stream crossings and associated roadways, or for impoundments, by approval of the Planning Board and by the concurrent approval of the New York State Department of Environmental Conservation or other responsible agency.
 - (b) Application requirements; waiver.
 - [1] In addition to those application requirements set forth in Article X, the applicant shall also submit:
 - [a] A comprehensive written record of all natural resources which have contributed to the designation of the area as an NRP Overlay Zone.
 - [b] A soil erosion, sedimentation and stormwater runoff control plan. Said plan shall conform to the requirements set forth in § 118-85 unless waived by the Planning Board. Control measures shall apply to all features of the site and shall be instituted during all phases of construction.
 - [c] A reasonable timing schedule indicating the anticipated starting and completion date of

the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.

- [2] The Planning Board may waive any of these requirements if it finds them inapplicable to the proposed project.
- (c) Design principles and standards.
 - [1] The soil erosion, sedimentation and stormwater runoff control plan shall meet the standards set forth in § 118-85.
 - [2] Wherever possible, existing vegetation shall be retained and protected.
 - [3] When vegetation is removed, it shall be replaced with other vegetation that is native to the region, compatible with the climate and equally effective in retarding runoff, preventing erosion and preserving natural beauty.

§ 118-34. Cannabis Retail Overlay Zone. [Added 3-23-2022 by L.L. No. 2-2022]

A. Definitions.

- (1) As identified in the NYS Cannabis Law, an establishment which involved the acquisition, possession, sale and delivery of cannabis to consumers, and licensed by NYS as a cannabis retail dispensary.
- (2) Cannabis Retail Dispensary Overlay District: properties adjacent to Commercial Drive from its intersection with Henderson Street to its intersection with NYS Route 5 in the Town of New Hartford, except to the extent that any parcel in excess of 12,000 square feet in size shall be excluded.

- B. So long as the Town does not have in place a local law calling for the prohibition of licensure of the same pursuant to Cannabis Law § 131 (i.e., an opt-out law, which, if any, shall take precedence over and supersede the following), cannabis retail dispensaries shall be permitted, subject to obtaining a special use permit, the fee for which shall be \$25,000.

ARTICLE VII
Planned Development Districts

§ 118-35. Procedure for establishment.

Where planned development techniques are deemed appropriate through the rezoning of land to a Planned Development District (PDD) by the Town Board, the set of use and dimensional specifications located elsewhere in this chapter may be replaced by an approval process in which an approved PDD plan becomes the basis for continuing land use controls within the PDD boundary.

§ 118-36. General purpose and intent.

- A. The planned development procedure provides a flexible land use and design regulation through the use of performance criteria. It enables site-sensitive development and innovative development techniques not possible through strict application of standard zoning (use and bulk) and subdivision (platting and design of improvements) requirements. The conventional use, area, bulk and density specifications set forth by other sections of this chapter are intended to be replaced, through application of the planned development procedure, by an approved PDD plan, which then becomes the basis legislatively established by the Town Board for detailed design, review, control and subsequent development.
- B. It is also the intent of a PDD to encourage innovations in project content and design which accommodate demands for business development, employment, recreational, commercial, and residential development.
- C. While flexibility is encouraged, it is intended that this procedure, required conformance with the Town's Comprehensive Plan and the purposes of this article shall ensure the general welfare of the Town.

§ 118-37. General objectives.

PDDs shall:

- A. Preserve natural habitats, trees, outstanding natural topographical and geological features and prevent soil erosion.
- B. Incorporate the existing natural and man-made environment into the design.
- C. Accomplish a purpose beneficial to the Town that cannot be accomplished through conventional zoning.
- D. Create an environment which is more desirable than that possible through the application of conventional zoning.
- E. Demonstrate a creative use of the land and related physical development which allows an orderly transition of land from one use to another.
- F. Ensure that nonresidential uses support the community in terms of work force, design and character.

§ 118-38. Types of PDDs and location.

- A. General applicability and location of PDDs. A PDD may be established on any tracts of land in the Town of New Hartford that meet the criteria, objectives and standards required of this article and chapter where a PDD application and requisite Zoning Map amendment are approved by the Town Board and Planning Board as required.
- B. Recreational Activity Planned Development District (RAPDD).
 - (1) Purpose. The Recreational Activity Planned Development District is intended to allow for the development of a mix of public and commercial recreational activities and their ancillary uses which

may include, but are not limited to, snack bars, clubhouses and pro shops.

- (2) Permitted uses. The permitted principal and accessory uses in the RAPDD include all principal uses permitted in Schedule A¹⁷ for the existing zoning district in which the RPDD is being considered, as well as all uses permitted in the PR and RA Districts.

C. Residential Planned Development District (RPDD).

- (1) Purpose. The Residential Planned Development District is intended to provide for creative developments which provide for a variety of housing types and styles suitable for a variety of income levels.
- (2) Permitted uses. The permitted principal and accessory uses in the RPDD include all principal uses permitted in Schedule A for the existing zoning district in which the RPDD is being considered, as well as all uses permitted in the MDR, HDR and C-3 Districts.

D. Mixed Use Planned Development District (MUPDD).

- (1) Purpose. The Mixed Use Planned Development District is intended to provide creative, pedestrian-scale areas where a mix of uses, including residential, institutional and commercial, may be compatible.
- (2) Permitted uses. The permitted principal and accessory uses in the MUPDD include all principal uses permitted in Schedule A for the existing zoning district in which the MUPDD is being considered, as well as all uses permitted in the PR, RA, MDR, HDR, I, MU and C-3 Districts, with the following additional requirements:
 - (a) A minimum of 20% of all land use shall be residential.
 - (b) A minimum of 20% of all land use shall be nonresidential.

E. BPDD Business Planned Development District (BPDD).

- (1) Purpose. The Business Planned Development District is intended to provide for a variety of retail, professional office, commercial and light industrial uses.
- (2) Permitted uses. Permitted principal and accessory uses in the BPDD include all principal uses permitted in Schedule A for the existing zoning district in which the BPDD is being considered, as well as all uses permitted in the I and C-1 Districts and the following:
 - (a) Warehouse and wholesale distribution.
 - (b) Permitted accessory uses as permitted in this chapter in the C-1 District shall be in harmony with and customarily incidental to the principal use or building and located on the same lot or parcel of land.

§ 118-39. Criteria.

- A. Development area. The minimum development area required to qualify for a PDD is five contiguous acres of land without interior parcels or holdings which are not a part of the PDD. The calculation of such land shall not include existing streets, easements, parks or otherwise dedicated land or acreage, slopes in excess of 15%, floodplains, wetlands or unusual or adverse geologic features or sub-soil conditions.
- B. Ownership. The tract for a PDD may be owned, leased or controlled by a single person or corporation or by a group of individuals or corporations acting in concert. Any application or petition must be filed by the owner, or jointly by the owners of all property included in a project. In the case of multiple ownership, the approved

17. Editor's Note: Schedule A is included as an attachment to this chapter.

plan shall be binding upon all owners. When common property exists or is proposed, arrangements, satisfactory to the Town Board and the Town Planning Board, must be presented for the maintenance of said property, including roads, driveways, service and parking areas and recreational and other open space areas.

§ 118-40. Approval procedure.

- A. Application process. Application for a PDD shall be made to the Town Board on such forms as may be provided by the Town. The Town Board shall, if it determines that the proposal merits review, refer the application to the Planning Board for review and recommendation. If the Town Board determines that the proposal does not merit review because it does not meet the objectives of this article, it shall not refer the application to the Planning Board, and no further action on the application shall be taken.
- B. Application submission requirements. The application for a Planned Development District shall include:
- (1) The PDD application fee.
 - (2) Ten copies of a completed long environmental assessment form (EAF) Part I, in accordance with Article 8 of the Environmental Conservation Law (ECL) and Title 6, Part 617, of the New York Codes, Rules and Regulations (NYCRR).
 - (3) Ten copies of a site plan as defined in Article X, Site Plan Review, of this chapter, clearly showing and/or narratively describing in a supplemental document the following information:
 - (a) The location of the principal and accessory uses and buildings on the site in relation to one another and neighboring development.
 - (b) The height and bulk of buildings and their relation to one another and neighboring development.
 - (c) Delineation of the various residential areas, as applicable, indicating for each such area:
 - [1] General extent, size and composition in terms of total number of dwelling units;
 - [2] Approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, townhouse, apartments);
 - [3] Description of the intended market structure (i.e., luxury, middle income, moderate income, elderly units, family units, etc.);
 - [4] Calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for such area; and
 - [5] Calculation of total permeable area.
 - (d) The pedestrian circulation and open space distribution in relation to the structures and to prospective user needs.
 - (e) The traffic circulation features within the site and the amount, location and safety of access both to the site and within the site, including the overall provision of vehicular parking areas.
 - (f) The adequacy of proposed utilities, including, but not limited to, water supply, sewage treatment and stormwater drainage facilities.
 - (g) The protection of existing natural features, landscaping plans to be implemented subsequent to development and a long-term maintenance plan for such landscaping.
 - (h) The efforts provided to mitigate, if not eliminate, possible detrimental effects of the proposed use or uses on adjacent properties and the neighborhood in general. This may include buffer and screening plans.

- (i) The method of ownership, control and maintenance of all common lands and facilities, structures or buildings thereon, parking areas, walkways and utilities.
- (j) If the development is to be phased, a general indication of how the phasing is to proceed.
- (k) Evidence of the applicant's financial competence to carry out the plan.
- (l) A fiscal impact analysis identifying projected short and long-term impacts on municipal and school district budgets.

C. Referral of application to Planning Board.

- (1) The Town Board shall refer the application and accompanying documents to the Planning Board for its review and recommendation. Within 90 days of the date of receipt by the Planning Board, of referral from the Town Board or from the date that all information requested by the Planning Board is submitted, whichever is later, the Planning Board shall, in writing, recommend approval, approval with modifications or disapproval to the Town Board of such PDD application.
- (2) Professional review.
 - (a) As part of the Planning Board review process, all applications shall be reviewed by one or more of the following independent New York State licensed professionals: engineer, architect, landscape architect or professional planner. The cost associated with the independent review shall be the expense of the applicant. The Planning Board may deny an application upon failure of the applicant to make such payment in a timely manner. The Town Attorney shall establish the terms of the payment in consultation with the Planning Board and the applicant.
 - (b) All professional observations and recommendations shall be submitted in writing to the Planning Board and shall be considered by the Planning Board as part of the PDD application review and final development plan review under site plan review.
- (3) Upon completion of its review, the Planning Board shall prepare and submit a report to the Town Board regarding the PDD application, recommending either adoption, adoption with modification or rejection of the requested rezoning and stating the reasons for such recommendation. If the recommendation is favorable, the report shall include the following findings:
 - (a) That the proposal complies with the objectives of the Town's Comprehensive Plan.
 - (b) That the proposal meets the intent and objectives of the PDD as expressed in this article.
 - (c) That the proposal is conceptually sound in that it meets local and area-wide needs and it conforms to accepted design principles in the proposed functional roadway and pedestrian system, land use configuration, open space system, drainage system and scale of elements, both absolutely and to one another.
 - (d) That there are adequate services and utilities available or proposed to be made available in the construction of the development.
 - (e) That traffic will not have an adverse impact on the adjoining transportation system; or, alternatively, that proposed traffic mitigation measures will reduce such impacts.

D. Town Board action.

- (1) Upon receipt of the report and SEQRA recommendations from the Planning Board, the Town Board shall review the application and the Planning Board's recommendation and findings and may then set a date for and conduct a public hearing to consider the application.

- (2) When required, the Town Board shall refer the application to the Oneida County Department of Planning for a referral in accordance with General Municipal Law § 239-m.
- (3) Upon completion of the public hearing and due consideration of the application, the Town Board shall act to adopt, adopt with modifications, or reject the requested PDD zoning amendment.
- (4) If the Town Board grants the Planned Development District, the PDD will not be in effect until the Planning Board grants final site plan approval and work commences within two years.
- (5) The Town Board may attach to its zoning resolution additional conditions or requirements in order to protect the health and safety of the community. Such requirements may include but are not limited to:
 - (a) Types of uses.
 - (b) The density and intensity of land use.
 - (c) Screening and buffering.
 - (d) Schedule of construction and occupancy.
 - (e) Pedestrian and vehicular circulation system.
 - (f) Parking and snow removal.
 - (g) Sites for public service.
 - (h) Protection of natural and/or historical features.

E. Planning Board site approval. Upon approval of the zoning request by the Town Board, the applicant shall submit final plans to the Planning Board, consistent with the site plans submitted with the application to rezone, with such modifications as may have been required by the Town Board. Final site plan submittal requirements shall be as set forth in Article X, Site Plan Review, of this chapter.

§ 118-41. General standards.

- A. Density. The density shall be as determined by the approved PDD Site Plan.
- B. Lot development requirements.
 - (1) Residences may be of any type consistent with the purpose and objectives of this article; however, no more than six townhouse units may be attached as a group.
 - (2) Building height, setbacks and lot frontage shall be as determined by the approved PDD Site Plan.
 - (3) The maximum impervious surface for the PDD shall be 66%.
- C. Building design standards for all PDDs.
 - (1) All buildings except single- and two-family dwellings shall meet the design standards and guidelines of §§ 118-78 and 118-79 of this chapter.
 - (2) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses.
 - (3) Individual buildings shall generally be related to each other in design, mass, materials, placement and connections to provide a visually and physically integrated development.
 - (4) Treatment of the sides and rear of all buildings within the PDD will be comparable in amenity and compliance to the treatment given to street frontages of these same buildings.

- (5) The design of buildings and the parking facilities shall take advantage of the topography of the site, where appropriate, to provide separate levels of access.
 - (6) All building walls shall be so oriented as to ensure adequate light and air exposure to the rooms within and to adjacent properties.
 - (7) All buildings shall be arranged so as to avoid undue exposure to loading or parking facilities wherever possible and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
 - (8) All buildings shall be arranged so as to be accessible to emergency vehicles.
 - (9) Exterior surfaces of all structures shall have color tones which blend well with the natural vegetation of the area.
- D. Open space requirements. Common open space totaling not less than 15% of the total PDD tract shall be provided in perpetuity. This land shall be exclusive of any land area used primarily for vehicular modes of transportation, including parking areas, garages, carports and other features. The ownership of such open space land may be either public or private. When in private ownership, a homeowners' 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. The grant of a conservation easement to further ensure the protection of this open space may be required.
- (1) The location, shape, size and character of the open space must be suitable for the planned development.
 - (2) Open space may be used for amenity or recreational purposes. The uses authorized for the open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography and the number and types of dwellings to be provided.
 - (3) Open space must be suitable for its intended use. If intended for active use, said open space shall be suitably improved. The buildings, structures and improvements which are permitted in the open space must be appropriate to the uses which are authorized for the open space.
 - (4) The development schedule which is part of the final site plan must coordinate the improvement of the open space and the construction of buildings, structures and improvements.
 - (5) All land shown on the final site plan as open space must be maintained and used for said purpose.
- E. Water supply and sewage disposal. All planned developments shall be served by a water supply and distribution system and shall have sewage disposal facilities which are in accordance with the requirements of the Town of New Hartford and the New York State Health Department.
- F. Stormwater runoff control; erosion and sedimentation control. All applicable standards and requirements of § 118-85 and other local, state and federal laws shall apply.
- G. Landscape design standards.
- (1) All development shall meet the landscaping and screening requirements of § 118-81 of this chapter.
 - (2) Landscape treatment for roads, paths, service and parking areas and dumpsters shall be designed as an integral part of a coordinated landscape design for the entire site.
 - (3) Whenever possible, existing trees shall be conserved and integrated into the landscape design plan.
 - (4) Wherever possible, streets trees shall be planted at appropriate intervals on all streets bordering or within the project area.
- H. Circulation system design standards.

- (1) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, sidewalks, paths and lanes for bicycles, pedestrian- and cyclist-related amenities, roadways, driveways, lighting, off-street parking and loading spaces.
- (2) Roads, sidewalks, other pedestrian walkways, bicycle lanes and paths and open spaces shall be designed as an integral part of an overall site design and shall be properly related to existing and proposed buildings and shall be appropriately landscaped.
- (3) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained and indicative of their function and shall comply with other laws, ordinances, rules and regulations wherever applicable thereto.

I. Parking and loading design standards.

- (1) All development shall meet the off-street parking and loading standards of § 118-82 of this chapter.
- (2) The Planning Board may require that parking facilities be landscaped and screened to the extent necessary as determined by the Planning Board.
- (3) Pedestrian connections between parking areas and buildings shall be via pedestrian walkways.
- (4) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of ingress and egress and shall be developed as an integral part of an overall site design.

§ 118-42. Reversion of PDD to prior zoning classification.

- A. In the event that a final site plan has not been submitted within three years from the date the Zoning Map amendment establishing the Planned Development District became effective, the Planning Board shall so notify the Town Board. The Town Board may, on its own motion or on request by the Planning Board, initiate a Zoning Map amendment to return the Planned Development District to its former classification.
- B. In the event that 1/3 of the work has not been completed on the newly proposed project within two years from the date that final approval has been rendered by the Planning Board, the Planning Board shall notify the Town Board. The Town Board, on its own motion or on request by the Planning Board, may initiate a Zoning Map amendment to return the Planned Development District to its former classification.

§ 118-43. (Reserved)

ARTICLE VIII
Additional Regulations of Specific Uses

§ 118-44. Accessory apartment.

- A. Intent. The Town recognizes that accessory apartments can provide an important housing alternative for aging parents and other family members in need of housing. These accessory units shall not be used as rental units for supplemental income.
- B. Regulations.
- (1) Accessory apartments must be located entirely within the principal building. Only one accessory apartment is allowed per one-family dwelling. The accessory apartment may not result in a significant change to the exterior architecture of the building in which it is located. The Code Enforcement Officer is responsible for determining what constitutes a significant change. An accessory apartment may be located in an accessory building at the discretion of the Planning Board; the lot size will be the determining factor.
 - (2) Accessory apartments may be located only on owner-occupied lots.
 - (3) The usable floor area of an accessory apartment shall have a minimum of 400 square feet and a maximum of 800 square feet, except that the area of the accessory apartment shall not exceed 25% of the usable floor area of the main building.
 - (4) Changes to the residential architecture necessary to accommodate the accessory apartment are limited to those necessary to provide bathroom and kitchen facilities, and the resulting arrangement must not divide the dwelling or give the appearance of dividing the dwelling into two separate dwelling units capable of independent occupancy.
 - (5) A certificate of occupancy from the Code Enforcement Officer is required on an annual basis.

§ 118-45. Adult entertainment establishment.

- A. Adult entertainment establishments shall be subject to the following additional regulations:
- (1) No adult use shall be permitted in any building used in whole or in part for residential purposes.
 - (2) No more than one adult entertainment establishment shall be permitted on any lot, and no such use shall be permitted within 1,500 feet of any other such use.
 - (3) No adult entertainment establishments shall be permitted on any lot that is located within 1,500 feet of any lot on which is located a residential use, school, religious institution, cemetery, community center, day-care center, public park, playing field, bike path, or other public recreational facility.
 - (4) No adult entertainment establishments shall be conducted in any manner that allows the observation of any material depicting, describing or relating to any sexual act or any part of the anatomy from any public way or from any other property. This provision shall apply to any display, decoration, sign, show, window, or other opening.
 - (5) There shall be no outdoor sign, display or advertising of any kind other than an identification sign limited to the name of the establishment.
 - (6) Adult entertainment establishments shall comply with all other requirements of this chapter, as well as all other applicable Town, county, state and federal laws and regulations.
- B. The distances provided in Subsection A above shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the parcel lot line upon which the adult entertainment

establishment is to be located to the nearest point of the parcel lot line or the land use district boundary line from which the adult use is to be separated.

§ 118-46. Adaptive reuse of barns.

- A. Barn structures located on lands zoned A or RA, where agriculture was formerly a principal use, may be adaptively reused for the following uses with a special use permit:
 - (1) Sale of agriculture-related goods otherwise permitted at a farm stand.
 - (2) Artist and craftsman work space.
 - (3) Leasable storage space for such items as farm equipment, recreational vehicles and equipment, and boats entirely enclosed within the structure and meeting the standards of the Uniform Fire Prevention and Building Code.

§ 118-47. Automobile/motorized vehicle sales, lease or rental establishment.

- A. The minimum front yard setback for all vehicle displays, storage, repair or finishing work shall be 50 feet.
- B. Landscaping.
 - (1) A landscaped strip of trees and shrubs a minimum of 10 feet in depth and three feet in height shall be provided in the front yard setback if vehicles shall be displayed or stored in the front yard facing a public right-of-way.
 - (2) The landscaping strip shall parallel the length of the lot frontage where vehicles are displayed or stored. This shall apply to both frontages on a corner lot if vehicles are displayed or stored on the lot facing both public rights-of-way.
 - (3) All other landscaping and screening requirements of § 118-81 shall apply. The more stringent standard of § 118-81D shall be required where applicable.
- C. Employee and customer parking provided on site, as required by § 118-82 of this chapter, shall be designated by signage indicating "This space is reserved for employees," and indicating "This space is reserved for customers." Parking areas designated for employees and customers shall not be used for vehicle storage, repair or finishing work or display or customer parking.
- D. All exterior lighting shall be designed and oriented so as to minimize the visual impact upon adjacent and nearby residential properties as may be applicable.
- E. No exterior public address system shall be permitted.
- F. No exterior display of banners, pennants, ribbons, or other similar temporary advertising materials shall be permitted in any outdoor sales area except as permitted in § 118-84H(5) of this chapter.

§ 118-48. Car wash.

- A. This section applies to any car wash established as a permanent use. This section does not apply to temporary car-washing activities sponsored by schools, churches, or other nonprofit organizations or groups in order to raise money for designated events.
- B. No building, parking or service area shall be closer than 100 feet to any existing residential structure.
- C. Ingress and egress shall be so designed as to minimize traffic congestion, and for this purpose, the number and location of driveways shall be subject to the explicit approval of the Planning Board as part of site plan review.

- D. In addition to meeting any off-street parking requirements of this chapter, a car wash shall provide a minimum of four stacking spaces per bay on the lot.
- E. As part of site plan review, evidence of an adequate long-term source of public or private water shall be submitted to show that water usage will not affect surrounding properties.
- F. The premises shall not be used for the sale, rent or display of automobiles, trailers, mobile homes, boats, or other vehicles unless one of these uses is the permitted principal use on the lot and the car wash is an accessory use to that principal use.

§ 118-49. Christmas tree and wreath sales lots.

- A. Christmas tree and wreath sale lots off-premises from the site where such trees are grown requires a temporary use permit from the Code Enforcement Officer.
- B. Such use shall be limited to a period not to exceed 45 days of operation per year.

§ 118-50. Community-based long-term care facility.

- A. No more than six patients shall occupy a community-based long-term care facility.
- B. No community-based long-term care facility shall be located on a street with only one outlet (e.g., a cul-de-sac, a dead-end road, etc.)
- C. No two community-based long-term-care facilities shall be located within 1/2 mile of each other, said distance to be measured as a straight line connecting the approximate center point of each structure.
- D. Each community-based long-term care facility shall, on an annual basis, provide the Town Code Enforcement Officer with written verification of its continued certification to operate as a licensed health-care facility.
- E. The Planning Board may waive or vary any requirement in this chapter for good cause shown with a majority plus one.

§ 118-51. Contractors' offices; equipment sheds; construction staging areas.

- A. Contractors' offices, equipment sheds and construction staging areas containing no sleeping or cooking accommodations may be permitted in any district when used in conjunction with a valid building permit.
- B. Temporary storage shall be allowed as an accessory use to the contractor's office or equipment shed.
- C. Such use shall be limited to a period not to exceed the duration of the building permit and shall be removed immediately upon expiration thereof.

§ 118-52. Drive-through window facilities.

- A. Due to potential impacts on traffic volume, vehicular and pedestrian circulation, and the environment, the following additional standards are required for the permitting of drive-through windows:
 - (1) Site location criteria. The site of the drive-through window shall meet all of the following criteria:
 - (a) The drive-through shall not be located within 50 feet of a lot line of any residential district;
 - (b) The drive-through shall not substantially increase traffic on streets in an A, RA, LDR or MDR district;
 - (c) The site shall be adequate in size and shape to accommodate said use and to accommodate all yards, parking, landscaping, and other required improvements; and

- (d) The use shall not substantially lessen the usability and suitability of adjacent lands zoned A, RA, LDR or MDR for uses permitted as of right in these districts.
- (2) General design standards. All the following must be provided for the primary use to be granted a building permit for a drive-through window:
- (a) All lighting on the exterior of the building shall be of an indirect nature, emanating only from fixtures located under canopies or hoods, under eaves of buildings and at ground level in the landscaping. Freestanding pole lights shall not exceed a maximum height of 14 feet and shall be so arranged and shielded that there shall be no glare or reflection onto adjacent properties or public rights-of-way.
 - (b) Signs should be placed and waiting lanes should be designed so that waiting cars do not block sidewalks or public streets.
 - (c) Landscaping, waiting-lane devices, and overall design should not prevent vehicles from safely and efficiently leaving waiting lanes.
 - (d) Traffic circulation.
 - [1] A traffic study addressing both on-site and off-site traffic and circulation impacts shall be required.
 - [2] Pedestrians must be able to enter the establishment from the parking lot or sidewalk without crossing the waiting or exit lanes.
 - [3] Waiting lanes shall accommodate the following number of cars to be in a queue or stacked based on the use:
 - [a] Fast-food restaurants and coffee shops: sufficient to accommodate a minimum queue of 12 vehicles.
 - [b] All other drive-through windows with a single lane: sufficient to accommodate a minimum queue of six vehicles.
 - [c] Drive-through banks with more than one lane: sufficient to accommodate a minimum queue of four vehicles.
 - [4] Waiting lanes shall be designed for the maximum length possible, allowing 20 feet per vehicle.
 - [5] The waiting lane shall be independent of any on-site parking, parking maneuvering areas, public streets, or traffic ways serving other on and/or off-site uses.
- (3) Site plan requirements. In addition to the general requirements for site plan review, drive-through window site plans must also include the following features:
- (a) Design and placement of signs to ensure that they facilitate the safe and smooth flow of traffic.
 - (b) Details of pedestrian and vehicular circulation.
 - (c) Details of waiting lanes, including location and design of curbs, gates, bollards and chains, pavement markings, and similar devices.

§ 118-53. Portable shelters.

- A. Portable shelters for use as a tent for an event or other activity shall be permitted for up to 30 days in a calendar year with the issuance of a temporary use permit from the Code Enforcement Officer.

- B. Portable shelters for use as a carport, garage or storage vessel shall be prohibited except in conjunction with an agricultural use.

§ 118-54. Farmers markets and other open-air markets.

- A. Farmers markets and other open-air markets are permitted with the issuance of a temporary use permit from the Code Enforcement Officer.
- B. Evidence of adequate on-street or off-street parking in the vicinity of the market location shall be provided. In general, at least six parking spaces plus one for every 250 square feet of sales area should be available within easy walking distance of the market.
- C. Safe ingress and egress from the farmers market or open-air market shall be required, including the provision of adequate pull-off areas and adequate parking.
- D. Signs: One freestanding sign not exceeding 16 square feet in area and six feet in height is permitted unless located on a corner lot, where one additional sign is permitted.

§ 118-55. Gasoline service stations.

A. Definitions.

- (1) A "canopy" means any structural protective cover that is not enclosed on any of its four sides and is provided for a service area designated for the dispensing or installation of gasoline, oil, antifreeze, headlights, wiper blades and similar products.
- (2) A "fuel pump" means any device that dispenses automotive fuel and/or kerosene. A fuel pump may contain multiple hoses or be capable of serving more than one fueling position simultaneously.
- (3) A "pump island" means a concrete platform measuring a minimum of six inches in height from the paved surface on which fuel pumps are located.

B. General standards.

- (1) A gasoline service station lot, fuel pump and/or fuel storage tanks shall not be located within 2,500 feet of any municipal water wells or other municipal water supply source. All fuel storage tanks shall comply with all federal and state regulations.
- (2) Fuel storage tanks shall not be located aboveground.
- (3) No fuel or oil pump, no oiling or greasing mechanism and no other storage or service appliance installed in conjunction with any gasoline service station or public garage shall be within 25 feet from any curblines and 50 feet from any property line.
- (4) Entrance and exit driveways shall have an unrestricted width of not less than 18 feet nor more than 30 feet nor be located closer than 25 feet to any side or rear lot line.
- (5) No entrance or exit driveway or parking space shall be so located as to require the backing of any vehicle into a public right-of-way.
- (6) No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church or place of worship or other public gathering place, park, playground or fire station designed for occupancy by more than 50 persons, unless a street with a right-of-way of not less than 50 feet lies between such gasoline service station and such building or use.
- (7) All major repair work, storage of materials, supplies, and parts shall be located within a structure completely enclosed on all sides, not to be construed as meaning that the doors on any repair shop must

be kept closed at all times.

- (8) Outdoor storage of motor vehicles shall be prohibited at all times. The premises shall not be used for the sale, rent or display of recreational vehicles, trailers, boats, or other vehicles.

C. Design standards.

- (1) Suitable year-round buffering and landscaping, using only indigenous plants, shall be provided in all rear and side yards.
- (2) Principal buildings shall be oriented to the street.
- (3) Principal buildings and pump island canopies should have pitched roofs.
- (4) Canopies shall not exceed 16 feet in height from finished grade to the underside of the canopy.
- (5) Canopies shall be architecturally integrated with the principal building and all other accessory structures on the site through the use of the same or compatible materials, colors and roof pitch.
- (6) Canopies shall not be used as, or for, signage.
- (7) Any lighting fixtures or sources of light that are a part of the underside of the canopy shall be recessed into the underside of the canopy so as not to protrude below the canopy ceiling surface more than two inches.

§ 118-56. Golf courses.

- A. The center line of a golf hole shall be a minimum of 150 feet from any road, right-of-way, boundary, clubhouse or maintenance building and a minimum of 220 feet from any residential dwelling.
- B. If night activities are to be held at the golf facility, the parking lot shall be lighted. Said lighting shall be arranged and shielded to reflect the light downward and prevent any light from shining directly on adjoining streets, residential zones and residential buildings.
- C. Any public address system shall be designed and operated in a manner which will not disturb adjacent landowners.

§ 118-57. Home occupations.

- A. Purpose. Some business activities may take place in a home as part of residential use and are not considered home occupations. Other activities are considered home occupations which are accessory activities to uses in residential zones. These regulations recognize that there are many professions and occupations which may be performed in a home with no significant effect on the surrounding neighborhood and that such business activities may create jobs, provide important local services and reduce the number of work trips, thereby conserving energy. The following regulations are intended to assure that home occupations will not be a detriment to the character and quality of the surrounding neighborhood.
- B. General standards applying to all home occupations:
 - (1) The home occupation shall be clearly incidental and secondary to the use of the lot for residential purposes.
 - (2) The home occupation is allowed in a residential setting because it does not compromise the residential character of an area, does not generate conspicuous traffic, does not visually call unusual attention to the home and does not generate noise of a nonresidential level.
 - (3) The home occupation shall be conducted entirely within a principal dwelling and not in an accessory

structure.

- (4) Inventory and supplies shall not occupy more than 50% of the area permitted to be used as a home occupation.
- (5) The home occupation shall not involve any operation considered to be hazardous.
- (6) No generation of noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall be perceptible beyond the property line.
- (7) Not more than 15% of all habitable space of the principal building shall be utilized for all home occupation activities.
- (8) All parking shall be provided off-street. No more than three client-related vehicles may be parked in the front yard.
- (9) The New York State Fire Prevention and Building Code shall be followed.
- (10) Hazardous materials shall be prohibited.

C. Type 1 (minor) home occupation: no permit required.

- (1) Certain home occupation activities are considered minor home occupations and, as such, do not require a permit if they meet the standards of Subsection B above and Subsection C(2) below. The following activities are considered Type 1 (minor) home occupations:
 - (a) Artists, sculptors and composers not selling their artistic product to the public on the premises.
 - (b) Craft work, such as but not limited to woodworking, jewelry-making and pottery, with no public sales permitted on the premises.
 - (c) Home offices with activities that may include receipt of mail and the making and receiving of telephone calls or other routine office work done exclusively by the dwelling unit resident related to an off-site business or organization to the extent that nonresident visitors do not customarily come to the property.
 - (d) Telephone answering and message services.
 - (e) Tutoring.
- (2) Additional standards for Type 1 (minor) home occupations:
 - (a) There shall be no exterior sign advertising the home occupation.
 - (b) All persons engaged in such activities reside on the premises.
 - (c) No goods or services are sold on the premises. Activities such as invoicing or receiving payments for products sold or services provided elsewhere (off-premises) is permitted.

D. Type 2 (major) home occupation: special use permit required.

- (1) Permitted major home occupations as defined in this chapter include activities that meet the standards in Subsection B, General standards applying to all home occupations, above but are permitted to have a limited number of employees, sell related goods and services and have client visits. The following restrictions shall apply:
 - (a) A major home occupation shall be permitted to have one nonresident employee or associate. An associate shall mean a person or persons joined with others in a business enterprise.

- (b) A major home occupation may sell goods or services, except that customers shall only visit between 8:00 a.m. and 8:00 p.m.
 - (c) One sign meeting the sign regulations of § 118-84 shall be permitted.
- (2) The following uses meeting the definition of a home occupation shall always be considered a Type 2 (major) home occupation and shall only be permitted in the Agriculture District (A District) due to the potential impacts of such uses on neighboring properties:
- (a) Landscaping and tree services.
 - (b) Small engine repair.
 - (c) Agriculture-related motor vehicle repair.
- (3) A special use permit is required for Type 2 (major) home occupations. In reviewing the special use permit application, the Planning Board shall consider the following site development characteristics and impacts:
- (a) Setback of home occupation from the right-of-way and adjacent properties.
 - (b) Screening.
 - (c) Method of enclosure for vehicles and equipment.
 - (d) Vehicle turnaround area.
 - (e) Truck traffic.
 - (f) Outdoor lighting.
 - (g) Parking arrangements for customer and employee parking as well as commercial vehicles related to the business.
 - (h) Visual impact from the right-of-way.
- E. Uses prohibited as home occupations. The following activities shall not be permitted as a home occupation in any district unless as otherwise stated and shall be required to be a principally permitted use in Schedule A: Permitted Uses:¹⁸
- (1) Commercial greenhouses.
 - (2) Kennels.
 - (3) Motor vehicle repair, except agriculture-related vehicles.
 - (4) Religious institutions.
 - (5) Restaurants and bars.
 - (6) Retail sales, except those that are incidental to a product created or service provided on site.
- F. Noncompliance.
- (1) Upon noncompliance with the conditions of the special use permit or the requirements of this chapter, such permit may be revoked by the Planning Board as provided in § 118-107 of Article XI, Special Use Permits, of this chapter.

18. Editor's Note: Schedule A is included as an attachment to this chapter.

§ 118-58. Horse boarding.

- A. For all lots on which a horse will be stabled accessory to a residential use in an A or AR District, a lot shall be at least three acres for every one horse.
- B. Commercial horse boarding.
 - (1) A commercial horse-boarding establishment shall be at least seven acres in size.
 - (2) Three acres per horse shall be required where a pasture is to be used for sustenance.
 - (3) Three acres per five horses shall be required where feed is brought in and manure is exported out (turn-out system).
 - (4) Prior to the establishment of a commercial horse-boarding operation, a plan describing how manure will either be used or removed from the farm (e.g., by landspreading, composting or periodic removal) is required.
 - (5) Manure that has not been removed, composted or spread shall not be stored and shall not remain on the farm for a period in excess of one year.
- C. The following setbacks shall be required for the following structures and uses:
 - (1) Horse barns shall be set back 50 feet from any side or rear lot line.
 - (2) Manure storage that has not yet been composted or spread shall be set back 150 feet from any lot line.

§ 118-59. Housing for farm workforce.

- A. Housing for farm workers and their families on farms located in the Town of New Hartford within an Agricultural District as defined by New York State Agriculture and Markets Law shall be permitted as accessory agricultural uses with the following conditions:
 - (1) Housing for farm workers shall be in the form of either dwelling units within an accessory structure on the site that shall require a building permit from the Code Enforcement Officer, or a manufactured or mobile home as defined in this chapter.
 - (2) Manufactured homes as permitted in this section are exempt from the size and design standards of this chapter, except that the Code Enforcement Officer shall consider the manufactured home structurally sound and free of heating and electrical system hazards.
 - (3) Housing structures shall meet the setback standards for accessory uses as described in Schedule B.¹⁹
 - (4) Proof of housing occupancy in connection with the farm use shall be filed with the Code Enforcement Officer annually. The permit shall be valid for a period of one year, at which time renewal of the permit shall be required.
 - (5) Farm-worker housing structures shall not be permitted to be parceled off and sold as separate residences, nor is any use other than for housing of farm workers permitted.
 - (6) Farm-worker housing that has not been used for such purposes for three or more years shall be removed from the property.

§ 118-60. Kennels.

- A. The required minimum lot size for all kennels is five acres.

¹⁹ Editor's Note: Schedule B is included as an attachment to this chapter.

- B. All kennels with outdoor exercise pens or kennels shall be located no closer than 150 feet to any adjoining property line.
- C. Adequate landscaping and/or fencing shall be provided to create a visual, sound, and odor buffer between such facility and adjacent properties.
- D. Adequate provision for the storage and removal of all animal wastes shall be made. In particular, no manure storage area shall be located within 150 feet of any residence or street right-of-way.

§ 118-61. Manufactured home park (court).

- A. All manufactured home parks constructed after the effective date of this chapter shall conform to the standards of this section.
- B. All manufactured home parks are subject to site plan review.
- C. Park standards.
 - (1) Design team. All manufactured home parks shall be designed by a design team which shall include an architect or landscape architect and a civil engineer, all licensed by the State of New York.
 - (2) Minimum size. The minimum lot size for a manufactured home park is five acres.
 - (3) Park dimensional standards. Manufactured home parks shall meet the following requirements:
 - (a) Minimum frontage. The manufactured home park shall have a minimum frontage of 100 feet on a public street.
 - (b) Common recreation area. A minimum of 15% of the site area of the manufactured home park shall be reserved for recreation facilities to be used in common by park residents.
 - (c) Setback requirements: perimeter. The minimum setback requirements for the perimeter of a manufactured home park shall be as follows:
 - [1] Front yard. The minimum front yard shall be 100 feet. Each yard abutting a public street shall be considered a front yard.
 - [2] Other yards. All other yards shall be a minimum of 50 feet.
 - (d) Individual lot requirements within the park:
 - [1] Lot size. Individual home lots shall be at least 5,000 square feet.
 - [2] Lot width. Minimum lot width for each home lot shall be 50 feet.
 - [3] Maximum impervious surface: 40%.
 - [4] Front setback. The minimum front yard for an individual manufactured home lot shall be 20 feet from the edge of the pavement line, curb or sidewalk closest to the manufactured home.
 - [5] Side yard setback. The minimum side yard for an individual manufactured home lot shall be 10 feet.
 - [6] Rear yard setback. The minimum rear yard for an individual manufactured home lot shall be 15 feet.
 - [7] Structure separation. The minimum separation between dwellings shall be 30 feet in any direction.

- (e) Streets. Even though these internal roads will not be offered for dedication to the Town, all private streets within a manufactured home park shall conform to the following:
 - [1] Width of right-of-way: 50 feet.
 - [2] Pavement width: minimum of 24 feet.
 - [3] There shall be no dead end streets in any park.
 - [4] A cul-de-sac shall have a maximum length of 500 feet. Each cul-de-sac shall have a turn-around area at its terminus with a minimum radius of 30 feet.
 - [5] Street construction. All private streets shall have a crowned profile and shall be constructed of asphalt.
- (f) Utilities and services. The following utilities and service facilities shall be provided in each manufactured home park, which utilities and service facilities shall be in accordance with the regulations and requirements of the New York State Department of Health and the Sanitary Code of New York State.
 - [1] Plans. All plans for water, sanitary sewer and storm drainage lines shall be approved by the Planning Board.
 - [2] Storm drainage. All stormwater shall be collected on the site in a piped storm drainage system, unless otherwise approved by the Planning Board. Underground service connection shall be made from each manufactured home to the street gutter. Stormwater from the manufactured home park shall be piped to a public storm drain line, if available. The developer may be required to construct an off-site storm drainage system acceptable to the Planning Board.
 - [3] Electricity, telephone and television cable. All electrical, telephone and television cable lines shall be located underground.
 - [4] Other service buildings shall be provided as deemed necessary for the normal operation of the park; however, such buildings shall be maintained by the owner or manager of the park in a clean, sightly and sanitary condition.
- (g) Parking. Off-street parking spaces shall be required as follows: two spaces per lot or unit, whichever is greater. In addition, two spaces shall be provided for each vehicle used in connection with the facility. If no parking is provided on private streets, then two spaces must be provided for each five dwelling units for guest parking. All driveways for individual manufactured homes and off-street parking areas shall be paved with asphaltic concrete or portland cement. No parking shall occur in a perimeter yard.
- (h) Recreational vehicles. Storage areas for vehicles, including motor homes, recreation trailers, boats, boat trailers or other major recreational equipment shall not be located within 100 feet of the perimeter lot lines of a manufactured home park site. Recreational vehicle storage areas shall have a ten-foot yard between the storage area and the nearest structure. Said storage areas shall be screened from the view of adjacent structures by a sight-obscuring fence and landscaping.
- (i) Storage sheds. One storage shed shall be allowed for each manufactured home. Storage sheds shall not exceed 200 square feet of gross floor area and shall be located adjacent to and designed as an integral part of the manufactured home, deck or carport.
- (j) Landscaping. All land within a manufactured home park not paved or containing a structure shall be landscaped with grass, trees, shrubs or flowers in a manner that will enhance the residential

character of the manufactured home park and surrounding neighborhood. All landscaping shall be maintained, said maintenance to include regular irrigation, mowing, removal of weeds and trimming and pruning as necessary.

- (k) Perimeter landscaping or buffering. All manufactured home park yards, except the front yard, shall have continuous, permanently maintained perimeter landscaping separating the manufactured home park from the adjacent property.
- (l) Snow removal. All snow removal on private streets within the manufactured home park shall be provided by the owner or operator of the manufactured home park.

D. Site plan review.

- (1) All manufactured home park developments are subject to site plan review.
- (2) Upon receipt of an application, the Code Enforcement Officer shall immediately send a copy of the application to the Oneida County Department of Health and request that it make an investigation of the proposed project for the purpose of determining if it would meet the standards required by the State Sanitary Code for temporary residences.
- (3) For site plan review and approval, the site plan review procedures of Article X, Site Plan Review, shall be followed, and in addition, the following information shall be required on the site plan:
 - (a) The exact layout and dimensions of each manufactured home space.
 - (b) The exact layout of all streets and driveways, their widths and the specifications of proposed construction.
 - (c) The location of all required services and other improvements and facilities, such as playgrounds, swimming pools or recreation areas.

§ 118-62. Motor vehicle repair.

- A. All repair work and storage of materials, supplies, and parts shall be located within a structure completely enclosed on all sides (not to be construed as meaning that the doors of any repair shop must be kept closed at all times).
- B. For all overnight storage parking associated with automobile repair uses, perimeter landscaping as prescribed in § 118-81, Landscaping and screening, shall be provided to screen the parking from the public right-of-way and/or neighboring residential uses.
- C. The maximum number of parking spaces devoted to temporary overnight storage of vehicles shall be no more than three spaces per repair bay. These spaces shall be clearly delineated on all site plan and special use permit applications.
- D. Outside storage or parking of any disabled, wrecked or partially dismantled vehicle is not permitted for a period exceeding 30 days during any ninety-day period.

§ 118-63. Outdoor sales and displays.

- A. Outdoor sales and displays of items accessory to a principal commercial use, permitted in the district in which such use is located, shall be permitted for up to seven days with the issuance of a temporary use permit from the Code Enforcement Officer and if the standards of this section have been met.
- B. If outdoor sale or display items shall be proposed to be located on or adjacent to a public sidewalk, a four-foot minimum unobstructed, continuous sidewalk width shall be maintained at all times.

- C. No outdoor sales and display of items shall be allowed in areas set aside, required or designated for driving aisles, driveways, maneuvering areas, or emergency accessways.
- D. No outdoor sales or display areas shall be located in the sight distance triangle as defined in § 118-24I, Visibility at Street corners, or located in any manner that would restrict or limit adequate sight distance for vehicular traffic movement.
- E. No outdoor sales and display items shall exceed a height of five feet if within 25 feet of a public right-of-way.
- F. Any outdoor display or sale item located outdoors in a manner constituting a sign must conform to the regulations of this chapter.

§ 118-64. Outdoor storage accessory to commercial uses.

- A. Outdoor storage shall be limited to those areas designated for employees only and made accessible to the general public by means of a fence, wall or other permanent, secured enclosure or in areas that are set back a distance of not less than 50 feet from any public entry, parking lot, pedestrian facility or similar publicly used area. If not enclosed by a fence or wall, all storage areas shall be screened from view by landscaping as required in § 118-81, Landscaping and screening.
- B. All storage areas shall be at least 25 feet from all property lines.
- C. Outdoor storage shall not be construed to include the storage of junk or a junkyard or any similar use.

§ 118-65. Outdoor storage accessory to residential uses.

- A. All personal property storage areas shall be at least 20 feet from all property lines.
- B. All storage areas shall be screened from view and fenced as required in § 118-80, Fences and walls, to prevent littering the environment. **[Amended 3-11-2015 by L.L. No. 4-2015]**
- C. Outdoor storage shall not be construed to include a junkyard, as defined this chapter, or any similar use.
- D. Outdoor storage shall not include recreational vehicles; see § 118-67 regarding the storage of such vehicles.
- E. The temporary storage of materials, including construction, landscaping and gardening materials such as compost, topsoil and mulch, shall be exempt.

§ 118-66. Outdoor wood boilers.

- A. Purpose. It is the intent of this section to establish restrictions upon the construction, installation and operation of outdoor wood boilers within the limits of the Town of New Hartford for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the Town and its inhabitants. It is generally recognized that the types of fuel uses and the scale and duration of the burning by such boilers create noxious and hazardous smoke, soot, fumes, odors and air pollution, can be detrimental to citizens' health, and can deprive neighboring residents of the enjoyment of their property or premises.
- B. Definitions. In addition to the definition of "outdoor wood boiler" in Article III, Definitions and Word Usage, the following definitions shall apply:

CLEAN WOOD — Wood that has not been painted, stained, or treated with any other coatings, glues or preservatives, including, but not limited to, chromated copper arsenate, creosote, alkaline copper quaternary, copper azole or pentachlorophenol.

COMMERCIAL-SIZE NEW OUTDOOR WOOD BOILER — An outdoor wood boiler with a thermal output rating greater than 250,000 British thermal units per hour (Btu/h).

RESIDENTIAL-SIZE NEW OUTDOOR WOOD BOILER — An outdoor wood boiler that has a thermal

output rating of 250,000 Btu/h or less.

- C. Permit required. No person shall cause, allow or maintain the use of an outdoor wood boiler within the Town of New Hartford without first having obtained a permit from the Code Enforcement Officer.
- D. Specific requirements.
 - (1) The outdoor wood boiler must be installed, operated and maintained according to manufacturer's instructions. The installation must be inspected by the Code Enforcement Officer prior to the issuance of an operating permit.
 - (2) The outdoor wood boiler shall only be fueled by firewood, natural untreated lumber or other fuels specifically permitted by the manufacturer.
 - (3) Prohibited fuel types.
 - (a) No person shall burn any of the following items in an outdoor wood boiler: wood that does not meet the definition of clean wood; unseasoned wood; garbage; tires; yard waste, including lawn clippings; materials containing plastic; materials containing rubber; waste petroleum products; paints or paint thinners; household or laboratory chemicals; coal; paper, except that nonglossy, noncolored papers may be used to start an outdoor wood boiler; construction and demolition debris; plywood; particleboard; fiberboard; oriented strand board; manure; animal carcasses; and asphalt products.
 - (b) No person shall cause or allow emissions of air contaminants from an outdoor wood boiler to the outdoor atmosphere of a quantity, characteristic or duration which is injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property. This prohibition applies, but is not limited to, the following conditions:
 - [1] Activating smoke detectors in neighboring structures;
 - [2] Impairing visibility on a public highway; or
 - [3] Causing a visible plume migrating from an outdoor wood boiler and contacting a building on an adjacent property.
 - (c) The prohibition further applies to any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emission, either alone or in combination with others, emitted from an outdoor wood boiler, that results in the conditions or circumstances listed in this subsection, notwithstanding the existence of specific air quality standards or emission limits.
 - (4) The outdoor wood boiler must be equipped with a properly functioning spark arrestor.
 - (5) Setbacks.
 - (a) Residential-size outdoor wood boilers.
 - [1] Outdoor wood boilers shall be located in a rear yard with a minimum setback of 50 feet from any residential unit.
 - [2] The outdoor wood boilers shall be set back a minimum of 200 feet from any adjacent property line.
 - (b) Commercial-size outdoor wood boilers.
 - [1] The outdoor wood boiler shall be set back a minimum of 200 feet from the nearest property boundary line.

- [2] The outdoor wood boiler shall be set back a minimum of 300 feet from a property boundary line of a residentially zoned property.
 - [3] The outdoor wood boiler shall be set back a minimum of 1,000 feet from a school, public recreational use or park.
- (6) Stack height of chimney.
 - (a) The minimum height of any chimney must be at least 18 feet above the ground.
 - (b) When an outdoor wood boiler is located within 150 feet of a structure, the stack shall be at least two feet higher than the roof peak of the structure.
 - (7) Existing outdoor wood boilers on the effective date of this chapter are not to be extended or enlarged.
 - (8) Any outdoor wood boiler damaged by natural causes by more than 75% of its value shall not be repaired or rebuilt.
- E. Suspension of permit. A permit issued pursuant to this chapter may be suspended as the Town Code Enforcement Officer may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of New Hartford if any of the following conditions occur:
- (1) A violation cited by the New York State Department of Environmental Conservation.
 - (2) Malodorous air contaminants from the outdoor wood boiler are detectable outside the property of the person on whose land the outdoor wood boiler is located.
 - (3) The emissions from the outdoor wood boiler interfere with the reasonable enjoyment of life or property, cause damage to vegetation or property, and/or are or may be harmful to human or animal health.
 - (4) A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this chapter.
- F. Effect of other regulations. Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, New York State Department of Environmental Conservation, or any other federal, state, regional or local agency. Outdoor boilers and any electrical, plumbing or other apparatus or device used in connection with an outdoor wood boiler shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all local, state and federal codes, laws, rules and regulations. In case of a conflict between any provision of this chapter and any applicable federal, state or local laws, laws, codes, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

§ 118-67. Parking and storage of commercial and recreational vehicles, boats and other motor vehicles.

- A. Within the A, RA, LDR, MDR and HDR Districts, the following applies to commercial and/or recreational vehicles, boats and other motor vehicles:
- (1) All recreational vehicles and boats shall be registered, inspected and operable.
 - (2) All recreational vehicles and boats shall be parked on the rear or side yard on a prepared surface.
 - (3) Recreational vehicles and travel trailers shall not be used as housing, temporary or otherwise, in the Town of New Hartford, with the following exceptions:
 - (a) When located in a campground or recreational vehicle park.
 - (b) In the Agricultural District (A District), a recreational vehicle may be utilized as temporary

housing for one week within a calendar year for residential purposes.

- B. Within the A, RA and LDR, MDR and HDR Districts, the tractor portion of a tractor trailer, semi-truck or eighteen-wheeler that is registered, inspected and operable shall be permitted to be parked in the rear or side yard on a prepared surface.

§ 118-68. Portable storage containers.

- A. A portable storage container may be temporarily located on a lot of record as part of temporary storage solution with the issuance of a temporary use permit from the Code Enforcement Officer. Portable storage containers shall not include dumpsters, tractor-trailers or other vessels with other traditional uses.
- B. In an A, RA, LDR, MDR and HDR District, one mobile storage trailer or container shall be allowed with the issuance of a building permit. Building permits are required and renewable on a triennial basis but for no more than one year. The trailer or container shall not be placed in any front yard unless the rear or side yards are not accessible.
- C. Mixed use and commercial use zones.
 - (1) One mobile storage trailer or container shall be allowed for a period not to exceed two months. The storage unit shall be removed promptly, and not more than three building permits may be issued in any year. The unit shall be placed in a rear or side yard only.
 - (2) Storage trailers and/or containers located in an M Zone shall be exempt from all of the above.

§ 118-69. Raising of livestock; animal husbandry.

- A. A minimum lot size of three acres shall be required, and the property shall be located in an A or RA Zone. **[Amended 6-14-2017 by L.L. No. 3-2017]**
- B. The building or structure used for the stabling or keeping of livestock shall be located at least 50 feet from any property line.
- C. Manure storage that has not yet been composted or spread shall be set back 150 feet from any lot line.

§ 118-70. Roadside stands or farm stands.

- A. A temporary use permit shall be acquired from the Code Enforcement Officer.
- B. The stand shall not utilize a permanent roadside structure.
- C. The stand shall be set back a minimum of 10 feet from the public right-of-way.
- D. Two temporary, seasonal signs with a maximum of 16 square feet in size for each sign shall be permitted; however, such sign shall be located at least 10 feet from the public right-of-way.
- E. Safe ingress and egress from the farm or roadside stand shall be required, including the provision of adequate pull-off areas and parking for at least three vehicles.

§ 118-71. Satellite dish antennas.

- A. Dish antennas greater than 30 inches in diameter.
 - (1) No more than two dish antennas shall be erected, constructed, installed or maintained on a single lot or premises, except that one dish per dwelling unit shall be permitted for multi-family uses.
 - (2) All dish antennas shall be affixed directly to the ground.

- (3) No dish antenna shall be located on any trailer or portable device.
- (4) No dish antenna over 30 inches in diameter shall be connected to or placed upon any roof, building or part thereof; however, if no other site is available for reason(s) of accessibility, reception or code requirements, said dish antenna may be connected to or placed upon any roof, building or part thereof upon a licensed engineer's certification of said antenna's structural soundness.
- (5) Dish antennas shall, to the extent possible, be located in rear yards. When a rear yard is not accessible, does not get reception or does not meet building specifications and a side yard meets the Uniform Fire Prevention and Building Code, a dish antenna may be located there. If said side yard borders on a street, a screen of foliage shall be provided so as to shield said satellite antenna from the street and adjoining properties during the entire year.
- (6) Every effort shall be made to provide that the color of the satellite dish and screening materials shall be in solid earth tones so as to reduce or eliminate aesthetic concerns of the adjoining properties insofar as possible, and said color tones shall be maintained in such character during the usage of said satellite antenna. The colors shall be solid and in black, brown, green, beige, or similar muted colors, including solid mesh construction.
- (7) A dish antenna shall not at any point, nor shall any part of the antenna, including any platform or structure upon which it is mounted or affixed, be elevated to or reach a height of more than 10 feet above the natural grade of the subject premises. In no event shall the natural grade be changed by any means in order to increase the elevation of the dish antenna.

§ 118-72. Commercial sawmills.

- A. All elements of the sawmill, including storage area for logs and sawn lumber; bark, sawdust and other waste materials; buildings; and equipment areas, shall be screened by existing landforms and/or vegetation from the direct view of abutting residential properties and public rights-of-way.
- B. All buildings or other structures and all equipment or storage associated with the sawmill shall be located not less than 100 feet from any property line, nor less than 300 feet from any neighboring dwelling.
- C. No storage area for logs, sawn lumber or waste materials shall be located within 100 feet of any stream, other water body or well providing a source of potable water.

§ 118-73. Self-storage unit facilities.

- A. Standards for self-storage facilities.
 - (1) Only "dead" storage activities are permitted. Retail activities, storefronts and office activities shall be prohibited, except that one office for the operation of the self-storage facility and limited retail sales of products and supplies incidental to the principal use shall be permitted within the office area.
 - (2) Only auctions or lien sales directly related to the sale of repossessed items retrieved from the self-storage unit property on which the auction or lien sale is located shall be permitted with a temporary permit from the Code Enforcement Officer. Up to two auctions or lien sales shall be permitted in a calendar year.
 - (3) The following activities are prohibited: activities similar to garage sales; flea markets; hobby shops; service and repair of motor vehicles, boats, trailers, lawn mowers, appliances and other similar equipment; the operation of power tools, spray painting equipment, kilns, table saws, compressors, welding equipment or other similar equipment storage, including cars or other property that have internal combustion engines; the establishment of transfer storage businesses; and any use that is noxious or offensive because of odors, dust, noise, fumes or vibrations, but nothing herein shall prevent

the enforcement of the provisions of the New York State Lien Law. Outside storage shall be prohibited. None of the aforementioned conditions shall restrict the facility owner from performing maintenance of the facility.

- (4) Minimum lot size shall be two acres, and maximum lot size shall be five acres.
- (5) Setbacks. The minimum front, side and rear yard setbacks shall be 120 feet.
- (6) Self-storage facilities shall have a maximum storage capacity of 40,000 feet.
- (7) Circulation drives and aisles shall be a minimum of 12 feet in width for one-way circulations and 24 feet in width and all corners shall provide a fifty-foot turning radius to provide adequate access for firefighting vehicles. The lanes shall be surfaced with asphalt or some other hard-packed material capable of sustaining the weight of fire equipment. All interior travel lanes shall be posted to prohibit parking.
- (8) Landscaping and security.
 - (a) Landscaping shall meet the perimeter landscaping requirements of § 118-81 and must be provided along all lot lines in a manner which will largely obscure the use and its operation when viewed from the ground level.
 - (b) Any fencing for security or aesthetic purposes is required and shall be approved by the Planning Board as to material, height and color.
 - (c) Site lighting shall be provided but shall be shielded from direct light or glare onto established uses and away from adjacent property, but it may be of sufficient intensity to discourage vandalism and theft. However, access and lighting shall not be permitted on a side facing a residential area, unless a sufficiently high landscaped berm or buffer area can be provided to completely shield the building and lighting from residences.
 - (d) No loading docks or permanent material-handling equipment shall be permitted.
 - (e) If the self-storage facility is built as an accessory building to an existing commercial business and is contained on the same property as the existing commercial business, the self-storage facility shall in all respects comply with the terms of this section. The minimum and maximum dimensions referred to above shall, in such cases, be measured around the perimeter of the security fence.
 - (f) No self-storage facility shall be located within 5,000 feet of another self-storage facility.

B. Standards for self-storage units.

- (1) The unit shall be no more than one story and a maximum of 20 feet in height.
- (2) No building shall exceed 150 feet in length.
- (3) The buildings must be constructed on a permanent foundation, and the buildings must conform to the requirements of the New York State Uniform Fire Prevention and Building Code.
- (4) Buildings shall be oriented so as to reduce the visual impact on adjacent properties and existing roadways.

§ 118-74. Solar energy systems. [Amended 12-13-2017 by L.L. No. 8-2017; 2-9-2022 by L.L. No. 1-2022]

- A. Purpose. The use of solar energy systems/collectors, storage facilities, and distribution components for space heating and cooling, the heating of water, use in industrial, commercial or agricultural processes and to otherwise generate electricity are recognized as a renewable and nonpolluting energy resource. The purpose

of this section is to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefor, and to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar energy systems without excess regulation. This section is not intended to override agricultural exemptions that are currently in place.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

FLUSH-MOUNTED SOLAR PANELS/COLLECTORS — Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM/COLLECTORS — A solar energy system that is directly installed in the ground and is not attached or affixed to an existing structure.

LARGE-SCALE SOLAR ENERGY SYSTEM/COLLECTORS — Refers to any solar thermal or solar photovoltaic system which is not a small-scale solar energy system/collector.

NET METERING — A billing arrangement that allows solar customers to get credit for excess electricity generated and delivered to the grid.

ROOFTOP-MOUNTED or BUILDING-MOUNTED — A solar power energy system/collectors in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or modules fixed to frames. Said panels shall be limited to the roof area.

SMALL-SCALE SOLAR ENERGY SYSTEM/COLLECTORS — Refers to solar photovoltaic systems rated up to 25 kilowatts (kW) of energy or solar thermal systems which serve the building to which they are attached.

SOLAR COLLECTOR — A solar photovoltaic cell, panel or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

C. Applicability.

- (1) This section applies to all types of solar energy systems/collectors that are modified or installed after the effective date of this chapter, unless a building permit was properly issued prior to the effective date of this chapter.
- (2) All solar energy systems/collectors shall be designed, erected and installed in accordance with all applicable codes, regulations and standards, including NYSERDA.
- (3) Solar energy systems/collectors shall be permitted a) to provide power or hot water for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected and as an accessory use, and b) for the purpose generating electricity to be utilized in connection with a net billing or net metering arrangement in accordance with New York Public Service Law § 66-j, or similar state or federal statutes. Nothing herein shall restrict the Town of New Hartford from entering into an agreement with a private provider to generate electricity to benefit the residents of the Town of New Hartford.

D. Permitting.

- (1) Rooftop- and building-mounted small-scale solar energy systems/collectors shall be permitted as of right in all zoning districts with issuance of a building permit and located on an existing structure. Applicants must provide the dimensions of all panels; their height and angle from horizontal; detail of materials; location of roof drains; and engineer's verification that the roof structure can handle the load, including any additional drifting snow, as well as any additional items requested by the Codes Officer.
- (2) Freestanding or ground-mounted solar energy systems only on lots greater than five acres in size.

- (a) Small-scale solar energy systems/collectors which are freestanding or ground-mounted solar energy systems shall be permitted in all zoning districts and shall require a special permit review from the Town of New Hartford Planning Board and may be subject to additional requirements as prescribed in this section. Large-scale solar energy systems/collectors which are freestanding or ground-mounted solar energy systems shall be permitted in those zoning districts which are designated by the New Hartford Town Board and shall require a special permit review from the Town of New Hartford Planning Board and may be subject to additional requirements as prescribed in this section. Once the special permit is granted, a building permit shall be required. Initially, the Town of New Hartford designates the Town property on Middle Settlement Road from Commercial Drive to Clinton Road and Town-owned lands adjacent to Sherrillbrook Park, Route 12, as locations for such large-scale solar energy systems/collectors for a freestanding or ground-mounted system. Free standing or ground-mounted systems shall not be permitted in residential districts.
 - (b) Upon receipt of a complete special permit application (including the payment of a fee), the Code Enforcement Officer shall submit a copy of the application to the Planning Board for review at the next Planning Board meeting. The Planning Board may condition its approval of any freestanding or ground-mounted solar energy systems on such factors as it may reasonably determine from time to time and in accordance with the Town's Comprehensive Plan, provided that such conditions shall not be of such degree or scale so as to either be physically/logistically impractical or otherwise render the proposed use economically unviable.
 - (c) The Planning Board shall review the application and provide a recommendation for approval, disapproval or approval with conditions within 45 days of receipt of the application.
- (3) Reasonable costs incurred by the Planning Board for private consultation fees or other expenses in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fees required in § 118-140, Fees.

E. Additional accessory use development standards.

- (1) Solar energy systems/collectors and equipment shall be permitted only if they are determined by the Town of New Hartford not to present any unreasonable safety risks, including, but not limited to, the following:
 - (a) Weight load.
 - (b) Wind resistance.
 - (c) Ingress and egress in the event of fire or other emergency.
 - (d) Maximum height measured to the highest point shall not exceed 20 feet.
 - (e) All such systems be installed by contractors certified by the North American Board of Certified Energy Practice. Further, the applicant shall provide detailed plans setting forth the locations of all trees that may have to be topped or removed.
- (2) For purposes of this chapter, freestanding or ground-mounted energy systems are special permit uses in all allowed districts and shall require the issuance of a building permit. They shall be exempt from being counted toward the maximum number of accessory structures and square footage of accessory structures.
- (3) All freestanding or ground-mounted energy systems/collectors shall be located at least 75 feet from the side and rear lot lines measured from the corresponding side of the solar panel. In no case shall small-scale solar energy systems/collectors be installed in a front yard. Such systems will not be allowed on lots less than five acres in size.

- (4) Additional requirements and criteria to be provided by the applicant.
- (a) A line-of-sight profile analysis.
 - (b) A computer-generated model of visual impacts on viewpoints noted in § 280-40U(3)(a)[1], including photo simulations of summer and winter conditions, and before and after simulations of proposed landscaping and buffer.
 - (c) Equipment. All electrical and control equipment shall be labeled and secured to prevent unauthorized access as required by the National Electrical Code and NYS Uniform Fire Prevention and Building Code and New York Electric Safety Code.
 - (d) Signs. Warning signage shall be placed on solar equipment to the extent appropriate. Solar equipment shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment, except:
 - [1] Manufacturer's or installer's identification;
 - [2] Appropriate warning signs and placards;
 - [3] Signs that may be required by a federal agency; and
 - [4] Signs that provide a twenty-four-hour emergency contact phone number and warning of any danger.
 - (e) Landscaping management plan. A plan shall specify how the owners and operators will implement, maintain and replace, if necessary, the approved landscaping plan and screening methods.
 - (f) Glare. Solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways. Exterior surfaces of roof-mounted collectors and related equipment shall have a nonreflective finish and shall be color-coordinated to harmonize with roof materials and other dominant colors of the structure. The applicant shall demonstrate that any glare produced does not have significant adverse impact on neighboring properties or roadways.
 - (g) Preservation. Existing on-site vegetation shall be preserved to the maximum extent practicable. The removal of existing noninvasive trees greater than six inches in diameter shall be minimized to the greatest extent possible. Any herbicides shall be used to a minimal extent. Clear-cutting of all native and noninvasive trees in a single contiguous area exceeding 20,000 square feet shall be prohibited, except for agricultural and farm management practices as shown in a submitted arborist's report.
 - (h) Height. Ground-mounted arrays shall not exceed 20 feet in height when oriented at maximum tilt.
 - (i) Lot coverage. A major solar energy system shall not exceed 60% lot coverage. "Lot coverage" shall be defined as the area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.
 - (j) Site disturbance. Site disturbance, including, but not limited to, grading, soil removal, excavation, soil compaction, and tree removal shall be minimized to the maximum extent practicable. The siting of a solar energy system shall take advantage of natural topography and vegetative screening. The facility should be located at a lower elevation on the property if practicable. Forested sites shall not be deforested to construct a solar energy facility.
 - (k) Site operation and maintenance plan: a plan showing continued photovoltaic maintenance and property upkeep, such as mowing and trimming. Washing additives shall be nontoxic and

biodegradable.

- (l) Stormwater pollution prevention plan (SWPPP): an SWPPP prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town.
 - (m) Noise. Substations and inverters shall be located so to provide for no discernible difference from existing noise levels at the property line.
 - (n) Setbacks. Any structure and equipment for a major solar energy facility shall be located an additional 100 feet from the minimum setback requirements for a principal structure under § 280-24, and shall be located at least 200 feet from an adjacent residential dwelling unit. The Zoning Board or Planning Board may require further setbacks to provide an adequate buffer and eliminate noise impacts.
 - (o) Fencing. Perimeter fencing shall allow for the movement of small wildlife by using fixed-knot woven wire or other wildlife-friendly fencing. Barbed wire fencing is prohibited. Fencing for mechanical equipment, including a structure for storage batteries, may be seven feet high, as required by the National Electrical Code, with a self-locking gate to prevent unauthorized access.
 - (p) Utility connections. Utility lines and connections for a solar energy system shall be installed underground, unless otherwise determined by the Zoning Board for reasons that may include poor soil conditions, topography of the site, and consideration of the utility provider's engineering requirements. Electrical transformers for utility interconnections may be aboveground if required by the utility provider.
 - (q) Access and parking. A road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made.
- (5) Safety. A solar energy system shall be certified under the National Electrical Code and NYS Uniform Fire Prevention and Building Code and New York Electric Safety Code as required, and shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal, at a level acceptable to the local fire department. Storage batteries shall meet the requirements of the NYS Uniform Fire Prevention and Building Code and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.
- (6) Financial surety.
- (a) Prior to the issuance of a building permit and for each year thereafter, the major solar energy system owner and/or landowner shall file with the Codes Officer evidence of financial security to provide for the cost of decommissioning and removing the solar energy system and restoring the site, including, but not limited to, legal fees, court costs, and expenses, in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit, surety bond, or other security acceptable to the Town Board. The financial security shall include an auto-extension provision, be nonterminable, and issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw on the financial security in the event that the major energy system's owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner, shall have the ability to demand payment under the letter of credit or surety bond. Upon completion of decommissioning, the owner and/or landowner may petition the Town Board to terminate the letter of credit or surety bond. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every year thereafter, as provided herein.

- (b) Amount. The amount of the financial security shall be determined by the Codes Officer after consulting with the Town-designated engineer regarding costs of decommissioning, removal and restoration and with the Town Attorney regarding legal fees, court costs, and expenses. The amount of the financial security may be adjusted by the Codes Officer upon receipt of updated cost estimates for decommissioning, removal and restoration, and legal fees, court costs, and expenses.
- (7) Annual report. The major solar energy system owner shall, on a yearly basis, provide the Codes Officer a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The report shall also identify any change in ownership of the major solar energy system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year. Every year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the major solar energy system. The Codes Officer may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of § 118-24 of this chapter.
- (8) Ownership changes. If the owner or operator of the solar energy system or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes, in writing, all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the solar energy system shall notify the Codes Officer within 30 days of the ownership change.
- (9) Decommissioning and removal.
 - (a) A major solar energy system that fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a period of 12 consecutive months shall be deemed to be abandoned. The Town Board may, after holding a public hearing on notice to the owner and operator of the system and site owner, determine that the system shall be decommissioned on an approved time schedule. The decommissioning and removal of a major solar energy system shall consist of:
 - [1] Physical removal of the major solar energy system from the lot, to include, but not be limited to, all aboveground and below-ground equipment, structures and foundations, fences, electric transmission lines and components, roadways and other physical improvements to the site;
 - [2] Restoration of the ground surface and soils to their preinstalled condition, including grading and vegetative stabilization to eliminate any negative impacts to surrounding properties;
 - [3] Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations, and certification of proper removal and disposal as required by the NYS Department of Environmental Conservation or other government agency;
 - [4] Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
 - (b) Decommissioning and removal by the Town. If the major solar energy system owner and/or landowner fail to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.
 - [1] Procedure.
 - [a] Upon a determination by the Town Board that a major solar energy system has been abandoned, the Codes Officer shall notify the system owner and operator and property

owner by certified mail: a) in the case of a facility under construction, to complete construction and installation of the facility within 180 days; or b) in the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.

- [b] Being so notified, if the system owner, landowner and/or permittee fail to perform as directed by the Codes Officer within the 180-day period, the Codes Officer shall notify the system owner, landowner and permittee, by certified mail, that the major solar energy system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing the notice. The notice shall also state that the permittee may appeal the Codes Officer's determination of abandonment to the Zoning Board and request a public hearing.
 - [c] The appeal and request for hearing shall be made and received by the Codes Officer within 20 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the twenty-day period shall result in the special use permit being deemed revoked as stated herein. In the event the permittee appeals the determination of the Codes Officer and requests a hearing, the Zoning Board shall schedule and conduct the hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Zoning Board shall determine whether the major solar energy system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Zoning Board, or whether to revoke the permit and order removal of the major solar energy system.
 - [d] Upon a determination by the Codes Officer or Zoning Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fail to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.
- [2] Removal by the Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a major solar energy system, including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in § 118-74E(6). Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

§ 118-75. Tennis courts.

- A. Tennis courts may use a hurricane-type fence around the court area. The maximum height may be six feet along the property line and an additional one foot in height for every additional one foot set back from the property line.
- B. Tennis court drainage shall be reviewed by the Town Engineer.

§ 118-76. Temporary vendors on private lots.

- A. Temporary vendors, such as, but not limited to, food and coffee trucks or carts, located on private lots shall only be permitted in the C-1, C-2, C-3, I, MU and M districts with a temporary use permit from the Code Enforcement Officer.
- B. A temporary use permit may be issued for up to 30 days.
- C. The vendor shall not utilize a permanent roadside structure.
- D. The vendor vehicle shall be set back a minimum of 10 feet from the public right-of-way.
- E. Safe ingress and egress from the vendor truck or cart shall be required, including the provision of adequate pull-off areas and parking for at least three vehicles.
- F. No freestanding signage advertising the business shall be permitted.

§ 118-77. (Reserved)

ARTICLE IX
Supplemental Development Standards

§ 118-78. Building design standards: residential uses.

- A. Applicability. The standards of this section shall apply to the construction of new homes, new multifamily and new long-term care residential structures in the Town of New Hartford.
- B. General standards.
 - (1) Primary building entrances shall be oriented toward the primary public street or right-of-way with respect to architecture and detailing.
 - (2) The first floor primary facade shall include a minimum of one architectural feature, such as a covered entrance, raised porch, bay window and similar features.
 - (3) Primary facades shall have a minimum window coverage of 20%. On a corner lot, both sides facing a street shall be considered primary facades.
 - (4) Windows shall be transparent (i.e., not heavily tinted).
 - (5) Buildings fronting more than one street shall have facades consisting of the same materials.
- C. Materials.
 - (1) The following materials are permitted for use on the facades of new buildings: brick or tile masonry, native stone, wood shingles or clapboard, cementitious siding, vinyl, and stucco or synthetic equivalent. Metal is permitted for beams, lintels, trim elements and ornamentation.
 - (2) Alternate building materials may be approved by the Code Enforcement Officer and Planning Board. New materials must be considered equivalent or better than the materials listed above.
- D. All facades, other than the primary facade, shall have a minimum window coverage of 15% on all levels and other architectural details approved by the Planning Board. On a corner lot, both sides facing a street shall be considered primary facades.
- E. Exterior window guards and security doors shall be treated as ornamental features and integrated with the design of the building.
- F. Facade composition and materials shall clearly exhibit a base, midsection and crown.
- G. Rooftop mechanical apparatus shall be hidden or screened using a parapet or cornice, or other architectural features as approved by the Code Enforcement Officer and Planning Board.

§ 118-79. Building design standards: commercial and other nonresidential uses.

- A. Applicability.
 - (1) The standards of this section should apply to the construction of new mixed use residential/nonresidential, commercial or other nonresidential structures in the Town of New Hartford except as provided below. Additional standards with regard to landscaping and screening, lighting, signage and off-street parking located in other sections of this chapter shall also apply and may impact building design and location.
 - (2) Permitted light industrial, manufacturing, warehouse and distribution uses located in the Manufacturing (M) District shall be exempt from meeting the standards of this section.
- B. Orientation and entrance.

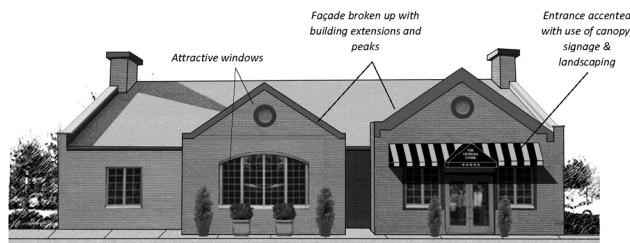
- (1) Primary buildings should be parallel to the street frontage property line.
- (2) Primary building entrances should be oriented toward the primary public street or right-of-way with respect to architecture and detailing.
- (3) All entrances shall be accentuated. Permitted entrance accents include recessed or protruding entrances or the addition of a canopy, portico or overhang.

C. Materials.

- (1) The following materials are permitted for use on the facades of new buildings: brick or tile masonry, native stone, wood shingles or clapboard, cementitious siding, and stucco or synthetic equivalent. Industrial materials such as raw concrete finish, anodized or galvanized metal, tinted glass, plastics and similar materials are prohibited, with the following exceptions:
 - (a) Roofs may be constructed of metal.
 - (b) Tinted glass is permitted above the first floor.
 - (c) Metal is permitted for beams, lintels, trim elements and ornamentation.
 - (d) An exterior insulation finishing system (EIFS) is permitted for trim and cornice elements only.
 - (e) Alternate building materials may be approved by the Code Enforcement Officer and Planning Board. New materials must be considered equivalent to or better than the materials listed above.

D. Walls.

- (1) Exterior walls facing a street frontage or parking lot should not be permitted to be blank, with no windows or architectural features, unless approved by the Planning Board.
- (2) Walls or portions of walls, where windows are not provided, should have architectural treatments that are similar to the front facade, including materials, colors and details.
- (3) Architectural treatments should be integral to the building's construction and not consist of surface-applied trim, graphics or paint.
- (4) A mix of architectural elements should be provided for all walls.



Example of commercial establishment with architectural features.

E. Windows.

- (1) Street level primary facades should have a minimum of 40% window coverage and a transparent door area, with views provided into the businesses.
- (2) All floors facing a street, right-of-way, parking lot or walkway, other than the street level of the primary facade, should have a minimum of 20% window coverage.

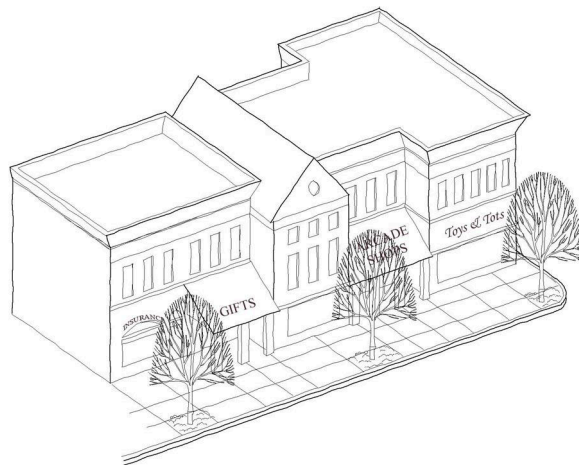
- (3) Street level windows should be a maximum of 24 inches above the sidewalk.
- (4) Windows should be recessed a minimum of two inches from the facade on all newly constructed buildings.
- (5) Windows should be transparent.
- (6) When necessary repair or replacement of windows is required, replacement windows should match the original windows in style, configuration and size.

F. Roofs.

- (1) Roofs should be proportional to the rest of the building.
- (2) Where flat roofs are used, they should have a parapet or cornice a minimum of 12 inches high.
- (3) Rooftop mechanical apparatus should be hidden or screened using a parapet or cornice or other appropriate architectural features.

G. Massing.

- (1) Buildings should be similar in height and size or articulated and subdivided into massing that is more or less proportional to adjacent structures and maintains the existing architectural rhythm.
- (2) Nonresidential and mixed use buildings should have an offset of at least a three-foot to five-foot depth for every 50 feet of continuous primary facade. Such breaks may be met through the use of bay windows, porches, porticos, building extensions, towers, recessed doorways, and other architectural treatments.
- (3) The building length of the primary facade of any building shall not exceed 175 feet.



Example of massing, offsets and architectural features.

§ 118-80. Fences and walls.

A. Permit required.

- (1) A building permit is required for the installation of a fence or to erect a wall. The applicant shall be required to submit a detailed description of the proposed fence or wall and proposed location and, at the discretion of the Code Enforcement Officer, a contemporaneous survey prepared by a licensed individual may be required. Property pins or other points of reference must be verifiable or otherwise

clearly delineated on the property at the time of inspection.

- (2) Fences and walls to be erected in any I, C-1, C-2, C-3 or M District shall require a special use permit and shall comply with the requirements set forth by the Planning Board.
- B. The height of all fences and walls shall be measured from the lowest natural grade directly beneath the fence being erected. A fence placed on a man-made berm shall not circumvent measurement requirements from natural grade.
- C. Residential fences shall not exceed six feet in height measured from natural grade and shall be positioned from the frontmost point of a residential building extending back to the furthest point in the designated rear yard. A through lot shall be allowed a six-foot-high fence, providing adjacent lots treat that same side as their rear yard.
- D. Residential fences shall not extend or be positioned forward beyond the frontmost point of a residential building, except in RA and A Zones. In RA and A Zones, residential fences shall be allowed to extend to within two feet of the front property line, provided they are open in style, i.e., picket or split rail, and shall not exceed four feet in height, and shall comply with provisions regarding visibility at street corners. (See § 118-24I.)
- E. Fences may be erected directly on a property line, except those allowed in a front yard, where they must be located a minimum of two feet in back of the front property line, and corner lots, where they must conform with § 118-24I.
- F. Decorative fences, open in style, not exceeding four feet in height, consisting of no more than three posts, and extending no more than eight feet in length in either direction from the center post, shall be allowed in the front yard of any property, except on corner lots, where they must conform to § 118-24I.
- G. Fences that have one finished side and one structural side shall be erected so that the finished side faces toward the immediate adjoining property owner's property.
- H. Fences shall not be installed in a drainage swale or in any easement area.
- I. Fence materials shall be wood, wood composite, brick, vinyl, stone, chain-link, wrought iron or painted steel.
- J. Fences shall be maintained to be aesthetically pleasing and structurally sound. Painted or stained fences shall be maintained accordingly. Fences must not be allowed in any state of disrepair, which includes loose, dangerous, crumbling, missing, broken, rotted or other unsafe portions of fences.
- K. Temporary fences not requiring a Town permit, such as snow fences or vinyl roll fences used to protect a potential hazard created by excavation or construction (examples: swimming pools, utility installation ditches, dwelling foundations, etc.) shall not be allowed more than 90 days in any one year.
- L. All excavations associated with a building permit shall be required to be protected by a temporary fence.
- M. For tennis court fences, refer to § 118-75.

§ 118-81. Landscaping and screening.

- A. Purpose. The purpose of these landscaping and screening requirements is to:
 - (1) Promote and protect the health, safety and welfare of the public by creating a community environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life;
 - (2) Protect public and private investment;

- (3) Encourage preservation of existing trees and other significant vegetation;
- (4) Encourage proper selection, installation, and maintenance of plant materials that result in the conservation of natural resources, including water;
- (5) Reduce the negative environmental effects of development while protecting and enhancing the value of developed properties and the surrounding area;
- (6) Reduce soil erosion and increase infiltration in permeable land areas essential to stormwater management; and
- (7) Mitigate air, dust, noise, heat, chemical pollution and glare, and other adverse environmental effects of development.

B. Applicability. This section applies to the following building development:

- (1) Any proposed institutional, commercial or industrial development in Schedule A,²⁰ including expansions of 1,500 square feet or greater to existing buildings, where the principal building(s) are set back at least 20 feet from the front lot line and/or side property line on a corner lot.
- (2) Any proposed parking lot expansions of 10 spaces or more, whether or not the project is in conjunction with any other new or expansion development, which shall meet the standards of § 118-81F and G.
- (3) Any proposed multifamily residential development, including long-term residential care facilities, consisting of four or more dwelling units with a new building or building expansion that amounts to or exceeds either 4,000 square feet or 25% of the assessed valuation of the existing building within any twelve-month period.

C. General requirements.

- (1) A minimum of 20% of a lot on which a new or expanded development meeting the definition of Subsection B(1) above is proposed shall be landscaped. Where projects only include the expansion of a structure, the portion of the lot utilized for the expansion and any additional new accessory uses, including parking, the landscaping requirement is based on 20% of the expansion project land area.
 - (a) The percentage of landscaping for tree plantings not otherwise incorporated into a planting area shall be measured based on the expected diameter of the tree crown at 15 years or 20 feet, whichever is lesser.
- (2) Notwithstanding Subsection C(1) above, the requirements of this section and other sections of this chapter may require that landscaping and screening exceed 20% of the lot.
- (3) Any development requiring full site plan approval, as determined by the Planning Board, shall prepare a landscaping plan that meets the landscaping and screening requirements of this section.
- (4) Landscaping plans shall be drawn to scale and include existing and proposed pavement and structures, irrigation, vehicular use areas, significant trees and/or landscape features and topographic elevations.
- (5) Landscaping required pursuant to an approved site plan shall be installed or funds in an amount equal to the cost of purchasing and installing all landscaping materials, deposited in, or a certificate of deposit issued by, a bank or trust company located and authorized to do business in this state under an agreement approved by the Town Attorney prior to temporary occupancy and installed before the issuance of a final certificate of occupancy. A temporary certificate of occupancy shall only be issued for up to six months for reasons related to the installation of landscaping.

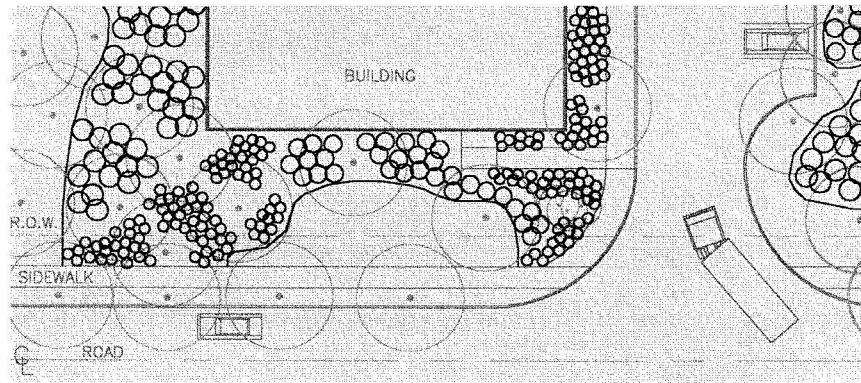
²⁰ Editor's Note: Schedule A is included as an attachment to this chapter.

- (6) Natural vegetation or stands of trees existing prior to site development may be used toward meeting all or part of the landscaping requirements. Incorporation of native species which have food or habitat value is encouraged.
- (7) Required landscaping shall not incorporate trees which have the potential of interfering with overhead power lines.
- (8) Plant material size.
 - (a) At the time of planting, deciduous trees must be at least 2 1/2 inches in caliper measured six inches above the base, and coniferous trees must be at least six feet in height.
 - (b) A minimum of 25% of the shrubs shall be no less than 24 inches in height or spread.
- (9) Maintenance.
 - (a) Any plant material used in the landscaping project shall be maintained in a healthy growing condition. The property owner shall bear responsibility for maintenance of required landscaping and shall replace, within one year (excluding non-planting-season months), any plant material that dies.
 - (b) Action upon noncompliance. Failure, neglect or refusal of an owner to perform the required maintenance shall result in a violation of this chapter, and action shall be taken in accordance with the enforcement provisions of Article XIII, Administration and Enforcement.

D. Building perimeter landscaping planting requirements.

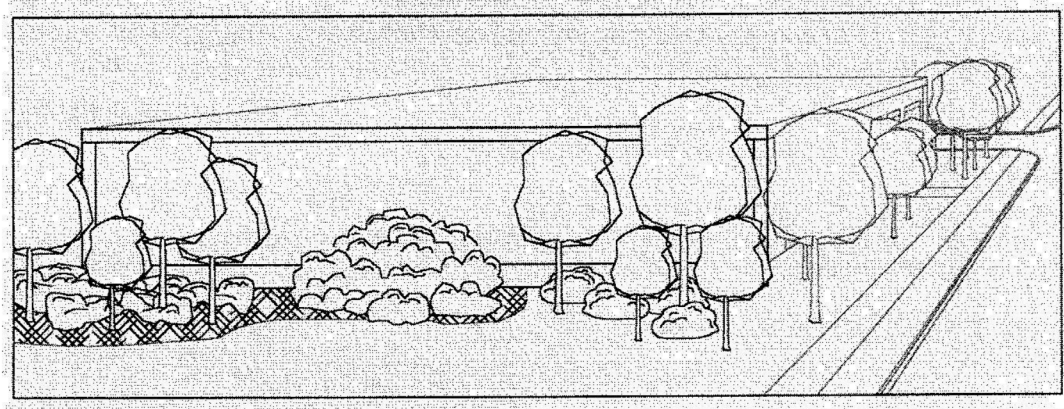
- (1) Planting requirements.
 - (a) Landscaping shall be required in the front yard and, on a corner lot, along any side yard abutting a public right-of-way.
 - (b) To provide a proper planting area, the minimum dimension of any required planting area must be no less 10 feet in width.
 - (c) Building landscaping may be composed of trees, shrubs and ornamental plants in any combination, provided that at least 50% of the total required materials are shrubs.
 - (d) Plant material shall be massed in beds rather than planted as independent units in a lawn.

- (e) Simple masses of shrubbery with good scale, a predominance of one species for unity and individual plants for accent are desirable.



Example of massing of plants and shrubbery.

- (f) Building landscaping shall abut the building and shall be used or installed in such a manner as to screen mechanical equipment attached to or adjacent to the building; provide direction to and enhance entrances and walkways; and provide visual breaks along blank building facades.



Typical blank wall landscaping.

E. Perimeter screening requirements.

- (1) Purpose. The purpose of these screening requirements for certain uses and locations of development is to provide landscaped separations between residential and nonresidential uses where an incompatibility may exist and screen from view certain land uses that may create visual clutter and distraction.
- (2) Applicability. The following land use development must provide landscaping on the perimeter of the site:
 - (a) Uses in the C-1 and M Districts must provide perimeter landscaping along site boundaries that abut lots zoned A, RA, LDR, MDR or HDR.
 - (b) Uses that specifically require perimeter landscaping as part of any additional regulations required in Article VIII, Additional Regulations of Specific Uses, shall meet the standards of this Subsection E.

(3) Requirements.

- (a) Each planting area shall be a minimum of 10 feet in width.
- (b) A screen of at least eight feet in height at the time of planting that results in a noise- and sight-obscuring buffer that is any one or a combination of the following methods shall be required:
 - [1] A solid row of evergreen trees or shrubs.
 - [2] A solid row of evergreen trees and shrubs planted on an earthen berm an average of three feet high along its midline.
 - [3] A combination of trees or shrubs and fencing (metal or wood) or wall (brick, masonry or textured concrete).
- (c) Trees and shrubs should be spaced to grow together within four years from planting, and ground cover shall be provided to attain 75% coverage within four years.
- (d) Breaks in perimeter landscaping for pedestrian access may be required as determined by the Planning Board during site plan review.
- (e) Perimeter landscaping shall be required in an amount which, when combined with other on-site landscaping requirements, is a minimum of 15% of the total site area.

F. Screening between parking areas and public rights-of-way.

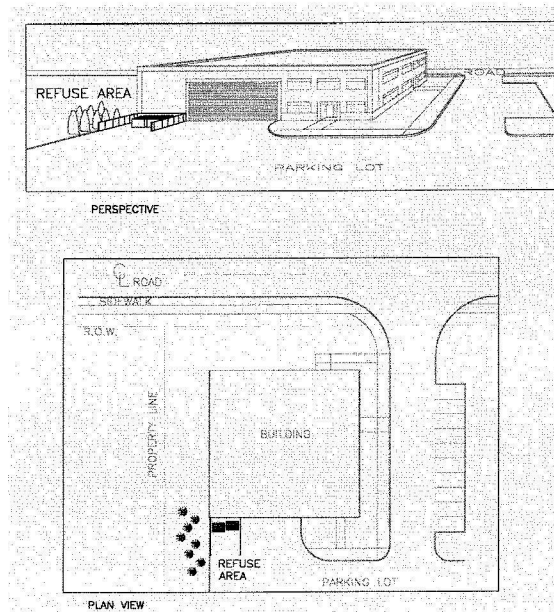
- (1) Purpose. The purpose of these requirements is to provide visual relief and separation of parking areas from public rights-of-way.
- (2) Applicability. The requirements in this section apply to all parking lots located adjacent to a public right-of-way, except those provided for, and on the same lots with, single-family and two-family dwellings, and except for those land uses requiring perimeter screening as specified in Subsection E, above, of this section.
- (3) Requirements. A landscape strip of trees and shrubs shall be provided on the property between the parking lot or access drive and the right-of-way. The landscaped strip may not include any paved area except pedestrian sidewalks or trails which cross the landscaped strip. Shrubs must be maintained at a maximum height of 36 inches.

G. Parking area landscaping.

- (1) Purpose. The purpose of these requirements is to provide visual relief and shade in parking areas.
- (2) Requirements.
 - (a) For parking areas with 10 or more parking spaces, the following standards shall apply:
 - [1] Landscaped areas covering a minimum of 5% of the total paved area of the lot shall be provided.
 - [2] Shade shall be provided for at least 20% of the paved parking area using the following standard:
 - [a] One large shade tree for every 1,500 square feet of parking area.
 - [b] No small (less than 30 feet in height at maturity) trees shall be considered a shade tree.
 - [c] The use of a single tree species throughout the parking area is not encouraged.

H. Outdoor storage screening.

- (1) Refuse collection areas should be effectively designed to contain all refuse generated on site and deposited between collections. Deposited refuse should not be visible from outside the refuse enclosure.
- (2) Screening shall be of sufficient height and density to completely hide the storage from public view. All screening shall be maintained in such a manner as to present a neat and orderly appearance at all times.
- (3) Refuse collection areas should be so located upon the lot as to provide clear and convenient access for refuse collection vehicles and thereby minimize wear and tear on on-site and off-site developments.
- (4) Refuse collection areas should be designed and located upon the lot as to be convenient for the disposition of refuse generated on site. In no case shall outdoor storage or refuse areas be located in the front yard or the front yard setback of any site area; no refuse area shall be visible from a public street.



Typical Refuse Storage Screening

- I. Alternative landscaping plan. Alternative landscaping plans may be proposed where strict application of the requirements in this chapter would prohibit reasonable development of a property. The Planning Board may consider the topography, shape, size or other natural features of the property or design features of the development when considering the suitability of a proposed alternative landscaping plan. Examples of situations where alternative landscaping plans are more likely to receive favorable consideration are mixed use buildings and developments that qualify for reduced parking under § 118-82, Off-street parking and loading. Another technique that can be used in alternative landscaping plans is the enhancement of landscaping in a nearby area to soften the overall effect of the development, such as improvement of a nearby existing public right-of-way.

§ 118-82. Off-street parking and loading.

A. Applicability.

- (1) In any zoning district within the Town, all structures built and all uses, including a change of use, established hereafter shall provide accessory off-street parking in accordance with the following regulations.

- (2) Structures and land uses in existence or for which building permits have been approved at the time of the adoption of this chapter shall not be subject to the parking or loading space requirements of this section. However, any existing parking and loading facilities for such uses shall not be reduced unless they exceed the requirements of this chapter, in which case they shall not be reduced below the requirements of this section.
- (3) When an existing structure or use is expanded, accessory off-street parking shall be provided in accordance with the following regulations for the area or capacity of such expansion.
- (4) The provisions of this section shall not be deemed to apply to motor vehicle storage or display parking areas associated with a vehicle sale, rental or ancillary service establishment, except as may be qualified elsewhere in this chapter.

B. General provisions.

- (1) Parking, stacking and loading areas shall be arranged, marked and maintained as shown on the final approved development proposal in order to provide for orderly and safe parking, storing and loading of vehicles. The Planning Board may also require structural or landscape features, including, but not limited to, bumper guards, curbs, walls or fencing, landscaping or berming, to ensure protection of property and persons and privacy screening for adjacent land uses with visual, noise and air standards.
- (2) All required off-street parking spaces shall be located on the same lot as the principal use or on a contiguous lot which has the same zoning classification and is under the same ownership, unless it is provided in a shared parking agreement. (See Subsection D below.)
- (3) Off-street surface parking shall not extend more than 70 feet in width along any pedestrian street frontage without breaking up the parking area into smaller lots through the placement of buildings, the use of landscaping, community gathering spaces or other treatments.
- (4) No off-street parking facilities for a structure or use permitted in an MU, C-1, C-2, C-3, I or M District shall be located in a residential district.
- (5) All off-street parking facilities shall be used solely for parking of vehicles in operating condition by patrons, occupants or employees of the use to which parking is accessory. No motor vehicle work except emergency service shall be permitted in association with any required off-street parking facilities.
- (6) In the A, RA, LDR, MDR and HDR Districts, trucks larger than 3/4 ton, (except used for on-site farming), motor homes, recreational vehicles, travel trailers, boats and similar conveyances shall not be parked or stored in the front yard. Side and rear yard parking areas shall be on a prepared surface or macadam. No more than one motor home, travel trailer, or recreation vehicle may be parked/stored in a side or back yard. Not more than one vehicle with a business name shall be allowed.

C. Required number of off-street parking spaces.

- (1) The minimum number of off-street parking spaces required shall be calculated using the standards in this subsection and Schedule C below.
 - (a) In churches and other places of assembly in which patrons or spectators occupy benches, pews or other similar seating facilities, each 20 inches of such seating facility shall be counted as one seat.
 - (b) For uses not expressly listed in this section, parking spaces shall be provided on the same basis as required for the most similar listed use as determined by the Planning Board.
 - (c) When determination of the number of required parking spaces results in the requirement of a fractional space, any fraction up to and including 1/2 shall be disregarded, and fractions over 1/2 shall require one parking space.

- (d) Where the occupant load is not definitive or seating is not clearly shown on a building permit, the New York State Uniform Fire Prevention and Building Code shall be used to determine occupant load.
- (2) The minimum number of required off-street parking spaces may be reduced by up to 10% with the granting of a waiver by the Planning Board as part of site plan review if the Planning Board determines that the lesser parking will satisfy the intent of this article and the proposed use is either commercial or industrial as provided in Schedule A of this chapter.²¹
- (3) The number of handicapped-accessible parking spaces shall be determined based on the total number of parking spaces as set forth in the most recent edition of the New York State Uniform Fire Prevention and Building Code.
- (4) Maximum parking standards. The maximum number of off-street parking spaces for any nonresidential building in the MU, C-1, C-2, C-3, I, and M Districts shall not exceed more than 120% of the number of spaces required in Schedule C below.

Schedule C: Off-Street Parking Requirements

SF = square feet GFA = Gross Floor Area

Type of Use	Number of Parking Spaces
Accessory apartment	1 per each apartment
Agriculture, accessory retail	1 per 250 SF of GFA; plus 1 for every 4 employees
Airport	1 per each 4 seating accommodations for waiting passengers; plus 1 per every 2 employees on the shift of greatest employment
Arena	1 per 5 seats
Automobile/boat sales/service/ machinery equipment sales	1 per employee; plus 1 per 1,000 SF of GFA
Bed-and-breakfast	1 per bedroom; plus 2
Bowling alley	2 per lane
Campground	1 per campground; plus 1 per employee
Car wash	1 per employee; plus 1 per 500 SF of GFA (See also § 118-48 for stacking requirements.)
Cemetery	1 per full-time employee
Day-care center, adult day treatment	1 per 250 SF of GFA
Day-care center (children)	1 per every 10 children; plus 1 per employee
Eleemosynary use	1 per 500 SF of GFA
Entertainment and recreation, commercial, except as otherwise listed in Schedule C	1 per 50 SF of GFA; except skating rinks, which shall require 1 per 200 SF of GFA
Funeral home	1 per employee; plus 1 per 100 SF of GFA
Golf course	5 per hole
Golf course, mini	1 per hole
Greenhouse/nursery	1 per 500 SF of gross sales area

21. Editor's Note: Schedule A is included as an attachment to this chapter.

Schedule C: Off-Street Parking Requirements

SF = square feet GFA = Gross Floor Area

Type of Use	Number of Parking Spaces
Home occupation	1 per employee
Hotel/motel	1 per bedroom; plus 3 per 1,000 SF of nonguest floor area
Hospital	1 per bed; plus 2 per every 3 employees at maximum shift
Industrial/manufacturing use/research and development center	1 per every employee; plus 1 per 5,000 SF of floor area
Kennel	1 per 10 runs/cages
Laundromat	1 per every 3 machines
Long-term care facility, community based	1 per every bed
Machinery and farm equipment sales and service	1 per 600 SF of GFA
Medical/dental use	3 per examination room
Membership clubs or lodge	1 per every 50 SF of GFA
Office	1 per 250 SF of GFA
Park and recreation, public	1 per 3 persons based on maximum capacity; plus 1 per employee
Personal service establishment (See also retail)	1 per 200 SF of GFA
Public facilities, including library, community center and municipal building	1 per 300 SF of GFA
Recycling center	1 per employee of largest shift
Religious institution	1 per every 3 seats or 50 square feet of seating area where fixed seating is not provided
Residential care facility	1 per every 3 beds
Residential uses	2 per dwelling unit
Restaurant/tavern/fast-food restaurant/drive-in restaurant	1 per every 3 seats (See also § 118-52, for drive-through stacking requirements.)
Retail store and service unless otherwise listed in Schedule C	1 per 200 SF of GFA
Sawmill	1 per employee during largest shift
School/educational use	1 per 12 classroom seats or 1 per 3 auditorium seats, whichever is greater
Self-storage facility	1 per 200 SF of office area
Shopping center, plaza or mall	250 SF of GFA
Theater	1 per every 3 seats
Veterinary hospital	4 per veterinarian on duty, plus 1 per employee
Warehouse/cold storage/other storage	1 per every 2 employees

D. Shared parking standards.

- (1) Shared parking of areas with multiple uses is encouraged. The requirement for off-street parking spaces shall be the sum of the requirements for the various individual uses, unless it can be established by the applicant to the satisfaction of the Planning Board that staggered hours of use would permit reduction of this requirement. Shopping plazas, centers and malls with multiple users shall meet the shopping center, plaza or mall standards of Schedule C.
- (2) An agreement establishing joint use of a parking area, approved by the Planning Board, shall be recorded with the Code Enforcement Officer. Such agreements shall run with the land for all properties with joint use of parking areas and require Planning Board approval for any change or termination.

E. Design and development standards for off-street parking.

(1) Access, driveways and on-site location.

- (a) Parking areas, exclusive of driveways, shall not encroach within 15 feet of any public right-of-way.
- (b) For nonresidential uses, parking shall not be allowed within 15 feet of the front property line nor within 10 feet of the side or rear property lines.
- (c) For residential uses, driveways shall be set back a minimum of three feet from the side lot line.
- (d) For nonresidential uses and multifamily uses, driveways shall be set back a minimum of five from the side lot line.
- (e) Parking lot entrances and exits for off-street parking with more than four spaces shall not be located within 50 feet of street intersections. All points of ingress and egress shall have appropriate signage unless deemed unnecessary by the Planning Board.
- (f) Parking aisles shall be located a minimum of 20 feet from the intersection of the driveway approach and the street.
- (g) Where warranted by site topography, barriers or other safety devices shall be incorporated into the design of the parking area.
- (h) All parking areas containing four or more parking spaces shall include a turnaround that is designed and located so that vehicles can enter and exit the parking area without backing out or backing onto a public right-of-way.
- (i) Where appropriate, the Planning Board may require paved connections between abutting parking areas in different ownerships to facilitate traffic flow.
- (j) Shared access driveways between uses is preferred to eliminate curb cuts.

(2) Parking stall and aisle standards.

- (a) Handicapped accessible parking dimensional standards are as set forth in the most recent edition of the New York State Uniform Fire Prevention and Building Code.
- (b) The minimum standards of Schedule D in this subsection shall apply to the width and length of required parking spaces.
- (c) Parallel parking spaces stall lengths shall be 22 feet long.
- (d) Turn radius. The minimum allowable inside vehicle turning radius for parking areas and driveways shall be 15 feet unless fire apparatus access is necessary, in which case the turn radius shall be greater as determined the Fire Department. **[Amended 6-14-2017 by L.L. No. 5-2017]**

Schedule D: Off-Street Parking Aisle and Stall Dimensions

Parking Angle	Stall Length	Stall Width	Aisle Width	Aisle Width
			(One-Way)	(Two-Way)
90°	18 feet	10 feet	24 feet	24 feet
60°	21 feet	11.5 feet	18 feet	24 feet
45°	19 feet 10 inches	14 feet	13 feet	24 feet



Parking standards at different angles.

- (3) **Materials.** All drive and parking surfaces for multifamily and nonresidential uses, except agriculture, shall be paved with a compacted macadam base, not less than four inches thick, surfaced with asphaltic concrete or some comparable all-weather dustless material designed to be pitched and drained to dispose of surface water accumulation. The water shall not drain to adjoining property unless part of an approved drainage plan. Parking for 10 vehicles or more must provide adequate drains to storm sewers.
- (4) **Landscaping and screening.** Landscaping and screening of off-street parking areas shall meet the standards of § 118-81.
- (5) **Lighting.** Off-street parking areas shall meet the standards of § 118-83 of this chapter.
- (6) **Parking lot pedestrian linkages.**
 - (a) Clearly defined and marked sidewalks within a minimum width of four feet shall be required within parking lots and be provided for the length of the parking to the entrances of establishments.
 - (b) Clearly defined and marked sidewalks shall be distinguished from driving surfaces through the use of special pavers (brick, scored concrete, or similar materials).
 - (c) Pedestrian access and linkages shall be adequately lit.

F. Off-street loading facility standards.

- (1) Spaces for off-street loading shall be in addition to space for off-street parking. Off-street loading berths shall be required for the following uses.
- (2) Each required loading berth shall be at least 15 feet wide, 45 feet long and 14 feet high. Alternative design standards may be accepted by the Planning Board if the applicant demonstrates that such standards are appropriate.
- (3) Unobstructed access, at least 10 feet wide, to and from a street shall be provided. Such access may be combined with access to a parking lot. All permitted or required loading berths shall be on the same lot as the use to which they are accessory, except as permitted below. No entrance or exits for any off-street parking or loading area shall be located within 50 feet of any street intersection, nor shall any off-street loading berth encroach on any required front yard or required side yard, accessway or off-street parking area, except that in a commercial district, off-street parking areas may be used for loading and unloading, provided that such areas shall not be so used or restricted for any more than three hours during the daily period that the establishment is open for business.
- (4) Permitted or required loading berths, open or enclosed, may be provided in spaces designed to serve

jointly two or more adjacent establishments.

§ 118-83. Outdoor lighting.

A. Purpose. The purpose of this section is to require and set minimum standards for outdoor lighting that:

- (1) Permit reasonable uses of outdoor lighting for safety, security, and visibility for pedestrians and motorists;
- (2) Minimize glare and obtrusive light by limiting outdoor lighting that is misdirected, excessive or unnecessary; and
- (3) Conserve energy and resources to the greatest extent possible.

B. Applicability.

- (1) The lighting standards of this section shall apply to all properties in the Town of New Hartford.
- (2) All outdoor lighting fixtures (luminaires) shall be installed in conformance with this chapter, provisions of the Uniform Fire Prevention and Building Code and the sign regulations of § 118-84 as applicable.

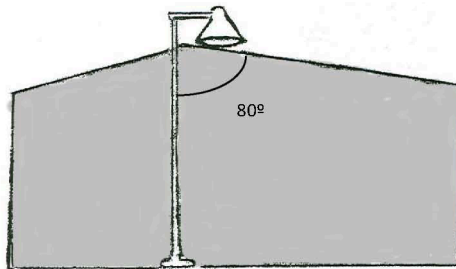
C. Definitions. As used in this section, the following terms shall have the meanings indicated:

FULL-CUTOFF OR FULL-SHIELDED TYPE FIXTURE — An outdoor lighting fixture that is shielded or constructed so that all light emitted is projected below a horizontal plane running through the lowest light-emitting part of the fixture.

GLARE — Direct light that causes annoyance, discomfort or loss in visual performance and visibility.

LIGHT FIXTURE — The assembly that holds a lamp and may include an assembly housing, mounting bracket or pole socket, lamp holder, ballast, reflector or mirror and refractor or lens. A light fixture also includes the assembly for luminous tube and fluorescent lighting.

LIGHT POLLUTION — Artificial light which causes a detrimental effect on the environment or on enjoyment of the night sky, or causes undesirable glare or unnecessary illumination of adjacent properties.



Example of full cut-off lighting fixture.

D. Exempt lighting. The following types of lighting are exempt from the standards of this section:

- (1) Emergency lighting or temporary construction lighting, as may be required by a public agency.
- (2) Holiday lighting.
- (3) Lighting in swimming pools and other water features governed by Article 680 of the National Electrical Code.
- (4) Low-voltage landscape lighting; however, such lighting should be shielded in such a way as to eliminate glare and light trespass.

- (5) Exit signs, lighting of stairs and ramps and other illumination required by the Uniform Fire Prevention and Building Code.
- (6) Sports fields lighting; however, glare and light trespass shall be minimized and sensible curfews utilized.

E. Prohibited lighting:

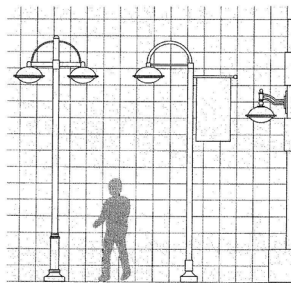
- (1) Blinking and flashing lights.

F. General requirements.

- (1) The number of light fixtures and the intensity of lighting shall be appropriate to illuminate the location for safety, without glare to adjoining properties.
- (2) The International Dark-Sky Association's guidance on outdoor lighting standards for preventing light pollution and reducing energy usage without compromising safety are considered best practices. As such, consideration shall be given to following recommendations from the International Dark-Sky's Association in developing all lighting plans and reviewing all lighting plans as part of site plan review.
- (3) All lighting installation shall meet the exterior lighting standards of the current Energy Conservation Construction Code of New York State and be designed and installed to be fully shielded (full cutoff), except as in exceptions above, and the following:
 - (a) Non-cut-off (unshielded) fixtures may be used when the maximum initial lumens generated by each fixture is less than 9,500 initial lamp lumens. These fixtures must feature globes or vertical glass planes and must be coated with an internal white frost to diffuse light.
- (4) Installation of supply wires for lighting shall be placed underground.
- (5) Automobile-oriented uses such as gasoline service stations and drive-through facilities shall install recessed ceiling fixtures in any canopy.
- (6) Maximum height.
 - (a) Lighting attached to residential structures should not exceed the height of the eave.
 - (b) The total height of exterior lighting fixtures, including the base, shall be a maximum of 20 feet, and 15 feet for pedestrian walkways and parking lots adjacent to residential uses.

G. Design.

- (1) Exterior lighting shall enhance the building design and adjoining landscape.
- (2) Decorative style lighting is preferred.



Types of preferred lighting styles.

§ 118-84. Signage.

A. Intent. The purpose of this section is to reduce distractions and obstructions that may contribute to traffic accidents or safety hazards, and to protect property values, maintain an attractive business climate and protect the physical appearance of the community.

B. Applicability and procedures.

(1) Except as otherwise provided in Subsection D of this section, no sign or other advertising device shall be erected, constructed, displayed, moved, reconstructed, extended, enlarged or altered except in conformity with this section and, where applicable, without first obtaining a permit from the Code Enforcement Officer in accordance with the following procedures and standards.

(2) A permit shall be required for any change in the size, shape, lighting, materials or location of an existing sign.

(3) Application for a permit shall be made in writing to the Code Enforcement Officer. One application may include more than one sign, provided that all signs contained in such application are to be erected at the same time on one lot. Applications for new signs or proposed changes in existing signs shall include the following information:

(a) Plans to scale detailing the dimensions and area of the sign(s), the location of the sign(s) on the building, structure or property where the sign(s) will be erected or attached, and a visual simulation or photo to scale illustrating colors, materials, lettering, artwork, and method of illumination, if any.

(b) Written consent of the owner of the structure or real property upon which the sign is to be attached or erected, in the event the applicant is not the building or property owner.

(c) Each application for a permit shall be accompanied by the fee set forth in § 118-140. Such fee shall be based on all signs contained in such application.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

AWNING (CANOPY) SIGN — A sign painted on, printed on, or attached flat against the surface of an awning made of canvas or fabric or similar material, which is affixed to a building and projects therefrom. Such signs may or may not be fixed or equipped with a mechanism for raising and holding an awning in a retracted position against the building.

BILLBOARD — See "off-premises sign/billboard" in this subsection.

DIRECTIONAL SIGN — A sign conveying instructions regarding pedestrian and/or vehicular movement with respect to the premises on which it is located, such as the entrance and exit of a parking area.

ELECTRONIC MESSAGE CENTER (EMC) — A changeable copy sign that utilizes computer-generated messages or some other electronic means of changing copy. These signs include displays using incandescent lamps, LEDs, LCDs or a flipper matrix.

FREESTANDING SIGN — A self-supporting sign standing alone on its own foundation.

ILLUMINATED SIGN — Any sign illuminated by artificial light, either from the interior or exterior of a sign, and includes reflective and phosphorescent light.

INTERNALLY LIT SIGN — Any sign deriving its illumination from an internal source, and shall include all plastic signs lighted from behind, as well as all neon signs, and all lighted awnings lighted in a way as to give the awning the appearance of being lighted.

MONUMENT SIGN — A freestanding sign attached to a brick, stone, or masonry wall or structure that forms a supporting base for the sign display.

OFF-PREMISES SIGN/BILLBOARD — A sign which is located on a parcel of land other than that parcel where the business, service or event advertised is located.

PORTABLE SIGN — A sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to, a sign designed to be transported by means of wheels, or on its own trailer or otherwise. Examples of portable signs include, but are not limited to, sandwich boards, menu boards, signs attached to A-frames or T-frames, and balloons used as signs.

ROOF SIGN — A sign erected upon or above a roof or parapet wall of a building, and which is wholly or partly supported by that building.

SANDWICH BOARD/SIDEWALK SIGN — A movable sign not secured or attached to the ground or surface upon which it is located, but supported by its own frame and most often forming the cross-sectional shape of an "A."

SIGN HEIGHT — The distance from the highest portion of the sign to the average level of ground within a twenty-foot radius immediately beneath the sign.

VEHICULAR SIGN — Any vehicle and/or trailer to which a sign is affixed in such a manner that the carrying of the sign is no longer incidental to the vehicle's purpose but becomes the primary purpose of the vehicle.

WALL SIGN — A sign which is painted on or attached to the outside wall of a building with the face of the sign in the plane parallel to such wall.

WINDOW SIGN — A sign mounted or painted on a window or inside a structure that is intended to be seen through a window from the outside.

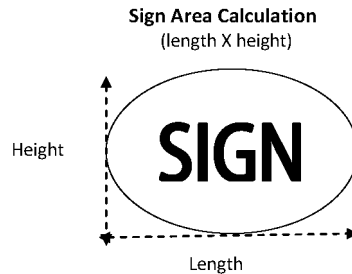
D. Exempt signs.

- (1) Signs advertising the sale or rental of the premises upon which the sign is located.
 - (a) Not more than one sign shall be placed upon a property unless such property fronts on more than one street, in which event one sign may be erected on each frontage.
 - (b) In the A, RA, LDR, MDR and HDR Districts, signs advertising the sale, lease or rental of the premises upon which the sign is located shall not exceed six square feet in area, and a subdivision sign shall not exceed 32 square feet in area.
 - (c) In the MU, I, C-1, C-2, C-3 and M districts, signs advertising the sale, lease or rental of the premises upon which the sign is located shall not exceed 32 square feet in area.
 - (d) Such sign(s) shall be removed within 30 days after the premises has been sold or rented.
 - (e) Such signs shall not be illuminated.
- (2) Signs denoting the architect, lending institution, engineer or contractor where construction, repair or renovation is in progress, which shall be limited to one sign per property with a maximum size of six square feet in the A, RA, LDR, MDR and HDR districts and 32 square feet in all other districts.
- (3) Signs which mark property boundaries; give directions for roads or trails; prohibit trespassing, hunting, fishing or off-road vehicles; or warn of hazards.
- (4) Signs up to two square feet in size, giving the name of the residents of a dwelling or its address.
- (5) Sandwich boards meeting the following requirements:
 - (a) Sandwich boards must be nonilluminated and shall not exceed eight square feet in sign area, with a maximum height of four feet and a width not to exceed 30 inches.
 - (b) Sandwich boards shall be constructed of commercial grade materials.

- (c) The sign shall not be located in such a manner as to restrict vision or impair vehicular or pedestrian safety or maintenance of sidewalks or impede flow of pedestrian traffic.
 - (d) The sign must be located in front of or on the side of the building and in close proximity to the building within which the business is located.
 - (e) The sign shall only be displayed during hours that the business establishment is open.
- (6) Temporary signs. Temporary signs meeting the following standards shall be permitted:
- (a) Temporary signs shall be limited to 60 days and shall be removed within seven days of an event or activity, as applicable.
 - (b) Temporary signs located in an LDR, MDR or HDR District shall not exceed six square feet in size.
 - (c) Temporary signs located in an A, RA, MU, I, C-1, C-2, C-3 or M District shall not exceed 32 square feet in size.
 - (d) Temporary signs shall be set back five feet from the lot line.
- (7) Window signs, as long as they conform to the illumination requirements of this article and do not cover more than 20% of the glass area or six square feet of the pane to which the sign is affixed or displayed.
- (8) Gasoline service station signs attached on fuel pumps or pump islands, displaying the price of fuel, not exceeding two square feet; however, the total size of price, logo and any other signage on a pump shall not exceed a combined total of three square feet.
- (9) Signs on vehicles used when the vehicle is used on a daily basis to transport people or goods to and from the business where the vehicle is parked. Vehicles with signs on them as described in this Subsection D(9) shall be parked in the rear or side yard during nonoperating hours.
- E. Prohibited signs. The following signs are prohibited in the Town of New Hartford:
- (1) Signs with any mirror or mirror-like surface, or any day-glowing or other fluorescent paint or pigment.
 - (2) Vehicular or other mobile signs.
 - (3) Sign walkers or sign twirlers located off-premises or in the public right-of-way or a public parking lot.
 - (4) Permanent or temporary signs erected or placed at or near the intersection of any street in such a manner as to cause a traffic hazard at the intersection or at any location where, by reason of the position, shape, color, or illumination of the sign, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device.
 - (5) Signs using of the words "STOP," "LOOK," "DANGER," "CAUTION," or any other word, phrase, symbol or character which may tend to confuse, mislead or resemble any governmental or duly authorized sign. This does not pertain to traffic control devices.
 - (6) Off-premises signs (billboards).
 - (7) Roof signs.
- F. General regulations.
- (1) Sign materials and structure.
 - (a) Signs shall be constructed of wood, plastic, metal, glass, foam or stone.
 - (b) A sign support structure shall be adequate to support the load of the sign which it is supporting.

Upon request of the Code Enforcement Officer, an engineered design, paid for by the sign owner, may be necessary. Signs 100 square feet or more shall have an approved New York State engineering plan when applying.

- (2) Sign area calculation. The area of a sign shall be determined by the smallest rectangle that encompasses all of the letters or symbols that make up the sign, together with the area of any background of a different color or material than the general finish of the building, whether painted or applied. For the purposes of calculating total sign area, only one side of a two-sided area shall be counted.



- (3) Location of signs.
- (a) No sign, other than an official traffic sign or public notice approved by the Town Clerk, shall be erected within the right-of-way line of any public street. Signs posted in the right-of-way shall be removed, without prior notice, by the Codes Department, Highway Department or Police Department. Signs removed from the public right-of-way shall be retained for no more than 10 business days and disposed of thereafter.
 - (b) Signs shall not use utility poles or trees, rocks or other natural features as a medium of communication or means of support.
 - (c) No sign shall be so located as to detract from, or obstruct public view of, historic buildings, scenic views or any other recognized natural features such as a waterfall, glen, etc.
- (4) Illumination of signs.
- (a) No sign shall contain flashing, intermittent, rotating or moving lights except as permitted in Subsection H(4), regarding electronic message centers and LEDs, and no sign shall consist of pennants, banners, ribbons or streamers.
 - (b) Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into the public right-of-way or residential properties.
 - (c) Signs shall not be illuminated between the hours of 10:00 p.m. and 6:00 a.m., unless the premises on which they are located is open for business.
 - (d) Electronic message centers, video display signs, LEDs and LCDs are regulated in Subsection H(4) below.
- (5) Condition and maintenance of signs.
- (a) Should any sign be or become unsafe, unsightly, damaged or in danger of falling, or is a menace to the public, the owner thereof or the person maintaining the same shall, upon receipt of written notice from the Code Enforcement Officer, proceed at once to put such sign in a safe and secure condition, or renovate or remove the sign; provided, however, that if such a situation is not corrected within 90 days from the date of receipt of written notice, the Code Enforcement Officer shall correct the situation or have it corrected, with the costs assessed to the property's Town tax

bill.

- (b) All renovations to any nonconforming sign shall be undertaken in such a manner so as to cause the sign to conform to this chapter.

G. Signs in Agricultural and Residential Districts. Within the A, RA, LDR, MDR and HDR Districts, the following signs are permitted with a permit from the Code Enforcement Officer:

- (1) Signs denoting a subdivision name (five or more lots). The total sign area shall not exceed 32 square feet in area. All such signs shall be set back 10 feet from the lot line. Such signs shall not be illuminated.
- (2) Home occupation identification signs. For home occupations defined as a "major home occupation" in this chapter, one business sign shall be permitted that meets the following standards:
 - (a) Signs shall bear only the name and profession or occupation of the resident.
 - (b) Signs shall not exceed four square feet in area.
 - (c) Signs may be located on the building wall or in the required front yard provided that they are set back at least 10 feet from all property lines and are not more than six feet above the natural ground level at their location.
- (3) Nonresidential and business identification signs. A property utilized for a permitted agricultural, nonresidential or business activity according to Schedule A of this chapter²² shall be permitted up to one sign and shall meet the following standards:
 - (a) The total cumulative area of all signs permitted on such lot shall be 16 square feet, except that a lot with an agricultural use as the principal use in the A and RA Districts may have a wall sign up to 32 square feet.
 - (b) Notwithstanding § 118-24I, Visibility at street corners, the maximum height of a freestanding sign above grade level of the road shall be eight feet and such sign shall be set back at least five feet from any property line unless on a corner lot. On a corner lot, a freestanding sign shall be set back 20 feet from the intersection.

H. Signs in nonresidential districts. Within the MU, I, C-1, C-2, C-3 and M districts, the following signs are permitted, subject to the limitations of Schedule E and other requirements of this section, and with a permit from the Code Enforcement Officer:

- (1) Wall signs or building-mounted signs.
 - (a) Not more than one exterior building-mounted or wall sign shall be permitted for each business on each wall facing a public street or private parking area. The total maximum size of individual wall signs is provided in Schedule E of this section.
 - (b) No building-mounted or wall sign shall be erected or maintained which extends above the highest roofline or parapet of any building or structure.
 - (c) Wall signs shall be placed flat against the exterior wall and shall not project more than 12 inches from the wall to which they are fixed. No sign shall project beyond the top or side of the wall to which it is fixed.
 - (d) Projecting signs shall not project more than six feet from the side of the building and when suspended over a pedestrian walkway, such as a sidewalk or entranceway; the bottom of such signs shall be no lower than eight feet and no higher than 12 feet above the finished grade.

22. Editor's Note: Schedule A is included as an attachment to this chapter.

(2) Freestanding signs.

- (a) Not more than one freestanding sign shall be permitted per site except as permitted in Subsection H(2)(b) below and except for directional signs that do not exceed four square feet in sign area which are permanent in nature and limited to such texts as "entrance," "exit," "no parking," etc. For the purposes of this provision, a single business or activity shall include all businesses or activities subordinate to or integrated in that business or activity located on the same premises as that business or activity.
- (b) Sites with more than 1,000 linear feet of building frontage between main entrances may have a freestanding sign at each entrance, except that such signs shall not be electronic messaging signs, LEDs and video displays.
- (c) If freestanding signs are used to identify two or more uses in a single structure or per site, the total square footage of a freestanding sign, only, shall be allowed to be doubled per side, except in the A and RA Districts. This shall not apply to electronic messaging signs, LEDs and video displays.
- (d) Freestanding signs shall be placed at a minimum of five feet from the front property line, measured from the front of the sign support or leading edge of the sign face, whichever is closer to the property line, and in accordance with all other setback restrictions of the principal use, but in no case shall they obstruct the vision of motorists entering and leaving the premises and shall otherwise not interfere with pedestrian traffic nor interfere with the use and enjoyment of the adjoining properties.

(3) Awning or canopy signs.

- (a) The valance portion of an awning or canopy may be used in place of a wall or building-mounted sign. The bottom of the awning or canopy shall be at least eight feet above the finished grade. Sign area on awnings or canopies shall be measured based on the inclusion of the entire side of the awning or canopy on which the sign is located.

Schedule E: On-Premises Sign Area and Height Requirements

Zoning District	Maximum Freestanding Sign Area per Site	Maximum Wall Sign Area per Use	Maximum Projecting Sign Area	Maximum Freestanding Sign Height	Total Allowed Sign Area per Use*
MU	24 square feet	0.5 square foot for each linear foot of building frontage up to 40 square feet	12 square feet	10 feet measured from the finished grade	80 square feet
C-3 and I	32 square feet	1.0 square foot for each linear foot of building frontage up to 60 square feet	12 square feet	15 feet measured from the finished grade	80 square feet
C-1, C-2 and M	64 square feet*	1.5 square feet for each linear foot of building frontage up to 100 square feet	12 square feet	25 feet measured from the finished grade	200 square feet

NOTES:

* See Subsection H(2)(b), regarding sites with multiple uses and building frontages in excess of 1,000 linear feet between entrances.

- (4) Electronic messaging signs, LEDs, video display and changeable copy.
 - (a) Electronic messaging signs, video display signs and changeable copy signs shall be permitted in the C-1 and C-2 Districts only.
 - (b) Brightness. The sign must not exceed a maximum illumination of 6,500 nits (candelas per square meter) during daylight hours and a maximum illumination of 500 nits (candelas per square meter) between dusk and dawn, as measured from the sign's face at maximum brightness.
 - (c) Dimmer control. Electronic graphic display signs must have an automatic dimmer control to produce a distinct illumination change from a higher illumination level to a lower level for the time period between one half-hour before sunset and one half-hour after sunrise.
 - (d) Audio or pyrotechnics. Audio speakers or any form of pyrotechnics are prohibited in association with an electronic graphic display sign.
 - (e) Images or messages shall be static in nature, not streaming or scrolling.
 - (f) No image or message may be displayed for less than three seconds.
 - (g) No image or message shall change without a three-second pause between images or messages.
 - (h) The face or display of the sign shall be placed perpendicular to a public right-of-way.
 - (i) Signs of this nature shall not be permitted as wall-mounted signs or on buildings in general.
 - (5) Temporary advertising devices. Temporary advertising devices, including but not limited to inflatables, banners, ribbons or streamers, may be employed on an occasional or temporary basis for up to 30 days, with the issuance of a temporary sign permit, to call attention to special business or related events and shall be removed within seven days of an event, as applicable. Only one such device shall be allowed per business.
- I. Amortization of existing signs. Signs not in compliance with this chapter must be brought into compliance within seven years of the date of enactment of this chapter.

§ 118-85. Soil erosion, sedimentation and stormwater runoff control plan.

In accordance with applicable provisions of, and when required by, this chapter, the applicant shall submit a soil erosion, sedimentation and stormwater runoff control plan. Such plan shall be mapped at a scale of one inch equals 100 feet or less and shall contain:

- A. Property boundaries, site acreage and existing natural and man-made features on and within 500 feet of the site boundary, including roads, structures, water sources and utilities and topography, including existing contours with intervals of not more than two feet where the slope is 10% or greater and not more than five feet where the slope is less than 10%. The plan shall include a copy of the soil survey map, soil map unit description and depth to the seasonal high-water table according to the Natural Resource Conservation Service.
- B. The location and a description of proposed changes to the site and existing development of the site:
 - (1) All excavation, filling and grading proposed to be undertaken, identified as to the depth, volume and nature of the materials involved.

- (2) All areas requiring clearing, identified as to the nature of the vegetation affected.
- (3) All areas where topsoil is to be removed and stockpiled and where topsoil is to be ultimately placed.
- (4) All temporary and permanent vegetation to be placed on the site, identified as to planting type, size and extent.
- (5) The location and description of all temporary and permanent erosion and sediment control measures.
- (6) The description of the proposed stormwater drainage system, including the proposed location of stormwater control measures:
 - (a) The designated volume, rate, flow path, detention and retention of stormwater on site.
 - (b) The amount and rate of off-site stormwater discharged from the site.
 - (c) The description of the pollutants likely to be generated on the site.
 - (d) The anticipated pattern of surface drainage during periods of peak runoff, upon completion of site preparation and construction activities, identified as to rate and direction of flow at all major points within the drainage system.
 - (e) The location of all roads, driveways, sidewalks, structures, utilities and other improvements.
 - (f) The final contours of the site at intervals of no greater than two feet.
- (7) A schedule of the sequence of installation of planned soil erosion, sediment and runoff control measures as related to the progress of the project, including anticipated starting and completion dates.
- (8) Where there are newly graded banks or slopes in the plan, an outline shall be prepared indicating:
 - (a) Method of vegetative stabilization (hydroseeding or hand-planting of trees, shrubs or ground cover).
 - (b) Site preparation needed (grading, shaping).
 - (c) Need for lime (fertilizer).
 - (d) Type of plant material or seed mixture to be used.
 - (e) Mulch to be applied and method used (mechanical mulching using hay, paper mulch applied by hydroseeder, hand-mulching using wood bark, landscaping fabrics, etc.).
- (9) Test pits or soil borings, as may be required by the Town should dry wells, infiltration or percolation systems be proposed for stormwater management.

C. Performance standards. The plan shall be designed to meet the following performance standards:

- (1) The site erosion and sedimentation control measures shall be appropriate for the existing topography, vegetation and other natural features of the site. The practices shall meet the standards and specifications of the United States Natural Resource Conservation Service. Practices shall be designed according to these standards and specifications; vegetation recommendations shall also meet these standards. All conservation practices installed shall be maintained so as to ensure the designed life span of the conservation practice.
- (2) Site grading (excavation and filling) shall minimize destruction of natural vegetation, the potential for erosion, sedimentation and stormwater runoff and the threat to the health, safety and welfare of neighboring property owners and the general public.

- (3) Erosion, sedimentation and stormwater runoff shall be controlled prior to, during and after site preparation and construction.
- (4) Soils exposed by site preparation shall remain so for the shortest practical period of time during site clearing, construction and restoration.
- (5) Areas exposed by site preparation shall be protected during site construction.
- (6) Slopes created during the period of site development shall not be so steep that erosion or sedimentation may result or vegetation cannot be readily established. A maximum slope of two to one is the preferred angle of repose for most slopes to be stabilized.
- (7) All fill material shall be of a composition suitable for fill and free of brush, stumps and other debris. No organic material shall be disposed of on site.
- (8) Site preparation and construction activities shall not result in the encroaching on or blocking or restriction of swales, the storm sewer systems, wetlands or surface waters.
- (9) Fill material shall be compacted to prevent erosion or settling.
- (10) All topsoil removed during site preparation and construction shall be stockpiled and protected in a manner so that erosion from the soil pile will not occur.
- (11) A stormwater drainage system shall be provided during and after construction such that sediments or stormwater will not in any way damage public or private downstream property. The components of the stormwater drainage system shall be identified and shall be designed to meet the engineering standards and specifications of the United States Natural Resource Conservation Service.
- (12) The method of controlling sediment loss shall be the installation of sediment screens around the perimeter of any disturbed site.
- (13) Normally, design of stormwater management facilities shall be based on the NYSDEC publication entitled "Best Management Practices." Dependent on project specifics, the applicant may be required to meet more stringent requirements.
- (14) All piped conveyance of stormwater shall be sized to carry the twenty-four-hour, ten-year-frequency storm. Storm flow exceeding the carrying capacity of this piping shall be conveyed by constructed or natural swales or other surface facilities to the stormwater management basin.
- (15) Stormwater management basins shall be designed to collect sediment, be sufficient to store the twenty-four-hour, one-hundred-year-frequency storm while not exceeding the pre-improvement rate of discharge for the one-, two-, five-, ten-, twenty-five-, fifty- and one-hundred-year storm and maintain a freeboard of one foot.
- (16) Piping that crosses Town highways shall be fourteen-gauge corrugated metal pipe and shall extend four feet beyond the edge of paved shoulder. Beyond this dimension, but within the right-of-way (R.O.W.), corrugated metal pipe or high-density, corrugated polyethylene, smooth interior storm drain pipe may be utilized.
- (17) All structures collecting and conveying stormwater flow shall have at a minimum a one-and-one-half-foot sump for retention of sediment.
- (18) All catchment structures that are within 30 feet of the center line of any municipal road or non-dedicated road or lane in a commercial development shall be designed for H-20 loading. Structures installed in the Town right-of-way shall be sufficient in dimension and complete with a frame and grate of No. 9 or No. 16, as manufactured by Syracuse Castings Sales Corporation, or equal, as required.

§ 118-86. through § 118-88. (Reserved)

ARTICLE X
Site Plan Review

§ 118-89. Purpose and initial review.

Site plan review applies to those uses listed as requiring site plan review in the Schedule B: Lot Development Standards, included as an attachment to this chapter. The purpose of the site plan review process is to ensure the orderly and safe arrangement, layout and design of a proposed project. Prior to the commencement of the site plan review process, the Code Enforcement Officer shall decide if the proposed site plan application is in conformance with the zoning requirements of the district(s) in which the property is located. The Code Enforcement Officer shall then refer the site plan to the Town Planner and Planning Board for its review and approval in accordance with § 274-a of the Town Law and the standards and procedures set forth in this article.

§ 118-90. Applicability.

All land use activities which meet one or more of the criteria below shall, prior to the issuance of a building permit, receive site plan approval from the Planning Board, pursuant to the procedures and standards of this article of this chapter.

- A. All uses requiring site plan review listed in the Schedule A,²³ except for the following uses and activities, which shall be exempt from site plan review:
- (1) Customary accessory uses.
 - (2) A change of use that shall not result in a new or expanded structure.
 - (3) An alteration to the exterior of the principal structure that shall not be a major alteration of appearance.
 - (4) A surface parking increase of 25% or up to four additional spaces, whichever is greater; except that the addition of 10 or more spaces or changes to ingress or egress shall always require site plan review.
 - (5) Ordinary landscaping or grading that is not conducted in connection with land use reviewable under the provisions of this chapter.
 - (6) Ordinary repair or maintenance or interior alterations to existing structures or uses.
- B. All land use activities proposed within the boundaries of any Natural Resource Overlay District, described in Article VI of this chapter, and shown on the Town of New Hartford Zoning Map.²⁴
- C. All planned developments according to the procedure in Article VII.
- D. All alterations to traffic circulation within a site and impacting ingress and egress to the site.
- E. Site plan approval shall also be required for any development which is the functional equivalent of a land subdivision but which is structured for ownership purposes as a condominium project. In such cases, the Planning Board shall apply all relevant review criteria contained in Chapter 104, Subdivision of Land, as well as the provisions of this article.

§ 118-91. Sketch plan.

- A. Prior to submission of a preliminary application for site plan review, the applicant is encouraged to meet in person with the Town Planner and/or Code Enforcement Officer to discuss the project. Members of the Planning Board may attend the sketch plan conference. Such discussion may consider the primary aspects of

23. Editor's Note: Schedule A is included as an attachment to this chapter.

24. Editor's Note: The Zoning Map is included as an attachment to this chapter.

the project and application requirements in order to assist the applicant in preparing a formal site plan. The applicant is encouraged to submit a sketch plan to the Town Planning Board Secretary which has sufficient data regarding the proposed development to clearly illustrate the intention of the applicant. The sketch plan should consist of a map showing the important existing natural and man-made features on and adjacent to the site and the major features of the proposed development.

- B. The Town Planner, after review of the sketch plan and discussion with the applicant, shall make a recommendation to proceed with modifications to the preliminary site plan review with the Planning Board. Such a recommendation may include suggestions for additional information needed in order for the Planning Board to complete the review of the preliminary application.

§ 118-92. Application for preliminary site plan approval.

- A. All applications for preliminary site plan approval shall be made in writing to the Code Enforcement Officer at least 11 working days prior to the next Planning Board meeting and shall be accompanied by five prints of a preliminary site plan. The preliminary site plan shall include information drawn from the following checklist of items, as determined necessary by the Town Planner and/or Code Enforcement Officer at the time of the sketch plan conference, and certified by a licensed engineer, architect, landscape architect and/or land surveyor. Upon receipt of a written request, the Planning Board has the right to waive any of the below application requirements if such requirements are found not to be necessary or appropriate to a particular site plan.
- B. The official review of a site plan application shall commence at the first available regular Planning Board meeting. At this meeting, the Planning Board shall make a preliminary review of the application for the purpose of determining completeness. The application will be recorded as received on the date that the Planning Board determines the application to be complete. Once received, the statutory time frames associated with application review shall begin.
- C. Preliminary site plan checklist:
 - (1) An instrument stating that the applicant's interest in the land is subject to site plan review.
 - (2) Title of the drawing, including the name and address of the applicant and person(s) responsible for the preparation of such drawing.
 - (3) North arrow, scale and date.
 - (4) Boundaries of the property plotted to scale.
 - (5) Existing watercourses.
 - (6) Grading, drainage and stormwater management plan, showing existing and proposed contours at an appropriate interval to be specified at the sketch plan conference, with two-foot contour intervals and soils data from available Natural Resource Conservation Service (NRCS) mapping generally required on that portion of any site proposed for development where general site grades exceed 8% or where there may be susceptibility to erosion, flooding or ponding.
 - (7) Stormwater pollution prevention plan. A stormwater pollution prevention plan (SWPPP) shall be required for development activities pursuant to Article II of Chapter 101 of the Town Code. The SWPPP shall meet the performance and design criteria and standards in Article III of Chapter 101 of the Town Code.
 - (8) Location, proposed use and height of all buildings.
 - (9) Location of all parking and truck-loading areas, with access and egress drives thereto.

- (10) Provision for pedestrian access.
 - (11) Location of outdoor storage equipment and materials, if any.
 - (12) Location of all existing or proposed site improvements, including, but not limited to, drains, culverts, retaining walls and fences.
 - (13) Description of the method of sewage disposal and location, and design of such facilities.
 - (14) Results of soil and percolation tests conducted at the site of proposed sewage disposal facilities.
 - (15) Description of the method of securing the water supply and location and design of such facilities.
 - (16) Location of fire and other emergency zones, including the location of the nearest water supply for fire emergencies.
 - (17) Location of all energy distribution facilities, including electrical, gas and solar energy.
 - (18) Location, size and design of all proposed signage.
 - (19) Location and proposed development of all buffer areas.
 - (20) Location and design, including height and materials, of outdoor lighting facilities, including data regarding, when appropriate, lighting levels, both within the site and at the site's boundaries.
 - (21) General landscaping plan.
 - (22) A tabular summary relating the details of the site plan to the requirements of this chapter, including lot area, building area, building coverage, open space area (in square feet and as a percentage of lot area), indication of all front, rear and side yard setbacks to the principal structures and other site elements and compliance with parking requirements.
 - (23) Other elements integral to the proposed development, as considered necessary by the Planning Board, including the identification of any state or county permits required for the project's execution.
 - (24) The applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board.
 - (25) A completed environmental assessment form (EAF) in compliance with the State Environmental Quality Review Act (SEQRA).
- D. Consultant review. In its review, the Planning Board may consult with local, county, state and federal officials and its designated private consultants.
- E. Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the application by the Planning Board for preliminary site plan approval. The applicant shall, at least 10 days before such hearing, be given notice of the hearing and shall appear in person or by agent. Additionally, notice shall be provided as follows:
- (1) The Town shall publish, at least five calendar days prior to the date thereof, a legal notice in the official newspaper of the Town.
 - (2) The applicant shall provide notice of the public hearing and data regarding the application to the owners of all property abutting that held by the applicant and all other owners within 500 feet of the land involved in such application. Notice shall be provided by certified mail at least five calendar days prior to the hearing, with compliance with this notification procedure certified to by a United States Postal Service receipt. The names of owners notified shall be taken as such appear on the last completed tax

roll of the Town.

F. County Planning Board referral.

- (1) If applicable, at least 10 days before such hearing, the Planning Board shall mail notices thereof to the Oneida County Department of Planning in accordance with § 239-m of the General Municipal Law. Such notice shall be accompanied by a full statement of the proposed project. Applicable uses include any site plan within 500 feet of:
 - (a) The boundary of any city, village or town;
 - (b) Any existing or proposed county or state park or other recreation area;
 - (c) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
 - (d) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
 - (e) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
 - (f) The boundary of a farm operation located within an Agricultural District or defined by Article 25-AA of the Agriculture and Markets Law.
- (2) If no public hearing is held, the matter shall be referred to the Oneida County Department of Planning before final action is taken thereon.

§ 118-93. Action on preliminary site plan.

- A. Within 62 days of the receipt of an application for preliminary site plan approval, or within 62 days of the conclusion of a public hearing, whichever shall first occur, the Planning Board shall act on the preliminary site plan. If no decision is made within said period, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether the preliminary site plan is approved, disapproved or approved with modifications.
- B. Proposed projects are actions subject to the provisions of SEQRA. Prior to rendering its decision on the preliminary site plan, the Planning Board shall complete the SEQRA process in accordance with Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617.
- C. If the Planning Board's statement includes recommendations or modifications to be incorporated in the final site plan, conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.
- D. If the Planning Board determines that sufficient and adequate information has been provided at the conclusion of the preliminary application review, the Planning Board may combine the preliminary and final application approval. A combined approval shall eliminate the need for submission of a final site plan application.

§ 118-94. Procedure for final site plan approval.

- A. After receiving approval from the Planning Board on a preliminary site plan, the applicant shall, at least 10 working days prior to the next Planning Board meeting, submit five prints of a final site plan to the Planning Board for approval. If more than six months have elapsed since the time of the Planning Board's action on the preliminary site plan, and if the Planning Board finds that conditions have changed significantly in the

interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review. In this event, a second public hearing may be scheduled.

- B. The final site plan shall conform substantially to the approved preliminary site plan. It should incorporate any revisions or other modifications that may have been recommended by the Planning Board in its preliminary review.
- C. The following additional information shall accompany an application for final site plan approval:
 - (1) A record of application for and approval status of all necessary permits from federal, state and county officials.
 - (2) Sizing, design and material specifications of all required improvements, including planting schedules and construction details, as required.
 - (3) Supporting engineering calculations, as required.
 - (4) An estimated project construction schedule.
- D. The applicant shall appear in person or by agent at meetings when the project is on the agenda.

§ 118-95. Action on final site plan.

- A. Within 62 days of receipt of the application for final site plan approval, the Planning Board shall render a decision to the Code Enforcement Officer. If no decision is made within such sixty-two-day period, the final site plan shall be considered approved.
 - (1) Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Code Enforcement Officer. The Code Enforcement Officer may then issue a building permit or certificate of occupancy if the project conforms to all other applicable requirements.
 - (2) Upon disapproval of a final site plan, the Planning Board shall so inform the applicant and Code Enforcement Officer in writing of its decision and its reasons for disapproval. The Code Enforcement Officer shall deny a building permit or certificate of occupancy or use to the applicant.
 - (3) Decisions. The decision of the Planning Board shall be filed within five days in the office of the Town Clerk and a copy thereof mailed to the applicant.
 - (4) The applicant shall appear in person or by agent at meetings when the project is on the agenda.
- B. Upon receipt of final approval, the applicant shall provide one reproducible mylar to the Planning Board Secretary.

§ 118-96. Amendment to final approval.

If, after an applicant receives the Planning Board's final approval on a site plan, the applicant wants to amend said site plan, the applicant shall submit a letter to the Planning Board Secretary describing the nature of the modifications and go before the Planning Board for its review and pay the applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board.

§ 118-97. Reimbursable costs.

Reasonable costs incurred by the Planning Board for private consultation fees or other expenses in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fees required in § 118-140, Fees.

§ 118-98. Financial guaranties.

Before the Planning Board approves a site plan, the Planning Board may require that the applicant furnish to the Town a financial guaranty for performance of the required approvals. The time allowed for installation of improvements for which the performance guaranty has been provided may be extended by the Planning Board.

- A. Performance bond. Such bond shall be in an amount not to exceed 120% of the cost of installation of improvements. Such bond shall be issued by a financial institution in New York State and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of execution and satisfactory to the Town Board as to surety. The bond shall be released only by resolution of the Town Board when all requirements and completion of improvements have been satisfactorily met by the applicant. The responsibility for determining that improvements have been satisfactorily met shall rest with the Town Engineer, who shall report to the Town Board.
- B. Letter of credit. An irrevocable letter of credit from a bank or other reputable financial institution in New York State may be accepted by the Planning Board in lieu of a performance bond. Such letter of credit shall be satisfactory to the Town Attorney as to form, sufficiency, manner of execution and institution.
- C. Escrow account. The deposit of cash, by the applicant, with the Town or its designated bank is to be held in escrow pursuant to an escrow agreement. The escrow agreement shall be satisfactory to the Town Attorney as to form, sufficiency, manner of execution and financial institution.

§ 118-99. Time limit for commencement of construction.

Upon issuance of a site plan permit, the applicant shall have two years within which to commence the construction of the use. If said period passes without commencement, the site plan permit shall be considered null and void.

§ 118-100. Inspection of improvements.

The Code Enforcement Officer shall give reasonable written notice to the owner(s) of his or her intent to examine or inspect any building or property and shall enter only with permission of the owner. At such time, the Code Enforcement Officer shall have the right to enter upon, examine and inspect, or cause to be entered, examined and inspected, any building or property for the purpose of carrying out his or her duties, and to determine the compliance by request with the provisions of this chapter. If such permission is denied, the Code Enforcement Officer shall contact the Town Attorney to pursue appropriate legal action necessary to gain entry for the purposes of examination and inspection of the building or property in question.

§ 118-101. Integration of other procedures.

Whenever the particular circumstances of a proposed development require compliance with either another procedure in this chapter, the requirements of the Town of New Hartford Subdivision Regulations²⁵ or the requirements of the State Environmental Quality Review Act, the Planning Board may integrate, if it deems appropriate, site plan review as required by this article with the procedural and/or submission requirements for such other compliance. Such integration of procedures may require, upon mutual written consent of the Planning Board and the applicant, reasonable modification of the time schedules otherwise stated in this article.

§ 118-102. General considerations for Planning Board review of site plans.

The Planning Board's review of a site plan shall include, as appropriate, but is not limited to, the following:

- A. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, structures and traffic controls.

25. Editor's Note: See Ch. 104, Subdivision of Land.

- B. Adequacy and arrangement of pedestrian traffic access and circulation, walkways, control of intersections with vehicular traffic and overall pedestrian convenience.
- C. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- D. Location, arrangement, size, design and general site compatibility of principal and accessory buildings, lighting and signage.
- E. Adequacy of stormwater and drainage facilities.
- F. Adequacy of water supply and sewage disposal facilities.
- G. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-detering buffer between the applicant's land and adjoining lands, including the maximum retention of existing vegetation.
- H. In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.
- I. Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
- J. Adequacy of fire lanes and other emergency zones and water supply for fire emergencies.
- K. Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- L. Compatibility of building design with existing characteristics of the neighborhood.

§ 118-103. Specific standards for Planning Board review of site plans.

The following standards and considerations shall be utilized by the Planning Board for the review of a site plan, and no application shall be approved or approved with conditions or modifications which does not reasonably comply with these standards. In addition, any applicable standards or requirements of the Town Code shall also apply and be utilized by the Planning Board in its review of a proposed site plan.

- A. Aesthetics.
 - (1) Site development shall be planned so that it harmonizes with the existing landscape character and blends into the landscape by using existing land forms and vegetation.
 - (2) Where new construction or substantial rehabilitation is concerned, the needs of the site for plantings, paving, screening and other landscaping amenities shall be considered.
- B. Off-site impacts.
 - (1) Development shall be planned and undertaken so as to minimize impacts upon adjoining and nearby land uses, to the extent practicable.
 - (2) Any noise, odor, vibration, dust, gas or emission of any type that is likely to result from the nature of the operation shall not be hazardous or create a nuisance.
- C. Existing topography and vegetation.
 - (1) Existing vegetation, topography and careful siting methods shall be utilized to minimize the visual impact of the proposed development.
 - (2) Cuts for roads and other site development shall be stabilized and vegetated to avoid erosion and

sedimentation.

D. Cultural, historical and geological forms. Cultural, natural or geologic features shall be preserved to the extent possible.

E. Construction activities.

- (1) All earthmoving activities shall be planned in such a manner as to minimize the amount of land area disturbed.
- (2) Natural features such as topography, waterways and other similar resources should be preserved, and development shall conform substantially with natural boundaries and alignment of watercourses.
- (3) Permanent vegetation shall be successfully established, and permanent erosion control structures shall be installed in accordance with the construction schedule approved by the Planning Board. Wherever feasible, indigenous vegetation shall be retained and protected.
- (4) Where it is not possible to permanently stabilize a disturbed area immediately after the final earthmoving has been completed or where the activity ceases for more than 30 days, interim stabilization measures shall be implemented promptly, including mulching and planting of vegetation.
- (5) Runoff from any slope exposed for longer than 30 days shall be controlled through utilization of mulching, check dam, temporary sediment basins and other generally approved engineering methods.
- (6) Topsoil from all areas to be excavated shall be removed and stored. Upon completion of the earth movement, the topsoil shall be respread to provide a suitable base for seeding and planting, except on the immediate building site and the road leading to it.
- (7) All fill material shall be of a composition suitable for the ultimate use of the fill, free of rubbish and toxic waste. Fill material shall be compacted sufficiently to prevent problems of erosion.

F. Drainage.

- (1) All development activities requiring site plan review shall meet the stormwater pollution prevention requirements of Chapter 101 of the Code of the Town of New Hartford.
- (2) Satisfactory provision shall be made for surface water drainage; existing drainage and runoff patterns shall not be disturbed any more than necessary.
- (3) Satisfactory provision shall be made for control of soil erosion and for revegetation of disturbed soil areas.
- (4) Postdevelopment runoff rates shall be equivalent to or less than predevelopment runoff rates unless otherwise permitted in writing by the Planning Board.
- (5) The applicant shall provide measures to the satisfaction of the Board to ensure long-term maintenance of retention and detention basins, including periodic clearing of filters, removal of debris and sediment and weed-cutting. Wherever possible, restrictive deed covenants shall be used to assure that maintenance responsibilities are legally binding.

G. Roads and parking.

- (1) Vehicular circulation and service access shall be planned to protect adjoining properties and pedestrians and to avoid pedestrian/vehicular conflicts.
- (2) The visual impact of parking areas shall be minimized.
- (3) Parking areas and driveways shall be designed and constructed to provide convenient access to and from

public highways.

- (4) Activities which involve a new road or driveway entering onto a public highway shall comply with the following standards:
 - (a) The point of intersection with the public highway shall be a point at which sight distances are good and sufficient in both directions.
 - (b) The angle of intersection with the public highway shall be as close to 90° as possible.
 - (c) In the case of new connections to Town highways, the existing public road drainage shall be protected so that surface drainage flow is not impeded. The applicant's engineer, in consultation with the Town Engineer, shall prescribe the size and type of culvert, if any, to be utilized at the point of intersection. The Planning Board shall prescribe whether the applicant or the Town itself (at the applicant's expense) will supply and/or install the culvert, after recommendation of the Town Engineer.
 - (d) Any access permits necessary from the Town, Oneida County or the State of New York as a result of access causing entry to a state, Town or county highway shall be obtained by the applicant, in addition to compliance with the terms of this section.
- (5) All proposed traffic access and roads shall be adequate in width, grade, alignment and visibility. Necessary traffic signalization, stop signs, other safety controls, devices and facilities shall be given proper consideration and be duly provided wherever appropriate or warranted.
- (6) Access shall be restricted to discrete points of entry and exit and shall not be along the entire road frontage of the project.
- (7) An area or areas shall be provided on site for the storage of snow, said area(s) located so as to avoid obstructing drivers' vision, protect landscaping elements and avoid posing problems for adjoining properties.
- (8) All roads shall be planned and installed to logically relate to the existing soils, topography and vegetation. For these purposes, areas with steep slopes, shallow soils, soils with the water table at or near the surface and soils that are highly susceptible to erosion or slippage shall generally be avoided.
- (9) Clearing and grading of roads in wooded areas shall be limited to that which is necessary to provide needed roadside and embankment drainage, construct stable cuts and fills and provide for utility installation.
- (10) All cleared banks, exposed burrow areas and cut and fill slopes, including ditch banks, shall be revegetated in a manner suited to site conditions.
- (11) Ditch bottoms shall be constructed and maintained to minimize soil erosion during periods of peak flow by means of revegetation, sodding, mulching, netting, stone paving, riprap and other materials or combinations of these, depending on hydraulics and soil properties.
- (12) Public road grades shall not exceed 10%. Private drive grades shall not exceed 12%.
- (13) Where feasible, access should be combined with existing access to public roads, and consideration should be given to the number and width of access points.

H. Sewage. Every on-lot sewage disposal system shall comply with the standards as to type, capacity, location, layout and minimum lot size requirements of the New York State Department of Health (NYSDOH) and, where applicable, the regulations of the New York State Department of Environmental Conservation (NYSDEC). In case of conflict between the requirements of the NYSDOH and NYSDEC, the most restrictive shall prevail.

- I. Water supply. All water supply systems shall comply with the requirements of the NYSDOH and NYSDEC. In case of conflict between the requirements of the NYSDOH and NYSDEC, the most restrictive shall prevail.
- J. Emergency access. All proposed structures shall be readily accessible for emergency vehicles, including police, ambulance and fire protection.
- K. Watercourse protection. Any paved or otherwise improved parking area, driveway or loading or service area within 100 feet of any watercourse shall be designed and constructed so as to minimize surface runoff and the entrance of any chemical pollutants or soil siltation into the waterway.
- L. Erosion and sedimentation control. The provisions of the NYSDEC's publication, entitled "Best Management Practices," shall apply with the particular intent of preventing the entrance of chemical pollutants into surface water and groundwater resources.

§ 118-104. (Reserved)

ARTICLE XI
Special Use Permits

§ 118-105. Purpose, application and procedure.

Special use permit review applies to those uses listed as requiring special use permit review in Schedule A: Permitted Uses.²⁶ The purpose of the special use permit review process is to ensure the compatibility of a proposed use with the neighborhood in which it is proposed to be located, and with the Town of New Hartford in general. The application shall contain those elements listed in § 118-92, Application for preliminary site plan approval, of this chapter. The Planning Board shall review and act on all special permit applications in accordance with the procedure set forth below. No building permit or certificate of occupancy or use shall be issued by the Code Enforcement Officer except upon authorization of and in full conformance with plans approved by the Planning Board.

- A. Public notice and hearing. The Planning Board shall conduct a public hearing within 62 days of receiving an application. The applicant shall, at least 10 days before such hearing, be given notice of the hearing and shall appear in person or by agent. Additionally, notice shall be provided as follows:
- (1) The Town shall publish, at least five calendar days prior to the date thereof, a legal notice in the official newspaper of the Town.
 - (2) The applicant shall provide notice of the public hearing and data regarding the application to the owners of all property abutting that held by the applicant and all other owners within 500 feet of the land involved in such application. Notice shall be provided by certified mail at least five calendar days prior to the hearing, with compliance with this notification procedure certified to by a United States Postal Service receipt. The names of owners notified shall be taken as such appear on the last completed tax roll of the Town.
- B. County Planning Board referral.
- (1) If applicable, at least 10 days before such hearing, the Planning Board shall mail notices thereof to the Oneida County Department of Planning in accordance with § 239-m of the General Municipal Law. Such notice shall be accompanied by a full statement of the proposed project.
 - (2) Applicable uses include any special permit use within 500 feet of:
 - (a) The boundary of any city, village or town;
 - (b) Any existing or proposed county or state park or other recreation area;
 - (c) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
 - (d) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
 - (e) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
 - (f) The boundary of a farm operation located within an Agricultural District or defined by Article 25-AA of the Agriculture and Markets Law.
 - (3) No action shall be taken by the Planning Board on such application until an advisory recommendation has been received from the County Department of Planning or 30 calendar days have elapsed since the

²⁶ Editor's Note: Schedule A is included as an attachment to this chapter.

County Department of Planning received such full statement. If the Planning Board receives the county recommendation after the thirty-day period but two or more days prior to final action by the Planning Board, then a majority plus one vote is required if the Town Planning Board acts contrary to the County recommendation.

§ 118-106. Integration of other procedures.

Whenever the particular circumstances of a proposed development require compliance with either another procedure in this chapter, the requirements of the Town Subdivision Regulations²⁷ or the requirements of the State Environmental Quality Review Act, the Planning Board may integrate, if it deems appropriate, review as required by this article with the procedural and/or submission requirements for such other compliance. Such integration of procedures may require, upon mutual written consent of the Planning Board and the applicant, reasonable modification of the time schedules otherwise stated in this article.

§ 118-107. Restrictions; expiration; revocation; enforcement.

- A. A special use permit shall pertain only to the specific property for which the application was made. Such granted permit does not apply to any other property the applicant may control.
- B. A special use permit shall be deemed to authorize only the particular special use or uses specified therein.
- C. 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.
- D. A special use permit may be issued as:
 - (1) Permanent, except where the permitted use is discontinued for any reason for a period of one year or more.
 - (2) Temporary, to cease on a specified date and not to be renewable.
 - (3) Renewable within a specified period of time set by the Planning Board.
- E. A special use permit may be revoked by the Planning Board if the conditions of the special use permit are violated.
- F. Any violation of the conditions of a special use permit or a violation of any applicable performance criteria of this article shall be deemed a violation of this chapter and shall be subject to enforcement action as provided herein.
- G. 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.
- H. Upon issuance of a special use permit, the applicant shall have two years within which to commence construction of the special use. If said period passes without commencement, the special use permit may be considered null and void.

§ 118-108. General special use permit standards.

In authorizing any special use, the Planning Board shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and that of the immediate neighborhood in particular. The Planning Board shall also take into strict account the specific conditions set forth in Article VIII for certain uses, applicable supplementary regulations required in Article IX of this chapter and the following general objectives for any use requiring Planning Board authorization:

27. Editor's Note: See Ch. 104, Subdivision of Land.

- A. Adjacent land uses. The Planning Board shall not approve the special use unless, in its determination, the proposed use will not have a negative effect on adjacent land uses.
- B. Location and size of use. The nature and intensity of the operations involved, the size of the site in relation to the use and the location of the site with respect to existing and future streets providing access shall be in harmony with the orderly development of the district.
- C. Location, nature and intensity of intended buildings, structures and operations. The location, nature and intensity of intended buildings, structures and operations should not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
- D. Vehicular access and circulation. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, alignment, grade, pavement surfaces, channelization structures, visibility and traffic controls shall be considered. Accessways shall be adequate but not excessive in number and be located not less than 25 feet from street corners or other places of public assembly.
- E. Pedestrian circulation. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience shall be considered.
- F. Parking. Location, arrangement, appearance and sufficiency of off-street parking and loading shall be considered. The general landscaping of the site shall be compatible with plant species generally found in the area and serve to mitigate the visual impact of the parking area. Such landscaping shall include the preservation of existing natural screening and trees over eight inches in diameter to the maximum extent possible.
- G. Layout. The location, arrangement, size, design and general site compatibility of buildings, lighting and signage shall be considered. These shall be in general harmony with the character and appearance of the surrounding neighborhood.
- H. Drainage facilities/erosion control. Stormwater management plans and drainage facilities shall be in conformance with applicable regulations in § 118-85, Soil erosion, sedimentation and stormwater runoff control plan, of this chapter and the stormwater management requirements of Chapter 101.
- I. Water and sewer. Adequacy of water supply and sewage disposal facilities and their compliance with New York State and Oneida County Departments of Health requirements are required.
- J. Vegetation. The type and arrangement of trees, shrubs and other landscaping components, where possible, shall constitute, at all seasons of the year, a visual and/or noise deterring buffer, if necessary, between the applicant's land and adjoining lands. Existing vegetation shall be retained to the extent possible.
- K. Emergency access. Adequate provision for fire, police and other types of emergency vehicles shall be made.
- L. Flooding. Special attention shall be given to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion. See Article IX for applicable provisions.
- M. Lighting. The impacts of lighting on adjacent areas and areas within viewing distance shall be considered. Outdoor lighting shall be kept to the minimum intensity needed. All outdoor lighting fixtures or lamps shall be shielded in such manner that the edge of the lamp shield is below the light source, direct radiation (glare) from the light source is confined within the boundaries of the property and direct radiation is prevented from escaping toward the sky. (For the purposes of these provisions, light sources include any refractor, reflector, bulb, tube or globe.) High-intensity discharge lighting is prohibited.

§ 118-109. (Reserved)

ARTICLE XII
Nonconforming Uses, Structures and Lots

§ 118-110. Applicability.

The following provisions shall apply to all uses, structures and buildings lawfully existing on the effective date of this chapter, to all uses, structures and buildings that may become nonconforming or noncomplying by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof²⁸ and to all complying buildings housing nonconforming uses.

§ 118-111. Nonconforming use of buildings.

The lawful use, under any previous Town of New Hartford Zoning chapters or laws, of any use, structure or building existing at the time of the adoption of this chapter may be continued, although such use does not conform with the provisions hereof, and any such building that may be reconstructed or structurally altered or the nonconforming use therein changed are subject the following regulations:

- A. Expansion. A nonconforming building or use shall not be expanded unless such nonconforming building or use is made to conform to the current regulations of the district in which it is located.
- B. Reconstruction/alterations. A building, nonconforming as to use, may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50% of the fair value of the building, unless the use of such building is changed to a conforming use. This section shall not be deemed to apply to normal repair and maintenance. This subsection shall not apply to single-family dwellings, not regulated as manufactured or mobile, situated wholly and solely within the boundaries of their lot descriptions.
- C. Discontinuance. Whenever a nonconforming use has been discontinued for a period of 12 consecutive months, any future use shall be in conformity with the provisions of this chapter.
- D. Restoration. A building nonconforming as to use which has been damaged by fire or other causes to the extent of more than 50% of its fair value, exclusive of its foundation, shall not be restored except in conformity with the regulations of this chapter. As used in this subsection, the word "building" shall be construed as being singular. This subsection shall not apply to single-family dwellings, not regulated as manufactured or mobile, situated wholly and solely within the boundaries of their lot descriptions.
- E. 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.
- F. Validity of permit. Any building for which a permit has been lawfully granted and on which construction has been started and diligently prosecuted before the effective date of this chapter may be completed.
- G. A nonconforming use shall not be changed to another nonconforming use without the approval of the Zoning Board of Appeals, and then only to a use which, in the opinion of the Board of Appeals, is of the same or a more restricted nature.

§ 118-112. Nonconforming use of land.

The nonconforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of the adoption of this chapter. A nonconforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of adoption of this chapter. A nonconforming use of land shall not be changed to another nonconforming use without the approval of the Zoning Board of Appeals. If a nonconforming use of land is discontinued for a period of 12 consecutive

28. Editor's Note: The Zoning Map is included as an attachment to this chapter.

months, it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

§ 118-113. Nonconforming lots.

- A. Development of nonconforming (substandard) lots.
 - (1) Lots of record at the time of adoption of this chapter which are less than the minimum lot size or lot frontage shall be deemed to meet the minimum size regulations of this chapter in the A, RA, LDR, MDR, HDR and MU Districts, provided that such lot may not be used for any use other than a single-family residence and its associated accessory structures. The minimum yard requirements may be reduced in proportion to the size of the lot as compared to the minimum required for the district.
 - (2) Substandard lots in all other zoning districts at the time of adoption of this chapter that do not meet the minimum lot size may be built upon but shall meet all other lot development standards of Schedule B and this chapter.²⁹
- B. Change of use on nonconforming (substandard) lots: site plan review. A change of use in an existing structure on a lot of record at the time of adoption of this chapter which is less than the required minimum lot size, or has less than the minimum setbacks, shall be required to obtain site plan review approval by the Planning Board to ensure that the substandard lot is of adequate size and suitability for the new use. The Planning Board shall take into consideration site impacts of the new use, including but not limited to traffic volume, traffic circulation, outdoor lighting, off-street parking and loading, landscaping and screening.

§ 118-114. Creation of substandard lots prohibited.

No lot in existence on the effective date of this chapter shall be subdivided or diminished in area in such a way that the lot area, frontage, width, front, side or rear yard, coverage, required parking spaces or green space no longer meets the requirements of these regulations or any permit issued thereunder.

§ 118-115. Nonconforming signs.

Any sign lawfully erected prior to the effective date of this chapter which does not conform to the provisions hereof shall be removed within seven years of the effective date of this chapter.

§ 118-116. (Reserved)

²⁹ Editor's Note: Schedule B is included as an attachment to this chapter.

ARTICLE XIII
Administration and Enforcement

§ 118-117. Code Enforcement Officer.

Refer to Town Code Chapter 65, § 65-3, Code Enforcement Officer; inspectors.

§ 118-118. Building/site permits.

Refer to Town Code Chapter 65, § 65-4, Building/site grading permits.

§ 118-119. Certificate of occupancy.

Refer to Town Code Chapter 65, § 65-7, Certificates of occupancy; certificates of compliance; temporary certificates of occupancy.

§ 118-120. Notice of violation.

Refer to Town Code Chapter 65, § 65-17, Enforcement; penalties for offenses.

§ 118-121. Stop-work orders.

Refer to Town Code Chapter 65, § 65-6, Stop-work orders.

§ 118-122. Emergency action.

Refer to Town Code Chapter 65, § 65-10, Emergency action.

§ 118-123. Inspection and certificate of completion.

Refer to Town Code Chapter 65, § 65-11, Inspection; certificate of completion.

§ 118-124. Penalties for offenses.

- A. Civil penalties. In addition to those penalties prescribed by state law, any violation of any provision of the Uniform Code, the Energy Code, or the Code of the Town of New Hartford, or any term or condition of any building/site grading permit, certificate of occupancy, certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be considered a civil offense punishable by a fine of not more than \$250 and/or imprisonment for not more than 15 days for each such offense. The owner, general agent or contractor of a building premises, or part thereof, where such a violation has been committed or does exist and any agent, contractor, architect, builder, corporation or other person who commits, takes part in or assists in such violation shall be liable for such an offense. All such penalties shall be collectible by and in the name of the Town. Each and every week that any such violation continues after notification that such violation exists shall constitute a separate offense. Such notice shall be given in writing by the Code Enforcement Officer and shall be served by certified return mail or personal service.
- B. Court action. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings in a court of competent jurisdiction to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to restrain by injunction, correct or abate a violation or to prevent the illegal occupancy of a building, land or premises.

§ 118-125. (Reserved)

ARTICLE XIV
Zoning Board of Appeals

§ 118-126. Creation; appointment; organization.

A Zoning Board of Appeals is hereby created in accordance with Article 16, § 267, of the Town Law. Said Board shall consist of seven members appointed by the Town Board. Members shall be residents of the Town of New Hartford. The Town Board, by resolution, shall fix the members' terms so that one member's term shall expire at the end of each year for seven calendar years. At the expiration of each original member's appointment, the replacement member shall be appointed for a term of seven years. The Town Board shall annually designate the Chairman of the Board of Appeals, while the Board of Appeals shall annually designate its Secretary and may prescribe reasonable rules in addition to those provided herein for the conduct of its affairs. All members are subject to removal by the Town Board for just cause after public hearing. All Board of Appeals members shall complete a minimum of four hours of Town-Board-approved training per year as required by § 267 of the Town Law.

§ 118-127. Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- A. Interpretation. To hear and decide on questions where it is alleged that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer involving the interpretation of any provision of this chapter or on request by an administrative official, board or agency or resident of the Town, to decide any of the following questions:
 - (1) Determination of the meaning of any portion of the text of this chapter or of any conditions or requirements specified or made under the provisions of this chapter.
 - (2) Determination of the exact location of any district boundary shown on the Zoning Map.³⁰
- B. Variances. To authorize, upon appeal from a decision of the Code Enforcement Officer charged with the enforcement of this chapter, variances from the terms of this chapter. Variances may apply to either the area, bulk, height and density requirements (area variance) or the use requirements (use variance) for a structure or parcel. The criteria to be applied by the Zoning Board of Appeals for review of each type of variance are as follows:
 - (1) Use variances.
 - (a) No use variance shall be granted by the 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 Board of Appeals that, under the zoning regulations for the particular district where the property is located:
 - [1] 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.

30. Editor's Note: The Zoning Map is included as an attachment to this chapter.

- (b) The 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 proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (2) Area variances.
- (a) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - [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.
 - [5] Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.
 - (b) The 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.
- (3) Conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 118-128. Procedures.

The Zoning Board of Appeals shall act in strict accordance with the procedures specified by § 267 of the Town Law and this chapter.

- A. Meetings. Meetings shall be held at the call of the Chairperson or at such other times as the Board of Appeals may determine. A quorum shall consist of four members, but in order to issue an interpretation, reverse a decision of the Code Enforcement Officer or authorize a variance, an affirmative vote of at least four members shall be required. A favorable vote of a majority plus one shall also be required if the action taken is contrary to an advisory recommendation received from the Oneida County Department of Planning, under the provisions of § 239-m of the General Municipal Law. The Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations and other official actions. All meetings of the Board of Appeals shall be open to the public.
- B. Application and fee. All appeals and requests made to the Board shall be in writing, on forms prescribed by the Board. All appeals shall be filed with the Board within 60 days of the action appealed from and shall be accompanied by the applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board. Every appeal or request shall refer to the specific provision of this chapter that is involved and shall precisely set forth either the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that such variance should be granted.

- C. Public notice and hearing. The Board shall fix a reasonable time and place for a public hearing on any such appeal or request, of which hearing date the appellant shall be given notice and at which hearing he/she shall appear in person or by agent. Additionally, notice shall be provided as follows:
- (1) By publishing at least five calendar days prior to the date thereof a legal notice in the official newspaper of the Town.
 - (2) By requiring the applicant to provide notice of the public hearing and data regarding the substance of the appeal to the owners of all property abutting that held by the applicant and all other owners within 500 feet, or such additional distances that the Board of Appeals may deem advisable, of the land involved in such appeal. Notice shall be provided by certified mail at least five calendar days prior to the hearing, with compliance with this notification procedure certified to by a United States Postal Service receipt. The names of owners notified shall be taken as such appear on the last completed tax roll of the Town.
- D. Required referral. A full statement of any appeal that meets the referral requirements of § 239-m of the General Municipal Law shall also be referred not less than five days prior to the public hearing to the Oneida County Department of Planning. No action shall be taken by the Board of Appeals on such appeal until an advisory recommendation has been received from said Board or 30 calendar days have elapsed since the Board received such full statement.
- E. Decisions. Every decision of the Board of Appeals on an appeal or request shall be made within 62 days of the close of the hearing by the Board, shall be recorded in accordance with standard forms adopted by the Board, shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is based. Every decision shall be by resolution of the Board, with each such decision being filed in the office of the Town Clerk within five business days thereof. The Board shall also notify the Code Enforcement Officer and the Secretary of the Planning Board of its decision in each case. If applicable, a report on the action taken shall also be filed within 30 calendar days of said action with the Oneida County Department of Planning.
- F. Attachment of conditions. In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this chapter, it shall be the duty of the Board of Appeals to attach such conditions and safeguards as may be in accordance with the spirit and intent of this chapter.
- G. Effect of appeal. Unless the Code Enforcement Officer determines there exists an imminent peril to either life or property, an appeal stays all proceedings in furtherance by either the Town or appellant related to the action which is the subject of the appeal.
- H. Expiration of approval. Unless construction or use is commenced and diligently pursued within one calendar year from the date of the granting of a variance, such variance shall become null and void without further hearing and notification by the Board of Appeals.
- I. Strict compliance. All the provisions of this chapter relating to actions of the Board of Appeals shall be strictly adhered to. The Board of Appeals, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein; provided, however, that if the procedural requirements set forth in this chapter have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.

§ 118-129. Compliance with State Environmental Quality Review Act.

The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA).

§ 118-130. (Reserved)

§ 118-131. Statutory authorization.

This chapter or any part thereof, including the Zoning Map,³¹ indicating the various district boundaries, may from time to time be amended, supplemented, changed, modified or repealed by the Town Board in the manner provided by §§ 264 and 265 of the Town Law.

§ 118-132. Initiation.

An amendment to this chapter may be initiated in any of three ways:

- A. By the Town Board upon its own motion.
- B. By resolution of the Planning Board, filed with the Town Clerk, wherein certain changes to or repeal of specific provisions of this chapter are recommended, in which case, it shall be the duty of the Town Board to act on such proposed amendment within 90 days of the time such resolution is filed by the Planning Board with the Town Clerk.
- C. By a petition duly signed and acknowledged from the owners of 50% or more of the acreage in any district or part thereof requesting an amendment, supplement or change in the regulations prescribed for such district or part thereof, in which case, it shall be the duty of the Town Board to act upon such petition for amendment within 90 days of the time such petition is filed by the petitioners with the Town Clerk. Said petition shall be accompanied by the applicable fee in accordance with the fee schedule of § 118-140.

§ 118-133. Report of Planning Board.

- A. All proposed amendments, supplements or changes originating by petition or by motion of the Town Board shall be referred to the Planning Board for a report and recommendation thereon. In undertaking such review, the Planning Board shall make inquiry and provide recommendation concerning the items specified below:
 - (1) Whether such change is consistent with the purposes embodied in this chapter as applied to the particular districts concerned.
 - (2) Whether adequate public services and other support facilities exist or can be created to serve the needs of any additional development that may occur as a result of such change.
 - (3) The indirect implications of such change in its effect on other regulations.
 - (4) Whether such proposed amendment is consistent with the underlying objectives of the Town Comprehensive Plan.
 - (5) Whether such proposed amendment is consistent with the character of the community.
- B. The Planning Board shall submit its report within 45 days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to be a recommendation of approval of the proposed amendment.

§ 118-134. Town Board procedures.

- A. Public notice and hearing. The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given as follows:

31. Editor's Note: The Zoning Map is included as an attachment to this chapter.
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- (1) By publishing a notice at least 10 calendar days prior to the time of such hearing in the official newspaper of the Town, specifying:
 - (a) The nature of the proposed amendment.
 - (b) The land or district affected.
 - (c) The date, time and place where the public hearing shall take place.
 - (2) By providing a copy of such notice of any proposed change or amendment affecting property within 500 feet of any other municipality to the Clerk of such municipality at least 10 calendar days prior to the date of such public hearing.
- B. Required referral. If applicable, the Town Board shall transmit a full statement of any proposed amendment, either map or text, that meets the referral requirements of § 239-m of the General Municipal Law to the Oneida County Department of Planning for its review and recommendation. No action shall be taken by the Town Board on such proposed amendment until a recommendation has been received from the County Department of Planning or 30 calendar days have elapsed since said Board received such full statement.
- C. Compliance with State Environmental Quality Review Act. Proposed amendments are actions subject to the provisions of the New York State Environmental Quality Review Act. Prior to formal consideration and public hearing, the Town Board as lead agency shall make a determination as to the type of action and environmental significance of the proposed action in accordance with Part 617 of the NYCRR and Article 8 of the Environmental Conservation Law.
- D. Town Board action. The Town Board may approve any such proposed amendment by a majority vote of said Board, except that a favorable vote of at least four members of the Town Board, i.e., a majority plus one, shall be required if:
- (1) The action being taken is contrary to the advisory recommendation received from the Town Planning Board or from the County Planning Board under the provisions of § 239-m of the General Municipal Law.
 - (2) In accordance with the provisions of § 265 of the Town Law, a protest petition against such amendment has been duly signed by the owners of at least 20% of the land area included in such proposed change or of that immediately adjacent extending 100 feet therefrom or that directly opposite.
- E. Conformance with Town Comprehensive Plan. In all cases where the Town Board shall approve an amendment to the Zoning Map,³² said Board shall find, for reasons fully set in its resolution, such amendment to be in conformity with the Town Comprehensive Plan.

§ 118-135. (Reserved)

ARTICLE XVI
Miscellaneous Provisions

§ 118-136. Interpretation of provisions; conflict with other provisions.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety or general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions or those imposing the higher standards shall govern.

§ 118-137. Existing violations.

No site plan or special use permit shall be approved, no building permit or certificate of occupancy or use issued or variance granted under this chapter for premises upon which there is an existing violation of this chapter or any related Town regulation governing either building construction or the use of land and structures within the Town of New Hartford. This limitation does not, however, prohibit such an approval, issuance or grant with respect to a legal nonconforming use or legal noncomplying structure.

§ 118-138. Severability.

Should any section or provision of this chapter be decided by the courts to be unconstitutional or otherwise invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the section or provision so declared to be unconstitutional or invalid.

§ 118-139. Periodic review required.

From time to time and at intervals of not more than five years, the Planning Board shall conduct a review of the effectiveness of the provisions of this chapter, including the location of district boundaries, and shall submit a report thereon to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

§ 118-140. Fees.

- A. Purpose. The following fees shall be charged to reimburse the Town in supporting comprehensive planning and engineering and the necessary support services (both direct and indirect costs) to provide for the processing, review, inspection and implementation of development applications, plans and/or requests for permits, amendments, appeals and the request and dissemination of information pursuant to this chapter.
- B. Site plan review.
 - (1) Sketch plan conference with the Development Review Committee (Town Planner, Town Engineer and Town Code Enforcement Officer): \$250.
 - (2) Applicant to appear before the Board prior to application for preliminary site plan review and action: \$100 each.
 - (3) Application for preliminary plan review: \$500, plus \$200 per acre of land area, plus (and/or) \$2 per parking space as required by the Town Planning Board, plus (and/or) \$25 per unit for multifamily residential development (apartment, condominium, townhouse and zero lot line), plus (and/or) \$25 per space for manufactured home park development.
 - (4) Application for final plan review: \$250 plus \$100 per acre of land area, plus (and/or) \$2 per parking space as required by the Town Planning Board, plus (and/or) \$25 per unit for multifamily residential development (apartment, condominium, townhouse and zero lot line), plus (and/or) \$25 per space for mobile home development.

- (5) In addition, should the Town or its agents require independent construction inspection services for site work and exterior utilities and appurtenances to comply with the requirements of the Town Planning Board, an additional fee will be assessed to the applicant to compensate for the charge incurred by the Town. A prepaid fee will be established by the Town based on the current hourly inspection rate schedule approved by the Town Board.
- (6) In addition, should the Town require special studies to comply with the requirements of the Town Planning Board, an additional nonrefundable and nontransferable fee will be assessed to the applicant to compensate for any and all charges incurred by the Town in this regard.
- (7) Should the project for which application is made be subject to other charges, i.e., fees in lieu of mitigation, the applicant shall be solely responsible for payment of the same, and the charges shall be in addition to all other fees or charges associated with said application. Payment of said charges shall be paid in full prior to issuance of a building permit by the Town.
- (8) The above fees for site plan review are to be used for new site plan applications, subsequent to the calendar date this amendment takes effect. All amendments in an existing approved final site plan will be subject to site plan review schedule and fees, plus 10% of the total site plan fee.
- (9) Planned Development District review.
 - (a) Sketch plan conference with the Development Review Committee (Town Planner, Town Engineer and Town Code Enforcement Officer): \$250 each.
 - (b) Preliminary plan review: \$3,000, plus \$200 per acre of land area, plus \$4 per parking space as required by the Town Planning Board, plus (and/or) \$50 per unit for multifamily residential development (apartment, condominium, townhouse and zero lot line), plus (and/or) \$100 per space for mobile home development, plus (and/or) \$100 per lot for single-family development.
 - (c) Application for final review: \$1,500, plus \$100 per acre of land, plus \$4 per parking space as required by the Town Planning Board, plus (and/or) \$25 per unit for multifamily residential development (apartment, condominium, townhouse and zero lot line), plus \$50 per space for mobile home development, plus (and/or) \$100 per lot for single-family development.
 - (d) In addition, should the Town or its agents require independent construction inspection services for site work and exterior utilities and appurtenances to comply with the requirements of the Town Planning Board, an additional fee will be assessed to the applicant to compensate for the charge incurred by the Town. A prepaid fee will be established by the Town based on the current hourly inspection rate schedule approved by the Town Board.
 - (e) In addition, should the Town require special studies to comply with the requirements of the Town Planning Board, an additional nonrefundable and nontransferable fee will be assessed to the applicant to compensate for any and all charges incurred by the Town in this regard.
 - (f) Should the project for which application is made be subject to other charges, i.e., fees in lieu of mitigation, the applicant shall be solely responsible for payment of the same, and the charges shall be in addition to all other fees or charges associated with said application. Payment of said charges shall be paid in full prior to final approval by the Planning Board.
 - (g) The above fees for planned development are to be used for new planned development applications, subsequent to the calendar date this amendment takes effect. All amendments in an existing planned development zone will be subject to site plan review schedule and fees, plus 10% of the total site plan fee.

C. Fee schedule. **[Amended 9-19-2018 by L.L. No. 7-2018]**

(1) Building permits. In any situation where work is started before a building permit is issued, the application fee is doubled. All building permits expire one year from the date of issuance. [Amended 7-17-2019 by L.L. No. 3-2019]

(a) Residential.

Type	Fee
One- and two-family residences	\$0.26 per square foot
Attached garages	\$0.15 per square foot
Review and inspection fee: alterations, miscellaneous work	\$30 minimum or \$0.15 per square foot
Decks 150 square feet or less	\$25
Each additional 150 square feet or part thereof	\$10
Three-season rooms	\$25 + \$0.15 per square foot
Fences	\$50
Additions	\$50 + \$0.15 per square foot
Mobile home	\$0.15 per square foot
Detached accessory buildings	\$30 or \$0.10 per square foot, whichever is greater
Fireplaces or other solid-fuel-burning appliance	\$30
Certificate of occupancy	\$50
Certificate of compliance	\$10
Temporary storage units	\$30
Solar	\$0.10 per square foot of array

(b) Multifamily.

Type	Fee
Multifamily residences	\$0.60 per square foot
Review and inspection fee: alterations, miscellaneous work	\$50 minimum or \$0.15 per square foot
Certificate of occupancy	\$50 per dwelling unit
Certificate of compliance	\$25
Decks 150 square feet or less	\$25
Each additional 150 square feet or part thereof	\$10
Three-season rooms	\$25 + \$0.15 per square foot
Fences	\$50
Detached accessory buildings	\$30 or \$0.10 per square foot, whichever is greater
Temporary storage units	\$30

Type	Fee
Multifamily plan review	\$0.02 per square foot
Solar	\$0.10 per square foot of array

(c) Commercial.

Type	Fee
Commercial building: anything other than an R occupancy up to 50,000 square feet	\$0.66 per square foot
Any remaining portion up to 100,000 square feet	\$0.50 per square foot
Any remaining portion over 100,000 square feet	\$0.32 per square foot
Commercial plan review	\$0.02 per square foot
Review and/or inspection fee: alterations or miscellaneous work	\$200 minimum or \$0.50 per square foot
Detached accessory buildings	\$30 or \$0.10 per square foot, whichever is greater
Kiosks, temporary	\$45
Kiosks, permanent	\$250
Temporary storage units	\$100
Certificate of occupancy	
First 1,000 square feet	\$200
Each additional 1,000 square feet or part thereof	\$20
Certificate of compliance	\$50
Open decks: Up to an including 150 square feet	\$25 minimum
Over 150 square feet	\$25 + \$10 for each additional 100 square feet or part thereof
Roofing with insulation change	\$100 + \$0.02 per square foot
Solar	\$0.10 per square foot of array

(2) Miscellaneous. [Added 9-19-2018 by L.L. No. 7-2018; amended 7-17-2019 by L.L. No. 3-2019]

Type	Fee
Demolition permits:	
Commercial buildings	\$200
Residential buildings	\$100
Swimming pools:	
Aboveground	\$30
In-ground	\$50
Permanent signs	\$45 + \$1 per square foot
Temporary signs and advertising devices	\$45 + \$1 per square foot

Type	Fee
Commercial tents not to exceed 20 days no more than three times a year	\$100
Zoning compliance letter	\$100
Zoning and building safety compliance letter	\$250
Flood development fee	\$100

- (3) Firesafety and property maintenance inspections. Fees are assessed per building per tax parcel. Mixed occupancy fees are applied per occupancy designation; in the event that a building contains an area of public assembly, the public assembly fees apply for the entire building.

Type	Fee
Multifamily occupancies with a common area	\$30 per unit
Multifamily occupancies without a common area	\$15 per unit
Commercial buildings except those containing an area of public assembly:	
0 to 5,000 square feet	\$50
5,001 to 10,000 square feet	\$50 + \$0.01 per square foot
10,001 to 100,000 square feet	\$150 + \$0.005 per square foot
100,001 square feet +	\$600 + \$0.0025 per square foot
Commercial buildings containing an area of public assembly:	
0 to 5,000 square feet	\$50
5,001 to 10,000 square feet	\$50 + \$0.005 per square foot
10,001 to 100,000 square feet	\$75 + \$0.0025 per square foot
100,001 square feet +	\$300 + \$0.00125 per square foot
Operating permit fee	\$10

- (4) Site permits.

Type	Fee
Flood development permit	\$100 per acre or part thereof
Site grading permit	\$100 minimum or \$100 per acre or part thereof
Sewer permit	
Residential	\$50
Commercial	\$100
Septic permit	\$50
Driveway permit	\$25
Fence permit	\$50

- (5) Construction inspection. When, at the discretion of the Town Code Enforcement Officer or the Town Engineer, it is determined that an independent construction inspection or services for site work, exterior utilities and appurtenances are required to ensure compliance with the requirement for Town codes and other Town policy, an additional fee will be assessed to the applicant to compensate for the charge

incurred by the Town. A prepaid fee will be established by the Town Board based on the current hourly inspection rate schedule approved by the Town Board.

- (6) Reinspection fees.
 - (a) Reinspection fee, each: \$75.
 - (b) A reinspection fee is payable in the following circumstances:
 - [1] When a request is made for inspection, an inspector responds to the site and the work is not ready to be inspected.
 - [2] When an inspection is made, corrective measures are directed by the inspector, a schedule is established for reinspection, a reinspection (free of charge) is made but defective work is not properly corrected and a still further inspection is necessitated.
 - [3] When an approved plan is deviated from in the field, the deviation is discovered by an inspector and reinspection is necessitated to confirm that the work conforms to the original plan.
 - [4] When work is performed in phases and more than one inspection is required before the work is approved; a maximum charge of \$25 would apply for each such inspection.
- (7) Application to Zoning Board of Appeals.
 - (a) Application for area variances.
 - [1] Residential, one- and two-family: \$100.
 - [2] Multiple dwellings and other nonresidential uses: \$240.
 - [3] Interpretations: \$100.
 - [4] Application for use variances (all uses): \$300.
 - (b) Applicants appearing before the Zoning Board of Appeals, upon payment of the designated fee, are entitled to only one "no-show" at a Zoning Board of Appeals meeting, unless otherwise adjourned by said Zoning Board; and after that the applicant must reapply and pay the designated fee.
- (8) Special use permit: application to Planning Board.
 - (a) Special permit application: \$250.
- (9) Zoning Text or Map amendment: application to Town Clerk.
 - (a) Request for amendment to the Zoning Law, Text or Map amendment: \$5,000.
- (10) Request for a paper copy of the Zoning Law from the Town Clerk: \$50.

ARTICLE XVII

Repealer; Affirmation of Code Provisions; When Effective**§ 118-141. Repealer.**

A certain Zoning Law known as "The Town of New Hartford Zoning Law of 1999," adopted by the Town Board of the Town of New Hartford on the fifth day of May, 1999, and all amendments thereto and all previous zoning ordinances and/or local laws are hereby repealed except to the extent that such ordinances or local laws shall be referred to in determining the legality of an existing use.

§ 118-142. Affirmation of Code Provisions.

All other provisions of the Code of the Town of New Hartford, and amendments thereto, are hereby affirmed except to the extent that this chapter shall modify or amend such provisions.

§ 118-143. When effective.

This chapter shall become effective immediately upon its filing in the office of the New York State Secretary of State.

