

---

# **FULL ENVIRONMENTAL ASSESSMENT FORM**

## **EAF**

**TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK  
TOWN OF TUSTEN TOWN ZONING CODE AMENDMENTS**

---

*Prepared For:* **Town Board  
Town of Tusten  
210 Bridge Street  
P.O. Box 195  
Narrowsburg, NY 10590**

**Date: July 25, 2011  
Updated: August 1, 2011**

*Prepared By:*  
**William J. Pammer, Jr., Ph.D.  
Pammer Associates  
P. O. Box 173  
Bethel, NY 12720  
[bpammerjr@hvc.rr.com](mailto:bpammerjr@hvc.rr.com)  
(845) 701-2306**

# FULL ENVIRONMENTAL ASSESSMENT FORM

## TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK TOWN OF TUSTEN TOWN ZONING CODE AMENDMENTS

### I. EAF INTRODUCTION

#### EAF Methodology

As more fully described in the Proposed Action Description section below, the proposed action consists of a comprehensive zoning text amendment to effectively regulate allowable uses within all zoning districts of the town and, in turn, support the goals of the Town's updated comprehensive plan of 2007. In particular, the zoning text amendments are intended to provide greater clarity on regulatory aspects. The amendments also expand the Downtown Business (DB) District along Erie Avenue between Bridge Street and Main Street. The expansion of the DB District is an essential component of the vision of the Town's comprehensive plan to accomplish two policy goals: promote hotel and overnight stays in the Town to encourage commerce in DB and RB Districts, and encourage home businesses and professional services in parcels currently adjacent to existing businesses in the DB District. No construction or change in land use is proposed or planned in association with the proposed action. Accordingly, many of the questions on the State Environmental Quality Review (SEQR) full Environmental Assessment Form (EAF), Parts 1 are inapplicable. Therefore, where the questions on the forms do not pertain, the response indicates that the question **does not apply ("N/A")**.

### II. PROPOSED ACTION DESCRIPTION

#### Proposed Action

The proposed action consists of the review, adoption and implementation of a Local Law amending the Zoning Law of the Town of Tusten, specifically amending ***Definitions; Permitted, Accessory, and Special Uses in all Districts; Zoning Map; Supplementary Regulations Pertaining to Specific Uses; Moderate to High Density Residential Development; Nonconforming Lots and Uses, Sign Requirements***. The proposed action also includes an addition to the Zoning Law that includes the following provisions—**Explicitly Prohibited Uses and Zoning Vested Rights**.

The proposed action is a direct legislative action by the Town Board of the Town of Tusten, as contrasted to a specific construction project on a specific site. The proposed action is intended to clarify and update where and how certain land uses are to be permitted and regulated.

Specifically, the proposed zoning text amendments are intended to clarify and update regulatory and enforcement action to more effectively protect community character; for example;

- The law enacts more relevant and concise definitions that reflect new and emerging uses. These definitions are, in turn, linked in a succinct manner to the Schedule of District Regulations via specific terminology that allows the Town of Tusten more clarity and tangibility for review and enforcement of requirements and restrictions when required.
- The law provides for new performance standards for commercial and light industrial uses by incorporating extensive noise, buffer, and visual and aesthetic review provisions in the code.

- The law incorporates accessory apartments/family based as a special use to accommodate the need for senior housing, which was a major goal of the Comprehensive Plan.
- Principle and accessory buildings are limited to 28 feet in height.
- The law eliminates the confusing language on review and enforcement of the uses of non-conforming lots by delineating specific criteria for issuance of a building permit by the Code Enforcement Officer (CEO) for construction of a single family dwelling or a commercial use on a vacant substandard lot. If said criteria are not met, the regulations call for an area variance review by the ZBA. In effect, the new language is very specific about the ministerial functions of the CEO and the adjudication jurisdiction of the ZBA in these cases.
- The law is sensitive to the “multi-functionality” of agricultural which can range from crop and livestock production, coupled with sustainable land management practices, to commercial activities with direct distribution to the public (i.e., distillers) to industrial uses involving wood processing. The concern among the public, as evidenced in the Town of Delaware, is that when agricultural uses assume commercial and industrial business uses they have potential impacts on the surrounding community which require site plan review. Therefore, the definitional phrases differentiate the “multi-functionality” of agricultural uses by principle and special uses in the Schedule of District Regulations. These differences are further addressed via specific performance standards for commercial and industrial uses in the regulations.
- The law provides for hotels and senior housing in both the Downtown Business District (DB) and Roadside Business District (RB), and Planned United Developments (PUDs) in the RB. Given the existence of centralized sewer and water in these districts and their proximity to Main Street and roadside businesses, the intent is to foster additional housing for seniors and overstay for tourists and visitors.
- The sign regulations now provide specific definitions and standards for a comprehensive range of signs. Furthermore, the standards are now presented in tabular form via a schedule of sign regulations by district making it easier to understand the sign requirements by zoning district.
- The regulations enact a prohibition of high impact industrial uses and offer a finding of fact for such action.
- The regulations establish criteria for zoning vested rights that convey expectations of applicants who intend to develop in the town.

These amendments implement the 2007 Town of Tusten Comprehensive Plan, and therefore are considered to be consistent with local planning objectives.

The proposed amendments will be enacted through adoption of a new Local Law pursuant to the provisions of the Municipal Home Rule Law. ***Refer to Appendix B for a complete copy of the proposed (Local Law) legislation.*** The proposed action is a legislative action only; the adoption of the Local Law in itself will not involve any development or construction activities, or result in any direct or indirect physical changes to real property or land use.

### **Legislative Applicability**

The proposed legislation will apply to all existing zoned lands within the Town of Tusten. ***Refer to Appendix B for a complete copy of the proposed (Local Law) legislation.*** The proposed zoning amendments are intended to provide increased clarity to the regulation of land uses involving tourism, retail, commercial, light industrial and residential development consistent with the goals, policy statements and recommendations of the Town of Tusten’s 2007 Comprehensive Plan.

## SEQR Classification of Proposed Action

The review, adoption and implementation of the proposed Local Law is a direct legislative action under the sole approval authority of the Tusten Town Board. The proposed legislative action is classified as a Type I action, pursuant to the New York State Environmental Quality Review Act (SEQR), Part 617, as it involves changes to the allowable land uses affecting an area within the Town of Tusten greater than 25 acres (the area of the existing zoning districts in the Town of Tusten cover approximately 31,232 acres or 48.7 square miles of the entire town).

## SEQR Lead Agency

In that the proposed Type I action consists of a direct legislative action by the Tusten Town Board, the Town Board is the sole agency with jurisdiction over the proposed action and is the sole “**involved agency**” as defined in SEQR 6 NYCRR Part 617 (an involved agency, “*means an agency that has jurisdiction by law to fund, approve or directly undertake an action*”). As such, the Town Board is the defacto lead agency for the environmental review of the proposed legislative Type I action under the applicable standards of SEQR 6 NYCRR Part 617.6(b)(1).

## Required Agency Referrals

- **Town of Tusten Planning Board** – Although members of the Tusten Planning Board are members of the Tusten Zoning Re-Write Committee, the proposed zoning amendments may be referred to the Planning Board for review and recommendation after discussions with the Planning Board members. If the Town Board refers the proposed legislative action to the Planning Board and receives a response along with several questions, the Town’s Planning Consultant will prepare responses to questions and perhaps point out revisions to the draft zoning amendments based on that feedback. Those responses will be included in an Appendix that will be added to this document after the Town officially declares its lead agency and the public comment period and public hearings have concluded.
- **Sullivan County Division of Planning and Environmental Management** - In accordance §239-l, m & n of the General Municipal Law, referral of the proposed action to the Sullivan County Division County Planning Board for its review and recommendation is required. The Town Board will refer the proposed legislative action to the Sullivan County Division of Planning and Environmental Management after officially declaring its lead agency status and completion of Part II of the EAF.
- **Upper Delaware Council (UDC)**- Since the Town of Tusten is a signatory to the Upper Delaware River Management Plan (RMP), this proposed action will be referred to the Upper Delaware Council for its review and recommendations in reference to the action’s conformance to the RMP. The Town Board will refer the proposed legislative action to the UDC after officially declaring its lead agency status and completion of Part II of the EAF.
- **Adjacent Municipalities** - The Town Board has referred a copy of the proposed Local Law to each of the five (5) adjacent Towns surrounding the Town of Tusten, including:
  - Town of Cohecton, New York
  - Town of Bethel, New York

- Town of Highland, New York
- Township of Berlin, Pennsylvania
- Township of Lackawaxen, Pennsylvania

### III. POTENTIAL ENVIRONMENTAL SIGNIFICANCE OF PROPOSED ACTION

1. The review, adoption and implementation of the proposed legislative action (Local Law), in itself, does not involve any development or construction activities, or result in any direct physical or environmental changes to any real property. Future applicability of the amended zoning provisions may affect project and site-specific proposals, and these proposals will be subject to the Town's land use and development application and permit review processes.
2. The proposed legislative action (Local Law) clarifies certain principal, accessory, and special uses, and it provides specific provisions regulating the development of real property with regard to special uses and accessory uses. The proposed zoning amendments are intended to provide increased clarity to the regulation of land uses involving tourism, retail, commercial, light industrial and residential development consistent with the goals, policy statements and recommendations of the Town of Tusten's 2007 Comprehensive Plan.
3. The proposed zoning amendments are consistent with the stated purposes as set forth in the proposed Zoning Ordinance, and are deemed necessary in order to help:
  - "preserve open space, encourage the preservation of the scenic and natural assets of the Town, and of the rural residential character of the town and to discourage commercial or industrial development that is inconsistent with such preservation..."
  - "protect property values; regulate location and use of buildings and the uses of land within each district with regard to residential, commercial, industrial, and other purposes..."
  - "lessen congestion in streets; secure safety from fire, flood, panic, and other dangers..."
  - "provide adequate light and air and acceptable noise levels and prevent overcrowding of land and avoid undue concentration of population..."
  - "facilitate the adequate provision of transportation, water, sewage disposal, schools, parks and other public requirements."
4. The proposed action involves expenditure of local funding associated with the preparation, adoption, filing, and implementation of the proposed zoning amendment legislation. Current procedures related to administration and enforcement actions will remain unchanged and in force. The proposed legislation is intended to be applied uniformly to individuals and corporations and is intended to be salutary and provide increased benefits to the community.
5. At this point in time, the adoption and implementation of the proposed legislative action will not result in any adverse environmental impacts on land, water, wetlands and related resources, plants and animals, or associated habitat areas.

6. At this point in time, adoption and implementation of the proposed legislative action will not result in any adverse environmental impacts on air resources, agricultural lands, transportation resources and facilities, energy resources and facilities, nor will the proposed action generate any adverse environmental public health, noise, or odor impacts.
7. At this point in time, adoption and implementation of the proposed legislative action will not result in any adverse environmental impacts on aesthetic resources, recreation or open space resources, or on historic or archaeological resources.
8. At this point in time, adoption and implementation of the proposed legislation action will not generate or stimulate an increased demand for community provided services such as recreation, education, police, and fire protection.

---

**FULL ENVIRONMENTAL ASSESSMENT FORM (EAF)**  
**EAF PART 1**

**TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK**  
**TOWN OF TUSTEN TOWN ZONING AMENDMENTS**

---

**617.20**  
**Appendix A**  
**State Environmental Quality Review**  
**FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

---

**THIS AREA FOR LEAD AGENCY USE ONLY**

**DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions**

**Identify the Portions of EAF completed for this project:**



Part 1



Part 2



Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- ☐ A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore **a negative declaration will be prepared.**
- ☐ B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore **a CONDITIONED negative declaration will be prepared.\***
- ☐ C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore **a positive declaration will be prepared.**

\*A Conditioned Negative Declaration is only valid for Unlisted Actions  
Zoning Ordinance Text Amendments (All Articles)

\_\_\_\_\_  
Name of Action

Town of Tusten Town Board

\_\_\_\_\_  
Name of Lead Agency

Margaret Harrison

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Responsible Officer in Lead Agency

\_\_\_\_\_  
Signature of Preparer (If different from responsible officer)

August 2, 2011

\_\_\_\_\_  
Date

website



**PART 1--PROJECT INFORMATION**  
**Prepared by Project Sponsor**

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Zoning Ordinance Text Amendments

Location of Action (include Street Address, Municipality and County)

Affecting all land uses for land located within the existing Town of Tusten Zoning Districts.

Name of Applicant/Sponsor Town of Tusten Town Board

Address P.O. Box 195, 210 Bridge Street

City / PO Narrowsburg State New York Zip Code 12764

Business Telephone \_\_\_\_\_

Name of Owner (if different) \_\_\_\_\_

Address \_\_\_\_\_

City / PO \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_

Description of Action:

The proposed action consists of comprehensive zoning text amendments which affect allowable uses within the Town of Tusten for all zoning districts. The zoning text amendments are intended to provide greater clarity on regulatory aspects, as contrasted to a construction or development project on a specific site. No construction or change in land use is proposed or planned in association with the proposed action.

The proposed action consists of the review, adoption and implementation of a Local Law amending the Zoning Law of the Town of Tusten, specifically amending Definitions; Permitted, Accessory, and Special Uses in all Districts; Zoning Map; Supplementary Regulations Pertaining to Specific Uses; Moderate to High Density Residential Development; Nonconforming Lots and Uses, Sign Requirements. The proposed action also includes an addition to the Zoning Law that includes the following provisions—Explicitly Prohibited Uses and Zoning Vested Rights. The proposed action is a direct legislative action by the Town Board of the Town of Tusten.

NOTE: The proposed action does not relate to any specific site or parcel of land, and does not involve any construction or physical improvements but rather consists of a direct legislative action affecting the principal, accessory and special land uses of the existing Town of Tusten collectively cover approximately 31,232 acres or 100% of the entire town area. Accordingly, many of the questions on this State Environmental Quality Review (SEQR) full Environmental Assessment Form (EAF) are inapplicable ("N/A").

Please Complete Each Question--Indicate N.A. if not applicable

# A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☐ Urban ☒ Industrial ☒ Commercial ☒ Residential (suburban) ☒ Rural (non-farm)  
☒ Forest ☒ Agriculture ☒ Other Retail, professional, tourism related, and home based businesses.

2. Total acreage of project area: 31,232 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (Indicate type) <u>"N/A." See above statement.</u>	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? "N/A" see attached
- a. Soil drainage: ☐ Well drained N/A % of site ☐ Moderately well drained N/A % of site.  
☐ Poorly drained N/A % of site
- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? N/A acres (see 1 NYCRR 370).
4. Are there bedrock outcroppings on project site? ☐ Yes ☐ No
- a. What is depth to bedrock N/A (in feet)
5. Approximate percentage of proposed project site with slopes:  
☐ 0-10% N/A % ☐ 10- 15% N/A % ☐ 15% or greater N/A %
6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☐ Yes ☐ No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☐ No
8. What is the depth of the water table? N/A (in feet)
9. Is site located over a primary, principal, or sole source aquifer? ☐ Yes ☐ No "N/A"
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☐ No "N/A"

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☐ No

According to:

"N/A." See below.

Identify each species:

"N/A". Species of plant exist within the Town's Zoning Districts. However, no construction or other physical activities is associated with the adoption of the zoning text amendment. Future development will be subject to review and approval on a case-by-case basis.

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☐ No

Describe:

"N/A". As there is no construction or other physical activities associated with the adoption of the zoning text amendment, potential impacts to unusual land forms are not reasonably associated with the action. Future development will be subject to review and approval.

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☐ No

If yes, explain:

"N/A". As there is no construction or other physical activities associated with the adoption of the zoning text amendment, uses named above are not reasonably associated with the action. Future development will be subject to review and approval.

14. Does the present site include scenic views known to be important to the community? ☐ Yes ☐ No

"N/A". As there is no construction or other physical activities associated with the adoption of the zoning text amendment, potential impacts to scenic views are not reasonably associated with the action.

15. Streams within or contiguous to project area:

"N/A." There is no construction or other physical activities associated with the adoption of the zoning text amendment. Future development will be subject to review and approval.

a. Name of Stream and name of River to which it is tributary

"N/A." Mapped streams exist in the Town's Zoning Districts. However, as there is no construction or other physical activities associated with the adoption of the zoning text amendment, potential impacts to streams are not associated with the proposed legislative action. Future development will be subject to review and approval.

16. Lakes, ponds, wetland areas within or contiguous to project area:

"N/A." Mapped streams exist in the Town's Zoning Districts. However, as there is no construction or other physical activities associated with the adoption of the zoning text amendment, potential impacts to streams are not associated with the proposed legislative action. Future development involving land altering activities in regulated proximity of streams will be subject to review and approval.

b. Size (in acres):

"N/A." No construction or other physical activities is associated with the adoption of the zoning text amendment, potential impacts to streams etc. are not associated with the proposed legislative action. Future development involving land altering activities in regulated proximity of streams will be subject to review and approval.



17. Is the site served by existing public utilities? ☐ Yes ☐ No "N/A"
- a. If **YES**, does sufficient capacity exist to allow connection? ☐ Yes ☐ No "N/A"
- b. If **YES**, will improvements be necessary to allow connection? ☐ Yes ☐ No "N/A"
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☐ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☐ No

20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☐ No "N/A"

**B. Project Description**

1. Physical dimensions and scale of project (fill in dimensions as appropriate). "N/A"
- a. Total contiguous acreage owned or controlled by project sponsor: \_\_\_\_\_ acres.
- b. Project acreage to be developed: \_\_\_\_\_ acres initially; \_\_\_\_\_ acres ultimately.
- c. Project acreage to remain undeveloped: \_\_\_\_\_ acres.
- d. Length of project, in miles: \_\_\_\_\_ (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. \_\_\_\_\_ %
- f. Number of off-street parking spaces existing \_\_\_\_\_; proposed \_\_\_\_\_
- g. Maximum vehicular trips generated per hour: \_\_\_\_\_ (upon completion of project)?
- h. If residential: Number and type of housing units: "N/A"
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | _____      | _____      | _____           | _____       |
| Ultimately | _____      | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; \_\_\_\_\_ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? \_\_\_\_\_ ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? \_\_\_\_\_ tons/cubic yards.
3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☐ N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- "N/A." No construction or other physical activities is associated with the adoption of the zoning text amendment. Future development involving land reclamation will be subject to review and approval on a case-by-case basis.
- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No "N/A"
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No "N/A"
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? "N/A" acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☐ No "N/A"

6. If single phase project: Anticipated period of construction: N/A months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated "N/A" (number)

b. Anticipated date of commencement phase 1: N/A month N/A year, (including demolition)

c. Approximate completion date of final phase: N/A month N/A year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☐ No "N/A"

8. Will blasting occur during construction? ☐ Yes ☐ No "N/A"

9. Number of jobs generated: during construction N/A; after project is complete N/A

10. Number of jobs eliminated by this project N/A.

11. Will project require relocation of any projects or facilities? ☐ Yes ☐ No "N/A"

If yes, explain:

"N/A."No relocation activities is associated with the adoption of the zoning text amendment.

12. Is surface liquid waste disposal involved? ☐ Yes ☐ No "N/A"

a. If yes, indicate type of waste (sewage, industrial, etc) and amount \_\_\_\_\_

b. Name of water body into which effluent will be discharged \_\_\_\_\_

13. Is subsurface liquid waste disposal involved? ☐ Yes ☐ No Type \_\_\_\_\_

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☐ No "N/A"

If yes, explain:

"N/A."No disturbances in existing water bodies is associated with the adoption of the zoning text amendment.

15. Is project or any portion of project located in a 100 year flood plain? ☐ Yes ☐ No "N/A"

16. Will the project generate solid waste? ☐ Yes ☐ No "N/A"

a. If yes, what is the amount per month? \_\_\_\_\_ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No "N/A"

c. If yes, give name "N/A" ; location "N/A"

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No "N/A"

e. If yes, explain:

"N/A." No uses of wastes is associated with the adoption of the zoning text amendment. Future development involving wastes will be subject to review and approval on a case-by-case basis per this legislative action.

17. Will the project involve the disposal of solid waste? ☐ Yes ☐ No "N/A"

a. If yes, what is the anticipated rate of disposal? N/A tons/month.,

b. If yes, what is the anticipated site life? N/A years.

18. Will project use herbicides or pesticides? ☐ Yes ☐ No "N/A"

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☐ No "N/A"

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☐ No "N/A"

21. Will project result in an increase in energy use? ☐ Yes ☐ No "N/A"

If yes, indicate type(s)

"N/A." No energy use is associated with the adoption of the zoning text amendment. Future development involving energy will be subject to review and approval on a case-by-case basis per this legislative action.

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:

"N/A." See comment in the Description of Action Section.

**25. Approvals Required:**

		Type	Submittal Date
<del>City, Town, Village</del> Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Adoption of Local Law	
<del>City, Town, Village</del> Planning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Referral Action Only	
<del>City, Town</del> Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Local Agencies <b>S.C. Planning</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Referral Action Only	
Other Regional Agencies <b>UDC</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
State Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

**C. Zoning and Planning Information**

1. Does proposed action involve a planning or zoning decision? ☒ Yes ☐ No

If Yes, indicate decision required:

- |  |   |  |                                      |
|--|---|--|--------------------------------------|
| <input checked="" type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance    | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan                   | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan    | <input type="checkbox"/> Other       |

2. What is the zoning classification(s) of the site?

No specific site, but proposed legislative action affects all lands zoned in the Town of Tusten.

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

No specific site, but proposed legislative action affects all lands zoned in the Town of Tusten.

4. What is the proposed zoning of the site?

No specific site, but proposed legislative action affects all lands zoned in the Town of Tusten.

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

"N/A." See comment in the Project Description.

6. Is the proposed action consistent with the recommended uses in adopted local land use plans?

☒

Yes

☐

No

"N/A." See comment in the Project Description.

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

"N/A." See comment in the Project Description.

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile?

☒

Yes

☐

No

9. If the proposed action is the subdivision of land, how many lots are proposed? "N/A."

- a. What is the minimum lot size proposed? "N/A."



10. Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand? ☐ Yes ☐ No

12. Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic. ☐ Yes ☐ No

**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Margaret Harrison, Town Supervisor Date \_\_\_\_\_

Signature \_\_\_\_\_

Title Town Supervisor

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

---

## **APPENDIX A**

**TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK  
TOWN OF TUSTEN TOWN ZONING MAP AMENDMENTS**

---

## **PROPOSED EXPANSION OF THE DOWNTOWN (DB) DISTRICT**

The following proposed parcels are recommended to be included in the Downtown (DB) Business District based on the objectives of the 2007 comprehensive plan. The Section, Lot, and Block data are listed below and the map on the following page displays a visual representation of these proposed parcels via a shaded area.

### **Listing of Proposed Parcels**

#### **Section 10/Block 1**

10.-1.-10.3  
10.-1.-11  
10.-1.-12  
10.-1.-13  
10.-1.-14  
10.-1.-16

#### **Section 10/Block 3**

10.-3.-.1  
10.-3.-17  
10.-3.-18  
10.-3.-.19

#### **Section 12/Block 2**

12.-2.-.1  
12.-2.-.2  
12.-2.-.3

#### **Section 12/Block 3**

12.-3.-.2  
12.-3.-.3

8 SECTION 8

12 SECTION 12

10 SECTION 10

DB DISTRICT  
(AREA ENCLOSED IN BLACK SOLID LINES)

PROPOSED DB EXPANSION  
(AREA SHADED)

MAIN STREET (R 41)

DEMAURO LANE (R 77)

SCHOOL STREET (R 1)

PENNSYLVANIA LINES LLC

1.37A

1.064(C)

2.2A(C)

11.2

10.3

10.1

1.1

1.2

1.3

1.4

1.5

1.6

1.7

1.8

1.9

2.0

2.1

2.2

2.3

2.4

2.5

2.6

2.7

2.8

2.9

3.0

3.1

3.2

3.3

3.4

3.5

3.6

3.7

3.8

3.9

4.0

4.1

4.2

4.3

4.4

4.5

4.6

4.7

4.8

4.9

5.0

5.1

5.2

5.3

5.4

5.5

5.6

5.7

5.8

5.9

6.0

6.1

6.2

6.3

6.4

6.5

6.6

6.7

6.8

6.9

7.0

7.1

7.2

7.3

7.4

7.5

7.6

7.7

7.8

7.9

8.0

8.1

8.2

8.3

8.4

8.5

8.6

8.7

8.8

8.9

9.0

9.1

9.2

9.3

9.4

9.5

9.6

9.7

9.8

9.9

10.0

10.1

10.2

10.3

10.4

10.5

10.6

10.7

10.8

10.9

11.0

11.1

11.2

11.3

11.4

11.5

11.6

11.7

11.8

11.9

12.0

12.1

12.2

12.3

12.4

12.5

12.6

12.7

12.8

12.9

13.0

13.1

13.2

13.3

13.4

13.5

13.6

13.7

13.8

13.9

14.0

14.1

14.2

14.3

14.4

14.5

14.6

14.7

14.8

14.9

15.0

15.1

15.2

15.3

15.4

15.5

15.6

15.7

15.8

15.9

16.0

16.1

16.2

16.3

16.4

16.5

16.6

16.7

16.8

16.9

17.0

17.1

17.2

17.3

17.4

17.5

17.6

17.7

17.8

17.9

18.0

18.1

18.2

18.3

18.4

18.5

18.6

18.7

18.8

18.9

19.0

19.1

19.2

19.3

19.4

19.5

19.6

19.7

19.8

19.9

20.0

20.1

20.2

20.3

20.4

20.5

20.6

20.7

20.8

20.9

21.0

21.1

21.2

21.3

21.4

21.5

21.6

21.7

21.8

21.9

22.0

22.1

22.2

22.3

22.4

22.5

22.6

22.7

22.8

22.9

23.0

23.1

23.2

23.3

23.4

23.5

23.6

23.7

23.8

23.9

24.0

24.1

24.2

24.3

24.4

24.5

24.6

24.7

24.8

24.9

25.0

25.1

25.2

25.3

25.4

25.5

25.6

25.7

25.8

25.9

26.0

26.1

26.2

26.3

26.4

26.5

26.6

26.7

26.8

26.9

27.0

27.1

27.2

27.3

27.4

27.5

27.6

27.7

27.8

27.9

28.0

28.1

28.2

28.3

28.4

28.5

28.6

28.7

28.8

28.9

29.0

29.1

29.2

29.3

29.4

29.5

29.6

29.7

29.8

29.9

30.0

30.1

30.2

30.3

30.4

30.5

30.6

30.7

30.8

30.9

31.0

31.1

31.2

31.3

31.4

31.5

31.6

31.7

31.8

31.9

32.0

32.1

32.2

32.3

32.4

32.5

32.6

32.7

32.8

32.9

33.0

33.1

33.2

33.3

33.4

33.5

33.6

33.7

33.8

33.9

34.0

34.1

34.2

34.3

34.4

34.5

34.6

34.7

34.8

34.9

35.0

35.1

35.2

35.3

35.4

35.5

35.6

35.7

35.8

35.9

36.0

36.1

36.2

36.3

36.4

36.5

36.6

36.7

36.8

36.9

37.0

37.1

37.2

37.3

37.4

37.5

37.6

37.7

37.8

37.9

38.0

38.1

38.2

38.3

38.4

38.5

38.6

38.7

38.8

---

## **APPENDIX B**

**TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK  
TOWN OF TUSTEN TOWN ZONING CODE AMENDMENTS**

---

**ARTICLE I — ENACTMENT AND PURPOSE**

**1.0      TITLE**

This document shall be known and may be cited as the **“TOWN OF TUSTEN ZONING LAW.”** Hereinafter, this Law is sometimes referred to as “this Zoning Law,” “this Law,” or “this law.”

**1.1      INTERPRETATION**

The various statements of purpose, intent and findings are legislatively adopted along with the formal text of this Law. They are intended as a legal guide to the administration and interpretation of this Law and shall be treated as legislative history.

**1.2      REPLACEMENT OF EXISTING ZONING LAW**

Upon the effective date of this law, the law entitled “Zoning Law of the Town of Tusten,” as adopted on [day-month and year], together with all changes and amendments thereto, shall be superseded and re-enacted, re-adopted, restated and amended to read as set forth in this law, except as may otherwise herein be provided. This re-adoption and re-enactment shall not affect any pending, or prevent any future, prosecution of any action to abate any violation existing at the time this law is enacted, if the use is in violation of the provisions of this law. Nothing herein shall be deemed to change the status of non-conforming uses created by virtue of the Zoning [Ordinance] adopted [day-month and year], as amended, if such uses remain non-conforming under the provisions of this law.

**1.3      PURPOSE**

The purposes of this Zoning Law, its regulations and its zoning and overlay districts, are to: promote the health, safety and general welfare of the present and future inhabitants of the Town; guard against loss of life and damage to property due to flooding through protection of natural drainage features; preserve features of historical significance; encourage the most appropriate development of the Town in accordance with the **TOWN OF TUSTEN COMPREHENSIVE PLAN**; preserve open space, encourage the preservation of the scenic and natural assets of the Town, and of the rural residential character of the town, and to discourage commercial or industrial development that is inconsistent with such preservation; protect property values; regulate location and use of buildings and the uses of land within each district with regard to residential, commercial, industrial, and other purposes; lessen congestion in streets; secure safety from fire, flood, panic, and other dangers; provide adequate light and air and acceptable noise levels; prevent overcrowding of land and avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewage disposal, schools, parks and other public requirements; and establish districts in which regulations concerning the size of buildings and other structures, the percentage of lots that may be covered, the size of yards, and the use of buildings, structures and land for trade, commerce, residence, and other purposes are restricted and regulated as hereinafter provided.

**1.4    SEVERABILITY**

If the provisions of any article, section, subsection, paragraph, sentence, clause or part of this Law shall be adjudicated invalid by a court of competent jurisdiction, such adjudication shall not affect, impair or invalidate the remainder this Law, and such adjudication shall be confined in its operation to the specific article, section, subsection, paragraph, sentence, clause or part thereof held to be invalid.

**TOWN OF TUSTEN ZONING LAW  
ARTICLE II — DEFINITIONS**

**2.0    GENERAL TERMS**

Except where specifically defined herein, all words used in this law shall carry their customary dictionary meanings. For purposes of this law, certain terms and words shall be interpreted as follows:

- (a) Words used in the present tense shall include the future.
- (b) The plural usage includes the singular, and the singular the plural.
- (c) The word “shall” is mandatory.
- (d) The word “may” is permissive.
- (e) The word “building” includes the word “structure,” and “building” or “structure” includes any part thereof.
- (f) The word “lot” includes the words “plot” and “parcel.”
- (g) The words “occupied” and “used” shall be interpreted as though followed by the words “or intended, arranged, or designed to be used or occupied.”
- (h) The words “he” and “she” include the opposite gender, and in both instances includes the word “it.”

Where the precise meaning of a word is in doubt by any board or official, the Town Board shall make a determination in accordance with the purpose and intent of this Law and the Comprehensive Plan. To the extent that this provision conflicts with (NYS) Town Law Section 267-b, the Town Board hereby expresses its intention to supersede the (NYS) Town Law in accordance with Municipal Home Rule Law, Article 2, §10, et seq. This power to interpret words shall not change the jurisdiction of the Board of Appeals to hear an appeal of a decision made by an administrative official pursuant to Article XI hereof.

**2.1    WORDS AND PHASES DEFINED**

For the purpose of this Law, the following words, terms and phrases shall have the meanings indicated below.

**ABANDONED SIGN:** A sign that no longer correctly advertises an existing, bona fide business, lesser, product or activity conducted or available on the premises where the sign is displayed.

**A-BOARD SIGN:** means an A-shaped sign with no external supporting structure that is set upon, but not attached to, the ground.

**ACCESSORY USE/CUSTOMARILY ACCESSORY USE (also see CUSTOMARILY ACCESSORY USE) :** A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. In order for a use or structure to be deemed an accessory use/customarily accessory use it must be subordinate to the principal use of a building on the same lot, serving a purpose customarily incidental to the use of the principal building, unity of ownership between the principal and accessory uses, and promoting harmony of land use within the



relevant zoning district of the town. In no case shall such use dominate in area, extent or purpose, the principal use. Examples of customarily accessory uses are decks, satellite dish antennas (assuming such antennas meet the standards of Article VI, Section 6.4 of this law), outdoor fireplaces, patios, garages, carports, domestic gardens, sheds, and barns.

**ACCESSORY APARTMENT/FAMILY BASED:** A separate living space within a single family dwelling unit consisting of its own sleeping, cooking and bathroom facilities and which is intended to be occupied by an in-law or in-laws; or a member of the family occupying the main part of the dwelling. This accessory use may be occupied only by members of the family occupying the main part of the dwelling or by in-laws of a member of said family unit. The applicant must satisfactorily demonstrate that said apartment will be utilized only in this fashion. The occupancy or rental of family-based apartment by persons other than in-laws, as defined here is expressly prohibited.

**ACRE:** 43,560 contiguous square feet of land.

**ADULT-ORIENTED BUSINESS:** Use of a building, structure or property for a business involving one or more of the following:

- a. Adult arcades where, for any form of consideration, one or more motion picture projectors, slide projectors, video cassette players, computers, or similar electronic machines, for viewing by five or fewer persons, each are used to show films, motion pictures, video cassettes, slides, computer generated images, or other photographic reproductions, which are characterized by emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- b. Adult bookstores which have a substantial (50% or more) portion of its stock in trade and offers for sale, any consideration, any one of more of the following:
  - i. Books, magazines, periodicals, or other printed matter or photographs, film, motion pictures, video cassettes, slides or other visual representations, which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, or
  - ii. Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.
- c. Adult cabarets, meaning any night club, bar (including establishments which do not serve alcoholic beverages), restaurant, or similar establishment, which regularly feature live performances characterized by exposure of specified anatomical areas or by specified sexual activities or films, motion, pictures, videos cassettes, slides, or other photographic reproductions characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- d. Adult motion picture theaters where, for any form of consideration, films, motion pictures, video cassettes, slides, or other photographic reproductions are regularly shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

- e. Adult theaters meaning any theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances in which a substantial portion of the total presentation time is devoted to the exposure of specified sexual activities or specified anatomical areas.
- f. Massage parlors where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment or manipulation of the human body is administered, unless by a medical practitioner, chiropractor, acupuncturist, physical therapist, licensed massage therapist, or similar professional person licensed by the state. This definition shall not be deemed to include a health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.
- g. Peep shows where, for any form of consideration, persons may observe from individual enclosures shows which regularly feature live performances characterized by exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video cassettes, slides, computer generated images, or other photographic reproductions characterized by an emphasis upon which the depiction or description of specified sexual activities or specified anatomical areas.
- h. Adult hotels or motels, meaning any hotel or motel that excludes minors because of age.
- i. Any other business the income of which is primarily derived from the display or sale of material portraying specified anatomical areas or specified sexual activities, and not otherwise defined in a-h above, that defines itself primarily through its exclusion of minors.

**AGRICULTURE/FARM OPERATIONS:** Uses specified under Section § 301, Subdivision 11 of the New York State Agriculture and Markets Law (NYSAML) that include the production of field crops and livestock and livestock products. NYSAML defines livestock and livestock products, as including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs. For existing and proposed uses that fall outside the crops and livestock and livestock products defined here please consult the following definitions that capture the diversity of agriculture/farm operations: **AGRIBUSINESS; GREENHOUSE (COMMERCIAL); INDUSTRY, LIGHT; LIVESTOCK RAISING; NURSERY (COMMERCIAL); SAWMILLS; and VALUE-ADDED WOOD PROCESSING.**

**AGRIBUSINESS:** A commercial or manufacturing or light industrial use of non-animal materials requiring intensive operational characteristics, including but not limited to high water consumption or energy use; employment generating demand for on-site parking; or processes requiring extensive building coverage. Agribusiness may include requiring greenhouses, nurseries, cooking, dehydrating, kiln drying, and refining, packing, warehousing or other treatment of agricultural products. Said definition specifically excludes slaughterhouses, rendering plants or other agricultural operations involving animals. Also refer to **GREENHOUSE (COMMERCIAL); INDUSTRY, LIGHT; LIVESTOCK RAISING; NURSERY (COMMERCIAL); SAWMILLS; and VALUE-ADDED WOOD PROCESSING.** Performance standards outlined in Article VI, Section 6.13 of this law are applicable to uses defined herein.

**AGRICULTURE, ON-SITE PROCESSING:** One or more agribusiness facilities or operations that transform, package, sort, or grade dairy products, agricultural commodities, or plants or plant products, into goods that are used for intermediate or final consumption, including goods for food and nonfood use. Performance standards outlined in Article VI, Section 6.13 of this law are applicable to uses defined herein.

**AIRPORT or HELIPORT:** Any area of land which is used or intended for use for the landing and taking off of aircraft; also, any appurtenant areas which are used or intended for use or other airport buildings and facilities.

**ALTERATION:** A change or rearrangement in the structural parts of a building or an enlargement, whether by extending to a side or by increasing the height.

**ANIMAL HOSPITAL (also see Veterinarian Clinic/Office):** A use where animals or pets are given medical or surgical treatment and the boarding of animals for extended periods is part of the care given at the facility.

**ANTENNA/COMMUNICATIONS TOWER SITE:** A land use comprising of the design of buildings and communications equipment buildings, structures, devices, accessory building(s), parking and landscaping in compliance with Article VI, Section 6.4 of this law.

**ANTENNA HEIGHT** - The vertical distance measured from the ground level to the highest point on a Communications Tower, including antennas mounted on the tower in compliance with Article VI, Section 6.4 of this law.

**APPLICANT:** A person who makes formal application to the Planning and/or Zoning Appeals Board for review of a proposed project use in conformance with this zoning law.

**APPROVED or APPROVAL:** A final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan.

**AUTOMOTIVE, VEHICLE AND EQUIPMENT SALES:** A use that includes any automotive sales, under license by the State of New York, of new or used automobiles of presently operable condition; panel trucks or vans; trailers; recreational vehicles; or farm and construction equipment; including any warranty repair work and other repair service as an accessory use. This definition is meant to include auto sales lots but such lots shall be restricted automobile, non commercial truck, and farm equipment sales. None of these terms in this definition, however, shall under any circumstances be deemed to include junkyards, collectors of itinerant vehicles or vehicle dismantling operations for other than routine repairs.

**AUTOMOTIVE REPAIR:** see **MOTOR VEHICLE REPAIR.**

**AUTOMOTIVE GASOLINE SERVICE STATION:** see **GASOLINE SERVICE STATION.**

**AWNING SIGN:** means a sign incorporated upon or within an awning.

**BAKERY, RETAIL:** A place for preparing, baking, and selling baked goods on the premises.

**BALLOON SIGN:** means an air-inflated sign.

**BANNER SIGN:** means a sign constructed from a non-rigid fabric in a banner style, which is attached to a pole or other structure.

**BASE FLOOD:** The elevation to which floodwater is anticipated to rise, which is the 1 percent annual chance of a flood being equaled to or exceeding the elevation in any given year. This is the regulatory standard also referred to as the "100-year flood." The base flood is the national standard used by the National Flood Insurance Program (NFIP) and all Federal agencies for the purposes of requiring the purchase of flood insurance and regulating new development. Base Flood Elevations (BFEs) are typically shown on Flood Insurance Rate Maps (FIRMs).

**BASEMENT:** that space of a building that is partly below grade.

**BELOW-REGULATORY CONCERN:** Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

**BED-AND-BREAKFAST:** Owner-occupied one-family dwelling used for providing overnight accommodations that may include a morning meal to transient lodgers, containing at least three but not more than five bedrooms for such lodgers. As used in this law, the following terms shall have the meanings of bed-and-breakfast-oriented businesses indicated:

**BED-AND-BREAKFAST GUEST UNIT:** One or more rooms intended for overnight occupancy by persons other than those who permanently reside at the premises.

**BED-AND-BREAKFAST HOMESTAY:** An owner-occupied residence which has a maximum of three (3) guest units within a single-family dwelling, the owners of which serve breakfast to guests.

**BED-AND-BREAKFAST INN:** An owner-occupied residence which has a maximum of five (5) guest units within a single-family dwelling, the owners of which serve breakfast to guests.

**BED-AND-BREAKFAST COUNTRY INN:** A residence or building which has six (6) or more guest units which exhibits a character of use consistent with a motel or hotel and which may have a restaurant open to the general public as well as the guests.

**BUFFER:** Open spaces, landscaped areas, fences, walls, berms or any combination thereof used to physically and visually separate one use or property from another in order to mitigate the impacts of noise, light or other impact.

**BILLBOARD SIGN:** means a large engineered freestanding sign designed for a changeable message used generally for off-site and corporate advertising.

**BOATHOUSE:** A building especially designed for the storage of boats, including motorboats, personal watercraft, and vessels.

**BOARD OF APPEALS:** The Town of Tusten Zoning Board of Appeals.

**BUILDING:** A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

**BUILDING LOT COVERAGE:** That portion of a lot which is covered by structures, including buildings, carports, patios and other appurtenances having an attachment to the ground but not including driveways or sidewalks.

**BUILDING HEIGHT:** The vertical distance measured from the average of the ground levels at the front and rear of a building to the highest point of the roof, not including chimneys, spires, water tanks and similar projections.

**BUILDING PERMIT:** A written authorization issued by the code enforcement officer, derived either from that official's direct authority as set forth in this zoning law, or through authority vested in the Town Board, Planning and/or Zoning Appeals Boards that authorizes the construction or renovation of a building or structure at a specified parcel/location.

**BUILDING SETBACK LINE:** shall mean the line, designated on a plan, beyond which no part of a building, other than parts expressly permitted, shall extend.

**BUILDING SUPPLY STORES:** Retail stores where building supplies such as plumbing, heating, and electrical supplies, tools and fasteners, and paints and other coverings are sold.

**BUILDING, PRINCIPAL:** A structure in which is conducted the principal use of the site on which it is situated. In any residential district, the dwelling shall be deemed to be the "principal building" on the lot on which the same is located.

**BUSINESS AND PROFESSIONAL BUILDINGS/OFFICES:** A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations. Examples are medical, dentist, law, engineering and surveying, insurance, accounting, and real estate offices. Also see **PROFESSIONAL BUILDINGS/ OFFICES**.

**CAMPGROUND or RECREATIONAL VEHICLE PARK:** a parcel of land used or intended to be used to provide two (2) or more commercial sites for parking of travel trailers, placement of tents or other temporary or movable sleeping accommodations, which meets all New York State Department of Environmental Conservation (NYSDEC) and Department of Health (NYSDOH) health standards.

**CANOE LIVERY:** A parcel of land upon which facilities exist for the leasing or renting of waterborne vessels (canoes, kayaks, rubber rafts, and tubes) for outdoor water-based recreation.

**CANOPY SIGN:** means a sign incorporated upon or within a building canopy.

**CAMPSITE:** A property providing one private site for the parking of occupied travel trailers, the erection of tents or other shelters serving as temporary residences, as defined by the New York State Sanitary Code, and all buildings and facilities pertaining thereto.

**CARPORT:** An open space for the storage of one or more vehicles in the same manner as a private garage, and which may be covered by a roof supported by columns or posts except that one or more walls may be the walls of the main building of which the carport is an accessory building or extension.

**CARWASH:** Any building or premises or portions thereof used for washing automobiles for commercial purposes.

**CELL SITE:** see **ANTENNA/COMMUNICATIONS TOWER SITE**.

**CEMETERY:** Land used for the interment of human remains, including a burial park for earth interments, which may include a mausoleum for vault or crypt interments, operated by a not-for-profit organization.

**CERTIFICATE OF OCCUPANCY AND/OR COMPLIANCE:** a form of protection afforded the owner or occupants of a structure by serving as a proof of compliance or alteration.

**CHILDREN'S CAMP:** a facility including buildings for eating and sleeping and amenities such as swimming pools, base ball fields, and tennis courts which are available for use by youth.

**CLEARCUTTING:** removal from a tract of land of substantially all trees, vegetation and underbrush excluding commonly accepted agricultural activities.

**CLUB:** shall mean any organization catering exclusively to members and their guests, or premises and buildings for recreational, hunting, outdoors, or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required for the membership and purposes of such clubs; it shall include fraternal, outdoors, hunting, athletic, social and service organizations.

**COMMERCIAL GROUP:** Two or more retail establishments totaling at least 10,000 square feet of rentable commercial space and sharing certain facilities such as parking, public utilities and open space.

**COMMERCIAL KENNELS:** (see **KENNEL, COMMERCIAL**)

**COMMERCIAL PARKING LOT:** A vehicle parking facility that is operated as a business enterprise by charging a fee for parking.

**COMMERCIAL RECREATION:** A parcel of land which may include facilities or equipment for recreational purposes, utilized by the public for a fee. Activities include but are not limited to bowling alleys, canoe liveries, campgrounds, tennis courts and golf courses.

**COMMUNICATIONS ANTENNA:** Any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service or any other wireless communications signals, including without limitation omnidirectional or whip antennas and directional or panel antennas, owned or operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such device. This definition shall not include private residence mounted satellite dishes or television antennas or amateur radio equipment including without limitation ham or citizen band radio antennas assuming they do not exceed the standards containing in Article VI, Section 6.4 of this law.

**COMMUNICATIONS EQUIPMENT BUILDING:** An unmanned building or cabinet containing communications equipment required for the operation of Communications Antennas and covering an area on the ground not greater than 250 square feet.

**COMMUNICATIONS TOWER:** A structure other than a building, such as a monopole, self-supporting or guyed tower, designed and used to support Communications Antennas and is part of an antenna/communications tower site.

**COMMUNITY BUILDING:** A facility that is constructed for and devoted to meetings or gatherings for business, educational, recreational or community pursuits for use publicly or privately.

**COMPREHENSIVE PLAN (OTHERWISE KNOWN AS THE TOWN OF TUSTEN COMPREHENSIVE PLAN):** The Comprehensive Plan adopted by the Town of Tusten Board that establishes planning goals for the future preservation and development of the Town of Tusten pursuant to §272-a of the (NYS) Town Law, including any part of such plan separately adopted, as the same may from time to time be updated, supplemented, or amended.

**CONDOMINIUM:** an apartment house or houses, the apartments of which are individually owned, each owner receiving a deed enabling him to sell, mortgage or exchange his apartment independent of the owners of the other apartments in the building or buildings.

**CONGREGATE CARE FACILITY:** A building or other complex containing multiple dwelling units that are separately occupied but that have one or more common kitchen and dining area for residents of the individual units. An apartment building or condominium complex shall not be considered “congregate living” where each unit includes complete kitchen facilities, regardless of the fact that such complex includes one or more common areas. A congregate living facility may be located on the same site or in



the same complex as a nursing home, but such combination shall be allowed only where “nursing home” is a permitted use.

**CONSERVATION SUBDIVISION:** A form of development for single-family residential subdivisions that permits a reduction in lot area and other development standards, given the specific site conditions, and where no less than a specified proportion of the total land area is devoted to permanent open space.

**CONSTRUCTION SITE IDENTIFICATION SIGN:** A temporary sign erected on a site under construction for advertising or providing information related to the construction project.

**COUNTY DEPARTMENT OF PLANNING:** The Sullivan County Department of Planning and Environmental Management or any successor agency or department that fulfills the requirements for review under the New York State General Municipal Law § 239-m.

**CREMATORIUM:** A furnace or establishment for the incineration of corpses.

**CUSTOMARILY ACCESSORY USE (also see ACCESSORY USE) :** A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. In order for a use or structure to be deemed an accessory use/customarily accessory use it must be subordinate to the principal use of a building on the same lot, serving a purpose customarily incidental to the use of the principal building, unity of ownership between the principal and accessory uses, and promoting harmony of land use within the relevant zoning district of the town. In no case shall such use dominate in area, extent or purpose, the principal use. Examples of customarily accessory uses are decks, satellite dish antennas (assuming such antennas meet the standards of Article VI, Section 6.4 of this law), outdoor fireplaces, patios, garages, carports, domestic gardens, sheds, and barns.

**DAY-CARE CENTER:** A facility licensed or authorized and regulated by the State of New York Department of Social Services or other state agency having jurisdiction where care is provided, for more than five hours per week, for three or more children away from their own homes for less than 24 hours per day in a facility which is operated for such purposes.

**DEGRADATION OF WATER:** Pollution of water that unreasonably reduces the quality of such water. Water quality may be considered unreasonably reduced when the quality of a representative sample of water is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare.

**DELETERIOUS SUBSTANCE:** Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling,



production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) solution mining brine or mineral brines, (f) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (g) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (h) drill cuttings from crude oil or natural gas wells, (i) any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas, (j) waste from the extraction or processing of ores and minerals, including slag, mud, ash, and process waste water and waste solids, or (k) cement kiln dust waste. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). This definition does not include (i) animal manure and/or recognizable and non-recognizable food wastes, or (ii) storage of waste generated by agriculture.

**DELETERIOUS SUBSTANCE DISPOSAL/STORAGE FACILITY:** Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of deleterious substances that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

**DEVELOPMENT DIRECTIONAL SIGN:** means a temporary sign for guiding or directing pedestrian or vehicular traffic to new subdivisions, new home areas, or show homes.

**DIRECTIONAL SIGN:** A sign for directing pedestrian or vehicular traffic, including ingress and egress signs and parking signs, but does not include advertising, with the exception of a logogram. Also see **SIGN, DIRECTIONAL**.

**DISTURBANCE:** Land preparation, such as clearing, grading and filling, or the building of structures, including driveways.

**DRIVE-IN/DRIVE THROUGH OR FAST-FOOD ESTABLISHMENT:** Any establishment primarily offering, for sale, take-out food and drink for consumption off-premises, including commercial food stands.

**DRIVEWAYS:** Private access routes which directly service a parking area; or serving parking spaces not directly serving more than two (2) dwelling units, and not providing a route for through traffic yet can access a public road.

**DUMP:** Land upon which deleterious substances, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**DWELLING:** Any building or portion thereof designed or used exclusively as the residence or sleeping place for one or more persons. A dwelling shall not include either a manufactured home or a mobile home.

**A. DWELLING, SINGLE-FAMILY**

— A detached building, designated for or occupied exclusively by one family and containing not more than one dwelling unit.

**B. DWELLING, TWO-FAMILY**

— A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

**C. DWELLING, MULTIFAMILY**

— A building or portion thereof used or designed as a residence for three or more apartment or dwelling units, including one-family attached dwellings or townhouses.

**D. DWELLING, SEASONAL**

— A detached single-family or two-family dwelling which is temporarily occupied by a person or persons having a usual residence elsewhere from whence they customarily journey to work, send children to school, vote, or conduct other principal activities. A seasonal dwelling may have any of the following characteristics: a lack of year-round water supply; a lack of a furnace or heat source; a lack of indoor plumbing; a lack of insulation; or seasonal use typically during warmer weather months.

**E. DWELLING, SEASONAL/COMMERCIAL**

— A seasonal dwelling that is offered for lease or rent to occupants who are primarily transient in nature or otherwise qualifies as an R-1 residential occupancy as defined under the Building Code of New York State, Section 310.1, as hereafter supplemented or amended.

**DWELLING UNIT:** One or more rooms, including cooking facilities and sanitary facilities, in a structure designed as a unit for occupancy by not more than one family for living and sleeping purposes.

**EATING AND DRINKING ESTABLISHMENTS:** Any establishment where food and drink are regularly prepared and served for consumption either on or off the premises, including restaurants, food service establishments, commercial food stands and drive-in or fast-food establishments. An eating and drinking place may be operated from any facility specifically constructed for this purpose.

**EDUCATIONAL INSTITUTION(S):** An institution of secondary or higher learning chartered by the State of New York or a private educational institution subject to regulations prescribed by the State of New York.

**ELECTION SIGN:** means a sign advertising a local candidate and/or party in a federal, provincial, school board or municipal election.

**ELECTRONIC MESSAGE SIGN:** A sign or part of a sign on which the advertising is programmable or changeable by electrical or electronic means.

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

**ENVIRONMENTAL ASSESSMENT FORM (EAF):** A form used to determine whether a project will have significant environmental impacts. Depending on the site's environmental features and the project's magnitude, either a short or long SEQR Environmental Assessment Form will be completed.

**ENVIRONMENTAL IMPACT STATEMENT (EIS):** A document prepared pursuant to SEQR, subsequent to a determination of potential adverse impacts that examines the existing and developed environment, and identifies and presents impacts, mitigation measures and alternatives.

**ESSENTIAL PUBLIC SERVICES:** The erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, CATV, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety and general welfare. "Essential public services" shall also include firehouses, first aid and emergency aid squads, whether provided by a municipal or nonprofit agency.

**EQUIPMENT SALES:** Commercial uses that consist of the display for sale or hire of new or used farm, lawn and garden, or construction or similar equipment. Also see **AUTOMOTIVE, VEHICLE AND EQUIPMENT SALES**.

**EVENT DIRECTIONAL SIGN:** A temporary sign providing direction to a non-reoccurring event of less than three (3) days in length; such as a property auction sale.

**EXEMPTED VEHICLES:** Any of the following: (a) vehicles for agricultural use, (b) school buses or other mass transit buses, (c) emergency vehicles, (d) military vehicles driven by active duty military personnel, or (e) trucks used in the construction, repair or maintenance of state, county, or Town roads or other public structures or property.

**EXPLORATION:** Geologic or geophysical activities related to the search for sub-surface minerals or hydrocarbons including prospecting, geophysical and geological seismic surveying and sampling.

**EXPLOSIVE MATERIALS:** Substances capable of undergoing decomposition or combustion with great rapidity, involving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling. Examples include TNT, dynamite, nitroglycerin, and ammonium nitrate.

**FAMILY:** One or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, or a household of up to four (4) persons living together as a single housekeeping unit though not related by blood, adoption or marriage. The rationale for the number four

(4) in reference to the latter is to mitigate “dormitory type” situations and traffic problems in single family residences.

**FARMERS MARKET:** A designated area where, on designated days and times, growers and producers may sell directly to the public from open or semi-open facilities in accordance with Town regulations. The Town shall have the right to specify the dates and times when a Farmers Market may operate and to stipulate what goods may be sold.

**FARM STAND:** A temporary structure designed or used for seasonal display of raw and/or processed products grown or produced on the property on which the stand is located or any parcel in common ownership or leasehold.

**FENCE SIGN:** A sign painted on or attached to a fence.

**FILLING STATIONS:** see **GASOLINE SERVICE STATION**.

**FLAMMABLE:** A solid, liquid or gas that will ignite easily and burn rapidly.

**FLASHING SIGN:** A sign that contains an intermittent or flashing light source.

**FLEA MARKET:** Any establishment which for a fee or remuneration of any kind permits others to display for sale, new or used or second hand wearing apparel, watches, jewelry, luggage, musical instruments, furniture, household appliances, automobile parts and accessories, hand tools, mechanical equipment, garden tools, hobby items, water heaters, pipes, electrical fittings, plumbing fittings, radios, television sets, bicycles, personal property or any other kinds of used goods, wares and merchandise.

**FLOOD OR FLOODING:** A general or temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters and/or (2) the unusual and rapid accumulation of runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAPS:** Commonly referred to as FIRMS, this document is a Federal Emergency Management Agency (FEMA) map of the Town of Town that delineates the floodplains, specifically areas that fall within the 100-year flood boundary as noted in the definition on Base Flood. FIRMs are used to set rates of insurance against risk of flood and to determine whether buildings are insurable at all against flooding.

**FOOD SERVICE ESTABLISHMENT:** Any establishment where food and drink are prepared specifically for consumption off site as in the headquarters of a catering operation.

**FOREST MANAGEMENT:** Management of natural vegetation for either wildlife habitat improvement, or timber and firewood harvesting under the direction of a forester. Excludes sawmills, on-site processing, and valued-added wood processing.

**FOUNDATION:** A wall or pier extending at least four feet below grade or an equivalent load-bearing structure certified by a licensed professional engineer, having a fixed location on the ground and capable of serving as a support for a structure or structural part of a building, such as a wall, pier or column. All foundations shall meet the relevant criteria set forth in the New York State Uniform Fire Prevention and Building Code applicable to general building construction.

**FREESTANDING SIGN:** A sign anchored into the ground and not attached to a building.

**GAMBLING:** The wagering of money or something of material value on an event with an uncertain outcome with the primary intent of winning additional money and/or material goods and shall include a lottery or the sale of lottery tickets, pool-selling, bookmaking, slot machines, roulette, poker, or other games of chance.

**GARAGE SALE SIGN:** A sign advertising the location and product of a garage sale.

**GASOLINE SERVICE STATION:** Any building, structure or premises providing sales of different motor vehicle fuel from filling stations and sales of different motor vehicle fluid products such as oil, lubrication products, windshield fluid, and antifreeze. This may be an accessory use to a convenience store.

**GATHERING LINE, or PRODUCTION LINE:** Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

**GREENHOUSE (COMMERCIAL)** – A structure, typically of glass or opaque material, in which temperature and humidity can be controlled for the cultivation or protection of plants. Activities include the production of fruits, vegetables, flowers, and any other plants requiring special temperature conditions and the retail or wholesale sale of seeds, plants and any related products.

**GREENHOUSE (PRIVATE)** – An accessory structure reserved for private use among a residential household typically of glass or opaque material, in which temperature and humidity can be controlled for the cultivation or protection of plants.

**GROSS VEHICLE WEIGHT RATING:** The weight specified by the manufacturer as the maximum load weight (truck plus cargo) of a vehicle.

**GROUP HOME:** A nonprofit or for-profit boarding home for sheltered care of persons that also provides some combination of personal care, social or counseling services, and transportation under the direction of New York State Department of Health (NYSDOH).

**HIGH-IMPACT TRUCK:** A truck or tractor, as defined in the Vehicle and Traffic Law, with a minimum of three axles, and/or ten wheels, and capable of hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck does not include exempted vehicles.

**HIGH-FREQUENCY, HIGH-IMPACT TRUCK TRAFFIC:** Any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact truck to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact truck to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.

**HIGH-IMPACT INDUSTRIAL USE:** High-impact industrial uses are industrial uses or operations that are more likely than not to generate or involve, at any time during such use or operation and whether concurrently or in separate occurrences, any four (4) or more of the following impacts in the Town:

- (a) combined total surface disturbance of more than two (2) acres of land;
- (b) the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
- (c) high-frequency, high-impact truck traffic;
- (d) an operation that, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to typical work days and morning to early evening hours, but rather instead is often conducted at any and all times of the day and night with either truck traffic entering or leaving the site, or other noise, vibrations or light that extends beyond the property boundaries;
- (e) open air industrial use;
- (f) open air storage;
- (g) flammable or explosive materials are present, used, produced, stored or disposed of;
- (h) a private electric power generation facility;
- (i) sequestering water use of 500,000 or more gallons of water;
- (j) construction or use of more than 45,000 square feet of impervious surface;
- (k) construction or use of a staging facility; or
- (l) construction of pipelines, roadways and other infrastructure to move product and materials to and from the proposed project site.

**HOME ADDRESS SIGN:** A sign that which states only the municipal address and occupant names.

**HOME-BASED BUSINESS/HOME OCCUPATION (HBHO):** shall mean a subordinate use of a non-residential nature which is conducted within a dwelling unit, or building accessory thereto, by an occupant of the dwelling unit, which is clearly incidental and accessory or secondary to the use of the property for residential purposes, and which meets the following additional conditions: (1) the occupation or activity shall be carried on wholly within the principal building or within a building or other structure accessory thereto; (2) not more than two (2) persons outside the resident household shall be employed in the occupation or as assistants; (3) there shall be no exterior display, or sign except

as permitted under this Law; no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the lot or of the surrounding neighborhood; (4) no offensive odor, noise, vibration, smoke, dust, heat or glare shall be produced; (5) the home occupation shall not generate traffic in any greater volume than would normally be expected in a residential neighborhood per the parking requirements in Article VI, Section 6.12.1 of this law, and any need for parking generated by the occupation shall be met off the street and in accordance with the regulations in Article VI, Section 6.12.1 of this law, (6) the habitable floor area of the home occupation shall not exceed the habitable floor area of the principal use. In particular, a home-based business/home occupation includes, but is not limited to the following: art studio, creation of crafts, dressmaking, teaching (with musical instruction limited to a single pupil at a time). A home based business/home occupation shall not involve in-person retail sales to the general public nor the storage of materials out-of-doors. See Article VI, Section 6.7 for standards applicable to this definition.

**HOME BUSINESS SIGN:** A sign advertising an approved home business.

**HOTEL:** A building or portion thereof containing rooms that are used, rented or hired out to be occupied for transient sleeping purposes for compensation, whether the compensation is paid directly or indirectly. No such rooms shall contain individual kitchen or cooking facilities. A small hotel shall be one of twelve (12) or fewer rental units.

**HOUSE OF WORSHIP:** A building for religious assembly.

**HUNTING/FISHING CLUB/SPORTSMEN CLUB:** A facility, whether open to the public or limited to members of a group, which offers such activities as game hunting, fishing, trap or skeet shooting, target shooting, and target practice. The term includes rod & gun clubs and sportsmen's clubs.

**HUNTING PRESERVE:** Any parcel(s) and facilities either privately owned or leased for holding, rearing, releasing, or processing captive raised game for the purpose of hunting, for a fee. Hunting Preserves are authorized as a special use if they comply with the following standards:

1. The proposed hunting preserve shall contain at least two hundred (200) contiguous acres but shall not contain more than two thousand (2000) contiguous acres. A person may own or control by a written lease a portion of the proposed area but the lease shall be for a minimum of a five (5) year period from the date of the approval of the Conditional Use Permit.
2. The total area of all hunting preserves shall not exceed three percent (3%) of the total land area in the Town.
3. Upon approval of a conditional use permit the applicant shall immediately construct and maintain boundary fences at least one five hundred feet (500') from the outside perimeter of the approved hunting preserve area. Said fence shall not be closer than 500 hundred feet (500') to any established public roadway or residence. The boundary fence shall be constructed and maintained to adequately "animal proof" the required area. The preserve fencing shall be a minimum height of eight feet (8') above ground level. The fencing shall be inspected and approved by the Zoning Administrator or designee prior to certification.



Follow-up fence inspections by the Code Enforcement/Zoning Administrator shall be allowed at any reasonable time by appointment or by providing the landowner or preserve registrant with at least forty-eight (48) hour notice. Boundary fence gates shall remain closed at all time except for preserve maintenance activity at which time no open gate shall be left unattended.

5. Any game birds or hoofed non-domesticated mammal other than livestock released in the preserve shall not be detrimental to the other existing wildlife or environment.

6. The proposed hunting preserve shall not interfere with the normal activities of migratory birds or other wildlife.

7. All hunting preserves shall post and maintain boundary signs which meet the following specifications:

- i. One hundred sixty square inch (160") surface area; and
- ii. Sign material of wood, steel, aluminum or heavy poly-plastic; and
- iii. White/red color combination with the message "Registered Hunting Preserve"; and
- iv. Boundary sign shall be posted at each entrance and perimeter gate and at every boundary corner.

8. All hunting preserves shall allow all records be available for inspection by the Code Enforcement Officer/Zoning Administrator or designee during any reasonable hours.

9. All hunting preserves shall keep their records and reports current and shall reflect a true and accurate account of registrant activities.

10. All hunting preserves shall notify the Code Enforcement Officer/Zoning Administrator within thirty (30) days in writing if the operator ceases operation as a "hunting preserve"

11. All hunting preserves shall be reviewed annually (by March 31 of each year) to determine if they are in full compliance with all applicable County, State and Federal regulations. The Code Enforcement Officer/Zoning Administrator or designee may request copies of all documents in regards to other County, State or Federal regulatory reporting requirements.

**ILLUMINATION:** Lighting of any sign by artificial means.

**IMPERVIOUS SURFACE:** Any material or surface that substantially reduces or prevents the infiltration of water into the ground. Examples are pavement (asphalt, concrete, etc), buildings/structures, conventionally surfaced roadways, driveways and parking lots, and sidewalks.

**INDIRECT ILLUMINATION:** Lighting of a sign by reflected light.

**INDUSTRIAL USE:** Exploration, production, assembly, harvesting, or manufacturing operation, in any event requiring: machinery and equipment. Does not include: (a) agricultural or forestry use, (b) residential use, (c) retail or similar commercial use, (d) telecommunication facilities or communication transmission towers, or (e) gasoline or automotive service station.

**INDUSTRY, LIGHT:** The design, manufacture, processing, fabrication or assembly of finished products or parts predominately from previously processed or prepared materials (including fabrication, treatment, packaging, and incidental storage, and sale and distribution of such products or parts) and/or on-site



extraction or importation of natural resources involving both short-term and long-term storage of bulk materials involving design, manufacture, processing fabrication or assembly; provided, that all operations are conducted entirely within an enclosed structure, and provided, further, that such use: (a) does not produce or generate or otherwise involve on-site use or storage of deleterious substances, and (b) does not involve high frequency, high-impact truck traffic, or any other prohibited use set forth in Article XIII of this Law.

**INJECTION WELL:** A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. Injection wells do not include: (a) single family septic systems that receive solely residential waste, (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground, (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power, or (d) bore holes drilled to produce potable water to be used as such.

**INSTITUTIONAL USE:** A nonprofit or public use, such as a library, hospital, or government-owned or -operated building, structure, or land used for public purpose.

**INTERPRETIVE CENTER:** Is a facility dedicated to the dissemination of knowledge of natural or cultural heritage, similar to a museum, but located near and operated in connection with a cultural, historic or natural site.

**JUNKYARDS:** Buildings, structures or premises where junk, waste, discarded or salvage materials are bought or sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards and yards for house wrecking and structural steel materials and equipment, but not including premises used for the purchase or storage of used furniture and household equipment or used cars in operable condition.

**KENNEL:** Any enclosure, premises, building, structure, lot or area in or on which more than four dogs of at least four months of age are kept, harbored or maintained for noncommercial purposes for continuous periods of 24 hours or more.

**KENNEL (COMMERCIAL):** Any premises where three (3) or more dogs, over four (4) months of age, are owned, boarded, bred, and/or offered for sale for continuous periods of 24 hours or more.

**LAND APPLICATION FACILITY:** A site where any deleterious substance is applied to the soil surface or injected into the upper layer of the soil.

**LANDOWNER:** An owner of a legal or equitable interest in real property and/or a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan.

**LARGE SCALE WATER USE:** Any water withdrawal or sequestering water use of over 100,000 gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agricultural use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes and used within the Town.

**LIGHT INDUSTRY:** See Industry, Light.

**LIVESTOCK RAISING:** The keeping, fattening or breeding of various forms of farm, ranch and preserve animals, including but not limited to rabbits, deer, dairy and beef cattle, hogs, sheep and goats, poultry, equines, ratites, llamas and other farm animals raised as a source of income or as a novelty, which is consistent with Section § 301, Subdivision 11 of the New York State Agriculture and Markets Law (NYSAML).

**LOCAL GOVERNING BODY:** Means: (a) the Town of Tusten Town Board; or (b) A body or board authorized by the Town of Tusten Town Board to make land use decisions, to include the Planning Board and Zoning Board of Appeals, or ZBA, authorized to approve plans pursuant to the provisions of this zoning law.

**LOT CLEARING:** The removal, or causing to be removed, through either direct or indirect actions, trees, shrubs, sand and gravel, vegetation and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing irreversible damage to roots or trunks of trees; destroying the structural integrity of vegetation; and/or any filling excavating or grading.

**LOT COVERAGE:** The percentage of the lot area that is occupied by the ground area of a building, its accessory buildings, and other impervious surfaces.

**LOT:** A piece or parcel of land occupied or intended to be occupied by a principal building, or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as are required by this law, and having frontage on a public street.

**A. LOT, CORNER**

— A lot abutting upon two or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than 135°. The point of intersection of the street lot lines is the corner.

**B. LOT DEPTH**

— The mean horizontal distance between the front and rear lot lines.

**C. LOT LINES**

— The property lines bounding the lot.

**(1) LOT LINE, FRONT**

— The line separating the lot from a street.

**(2) LOT LINE, REAR**

— The lot line opposite and most distant from the front lot line.

**(3) LOT LINE, SIDE**

— Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a "side street lot line."

**(4) LOT LINE, STREET OR ALLEY**

— A lot line separating the lot from a street or alley.

**D. LOT WIDTH**

— The distance between the two side lot lines measured at the required setback line.

**E. LOT AREA**

— The computed area contained within the lot lines of any parcel.

**LUMBER YARD:** A facility where building materials such as lumber, plywood, drywall, paneling, cement blocks and other cement products, and other building products are stored and sold. Lumber yards may also process lumber by performing millwork, planing, cutting, and other customizing processes. Lumber yards may provide for the sale of associated products including tools and fasteners.

**MAJOR MINERAL EXTRACTION:** Operations extracting greater than 750 cubic yards per year of material such a gravel, rock, stone, sand, fill or minerals from the surface or below the ground, or an operation two acres of active face at one time plus an area equal in size to the active face necessary for accessory use.

**MANUFACTURED HOME PARK:** Any plot of ground upon which three or more manufactured homes, spaced less than 500 feet apart and occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodation.

**MANUFACTURED HOME:** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit when affixed to a permanent foundation or placed on a concrete slab and connected to the required utilities. Manufactured homes are built to the U.S. Department of Housing and Urban Development standards.

**MARQUEE:** A permanent roof like structure that having areas on the sides for display of changeable graphics or copies, that projects from or is supported by a building.

**MASS GATHERINGS:** An extended outdoor assembly of 250 or more persons per day which continues for 48 hours or more and which occurs in part outdoors or in temporary structures.

**MINOR MINERAL EXTRACTION:** Operations extracting less than 750 cubic yards per year of material such as gravel, rock, stone, sand, fill or materials from the surface or below the ground, and not to exceed two acres of active face at one time plus an area equal to in size to the active face necessary for accessory use.

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

**MIXED USES:** A combination of residential, commercial, and office uses, either in one building located in or along a main street business district or in one integrated development or area through plan development districts, planned unit developments, or special design districts.

**MODULAR HOME:** A home that is constructed to New York State Building Code standards, partially assembled in a factory and transported to a home site in a minimum of two sections, each of which is transported to building site separately, with installation of heating system and application of siding coming after erection of the home, and which is indistinguishable in appearance from conventionally built homes.

**MONUMENT SIGN:** A sign, in which the face of the sign is permanently mounted on an enclosed decorative base of brick, stone, stucco, or similar material with a frame within which the sign panels are enclosed.

**MOTOR VEHICLE REPAIR:** Any use used for oil and fluid changes, polishing, bodyworks, and repairing motor vehicles, such as automobiles, recreation vehicles, snowmobiles, boats, motor cycles, and farm equipment. Such use shall include any building used for the repair of said motor vehicles, including bodywork. Such repair work listed here shall be conducted primarily within a completely enclosed building.

**MOTELS, MOTOR COURTS and MOTOR HOTELS:** A series of attached dwelling structures, where each unit has convenient access to parking space for the use of the unit's occupant. The units, with the exception of the manager's or caretaker's, are designed to provide sleeping accommodations for automobile transients or overnight guests and without the provision for cooking in any room or suite. A small motel shall be one of twelve (12) or fewer living or sleeping accommodations (**also SMALL HOTEL/MOTEL**).

**MULTI-FAMILY DWELLING (See DWELLING):** A building, or portion thereof, containing three (3) or more dwelling units, originally constructed for said purpose.

**MULTIPLE OCCUPANT COMMERCIAL BUILDING:** A building containing two (2) or more independent, non-residential uses, or two (2) or more commercial buildings in one (1) lot.

**MUSEUM:** A permanent facility in the service of society and of its development, open to the public, which acquires, conserves, researches, communicates and exhibits the heritage of humanity and its environment, for the purposes of education, study, and enjoyment.

**NATURAL GAS PROCESSING FACILITY:** Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams.

**NATURAL GAS COMPRESSION FACILITY:** Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

**NEIGHBORHOOD STORE:** A retail business establishment of not more than 5,000 square feet in floor area, offering consumer goods for sale and located in a separate building, if one story, or on a separate floor of a multistory building. This excludes drive-in restaurants.

**NEON SIGN:** A sign consisting of glass tubing, filled with a gas such as neon, which glows when electric current is sent through it.

**NONCONFORMING USE:** Any use, lawfully in existence within a given zoning district on the effective date of this law, which shall be made nonconforming on the passage of this law or any applicable amendment thereto.

**NON-REGULATED PIPELINES:** Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

**NURSERY (COMMERCIAL):** A use where plants are grown for transplanting, for use as stocks for budding and grafting, or for sale. Typically a nursery use will include the growing of plants out-of-doors, but may include the use of one or more greenhouses. Activities include the production of woody and herbaceous plants, including ornamental trees, shrubs, flowers, and bulb crops, as well as fruit plants and vegetables and the retail or wholesale sale of seeds, plants and any related products.

**OFF-SITE/OFF PREMISE ADVERTISING SIGN:** A sign displaying advertising of a business, commodity, service or entertainment that is conducted, sold or offered elsewhere other than the site on which the sign is located.

**OFF-PREMISE PORTABLE SIGN:** A sign designed either as an integrated physical feature of a motor vehicle, and/or mounted on a trailer, bench, wheeled carrier, or other non-motorized mobile structure that is movable by a vehicle.

**OPEN AIR INDUSTRIAL USE:** An industrial use that is not conducted in an enclosed structure and poses the potential for release of pollution via groundwater, surface water, or air exposure pathways.

**OPEN AIR STORAGE:** An industrial use that includes storage outside of an enclosed structure of raw materials, components, equipment, products, by-products, waste, deleterious substances, chemicals or other materials, either as a primary activity, or as an accessory use or incidental to another activity or use.

**OPEN HOUSE SIGN:** A sign for guiding vehicular traffic and pedestrians to real estate open house locations;

**OPEN SPACE:** Any land or water area in which the preservation in its present state would conserve and enhance natural or scenic resources, protect streams or water supply, promote conservation of soils, wetlands, beaches or tidal marshes, enhance the value to the public of abutting or neighboring parks, forest, wildlife preserves, or nature reservations or sanctuaries or other open space areas, enhance recreation opportunities, preserve historic sites, or preserve visual quality along highway, road, and street corridor or scenic vistas. Open space is also that land that is developed to enhance any of the foregoing elements, including the construction of access points, hiking trails, ATV and snowmobile trails, beaches, golf courses, and similar recreational activities, all on such conditions as may be reasonably required by the Planning Board.

**PARCEL:** (see **LOTS**).

**PARKING SPACE:** The area required for parking one automobile which in this zoning law under Article VI, Section 6.12, is held to be an area at least ten feet wide and 20 feet long, exclusive of passageways and driveways thereto.

**PERFORMANCE BOND:** A financial guarantee approved by the Town Board and its Attorney, after a review by the Planning Board, which is used to ensure certain improvements will be instituted in the future by the developer.

**PERSON:** Refers to an individual, corporation, business or land trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by the State of New York.

**PIPELINE:** All parts of those physical facilities through which oil, gas, liquids in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

**PLANNED UNIT DEVELOPMENT (PUD):** A designed grouping of varied and compatible land uses, such as housing, recreation, commercial centers, and industrial parks, all within one contained development or subdivision maintained and operated as a unit in single ownership or control by an individual, partnership, corporation or cooperative group, which has certain facilities in common, such as yards and open spaces, recreation areas, garages and parking areas. See Article VII, Section 7.3 for standards applicable to this definition.

**PLANNING BOARD:** The duly appointed Planning Board of the Town of Tusten. Also see **LOCAL GOVERNING BOARD**.

**POLE SIGN:** A permanent, freestanding sign that is mounted on a pole(s) or other support(s) that is placed on and anchored in the ground or on a base and that is independent from any building or other structure.

**POLITICAL MESSAGE SIGN:** A sign containing a message intended for a political purpose or a message which pertains to an issue of public policy of possible concern to the electorate, but does not include a message intended solely for a commercial purpose.

**POLLUTION:** The contamination or other diminution of the physical, chemical or biological properties of land, water, or air, including a change in taste, color, turbidity or odor, and including a discharge of any liquid, gaseous, solid, radioactive or other substance on land, water or air, that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to humans, animal life, vegetation, or property, or to the public health, safety or welfare.

**PORTABLE SIGN:** A sign, with changeable message, designed to be readily relocated.

**PORTABLE STORAGE UNITS/ PORTABLE ON DEMAND (PODS):** A transportable storage unit designed and used primarily for temporary storage of building materials, household goods, personal items and other materials for use on a limited basis on residential and non-residential properties which is located for such purposes outside an enclosed building other than an accessory building or shed complying with all building codes and land use requirements.

**POST OFFICE(S):** An office use involving a public department or corporation responsible for mail delivery where mail is received, sorted, and delivered and where stamps and other postal materials are sold.

**POULTRY RAISING, HIGH-DENSITY:** A farm, the major occupation of which is the raising of poultry, wherein there is one square foot or less of floor space per bird in those structures housing the poultry.

**POULTRY RAISING, LOW-DENSITY:** A farm, the major occupation of which is the raising of poultry, wherein there is more than one square foot of floor space per bird in those structures housing the poultry.

**PRIMARY OFFICE:** A professional or business office that is the headquarters or main office of any business or commercial use.

**PRINCIPAL PERMITTED USE:** A principal use allowed as a matter of right in the district in which it is permitted.

**PRIVATE ELECTRIC POWER GENERATION FACILITY:** One or more power generators of more than one thousand (1,000) horsepower in the aggregate, fueled by diesel, oil, gas, propane or other fossil fuel, the primary function of which is the provision of electricity to an industrial use.

**PRIVATE GARAGE:** A structure primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the family resident(s) upon the premises. Carports shall be considered garages within this definition.

**PRIVATE WATER SYSTEM:** A system for the provision of water for human or animal consumption through pipes or other constructed conveyances, where such system has fewer than fifteen (15) service connections or regularly serves fewer than twenty-five (25) individuals.

**PRIVATE STABLE:** An accessory use/building for the keeping of horses for the private use of the property owner. A person may keep only the number of horses permitted for the lot area as described as follows: (1) one horse per 15,000 square feet of property; (2) two horses per one-half acre but less than one acre; (3) three horses per one acre but less than two acres; and (4) four horses or more, at least one-half acre per horse. A private stable must include a roof, a pen or corral containing at least 100 square for each animal and the use shall have proper drainage so as not to create offensive odors, fly breeding, or other nuisances.

**PROFESSIONAL BUILDINGS/OFFICES:** A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations. Examples are medical, dentist, law, engineering and surveying, insurance, accounting, and real estate offices.

**PROJECTING SIGN:** means a sign that is attached to and supported by a building and extends perpendicular to the building.

**PROPERTY:** (see **REAL PROPERTY**)

**PUBLIC FACILITIES AND UTILITIES:** Land set aside for the development and maintenance of services provided for the public good by governmental agencies.

**PUBLIC SCHOOL(S):** An elementary or secondary school or charter school following New York State Department of Education guidelines supported by public funds and providing free education for children of a community or district.

**PUBLIC USES:** Any structure, building or use owned or use owned and operated by a government body, special district, or non-profit organization including such things as schools, parks, civic centers, municipal



buildings but excluding solid waste disposal facilities, institutional uses, nursing homes, hospitals and other use specifically defined by this Law.

**PUBLIC UTILITY:** Building, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, operated by a public utility and relating to the furnishing of utility services to the public by that public utility.

**RADIOACTIVE MATERIAL:** Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

**RADIATION:** The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

**REAL ESTATE SIGN:** A sign for advertising property for sale, lease or rent.

**REAL PROPERTY or PROPERTY:** Means all real property, articulated through a parcel(s), that is subject to this zoning law of the Town of Tusten, and includes the earth, water and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

**RECREATIONAL FACILITY, COMMERCIAL INDOOR:** A recreational facility operated as a business and open to the public that is conducted entirely indoors such as a roller-skating rink, video arcade or bowling alley.

**RECREATIONAL FACILITY, PUBLIC:** Parks, swimming pools, playgrounds, tennis courts, and other recreational facilities owned and operated by the Town, County, school district, state, or federal government.

**RECREATIONAL FACILITY, TOURIST:** A recreational facility designed to provide overnight accommodations in permanently constructed buildings in combination with a variety of generally active recreational opportunities such as hiking, horseback riding, ball games and swimming; including summer camps for youth; including restaurants and specialty shops for guests of the facility; and excluding campgrounds.

**RECREATIONAL VEHICLES AND EQUIPMENT:** Includes all terrain vehicles (ATVs), snowmobiles, off road trucks, motorized boats, boat trailers, trailers, pickup campers or coaches (designed to be mounted on automotive or truck vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

**RESEARCH AND DEVELOPMENT:** A use devoted to the systematic investigation or experimentation involving innovation or technical risk, the outcome of which is either new knowledge or new or improved materials, products, devices, processes, or services. The research and development use

includes basic research, applied research, and experimental development and testing. The research and development use does not include the manufacture of products for wholesale or retail sale or the commercial servicing or repair of products.

**RESIDENTIAL CONSERVATION SUBDIVISION:** A form of development for single-family residential subdivisions that permits a reduction in lot area and other development standards, given the specific site conditions, and where no less than a specified proportion of the total land area is devoted to permanent open space.

**RESTAURANT:** Any establishment primarily offering sit-down dining for sale and consumption of food and drink on-premises.

**RETAIL SHOPS:** A use devoted principally to the sale of goods or commodities in small quantities directly to consumers.

**RIVER ACCESS FACILITY:** A property/parcel used as an area of entry to the river for the purpose of launching or landing of watercraft. It may include ancillary facilities, other than base operations for watercraft rentals, and may be operated as a private business.

**ROAD:** A public thoroughfare or right-of-way dedicated, deeded or condemned for use as such, which affords the public the principal means of transport and access to abutting property.

**ROADSIDE STAND SIGN:** A sign advertising for a farm stand business or arts and crafts business operating from a temporary location.

**ROOF SIGN:** A sign located upon, against, or above the roof of a building, or a sign attached to the roof or parapet of a building.

**SATELLITE DISH ANTENNA:** Any circular or parabolic-shaped device of solid or mesh construction, designed, erected and capable of receiving telecommunication signals from a transmitter located in planetary orbit to yield an unscrambled satellite-generated electronic signal that, when viewed on a conventional television set, is at least equal in picture quality to those received from local commercial television stations or by way of cable television systems. A satellite dish antenna is an accessory use in all zoning districts of the Town of Tusten subject to the following conditions:

- a. In the RB and DB zoning districts, satellite dish antennas may be located in any yard area or on the roof of any building. In the SR, RR, R1, R2, and GR zoning districts, satellite dish antennas shall be located in rear yard areas only, in an area bounded by the side setbacks, the rear wall of the primary structure, and a line no less than four feet inside the lot as measured from the rear property line. If usable satellite signals cannot be obtained by a satellite dish antenna located in the rear yard, the device may be located in the side yard between the primary structure and the side setback line. If a usable signal is still not available in a side yard location, the device may be located in the front yard provided it is located within the normal building setback requirements.

b. In the RB and DB zoning districts, there shall be no height limit for satellite dish antennas. In all the SR, RR, R1, R2, and GR zoning districts, satellite dish antennas detached from a primary structure shall not exceed a height of fifteen feet, as measured from grade at the support member to the highest point of the dish. Satellite dish antennas attached to a primary structure, either on the roof or to a wall of the structure, shall not exceed the elevation of the highest peak of the roof of the structure, exclusive of chimneys, mechanical units, or other similar items.

**SAWMILL:** Any facility constructed and used for the processing forestry products into milled lumber, cants, treated posts, firewood and wood by-products such as milled slab wood, wood chips, bark chips and sawdust, and including planning and sizing facilities, kilns, storage yards and accessory maintenance facilities incidental to sawmill operations. Also, see **VALUED-ADDED WOOD PROCESSING**.

**SEASONAL RESIDENCE:** a parcel of land used or intended to be used to provide a residential dwelling(s) which meets all New York State Department of Environmental Conservation (NYSDEC) and Department of Health (NYSDOH) health standards.

**SENIOR HOUSING:** Dwellings specifically designed to offer a family type of living environment where residences feel like a home instead of a medical facility for individuals 62 years of age or older for one of the following: a) a single person 62 years of age or older; b) two or three persons, all of who are sixty-two years of age or older; c) a married couple in which one spouse is 62 years of age or older; d) one child residing with a parent who is 62 years of age or older provided that the child is over the age of 18; e) the surviving spouse of a person 62 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death, and f) if there is no child in residence, an adult 18 years of age or older residing with a person 62 years of age or older, provided that the adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State. Some senior housing may have communal dining facilities and services such as housekeeping, organized social and recreational activities, transportation services, and other support services appropriate for the residents. Senior housing units should be differentiated from assisted living facilities or congregate care facility.

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

**SERVICE USES/ESTABLISHMENTS:** A use devoted principally to the sale of services directly to consumers.

**SEQUESTERING WATER USE:** Water that is sequestered from the natural hydrologic cycle. This term does not include water that has evaporated, transpired, been consumed by humans or livestock, used for irrigating crops, or otherwise returned to the atmosphere or incorporated into food products.

**SHED:** A small structure, an accessory building/use, either freestanding or attached to a larger structure, serving for storage or shelter as an accessory use. Such structure shall not exceed 15 feet in height and shall be at a maximum-144 square feet, and meet the minimum required side yard setbacks, and shall be located no closer than a distance equal to its height to the rear lot line.

**SHOOTING RANGE:** An indoor or outdoor facility intended to be used for firearms practice. Indoor ranges typically will have a back wall with a sloped earthen berm or bank, with reinforced baffles additionally situated along the roof and side walls. Ventilation is carefully controlled to pull smoke and lead particles away from the shooting line and to exhaust them from the building. Outdoor shooting ranges typically will be backed by a high retaining wall, earth mound, sandbag barrier or specially designed funnel-shaped traps to prevent the ricochet of bullets or shots going outside the bounds of the shooting range.

**SIGN:** A device or structure for providing direction or information to the public on such things as a development, business, product, service, location, event or person.

**SIGN AREA:** The area of one (1) sign face available for advertising of a single or multiple faced sign, excluding the main support structure.

**SIGN HEIGHT:** The vertical distance measured at right angles from the highest point of the sign or sign structure, to the finished grade directly below.

**SIGN, DIRECTIONAL:** A sign for directing pedestrian or vehicular traffic including ingress and egress signs and parking signs, but does not include advertising, with the exception of a logogram. Also see **DIRECTIONAL SIGN**.

**SINGLE-FAMILY DWELLING (also see DWELLING):** A building containing one dwelling unit only, including modular and conventional construction, and that is occupied by one family.

**SITE PLAN:** A rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in Article VIII of this zoning law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.

**SITE PLAN REVIEW:** A review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in Article VIII of this zoning law.

**SMALL HOTEL/MOTEL:** A small hotel shall be one of twelve (12) or fewer rental units, also see **HOTEL**. Likewise, a small motel shall be one of twelve (12) or fewer living or sleeping accommodations, also see **MOTELS, MOTOR COURTS and MOTOR HOTELS**.

**SPECIAL USE:** A use that because of its unique characteristics requires individual consideration through a procedure of review by the Planning Board, in order to determine whether a Special Use Permit should be granted, conditionally granted, or denied.

**STORAGE TANKS, COMMERCIAL:** An aboveground or belowground storage tank exceeding a storage capacity of 1,000 gallons used for the storage for resale of gaseous or liquid materials, including but not limited to propane, chemicals and petroleum products.

**STRUCTURE:** An assembly of materials constructed or erected for use, occupancy, or ornamentation which requires location on the ground or attachment to something on the ground.

**STRUCTURE, PERMANENT:** Anything structure constructed where the use requires permanent location on the ground or attachment to something having permanent location on the ground.

**STRUCTURE, TEMPORARY:** Structures erected for a period of less than 180 days. This definition includes sheds, tents but prohibits RVs, motor vehicles, house car, or any trailer attached to a motor vehicle.

**STUDIOS:** Small scale facilities used for individual and group instruction and training in the arts; production rehearsal; photography, and the processing of photographs produced only by users of the studio facilities; martial arts training studios; gymnastics instruction, yoga instruction, and aerobics and gymnastics studios with no other fitness facilities or equipment.

**SUBDIVISION:** Refers to the division of any parcel of land into two or more lots, blocks, or sites, with or without streets or highways, and includes re-subdivision. A condominium, or two house development, constitutes a subdivision.

**SUBDIVISION PLAT PLAN:** Refers to a development plan submitted to a local governing body by a applicant/landowner describing visually the layout of lots and blocks with proposed streets, crossways, easements, and location of wetlands and water courses. Subdivision plat plans can include a planned unit development, a preliminary or final subdivision plat, or a conservation subdivision.

**SUBSTANDARD LOT:** Any lot on record in the office of the County Clerk which does not meet the minimum area, width, or yard requirements for the district in which that lot is located.

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement or repair is started; or (2) if the structure has been damaged and is being restored, before the damage occurred.

**SUMMER CAMP:** One or more temporary or permanent shelters, buildings or structures, together with the lot or tract of land appertaining thereto, established or maintained as living quarters for temporary occupancy and not arranged or intended for such occupancy except during the period, or part of the period, from May 15 to October 15 in any year. Said facilities may provide recreational and/or other programs offered for the benefit of the occupants.

**SURFACE DISTURBANCE:** Any man-made change in improved or unimproved land sub-surface and surface, including but not limited to: construction, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the surface or sub-surface physical

character of any land, including clearing, grubbing, dredging, grading, excavating, extracting, exploration, stockpiling, paving, berming, soil disturbance, placement of fill, or storage of equipment or materials in pits, ponds or detention facilities. The scope of surface disturbance includes all activities that are necessary or convenient for the project that is being undertaken, such as associated infrastructure developments including pipelines, access roads, utility transmission facilities, drainage ditches and the like. For determining the area or extent of surface disturbance, a proposed project may not be segmented into smaller components, but rather the entire scope and larger common plan of development of a project shall be taken into account even though multiple separate and distinct land development activities may take place at different times on different schedules.

**SWIMMING POOL, PRIVATE:** A body of water in an artificial or semi artificial receptacle or other container, whether located indoors or outdoors, in-ground or above ground, having a depth at any point of more than eighteen (18) inches or a surface area of more than one hundred (100) square feet used or intended to be used for private swimming by adults or children, or by both adults and children or an individual for use by their household and guests without fees, and located on property owned, leased or otherwise used and maintained by the owner of said swimming pool.

**SWINE RAISING, HIGH-DENSITY:** Any farm operation conducted for financial or other consideration that consists in whole or in part of the raising of swine where the number of swine exceeds 50 at any given time.

**TEMPORARY USE:** A use established for a fixed period of time, with the intent to discontinue such use upon the expiration of such time, and that does not involve the construction or alteration of any permanent structure.

**THEATER:** Is a performance hall where theatrical works or plays are performed or other performances such as musical concerts may be given. This term includes all open-air facilities, such as outdoor stages, amphitheaters or performing arts centers.

**THEATRE, OUTDOOR:** An open lot or part thereof, with it appurtenant structures and facilities, devoted primarily to the showing of motion pictures or theatrical production on a paid admission basis.

**TOWN BOARD:** The duly constituted Town Board of the Town of Tusten. Also, see **LOCAL GOVERNING BOARD**.

**TOWN OF TUSTEN COMPREHENSIVE PLAN: (see COMPREHENSIVE PLAN).**

**TRANSIENT:** To remain in a place for only a brief time, typically less than six months. It shall also mean a person who stays for a short time only, such as a hotel guest, boarder, or seasonal lessee or licensee.

**TRANSMISSION LINE:** A pipeline that transports oil, gas, electric, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

**TRAVEL TRAILER:** A vehicular portable structure, built on a chassis, designed to be used as a temporary residence for travel, recreational and vacation use, having a body width not exceeding eight feet and being of any length, provided that its gross weight does not exceed 4,500 pounds.

**A. TRAVEL TRAILER, INDEPENDENT**

— A travel trailer having sleeping, kitchen and full bathroom equipment, with a holding tank and provision for attachment to a sewer connection.

**B. TRAVEL TRAILER, DEPENDENT**

— A travel trailer having sleeping and kitchen facilities but without full bathroom equipment, a holding tank and provision for attachment to a sewer connection.

**TWO-FAMILY DWELLING (Also see DWELLING):** A detached or semidetached building containing two separate, individual family or dwelling units, unconnected except for access to the outside or to a common cellar.

**UNDERGROUND INJECTION:** Subsurface emplacement of fluids by well injection.

**UNDERGROUND NATURAL GAS STORAGE:** Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

**USABLE AREA (WITH RESPECT TO INDIVIDUAL WASTE DISPOSAL SYSTEMS):** The general area required and suitable for the normal and reasonable development of each building site in a subdivision to permit the provision of water supply and sewage facilities to serve the area for the proposed occupancy in accordance with the provisions of local ordinances, watershed rules and regulations and the requirements of the New York State Department of Health or other state agency having jurisdiction.

A. A usable area shall not be deemed to include any area occupied by an existing building, structure, lake, stream, pond or swamp or area of exposed or underlying rock or groundwater within two feet of the surface, or marginal areas subject to flooding or along streams or other bodies of water.

B. The area intended for separate sewerage systems shall be well drained by natural or artificial means.

C. The Department may require to be shown such usable area as it may deem necessary for any other type of land usage other than single-family occupancy indicated on the plan or permitted under existing zoning laws, if any.

D. The usable area shall include a protective area not less than 10 feet in width laterally on all sides of the separate sewerage system and such other protective area between any separate sewerage system and any water supply line or drainage, watercourse or other hazardous condition as the Department shall deem necessary or adequate.



E. As applied to separate sewerage systems, the usable area shall contain suitable absorptive area for a depth of not less than two feet below proposed leaching devices. Where placement of soils is made in sewage leaching areas, the existing surface soils may not be displaced over clay or rock.

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

**USE, TEMPORARY:** (See **TEMPORARY USE**).

**VALUED-ADDED WOOD PROCESSING:** Any use involving a kiln process to artificially dry wood for commercial, manufacturing, and/or industrial purposes, and that can involve the importation of timber and export of wood products via trucking or other means of transportation and storage and facilities on-site. Also see **AGRI-BUSINESS** and **INDUSTRIAL, LIGHT**.

**VARIANCE:** An area variance or a use variance, as the context may admit using the following parameters:

VARIANCE, AREA: The authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE: The authorization by the Board of Appeals for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations.

**VETERINARIAN CLINIC/OFFICE (also see ANIMAL HOSPITAL ):** A facility where animals or pets are given medical or surgical treatment and the boarding of animals for extended periods is part of the care given at the facility.

**VESTED RIGHTS:** Refers to the rights to undertake and complete the development of a parcel or parcels under the terms and conditions of an approved site plan or subdivision plan in accordance with the zoning law under which the approval was granted. Article XV of this law sets forth the expectations of vested rights among applicants who intend to develop in the Town.

**VINEYARD:** A plantation or farmland devoted to cultivating grape-bearing vines, grown mainly for winemaking, but also for raisins, table grapes and nonalcoholic grape juice.

**WALL SIGN:** A sign fastened to or painted on a wall.

**WAREHOUSE:** A building, or part of a building, for storing goods, wares and merchandise, whether for the owner or others, and whether it is a public or private warehouse.

**WATER, WATER RESOURCES:** All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or



underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

**WATER WITHDRAWAL:** Removal or capture of water from water resources within the Town.

**WHOLESALE BUSINESS/WHOLESALE DISTRIBUTION:** Establishments engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Includes such establishments as: agents, merchandise or commodity brokers, and commission merchants; assemblers, buyers and associations engaged in the cooperative marketing of farm products; merchant wholesalers; stores primarily selling electrical, plumbing, heating and air conditioning supplies and equipment.

**WILDLIFE MANAGEMENT:** Management of natural wildlife and associated habitats indigenous to New York State and the Upper Delaware Region with the intent of enhancing such to include both big and small game hunting and fishing activities.

**WINDOW SIGN:** A sign placed on or inside a window that faces the outside and is intended to be seen from the outside.

**YARD:** An open space which lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as herein permitted.

**A. YARD, FRONT**

— An open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward.

**B. YARD, REAR**

— An open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward.

**C. YARD, SIDE**

— An open space extending from the front yard to the rear yard between a principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

**ZONING MAP:** The Zoning Map or Maps for the Town of Tusten, New York, together with all amendments subsequently adopted.

**TOWN OF TUSTEN ZONING LAW**

**ARTICLE III — ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP**

**3.0      ESTABLISHMENT OF DISTRICTS**

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

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

Additionally, overlay districts are hereby established. An “overlay district” is a special district that is drawn on a map over a specific area, usually an area where there is a significant resource such as a shoreline, historic area or a mountain ridge. The overlay district supplements other land use regulations, such as subdivision requirements, site plan review requirements, and zoning districts of the Town. Presently, two overlay zones exist.

The first overlay zone is the Floodplain (FP) Overlay District, encompassing those portions of Town mapped by the National Flood Insurance Program (NFIP) under the auspices of the Federal Emergency Management Agency (FEMA) as 100-year flood areas and/or commonly referred to as “Special Flood Hazard Areas.” Article VI, Section 6.5 of this law sets forth standards applicable to the FP Overlay District.

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

**3.1      ZONING MAP**

The Zoning Districts established by Section 3.0 of this Zoning Law, and the FP Overlay District and the SO Overlay District, are shown on the "Official Zoning Map of the TOWN OF TUSTEN," which, along with all explanatory matter thereon, is hereby made a part of this Zoning Law and shall be kept on file in the office of the Town Clerk. Unofficial reductions of these maps are appended to this law for reference purposes only. New PUD Districts shall be added to the Map as the same are from time to time approved by the Town Board. The FP Overlay District may be shown separately on the most current

Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency, which is housed with the Town via the Code Enforcement Officer (CEO).

### **3.2    INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

#### **3.2.1    Designation of District Boundaries**

Zoning district boundary lines are intended to follow or be parallel to the center line of streets, streams and railroads, and lot or property lines as they exist on a recorded deed or plan of record in the Sullivan County Clerk's Office and on the Sullivan County Tax Maps at the time of the enactment of this Law, unless such district boundary lines are fixed by dimensions or other points of reference as shown on the Official Zoning Map. Where no dimensions are given, the Code Enforcement Officer (CEO) shall scale the dimension. In the case of the Zoning District boundaries that follow the Delaware River, all areas of the Delaware River within the boundary of the Town shall be included in the applicable Zoning District as shown on the " Official Zoning Map of the TOWN OF TUSTEN."

#### **3.2.2    Determination of Locations of Boundaries**

Where the true location of a district boundary line is uncertain, the Code Enforcement Officer (CEO) shall request the Zoning Board of Appeals to determine such location.

**ARTICLE IV — DISTRICT REGULATIONS**

**4.0    SCHEDULE OF DISTRICT REGULATIONS**

The restrictions and controls intended to regulate development in each district are set forth in the Schedule of District Regulations presented below, which is supplemented by other sections of this Law. Any use identified as A Principal Permitted Use shall be permitted as a matter of right upon application to the Code Enforcement Officer, provided the proposed use is in compliance with these regulations. Special Uses are subject to Planning Board approval and, specifically, site plan review as pre-requisites to the Code Enforcement Officer issuing a permit for their establishment.

See Article XIII of this law, regarding certain Uses that are Explicitly Prohibited anywhere and everywhere throughout the Town.

SCENIC RIVER DISTRICT - SR																									
INTENT: The SR-Scenic River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) corridor as defined and designated as a "Scenic Segment" or "Recreational Segment" in the November 1986, Upper Delaware Final River Management Plan (RMP) prepared by the Conference of Upper Delaware Townships in cooperation with the National Park Service. This District is further intended to preserve the scenic character of the corridor which is presently undeveloped.																									
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																						
<ul style="list-style-type: none"><li>• 1-family dwellings units of slopes of 15% or less (not included manufactured homes)</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customarily accessory uses (i.e. deck, patios, outdoor fireplace, see definition)</li><li>• HBHO (2)</li><li>• Signs in association with an approved uses</li><li>• Sheds</li><li>• Private Stables</li><li>• Private swimming pools</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• 1-family dwellings units on slopes greater than 15%.</li><li>• Accessory Apartment/Family Based</li><li>• Agricultural/Farm Operations</li><li>• Agribusiness</li><li>• Agricultural, On-Site Processing</li><li>• Cemeteries</li><li>• Bed &amp; Breakfast Establishments (3)</li><li>• Farm Stands</li><li>• Forest management</li><li>• Greenhouses</li><li>• Group Homes</li><li>• Hunting/Fishing/Sportsmen Clubs</li><li>• Hunting Preserves</li><li>• Nurseries (commercial)</li><li>• Sawmills</li><li>• Value-Added Wood Processing</li><li>• Wildlife management</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>5 acres</td></tr><tr><td>Lot width</td><td>300 feet</td></tr><tr><td>Minimum river &amp; Road frontage</td><td>300 feet</td></tr><tr><td>Minimum yard dimensions:</td><td></td></tr><tr><td>Front yard</td><td>50 feet</td></tr><tr><td>Side yard</td><td>35 feet</td></tr><tr><td>Rear yard</td><td>50 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Lot clearing</td><td>20%</td></tr><tr><td>Minimum Sq ft.</td><td>500 sq ft.</td></tr><tr><td>Lot coverage</td><td>1 acre or 15%, whichever is less.</td></tr></table>	Lot area	5 acres	Lot width	300 feet	Minimum river & Road frontage	300 feet	Minimum yard dimensions:		Front yard	50 feet	Side yard	35 feet	Rear yard	50 feet	Maximum permitted building height	28 feet	Lot clearing	20%	Minimum Sq ft.	500 sq ft.	Lot coverage	1 acre or 15%, whichever is less.
Lot area	5 acres																								
Lot width	300 feet																								
Minimum river & Road frontage	300 feet																								
Minimum yard dimensions:																									
Front yard	50 feet																								
Side yard	35 feet																								
Rear yard	50 feet																								
Maximum permitted building height	28 feet																								
Lot clearing	20%																								
Minimum Sq ft.	500 sq ft.																								
Lot coverage	1 acre or 15%, whichever is less.																								
NOTES:																									
(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board																									
(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.																									
(3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.																									

Residential River District-RR																									
INTENT: The RR-Scenic River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) corridor and protect the scenic character of that portion of the corridor which is presently undeveloped but allow for moderate river recreational use and somewhat greater density for development.																									
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																						
<ul style="list-style-type: none"><li>• 1 &amp; 2 family dwellings units of slopes of 15% or less.</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customary accessory uses establishments</li><li>• Essential Services</li><li>• HBHO (2)</li><li>• Home greenhouses</li><li>• Signs in association with an approved use</li><li>• Sheds</li><li>• Private Stables</li><li>• Private swimming pools</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• 1 &amp; 2 family dwellings units on slopes greater than 15% or less</li><li>• Accessory Apartment/Family Based</li><li>• Agricultural/Farm Operations</li><li>• Agribusiness</li><li>• Agricultural, On-Site Processing</li><li>• Bed &amp; Breakfast Establishments (3)</li><li>• Campgrounds</li><li>• Canoe liveries</li><li>• Cemeteries</li><li>• Commercial recreation</li><li>• Forest management</li><li>• Farms stands</li><li>• Group Homes</li><li>• Hunting/Fishing/Sportsmen Clubs</li><li>• Hunting Preserves</li><li>• Public Uses</li><li>• River Access Facilities</li><li>• Sawmills</li><li>• Small Hotel/Motels</li><li>• Residential Conservation Subdivision Development</li><li>• Value-Added Wood Processing</li><li>• Wildlife management</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>3 acres</td></tr><tr><td>Lot width</td><td>300 feet</td></tr><tr><td>Minimum river or Road frontage</td><td>300 feet</td></tr><tr><td>Minimum yard dimensions:</td><td></td></tr><tr><td>Front yard</td><td>50 feet</td></tr><tr><td>Side yard</td><td>35 feet</td></tr><tr><td>Rear yard</td><td>50 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Minimum Sq Ft</td><td>500 ft sq</td></tr><tr><td>Lot clearing</td><td>20%</td></tr><tr><td>Lot coverage</td><td>43,560 sq. ft. or 20%, whichever is less</td></tr></table>	Lot area	3 acres	Lot width	300 feet	Minimum river or Road frontage	300 feet	Minimum yard dimensions:		Front yard	50 feet	Side yard	35 feet	Rear yard	50 feet	Maximum permitted building height	28 feet	Minimum Sq Ft	500 ft sq	Lot clearing	20%	Lot coverage	43,560 sq. ft. or 20%, whichever is less
Lot area	3 acres																								
Lot width	300 feet																								
Minimum river or Road frontage	300 feet																								
Minimum yard dimensions:																									
Front yard	50 feet																								
Side yard	35 feet																								
Rear yard	50 feet																								
Maximum permitted building height	28 feet																								
Minimum Sq Ft	500 ft sq																								
Lot clearing	20%																								
Lot coverage	43,560 sq. ft. or 20%, whichever is less																								
NOTES: (1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board (2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7. (3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.																									

Rural Residential District-R1																									
INTENT: The R1-Rural Residential District is intended to provide for low density residential development in combination with compatible commercial activities appropriate to rural areas of the Town of Tusten.																									
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																						
<ul style="list-style-type: none"><li>• 1 &amp;2 family dwellings units of slopes of 15% or less</li><li>• Agriculture/Farm Operations</li><li>• Arts, crafts, antique shops.</li><li>• Places of worship</li><li>• Forest management (except sawmills)</li><li>• Public schools</li><li>• Public Uses</li><li>• Wildlife management</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customary accessory uses</li><li>• HBHO (2)</li><li>• Signs in association with an approved use</li><li>• Sheds</li><li>• Private Stables</li><li>• Private swimming pools</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• 1 &amp;2 family dwellings units on slopes of 15% or more</li><li>• Accessory Apartment/Family Based</li><li>• Adult-Oriented businesses</li><li>• Agribusiness , Agricultural, On-Site Processing</li><li>• Automotive, Vehicle &amp; Equipment Sales</li><li>• Bed &amp; Breakfast Establishments (3)</li><li>• Business and Professional Offices</li><li>• Campgrounds</li><li>• Cell Sites</li><li>• Cemeteries</li><li>• Clubs</li><li>• Commercial Recreation</li><li>• Day Care Centers</li><li>• Eating and Drinking Establishments</li><li>• Enclosed storage/PODS</li><li>• Farm Stands</li><li>• Gasoline Service Stations</li><li>• Group Homes</li><li>• Hunting/Fishing/Sports.Clubs</li><li>• Hunting Preserves</li><li>• Kennels (Commercial)</li><li>• Mass Gatherings</li><li>• Manufactured Homes</li><li>• Manufactured Home Parks</li><li>• Mineral Extraction (mining)</li><li>• Motor Vehicle Repair</li><li>• Multifamily Dwellings</li><li>• Light Industrial</li><li>• Public Utilities and Facilities</li><li>• Residential Conservation Subdivision Development</li><li>• Sawmills</li><li>• Seasonal Residences</li><li>• Small motels and hotels</li><li>• Summer Camps</li><li>• Value-Added Wood Processing</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>3 acres</td></tr><tr><td>Lot width</td><td>300 feet</td></tr><tr><td>Minimum river &amp; Road frontage</td><td>300 feet</td></tr><tr><td>Minimum yard dimensions:</td><td></td></tr><tr><td>Front yard</td><td>50 feet</td></tr><tr><td>Side yard</td><td>35 feet</td></tr><tr><td>Rear yard</td><td>50 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Minimum Sq FT</td><td>500 sq ft</td></tr><tr><td>Lot clearing</td><td>20%</td></tr><tr><td>Lot coverage</td><td>43,560 sq. ft. or 20%, whichever is less</td></tr></table>	Lot area	3 acres	Lot width	300 feet	Minimum river & Road frontage	300 feet	Minimum yard dimensions:		Front yard	50 feet	Side yard	35 feet	Rear yard	50 feet	Maximum permitted building height	28 feet	Minimum Sq FT	500 sq ft	Lot clearing	20%	Lot coverage	43,560 sq. ft. or 20%, whichever is less
Lot area	3 acres																								
Lot width	300 feet																								
Minimum river & Road frontage	300 feet																								
Minimum yard dimensions:																									
Front yard	50 feet																								
Side yard	35 feet																								
Rear yard	50 feet																								
Maximum permitted building height	28 feet																								
Minimum Sq FT	500 sq ft																								
Lot clearing	20%																								
Lot coverage	43,560 sq. ft. or 20%, whichever is less																								
<p>(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board</p> <p>(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.</p> <p>(3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.</p>																									

Rural Development District-R2																									
INTENT: The R2-Rural Development District is intended to provide for moderate-density rural residential neighborhood and combined with essential commercial support activities.																									
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																						
<ul style="list-style-type: none"><li>• 1 &amp;2 family dwellings units of slopes of 15% or less.</li><li>• Agriculture/Farm Operations</li><li>• Arts, crafts, antique shops.</li><li>• Group Homes</li><li>• Farm Operations</li><li>• Forest Management</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customary accessory uses</li><li>• HBHO (2)</li><li>• Signs in association with an approved use</li><li>• Sheds</li><li>• Private Stables</li><li>• Private swimming pools</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• 1 &amp;2 family dwellings units on slopes of 15% or more</li><li>• Agribusiness</li><li>• Agricultural, On-Site Processing</li><li>• Automotive, Vehicle &amp; Equipment Sales</li><li>• Accessory Apartment/Family Based</li><li>• Bed &amp; Breakfast Establishments (3)</li><li>• Building Supply Stores</li><li>• Commercial recreation</li><li>• Day Care centers</li><li>• Eating and Drinking Establishments</li><li>• Educational Institutions</li><li>• Enclosed storage/PODS</li><li>• Farm Stands</li><li>• Gasoline Service Stations</li><li>• Group Homes</li><li>• Hotels and Motels</li><li>• Light Industrial</li><li>• Lumber Yards</li><li>• Mass Gatherings</li><li>• Manufactured homes</li><li>• Motor Vehicle Repair</li><li>• Multifamily dwellings</li><li>• Public Utilities and Facilities</li><li>• Retail Shops</li><li>• Residential Conservation Subdivision Development</li><li>• Light Industry</li><li>• Value-Added Wood Processing</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>3 acres</td></tr><tr><td>Lot width</td><td>300 feet</td></tr><tr><td>Minimum river &amp; Road frontage</td><td>300 feet</td></tr><tr><td>Minimum yard dimensions:</td><td></td></tr><tr><td>Front yard</td><td>50 feet</td></tr><tr><td>Side yard</td><td>35 feet</td></tr><tr><td>Rear yard</td><td>50 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Minimum Sq Ft</td><td>500</td></tr><tr><td>Lot clearing</td><td>20%</td></tr><tr><td>Lot coverage</td><td>43,560 sq. ft. or 20%, whichever is less</td></tr></table>	Lot area	3 acres	Lot width	300 feet	Minimum river & Road frontage	300 feet	Minimum yard dimensions:		Front yard	50 feet	Side yard	35 feet	Rear yard	50 feet	Maximum permitted building height	28 feet	Minimum Sq Ft	500	Lot clearing	20%	Lot coverage	43,560 sq. ft. or 20%, whichever is less
Lot area	3 acres																								
Lot width	300 feet																								
Minimum river & Road frontage	300 feet																								
Minimum yard dimensions:																									
Front yard	50 feet																								
Side yard	35 feet																								
Rear yard	50 feet																								
Maximum permitted building height	28 feet																								
Minimum Sq Ft	500																								
Lot clearing	20%																								
Lot coverage	43,560 sq. ft. or 20%, whichever is less																								
<p>NOTES:</p> <p>(1) Special uses are subject to site plan review by the Town of Tusten Planning Board</p> <p>(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.</p> <p>(3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.</p>																									



<b>General Residential District-GR</b>			
INTENT: The GR-General Residential District is intended to provide for higher-density residential neighborhoods where public water and sewer infrastructure is available, along with other essential public services.			
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS
<ul style="list-style-type: none"> <li>• 1 &amp;2 family dwellings units of slopes of 15% or less</li> </ul>	<ul style="list-style-type: none"> <li>• Carports</li> <li>• Private Garages</li> <li>• Customary accessory uses</li> <li>• Greenhouse (private)</li> <li>• HBHO</li> <li>• Sheds</li> <li>• Private Swimming Pools</li> <li>• Satellite Dish Antennae accessory to a residential structure</li> <li>• Keeping of not more than 3 dogs over 4 months old</li> </ul>	<ul style="list-style-type: none"> <li>• 1 &amp;2 family dwellings units on slopes of 15% or more</li> <li>• Accessory Apartment/Family Based</li> <li>• Bed &amp; Breakfast Establishments (3)</li> <li>• Day Care Centers</li> <li>• Forest Management</li> <li>• Multifamily Dwellings</li> <li>• Public Uses</li> <li>• Senior Housing</li> <li>• HBHO (2)</li> </ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <p>Lot area                      15,000 sq ft</p> <p>Lot width                    100 feet</p> <p>Minimum yard dimensions:</p> <p>Front yard                    40 feet</p> <p>Side yard                     25 feet</p> <p>Rear yard                     50 feet</p> <p>Maximum permitted building height                    28 feet</p> <p>Lot clearing                    15%</p> <p>Lot coverage                   25%</p>
<p>NOTES:</p> <p>(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board</p> <p>(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.</p> <p>(3) "Bed and Breakfast Establishments" refer to the different definitions of these uses included in this law. See Definitions.</p>			

Roadside Business District-RB																					
INTENT: The RB-Roadside Business District is intended to provide for commercial activity at relatively higher density in areas with substantial highway access and public sewer services.																					
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																		
<ul style="list-style-type: none"><li>• Arts, crafts and antique shops</li><li>• 1 &amp; 2 family dwellings units of slopes of 15% or less</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customary accessory uses</li><li>• HBHO (2)</li><li>• Signs in association with an approved use</li><li>• Sheds</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• Adult oriented businesses</li><li>• Agricultural, On-Site processing</li><li>• Agribusiness</li><li>• Automotive, Vehicle &amp; Equipment Sales</li><li>• Bed and Breakfast Establishments (3)</li><li>• Car Washes</li><li>• Cell Sites</li><li>• Cemeteries</li><li>• Commercial Parking</li><li>• Crematoriums</li><li>• Enclosed Storage/PODS</li><li>• Farmers Markets</li><li>• Flea Markets</li><li>• Farm Stands</li><li>• Gasoline service station</li><li>• Group homes</li><li>• Hotels and Motels</li><li>• Light Industry</li><li>• Medical offices</li><li>• Motor Vehicle Repair</li><li>• Multiple dwellings</li><li>• Multiple occupant commercial buildings</li><li>• Professional Offices</li><li>• Recreational Facilities, Tourist</li><li>• Restaurants and Taverns</li><li>• Retail Shops</li><li>• Service Uses/Establishments</li><li>• Studios</li><li>• Wholesale Business/Wholesale Distribution</li><li>• Veterinary Clinics</li><li>• Senior Housing</li><li>• HBHO (3)</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>20,000 sq ft</td></tr><tr><td>Lot width</td><td>150 feet</td></tr><tr><td colspan="2">Minimum yard dimensions:</td></tr><tr><td>    Front yard</td><td>40 feet</td></tr><tr><td>    Side yard</td><td>25 feet</td></tr><tr><td>    Rear yard</td><td>30 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Lot clearing</td><td>50%</td></tr><tr><td>Lot coverage</td><td>65%</td></tr></table>	Lot area	20,000 sq ft	Lot width	150 feet	Minimum yard dimensions:		Front yard	40 feet	Side yard	25 feet	Rear yard	30 feet	Maximum permitted building height	28 feet	Lot clearing	50%	Lot coverage	65%
Lot area	20,000 sq ft																				
Lot width	150 feet																				
Minimum yard dimensions:																					
Front yard	40 feet																				
Side yard	25 feet																				
Rear yard	30 feet																				
Maximum permitted building height	28 feet																				
Lot clearing	50%																				
Lot coverage	65%																				
<p>NOTES:</p> <p>(1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board</p> <p>(2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7.</p> <p>(3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.</p>																					

Downtown Business District-DB																					
INTENT: The DB-Downtown Business District is intended to accommodate existing high density commercial activity located along Bridge, Main, and Fifth Streets and (Erie Avenue) adjacent thereto, higher density residential development and associated service activities.																					
PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES <sup>1</sup>	DEVELOPMENT STANDARDS																		
<ul style="list-style-type: none"><li>• Arts, crafts and antique shops</li><li>• 1 &amp; 2 family dwellings units of slopes of 15% or less</li></ul>	<ul style="list-style-type: none"><li>• Carports</li><li>• Private Garages</li><li>• Customary accessory uses</li><li>• HBHOs (2)</li><li>• Signs in association with an approved use</li><li>• Sheds</li><li>• Private Stables</li><li>• Satellite dish antennae accessory to a residential structure</li><li>• Keeping of not more than 3 dogs over 4 months old</li></ul>	<ul style="list-style-type: none"><li>• Bakeries</li><li>• Bed and Breakfast Establishments(3)</li><li>• Commercial Parking Lots</li><li>• Farmers Markets</li><li>• Farm Stands</li><li>• Flea Markets</li><li>• Eating and Drinking Establishments</li><li>• Hotels</li><li>• Light Industry</li><li>• Mass Gatherings</li><li>• Mixed Uses</li><li>• Museums</li><li>• Post Offices</li><li>• Professional Offices</li><li>• Recreational Facilities, Tourist</li><li>• Retail Shops</li><li>• Restaurants, no drive and/or drive-through</li><li>• River Access Facilities</li><li>• Senior Housing</li><li>• Service Establishments</li><li>• Studios</li><li>• Theaters</li><li>• Wholesale Business/Wholesale Distribution</li></ul>	<p>The following standards shall be applicable to all uses unless otherwise regulated by this Zoning Law:</p> <table><tr><td>Lot area</td><td>20,000 sq ft</td></tr><tr><td>Lot width</td><td>150 feet</td></tr><tr><td colspan="2">Minimum yard dimensions:</td></tr><tr><td>Front yard</td><td>40 feet</td></tr><tr><td>Side yard</td><td>25 feet</td></tr><tr><td>Rear yard</td><td>30 feet</td></tr><tr><td>Maximum permitted building height</td><td>28 feet</td></tr><tr><td>Lot clearing</td><td>50%</td></tr><tr><td>Lot coverage</td><td>65%</td></tr></table>	Lot area	20,000 sq ft	Lot width	150 feet	Minimum yard dimensions:		Front yard	40 feet	Side yard	25 feet	Rear yard	30 feet	Maximum permitted building height	28 feet	Lot clearing	50%	Lot coverage	65%
Lot area	20,000 sq ft																				
Lot width	150 feet																				
Minimum yard dimensions:																					
Front yard	40 feet																				
Side yard	25 feet																				
Rear yard	30 feet																				
Maximum permitted building height	28 feet																				
Lot clearing	50%																				
Lot coverage	65%																				
NOTES: (1) Special uses are additionally subject to site plan review by the Town of Tusten Planning Board (2) Certain Home Based Businesses and Home Occupations are Special Uses; see Section 6.7. (3) “Bed and Breakfast Establishments” refer to the different definitions of these uses included in this law. See Definitions.																					

**4.1    APPLICATIONS OF REGULATIONS**

**4.1.1    Use Requirements**

No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be divided, designed, used or intended to be used, for any purpose or in any manner other than as permitted in the district in which such building or land is located.

**4.1.2    Bulk Requirements**

No building shall be erected, no existing building shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot and building regulations hereinafter designated for the district in which such building is located.

**4.1.3    Yards and Open Space**

No yard or other open space provided around any building for the purpose of complying with the provisions of this Law shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

**4.2    USES NOT SPECIFIED IN SCHEDULE OF DISTRICT REGULATIONS**

Any use not specifically set forth as a permitted use in any district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district.

**ARTICLE V. SUPPLEMENTARY REGULATIONS FOR BUILDINGS AND LOTS**

**5.0    EXCEPTIONS TO DISTRICT REGULATIONS**

**5.0.1    Height Exceptions**

With the exception of the Scenic Overlay (SO) District, which is specified in more detail in Article VI, Section 6.17, the following structures shall be exempt from the height limitations set forth in the Schedule of District Regulations: farm structures, private home antennae, spires, belfries, cupolas, water tanks, ventilators, chimneys, solar energy devices, windmills, transmission towers, flag poles, skylights, and other appurtenances usually required be placed above the roof level and not intended for human occupancy.

**5.0.2    Yard Exceptions**

The following structures are exempted from the yard requirements specified in Section 4.0:

1. Chimneys, open trellis, uncovered steps, or a terrace not higher than one foot from ground level.
2. Overhanging roof not in excess of three (3) feet.
3. Awning or moveable canopy not extending more than ten (10) feet into required yard.
4. Fences or walls of lawful height along a common property line.
5. Within the GR, RB, and DB Districts, if two or more existing dwellings are located within 200 feet on each side of a proposed dwelling and on the same side of the street within the same block and district, said proposed dwelling shall not have a front yard greater than the average setback of all existing dwellings so located. This provision may be waived by the Planning Board for good cause.

**5.1    LOT REGULATIONS**

**5.1.1    Corner Lots**

A. Corner Lots - On a corner lot, front yards are required on all street frontages, and one (1) yard other than the front yards shall be deemed to be a rear yard, and the other or others, side yards.

B. Clear Sight Triangles - Visual obstructions at street intersection (excluding an existing building, post, public utility structures, column or tree) exceeding four (4) feet in height shall be prohibited on any lot within the triangle formed by the street lot lines of the lot and a line drawn between points along the right-of-way lines seventy-five (75) feet distant from the point of intersection of the right-of-way lines.

### **5.1.2    Lot Coverage and Calculation of Lot Coverage**

Lot coverage shall not be greater than is permitted in the applicable Zoning District as stipulated in the Schedule of District Regulations in Article IV of this zoning law. Land cleared as part of the building or development process shall be improved, landscaped or otherwise protected from erosion. In determining the percentage of lot coverage, all principal buildings, roofed porches, garages, carports and other accessory buildings and impervious surfaces shall be included.

## **5.2    HEIGHT AND YARD REGULATIONS**

No building or structure shall have a greater height than is permitted in the District where such building or structure is located, except as provided in Section 5.0.1. As noted in Section 5.0.1, chimneys, cupolas, silos, fire towers, steeples, water towers, spires or necessary mechanical appurtenances that are part of a building may exceed the height limitations established by this Zoning Law; but no such structure shall be used as a place of habitation or for tenant purposes. Communication towers and similar freestanding structures proposed in excess of the permitted height in a District shall be treated as Special Uses. The provisions of this Section shall not apply to **AGRICULTURE/FARM OPERATIONS**.

### **5.2.1    Yard Regulations**

Every part of a required yard must be open to the sky and be unobstructed except for plantings and, in the case of side yards and rear yards, ordinary projections of chimneys, steps, sills, cornices and ornamental features, not extending more than three (3) feet beyond the building wall, and fire escapes not extending more than four (4) feet beyond the building wall. No such projection shall extend to less than ten (10) feet from any side or rear lot line.

### **5.2.2    Residential Front Yard Grade**

Surface grade of residential front yards, measured the mid-point of a residence front wall, shall be at least one foot above the elevation of street center line, unless adequate site drainage is provided.

### **5.2.3    Side Yards**

Where the side wall of a building is not parallel with the side lot line or is broken or otherwise irregular, the side yard may be varied. In such cases, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such side yard shall not be narrower at any one (1) point than one-half (1/2) the otherwise required minimum width.

## **5.3    FENCES AND WALLS**

The following requirements apply to fences and walls on lots:

1. They shall not exceed six feet (6) in height on a lot, except as Special Uses.
2. They shall conform to corner lots requirement where applicable.

3. Shall provide for emergency equipment access and, except for farm fences, require the consent of adjoining property owners when placed on a property line.
4. Shall be maintained in good repair.

#### **5.4    ABANDONMENT OF CONSTRUCTION OR EXCAVATION**

Unfenced excavation shall not be carried out for period in excess of sixty (60) days. In addition, within six (6) months following a construction project or the demolition or abandonment of a building or structure, all construction materials shall be removed from the site and excavation filled to normal grade by owner.

#### **5.5    MINIMUM HABITABLE FLOOR AREA**

One-family and two-family dwellings shall have a habitable floor area of at least five-hundred (500) square feet. Furthermore, no habitable rooms are permitted in basements or cellars of multiple family dwellings unless a separate outside entrance way is provided to all habitable areas.

#### **5.6    ACCESS TO STRUCTURES**

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street and all essential services, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking. Every lot hereafter created shall also be a minimum of fifty (50) feet in width at the highway right-of-way line, except for existing lot improvements, well lots and similar parcels not intended for building purposes on a stand-alone basis.

#### **5.7    ACCESSORY BUILDINGS**

A permitted accessory building may be located in any required side or rear yard provided:

1. Such building shall not exceed fifteen (15) feet in height or more than 144 square feet in floor area.
2. Such building shall be set back ten (10) feet from any lot line and at least ten (10) feet from the main building.
3. No more than one (1) such accessory building shall be permitted per dwelling unit.

#### **5.8    PERMIT FOR TEMPORARY BUILDING**

A permit for a temporary building may be authorized by the Code Enforcement Officer for uses and structures incidental to construction on the premises. Such uses and structures may include the storage of building material and equipment, a real estate office for the sale of property on the premises, and a construction office for work being done on the premises. Such permit shall be authorized for a period of one year and may be extended for 6-month periods when the Code Enforcement Officer finds such work has been diligently pursued. All temporary uses must be removed on expiration of permits.



**5.9      STRUCTURAL REQUIREMENTS**

Retired school buses, trailers, vans, railroad cars, recreational vehicles or similar vehicles or equipment shall not, under any circumstances, be permitted as principal or accessory structures for any use.

**ARTICLE VI - SUPPLEMENTARY REGULATIONS PERTAINING TO SPECIFIC USES**

**6.0    ADULT-ORIENTED BUSINESSES**

Adult oriented businesses, which shall be permitted as Special Uses in the R-1 Rural Residential District, can have serious negative impacts on surrounding areas, including declines in property values, degradation of neighborhoods, increases in crime and deterioration of community character. This has been substantiated by a number of studies conducted throughout the United States. The Town of Tusten has considered the findings of these studies and those incorporated in the cases of; a) *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); b) *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and c) *Northend Cinema, Inc. v Seattle*, 585 P.2d 1153 (Wash.1978). The Town's intent in enacting this section is not to restrict speech protected by the First Amendment but rather to provide for it in a way which is consistent with the demands of the U.S. Constitution, as expressed in the referenced cases. It is also, however, intended to address, in a practical way, the very real secondary effects of adult-oriented businesses on the peace, good order and safety of Town residents. So as to limit these impacts, such uses shall be subject to the following standards:

**6.0.1    Set Backs**

Adult oriented businesses, therefore, shall not be located within one-thousand (1,000) feet of any residence, residential facility, institution, health facility, church, synagogue, school, public or semi-public use, public park or recreation facility, any other establishment which sells alcoholic beverages or any other existing adult oriented business. This setback is consistent with the open rural character of the Town within which numerous locations exist that can meet this standard.

**6.0.2    Sale of alcoholic beverages**

Sale of alcoholic beverages at an adult oriented business shall not be permitted unless the business is being operated as a bona-fide restaurant or eating and drinking establishment.

**6.0.3    Advertising**

No exterior display or interior display which is visible from outside the business shall be made to identify or portray the type of activity which occurs at an adult oriented business excepting for one approved ground sign not to exceed a surface area of twenty (20) square feet for both sides combined. Such sign shall be subject to all other requirements of this law applicable to signs. It shall not incorporate any obscene material but shall be otherwise unlimited as to message.

**6.0.4    Non-Conforming Uses**

No non-conforming building or lot shall be used for an adult oriented business. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting an adult oriented business unless application to do so has been made pursuant to this section and Planning Board approval has been given.

#### **6.0.5 Standards**

Because they are known to encourage prostitution, increase sexual assaults and attract criminal activity, the following activities shall not be permitted in any adult oriented or other business or any other public place within the Town of Tusten:

1. Public appearance by a person knowingly or intentionally engaged in sexual intercourse, deviate sexual conduct or the fondling of the genitals of himself or another person.
2. The knowing and intentional public appearance of a person in a state of nudity. Nudity means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

#### **6.0.6 Attire**

All adult oriented businesses shall otherwise comply with the Town of Tusten regulations governing female attire. These prohibitions are further based on the findings of the U.S. Supreme Court in the case of *Banes v. Glen Theatre*, 501 U.S. 560, 115 L.Ed 2d 504 (1991) and are intended to fulfill purposes identical to those upheld in that case.

### **6.1 BED AND BREAKFAST ESTABLISHMENTS**

A bed and breakfast establishment, as permitted by special use in the SR, RR, R-1, R-2, and GR, shall comply with the following standards in addition to all other applicable requirements of this Law.

- A. Parking - In addition to the parking required by Section 6.12 of this Article, the following number of spaces shall be provided: one (1) space for each non-resident employee, and two (2) spaces for the dwelling unit.
- B. Rooms for Rent - Not more than five (5) rentable rooms are provided in a bed breakfast inn; not more than three (3) rentable rooms are provided for a bed and breakfast homestay establishment.
- C. Use as Residence - The owner or manager of the bed and breakfast establishment outlined above and specified in Article II of this zoning law must reside on the premises.

### **6.2 CAMPGROUNDS AND USE OF RECREATIONAL VEHICLES (RVs)**

Campgrounds and RVs shall be subject to the following provisions of the Town of Tusten Zoning Law.

#### **6.2.1 Campgrounds**

The following additional standards must be provided for in the site plan before a special permit for a campground can be issued:

1. Evidence that all New York State Department of Environmental Conservation and Health Department regulations applicable to campgrounds will be met.

2. A 25 foot planted or natural landscaped border will be provided for on all perimeters of the campground property.
3. A minimum of ten (10) acres of land must be provided for the campground, the property must be served with central water and sewage facilities, density shall not exceed 8 sites per acre and permanent occupancy shall be strictly prohibited.
4. These regulations shall only apply to facilities with five (5) or more campsites.

#### **6.2.2    RV Use and Storage**

Individual recreational vehicles may be stored on any lot subject to the following restrictions:

1. No more than one (1) such vehicle may be stored on any lot (permitted sales lots excepted).
2. The vehicle shall not be connected to any utilities, except on a temporary basis for purposes such as testing of equipment, cleaning and similar activities, and shall neither be used as additional residential, commercial or other space for business or living purposes nor as an independent dwelling or office.
3. The vehicle shall not be parked in any front yard or within ten (10) feet of any property line.

#### **6.3    COMMERCIAL DOG KENNELS**

All commercial dog kennels, as permitted in SR shall not be located closer than two hundred (200) feet to any lot line and one hundred (100) feet to any public road right-of-way. All dogs shall be confined to pens at all times, and shall be kept in a fully noise insulated and ventilated structure between the hours of sunset (4:30 p.m.) and 7:00 a.m.

#### **6.4    COMMUNICATION/RECEPTION ANTENNAE: REGULATIONS**

The following regulations shall apply to cellular phone antennae, antennae for communication service regulated by the state and federal government, other commercial antennae and associated facilities, and certain antennae accessory to residential structures, hereinafter referred to as antennae. Such antennae and associated facilities shall be permitted only in the districts as provided on the Schedule of District Regulations.

##### **6.4.1    Purposes**

- A. To accommodate the need for cellular phone and similar antennae while regulating their location and number in the Town.
- B. To minimize the adverse visual effects of antennae and antennae support structures through proper design, siting and vegetative screening.
- C. To avoid potential damage to adjacent properties from antennae support structure failure and falling ice, through engineering and proper siting of antennae support structures.
- D. To encourage the joint use of any new antennae support structures and to reduce the number of such structures needed in the future.

#### **6.4.2    Use Regulations and Parcel Size**

No antennae shall be used, erected, moved, reconstructed, changed or altered, and no existing structure shall be modified to support or be used as an antenna unless in conformity with these regulations:

- A. New Structures - An antenna site with an antenna that is either not mounted on an existing structure, or is more than ten (10) feet higher than the structure on which it is mounted shall require Special Use approval in accord with this Section and the project parcel shall meet the four (4) acre minimum size requirement established by the Schedule of District Regulations.
- B. Existing Structures - An antenna site with an antenna that is attached to an existing communications tower, smoke stack, water tower, or other tall structure shall be considered a principal permitted use and Special Use approval shall not be required and the project parcel need not meet the acre minimum size requirement established by the Schedule of District Regulations. The height of the antenna shall not exceed the height of the existing structure by more than ten (10) feet.
- C. Associated Use - All other uses ancillary to the antenna and associated equipment (including a business office, maintenance depot, vehicle storage, etc.) are prohibited from the antenna site, unless otherwise permitted in the zoning district in which the antenna site is located.
- D. Antennae Accessory to Principal Structures for Other Permitted Uses - Any antenna accessory to a principal structure which is attached to the structure and which does not exceed the maximum height limitation of the district for principal structures by more than fifteen (15) feet, and any freestanding accessory antenna which does not exceed the maximum height limitation of the district for principal structures by more than fifteen (15) feet shall not be regulated by this Section. Any accessory antenna which exceeds said height shall be considered a Special Use and shall comply with the standards of this Section.

#### **6.4.3    Standards**

- A. Siting and Visual Impact - All antennae and accessory facilities shall be sited to have the least practical adverse visual effect on the community. The applicant shall submit a completed Visual Environmental Assessment Form (Visual EAF) addressing the standards of this Section 617 with particular attention to visibility from key viewpoints within and outside the Town as identified in the Visual EAF. The Planning Board may require the submission of a more detailed visual analysis based on the results of the Visual EAF.
- B. Location Requirement - The applicant shall demonstrate, using technological evidence, that the antenna must go where it is proposed, in order to satisfy its function in the company's grid system.
- C. New Tower - Shared Use - If the applicant proposes to build a tower (as opposed to mounting the antenna on an existing structure), the Town may require the applicant to demonstrate that it contacted the owners of tall structures within not less than a one-mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones. This would include smoke stacks, water towers, tall buildings, antenna support structures of other cellular phone companies, other communications

towers (fire, police, etc.) and other tall structures. The Town may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the antenna on an existing structure.

- D. Antenna Height - The applicant shall demonstrate that the antenna is the minimum height required to function satisfactorily. No antenna that is taller than this minimum height shall be approved.
- E. Setbacks from Base of Antenna Support Structure - If a new antenna support structure is constructed (as opposed to mounting the antenna on an existing structure), the minimum distance between the base of the support structure and property lines shall be not less than the height of the antenna. All guy wire anchors and accessory facilities shall be set back a minimum of thirty (30) feet from all property lines.
- F. Antenna Support Structure Safety - The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers.
- G. Fencing - The Planning Board may require a fence shall be required around the antenna support structure and other equipment, unless the antenna is mounted on an existing structure. The fence shall be a minimum of eight (8) feet in height.
- H. Landscaping - Existing vegetation shall be maintained to the greatest extent possible and building materials, colors and textures of accessory facilities shall blend with the natural surroundings to the greatest extent possible. Landscaping may be required to screen as much of the support structure as possible, the fence surrounding the support structure, and any other ground level features (such as a building), and in general buffer the antenna site from neighboring properties in a reasonable period of time as established by the Planning Board. The Town may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if the same achieves the same degree of screening as the required landscaping. If the antenna is mounted on an existing structure, and other equipment is housed inside an existing structure, landscaping shall not be required. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.
- I. Other Uses - In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including other cellular phone companies, and local fire, police, and ambulance companies.
- J. Licenses - The applicant must demonstrate that it has obtained the required licenses from the Federal Communications Commission, the State of New York and other agencies.
- K. Access and Parking - A road and parking area shall be provided to provide adequate emergency and service access. The Planning Board may require that the road be constructed to Town standards for minor roads. If the antenna site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall equal the number of people on the largest shift.
- L. Lighting and Color - No antenna support structure shall be artificially lighted except when required by the Federal Aviation Administration (FAA). In order to reduce the visual impact, antenna support structures shall be painted gray or have a galvanized finish retained above the

surrounding tree-line, and shall be painted gray, green or black below the surrounding tree-line unless otherwise required by the FAA. Support structures should, whenever possible, be designed and sited to avoid the necessity of complying with Federal Aviation Administration lighting and painting regulations.

## **6.5    FLOOD HAZARD AREAS: DEVELOPMENT IN THE FLOOD PLAIN (FP) DISTRICT**

As noted in Article III, Section 3.0 of this zoning law, a special Flood Plain (FP) overlay district exists and is based on the recent Flood Insurance Rate Maps (FIRMS) created under the auspices of the National Flood Insurance Program (NFIP) located in the Federal Emergency Management Agency (FEMA). This Overlay District tracks areas designated as 100-year flood areas, commonly referred to as “Special Flood Hazard Areas.” This Section 6.5 sets forth the permitted uses, and the regulations and building standards applicable to this overlay District.

### **6.5.1    Permitted Uses**

The following uses which have low flood damage potential and which do not obstruct flood flows may be permitted within Special Flood Hazard Areas to the extent that these uses do not constitute development or substantial improvement to a structure and are not otherwise prohibited by any other law.

1. Agricultural uses such as pasture or grazing as long as they do not require development within the flood plain.
2. Private and public recreational areas such as swimming areas, open space, wildlife or natural preserves, hunting and fishing areas, hiking and horseback trails as long as they do not require development within the flood plain.
3. No uses shall diminish or constrict the capacity of the channel or floodway of any watercourse, or any tributary to the main stream, or any other watercourse, drainage ditch or any other facility or system to discharge the waters from the base flood.

### **6.5.2    Issuance of Building Permits**

#### **Within the Flood Protection overlay district:**

1. No building shall hereafter be erected, relocated or altered as to outside dimensions or so to permit a change in its use and no excavation for any building shall be begun unless and until a permit therefore has been issued. For purposes of this section, mobile homes or any other structure permanently affixed to a foundation shall be deemed a building.
2. Permits will not be necessary for minor repairs, unenclosed patios, painting, plumbing, new roofs and accessory structures at the discretion of the Code Enforcement officer with the approval of the Planning Board.
3. Upon receipt of the application for building permit, the Code Enforcement Officer shall determine if the location of such proposed building falls within the Special Flood Hazard Area. Appeals to such determination shall be made to the Zoning Board of Appeals.



### **6.5.3 Building Standards for Variances**

#### **Within the Flood Protection overlay district:**

All development uses within the Special Flood Hazard area as identified in Federal Insurance Rate Maps (FIRM Maps) for the Town of Tusten, New York, except those uses permitted by right under this provision, are allowed only in compliance with these regulations. Variances and allowed uses must meet the following standards:

1. New construction or substantial improvement of any residential structures shall have the lowest habitable floor, including basement, elevated to at least one foot above the base flood elevation at that point.
2. New construction or substantial improvement of any non-residential structures shall either have the lowest floor including the basement, elevated to, or above, the base flood level, or together with attendant utility and sanitary facilities, be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting external water pressure and effects of buoyancy. The design of flood proofed structures may include the following measures or techniques as appropriate:
  - a. Anchorage to resist flotation and lateral movement.
  - b. Reinforcement of walls to resist water pressure.
  - c. Installation of watertight doors, bulkheads and shutters.
  - d. Use of paints, membranes, or mortars to reduce seepage of water through walls.
  - e. Addition of mass or weight to resist flotation.
  - f. Installation of pumps to lower water levels in structures.
  - g. Pumping facilities to relieve water pressure on external walls and basement floors.
  - h. Elimination of gravity flow drains.
  - i. Construction to resist rupture or collapse caused by water pressure or floating debris.
3. Mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors. Specifically:
  - a. Over-the-top ties shall be provided at each of the four corners of the mobile home with two additional ties per side at intermediate locations, except that a mobile home less than 50 feet in length requires only one additional tie per side.
  - b. Frame ties shall be provided at each corner of the mobile home with five additional ties per side at intermediate points, except that a mobile home less than 50 feet long need have only four additional ties per side.
  - c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
  - d. Any additions to the mobile home shall be similarly anchored.
4. All new construction or substantial improvements of buildings and other structures, including new or replaced utility and sanitary facilities, shall include the following measures as appropriate:
  - a. Anchored to prevent flotation, collapse, or lateral movement of structure.
  - b. Constructed with materials and utility equipment resistant to flood damage.
  - c. Constructed by methods and practices that minimize flood damage.

- d. Public facilities and utilities such as sewer, electrical, and water systems located and constructed to minimize flood damage.
- e. Adequate drainage provided to reduce exposure to flood damage.
- f. New and replacement water supply designed to minimize or eliminate the infiltration of flood waters into the system. Design of such water supply, sanitary sewage, and on-site waste disposal systems shall be in compliance with the State Sanitary Code (Public Health Law Section 225; 10 NYCRR Section 1.1 et seq.), and, where applicable, with County and Town health or sanitary codes.
- g. New and replacement sanitary sewer systems designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the system into flood waters. Design shall be in compliance as above.
- h. On-site waste disposal systems located to avoid impairment to them or contamination from them during flooding. Design shall be in compliance as above.
- i. Where elevation of the first floor or basement floor above the base flood elevation is required, fill deposited shall extend at least 15 feet beyond the limits of any structure or building erected thereon, and such fill shall be protected against erosion by riprap, vegetation, bulkheads, or other forms of cover.

#### **6.5.4    Encroachments**

In all areas of special flood hazard in which base flood elevation data has been provided, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.

#### **6.5.5    Local Submission, Filing, and Public Record**

Application for a variance within a Special Flood Hazard Area shall, in addition to standards set forth in above, be accompanied by written certification of either a professional engineer or architect licensed to practice in the State of New York that the appropriate standards of Section 606 have been met, and all necessary permits have been obtained from those federal, state, and local governmental agencies from which prior approval is required. Such application shall be kept on file with the Town Clerk and shall be available for public inspection.

The Code Enforcement Officer (CEO) shall obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structure that contains a basement. CEO shall also obtain, verify, and record the actual elevation to mean sea level to which any new or substantially improved non-residential structures in a Special Flood Hazard Area have been flood proofed. All such records shall be maintained for public inspection.

#### **6.5.6 Subdivision Proposal**

For the purpose of maintenance of the provisions of this Law, the Planning Board shall require that all subdivision proposals and other proposed new developments within a Special Flood Hazard Area include within such proposals base flood elevation data.

#### **6.5.7 Watercourse Alteration**

To maintain in compliance with those regulations pertaining to Areas of Special Flood Hazard, the Planning Board shall notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator, and shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **6.6    FOREST MANAGEMENT**

#### **6.6.1    Permitting.**

Any person proposing to engage in commercial logging or forestry operations within the Town of Tusten shall first obtain a permit from the Town Code Enforcement Officer for each project. Such permit shall be good for six (6) months duration but may be extended for successive periods of six (6) months each provided the operation continues to comply with all requirements contained herein. The permit application shall be made on forms to be developed by the Code Enforcement Officer and shall be accompanied by a fee, which fee amount may be adjusted from time to time by resolution of the Town Board. The application shall require only the following information; (1) names, addresses and phone numbers for the property owner and commercial logger, (2) the dates between which timber harvesting will take place, and (3) a location map depicting where the logging will take place, the site of any landing and the proposed access to the public highway system.

#### **6.6.2    Clearcutting Provisions.**

No permit issued hereunder for clearcutting of more than one (1) acre or more of forest land shall be allowed without prior review by the Planning Board.

#### **6.6.3    Logging Roads.**

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

#### **6.6.4    Periods of Operation.**

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

#### **6.6.5 Repairs to Town Roads.**

The purpose of this permit system shall be to ensure repairs, where necessary, to any Town roads and compliance with good forest practice as defined by the New York DEC Forest Practice Board. The Code Enforcement Officer shall be authorized to immediately revoke the permits of any commercial logger who shall not comply with these requirements until such compliance is secured and failure to comply shall require the permanent ceasing of all activity by said logger within the Town of Tusten. Commercial loggers who shall fail to comply with these requirements shall also be ineligible for any future logging permits within the Town.

### **6.7       HOME BASED BUSINESSES/HOME OCCUPATIONS (HBHO)**

It is the intent of this Section 6.7 to regulate the operation of home occupations in order to preserve the residential character of the neighborhood in which the home occupation is operated. Home occupations as set forth in Section 6.7.1 shall be considered accessory uses in all Districts. Other home occupations may be authorized by the Planning Board as Special Uses in accord with Section 6.7.2.

#### **6.7.1    Home Based Businesses/Home Occupations (HBHO) As Accessory Uses**

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

- A. Standards - The home occupation must be clearly incidental and secondary to the use of the dwelling as a residence.
- B. Floor Area - The home occupation does not use more than fifty (50) percent of the ground floor area of the dwelling unit.
- C. Sales - Retail and wholesale sales shall not be permitted.
- D. Storage - No outdoor display or storage of materials, goods, supplies, or equipment used in the home occupation shall be permitted on the premises.
- E. Exterior Appearance - There shall be no visible evidence that the residence is being operated as a home occupation except for the permitted sign.
- F. Employees - A maximum of three (3) persons other than members of the immediate family residing in the dwelling shall be employed in the home occupation.
- G. Parking - Off-street parking shall be provided on the premises, as required by this Law or as otherwise necessary to prevent parking on any public or private right-of-way.
- H. Nuisances - A home occupation use shall not generate nuisances such as traffic, on-street parking, noise, vibration, glare, odors, fumes, electrical interference, or hazards to any greater extent than what is usually experienced in the residential neighborhood.

I. One (1) non-illuminated identification sign having an area of not more than four (4) square feet shall be permitted.

J. Uses Permitted - Accessory use home occupations may include the following types of uses:

1. Professional offices of doctors, dentists, lawyers, architects, engineers and other professionals.
2. Custom dressmaking or tailoring
3. Artist or musician studios.
4. Foster family or day care for not more than four (4) children simultaneously.
5. Tutoring for not more than five (5) students at a time.
6. Beauticians and barbers.
7. Mail order or telephone sales where customers do not visit the premises.

#### **6.7.2    Home Occupations As Special Uses**

The Planning Board may define and limit other uses as home occupations in accord with the Special Use/Site Plan procedures of this Zoning Law. Such uses shall comply with all provisions of this Section 6.7 and other applicable standards of this Zoning Law.

A. Standards - The home occupation shall comply with the standards A through J, of Section 6.7.1.

B. Conditions- The Planning Board shall attach any and all necessary conditions to assure compliance with this Section 6.7, and such conditions may include, but not be limited to, hours of operation, water use restrictions, sewage disposal requirements, screening and other conditions deemed necessary by the Board.

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

1. Commercial stables.
2. Commercial kennels.
3. Vehicle or equipment service operations .
4. Veterinarians.
5. Any other use determined by the Planning Board as inappropriate as a home occupation.

#### **6.8    INTENSIVE LIVESTOCK RAISING AND CAGE TYPE POULTRY OPERATIONS**

Livestock raising operations and cage type poultry operations as part of agriculture/farm operation (see definition of **AGRICULTURE/FARM OPERATIONS**), as permitted in SR, RR, R1 and R2, and permitted outside approved New York State Agricultural Districts, shall have a minimum lot area for any new such use of twenty (20) acres.

#### **6.9    JUNKYARDS AND VEHICLE DISMANTLING AND STORAGE OPERATIONS**

These regulations are enacted for the purpose of establishing minimum health and safety standards for junkyards in the Town of Tusten as well as controlling their location so as to limit problems of incompatibility with other activities. These regulations are enacted pursuant to the authority granted towns by § 136 of the General Municipal Law and § 136.1 of the Town Law.

These regulations shall apply to all junkyards now existing or hereafter proposed in the Town of Tusten. No junkyard shall be created except in conformance with the standards herein, and all junkyards shall be required to conform to said standards or be removed at the owner's expense.

**6.9.1 Exemptions.**

The following land uses shall be exempt from these requirements provided they are not maintained in the manner of a junkyard and do not include a junkyard operation:

1. Storage areas for officially recognized and operable antique or classic automobiles or other operable special purpose vehicles.
2. Agricultural equipment which is utilized as part of an active farming operation or contractors' construction equipment which is part of an active contracting business.
3. Automobile repair businesses or automobile, vehicle and equipment sales operations managed by State licensed dealers. Sales of two (2) or more unlicensed vehicles per year absent such licensing shall be considered a junkyard operation.
4. No right to establish or continue a junkyard operation shall be conveyed by the existence of a State license or the presence of any of the above activities on a site.

**6.9.2 License Required.**

No person, partnership, association or corporation, being the owner or occupant-of any land within the Town of Tusten, shall use or allow the use of such land for a junkyard unless a license has been obtained and maintained as herein provided, which license shall be applied for concurrently with application for site plan review and special use approval hereunder. The Code Enforcement Officer shall issue a license within ten (10) days after approval of the application by the Town Planning Board pursuant to criteria contained herein. Said license shall be effective from the date of issuance until surrendered by the licensee or revoked by the Code Enforcement Officer and shall be renewed annually based on an inspection by the Code Enforcement Officer as to continued compliance with the standards of this Law. No license shall be issued until the Code Enforcement Officer has received;

1. A written application from the applicant on the form provided by the Town Code Enforcement Officer.
2. The required fee as herein provided. Such fees shall be set by resolution of the Town Board.

**6.9.3 Transfers of License.**

The license may be transferred to a new owner of a junkyard provided all of the requirements of this Law are met and provided the Town is so notified.

**6.9.4 Disapprovals.**

Any disapprovals shall be in writing and include the reasons therefore. The Code Enforcement Officer shall not issue a license in any instance where the Planning Board has not approved the site plan and given special use approval.

**6.9.5    Right to Enter and Inspect.**

The Code Enforcement Officer shall enforce all of the provisions of this Law and shall have the right, at all reasonable times, to enter and inspect any junkyard. The Town Board shall specify the frequency of such inspections and set fees to cover costs involved.

**6.9.6    Orders to Correct.**

If the Code Enforcement Officer finds that a junkyard for which a license has been issued, is not being operated in accordance with the provisions of this Law, he may serve, personally or by certified mail to the holder of the license, a written order which will require the holder of the license to correct the conditions specified in such order within ten (10) days after the service of such order.

**6.9.7    Suspension of License.**

If the holder of such license shall refuse or fail to correct the condition or conditions specified in such order within ten (10) days after the service of such order, the Code Enforcement Officer may suspend such license and the holder of the license shall thereupon terminate the operation of such junkyard.

**6.9.8    Expiration of License.**

Any license which is not used for the purpose intended within two (2) years of the date of issuance shall automatically expire.

**6.9.9    Standards Applicable to New Junkyards**

All new junkyards shall conform to the following standards:

1. If a junkyard is to be located adjacent to a federal aid primary highway, it shall comply with all regulations of the Federal Highway Administration and the New York State Department of Transportation and provide evidence of the same to the Town of Tusten.
2. Junkyards shall be located no closer than five-hundred (500) feet to an existing public right-of-way or five-hundred (500) feet to any adjoining property.
3. Junkyards shall, moreover, be permitted only in R-I Districts.
4. All new junkyards must erect and maintain a eight (8) foot fence or dense natural screening along the boundaries of the property adequate-to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals. Such fence or screening shall also substantially screen the junkyard from public view and otherwise comply with the requirements of § 136 of the General Municipal Law.
5. No junkyard or portion of a junkyard shall be located on a slope exceeding twelve percent (12%) in grade or so situated on a bluff as to be unscreenable (visible from an adjacent public highway or residence located above or below the level of the junkyard).
6. No junkyard shall be used as a dumping area for refuse or as a place for the burning or disposal of trash.



7. All continuing dismantling operations shall take place inside an enclosed structure and any parts of vehicles or equipment shall similarly be stored inside an enclosed structure. All vehicles awaiting dismantling or retained for sale or use intact shall be stored in improved parking areas specifically designated for this purpose.
8. The Planning Board, in acting upon the Special Use application for any new junkyard, shall consider aesthetics and the impact on surrounding property consistent with the demands of § 136-7 and 8 of the General Municipal Law.

#### **6.9.10 Standards Applicable to Existing Junkyards**

All existing junkyards shall conform to the following standards:

1. Existing nonconforming junkyards shall, within a period of two (2) years following the effective date of this law shall be removed unless a license shall have been obtained for continued operation and the facility has been made to conform to the regulations provided below. Junkyards created subsequent to the enactment of this Law and discontinued shall be subject to the same standard.
2. Applications for licenses to continue operating existing non-conforming junkyards shall, unless the owners thereof have indicated in writing their intention to discontinue operations as provided above, be made within one (1) year following the effective date of this law.
3. Applications for licenses to continue operation of existing non-conforming junkyards shall include a site plan depicting the existing operation and any planned improvements as may be required by this law.
4. The plan shall comply with the requirements applicable to new junkyards to the maximum extent practical and shall include provisions for screening of the view of the junkyard from adjacent property as well as the public highway. A six (6) foot high fence along the side and rear boundaries of the property adequate to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals shall be required unless physical circumstances would make such fencing wholly impractical.
5. All fencing must be approved by the Town of Tusten Planning Board and produce a screen through which one generally cannot see. Various materials, including evergreen screening, may be used. The Town Board shall be responsible for taking measures, including securing injunctive relief, to ensure maintenance of such fencing or screening.
6. The license application and site plan for the existing non-conforming junkyard shall be processed in a manner identical to that for special use applications and shall include other information as may be required to determine compliance with these regulations. The Planning Board, in acting upon the application, shall consider the following:
  1. The impacts of the use on the enjoyment and use of adjoining properties as well as the community as a whole.
  2. The degree to which the use can economically be made to comply with requirements for new junkyards.
  3. The effectiveness of screening available or to be provided, visibility from the highway and the extent to which the operator's plans address various health, safety and aesthetic concerns.

4. The extent to which continuing dismantling operations can or do take place inside an enclosed structure and whether or not all parts of vehicles or equipment are similarly stored inside an enclosed structure. Likewise, the Board shall consider whether or not vehicles awaiting dismantling or retained for sale or use intact are or will be stored in improved parking areas specifically designated for this purpose.
7. Existing junkyards shall not be expanded except in conformance with the regulations contained herein for new junkyards, and in no case will any change in an existing junkyard which would lessen its conformity with these regulations be permitted.
8. No junkyard shall be used as a dumping area for refuse or as a place for the burning or disposal of trash.

**6.9.11 Site Plan for Establishment or Expansion; Notification of Nonconformity; Fee Schedule.**

Existing junkyards shall be identified and notified of any non-conformities with this law within sixty (60) days of the effective date of this law. The Code Enforcement Officer shall be responsible for this procedure and shall, additionally, inform all owners of existing non-conforming junkyards of the action which must be taken to comply with this law, the time available to take those actions and the consequences of violations.

**6.9.12 Other Provisions.**

Notwithstanding the above provisions, any person maintaining an unlicensed vehicle on site, for other than purposes of a licensed automobile sales operation, shall keep such vehicle inside a building or in a rear yard fully screened with vegetative material or fencing from view from a public highway or an adjacent residential property.

**6.10    MANUFACTURED HOMES AND PARKS**

Manufactured homes and manufactured home parks shall be subject to the requirements of the Town of Tusten Manufactured Home Law and the following standards and review criteria. Individual manufactured homes shall be subject to all the regulations applicable to other single-family detached dwellings. They may be installed in Districts where permitted (see Schedule of District Regulations) or on a single lot not in a manufactured home park, provided they meet the following specific standards and review criteria outlined in 6.10.1 and 6.10.2 respectively.

**6.10.1 Standards Applicable to Individual Manufactured Homes.**

1. Every manufactured home, whether sited individually or situated in a manufactured home park shall have not less than twelve (12) feet in width and five-hundred (500) square feet of living area. This standard shall not be met by including any living area later added to the basic manufactured unit.
2. All manufactured homes shall be sited on a reinforced slab or a masonry foundation, which foundation and the area up to the floor level of the manufactured home shall be screened from view from the highway and from adjoining properties by skirting acceptable to the Planning

Board. The Planning Board may individually approve such skirting and associated landscaping plans or adopt appropriate standards for use of the Code Enforcement Officer in administering this provision.

3. All manufactured homes and associated structures shall comply with the New York State Uniform Fire Prevention and Building Code to the extent that such Code is applicable.

#### **6.10.2 Manufactured Home Park Special Use and Site Plan Review Criteria**

The Planning Board shall, in reviewing and acting upon Special Use applications for manufactured home parks, apply the requirements of the Town of Tusten Manufactured Home Law and the following standards and review criteria:

1. The location of the park shall be one demonstrably suitable for such use, with proper drainage and provisions for storm water control such that the amount of water leaving the site after development shall not be greater than prior to development.
2. There shall be documentation of the availability and adequate capacity of all utility providers to service the park. Centrally supplied centralized sewage treatment and water supply facilities shall be provided.
3. The park shall be designed to provide maximum open space consistent with the minimum mobile home lot size requirements of the Manufactured Home Law and offer buffering of individual mobile home from each other and from other adjoining lot owners. It shall be landscaped so as to develop and maintain a high quality aesthetic environment and neighborhood character for prospective new and existing residents.
4. Adequate provisions shall be made for outside storage space and these shall-not-in-any way interfere with emergency access.
5. Adequate provisions shall be made to control potential nuisance situations such as accumulation of unused materials or vehicles.
6. Recreational facilities sufficient to accommodate the number of dwellings proposed shall be provided.
7. All roadways shall be constructed to standards which will facilitate dedication to the Town of Tusten.
8. There shall be adequate groundwater supplies to support the proposed water system without causing a detrimental impact on adjoining water supplies and evidence of this shall be provided and professionally reviewed.
9. The management and operations plan for the park shall provide for maintenance of all common facilities and ensure the purposes and requirements of this law are met. It shall also provide for limitation of occupancy to manufactured homes meeting U.S. Department of Housing Urban Development regulations under the Manufactured Housing Act.
10. Mixed-use residential developments where in mobile homes and other single family detached dwellings are both provided shall be encouraged where the other criteria contained herein can be met. All other single-family detached development, however, shall comply with the requirements of this law and the Town of Tusten Subdivision Law.
11. The manufactured home park shall not result in an over-concentration of such uses in a particular area of the Town.

12. The manufactured home park shall not have a detrimental or negative impact on adjacent properties or the general welfare of the residents of the Town of Tusten.
13. If a proposed park is one judged to present detrimental impacts, the Planning Board shall consider whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
14. The Planning Board shall also consider whether the park will have a positive or negative effect on the environment, job creation, the economy, housing availability or open space preservation and the application shall comply fully with the requirements of the State Environmental Quality Review Act (SEQRA)

#### **6.11 MINERAL EXTRACTION**

All mining and mineral extraction (these terms shall, for purposes of this Law, be synonymous) shall require issuance of a Department of Environmental Conservation (D.E.C.) permit as required and a Special Use permit from the Town of Tusten. In addition, stripping of topsoil for sale or use on other premises, except as may be incidental, and no more than is necessary, to a construction project, is prohibited within the Town without the issuance of a Special Use permit by the Planning Board. Major mining operations shall be prohibited within the Recreational River (RR) and Scenic River (SR) Districts and elsewhere limited as provided on the Schedule of District Regulations. They shall require a wooded setback of least one-hundred (100) feet in width from all property lines unless the site is presently unwooded in which case a fifty (50) feet wide evergreen screen of least eight (8) in height shall be established.

#### **6.12 PARKING, LOADING, AND ACCESS REQUIREMENTS**

##### **6.12.1 Off-Street Parking**

In all districts in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or enlarged, any land is used, or a change in use of land or structure, off-street parking spaces open at no charge for vehicles of employees, residents and/or patrons in accord with the requirements of this section.

- A. Size of Spaces - Each off-street parking space shall have an area of not less than two-hundred (200) square feet, exclusive of access drives or aisles, and shall measure ten (10) by twenty (20) feet. Except in the case of dwellings, no parking area provided hereunder shall be established for less than three (3) spaces.
- B. Number of Spaces - The number of off-street parking spaces required shall be as set forth in the Off-street Parking Schedule below. In the case of any building, structure or premises the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is similar, as determined by the Zoning Board of Appeals, shall apply.

USE	PARKING SPACES REQUIRED
Dwellings	2 per dwelling unit
Homes for handicapped or infirm, nursing homes, group	3 per every 5 beds

care homes, halfway houses and similar uses	
Hotels, motels, boarding and tourist houses, bed and breakfast establishments and other uses providing overnight accommodations	1 per bedroom, and 1 per 200 SFGFA for management and employees
<b>Sales and rental of goods, merchandise and equipment:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>
1. Retail establishments	1 per 200 SFGFA open to the public
2. Wholesale establishments	1 per 400 SFGFA
<b>Offices, research facilities and services not primarily related to goods:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>
1. Serving customers or clients on premises such as attorneys, physicians, insurance and travel agents	1 per 200 SFGFA
2. Drive-in banks	1 per 200 SFGFA plus reservoir lane capacity equal to 5 spaces per drive-in window
3. Serving little or few customers or clients on premises, such as corporate offices	1 per 400 SFGFA
<b>Manufacturing, processing, renovating, assembling goods, merchandise and equipment</b>	1 per 400 SFGFA
<b>Educational, cultural, religious social, fraternal uses:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>
1. Public and private schools	1.75 per classroom for elementary and middle schools; and 5 per classroom for high schools
2. Trade and vocational schools, colleges	1 per 100 SFGFA
3. Churches, synagogues and temples	1 per every 4 seats used for services
4. Libraries and museums, social, fraternal clubs and lodges; and similar uses	1 per 300 SFGFA
<b>Recreation, amusement and entertainment:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>
1. Bowling alleys	1 per every 3 persons of fully utilized design capacity (if exercise facilities and measurable in such fashion), otherwise 1 per 200 SFGFA
2. Movie theaters	1 per every 4 seats
3. Public and private outdoor recreation facilities such as golf courses	1 per 200 SFGFA plus 1 per every 3 persons of fully utilized design capacity
Hospitals, clinics and other medical treatment facilities	2 per bed or 1 per 150 SFGFA, which-ever is greater
Restaurants, bars, taverns and other eating establishments	1 per 100 SFGFA plus reservoir lane capacity equal to 5 spaces per drive-in window
<b>Vehicle related uses:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>

1. Sales, service, repair	1 per 200 SFGFA
2. Gas sales	1 per 200 SFGFA plus sufficient parking area at pumps which does not interfere with other required spaces
3. Car and truck wash	1 per 100 SFGFA plus 2 reservoir spaces in front of each stall for self-serve and 5 reservoir spaces for conveyor type
Warehousing and storage	1 per 4,000 SFGFA
<b>Miscellaneous uses:</b>	<b>Spaces per Square Feet of Gross Floor Space (SFGFA)</b>
1. Veterinary	1 per 200 SFGFA
2. Open air sales used for display or sales	1 per 1,000 square feet of lot area
3. Nursery schools and day care	1 per 150 SFGFA
4. Greenhouses	1 per 200 SFGFA
5. Emergency services	1 per 200 SFGFA
6. Junk and scrap yards	1 per 200 SFGFA
7. Post office	1 per 200 SFGFA
8. Home businesses/occupations (HBHO)	1 per 100 SFGFA devoted to the use
Note: SFGFA means "square feet of gross floor area." Gross floor area is the sum of the total horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for vehicles, or any space where the floor-to-ceiling height is less than six feet.	

- C. Reduction of Parking Spaces - Should the applicant provide evidence that the number of parking spaces required by this Section is not necessarily required to meet the immediate needs of the proposed use, the number of spaces provided may be reduced as a special use by up to fifty (50) percent provided sufficient and suitable area is dedicated to future parking to meet the normal standards in this Section and the applicant shall agree in writing to install the parking at the direction of the Planning Board. All reserve parking areas shall be included in the calculation of lot coverage area.

#### **6.12.2 Off-street Loading**

A. Requirement - Adequate off-street loading and unloading berths shall be provided for any commercial, institutional, manufacturing, wholesale use or other non-residential use. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these requirements and at least one (1) such berth shall be provided for each lot. In the case of a Special Use/Site Plan, additional berths may be required by the Planning Board.

B. Size - Each required loading berth shall be at least twelve (12) feet wide, sixty-five (65) feet long and fourteen (14) feet high or uncovered. All permitted or required loading berths shall be on the same lot as the use to which they are necessary and shall not include any one area used to meet parking requirements.

### **6.12.3 Access Requirements**

Access to and from all off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well-defined separate or common entrances and exits and shall comply with the following provisions:

A. Sight Distance - Access drives shall not open upon any public right-of-way line of any intersecting public street or highway where the sight distance in either direction would be less than required by Town, County or State regulations applicable to the same.

B. Entrance and Exit - There shall be no more than one (1) entrance and one (1) exit to any business or parking area on any one (1) highway unless topography or other physical features dictate the use of more than one access for safety reasons. Each entrance and exit shall be clearly defined with curbing, fencing, or vegetative screening so as to prevent access to the area from other than the defined entrances and exits. In no case shall one entrance and exit be located within eighty (80) feet of any other on the same property or adjoining property along the same public right-of-way. Non-conforming lots, however, shall be exempt from this requirement.

C. Commercial Subdivision - Any subdivision of property within a DB or RB Districts shall provide no more than one (1) common entrance and one (1) common exit on any public right-of-way, unless topography or other physical features dictate the use of more than one access for safety reasons. Interior access drives shall be provided for movement of traffic to the public right-of-way.

### **6.12.4 Lighting**

Any lighting used to illuminate any off-street parking shall be so arranged as to reflect the light away from adjoining premises and public right-of-ways.

### **6.12.5 Public Right-of-Ways**

Parking, loading and unloading of vehicles shall not be permitted on public right-of-ways.

### **6.12.6 Surfacing**

All off-street parking areas and access roads, except those accessory to a one-family or two-family dwelling, shall be graded for proper drainage and shall be surfaced so as to provide a durable and dustless surface, such as a gravel, concrete or bituminous concrete surface.

## **6.13 PERFORMANCE STANDARDS FOR COMMERCIAL AND LIGHT INDUSTRIAL, AND SIMILAR USES**

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

industrial, on-site processing, sawmills, and value-added wood processing, and similar non-residential uses.

#### **6.13.1 Yards and Buffers**

Unless otherwise regulated by this Zoning Law, where a commercial or light industrial use is proposed contiguous to any district, the Planning Board may require that the minimum size of the abutting yard shall be increased up to one-hundred fifty percent (150%). Storage of equipment, supplies, products or any other materials shall not be permitted within ten (10) feet of any property line or public road right-of-way.

Landscaped buffers may be required for Special Uses by the Planning Board in any yard in order to assure the protection of adjoining uses by providing barriers that block the glare of lights; reduce noise; serve as a protective barrier by blocking physical passage to dangerous areas; and reduce air pollution, dust and litter; and, to otherwise maintain and protect the rural character of the District.

A. Type - In determining the type and extent of the buffer required, the Planning Board shall take into consideration the design of the project structure(s) and site, topographic features which may provide natural buffering, existing natural vegetation, and the relationship of the proposed project to adjoining areas.

B. Width - The width of the required buffer shall be determined by the Planning Board.

C. Vegetative Screening - A mix of ground cover and shrubby vegetation and canopy trees, of such variety compatible with the local climate, may be required so that a dense screen not less than six (6) feet in height will be formed within three (3) years of planting.

D. Berms. Walls and Fences - Berms and landscaped walls or fences, compatible with the principal building design, may be incorporated in the required buffer. Front yard buffers shall be provided in the same manner to a height of not less than four (4) feet; however, all clear sight triangles shall be maintained.

E. Adjoining Uses - In any case, special consideration shall be given to existing residential uses and sites where residential uses are likely to be developed. In cases where the adjoining use is a commercial use, or when two or more adjacent properties are developed under a common site plan, the width and density of the buffer may be reduced if the Planning Board shall determine that the proposed use and adjoining use(s) are not incompatible.

#### **6.13.2 RESERVED**

#### **6.13.3 Fire and Explosion Hazards**

All activities involving any manufacturing, production, storage transfer or disposal of, inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and



explosion and adequate firefighting and fire suppression equipment and devices standard in the industry shall be required. Burning of waste materials in open fires is prohibited. Details of the potential hazards and details of planned safety and accident response actions shall be provided by the Applicant for review by the local fire company(s). Additional buffer areas or fencing may be required by the Planning Board for Special Uses if the nature of the proposed use as determined by the Planning Board so requires.

#### **6.13.4 Electrical Disturbance**

No activities shall be permitted which result in electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.

#### **6.13.5 Noise**

The maximum sound pressure level radiated by any use or facility at any lot line shall not exceed the values in the designated octave bands listed in Table 6.13.5-1, after applying the corrections shown in Table 6.13.5-2. The sound pressure level shall be measured with a Sound Level Meter and associated Octave Band Analyzer conforming to standards prescribed by the American Standards Association, Inc., as designated by the Town Board. The Planning Board may, in case of Special Uses, require additional setbacks, buffers and fencing, or limit the hours of operation to mitigate any potential noise impacts of any proposed use.

- A. Maximum Levels - Maximum permissible sound pressure levels at the lot line for noise radiated continuously from any facility or activity between the hours of 9:00 p.m. and 7:00 a.m. shall be as listed in Table 6.13.5-1.

<b>TABLE 6.13.5-1</b>	
<b>Frequency Band (cycles per second)</b>	<b>Sound Pressure Level (decibels re 0.0002 dyne/cm)</b>
20-75	69
76-150	60
151-300	56
301-600	51
601-1,200	42
1,201-2,400	40
2,401-4,800	38
4,801-10,000	35

<b>TABLE 6.13.5-2</b>	
<b>Type of Operation or Character of Noise</b>	<b>Correction in Decibels</b>
Day time operation only	+5
Noise source operation less than:	

a. 20% of any one-hour period	+5
b. 5% of any one-hour period	+10
c. 1% of any one-hour period	+15
Noise of impulsive character (hammering, etc.)	-5
Noise of periodic character (hum, scream, screech, etc.)	-5
* Apply only one of these corrections.	

- B. Corrections - If the noise is not smooth and continuous, and is not radiated between the hours of 9:00 p.m. and 7:00 a.m., one (1) or more of the corrections in Table 6.13.5-2 shall be applied to the decibel levels in Table 6.13.5-1.
- C. Exemptions - The maximum permissible sound levels of this Section 6.13.5 shall not apply to any of the following noise sources:
1. Sound needed to alert people about an emergency or building, equipment, or facility security alarms.
  2. Repair or construction work to provide electricity, water or other public utilities between the hours of 7:00 a.m. and 9:00 p.m., except for emergency repairs which shall not be restricted by time.
  3. Construction operations (including occasional blasting in construction) at and repairs of public facilities between the hours of 7:00 a.m. and 9:00 p.m., except for emergency repairs which shall not be restricted by time.
  4. Agricultural activities, but not exempting kennels.
  5. Motor vehicles when used on public streets in accord with state regulations.
  6. Railroads and aircraft.
  7. Public celebrations, specifically authorized by the Town, the County, state or federal government body or agency.
  8. Unamplified human voices.
  9. Routine ringing of bells or chimes by a place of worship or municipal clock.

#### **6.13.6 Vibration**

No vibration shall be permitted which is detectable without instruments at the property line.

#### **6.13.7 Lighting and Glare**

The following standards apply to lighting and glare.

1. No light source shall be exposed to the eye except those covered by globes or diffusers. Other lighting shall be indirect or surrounded by a shade to hide visibility of the light source.
2. Lighting design should be an inherent part of the architectural design.
3. All streets, off-street parking areas and areas of intensive pedestrian use shall be adequately lighted.
4. Appropriate lighting fixtures shall be provided for walkways and to identify steps, ramps, and directional signs.

5. The applicant shall provide the specifications of the proposed lighting and its arrangement on the site plan.
6. All lighting shall be designed so as to avoid unnecessary or unsafe spill-over of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source. Light sources shall comply with the following standards listed in Table 6.13.7-1:

Table 6.13.7-1 Lighting Standards		
Type of Light Source	Maximum Illumination Permitted at Property Line	Maximum Permitted Height of Light
Globe Light	0.20 Footcandles	15 feet
>90% Cutoff	0.75 Footcandles	25 feet
<90% Cutoff	2.00 Footcandles	30 feet

7. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or otherwise, shall be permitted so as to be visible at the property line.

#### **6.13.8 Smoke**

No emission shall be permitted from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 on the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954.

#### **6.13.9 Odors**

No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable without instruments at the property line of the parcel from which the odors are emitted.

#### **6.13.10 Other Forms of Air Pollution**

No open or exterior burning of any raw material, component or other substance associated with any production process shall be permitted. No waste materials or by-products shall be burned or incinerated on any property except at a NY DEC approved solid waste disposal facility. In any case, no emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted which can cause any damage to health, to animals, vegetation, or other forms of property, or which can cause any excessive soiling.

#### **6.13.11 Surface and Ground Water Protection**

All activities involving the possible contamination of surface or ground water shall be provided with adequate safety devices to prevent such contamination. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and details of planned safety

devices and contamination response actions shall be provided by the Applicant. The Applicant shall also provide details about the use of ground water and any processes that could result in the depletion of ground water supplies.

In the case of Special Uses, the Planning Board may require a plan to be submitted for review and approval and may require financial security for insuring contamination response. Monitoring wells and water quality testing may also be required by the Planning Board.

In cases where the use is of such a nature that large volumes of ground water are required the Applicant shall provide appropriate hydro-geologic studies which clearly establish that the proposed use will not cause a reduction in the quantity or the quality of ground water supplies available to other properties located within one-thousand (1,000) feet of any portion of the property where the proposed use will be located.

#### **6.13.12            Landscaping**

The Planning Board shall, to assure an acceptable buffer adjacent residential and non-residential uses and create a healthy, safe, and aesthetically pleasing environment in the Town, require a landscaping plan for any proposed Special Use, including the parking areas, walkways and areas adjacent to buildings. The landscaping plan shall include the overall design of the landscaping proposed, the type and size of vegetation to be utilized, and details of installation and maintenance program. Where required by the Planning Board for a Special Use, landscaping shall be installed to the following minimum standards:

1. Disturbed areas - All disturbed areas of the site shall be included in the landscaping plan, and those areas immediately adjacent to buildings and walkways shall be given extra consideration.
2. Pedestrian Walkways - Adequate pedestrian walkways shall be provided for access from parking areas and to common use areas and shall be an integral part of the landscaping; and shall be consistent with the architectural type of the project and shall be a minimum of four (4) feet in width.
3. Plant Type - Plants shall be of a variety proven successful in the Town's climate, unless otherwise approved by the Planning Board.
4. Buffers - Where landscaping is required to serve as a buffer (e.g. between the project and adjoining properties or between buildings and parking areas) the plants used shall be of such variety, size and arrangement of height and spacing to effect the required buffer in a reasonable period of time as determined necessary by the Planning Board. The width of the landscaped buffer shall generally not be less than ten (10) feet in all required yards, unless the applicant can demonstrate to the Planning Board that the buffer can be effected by other means such as soil mounding and/or fencing. Buffers of greater width may also be required as a condition of approval to address specific requirements of particular uses.
5. Landscape Materials - The variety of landscape materials shall be consistent with building architecture and the surrounding area and plant type shall be appropriate for the size and location of the space it is to occupy.

6. Natural Features - Attractive natural features of the site, including mature trees, shall be preserved to the greatest extent possible.
7. Artificial Materials - Plastic and other artificial landscape materials shall not be permitted with the exception of permeable weed control material.
8. The minimum branching height for all shade trees shall be six (6) feet.
9. Shade trees shall have a minimum caliper of two and one-half (2-1/2) inches (measured one foot above grade) and be at least twelve (12) feet in height when planted.
10. Evergreen trees shall be a minimum of six (6) feet in height when planted.
11. Shrubs shall be a minimum of 24" in height when planted. Hedges shall form a continuous visual screen within two (2) years after planting.
12. All lot area (except where existing vegetation is preserved) shall be landscaped with grass, ground cover, shrubs, or other appropriate cover.
13. The preservation of mature shade trees shall be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Code Enforcement Officer or Planning Board, as the case may be, determines the purpose of this section is achieved.
14. Where it is determined that a proposed Special Use would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified but not be waived unless no new construction is involved.
15. A performance guarantee in the amount of one-hundred-twenty-five percent (125%) of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition one (1) full year and any required fencing is properly maintained. The Code Enforcement Officer or Planning Board, as the case may be, shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Code Enforcement Officer shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned or infested plant materials. The requirement to maintain such fencing and landscaping shall continue beyond the period of the guarantee and the Code Enforcement Officer may proceed as provided herein to remedy any deficiencies in this regard.
16. All applicable requirements of these landscaping regulations shall be fully met prior to the Code Enforcement Officer granting a Certificate of Occupancy for a new building or use subject to these regulations.
17. Maintenance - All landscaping shall be maintained in good growing condition by the property owner with plants that have died being replaced with similar plants.

#### **6.13.13            Stormwater Management and Soil Erosion Control**

In the case of Special Uses a stormwater management plan and soil erosion control plan shall be required. Said plan shall be prepared and implemented pursuant to the standards contained in the Town Subdivision Regulations.

**6.13.14            Waste Materials**

No liquid, solid, toxic or hazardous waste shall be stored or disposed in any area, either above or below ground level, except for the temporary storage thereof pending removal from the premises. Such temporary storage and handling of waste shall be in a designated area and shall be conducted in compliance with all applicable state and federal regulations in order to prevent any water, soil or air contamination and shall be screened from view of adjoining properties and any public road right-of-way by fencing or other buffers. In addition, no waste discharge is permitted into any reservoir, sewage or stormwater disposal system, stream, open body of water or onto the ground.

**6.13.15            Sewage Disposal**

Sewage disposal shall be provided by a system meeting the requirements of the New York State Department of Health to all uses, including residential uses, governed by this Zoning Law. Discharge to such system shall be limited to normal, domestic and human bodily wastes unless the treatment system has been specifically designed to handle other wastes or the wastes are pre-treated in accord with Department of Health or local sewer district requirements. No discharge of wastes, by-products or materials in any way associated with a production process, health care or veterinary facility medical wastes, funeral home wastes, or other commercial wastes shall be permitted to any subsurface, land application or other soil based sewage disposal system.

**6.13.16            Water Supply**

All uses, including residential uses, governed by this Zoning Law shall be provided with an adequate and safe water supply meeting all applicable town, county, water district and state regulations.

**6.14    PORTABLE HOME STORAGE UNITS/PORTABLE ON DEMAND (PODS)**

No Portable Home Storage Units or Portable On Demand (POD) storage structures may be utilized as a temporary structure unless a permit is obtained for each portable on-demand storage structure or POD by application to the Code Enforcement Officer who shall issue such permit if the following requirements of this section are satisfied:

1. A portable on-demand storage structure or POD is located as a temporary structure on property within the town for a period not exceeding 72 hours in duration from time of delivery to time of removal.
2. No more than two portable on-demand storage structures may be located on a specific piece of property within the city at one time; such structures shall be individually limited to the duration time period established herein.
3. Such temporary structure(s) may not be located on a specific property more than two times in any given thirty-calendar-day period. Such temporary structure shall be located no closer than 10 feet to the property line unless placed on an existing impervious driveway.
4. All locations must be paved off-street surfaces. The applicant must obtain preapproval of the location by the Town Code Enforcement Officer in the following situations:

- a. If the property does not have a driveway.
  - b. If the location of the unit in the driveway is in the front yard of the property.
  - c. If the property is a corner lot.
5. Such structure may not exceed eight feet six inches in height, 10 feet in width or 20 feet in length. It shall be the obligation of the owner or user of such temporary structure to secure it in a manner that does not endanger the safety of persons or property in the vicinity of the temporary structure. In the event of high winds or other weather conditions in which such structure may become a physical danger to persons or property, the appropriate law enforcement officers may require the immediate removal of such temporary structure.
6. In the event of fire, or natural disaster causing substantial damage to the structure, the property owner may apply to the Town for permission to extend the time that a portable on-demand storage structure may be located as a temporary structure on the property. Application for such extended duration shall be made in writing and filed with the Town Code Enforcement Officer and shall give sufficient information to determine whether such extended duration should be granted. The Code Enforcement Officer (CEO) shall determine whether or not to grant such extended duration and the length of such extension. In the event of an adverse decision by the CEO, the applicant may appeal such decision to the Zoning Board of Appeals (ZBA). In the event of such an appeal, the decision of the ZBA shall be final.
7. Any portable on-demand storage structure which is not removed at the end of the time for which it may lawfully remain in place, or immediately upon the direction of a law enforcement officer for removal of such temporary structure for safety reasons, may be removed by the city immediately, without notice, and the cost of such removal, together with the cost of administration of its removal, may be assessed against the property on which the temporary structure was located and may be filed as a lien against such property by the Town Clerk. Such lien shall be superior in dignity to all other liens or encumbrances upon the property, including the lien of a mortgage, and shall be equal in dignity to the lien of ad valorem taxes.

## **6.15    SOLID WASTE FACILITIES**

### **6.15.1            Disposal Required**

All solid waste generated in conjunction with any use shall be disposed of in a New York State approved solid waste disposal facility.

### **6.15.2            Facility Requirements**

Solid waste facilities are considered Special Uses in all Districts and, in addition to all other applicable requirements of this Zoning Law, shall comply with the following requirements:

- A. Parcel Size - The minimum parcel size shall be fifty (50) acres.
- B. Setbacks - All disposal facilities shall not be closer than five-hundred (500) feet to any property line.
- C. Fence - All solid waste facilities shall be completely enclosed by a chain link fence not less than ten (10) feet in height. All gates shall be closed and locked when closed for business. The

fence and gate shall be maintained in such a manner as not to become unsightly. There shall be no advertising of any kind placed on the fence.

D. Buffer - In cases where natural vegetation is not adequate to screen the facility from view from adjoining properties or roads, a dense evergreen planting to effect such screening shall be provided and maintained by the Operator in accord with a planting plan submitted by the Applicant and approved by the Planning Board.

E. State Approval - Special Use/Site Plan approval shall be contingent upon New York State approval of the facility.

## **6.16    SWIMMING POOLS**

Swimming pools, whether above or below-ground, that are accessory to single-family dwellings shall not be located closer than ten (10) feet to any property line or within any front yard. Swimming pools accessory to more than one (1) residential dwelling unit or to a non-residential use shall not be located closer than fifty (50) feet to any property line, within fifty (50) feet of a dwelling or within any front yard. All pools shall comply with all applicable New York State Laws.

## **6.17    UPPER DELWARE SCENIC AND RECREATIONAL RIVER (UDSRR): THE RIVER MANAGEMENT PLAN**

Areas within the boundaries of the Upper Delaware National Scenic and Recreational River shall be subject to the following requirements of the Town of Tusten via the Scenic River (SR) and Residential River (RR) Districts, and, where applicable, the Scenic Overlay (SO) District. The purpose of these provisions, which were introduced in Article III, Section 3.0 of this law is to ensure development conforms with the recommendations of the Upper Delaware River Management Plan (RMP) of 1986.

### **6.17.1    Applicability and Standards of the Scenic Overlay (SO) District**

The Scenic Overlay (SO) District applies to all areas along Route 97 that extend two-hundred and fifty (250) feet on each side of the Route 97 Right-of-way edge within the SR and RR Districts. The SO District shall require that no building exceed twenty eight (28) in height, front yards be increased by fifty (50) percent, no greater than 60% of vegetation shall be removed (except in RB Districts) and all uses other than residential shall be processed as Special Uses.

### **6.17.2    Density in the Scenic River (SR) District**

Residential density in the SR District shall not exceed a net density of one (1) dwelling unit per three (5) acres. See Schedule of District Regulations in Article IV.

### **6.17.3 Prohibition of Types on Non-Residential Development**

Junkyards and salvage operations, solid waste disposal sites, light manufacturing, commercial uses which involve more than two-thousand (2,000) square feet of floor area or five (5) employees and major



airports shall not be permitted in the River corridor. This shall not be construed, however, to permit any use not otherwise provided for in the respective zoning districts on the Schedule of District Regulations.

#### **6.17.4 Ridgelines**

This Section shall be applicable in all areas of the Scenic River (SR) and Residential River (RR) Districts. Any proposal for a building or structure or use located within one-hundred (100) feet of the ridgeline as designated in the River Management Plan (RMP) or which is proposed at a lower elevation and which would be visible from the Delaware River shall be considered a Special Use and the Applicant shall submit for approval a plan detailing how the proposed use will be developed in accord with the intent of the RMP. In addition to the following standards all other applicable requirements of this Zoning Law shall apply:

- A. Steep Slopes - The requirements of Section 6.17.10 (along with 6.17.10 A and 6.17.10 B) of this Zoning Law, "Development on Steep Slopes", shall apply.
- B. Vegetation - Special attention shall be given to the preservation of trees and other vegetation.
- C. Buffers - The Planning Board may require additional vegetative plantings, buffers, and/or fencing in accord with Section 6.13.12 of this Zoning Law to effect the screening required to minimize the impact on the Upper Delaware Scenic and Recreational River.

#### **6.17.5 Special Setback Requirements**

No building, structure or any part of any septic system in the Scenic River (SR) and Residential River (RR) Districts shall be located less than one-hundred (100) feet from the normal high water mark of the Delaware River.

#### **6.17.6 Other Conditions for Special Uses**

In addition to the standards contained in Article III of this Zoning Law, the Planning Board shall, in approving Special Uses in the Scenic River and Residential River Districts, take into consideration the effect of the proposed use on the UDSRR and shall attach any and all conditions of approval necessary to provide protection to the River Management Plan (RMP) from impacts of development. Said conditions may include, but shall not be limited to, increased setbacks; buffers, landscaping and fencing; special storm water control facilities; limitations on the location, number and size of advertising signs; more restrictive lot coverage limitations; and more restrictive building height limitations.

#### **6.17.7 Clearcutting Timber for Forest Products**

Clearcutting of timber in the Scenic River District (SR) in excess of one (1) acre in size, which shall include the cumulative cutting of smaller plots as part of the cutting of a single tract or combination of tracts, shall be considered Special Uses to assure impacts on soil, water, vegetation and wildlife resources are minimized. The following standards shall apply, in addition to all other applicable regulations of this Zoning Law:

A. Plan - The applicant shall provide a timber harvesting plan prepared by a professional forester.

B. E & S Control - A soil erosion and sedimentation control plan meeting the requirements of the County Soil and Water Conservation District shall be implemented on the site.

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

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

Cluster Development - The Planning Board may strongly encourage the use of cluster development techniques as provided by Article VII hereof to preserve open space and the forested character of the river valley. It may also, pursuant to Municipal Home Rule Authority, modify zoning requirements to accommodate such projects within those areas falling under the jurisdiction of this section, provided no such modification shall increase density by more than 25% or result in less than 40% of the tract being preserved as permanent open space.

#### **6.17.8 Signs**

In addition to the sign regulations in Article XIII of this Zoning Law, the following special standards in this Section shall apply to the Scenic River (SR) District.

##### **A. Signs Permitted in the SR and RR Districts**

1. One (1) sign advertising the sale or rental of the premises on which the sign is located provided the sign does not exceed ten (10) square feet in area and is non-illuminated.
2. Non-illuminated announcement signs for schools, churches and other institutions, not exceeding one (1) per property and six (6) square feet in area.
3. One (1) non-illuminated sign for the purpose of identifying the location of a business or trade, provided such sign is located on the business premises and relate only to the use of that particular property and further provided that the sign does not exceed six (6) square feet in area.
4. Non-illuminated advertising signs located on any property provided such signs are not located along or directed toward the Delaware River and advertise only a business located in the Town of Tusten or adjoining municipalities. Such signs shall be limited to one (1) per business per Town, County or State road leading to the location of the business and shall not exceed six (6) square feet each in area. The total number of such signs erected along any such road in both directions shall be limited to one (1) per thousand (1000) lineal feet of frontage along said road.
5. Political signs shall not exceed ten (10) square feet in size and shall be limited to two (2) per property.

**6.17.9                Lots Fronting on the Delaware River**

No lot bordering the Delaware River in any area of the Scenic River (SR) District shall be created with less than three-hundred (300) feet of frontage along the River.

**6.17.10              Development on Steep Slopes**

All uses allowed by this Zoning Law shall be subject to the following special conservation performance standards which shall apply to any lands that are characterized by steep slopes. The procedures and standards are as follows:

**6.17.10 A           Steep Slope Determination**

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

**6.17.10 B           Performance Standards**

In reviewing applications for use of sites partially or wholly included within an area identified as steep-sloped, the Code Enforcement Officer (CEO) or Planning Board, as the case may be, shall determine that the following performance standards have been or will be met:

1. Map - An accurate map prepared by a Professional Surveyor has been submitted showing property boundaries, building and drive locations, contours at two (2) foot intervals and any areas to be graded. The proposed location of other factors shall also be shown including streams, wetlands, areas subject to landslides and extent of vegetative cover.
2. Grading and Drainage Plan - A grading and drainage plan has been prepared showing existing and proposed ground surfaces, plans for drainage devices, plans for walls or cribbing, etc., map of the drainage area affected, computation of the amount of runoff expected, an erosion control plan and schedule for completion of work.
3. Impervious Surfaces - Impervious surfaces are kept to a minimum.
4. Maximum Grade - No finished grade where fill is used shall exceed a fifty (50) percent slope.
5. Erodible Soils - Soils characterized by the Soil Conservation Service as highly susceptible to erosion shall be avoided.
6. Improvements - Roads and utilities shall, to the greatest extent possible, be installed along existing contours.
7. High Water Tables - Any steep slope areas also characterized by seasonal high water tables shall be avoided.
8. Vegetation - Natural vegetation shall be preserved to as great a degree as possible.

9. Structures - In cases where structures are proposed, the applicant shall submit plans to the Town detailing how the limitations of slope will be mitigated by the design of the structure(s). Said plans shall be prepared and certified by a Professional Engineer or Registered Architect.
10. Certification - Prior to the issuance of a Certificate of Occupancy the Applicant shall provide to the Code Enforcement Officer (CEO) a certification by a Professional Engineer or Registered Architect that the property has been developed and structures have been constructed in accord with the approved certified plans.

**6.17.11            Location of Small Hotels, Motels, and Bed and Breakfast Establishments**

Where permitted, small hotels, motels, and Bed and Breakfast Establishments within the corridor shall be located adjacent to arterial roads and designed to be compatible with the natural and scenic characteristics of the River corridor. Furthermore, if such establishments are proposed and/or existing within 250 feet of the Route 97 Right-of-way, the standards of the SO District will apply as specified in Section 6.17.1.

**ARTICLE VII - MODERATE TO HIGH DENSITY RESIDENTIAL DEVELOPMENT**

**7.0    CONSERVATION/CLUSTER DEVELOPMENTS**

The Town of Tusten Planning Board shall be authorized, pursuant to § 278 of the Town Law and simultaneously with the approval of plats under the Town of Tusten Subdivision Regulations, to modify applicable provisions of this Zoning Law so as to accommodate conservation subdivision projects. Also known as "cluster development," conservation subdivisions offer flexibility in design, facilitate the economical provision of streets and utilities and preserve open space. They shall be allowed anywhere within the Town of Tusten and be processed pursuant to subdivision plat approval procedures.

**7.0.1    Applications**

Conservation/Cluster development applications shall be processed concurrently with the subdivision approval procedures set forth in the Town of Tusten Subdivision Regulations and all applicable development requirements of the said Regulations shall apply.

**7.0.2 Minimum Parcel Size**

A minimum parcel size of five (5) acres shall be required and all lands, including open space, proposed for a cluster development shall be contiguous.

**7.0.3    Individual Lot Size**

The size of individual building lots may be reduced, provided no dwelling structure (single-family or two-family) is located on less than 43,560 square feet of land where on-site sewer and water facilities are to be provided or 15,000 square feet of land where centrally supplied sewer and water facilities are to be provided; and further provided the total density (in individual dwelling units) for the tract shall not exceed that which would result from a conventional subdivision plan designed in accord with this Law plus a bonus of up to 20%, as determined from the basic Sketch Plan submission. Yard requirements may also be reduced, but in no instance to less than forty (40) feet from the front yard and thirty (30) feet for the side and rear yards.

**7.0.4    Minimum Number of Lots**

Conservation/cluster subdivisions shall include at least five (5) lots and the Planning Board shall have the authority to require an alternative Sketch Plat, for any subdivision of ten (10) lots or more, depicting how the property might be developed using this technique. If this alternative Sketch Plat is determined to provide a superior design in accord with the purposes of this Law and the same density can be achieved the Planning Board may then require use of this technique.

### **7.0.5 Density**

The overall density on the parcel shall be maintained as required by this Zoning Law. The total number of individual building lots permitted on the project parcel shall be determined in one of the following two methods:

- A. **Demonstration Plan Method** - The number of cluster lots permitted shall be the same as the total number of buildable lots permitted in a normal (i.e., non-cluster) subdivision of the same parcel. In order to determine the number of cluster lots permitted, the Applicant shall submit a subdivision plan for the parcel as if it were to be developed in accord with all the standards and requirements in this Zoning Law and the Town Subdivision Regulations for a normal (i.e., non-cluster) residential subdivision served by the designated type of water supply and a sewage disposal system. The level of detail required for the plan shall be determined by the Planning Board based on site conditions and the nature of the proposed project. Any lot which, due to slope, wetlands or other limitation, does not contain a suitable area for erecting a dwelling and associated improvements using normal development and building practices, shall not be considered a "buildable lot" for the purposes of this Section 7.0; and such determination shall be made by the Planning Board.
- B. **Calculation Method** - The total number of dwelling units permitted shall be determined after deducting:
  - a. Land contained within public rights-of-way;
  - b. Land contained within the rights-of-way of existing or proposed private streets and parking areas (where formal rights-of-way are not involved the width of the street shall be assumed as fifty [50] feet wide);
  - c. Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service, and any petroleum products pipeline rights-of-way; and any petroleum products pipeline and railroad rights-of-way;
  - d. The area of waterbodies including lakes, ponds and streams (measured to the normal high water mark on each side); fifty (50) percent of wetland areas; quarries; fifty (50) percent of areas with slope in excess of twenty-four (24) percent; and areas used for improvements, from the total area of the project parcel and applying the density as required for the District based on the type of water supply and sewage disposal. For example, for a conservation/cluster development in the GR District with central water supply and central sewage disposal, the density would be based on one unit per 15,000 square feet of adjusted land area.
- C. **Crossing Zoning District Boundaries** - In cases where the proposed conservation/cluster development falls within two (2) or more zoning districts with differing density requirements, the Planning Board may approve in any one such zoning district a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts as determined in accord with this Section 7.0.

#### **7.0.6    General Planning Criteria**

- A. Preserve Natural Site Features - Individual lots, buildings, streets, parking areas and other improvements shall be designed and situated to minimize alteration of the natural site features.
- B. Open Space - Cluster open space shall include irreplaceable natural features located in the tract (such as, but not limited to, waterbodies, significant stands of trees, individual trees of significant size, and rock outcroppings).
- C. Visual Impacts - Individual lots, buildings, and units shall be arranged and situated to relate to surrounding properties, to improve the view from and the view of buildings, and to lessen area devoted to motor vehicle access, and reduce visual impacts to adjoining properties and public roads.
- D. Cluster Design - Diversity and originality in lot layout shall be encouraged to achieve the best possible relationship between development and the land.

#### **7.0.7 Open Space**

Open space shall be provided in accord with this Section as follows:

- A. Characteristics - All areas of a cluster development not conveyed to individual lot owners and not occupied by required or proposed development improvements shall be dedicated in perpetuity as permanent open space to be used for the sole benefit and enjoyment of the residents of the development.
  - 1. A minimum of twenty-five (25) percent of the gross area of the project parcel shall remain as open space and the location and configuration of the open space shall be suitable for recreation purposes and shall be approved by the Township.
  - 2. Open space areas shall be part of the project parcel and shall be contiguous.
  - 3. At least fifty percent (50%) of the open space shall be usable for active recreation purposes and shall not include wetlands, quarries, slopes in excess of twenty-four percent (24%), or otherwise unusable areas.
- B. Dedication and Ownership - Land designated as open space shall be maintained as open space and shall not be used to meet open space or recreation area requirements for other developments. The open space resulting from clustering of dwelling units shall be titled to a property owner's or homeowner's association (POA) prior to the sale of any lots or dwelling units by the developer.
  - 1. Membership shall be mandatory for each property owner within the development.
  - 2. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities.
  - 3. Each property owner must be required to pay their proportionate share of the POA's cost and the POA shall have the authority to file liens on the lot/unit owner's property if levied assessments are not paid.

- C. The POA must also have the ability to adjust the assessment to meet changing needs for operation and maintenance of open space and improvements.

#### **7.0.8 Bulk Requirements**

Bulk requirements shall be as follows:

<b>A. 10,000 Square Feet Minimum Size Lots</b>	<b>B. 21,780 Square Feet Minimum Size Lots</b>
Minimum lot width: 70 feet	Minimum lot width: 150 feet
Minimum lot depth: 100 feet	Minimum lot depth: 150 feet
Maximum lot coverage: 35%	Maximum lot coverage: 25%
Minimum yards: front: 25 feet rear: 15 feet side: 10 feet	Minimum yards: front: 50 feet rear: 50 feet side: 30 feet

#### **7.0.9 Water Supply**

All lots in the conservation/cluster development shall be provided with an adequate water supply. Any lots which are less than 40,000 square feet in size shall be served by a central water supply system. Lots of 40,000 square feet or more in size may be served by on-site wells.

#### **7.0.10 Sewage Disposal**

All lots in the cluster development shall be provided with adequate sewage disposal. Any lots which are less than 40,000 square feet in size shall be served by a central sewage disposal system. Lots of 40,000 square feet or more in size may be served by on-site sewage disposal systems.

#### **7.0.11 Access**

The development shall be served by two access points to any public highway.

#### **7.0.12 Lot Access**

Access for individual building lots shall be provided by development roads only and no individual driveways shall be permitted to encroach upon any public road right-of-way.

#### **7.0.13 Buffer**

A buffer area of fifty (50) feet shall be maintained between individual building lots and exterior property lines and/or any public road right-of-way.



## **7.1    MULTIPLE DWELLINGS**

Multiple dwelling projects are permitted as Special Uses in the GR and RB Districts and shall be subject to the provisions of this Zoning Law and shall also be considered major subdivisions subject to the jurisdictions of the Town of Tusten Subdivision Regulations. This "major subdivision" classification shall apply to all subdivision of property in connection with the development, regardless of whether or not the same are connected with building development or conveyance of land or buildings involved, and the approvals required shall be requested and acted upon concurrently as one subdivision.

### **7.1.1    Application Submission**

The Applicant shall submit all information required by the Town of Tusten Subdivision Regulations and the following additional information:

- A. Application - An application for multi-family dwelling special use approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the Applicant or his or her representative indicating how the development will specifically comply with or meet the special use and site plan review criteria contained in this Law.
- B. Lot Plan - A proposed lot plan showing, in addition to the information required by the Town Subdivision Regulations, the following:
  - 1. Approximate (generally within five feet) location of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply and distribution system, sewage treatment and collection systems.
  - 2. The specific areas provided as open space in connection with the requirements of this Zoning Law.
  - 3. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and size of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein. (NOTE: Compliance with New York State Building Codes shall be determined by the Town Code Enforcement Officer (CEO) as part of the building permit process.)
  - 4. Setbacks from property lines, improvements and other buildings.
- C. Property Owners Association and Open Space - In the case of projects involving the sale of interests in the project (as opposed to rentals), a plan submitted in accord with Section 7.0.7 of this Zoning Law shall be submitted for the purpose of dedicating the exclusive use and/or ownership of the recreation area and open space required by this Zoning Law to the dwelling owners or occupants. Land designated as open space shall be maintained as open space and shall not be used to meet open space or recreation area requirements for other developments.
  - 1. Membership in the POA shall be mandatory for each property owner within the development.
  - 2. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities.

3. Each property owner must be required to pay their proportionate share of the POA's cost and the POA shall have the authority to file liens on the unit owner's property if levied assessments are not paid.
4. The POA must also have the ability to adjust the assessment to meet changing needs for operation and maintenance of open space and improvements.

D. Building Permit Application - A completed building permit application on forms to be supplied by the Town. A copy of the completed application shall be also filed with the Code Enforcement Officer (CEO), who shall collect any fees connected with that application at the time the special use is granted.

#### **7.1.2 Procedure**

The application package shall be processed on a schedule identical with requirements for review and approval of other Preliminary Plans in accord with the Town Subdivision Regulations. The Planning Board shall act on the Preliminary Plan and Special Use/Site Plan application concurrently, and; if approval is granted, the approval be valid for a period equal to that for Preliminary Plan approval.

1. Public Hearing - The Town Planning Board, before taking action, shall also hold a public hearing pursuant to the requirements of the Town Subdivision Regulations and the Special Use/Site Plan requirements of this Zoning Law.
2. NYS Department of Health - Plan approval, if such approval is granted, shall be subject to approval by the New York State Department of Health if the same shall be required.
3. Building Permits - No building permit shall be issued to the Applicant until all conditions attached to the approval of any Preliminary Plan shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to Preliminary Plan approval. If the Preliminary Plan shall be rejected no building permit shall be issued.
4. Completion of Improvements - Following Preliminary Plan approval, the Applicant shall, in accord with the Town Subdivision Regulations, provide for the installation of required or proposed improvements, including but not limited to, streets, parking areas, storm drainage facilities, recreational facilities and lighting. Complete building plans shall also be submitted as part of the Final Plan application. Final Plan approval may be granted if a guarantee for improvements is provided to the satisfaction of the Town pursuant to the applicable provisions of the Town Subdivision Regulations.
5. Certificate of Occupancy - No Certificate of Occupancy shall, however, be issued until such time as:
  1. Final Plan approval shall have been granted in accordance with the procedures and informational requirements of the Town Subdivision Regulations; and,
  2. Buildings have been completed and inspected by the Code Enforcement Officer (CEO).
6. Sale of Land and Buildings - No person shall sell, transfer or lease any land and/or buildings or interests in the individual dwelling units to be created unless and until Final Plan approval shall have been granted and the Plan has been recorded in the County Clerk's Office. Nothing herein shall preclude agreements of sale or the taking of deposits consistent with New York State Law.

**7.1.3    Density**

Multiple dwelling density shall not exceed the number of dwelling units per acre which would be permitted within a Zoning District if the parcel on which the units are to be constructed were to be developed for single-family residential use. In the case of the GR and RB, the total number of dwelling units permitted shall be determined after deducting:

1. Land contained within public rights-of-way;
2. Land contained within the rights-of-way of existing or proposed private streets and parking areas (where formal rights-of-way are not involved the width of the street shall be assumed as fifty [50] feet wide);
3. Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service, and any petroleum products pipeline rights-of-way; and any petroleum products pipeline and railroad rights-of-way;
4. The area of waterbodies including lakes, ponds and streams (measured to the normal high water mark on each side); fifty (50) percent of wetland areas; quarries; fifty (50) percent of areas with slope in excess of twenty-four (24) percent; and areas used for improvements, from the total area of the project parcel and applying the following density factors to the adjusted land area:

<b>Zoning District</b>	<b>Lot Area per Unit (Square feet)</b>
GR	5,000
R-1	20,000

**7.1.4    Water and Sewage**

All multiple dwelling developments shall be served with central sewage disposal facilities and central water supplies. Effluent disposal areas shall be subject to the setback requirements applicable to other multiple dwelling buildings and improvements.

**7.1.5    General Planning Criteria**

- A. Natural Site Features - Buildings, streets, parking areas and other improvements shall be designed and situated to minimize alteration of the natural site features.
- B. Open Space - Open space shall include irreplaceable natural features located in the tract (such as, but not limited to, waterbodies, significant stands of trees, individual trees of significant size, and rock outcroppings).
- C. Visual Impacts - Buildings shall be arranged and situated to relate to surrounding properties, to improve the view from and the view of buildings, and to lessen area devoted to motor vehicle access, and reduce visual impacts to adjoining properties and public roads.
- D. Development Design - Diversity and originality in development layout shall be encouraged to achieve the best possible relationship between development and the land.

#### **7.1.6    Design Criteria**

The following design criteria shall apply to multiple dwelling developments:

- A. There shall be no more than ten (10) dwellings in each multiple dwelling building.
- B. No structure shall be constructed within forty (40) feet of the edge of the right-of-way of any road through the development.
- C. Roads shall comply with minor street requirements as specified in the Town Subdivision Regulations and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
- D. The development shall be served by only one access to any public highway, unless topography or other physical features dictate the use of more than one access for safety reasons.
- E. Parking shall comply with the standards of this Zoning Law excepting that in addition to the normal required spaces per unit there shall be specifically provided, for every two (2) units intended for rental or other transient occupancy, one (1) additional space to accommodate parking needs during sales and other peak visitation periods.
- F. No more than sixty (60) parking spaces shall be provided in (1) one lot, nor more than fifteen (15) in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and also arranged as to direct light away from residences.
- G. No structure shall be erected within a distance, equal to its own height, of any other structure.
- H. All multiple dwelling structures shall be a minimum of fifty (50) feet from any of the exterior property or boundary lines of the particular project involved and thirty (30) feet from any public right-of-way.
- I. Where a property line is not wooded, a planting strip/buffer of up to fifty (50) feet in width or privacy fence may be required to buffer adjoining property owners and ensure privacy. A landscaping plan may be required by the Planning Board.

#### **7.1.7    Non-Residential Use**

Non-residential uses shall not be permitted in a multiple dwelling development unless planned as part of a Planned Unit Development. This, however, shall not preclude such ancillary facilities as laundry areas, service buildings, recreational facilities, and the like.

#### **7.1.8    Conversions of Existing Structures**

Conversions of motels, hotels or other existing structures to multiple dwelling projects, regardless whether such conversions involve structural alterations, shall be subject to the provisions of this Section. If the proposed project does involve structural alterations, the Preliminary Plan shall include a certification of a registered architect or a registered engineer to the effect that the existing building is structurally sound and that the conversion will not impair its structural soundness.

## **7.2    PLANNED UNIT DEVELOPMENTS DISTRICTS (PUDS)**

### **7.2.1    Purposes and Planning Criteria**

It is the purpose of this section to permit on receipt and approval by the Town Board of an application made by the landowner(s) the establishment of a Zoning Classification entitled "Planned Unit Development" (PUD) District. Such District shall be permitted for the following purposes:

- A. A maximum choice in the types of housing (including senior housing), lot sizes and community facilities available to present and future Town residents and visitors of all income levels;
- B. More useable open space and recreation areas;
- C. More convenience in location of certain accessory commercial and service areas;
- D. The preservation of trees, outstanding natural topography and geological features and prevention of soil erosion;
- E. A creative use of land and related physical development which allows an orderly transition from rural to urban uses;
- F. An efficient use of land resulting in small networks of utilities and streets and thereby lower housing costs;
- G. A development pattern in harmony with objectives of the TOWN OF TUSTEN Comprehensive Plan;
- H. A more desirable environment than would be possible through the strict application of other articles of this Law or the TOWN OF TUSTEN Subdivision Regulations.

Generally, these "floating districts" are intended to provide landowners who wish to develop functionally integrated residential or resort communities or complexes with the flexibility to do so provided sufficient open space will be preserved and the development is designed with safeguards to protect the public health, safety and welfare.

The following general planning criteria shall be considered in PUD Districts:

- A. Natural Site Features - Individual lots, buildings, streets, parking areas and other improvements shall be designed and situated to minimize alteration of the natural site features.
- B. Open Space - Open space shall include irreplaceable natural features located in the tract (such as, but not limited to, waterbodies, significant stands of trees, individual trees of significant size, and rock outcroppings).
- C. Visual Impacts - Individual lots, buildings, and units shall be arranged and situated to relate to surrounding properties, to improve the view from and the view of buildings, and to lessen area devoted to motor vehicle access, and reduce visual impacts to adjoining properties and public roads.
- D. PUD Design - Diversity and originality in lot and development layout shall be encouraged to achieve the best possible relationship between development and the land.

### **7.2.2    Procedures**

The Town Board shall establish PUD Districts in the following manner:

- A. Application and Sketch Plan - The owner(s) of the land in a proposed PUD District shall initially apply to the TOWN OF TUSTEN Planning Board for the establishment of a planned district. The application shall be in writing and include a sketch plan. Said sketch plan shall be drawn to scale, though it need not be to the precision of a finished engineering drawing; and it shall include the following information:
1. The location and types of the various uses and their areas in acres;
  2. Delineation of the various residential areas indicating for each such area its general location, acreage and composition in terms of total number of dwelling units, approximate percentage allocation of dwelling units by type and the calculation of the residential density units per gross acre of site area;
  3. The general outlines of the interior roadway system and all existing public and private rights-of-way and easements;
  4. The location and area of the common open space;
  5. The overall drainage systems;
  6. A location map showing uses and ownership of abutting lands;
  7. Provisions for sewers, water and other required utilities;

Additional Documentation - In addition, the following documentation shall accompany the sketch plan:

1. Evidence that the proposal is compatible with the goals of the **TOWN OF TUSTEN COMPREHENSIVE PLAN**;
  2. A description of anticipated common open space ownership and maintenance.
  3. If the development is to be staged, a general indication of how the staging is to proceed. The sketch plan shall show the total project whether or not the proposed development is to be staged.
  4. A statement how the PUD will comply with the Special Use/Site Plan review criteria contained in this Zoning Law.
- B. Planning Board Public Hearing and Report - The Planning Board shall review the sketch plan and related documents and render a report to the Applicant on the acceptability of the proposal along with recommendations for changes or improvements, if any. The Planning Board may conduct a public hearing as part of the review process, notice of said hearing to be published in a newspaper of general circulation in the Town not less than five (5) days prior to the date of the hearing. The Planning Board shall make such report within sixty-two (62) days of the meeting at which the sketch plan is initially presented, or within sixty-two (62) days of the public hearing, if a hearing is conducted. An unfavorable report shall state clearly the reasons therefore and, if appropriate, advise the Applicant what revisions are necessary to receive acceptance.
- C. Preliminary Development Plan - Upon receipt of a favorable report from the Planning Board, the Applicant may submit a preliminary development plan for the project including all information required under the TOWN OF TUSTEN Subdivision Regulations and addressing any comments which may have been made by the Planning Board. The Applicant shall also submit, in the form of a letter or brief, information indicating how the development will specifically comply with or

meet the special use and site plan review criteria contained in this Law and the following additional information:

1. An area map showing the property proposed for the PUD and adjacent property, if any, owned by the Applicant and all other properties, roads and easements within 500 feet of the Applicant's property.
  2. The Preliminary Development Plan shall show:
    - a. Location, proposed use and height of all buildings;
    - b. Locations of all parking and truck loading areas, with egress thereto;
    - c. Location and proposed development of all open space;
    - d. Location of all existing or proposed site improvements;
    - e. Description and location of water supply, sewage system and storm drainage system;
    - f. Location of all signs and designs of lighting facilities;
    - g. Extent of building area proposed for non-residential uses, if any;
    - h. Location of existing water courses and wetlands; and,
    - i. Location of municipal, and fire, light, and school district boundaries.
- D. Action on PUD and Preliminary Plan - Within sixty-two (62) days of the receipt of a completed Preliminary Development Plan, the Planning Board shall conduct a public hearing on the development plan. Within sixty-two (62) days of the hearing, the Planning Board shall recommend action to the Town Board regarding establishment of a PUD District to accommodate the proposed project. It shall concurrently approve, disapprove or approve with modifications, the Preliminary Development Plan, conditioning any approval on action of the Town Board with respect to the PUD District. Public notice and other procedure shall be in accord with that required for review and action on preliminary plats in accord with Section 276 of the New York State Town Law.

The Planning Board shall approve the plan if it finds that:

1. The proposed uses will not be detrimental to present and potential uses in the area surrounding the proposed district.
  2. Existing and proposed highways are or will be suitable and adequate to carry anticipated traffic associated with the proposed district.
  3. Existing and future utilities are or will be adequate for the proposed development.
  4. The development plan complies with the requirements of this Zoning Law, the Town Subdivision Regulations and is consistent with the **TOWN OF TUSTEN COMPREHENSIVE PLAN**;
- E. Notice of Action - Preliminary approval by the Planning Board shall be in the form of a written statement to the Applicant and may include recommendations to be incorporated in the final plan. If the Preliminary Development Plan is disapproved, the statement of the Planning Board shall contain the reasons for disapproval. The Planning Board may recommend further study and resubmission of a revised Preliminary Development Plan.
- F. Town Board PUD Establishment - When the Planning Board has approved a development plan for a proposed district, the plan shall be filed in the office of the Town Clerk, and the Town Board shall then proceed to consider amendment of the Law in accord with the New York State



Town Law conducting a hearing and acting upon the same within ninety (90) days of the meeting at which the Planning Board's recommendation is received. The Town Board shall, as required by New York Law, provide for Sullivan County Division of Planning review of the proposal and may attach conditions to its approval. When any planned district is not substantially developed in accordance with the approved Preliminary Development Plan for a period of three (3) years from the effective date of its establishment, and provided it shall then appear that rights vested in persons acting in good faith in reliance on such zoning classification will not be prejudiced thereby, the Town Board, upon resolution, may amend the Zoning Law in the manner provided by the Town Law so as to void the change in classification to a PUD District.

- G. Final Development Plan - After the Planning Board has approved the Preliminary Development Plan and if the Town Board has approved the establishment of the PUD District, the Applicant shall prepare a Final Development Plan including all information required under the Town Subdivision Regulations for final plats, and shall submit it to the Planning Board for consideration. Said Final Development Plan shall be treated as a final plat in accord with the Town Subdivision Regulations and the applicable requirements of said Regulations shall apply. The Final Development Plan shall conform substantially to the Preliminary Development Plan approved by the Planning Board. It shall incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the time of preliminary review. Where more than twelve (12) months have elapsed between the date of Preliminary Approval and the time of submission of the Final Development Plan, or where the Planning Board finds that conditions affecting the plan have changed significantly in the interim, the Planning Board may require a resubmission of the Preliminary Development Plan for further review and possible revision prior to accepting the proposed Final Development Plan for consideration.
- H. Stages - The Applicant may submit, or the Planning Board may require the Applicant to submit, the Final Development Plan in stages. Revisions to any approved plan shall be submitted to the Planning Board for review and approval. The Board shall apply the terms of Section 8.0 of this Zoning Law to determine if special use approval shall be required for the revision. In addition, the Board may require special use approval for any revision which in the Board's determination will have a significant effect upon traffic, open space, stormwater, neighboring properties or other element of the environment or community. In cases where special use approval is not required, the revision shall not require a public hearing, and the Planning Board may take action on the revision during the meeting at which the plan revision is presented.

### **7.2.3 General Requirements**

The following general requirements shall apply to PUD Districts:

- A. Location - A PUD District is permitted in the R2, GR, and RB Districts in the TOWN OF TUSTEN.
- B. Parcel Size - A PUD District shall comprise at least fifty (50) contiguous acres of land, although lesser-sized tracts may be approved at the discretion of the Planning Board and Town Board.
- C. Utilities - All uses situated in a PUD District shall be served by central water and sewage systems. All water, sewer, and gas lines, and all other lines providing power and communication service,



shall be installed underground in the manner prescribed by the appropriate state and local agency and/or utility company having jurisdiction, excepting that temporary service for construction purposes may be provided above-ground.

- D. Modification of Standards - Developments within the PUD District shall comply with all other applicable provisions of this Law. However, the Planning Board, in the interests of meeting the purposes and the general planning criteria enumerated in Section 7.2.1 of this Article, shall have the authority to modify the standards of this Law as pertaining to development in the PUD. No modification or waiving of density or use standards applicable to PUD Districts shall be permitted.
- E. Density for Non-Residential Uses - Density for non-residential uses shall be determined on the basis of projected sewage flows with an equivalent dwelling unit being that amount of flow normally associated with a single-family residential dwelling.
- F. Building Heights - Building heights must not exceed 28 feet.
- G. Land Ownership - The land proposed for a PUD District may be owned, leased or controlled either by an individual, corporation, or by a group of individuals or corporations. PUD District applications shall be filed by the owner, or jointly by all owners of the property included in the application. In the case of multi-family ownership, the approved plan shall be binding on all owners.
- H. PUD Organization - A PUD District may be organized as a condominium, a cooperative, a leasehold or held in individual or corporate ownership. If a property owners' association (POA) is to be established, and one shall be required if any property is to be held in common, such POA shall be organized in the manner provided in Section 7.2.5 of this Article.

#### **7.2.4 Density**

The total number of dwelling units and extent of non-residential development permitted in a PUD District shall be determined after deducting:

- A. Land contained within public rights-of-way;
- B. Land contained within the rights-of-way of existing or proposed private streets and parking areas (where formal rights-of-way are not involved the width of the street shall be assumed as fifty [50] feet wide);
- C. Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service, and any petroleum products pipeline rights-of-way; and any petroleum products pipeline and railroad rights-of-way;
- D. The area of water bodies including lakes, ponds and streams (measured to the normal high water mark on each side); fifty (50) percent of wetland areas; quarries; fifty (50) percent of areas with slope in excess of twenty-four (24) percent; and areas used for improvements; from the total area of the PUD District and applying the density factors of two (2) dwelling units per acre for residential development and two (2) equivalent dwelling units per acre for non-residential development to the adjusted land area. An "equivalent dwelling unit" shall be that amount of sewage flow normally associated with a single-family residential dwelling.

### **7.2.5 Open Space**

Open space shall be provided in accord with this Section and Section 7.0 of this Zoning Law.

#### **A. Residential Projects**

The provisions of this Section shall apply to all areas of a PUD which are part of or are used for density for a particular residential development project.

1. Characteristics - All areas of a PUD which are part of or are used for density for a particular residential development project and which are not conveyed to individual lot owners and are not occupied by buildings or by required or proposed development improvements shall be open space to be used for the benefit and enjoyment of the residents of the PUD.
  - a. A minimum of fifty (50) percent of the gross area of the project parcel, or the overall PUD if the proposed project is included in the PUD open space plan, shall remain as open space and the location and configuration of the open space shall be suitable for recreation purposes and shall be approved by the Planning Board.
  - b. Open space areas shall be part of the project parcel and shall be contiguous, or may be located in another area of the PUD provided the proposed project is included in the PUD open space plan required by Section 7.0.
  - c. At least twenty-five (25) percent of the open space shall be usable for active recreation purposes and shall not include wetlands, quarries, slopes in excess of twenty-four percent (24%), or otherwise unusable areas.
2. Dedication and Ownership - Land designated as open space for residential projects shall be maintained as open space and shall not be used to meet open space or recreation area requirements for other developments. Open space may be held by a condominium, a cooperative, or in individual or corporate ownership. If a property owners' association (POA) is to be established, and one shall be required if any property is to be held in common, such POA shall be organized in the manner below.
  - a. Membership shall be mandatory for each property owner within the development.
  - b. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities.
  - c. Each property owner must be required to pay their proportionate share of the POA's cost and the POA shall have the authority to file liens on the lot/unit owner's property if levied assessments are not paid.
  - d. The POA must also have the ability to adjust the assessment to meet changing needs for operation and maintenance of open space and improvements.

#### **B. Non-Residential Uses**

Non-residential uses shall be included in the overall PUD open space plan required by Section 7.0. Nonresidential uses may be sold or changed in use provided such sale or change does not adversely

affect the open space designation or PUD residential property owner rights, and such change complies with all other requirements of this Zoning Law.

#### **7.2.6    Procedure For Annexation To An Existing PUD**

This Section shall only apply to the annexation of additional land area into an existing PUD which has been duly created in accord with Section 7.2.2 of this Zoning Law. Any such annexation shall become an integral part of the existing PUD in terms of development planning, overall density, open space, provision of utilities and other improvements, and property owner rights and responsibilities. Any parcel proposed for such annexation which will not be so integrated with the existing PUD shall be created in accord with the requirements of this Section 7.2 for a new PUD.

The following requirements shall apply to the annexation of additional land to an existing PUD:

- A. Land To Be Contiguous - The land to be annexed to the existing PUD shall be substantially contiguous to the PUD (as determined by the Planning Board) and shall be held under the same ownership and/or control as the existing PUD at the time the annexation is affected.
- B. Zoning Map Amendment - The annexation shall be considered a zoning map amendment which shall, in addition to the requirements of this Section be enacted in accord with the applicable requirements of this Zoning Law, the New York State Town Law, and any other applicable statutes.
- C. Application To Planning Board - The owner(s) of the land proposed for annexation to the existing PUD District shall initially apply to the TOWN OF TUSTEN Planning Board. The application shall be in writing; and, although a site specific plan for the use of the parcel proposed for annexation shall not be required, the application shall include the following information:
  - 1. A complete survey map prepared by a licensed land surveyor showing the parcel proposed for annexation and including the information for minor subdivisions as required the TOWN OF TUSTEN Subdivision Regulations, as amended, and the following information:
    - a. The location of any existing public and private roads, rights-of-way and easements;
    - b. The general location of all natural features including vegetation, drainage ways, steep slopes, waterbodies, wetlands, and other environmentally sensitive areas;
    - c. Any other information deemed necessary by the Planning Board;
  - 2. A statement regarding the provision of sewage disposal, water supply and other required utilities; and how same will relate to such facilities serving the existing PUD;
  - 3. Evidence that the proposal is compatible with the goals of the **TOWN OF TUSTEN COMPREHENSIVE PLAN** and the purposes and planning criteria enumerated in Section 1.3 of this Law;
  - 4. A description of anticipated common open space ownership and maintenance;
  - 5. If the development planned for the PUD is to be staged, a general indication of how the staging is to proceed;

6. An area map showing the property proposed for annexation to the existing PUD and how it relates to the PUD and adjacent property, if any, owned by the applicant and all other properties, roads and easements within 500 feet of the applicant's property;
  7. A statement detailing the uses, density, open space, and other features of the existing PUD and how the parcel proposed for annexation will affect the same;
  8. A statement indicating how the development will specifically comply with or meet the special use and site plan review criteria contained in this Zoning Law.
- D. Public Hearing and Action - Within sixty-two (62) days of the receipt of a completed proposal for a PUD District annexation, the Planning Board shall review such submission, may conduct a public hearing on the proposal, and shall recommend action to the Town Board regarding the amendment of the zoning map to effect the annexation. Such recommendation shall be made in writing. If a recommendation for disapproval is made, the written notice shall contain the reasons for the disapproval recommendation, and the Planning Board shall provide a copy of the written notice of same to the applicant as well as the Town Board.
- E. Town Board Action - Upon receipt of Planning Board's recommendation, the Town Board shall proceed with the consideration of the proposed annexation in accord with the applicable zoning map amendment requirements of this Zoning Law, the New York State Town Law, the New York State Environmental Quality Review Act, and any other applicable statutes.
- F. Development Plan - At the time a specific development plan is proposed for any land annexed to an existing PUD, application shall be made in accord with the applicable requirements of this Zoning Law and the Town Subdivision Regulations, and all applicable standards of same shall apply.

### **7.3    MANUFACTURED (a.k.a. MOBILE) HOMES**

All manufactured (a.k.a. or mobile) homes and manufactured (a.k.a. or mobile) home parks shall comply with the **TOWN OF TUSTEN Manufactured Home Law**, Local law, and no mobile home shall be permitted which is not placed on a permanent foundation as required therein.

### **7.4    TWO-FAMILY DWELLINGS**

#### **7.4.1    Districts Permitted**

Two-family dwellings are permitted in the RR, R-1, R-2, and GR Districts in accordance with Section 4.0, Schedule of District Regulations, of this Zoning Law, and the standards of this Section 7.4 shall apply.

#### **7.4.2 Lot Size**

The minimum lot size for a two-family dwelling shall be 1.5 the minimum lot size required for a single-family dwelling as set forth on the Schedule of District Regulations (Section 4.0).

#### **7.4.3    Parking**

Off-street parking shall be provided in accordance with this Zoning Law in Section 6.12.

#### **7.4.4    Sewage Disposal**

Sewage disposal shall be provided in accord with New York Department of Health and all other applicable sewage disposal requirements for a two-family dwelling. In the case where the use of an existing on-site sewage disposal system is proposed, the Applicant shall provide certification from a professional engineer of the adequacy and compliance of said system.

#### **7.4.5    Reserved**

### **7.5    CONVERSIONS OF DWELLINGS**

Any conversion of any building to a residential use or the conversion of any dwelling to accommodate additional dwelling units shall, in addition to the other applicable standards in this Zoning Law, comply with the standards in this Section. See Sections 4 and 6.17.2 for the SR and Section 4 for RR Districts.

#### **7.5.1 General Requirements**

The conversion of any building (existing at the time of adoption of this provision of this Zoning Law) into a dwelling or the conversion of any dwelling (existing at the time of adoption of this provision of this Zoning Law) so as to accommodate an increased number of dwelling units, or families, shall be permitted only within a Zoning District in which a new building for similar occupancy would be permitted under this Law and only when the resulting occupancy will comply with the requirements governing new construction in such district with respect to lot coverage, off-street parking, and other applicable standards.

#### **7.5.2 Lot Size**

A. Two-Family Dwellings - The parcel on which the principal structure proposed for conversion is located shall not be less than the minimum lot size required for a single-family dwelling as set forth on the Schedule of District Regulations (Section 4).

B. Multiple Dwellings - Conversions to multiple dwellings shall comply with all requirements of Section 7.1 of this Zoning Law.

#### **7.5.3    Structural Alterations**

If the proposed project involves structural alterations, the zoning application shall include a certification of a registered architect or engineer that the existing building is structurally sound and that the proposed conversion will not impair its structural integrity.

#### **7.5.4 Sewage Disposal**

Sewage disposal shall be provided in accord with New York Department of Health and all other applicable sewage disposal requirements for the proposed number of units. In the case where the use of an existing on-site sewage disposal system is proposed, the Applicant shall provide certification from a professional engineer of the adequacy and compliance of said system.

## **7.6    OWNERSHIP AND MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES**

This Section shall apply to any development which involves the ownership and maintenance of open land, recreation land, or common facilities (referred to as "common area") as required by this Law and the Town Subdivision Regulations.

### **7.6.1    Purpose**

The requirements of this Section are intended to assure the ownership, use and maintenance of common areas. The general principle shall be to assign ownership and maintenance responsibility to that entity which is best suited for the same and which will allocate any associated costs to the individuals which directly benefit from the use of the common area.

### **7.6.2    Plan and Legal Documents**

The developer shall submit a plan and proposed legal documents for the purpose of dedicating the use, ownership and maintenance of the approved common area. In the case of a PUD District, the Plan shall address individual residential project density, overall PUD density and non-residential uses. The provisions of the approved Plan shall be incorporated into the approval of development projects in the PUD.

### **7.6.3    Use Restriction**

The use of any common area shall be limited to those uses which are specifically permitted or required by the applicable sections of this Law and the Town Subdivision Regulations.

### **7.6.4    Development Plan Designations**

The final development plan for any project shall clearly show all common areas and specifically note the use, ownership and maintenance responsibility of the same. Reference to the legal document(s) governing the use, ownership and maintenance of common areas shall be noted on the plan. The plan shall also contain the following statement: Open land, recreation land, and common facilities associated with residential development shall not be further subdivided or developed, nor shall such land be used for density for any other development. In the case where a plat will be filed to effect a subdivision of land (e.g., cluster/conservation developments, condominiums), the development plan shall be attached to and shall be filed as part of the plat in the County Clerk's Office.

**7.6.5 Methods for Use Dedication and Common Area Ownership and Maintenance**

The developer shall document that the common area use rights established in accord with this Section will be preserved and the on-going ownership and maintenance of all open land, recreation land, and common facilities is addressed. All methods for dedication of use and common area ownership and maintenance, and any combination of methods, and any change in method which may be proposed by the ownership and maintenance entity, shall be subject to the approval of the Planning Board. Operation and maintenance provisions shall include, but not be limited to, capital budgeting for repair and/or replacement of common facilities, working capital, operating expenses, casualty and liability insurance, and contingencies.

**ARTICLE VIII - SPECIAL USE AND SITE PLAN REVIEW CRITERIA**

**8.0      AUTHORITY**

The Town of Tusten Planning Board is, pursuant to Section 274-b of the New York State Town Law, authorized to approve, disapprove or approve with conditions the establishment of certain uses which shall, throughout this Zoning Law, be identified as Special Uses. Special Uses shall be those uses enumerated in the Schedule of District Regulations set forth in Section 4.0 and any other sections of this Zoning Law. In addition, the following uses shall also be considered Special Uses:

- A. Any use involving the initial or cumulative disturbance of 43,560 or more square feet of soil surface area.
- B. Any use involving the initial or cumulative construction, installation and/or placement of 21,780 square feet or more of buildings, structures or other impervious surface areas.

Site Plan review shall also be required for all Special Uses and such other uses as may be specified in this Zoning Law. The Town of Tusten Planning Board is, pursuant to Section 274-a of the New York State Town Law, authorized to review and approve, approve with modifications, or disapprove site plans as submitted to the Town in accord with this Zoning Law.

Expansions or additions to uses classified as special uses in the PUD shall be governed by Section 7.2 of this Zoning Law. In all other Districts, the following shall be considered special uses:

- A. Expansions or additions to uses classified as special uses involving an increase of more than twenty-five (25) percent of the floor area or lot area devoted to the use, as measured cumulatively from the effective date of this provision.
- B. Expansions or additions to uses classified as special uses involving an expansion or addition of more than one-thousand (1,000) square feet of floor area or lot area devoted to the use, as measured cumulatively from the effective date of this provision.
- C. The addition of any dwelling unit.
- D. The addition of a new use.
- E. The expansion or addition to the following uses: adult-oriented businesses, airports, bulk fuel storage facilities, junk yards, natural resource uses, natural resources processing, and valued-added processing, and solid waste disposal facilities including storage of trucks or containers.

The addition of an accessory structure shall not be considered a special use.

**8.1      CONDITIONS OF APPROVAL; EXPIRATION OF APPROVAL**

**8.1.1    Conditions**

Should the Planning Board approve a Special Use/Site Plan, the Planning Board may impose such reasonable conditions and restrictions as are directly related to and incidental to the Special Use/Site Plan. Upon the approval of any Special Use/Site Plan, any conditions imposed by the Planning Board



must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town. The violation of any conditions of approval imposed on a Special Use/Site Plan shall be considered a violation of this Law, and shall be subject to the penalties therefor.

#### **8.1.2    Expiration**

Any special use and site plan approval granted by the Planning Board shall expire one (1) year from the date such approval was granted if no building construction as approved has taken place or the use is not otherwise established as a functional and constructive activity prior to the expiration date. In the case of special uses and site plans approved prior to the effective date of this provision, the twelve-month expiration period shall begin on the effective date of this provision. Upon such one-year expiration, the said approval, and any permit issued subsequent thereto, shall be deemed null and void and the developer shall be required to submit another application for the same. The Planning Board as the case may be, however, may grant an extension of the time limitations, for good cause.

#### **8.1.3    Zoning Permits -- Certificate of Use**

No zoning permit shall be issued for any structure covered by this Article VIII until an approved Special Use/Site Plan or approved amendment of any such Special Use/Site Plan has been secured by the Applicant and presented to the Code Enforcement Officer (CEO). Compliance with the New York State Uniform Fire Prevention and Building Code shall be determined by the Town Code Enforcement Officer (CEO) at the time of building permit application. No certificate of use shall be issued for any structure or use of land covered by this Article VIII unless the structure is completed or the land is developed or used in accord with an approved Special Use/Site Plan or approved amendment of any such Special Use/Site Plan.

#### **8.1.4    Waiver of Requirements**

The Planning Board, pursuant to Section 274-a and Section 274-b of the New York State Town Law, is authorized to, when reasonable, waive any preestablished requirements for the approval, approval with modification or disapproval of a Special Use/Site Plan submitted to the Board.

#### **8.1.5    Justification**

A waiver may be granted in the event any such requirement(s) is found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular Special Use/Site Plan application. However, the granting of a waiver shall not have the effect of making null and void the intent and purpose of this Zoning Law.

#### **8.1.6    Procedure**

All requests for waivers shall be in writing, shall accompany and be a part of the Special Use/Site Plan application, and shall include:

A. The specific Section(s) of this Law in question.

B. Justification for the waiver including the full grounds and facts of unreasonableness or hardship.

#### **8.1.7    Action**

If the Planning Board denies the request, the Applicant shall be notified, in writing, of the reasons for denial. If the Planning Board grants the request, the final Special Use/Site Plan shall include a note which identifies the waiver as granted. In any case, the Planning Board shall keep a written record of all actions on all requests for waivers.

### **8.2    STANDARDS AND CRITERIA**

The Planning Board, in taking action on a Special Use/Site Plan application, shall first determine compliance with the standards and criteria in this Section and the other applicable requirements of this Zoning Law; and no use specified as a Special Use by this Zoning Law shall be approved unless the proposed use complies with the said requirements.

#### **8.2.1    Comprehensive Plan**

The proposed use shall be in harmony with purposes, goals, objectives and standards of the ***TOWN OF TUSTEN COMPREHENSIVE PLAN.***

#### **8.2.2    Location**

The proposed use in the proposed location shall not result in either a detrimental over-concentration of a particular use within the Town or within the immediate area. The location chosen shall not be one demonstratively better suited or likely to be needed for uses which are permitted as a matter of right in the District. The Board shall, in making its decision, also evaluate the degree to which the proposed location may be particularly suitable or unsuitable for the proposed use in light of other potential sites in the immediate area, including those which might exist in adjacent communities.

#### **8.2.3    Adverse Effects**

The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the **TOWN OF TUSTEN COMPREHENSIVE PLAN.**

#### **8.2.4    Facilities, Services and Improvements**

The proposed use shall not impose an undue burden on any of the improvements, facilities, utilities and services of the Town, whether such services are provided by the Town or some other agency. The Applicant shall be wholly responsible for providing such improvements, facilities, utilities or services as may be required to adequately serve the proposed use when the same are not available or adequate to

service the proposed use in the proposed location. As part of the application and as a condition to any approval of the proposed Special Use/Site Plan, the Applicant shall be responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this and other regulations of the TOWN OF TUSTEN. Any approval shall be so conditioned.

#### **8.2.5 Additional Standards and Conditions of Approval**

No application for issuance of a Special Use/Site Plan permit shall be approved unless the Planning Board shall find that, in addition to complying with each of the standards enumerated above, any of the applicable standards of the Law shall be met. In instances where the standards contained herein do not adequately protect the general health, safety and welfare of parties effected, the Board shall be obligated to impose such conditions in issuance of a permit. Conditions which might be imposed shall include (but not be limited to) provisions for additional parking, traffic control, submission of landscaping plans, setbacks, special measures addressing sales period activities, limiting the approval to the permittee and not the property, and other measures which can be effectuated to remove any potential adverse influence the use may have on adjoining uses. In reviewing, a Special Use/Site Plan application and determining what conditions, if any, shall be attached should approval be granted, the Planning Board may consider;

- A. Location, arrangement, size, design and general site compatibility of buildings (including architectural design), lighting and signs.
- B. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- C. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- D. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- 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 buffer between the Applicant's and adjoining lands, including the maximum retention of existing vegetation.
- H. Adequacy of fire lanes and other emergency zones and the provision of fire protection facilities.
- I. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- J. The potential for the creation of nuisances such as, but not limited to, noise, vibration, odor and glare.
- K. The effect on the value and future development of neighboring properties.
- L. Such other factors as may reasonably be related to the health, safety and general welfare of the community.

#### **8.2.6    Burden of Proof**

The burden of proof shall remain with the Applicant to show compliance with all standards and the burden shall never shift to the Town.

### **8.3    PROCEDURE**

The following procedures shall apply to Special Use/Site Plan applications:

#### **8.3.1    Sketch Plan**

A sketch plan conference may be held between the Planning Board and the Applicant prior to the preparation and submission of a formal application. The intent of such a conference is to enable the Applicant to inform the Planning Board of his proposal prior to the preparation of a detailed plan; and for the Planning Board to review the basic site design concept, advise the Applicant as to potential problems and concerns, and to generally determine the information to be required on the plan. In order to accomplish these objectives, the Applicant should provide the following:

- A. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, proposed vehicle access and parking, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
- B. A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, properties, easements and other pertinent features; and
- C. A topographic or contour map of appropriate scale (1" = 200' or less) and detail to show site topography with contour intervals of no less than twenty (20) feet each.

#### **8.3.2 Applications**

The Planning Board shall, for purposes of agenda preparation and project evaluation, be authorized, although not required, to reject any application not filed with the Code Enforcement Officer (CEO) at least eight (8) calendar days prior to the meeting at which action is requested. The Planning Board may, from time to time and by resolution, adjust this time period to meet its needs, provided that such period shall not be more than twenty (20) calendar days.

#### **8.3.3 Information Required**

For applications involving the construction of buildings, structures or additions to buildings or structures, all information contained in this Section shall, in general, be provided by the Applicant. However, when the Planning Board determines that all such information is not required or when the application is for a change in use not involving construction of a building, structure or addition thereto, the Planning Board shall establish which information shall be submitted by the Applicant. In any case, the Planning Board shall have the right to require any or all information in the checklist or any other information deemed necessary by the Planning Board to determine compliance with this Zoning Law.

The site plan shall be prepared by a licensed surveyor, professional engineer, architect, landscape or architect, and shall be drawn in such reasonable detail and scale as deemed necessary by the Board to determine compliance with this Zoning Law.

Information Required:

- A. Title of drawing, including name and address of Applicant and person responsible for preparation of such drawing;
- B. North arrow, scale and date;
- C. Boundaries of the property plotted to scale;
- D. Existing watercourses;
- E. Grading and drainage plan, showing existing and proposed contours;
- F. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- G. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- H. Provision for pedestrian access;
- I. Location of outdoor storage, if any;
- J. Location, design and construction materials for all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- K. Description of the method of sewage disposal and location, design and construction materials of such facilities;
- L. Description of method of securing public water and location, design and construction materials of such facilities;
- M. Location of fire and other emergency zones, including the location of fire hydrants and type of fire prevention controls;
- N. Location, design and construction of materials of all energy distribution facilities, including electrical, gas and solar energy;
- O. Location, size, design and type of construction of all proposed signs;
- P. Location and proposed development of all buffer areas, including existing vegetative cover;
- Q. Location and design of outdoor lighting facilities;
- R. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
- S. General landscaping plan and planting schedule;
- T. An estimated project construction schedule;

#### **8.3.4 Referral to Other Agencies**

- A. Other Agencies - The Planning Board may refer any Special Use/Site Plan application for review and comment to any local, county, state or federal agency.
- B. County Planning Department - Prior to taking final action on the Special Use/Site Plan application, the Board shall refer the plan to the Sullivan County Department of Planning and Economic Development in accord with Section 239-m of the New York State General Municipal Law and shall comply with all applicable provisions of the said Section 239-m.

### **8.3.5 State Environmental Quality Review Act (SEQRA)**

The Applicant shall submit all documentation necessary to demonstrate compliance with the New York State Environmental Quality Review Act and the Planning Board shall take all required actions relative to the same prior to acting on the Special Use/Site Plan.

### **8.3.6    Agricultural Data Statement**

The application shall include an Agricultural Data Statement as required by §283-a of the NYS Town Law in cases where the proposal involves property within an agricultural district containing a farming operation or involves property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. Agricultural districts are such districts designated in accord with the NYS Agriculture and Markets Law, Article 25-AA, Agricultural Districts Law, as amended. If the proposal does not meet the criteria requiring an Agricultural Data Statement, the applicant shall provide a certification to such effect. Agricultural Data Statements shall be submitted by the applicant on the form provided by the Planning Board and shall be processed in accord with §283-a of the NYS Town Law.

### **8.3.7 Public Hearing**

The Planning Board shall conduct a public hearing on a Special Use/Site Plan application, and the said hearing shall be conducted within sixty-two (62) days of the date that the application is received for review by the Planning Board.

### **8.3.8 Hearing Notice**

- A. Newspaper - Public notice of the hearing required in Section 8.3.7 of this Zoning Law shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing.
- B. Applicant and County - At least ten (10) days before the hearing required in Section 8.3.7 of this Zoning Law, the Planning Board shall mail notices thereof to the Applicant and to the Sullivan County Department of Planning and Economic Development, as required by section 239-m of the New York state General Municipal Law, which notice shall be accompanied by a full statement of the Special Use/Site Plan application.
- C. Notice to Adjacent Property Owners - Notices of Special Use application hearings shall be provided, by the applicant, to all adjacent property owners as identified in the latest tax assessment records of the TOWN OF TUSTEN, including those for properties on the opposite side of any public or private road. Such notice shall be given by certified mail at least seven (7) calendar days in advance of such hearing. The Planning Board shall be authorized to waive this requirement in the case of applications limited to site plan review or where it is determined by the Board that adjoining owners have otherwise been afforded reasonable notice of such hearing as evidenced by their appearance at or knowledge of such hearing. No hearing shall be delayed where the Board determines the applicant has made reasonable attempts to notify all interested parties as provided herein.

### **8.3.9 Decision**

The Planning Board shall render a decision on the Special Use/Site Plan within sixty-two (62) days of the date of the hearing required in Section 8.3.7 of this Zoning Law. The decision of the Planning Board shall be immediately filed in the office of the Town Clerk, but in no case beyond five (5) business days after the day such decision is rendered, and a copy thereof mailed to the Applicant.

- A. Approval - Upon approval of the Special Use/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 Special Use/ Site Plan and shall forward a copy to the Applicant and the Town Clerk along with the notice required by this Section 8.3.7.
- B. Approval with Modifications and/or Conditions - Upon approval of the Special Use/Site Plan with modifications and/or conditions, the notice required by this Section 805.7 shall include, in writing, a statement of the modifications required and any conditions imposed by the Planning Board. The Planning Board may authorize the Board Chairman to endorse the Board's approval on the Special Use/Site Plan when all required modifications have been made and all conditions imposed are satisfied. Upon such endorsement, a copy shall be forwarded to the Applicant and the Town Clerk.
- C. Disapproval - Upon disapproval of the Special Use/Site Plan, the notice required by this section shall include, in writing, the reasons for the disapproval.

### **8.3.10 Extension of Time to Render Decision**

The time within which the Planning Board must render its decision may be extended by mutual consent of the Applicant and the Planning Board.

## **8.4      COMPLETION OF IMPROVEMENTS**

No certificate of occupancy shall be issued for any building, structure or use until all improvements shown on the Special Use/Site Plan are installed or a sufficient performance guarantee has been posted with the Town Board for improvements not yet completed.

### **8.4.1    Form and Content of Guarantee**

The form and term of the guarantee, and schedule for completion of the improvements, shall be approved by the Town Board after consultation with the Town Attorney and the Town Engineer.

### **8.4.2    Amount and Term of Guarantee**

The sufficiency of the amount of such performance guarantee, based on an estimate prepared by the Applicant's engineer, shall be determined by the Town Board after consultations with the Town Attorney, the Town Engineer and other appropriate parties. The amount shall be adequate to complete the required improvements plus expected cost increases over the term of the guarantee. The guarantee shall specify a completion date for the improvements, which shall not be more than three (3) years from the date of Special Use/Site Plan approval.

#### **8.4.3 Release of Guarantee**

When the improvements have been completed and approved by the Town Engineer or other qualified individual designated by the Town Board, the guarantee shall be released by the Town Board. The Town Board may approve partial releases of the guarantee for any portion of the improvements completed and approved in accord with this Section 8.4.

#### **8.4.4 Failure to Complete Improvements**

In the event that any required improvements have not been installed as required by this Law or within the terms of the guarantee, the Town Board may declare such guarantee to be in default and collect the sum remaining payable thereunder; and install such improvements as are covered by the guarantee and which are commensurate with the extent of the development that has occurred, but not exceeding in cost the amount of such proceeds.

#### **8.4.5 Inspections**

Prior to initiating the installation of any improvements, the Applicant shall meet with the Town Engineer to develop a schedule to assure that at the time each improvement is to be installed, and upon its completion, adequate inspections are conducted to confirm that all improvements are installed in accord with the approved plans.

#### **8.5.6 Costs**

Costs incurred by the Planning Board and the Town Board in connection with any Special Use/Site Plan for consultation fees or other expenses in connection with the review of plans, inspections of improvements, guarantee approval or any other costs shall be charged to the Applicant.



**ARTICLE IX - NONCONFORMING LOTS AND USES**

**9.0    PURPOSE AND APPLICABILITY**

**9.0.1    Purpose**

It is the purpose of this Section to recognize that if, prior to the adoption of the original TOWN OF TUSTEN Zoning Law as amended, reenacted and replaced, property was used for a then lawful purpose or in a then lawful manner which the Zoning Law would render thereafter prohibited and nonconforming, such property is generally held to have acquired a vested right to continue such nonconforming use or nonconforming structure. Nevertheless, this does not preclude the Town from regulating the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with New York State Town Law and general case law.

The purpose of this Section is to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of non-conforming uses and/or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such change, alteration, reconstruction, reestablishment, or extension would itself lead to neighborhood or district deterioration.

Another intent of this Section to prescribe those standards which are to be applied by the Town in determining the reasonableness of a proposal to change, alter, reconstruct, reestablish, or extend a non-conforming use. The following are regulations which shall apply.

**9.0.2    Applicability**

The provisions and protections of this Article IX shall apply only to those nonconforming lots, structures and uses which legally pre-existed the applicable provisions of this Law, as amended. Any lot, structure or use created, constructed or established after the effective date of the original Zoning Law, as amended, reenacted and replaced, which does not conform to the applicable requirements shall be considered an illegal lot, structure or use subject to the penalties prescribed by this Law, and the said lot, structure or use shall not be entitled to any of the protections afforded to legal, pre-existing nonconforming lots, structures or uses.

**9.1    DEFINITIONS**

**9.1.2    Nonconforming Lot**

Any lot which does not conform with the minimum width, depth and area dimensions specified for the district where such a lot is situated, such lot having been created and recorded in the office of the Sullivan County Clerk prior to the effective date of the original TOWN OF TUSTEN Zoning Law, as amended, reenacted and replaced.

**9.1.3    Nonconforming Structure**

A structure or part of a structure which does not comply with the applicable district limitations on structure size and location on a lot, where such structure lawfully existed prior to the enactment of the original TOWN OF TUSTEN Zoning Law, as amended, reenacted and replaced; and including, but not limited to, non-conforming signs.

**9.1.4    Nonconforming Structure, Alteration**

As applied to a nonconforming structure, a change or rearrangement in the structural parts or in the existing 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.

**9.1.5    Nonconforming Structure, Reconstruction**

The rebuilding of a nonconforming structure damaged or destroyed by casualty to the exact or less nonconforming TOWN OF TUSTEN ZONING LAW condition which existed prior to the casualty.

**9.1.6    Nonconforming Use**

A use, whether of land or of a structure, which does not comply with the applicable use provisions in this Law or amendments hereto, where such use was lawfully in existence prior to the enactment of the original TOWN OF TUSTEN Zoning Law, as amended, reenacted and replaced.

**9.1.7    Nonconforming Use, Change**

The conversion of a nonconforming use to a different use classification as enumerated on the Schedule of District Regulations, Section 4.0 of this Law.

**9.1.8    Nonconforming Use, Extension**

The expansion of a nonconforming use throughout the structure which the said use partially occupies; or the expansion of a nonconforming use onto property not already occupied by the said use.

**9.1.9    Nonconforming Use, Reestablishment**

The reopening or reinstitution of a nonconforming use which has been discontinued by the owner of the said use, such reopening effected prior to the abandonment of the nonconforming use as determined under the provisions of this Zoning Law.

**9.2    NONCONFORMITIES UNDER DEVELOPMENT**

For the purposes of this Article IX, a building, structure or use, planned and substantially under construction in compliance with existing laws prior to the effective date of this Law, or any amendment

hereto, and completed within a one-year period after the effective date of this Law or amendment hereto, shall be considered nonconforming.

### **9.3      NONCONFORMITIES BY VARIANCE**

A building, structure or use allowed by variance in a district where it is non-conforming with any regulations of this Law, as amended, reenacted and replaced, shall be considered nonconforming for the purposes of this law.

### **9.4      NORMAL MAINTENANCE AND REPAIR ACTIVITIES**

Normal maintenance and repair, such as painting, replacement of siding, and similar activities is allowed, as well as those interior renovations which do not structurally alter the building or area or result in increased use of the building or area, or a change of nonconforming, or otherwise create more incompatibility with the surrounding permitted uses. Such maintenance and repair activities shall, however, comply with all other applicable standards and permit requirements of this law.

### **9.5      CHANGES OF NONCONFORMING USES**

#### **9.5.1    Special Uses**

All changes of nonconforming uses shall be considered Special Uses subject to the specific procedures and review criteria contained in Article VIII of this Law, including requirements for building permits. A nonconforming use may only be changed to a use of equal or less nonconformity (i.e. more restrictive classification) as determined by the Planning Board in accord with classification of the uses in the Schedule of District Regulations, Section 4.0 of this Law. The general standard shall be that no change of a nonconforming use shall be permitted if such change will result in the establishment of a use which is materially different from the existing use in terms of negative affects on the community and the long term application of the Zoning Law to eliminate incompatible uses from specific zoning districts. For example, a change from a nonconforming retail store in the R-1 District to a bank or professional office may be permitted; however, a change to a manufacturing use would not be permitted.

#### **9.5.2 Conforming Changes and Conversions**

A change in a nonconforming use to a conforming use shall not be considered a special use unless the proposed use is classified as a Special Use by the Schedule of District Regulations in Article IV. Section 4.0 of this law. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter be reestablished.

The conversion of a nonconforming use to a nonconforming use of like classification shall not be considered a special use. For example, a nonconforming retail establishment selling groceries proposed for conversion to a shoe store would not be considered a change in nonconforming use.

### **9.5.3 Other Standards**

All changes to nonconforming uses shall also be subject to all other applicable standards in this Law.

## **9.6    EXTENSION OF NONCONFORMING USES**

### **9.6.1    Special Uses**

All extensions of nonconforming uses shall be considered special uses subject to the specific procedures and review criteria contained in Article VIII of this Law, including requirements for building permits.

### **9.6.2    Reserved**

### **9.6.3    Extension onto Other Properties of Record in the Same Ownership**

A nonconforming use may only be extended onto a new property of record if that property is contiguous to the existing location, the properties were both under the same ownership as of the effective date of this Law, as amended, the owner has clearly exhausted the alternatives available for expansion on the existing property, and the use is not one which has been altogether prohibited as a new use under this Law.

### **9.6.4    Prohibited Extensions**

Should the use proposed for extension be one which is specifically prohibited as a new use in the Town or is a use judged by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this Law, the requested extension shall be denied. The Board shall consider past operating performance in making its decision.

### **9.6.5    Other Standards**

All changes to nonconforming uses shall also be subject to all other applicable standards in this Law.

## **9.7    RECONSTRUCTION**

### **9.7.1    Time Limit**

If any nonconforming structure or use is damaged or destroyed as a result of a casualty, it may be restored or reconstructed to its preexisting condition of nonconformity within eighteen (18) months of the date of the casualty. The Code Enforcement Officer (CEO) may, upon written application by the owner of the structure, grant a one (1) year extension for just cause demonstrated by the owner.

### **9.7.2    Procedure – Permits**

All applicable permits for the reconstruction of a nonconforming use shall be required. Such reconstruction shall not be considered a special use unless the reconstruction involves a change or extension of use as regulated by Section 9.5 and Section 9.6 of this Law, respectively.

## **9.8    ABANDONMENT OF NONCONFORMING USES**

### **9.8.1    Use Abandoned**

Unless extended in accord with this Section, if a nonconforming use of land or structure ceases operation, is discontinued or is vacated for a period of twelve (12) months or more, then this shall constitute an abandonment of such nonconforming use, and any subsequent use of the land or structure shall be for conforming purposes only and said use shall in all respects conform to the applicable provisions of this Zoning Law.

### **9.8.2 Abandonment**

A non-conforming use shall be considered abandoned when, among other circumstances:

- A. Intent of the Owner - The intent of the owner to discontinue the use is apparent by the posting of signs, boarding of windows, or failure to pay taxes or assessments due or similar actions or lack thereof, or;
- B. Equipment and Furnishings - The equipment and furnishings used in furtherance of the nonconforming use have been removed from the premises, or;
- C. Use Replaced - The nonconforming use has been replaced by a conforming use or changed to another use under permit by the Town, or;
- D. Maintenance - The structure and/or premises is not maintained in a manner with consistent with applicable local and state building and property maintenance codes, or;
- E. Occupancy - The building is not occupied for a period of one (1) year.

The Code Enforcement Officer (CEO) may, upon review and recommendation by the Planning Board and for good cause shown by the applicant, grant an extension of not more than one (1) year for the continuation of the non-conforming use.

## **9.9    ALTERATIONS OF NONCONFORMING STRUCTURES**

### **9.9.1    Alterations**

The alteration of nonconforming structures shall be permitted in accordance with this Section.

**9.9.2    Procedure – Permits**

All applicable permits for the alteration of a nonconforming structure shall be required. Such alteration shall not be considered a special use unless the alteration involves a change or extension of use as regulated by Section 9.5 and Section 9.6 of this Law, respectively.

**9.9.3    Increase in Area or Bulk Nonconformity**

In the case where a proposed alteration of a nonconforming structure will result in an increased nonconformity of setback, height, lot coverage or other area or bulk standard, an area variance shall be required from the Zoning Board of Appeals.

**9.9.4    Other Standards**

All changes to nonconforming uses shall also be subject to all other applicable standards in this Law.

**9.10    USE OF NONCONFORMING LOTS OF RECORD**

**9.10.1    Single Family Dwelling**

Vacant substandard lots may be used for a single family dwelling, and a building permit issues by the code enforcement officer, provided that:

- A. The use is allowed in the district.
- B. The lot is of record in the Sullivan County Clerk's Office.
- C. The lot is in separate ownership from abutting parcels. If two (2) or more vacant substandard lots have the same ownership, the lots shall be merged.
- D. The lot meets the setbacks and other yard requirements in accordance with the Schedule of District Regulations stipulated in Article IV of this zoning law.
- E. A sewage disposal system is provided in accordance with applicable Town and New York State requirements.

**9.10.1.1 Single Family Dwelling: Protocol and Requirements for Lots with Lesser Dimensions**

A building permit for the improvement of a lot with lesser dimensions and requisites than those criteria stated in 9.10.1 shall only be issued if an area variance is granted by the ZBA.

**9.10.2    Commercial Uses**

Vacant substandard lots may be considered for a commercial use subject to site plan review provided that:

- A. Such use is allowed in the district.
- B. The lot is of record in the Sullivan County Clerk's Office.

- C. The lot is in separate ownership from abutting parcels. If two (2) or more vacant substandard lots have the same ownership, the lots shall be merged.
- D. The lot meets the setbacks and other yard requirements in accordance with the Schedule of District Regulations stipulated in Article IV of this zoning law.

**9.10.2.1 Commercial Use: Protocol and Requirements for Lots with Lesser Dimensions**

Site plan review for the improvement of a lot with lesser dimensions and requisites than those criteria stated in 9.10.2 shall only be allowed if an area variance is granted by the ZBA.

**9.11    CERTIFICATE OF NONCONFORMANCE**

The Code Enforcement Officer (CEO) shall, for purposes of establishing the legality of an existing non-conforming use, issue a Certificate of Non-Conformance to any owner of a non-conforming structure or use who so requests, provided there is sufficient evidence of the use's legal existence prior to the effective date of those regulations to which it is nonconforming. The Code Enforcement Officer (CEO) may submit any application for a Certificate of Nonconformance to the Planning Board for the Board's review and recommendation with regard to the evidence of nonconformity.

**ARTICLE X - ADMINISTRATION AND ENFORCEMENT**

**10.0    CODE ENFORCEMENT OFFICER (CEO)**

It shall be the duty of the Code Enforcement Officer (CEO), to be appointed by the Town Board, to enforce the provisions of this Zoning Law. The Code Enforcement Officer (CEO) shall examine all applications for permits, issue permits for construction and uses which are in accordance with the requirements of this Zoning Law, record and file all applications for permits with accompanying plans and documents and make such reports as the Town Board may require. Permits for construction and uses which are Special Uses shall be issued only upon written order of the Planning Board. Permits for construction and uses which require a variance to requirements of this Zoning Law shall be issued only upon written order of the Zoning Board of Appeals.

**10.1    PERMIT PROCEDURES**

**10.1.1    General Procedures**

All persons desiring to undertake any new construction, structural alteration (including demolition) or changes in the use of a building or lot shall apply to the Code Enforcement Officer (CEO) for a building permit and/or Certificate of Use by filling out the appropriate application form and by submitting the required fee. (In the case of special uses, the application shall be forwarded to the Planning Board in accordance with Section 8.3 of this Zoning Law.) The Code Enforcement Officer (CEO) shall either issue or deny the permit. If the permit is denied, the Code Enforcement Officer (CEO) shall specify those sections of the Zoning Law to which the permit application does not comply. After a permit has been approved by the Code Enforcement Officer (CEO), the applicant may proceed to undertake the action permitted in the permit and, upon completion of such action, shall apply to the Code Enforcement Officer (CEO) for issuance of a Certificate of Use. If the Code Enforcement Officer (CEO) finds that the action of the applicant has been taken in accordance with the permit, he shall issue a Certificate of Use allowing the premises to be occupied for the permitted use.

**10.1.3    Required Permits**

A zoning permit and/or Certificate of Use shall be required prior to the erection, addition, demolition, replacement or alteration of any building or portion thereof; prior to the use or change of use of a building or land; and prior to the change or extension of a non-conforming use. It shall be unlawful for any person to commence work for the erection or alteration of any building or for a change in land use until a permit has been duly issued thereof. The following classes of permits may be issued:

- A. Principal Permitted and Accessory Uses - A zoning permit or a Certificate of Use for a principal permitted use or an accessory use may be issued by the Code Enforcement Officer (CEO) on his own authority.
- B. Special Use/Site Plan Approval - A zoning permit or a Certificate of Use for a Special Use/Site Plan may be issued by the Code Enforcement Officer (CEO) after review and approval by the Planning Board.



- C. Variances - A zoning permit or a Certificate of Use for a use or structure which requires a variance may be issued by the Code Enforcement Officer (CEO) only upon order of the Zoning Board of Appeals.
- D. Temporary Permits - A temporary permit may be authorized by the Town Board and issued by the Code Enforcement Officer (CEO) for a non-conforming structure or use which the Town Board deems necessary to promote the proper development of the community, provided that such a non-conforming structure or use shall be completely removed upon expiration of the permit for a specified period of time not to exceed one (1) year and may be renewed annually for an aggregate period not exceeding three (3) years from the date the temporary permit is first issued. Temporary permits for purposes of demolishing a structure may be issued by the Code Enforcement Officer (CEO) and shall be for a period not to exceed sixty (60) days.

#### **10.1.4 Activities Not Requiring Permits**

Certain uses or activities shall not require permits although such uses or activities shall meet any applicable standards of this Zoning Law, provided however, that this Section shall in no event supersede the requirements of the NYS Uniform Fire Prevention and Building Code. These uses and activities include the following:

- A. Patios.
- B. Signs less than twenty (20) square feet in size.
- C. All non-structural accessory uses, including gardens, small animal projects, etc.

#### **10.1.5 Application For Permits**

All applications for permits shall be accompanied by the information required in this Section. All applications with accompanying plans and documents shall become a public record after a permit is issued or denied.

- A. Plot Plan - A plot plan in duplicate, drawn to show:
  - 1. The actual shape and dimensions of the lot to be built upon.
  - 2. The exact size and location of any buildings existing on the lot.
  - 3. The lines within which the proposed building or structure is proposed for erection or alteration.
  - 4. The existing and intended use of each building or part of a building.
  - 5. The number of families or dwelling units the building is designed to accommodate.
  - 6. Such other information deemed necessary by the Town to determine compliance with this Zoning Law.
- B. SEQRA and Other Information - Documentation necessary to determine compliance with the New York State Environmental Quality Review Act (SEQRA), and all other information deemed necessary by the Town to determine compliance with this Zoning Law.
- C. Subdivision Regulations - Applications for uses which also necessitate approvals under the TOWN OF TUSTEN Subdivision Regulations shall be processed in the manner provided therein for plan approval and shall contain all information or data normally required for a submission under those Regulations.

#### **10.1.6 Fees**

The Town Board shall by resolution establish and periodically update a uniform schedule of fees, charges and expenses, as well as a collection procedure for zoning permits, Special Use/Site Plan permits, variances and other matters pertaining to this Zoning Law. Such fees may include the assessment to the Applicant of all professional costs incurred by the Town in regard to any application.

Said schedule of fees shall be posted in the office of the Code Enforcement Officer (CEO) and/or the Town Clerk.

Permits, Special Uses/Site Plans and variances shall be issued only after fees have been paid in full, and the Zoning Board of Appeals shall take no action on appeals until all charges have been paid in full.

#### **10.1.7 Action On Permit Applications**

It shall be the duty of the Code Enforcement Officer (CEO) to issue a zoning permit, provided that he is satisfied that the structure, building, any signs, parking area of the premises and the proposed use thereof conform with all the requirements of this Zoning Law and that all other reviews and actions, if any are called for in this Zoning Law, have been complied with and all necessary approvals secured thereof. The following procedures shall be observed:

- A. Issuance of Permit - All zoning permits shall be issued in duplicate and one (1) copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a zoning permit covering such operation is displayed as required by this Zoning Law, nor shall he perform building operations of any kind after notification of the revocation of said zoning permit.
- B. Denial of Permit - When the Code Enforcement Officer (CEO) is not satisfied that the applicant's proposed development will meet the requirements of this Zoning Law, he shall deny the zoning permit application.
- C. Inspection by the Code Enforcement Officer (CEO) - It shall be the duty of the Code Enforcement Officer (CEO), or his duly appointed representative, to make the following minimum number of inspections on property for which a permit has been issued:
  - 1. At the beginning of construction: A record shall be made indicating the time and date of the inspection and the finding of the Code Enforcement Officer (CEO) in regard to conformance of the construction with plans submitted with the application for the building. If the actual construction does not conform to the application, a written notice of the violation shall be issued by the Code Enforcement Officer (CEO), and such violation shall be discontinued. Upon proper correction of the violation and receipt of written notice from the Code Enforcement Officer (CEO), construction may proceed.
  - 2. At the completion of construction: A record shall be made indicating the time and date of the inspection, and the findings of the Code Enforcement Officer (CEO) in regard to the issuance of a Certificate of Use. Nothing herein shall, however, preclude the Code Enforcement Officer (CEO) from making such additional inspections as are deemed necessary to establish conformance with this or other Town Regulations.

- D. Expiration and Renewal - A zoning permit shall expire after eighteen (18) months if the applicant fails to implement his application as filed with the Code Enforcement Officer (CEO). A zoning permit may be renewed by the Code Enforcement Officer (CEO) not more than two (2) times, and each renewal shall not exceed a period of six (6) months.

Revocation - If it shall appear at any time to the Code Enforcement Officer (CEO) that the application or accompanying plot plan is in any material respect false or misleading, or that work is being done upon the premises differing materially from that specified in the application filed with him under existing laws or ordinances, he may forthwith revoke the zoning permit, whereupon it shall be the duty of the permit holder to surrender it and all copies thereof to the Code Enforcement Officer (CEO). After the zoning permit has been revoked, the Code Enforcement Officer (CEO) may, at his discretion, before issuing a new zoning permit, require the applicant to file an indemnity bond in the favor of the TOWN OF TUSTEN with sufficient surety, conditioned for compliance with this Zoning Law and all building laws and ordinances then in force, and in a sum sufficient to cover the cost of removing the building if it does not so comply.

#### **10.1.7 Approvals by the Planning Board, Town Board, or Zoning Board**

In any instance when an approval is granted by the Planning Board, Town Board or Zoning Board of Appeals, the acting Board may require their approval be periodically renewed. Such renewal shall be granted following due public notice and hearing, and may be withheld only upon determination by the Code Enforcement Officer (CEO) to the effect that such conditions as may have been prescribed by the respective Board in conjunction with the issuance of the original approval have not been, or are being no longer, complied with. In such cases a period of sixty (60) days shall be granted the applicant for full compliance prior to the revocation of said permit.

#### **10.1.8 Certificate of Use**

A Certificate of Use shall be a statement issued by the Code Enforcement Officer (CEO) setting forth either that a building, structure or parcel of land complies with the provisions of this Zoning Law; or that a building or structure lawfully may be employed for specified uses under the provisions of this Zoning Law, or both. The Certificate of Use under this Zoning Law is separate from any permit or certificate issued pursuant to the NYS Uniform Fire Prevention and Building Code.

- A. Requirement - No vacant land shall be occupied or used, and no structure or part of a structure, hereafter erected, structurally altered or changed in use shall be occupied or used until a Certificate of Use shall have been regularly issued therefore by the Code Enforcement Officer (CEO).
- B. Structures - A Certificate of Use, either for the whole or part of a new structure, or for the alteration of an existing structure shall be applied for co-incident with the application for a zoning permit, and shall be issued within thirty (30) days after the erection or alteration of such structure or part thereof shall have been completed in conformity with the provisions of this Zoning Law, provided the applicant has given the Code Enforcement Officer (CEO) timely notice of completion of the project in order to facilitate the inspection of the same.

- C. Land and Change of Use - A Certificate of Use for the use of vacant land or for a change in the use of land, or for a change in the use of an existing structure, shall be applied for and issued before any such land or structure shall be occupied or used or such land or structure shall be changed in use, and such Certificate of Use shall be issued within thirty (30) days after application has been made, provided such proposed use is in conformity with the provisions of this Zoning Law.
- D. Nonconforming Uses - A Certificate of Use for changing or extending a nonconforming use, existing at the time of the passage of this Zoning Law or of an amendment thereto, shall be applied for and issued before any such nonconforming use shall be changed or extended. Such Certificate of Use shall be issued pursuant to the requirements of Article IX of this Zoning Law.
- E. Records - A record of all Certificates of Use shall be kept on file in the office of the Code Enforcement Officer (CEO) and a copy shall be furnished, on request, to any person having a proprietary or tenancy interest in the structure or land affected.
- F. House Numbers - No Certificate of Use shall be issued until a House Number meeting the requirements of emergency service providers and the Enhanced 9-1-1 System has been posted.

## **10.2    VIOLATIONS**

### **10.2.1    Violations**

It shall be unlawful to erect, construct, reconstruct, alter or maintain or use any building or structure or to use any land in violation of any provisions of this Zoning Law. Failure, refusal, or neglect in complying with the provisions of this Zoning Law; failure, refusal, or neglect to secure a permit, or Certificate of Use, when required, prior to the erection, construction, extension, or addition to a building or structure shall be a violation of this Zoning Law.

### **10.2.3    Notice of Violation and Termination**

When written notice of a violation of any of the provisions of this Zoning Law has been served by the Code Enforcement Officer (CEO) or his designee on the owner, occupant, contractor, or any other person using or occupying said property, continued violation of this Zoning Law shall be terminated immediately.

## **10.3    PENALTIES**

### **10.3.1    Enforcement**

A violation of this Law is hereby declared to be an offense punishable by a fine not to exceed three hundred fifty dollars (\$XXX) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense both of which are committed within a period of five (5) years, punishable by a fine not less than three hundred fifty dollars (\$XXX) nor more than seven hundred dollars (\$XXX) or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars (\$XXX) nor more than one

thousand dollars (\$X,000) or imprisonment for a period not to exceed six (6) months, or both . However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this Law shall be deemed misdemeanors and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

#### **10.3.2 Remedies**

In case any building or structure is erected, constructed, reconstructed, altered, converted, or maintained or any building, structure or land is used, or any land is divided into lots, blocks, or sites in violation of this Law or other regulation made under authority conferred thereby, the Town Board and/or Code Enforcement Officer (CEO), in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or division of land, to restrain, correct or abate such violation, to prevent any illegal act, conduct, business or use in or about such premises; and upon the failure or refusal of Town officials to institute any such appropriate action or proceedings for a period of ten (10) days after written request by a resident taxpayer of the TOWN OF TUSTEN so to proceed, any three (3) taxpayers of the Town residing in the district wherein such violation exists, who are jointly or separately aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such Town Officials are authorized to do so.

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

**11.0    ZONING BOARD OF APPEALS**

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

**11.0.1    Membership**

The ZBA shall consist of five (5) members to be appointed by the Town Board. The terms of the initial appointees shall be for one (1), two (2), three (3), four (4) and five (5) years from and after the date of appointment. Their successors, including such additional members as may be appointed by the Town Board, shall be appointed for the term of five (5) years after the expiration of the terms of their predecessors in office.

**11.0.2    Vacancies**

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

**11.0.3    Quorum**

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

**11.1    SPECIFIC POWERS AND DUTIES**

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

**11.1.2    Orders, Requirements, Decisions, Interpretations, and Determinations**

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

### **11.1.3 Area Variances**

The ZBA shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this Zoning Law, after public notice and hearing and in accordance with the requirements of law and this Law, to grant area variances as defined herein.

### **11.1.4 Use Variances**

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

### **11.1.5 Interpretations**

The ZBA shall, upon request from or appeal of a decision by the Code Enforcement Officer (CEO) or any administrative body of the TOWN OF TUSTEN, including the Town Board, decide any question involving the interpretation of any provision of this Law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

## **11.2 GENERAL PROCEDURES**

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

## **11.3 USE VARIANCES**

### **11.3.1 Use Variances**

The Board of Zoning Appeals, on application following the denial or referral of a Zoning Permit, shall have the power to grant a Use Variance. If the Use Variance is granted, the developer must obtain Site Plan Review approval from the Planning Board prior to commencing the use or obtaining a Building Permit [or Zoning Permit].

### **11.3.2 Required Findings**

No such Use Variance shall be granted by the Board of Zoning Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

**1. Unnecessary Hardship.**

In order to prove such unnecessary hardship the developer is required to demonstrate to the Board of Zoning Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria are satisfied:

- a. the developer cannot realize a reasonable return on the entire parcel of property, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. that the requested Use Variance, if granted, will not alter the essential character of the neighborhood; and
- d. that the alleged hardship has not been self-created.

**2. Reasonable Rate of Return.**

In making its determination of whether the developer cannot realize a reasonable rate of return, the Board of Zoning Appeals must find that the entire original or expanded property holdings of the developer are incapable of producing a reasonable rate of return. The Board of Zoning Appeals must find that the developer has clearly demonstrated, by detailed “dollar and cents” proof the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed development project) and for each and every permitted use in the district (including those uses permitted by Special Use Permit).

- a. Unique Hardship. The Board of Zoning Appeals must find that the entire parcel of which the development project is a part possesses unique characteristics that distinguish it from other properties in the area.
- b. Essential Character of the Neighborhood. In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Board of Zoning Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and historic character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the developer will use a style of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Board of Zoning Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the development project will not do any of the following: (x) pose a threat to the public



safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

- c. **Self-Created Hardship.** The Board of Zoning Appeals may find that the developer suffers from a self-created hardship in the event that the board finds that (i) the developer's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the developer previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the developer purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

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

In addition to the application requirements set forth herein, an application for a Use Variance shall contain a typewritten narrative explaining what the application is for, and how the development project exceeds all of the criteria for a Use Variance, including:

1. **Competent Financial Evidence.** Competent financial evidence containing reasonable specification of the nature and factual particulars of such claim, and articulating the basis for the developer's claim, and including, at a minimum (as to the entire parcel of which the proposed development project is a part):
  - a. date of acquisition;
  - b. the purchase price;
  - c. present value of the property;
  - d. the amount of real estate taxes;
  - e. the amount of mortgages or liens and other expenses;
  - f. the asking price for the property when it had been offered for sale;
  - g. the costs of demolishing any existing structures on the property;
  - h. cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit);
  - i. efforts to market the property;
  - j. and a schedule of all other property in common ownership at either the date of the enactment of this law or thereafter.

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

2. **Unique Nature of the Property.** The developer must provide evidence demonstrating the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.
3. **Alteration of the Essential Character of the Neighborhood.** The developer must demonstrate that the proposed development project will not change the essential character of the neighborhood with regard to physical, economic, social and environmental elements. Adverse impacts to the essential character of the neighborhood include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.
4. **Hardship Not Self-Created.** In order to show that the hardship is not self-created, the developer must demonstrate that either (i) when the property was purchased the zoning restrictions from which a Use Variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the developer's purchase which makes the use non-conforming, as long as the change was not caused by the developer.

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

The Board of Zoning Appeals, in the granting of Use Variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

#### **11.3.5. Conditions**

The Board of Zoning Appeals shall, in the granting of Use Variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed development project. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such Use Variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this law. If the developer refuses to

accept such requirements and conditions, the Use Variance shall be denied. Failure to abide by any conditions attached to a Use Variance shall constitute a zoning violation.

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

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

### **11.4    AREA VARIANCES**

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

The Board of Zoning Appeals shall have the power, upon an appeal from a decision or determination of the Zoning Officer or the Planning Board, to grant an Area Variance.

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

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

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 Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and whether the alleged difficulty was self-created;
5. which consideration shall be relevant to the decision of the Board of Zoning Appeals, but which consideration shall not necessarily preclude the granting of the Area Variance.

#### **11.4.3. Minimum Variance**

The Board of Zoning Appeals, in the granting of Area Variances, shall grant the minimum Area 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.

#### **11.4.4. Additional Submissions**

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

#### **11.4.5. Conditions**

The Board of Zoning Appeals shall, in the granting of Area Variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such Area Variance may have on the neighborhood or community. If the developer refuses to accept such requirements and conditions, the Area Variance shall be denied. Failure to abide by any conditions attached to an Area Variance shall constitute a zoning violation.

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

#### **11.5.1. Applications**

Every appeal and application for a Special Use Permit or Variance shall be in writing and on forms prescribed by the Board of Zoning Appeals. Twelve (12) copies of the appeal or application and supporting documentation shall be filed with the Zoning Officer, accompanied by a fee in the amount set from time to time by resolution of the Town Board.

#### **11.5.2. Content of Submission**

Each appeal or application shall fully set forth the circumstances of the case and contain the following information and documentation:

1. Contact Information. The name, address and telephone number of the property owner and, if different, the name, address and telephone number of the developer(s).
2. Property Description. Address, tax id number for the property, existing use, acreage of parcel, and zoning designation.
3. Development Project Description. A narrative description of the proposed development project, with reference to the appropriate use and regulations of this law.
4. Deed, Lease, Development Agreement. A copy of the recorded deed must be furnished evidencing ownership of the property, together with copies of any leases, development agreements or other agreements between the property owner and the developer(s).
5. List of Required Permits. A list of all federal, state and other permits and other governmental approvals that would be required to implement the development project, and evidence of whether the developer (or its agents) have applied for any such permits and approvals and whether the developer (or its agents) have received any of the listed approvals.
6. Copies of Permit Applications. Copies of any environmental assessments or permit applications and supporting materials submitted to any other permitting agency in connection with the

development project.

7. Site Development Plan. A complete site development plan, in accordance with the requirements set forth in Article XIII.
8. Attestation. Signature of the developer, or the owner and the developer if the developer is not the owner, attesting to the accuracy of the statements and representations made in the application, and constituting a certification by the owner, or owner and developer (as applicable), that each has undertaken due diligence in the filing of the appeal.

#### **11.5.3 Additional Submission Requirements for Appeals or Applications Regarding Explicitly Prohibited Uses**

In addition to all of the other information required for all Use Variance applications and/or all other information required for Appeal applications, the following reports shall be submitted in any application or appeal concerning what is otherwise an Explicitly Prohibited Use. The Board of Zoning Appeals may require any one or more of these reports in connection with its consideration of any other matter before it. These reports are intended to assist the Board of Zoning Appeals in its determination as to the impact of a proposed development project on the Town and/or the “essential character of the neighborhood” and/or to determine whether the proposed development project complies with the requirements of this law:

- a. Environmental Assessment Form. A completed draft of an Environmental Assessment Form, Part I.
- b. Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, park/recreational, and/or agricultural areas, as well as all county-designated Unique Natural Areas and locally designated Critical Environmental Areas (if any) within a two (2) mile radius of the perimeter of the site of the proposed use.
- c. Traffic Impact Report.
  - i. the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
  - ii. Existing and proposed daily and peak traffic hour levels as road capacity levels;
  - iii. a determination of the area of impact of traffic to and from the proposed development project;
  - iv. the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles;
  - v. the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed development project;
  - vi. the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities;
  - vii. a traffic impact analysis of the effects of the proposed development project on the transportation network in the Town using passenger car equivalents;
  - viii. articulation of the effects and impacts of the proposed development project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system;

- ix. evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions;
  - x. and determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic.
- d. Road Impact Report. An evaluation of (i) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes; (ii) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any high-impact trucks likely to be used in connection with the proposed development project; and (iii) impacts to the rural or scenic character of any roads along the proposed traffic route.
- e. Transportation Plan. A (i) description of ingress and egress through the proposed development project site through which equipment and supplies will be delivered and which will provide access during and after construction; and (ii) identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging access/traffic routes and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.
- f. Noise Impact Report. A report on the following topics:
  - i. the existing audible conditions at the development project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation;
  - ii. a description and map of sound producing features of the proposed development project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site, including noise impacts from truck traffic travelling within the Town to and from the proposed development project;
  - iii. for the noise generated by construction and use of the proposed development project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for the expectation;
  - iv. a description and map of the existing land uses and structures including any sound receptors (i.e. residences, hospitals, libraries, schools and places of worship, parks, areas with outdoor workers) within one (1) mile of the development project parcel boundaries. Said description shall

- include the location of the structure/land use, distances from the proposed development project and expected decibel readings for each receptor;
  - v. the report shall cover low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise;
  - vi. and the report shall describe the development project's proposed noise-control features, including specific measures proposed to protect workers and mitigate noise impacts for sensitive receptors.
- g. **Visual Assessment.** A visual presentation of how the site of the proposed development project will relate to and be compatible with the adjacent and neighboring areas, within a two (2) miles radius of the perimeter of the site of the proposed development project. This presentation shall include computerized photographic simulation showing the site during construction and fully developed and demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.
- h. **Report of Deleterious Substances and Other Wastes.** A report of (i) a description of deleterious substances and other solid wastes, industrial wastes, hazardous wastes and pollutants expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the development project site; (ii) a description of controls and practices to eliminate or minimize release all such materials into the environment; and (iii) a plan for ultimate disposal of such materials whether on or off-site.
- i. **Sustainability Analysis.** A discussion of (i) the extent of the use of nonrenewable resources during the initial and continued phases of the proposed development project; (ii) the expected duration of the initial and continued phases of the proposed development project; and (iii) the extent to which the proposed development project may contribute to an irreversible commitment to the continuation of this proposed use by future generations.
- j. **Compatible Uses Report.** A discussion of characteristics of the proposed development project that may decrease the Town's and/or the neighborhood's suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses.
- k. **Fiscal Impact Assessment.** An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed development project.
- l. **Fire Prevention, Equipment Failure and Emergency Response Report.** A report containing:

- i. Description of the potential fire, equipment failures and emergency scenarios associated the proposed development project that may require a response from fire, emergency medial services, police or other emergency responders;
- ii. An analysis of the worst case disaster associated with the proposed development project and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property;
- iii. Designation of the specific agencies that would respond to potential fires, equipment failures, accidents or other emergencies;
- iv. Description of all emergency response training and equipment needed to response to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies;
- v. and the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the site of the proposed use; and a detailed fire control and pollution prevention and emergency response plan.

m. Public Facilities and Services Assessment. An assessment describing:

- i. whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed development project (taking into account all other uses that have been permitted or are currently operating in the Town);
- ii. a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed development project (in determining the effect and impact of the proposed development project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations);
- iii. and a review of the impact of the proposed development project on the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks, elevated sidewalks, green space buffers for pedestrians/bikes where established walking/biking route overlap/run along intended truck routes so as to prevent accidents.

n. Property Value Assessment. A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the development project on the value of properties adjoining the project site.

o. Health Impact Assessment. A human health impact assessment that identifies ways in which the proposed development project could adversely affect the health of Town residents and



a priority list of recommendations to minimize the potential health impacts of the proposed development project. The health impact assessment must include (i) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the development project site; (ii) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; (iii) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, a perceived loss of shared community ideals and cohesion, declining property values, impacts to the education system and sudden changes in population numbers, demographics and customs, and (iv) proposed remedies to address principal findings.

#### **11.5.4. Additional Special Conditions**

In granting a Variance, or in making any determination upon which it is required to pass after public hearing under this law, the Board of Zoning Appeals may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of the Comprehensive Plan of the Town and this law. Such special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, in addition to any other special conditions, but are not limited to, provisions for:

- a. minimizing adverse impact of the development upon other land;
- b. ensuring the type, intensity, design, location, character and performance of activities be in harmony with the orderly development of the Town;
- c. controlling the sequence of development, including when it must be commenced and completed;
- d. controlling the duration of use or development and the time within which any temporary structure must be removed;
- e. assuring satisfactory installation and maintenance of required public improvements; designating the exact location and nature of development;
- f. establishing detailed records by submission of drawings, maps, plats or specifications;
- g. ensuring all proposed structures, equipment and materials shall be readily accessible for fire and police protection;
- h. ensuring that the nature and intensity of operations involved in or conducted in connection with the proposed use, its site layout and its relation to access streets be such that both pedestrian and vehicular traffic to and from the use and assembly of person in connection therewith will not be hazardous or inconvenient to or incongruous with the Town or conflict with the normal traffic of the Town.

If the developer refuses to accept such requirements and conditions, the Variance or Special Use Permit shall be denied. Failure to abide by any conditions attached to a Special Use Permit or Variance shall constitute a zoning violation.

#### **11.5.5 Environmental Review**

The Board of Zoning Appeals shall comply with the provisions of the state environmental quality review act (SEQRA) under Article 9 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes Rules and Regulations.

#### **11.5.6. No Violations**

No Special Use Permit, Use Variance, or Area Variance shall be issued for a property where there is an existing violation of this law upon such property.

#### **11.5.7 Coordination and Consultation**

The Board of Zoning Appeals may refer applications for Special Use Permits, Use Variances, Area Variances and appeals for reviewed by the Zoning Officer, the Fire Department, the Department of Public Works and any other Town officials or non-Town consultants deemed appropriate by the Board of Zoning Appeals. These may include, but shall not be limited to, local and county officials and representatives of county, state, and federal agencies, including the Natural Resource Conservation Service, Sullivan County Soil and Water District, the State Department of Transportation, and the State Department of Environmental Conservation. Any comments from these reviewers shall be forwarded to the board to aid its decision on the application or appeal. Additional consultation where fees are involved shall require approval by the Town Board and any such fees shall be borne by the developer.

### **11.6    OTHER GENERAL REQUIREMENTS APPLICABLE TO APPEALS**

#### **11.6.1 Interpretations**

The Town Board, Code Enforcement Officer (CEO) or Planning Board of the TOWN OF TUSTEN may request the ZBA to decide any question involving the interpretation of any provision of this Law and shall refer such other matters to the ZBA as it is required to decide by the provisions of this Law. The ZBA's rules and regulations shall govern these matters. All matters to be referred to the ZBA in such circumstances shall be in writing to the ZBA's Secretary and shall be acted on within ninety (90) days of the Secretary's receipt of the same.

#### **11.6.2 Appeals from Administrative Acts**

Any property owner, tenant, representative thereof or other person aggrieved by an administrative act of the TOWN OF TUSTEN with respect to this Law, who believes such decision to be in error, may appeal to the ZBA.

- A. Administrative Act - An administrative act shall include any order, requirements, decision, interpretation or determination made by the Code Enforcement Officer (CEO), the Town Board or the Planning Board. The ZBA may reverse or affirm wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to be made in the

matter and to that end shall have all the powers of the official or body from whom the appeal is taken.

- B. Time For Appeal - An appeal must be made to the ZBA within sixty (60) days after the filing of any order, requirements, decision, interpretation or determination made by the Code Enforcement Officer (CEO), the Town Board or the Planning Board. The Applicant must file a signed notice of appeal with the administrative official or body from whom the appeal is taken and with the Secretary of the Board of Appeals. Such notice shall be made on the forms provided for that purpose.
- C. Application to ZBA - The administrative official from whom the appeal is taken shall be responsible, at the direction of the ZBA, for providing any Applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be complete before an appeal is considered filed. Six (6) copies of the proper appeal form shall be filed with the ZBA.

## **11.7    HEARINGS**

### **11.7.1 Timing and Public Notice**

The ZBA shall schedule a hearing on all appeals or applications within sixty-two (62) days of the filing of the appeal or application. Public notice of the hearing shall be given at least five (5) days prior to the date thereof by publication in a newspaper of general circulation in the Town. The cost of sending or publishing any notices relating to any appeal or application shall be borne by the appealing party and shall be paid to the ZBA prior to the hearing.

### **11.7.2 General Conduct of Hearing**

Any party may appear in person or by agent or by attorney. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceedings. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence.

### **11.7.3 Rules of Evidence**

Unless otherwise provided by any statute, the ZBA need not observe the rules of evidence observed by courts, but shall give effect to rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, the ZBA may, for the purpose of expediting a hearing, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

### **11.7.4 Records and Evidence**

All evidence, including records and documents in the possession of the ZBA or parties to the hearing, of which the former desires to avail itself, shall be made a part of the record, and all such documentary

evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

#### **11.7.5 Cross Examination**

A party shall have the right of cross-examination.

#### **11.7.6 Judicial Notice**

Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the ZBA. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could be taken, every party shall be given notice thereof and shall on a timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

### **11.8    REHEARING**

Upon a motion initiated by any member, and adopted by unanimous vote of the members present, but not less than a majority of all the members, the ZBA may review at a rehearing any order, decision or determination of the ZBA not previously reviewed. Notice shall be given as upon an original hearing. Upon such hearing--and provided that it shall appear that no vested rights due to reliance on the original order, decision or determination will be prejudiced thereby--the ZBA may, upon concurrence of all the member present, reverse, modify or annul its original order, decision or determination. Requests for rehearing, however, shall be made within thirty (30) days of the original order, decision or determination.

### **11.9    NOTICE TO PARTIES, APPROPRIATE COMMISSIONS, AND COUNTY PLANNING AGENCY**

At least five (5) days before any hearing on any appeal or application, the ZBA shall mail notices thereof to relevant parties, to the federal, state, or regional state park commissions having jurisdiction over any federal, state park or parkway within five hundred (500) feet of the property affected by the appeal or application; and to the Sullivan County Division of Planning and Environmental Management as required by Section 239-m of the New York State General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration as defined by the said Section 239-m.

#### **11.9.1 County Action**

- A. Disapproval or Modification Recommendation - If within thirty (30) days after receipt of a full statement of such referred matter, the Sullivan County Division of Planning and Environmental Management recommends disapproval or modification of the proposal, the ZBA shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof and after adoption of a resolution fully setting forth the reasons for such contrary

action. The Chairperson shall read the report of the Sullivan County Division of Planning and Environmental Management at the public hearing on the matter under review.

- B. Non-Action - If the County fails to report within such period of thirty (30) days, or such longer period as may have been agreed upon by it and the ZBA, the ZBA may act without such report.
- C. Receipt Prior to Final Action - Any Sullivan County Division of Planning and Environmental Management report received after thirty (30) days or such longer period as may have been agreed upon, but two (2) or more days prior to final action by the ZBA, shall be subject to the provisions of Subsection A of this Section.
- D. Notice of ZBA Decision to Sullivan County Division of Planning and Environmental Management - Within thirty (30) days after final action by the ZBA, the ZBA shall file a report of the final action with the Sullivan County Division of Planning and Environmental Management, and such report shall include a copy of any resolution adopted for action contrary to the County recommendation.

#### **11.9.2 Referral to Town Planning Board**

The ZBA may also refer matters to the TOWN OF TUSTEN Planning Board for review and recommendation and defer any decision thereon for a period of not more than thirty (30) days pending a report from the Planning Board.

### **11.10 DECISIONS**

#### **11.10.1 Time of Decision**

Decisions by the ZBA shall be made within sixty-two (62) days from the date of the final hearing. The time within which the ZBA must render its decision may be extended by mutual consent of the Applicant and the ZBA.

#### **11.10.2 Written Decision**

The final decision on any matter before the ZBA shall be made by written order signed by the chairperson. Such decision shall state the findings of fact which were the basis for the ZBA's determination. The ZBA may reverse or affirm, wholly or partly, or may modify the order or requirement of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.

#### **11.10.3 Guidance of Decision**

The ZBA, in reaching said decision, shall be guided by standards specified herein as well as by the community goals and policies as specified in this Zoning Law and the **TOWN OF TUSTEN COMPREHENSIVE PLAN**. The findings of the ZBA and the supporting facts shall be enumerated in detail regardless of whether it is based on evidence submitted or on the personal knowledge of the ZBA.

#### **11.10    EXPIRATION OF PERMITS**

Unless otherwise specified, any order or decision of the ZBA for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the Applicant within ninety (90) days from the date of the decision; however, the ZBA may extend this time an additional ninety (90) days.

#### **11.11    FILING OF DECISIONS**

Any decision of the ZBA shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the ZBA.

#### **11.12    NOTICE OF DECISION**

Copies of the decision shall be forwarded to the Applicant, the Town Planning Board, and the Sullivan Division of Planning when referral to the County Planning Department is required in the particular case. A certified copy of the ZBA's decision, including all terms and conditions, shall be transmitted to the Town Code Enforcement Officer (CEO) and shall be binding upon and observed by him and he shall fully incorporate such terms and conditions of the same in the permit to the Applicant or appellant whenever a permit is authorized by the ZBA.

#### **11.13    RULES AND REGULATIONS**

The ZBA is hereby authorized to adopt rules and regulations for the conduct of its business consistent with this Law and State statutes.

#### **11.14    FORM OF APPEALS**

##### **11.14.1            Application Forms**

All applications and appeals made to the Board of Appeals shall be in writing on forms prescribed by the ZBA and signed by the Applicant. Every application or appeal shall refer to the specific provision of this Law involved and shall exactly set forth the interpretation that is claimed, the plans associated with and the details of any variance that is applied for.

##### **11.14.2            Record of Administrative Action**

When a notice of appeal in any case where a permit or action had been granted or denied by the Code Enforcement Officer (CEO), Planning Board or Town Board shall be filed, the applicable administrative official shall forthwith transmit to the ZBA all papers constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers. Also, it shall be proper for the administrative entity to recommend to the ZBA a modification or reversal of its action in cases where it believes substantial justice requires the same but where the entity has not itself sufficient authority to grant the relief sought.

#### **11.15    Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the acting administrative entity certifies to the ZBA, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the ZBA or the Supreme Court on application, on notice to the administrative entity and on due cause shown.

#### **11.16    APPEAL TO SUPREME COURT**

Any person aggrieved by a decision of the ZBA may apply to the Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk.

#### **11.17    APPLICATIONS ON MATTERS DECIDED**

Whenever the ZBA, after hearing all the evidence presented upon an application or appeal under the provisions of this Law, denies the same, the ZBA shall refuse to hold further hearings on the said or substantially similar application or appeal by the same Applicant, his successor or assign for a period of one (1) year, unless the ZBA shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.

#### **11.18 AD HOC MEMBERS OF ZONING BOARD OF APPEALS**

In the event that conflicts of interest or other causes result in the absence, disqualification or recusal of any regularly appointed member or members of the Board of Appeals, the Town Board shall appoint an ad hoc member or members in such number as shall be sufficient to constitute a full board of five (5) members for the purpose of hearing and determining a specific appeal or application pending before the Board of Appeals from which the regularly appointed members have been absent, disqualified or recused. The term of any such ad hoc appointment shall expire concurrently with the making of a final determination by the Board of Appeals with respect to the appeal or application for which such ad hoc appointment was made. Once designated to serve on a particular matter pending before the Board of Appeals, the ad hoc member or members shall have the same powers and duties as regular members of the Board of Appeals until that matter is concluded. Any determination by the Board of Appeals consisting of ad hoc members shall have the same weight and be entitled to the same authority as the act or deed of the regular Board of Appeals and all laws, statutes and regulations shall apply and be applied with equal force and effect.

**ARTICLE XII - GENERAL PROVISIONS**

**12.0    AMENDMENT PROCEDURE**

This Law or any part thereof may be amended, supplemented or repealed from time to time by the Town Board consistent with the provisions of the New York State enabling statutes.

**12.1    INTERPRETATION**

In interpretation and application, the provisions of this Zoning Law shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except where specifically provided to the contrary, it is not intended by this Law to repeal, abrogate, annul or in any way to impair or interfere with any rules, regulation or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings, structures, shelter or premises, nor is it intended by this Law to interfere with or abrogate or annul any easement, covenants or other agreements between parties; provided, however, that where this Law imposes a greater restriction upon the use of a building or premises or requires larger open spaces than are imposed or required by any other statute, ordinance, rule, regulation or permit or by any easement or agreement, the provisions of this Zoning Law shall control. In the event of conflict in the terminology of any section or part thereof of this Law, the more restrictive provisions shall control.

**12.2    STATE ENVIRONMENTAL QUALITY ACT**

All administrative actions undertaken in accord with this Zoning Law shall comply with the New York State Environmental Quality Review Act. The Applicant shall submit all documentation necessary to demonstrate compliance with the said Act.

**12.3    SECTION 239-m**

All administrative actions undertaken in accord with this Zoning Law shall comply with Section 239-m of the New York State General Municipal Law.

**12.4    SEVERABILITY**

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



**ARTICLE XIII — SIGN REQUIREMENTS**

**13.0    ADMINISTRATION**

**13.0.1    Legislative Intent**

The regulation of the location, size, placement, and certain features of signs is intended to:

1. Protect property rights and values within the Town of Tusten;
2. Protect the general public from damage and injury which may caused by the faulty construction of signs;
3. Encourage sign design, placement and landscaping that will protect the beauty and character of the Town and uphold the River Management Plan where applicable;
4. Promote and aid the tourist industry and other enterprises within the Town of Tusten;
5. Avoid damage or injury attributable to distractions and obstructions caused by improperly placed signs;
6. Promote public safety, welfare, convenience, enjoyment of travel and the free flow of traffic in the Town;
7. Ensure signage is clear and provides the essential identity or direction to facilities in the community; and,
8. Allow fair and consistent enforcement of the sign restrictions throughout the Town of Tusten.

**13.0.2    Applicability – Effect**

A sign may be erected, placed, established, painted, created or maintained in the Town only in conformance with the standards, procedures, exceptions, and other requirements of this Law. The effect of this Law is to:

1. Establish a permit and review system that allows a variety of signs by zoning district, subject to the standards and the permit procedures of this Law;
2. Allow certain signs that are small, unobtrusive, and incidental to principal use of lots on which they are located, subject to the substantive requirements of this Law, but without a requirement for permits; and
3. Provide for temporary signs.

**13.0.3    Requirement of Conformity**

No sign may be placed or maintained in the TOWN OF TUSTEN except as provided herein. All signs maintained contrary to the provisions of this Law are declared to be nuisances, and as such may be abated as provided by law.

### **13.1 DEFINITIONS**

**ABANDONED SIGN:** A sign that no longer correctly advertises an existing, bona fide business, lesser, product or activity conducted or available on the premises where the sign is displayed.

**A-BOARD SIGN:** means an A-shaped sign with no external supporting structure that is set upon, but not attached to, the ground.

**AWNING SIGN:** means a sign incorporated upon or within an awning.

**BALLOON SIGN:** means an air-inflated sign.

**BANNER SIGN:** means a sign constructed from a non-rigid fabric in a banner style, which is attached to a pole or other structure.

**BILLBOARD SIGN:** means a large engineered freestanding sign designed for a changeable message used generally for off-site and corporate advertising.

**CANOPY SIGN:** means a sign incorporated upon or within a building canopy.

**CONSTRUCTION SITE IDENTIFICATION SIGN:** A temporary sign erected on a site under construction for advertising or providing information related to the construction project.

**DEVELOPMENT DIRECTIONAL SIGN:** means a temporary sign for guiding or directing pedestrian or vehicular traffic to new subdivisions, new home areas, or show homes.

**DIRECTIONAL SIGN:** A sign for directing pedestrian or vehicular traffic including ingress and egress signs and parking signs, but does not include advertising, with the exception of a logogram.

**ELECTION SIGN:** means a sign advertising a local candidate and/or party in a federal, provincial, school board or municipal election.

**ELECTRONIC MESSAGE SIGN:** A sign or part of a sign on which the advertising is programmable or changeable by electrical or electronic means.

**EVENT DIRECTIONAL SIGN:** A temporary sign providing direction to a non-reoccurring event of less than three (3) days in length; such as a property auction sale.

**FENCE SIGN:** A sign painted on or attached to a fence.

**FLASHING SIGN:** A sign that contains an intermittent or flashing light source.

**FREESTANDING SIGN:** A sign anchored into the ground and not attached to a building.

**GARAGE SALE SIGN:** A sign advertising the location and product of a garage sale.

**HOME ADDRESS SIGN:** A sign that which states only the municipal address and occupant names.

**HOME BUSINESS SIGN:** A sign advertising an approved home business.

**ILLUMINATION:** Lighting of any sign by artificial means.

**INDIRECT ILLUMINATION:** Lighting of a sign by reflected light.

**MARQUEE:** A permanent roof like structure that having areas on the sides for display of changeable graphics or copies, that projects from or is supported by a building.

**MONUMENT SIGN:** A sign, in which the face of the sign is permanently mounted on an enclosed decorative base of brick, stone, stucco, or similar material with a frame within which the sign panels are enclosed.

**NEON SIGN:** A sign consisting of glass tubing, filled with a gas such as neon, which glows when electric current is sent through it.

**OFF-SITE/OFF PREMISE ADVERTISING SIGN:** A sign displaying advertising of a business, commodity, service or entertainment that is conducted, sold or offered elsewhere other than the site on which the sign is located.

**OFF-PREMISE PORTABLE SIGN:** A sign designed either as an integrated physical feature of a motor vehicle, and/or mounted on a trailer, bench, wheeled carrier, or other non-motorized mobile structure that is movable by a vehicle.

**OPEN HOUSE SIGN:** A sign for guiding vehicular traffic and pedestrians to real estate open house locations;

**POLE SIGN:** A permanent, freestanding sign that is mounted on a pole(s) or other support(s) that is placed on and anchored in the ground or on a base and that is independent from any building or other structure.

**POLITICAL MESSAGE SIGN:** A sign containing a message intended for a political purpose or a message which pertains to an issue of public policy of possible concern to the electorate, but does not include a message intended solely for a commercial purpose.

**PORTABLE SIGN:** A sign, with changeable message, designed to be readily relocated.

**PROJECTING SIGN:** means a sign that is attached to and supported by a building and extends perpendicular to the building.

**REAL ESTATE SIGN:** A sign for advertising property for sale, lease or rent.

**ROADSIDE STAND SIGN:** A sign advertising for a farm stand business or arts and crafts business operating from a temporary location.

**ROOF SIGN:** A sign located upon, against, or above the roof of a building, or a sign attached to the roof or parapet of a building.

**SIGN:** A device or structure for providing direction or information to the public on such things as a development, business, product, service, location, event or person.

**SIGN AREA:** The area of one (1) sign face available for advertising of a single or multiple faced sign, excluding the main support structure.

**SIGN, DIRECTIONAL:** A sign for directing pedestrian or vehicular traffic including ingress and egress signs and parking signs, but does not include advertising, with the exception of a logogram.

**SIGN HEIGHT:** The vertical distance measured at right angles from the highest point of the sign or sign structure, to the finished grade directly below.

**WALL SIGN:** A sign fastened to or painted on a wall.

**WINDOW SIGN:** A sign placed on or inside a window that faces the outside and is intended to be seen from the outside.

## **13.2    PROCEDURES**

### **13.2.1   Requirement of Permit**

A sign permit shall be required before the erection, re-erection, construction, alteration, placing, or installation of all signs identified on the Schedule of Sign Regulations as "Allowed with Permits from Enforcement Officer" or "Permitted upon Review by Planning Board." Permits shall not be required for routine maintenance or changing of the parts or copy of a sign, provided that the maintenance or change of parts or copy does not alter the sign surface area or height, or otherwise render the sign non-conforming.

### **13.2.2   Permit Application**

Applications for sign permits shall be submitted to the Code Enforcement Officer (CEO). The applicant shall pay the required application fee with the application. Three copies of plans and specifications shall be submitted with each application. One copy shall be returned to the applicant at the time the permit is granted. The application and plans shall, at a minimum, include:

1. The names, addresses, and telephone numbers of the applicant, the owner of the property on which the sign is to be erected or affixed, the owner of the sign, the person preparing the plans and specifications, and the person to be erecting or affixing the sign.
2. The location of the building, structure, or zoning lot on which the sign is to be erected or affixed.
3. A sketch plan of the property involved, showing accurate placement thereon of the proposed sign.
4. Three (3) sets of plans for the sign to be erected or affixed, along with specifications for the method of construction or attachment to the building and sign dimensions, color, lighting type and location (if any), materials and weight.
5. In the case of billboards, a copy of stress sheets and calculations prepared or approved by a registered structural engineer, licensed by the State of New York, showing the sign is designed for dead load and wind pressure in any direction in the amount required by this and all other applicable Laws of the Town.
6. The written consent of the owner of the structure or property on which the sign is to be erected or affixed.
7. The Code Enforcement Officer shall transmit one copy of the application and accompanying material to the Planning Board for their information and files.
8. The Code Enforcement Officer or designated official may, at his or her discretion, have the Planning Board review individual sign application permits for their comments and suggestions concerning recommendations for approval or denial of such application.
9. The application shall require the applicant to display the permit number in the lower right hand side of said sign.
10. If a sign authorized by a permit is not completed and in place within 90 days, said permit shall become null and void.

### **13.2.3 Issuance of Permits**

Upon the filing of an application for a sign permit, the Code Enforcement Officer (CEO) shall examine the plans, specifications, and other application data and the premises upon which the sign is proposed to be erected or affixed. If the proposed sign will comply with all the requirements of this Law and other applicable Laws of the Town and the appropriate permit fee has been paid, the Code Enforcement Officer (CEO) shall issue a permit for the proposed sign.

### **13.2.4 Expiration**

If the work authorized under a sign permit has not been completed within ninety (90) days after the date of issuance, the permit shall become null and void, unless otherwise extended by the Code Enforcement Officer (CEO) for a single additional ninety (90) day period.

### **13.2.5 Permit Fees**

Each sign requiring a sign permit shall pay a fee as established from a schedule adopted by resolution of the Town Board.

### **13.2.6 Inspections**

All signs for which a permit is required shall be subject to the following inspections:

- A. Footer inspection on all free standing signs. However, the Code Enforcement Officer (CEO) may waive the required inspection for signs eight (8) feet or less in height or twenty-four (24) square feet in area.
- B. A final site inspection to ensure the sign has been constructed according to the approved application, including inspection of braces, anchors, supports, connections, wall signs and markings.
- C. Final inspection shall also ensure that applicant has included the permit number in the lower right side of said sign.

## **13.3 GENERAL REQUIREMENTS AND SCHEDULE OF SIGN REGULATIONS**

### **13.3.1 Prohibited Signs**

- 1. No off premises signs such as billboards and advertising signs shall be allowed other than as specifically permitted herein and none shall exceed thirty-two (32) square feet in surface area.
- 2. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.
- 3. Signs or graphics which impair or cause confusion of vehicular or pedestrian traffic, by design, color or placement. No sign shall obstruct the sight distance of the motorist at a street corner or intersection by placement and location within twenty-five (25) feet of the intersection of the street or highway lines.
- 4. Signs placed upon the roof of any building.
- 5. Signs consisting of banners, pennants, ribbons, streamers, spinners or similar moving fluttering or revolving devices.
- 6. Advertising messages spread over more than one sign placed along a street or highway.
- 7. Signs with more than two (2) faces.
- 8. Portable signs, except as otherwise permitted herein.
- 9. Signs attached with nails, spikes, staples or similar devices to utility poles or trees not on the sign owners property, and without his or her permission.

### **13.3.3 Schedule of Sign Regulations**

The restrictions and controls intended to regulate signs in each district are set forth in the Schedule of Sign Regulations presented below. Any sign identified as exempt from a required permit must meet the requirements and stipulations set forth in said schedule of sign regulations otherwise applicant will be required to comply with Section 13.2.2 of this law. Furthermore, signs requiring a permit must adhere to Section 13.2.2 of this law and also meet the minimum requirements and stipulations set forth in the Schedule of Sign Regulations. Signs exceeding the minimum requirements and stipulations are subject to Planning Board review and approval as pre-requisites to the Code Enforcement Officer issuing a permit for their establishment.

<b>SCENIC RIVER DISTRICT - SR</b> INTENT: The SR-Scenic River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) corridor as defined and designated as a "Scenic Segment" or "Recreational Segment" in the November 1986, Upper Delaware Final River Management Plan (RMP) prepared by the Conference of Upper Delaware Townships in cooperation with the National Park Service. This District is further intended to preserve the scenic character of the corridor which is presently undeveloped.						
TYPE OF SIGN	ALLOWED USE	PERMIT REQUIRED	NUMBER ALLOWED PER PARCEL	MAX AREA	MAX HEIGHT	REQUIREMENTS/STIPULATIONS
A-Board/Sandwich Signs	N	N/A	N/A	N/A	N/A	N/A
Banners	N	N/A	N/A	N/A	N/A	N/A
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A
Pole Signs	Y	Y	1	24 sq. ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	
Election Sign	Y	N	No Set Number. See Requirements.	4 sq. ft.	3 ft.	Placement shall not exceed 45days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as litter, and the address of the sponsor will be identified.
Electronic Message/Flashing/Oscillating/Revol	N	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.

ving Signs									
Flags	Y		N		N/A		N/A		Permit and review is required when displayed in connection with commercial promotion.
Free Standing Sign	Y		Y		1		24 sq. ft.	8 ft.	Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Setback must be at least 10 feet from highway right-of-way. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y		N		1		10 sq. ft.	3 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	N		N/A		N/A		N/A	N/A	N/A
Home Address/Identification Signs	Y		N		1		2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y		N		N/A		N/A	N/A	N/A
Home Business Sign	Y		N		1		5 sq. ft.	6 ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N		N/A		N/A		N/A	N/A	N/A
Monument Signs	Y		Y		1		24 sq. ft.	6 ft.	Requires Planning Board Review. Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian



Neon Signs	N	N/A	N/A	N/A				traffic, said determination to be made the Code Enforcement Officer (CEO).
Political Message Sign	Y	N	1	4 sq. ft.	N/A	6 ft.	N/A	N/A
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	Not to exceed 10 consecutive days except with a sign permit.
Off-Premise Portable Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	2 sq. ft.	N/A	6 ft.	N/A	Not to exceed 2 sq. ft. per face.
Projecting Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Roadside Stand Sign	Y	Y	1	10 sq. ft.	N/A	6 ft.	N/A	Setback must be at least 10 feet from public right-of-way.
Real Estate/Leasing Sign	Y	N	1	10 sq. ft.	N/A	6 ft.	N/A	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the premises.
Roof Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Wall Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Window Signs	Y	N	1	25%	N/A	N/A	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.

Residential River District-RR						
<p>INTENT: The RR-Scenic River District is intended to complement the Upper Delaware Scenic and Recreational River (UDSRR) corridor and protect the scenic character of that portion of the corridor which is presently undeveloped but allow for moderate river recreational use and somewhat greater density for development.</p>						
TYPE OF SIGN	ALLOWED USE	PERMIT REQUIRED	NUMBER ALLOWED PER PARCEL	MAX AREA	MAX HEIGHT	REQUIREMENTS/STIPULATIONS
A-Board/Sandwich Signs	N	N/A	N/A	N/A	N/A	N/A
Banners	N	N/A	N/A	N/A	N/A	N/A
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A
Pole Signs	Y	Y	1	32 sq. ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subduced in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light; providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A
Election Sign	Y	N	No Set Number. See Requirements.	4 sq. ft.	3 ft.	Placement shall not exceed 45days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as litter, and the address of the sponsor will be identified.
Electronic	N	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or

Message/Flashing/Oscillating/Revolving Signs									welfare.
Flags	Y		N		N/A		N/A		Permit and review is required when displayed in connection with commercial promotion.
Free Standing Sign	Y		Y		1		32 sq. ft.	8 ft.	Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Setback must be at least 10 feet from highway right-of-way. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y		N		1		10 sq. ft.	6 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	N		N/A		N/A		N/A		N/A
Home Address/Identification Signs	Y		N		1		2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y		N		N/A		N/A		N/A
Home Business Sign	Y		N		1		5 sq. ft.	6 ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N		N/A		N/A		N/A		N/A
Monument Signs	Y		Y		1		48 sq. ft.	8 ft.	Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian

Neon Signs	N	N/A	N/A	N/A					traffic, said determination to be made the Code Enforcement Officer (CEO).
Political Message Sign	Y	N	N/A	1	4 sq. ft.	N/A	6 ft.	N/A	Not to exceed 10 consecutive days period except with a sign permit.
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Off-Premises Portable Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	N/A	2 sq. ft.	N/A	6 ft.	N/A	Not to exceed 2 sq. ft. per face.
Projecting Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Roadside Stand Sign	Y	Y	N/A	1	10 sq. ft.	N/A	6 ft.	N/A	Setback must be at least 10 feet from public right-of-way.
Real Estate/Leasing Sign	Y	N	N/A	1	10 sq. ft.	N/A	6 ft.	N/A	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the premises.
Roof Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Wall Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Window Signs	Y	N	N/A	1	25%	N/A	N/A	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.

<b>Rural Residential District-R1</b> INTENT: The R1-Rural Residential District is intended to provide for low density residential development in combination with compatible commercial activities appropriate to rural areas of the Town of Tusten.							
<b>TYPE OF SIGN</b>	<b>ALLOWED USE</b>	<b>PERMIT REQUIRED</b>	<b>NUMBER ALLOWED PER PARCEL</b>	<b>MAX AREA</b>	<b>MAX HEIGHT</b>	<b>REQUIREMENTS/STIPULATIONS</b>	
A-Board/Sandwich Signs	N	N/A	N/A	N/A	N/A	N/A	
Banners	N	N/A	N/A	N/A	N/A	N/A	
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A	
Pole Signs	Y	Y	1	32 sq. ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).	
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.	
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A	
Election Sign	Y	N	No Set Number. See Requirements.	4 sq. ft.	3 ft.	Placement shall not exceed 45 days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as litter, and the address of the sponsor will be identified.	
Electronic Message/Flashing/Oscillating/Revol	N	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.	

ving Signs									
Flags	Y		N		N/A		N/A		Permit and review is required when displayed in connection with commercial promotion.
Free Standing Sign	Y		Y		1		32 sq. ft.	8 ft.	Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Setback must be at least 10 feet from highway right-of-way. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y		N		1		10 sq. ft.	6 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	N		N/A		N/A		N/A	N/A	
Home Address/Identification Signs	Y		N		1		2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y		N						
Home Business Sign	Y		N		1		5 sq. ft.	6 ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N		N/A		N/A		N/A	N/A	
Monument Signs	Y		Y		1		48 sq. ft.	8 ft.	Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the

Neon Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	Code Enforcement Officer (CEO).	N/A
Political Message Sign	Y	N	1	4 sq. ft.	6 ft.	Not to exceed 10 consecutive days except with a sign permit.	N/A		
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A	N/A	N/A		
Off-Premise Portable Sign	N	N/A	N/A	N/A	N/A	N/A	N/A		
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	2 sq. ft.	6 ft.	Not to exceed 2 sq. ft. per face.	N/A		
Projecting Sign	N	N/A	N/A	N/A	N/A	N/A	N/A		
Roadside Stand Sign	Y			10 sq. ft.	6 ft.	Setback must be at least 10 feet from public right-of-way.	N/A		
Real Estate/Leasing Sign	Y	N	1	10 sq. ft.	6 ft.	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the premises.	N/A		
Roof Signs	N	N/A	N/A	N/A	N/A	N/A	N/A		
Wall Signs	N	N/A	N/A	N/A	N/A	N/A	N/A		
Window Signs	Y	N	1	25%	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.	N/A		

<b>Rural Development District-R2</b> INTENT: The R2-Rural Development District is intended to provide for moderate-density rural residential neighborhood and combined with essential commercial support activities.							
TYPE OF SIGN	ALLOWED USE	PERMIT REQUIRED	NUMBER ALLOWED PER PARCEL	MAX AREA	MAX HEIGHT	REQUIREMENTS/STIPULATIONS	
A-Board/Sandwich Signs	N	N/A	N/A	N/A	N/A	N/A	
Banners	N	N/A	N/A	N/A	N/A	N/A	
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A	
Pole Signs	Y	Y	1	32 sq. ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light; providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).	
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.	
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A	
Election Sign	Y	N	No Set Number. See Requirements	4 sq. ft.	3 ft.	Placement shall not exceed 45days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as litter, and the address of the sponsor will be identified.	
Electronic Message/Flashing/Oscillating/Revolving	N	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.	



Signs	Y	N	N/A		N/A		Permit and review is required when displayed in connection with commercial promotion.
Flags	Y	N	N/A		N/A		
Free Standing Sign	Y	Y	1		32 sq. ft.	8 ft.	Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Setback must be at least 10 feet from highway right-of-way. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y	N	1		10 sq. ft.	6 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	N	N/A	N/A		N/A	N/A	N/A
Home Address/Identification Signs	Y	N	1		2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y	N	N/A		N/A	N/A	N/A
Home Business Sign	Y	N	1		5 sq. ft.	6 ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N	N/A	N/A		N/A	N/A	N/A
Monument Signs	Y	Y	1		48 sq. ft.	8 ft.	Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the

Neon Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	Code Enforcement Officer (CEO).	N/A
Political Message Sign	Y	N	N/A	1	4 sq. ft.	N/A	6 ft.	Not to exceed 10 consecutive days except with a sign permit.	N/A
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Off-Premise Portable Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	N/A	2 sq. ft.	N/A	6 ft.	Not to exceed 2 sq. ft. per face.	N/A
Projecting Sign	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Roadside Stand Sign	Y	Y	N/A	1	10 sq. ft.	N/A	6 ft.	Setback must be at least 10 feet from public right-of-way.	N/A
Real Estate/Leasing Sign	Y	N	N/A	1	10 sq. ft.	N/A	6 ft.	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the premises.	N/A
Roof Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Wall Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Window Signs	Y	N	N/A	1	25%	N/A	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.	N/A

<b>General Residential District-GR</b>							
INTENT: The GR-General Residential District is intended to provide for higher-density residential neighborhoods where public water and sewer infrastructure is available, along with other essential public services.							
<b>TYPE OF SIGN</b>	<b>ALLOWED USE</b>	<b>PERMIT REQUIRED</b>	<b>NUMBER ALLOWED PER PARCEL</b>	<b>MAX AREA</b>	<b>MAX HEIGHT</b>	<b>REQUIREMENTS/STIPULATIONS</b>	
A-Board/Sandwich Signs	N	N/A	N/A	N/A	N/A	N/A	
Banners	N	N/A	N/A	N/A	N/A	N/A	
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A	
Pole Signs	N	N/A	N/A	N/A	N/A	N/A	
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.	
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A	
Election Sign	Y	N	No Set Number. See Requirements	4 sq. ft.		Placement shall not exceed 45 days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as litter, and the address of the sponsor will be identified.	
Electronic Message/Flashing/Oscillating/Revolving Signs	N	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.	
Flags	Y	N	N/A	N/A	N/A	Permit and review is required when displayed in connection with commercial promotion.	
Free Standing Sign	N	N/A	N/A	N/A	N/A	N/A	
Garage Sale/Auction Signs	Y	N	1	10 sq. ft.	6 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.	
Gasoline Station Signs	N	N/A	N/A	N/A	N/A	N/A	
Home Address/Identification Signs	Y	N	1	2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.	

Holiday Decorations	Y	N	N/A	N/A	N/A	N/A
Home Business Sign	Y	N	1	5 sq. ft.	6 ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N	N/A	N/A	N/A	N/A	N/A
Monument Signs	Y	Y	1	48 sq. ft.	8 ft.	Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Neon Signs	N	N/A	N/A	N/A	N/A	N/A
Political Message Sign	Y	Y	1	4 sq. ft.	6 ft.	Not to exceed 10 consecutive days except with a sign permit.
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A	N/A
Off-Premises Portable Sign	N	N/A	N/A	N/A	N/A	N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	2 sq. ft.	6 ft.	Not to exceed 2 sq. ft. per face.
Projecting Sign	Y	Y	1	16 sq. ft.	6 ft.	Setback must be at least 10 feet from public right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Roadside Stand Sign	N	N/A	N/A	N/A	N/A	N/A
Real Estate/Leasing Sign	Y	N	1	10 sq. ft.	6 ft.	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the premises.

Roof Signs	N	N/A	N/A	N/A	N/A	N/A
Wall Signs	N	N/A	N/A	N/A	N/A	N/A
Window Signs	Y	N	1	25%	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.

<b>Roadside Business District-RB</b> INTENT: The RB-Roadside Business District is intended to provide for commercial activity at relatively higher density in areas with substantial highway access and public sewer services.						
TYPE OF SIGN	ALLOWED USE	PERMIT REQUIRED	NUMBER ALLOWED PER PARCEL	MAX AREA	MAX HEIGHT	REQUIREMENTS/STIPULATIONS
A-Board/Sandwich Signs	Y	N	1	10 sq .ft.	N/A	Maintain 4 ft. from public pedestrian walkway. Allowed during regular business hours.
Banners	N	N	1	N/A	Top of Roof Eave	Allowed for 30days
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A
Pole Signs	Y	Y	1	32 sq .ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A
Election Sign	Y	N	No Set Number. See Requirements	4 sq. ft.	3 ft.	Placement shall not exceed 45days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as

								litter, and the address of the sponsor will be identified.
Electronic Message/Flashing/Oscillating/Revolving Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.
Flags	Y	N	N/A	N/A	N/A	N/A	N/A	Permit and review is required when displayed in connection with commercial promotion.
Free Standing Sign	Y	Y	Y	1	32 sq. ft.	8 ft.		Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Setback must be at least 10 feet from highway right-of-way. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y	N	1	10 sq. ft.	6 ft.			Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	Y	Y	See Requirements	See Requirements	See Requirements			Integral graphics or attached price signs allowed on gas pumps. Two auxiliary signs per station each not to exceed 2 sq. ft. and one portable sign per station not to exceed 12 sq. ft. in area and 4 sq. ft. in height.
Home Address/Identification Signs	Y	N	1	2 sq. ft.	6 ft.			Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y	N	N/A	N/A	N/A	N/A	N/A	N/A
Home Business Sign	Y	N	1	5 sq. ft.	6 ft.			Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Monument Signs	Y	Y	1	48 sq. ft.	8 ft.			Area around said sign must be landscaped. Said sign shall be subdued in appearance,

							harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Neon Signs	Y	Y	1	5 sq. ft.	See Require.		Neon is only to be used/mounted inside the window. All transformers, ballast, etc., shall be contained within the building or otherwise shielded from view. The use of neon bulbs to frame the façade of a building is prohibited. The depiction of any part of the human body is prohibited. Signs may remain illuminated only during the business hours of the business.
Political Message Sign	Y	N	1	4 sq. ft.	6 ft.		Not to exceed 10 consecutive days except with a sign permit.
Off-Site/Off Premise Ad. Sign	N	N/A	N/A	N/A	N/A		N/A
Off Premise Portable Sign	N	N/A	N/A	N/A	N/A		N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y	N	N/A	2 sq. ft.	6 ft.		Not to exceed 2 sq. ft. per face.
Projecting Sign	Y	Y	1	16 sq. ft.	20 ft.		Setback must be at least 10 feet from public right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Roadside Stand Sign	Y	Y	1	10 sq. ft.	6 ft.		Setback must be at least 10 feet from public right-of-way.
Real Estate/Leasing Sign	Y	N	1	10 sq. ft.	6 ft.		Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the



Roof Signs	N	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Wall Signs	Y	Y	1	20%	N/A	N/A	N/A	N/A	N/A
Window Signs	Y	N	1	25%	N/A	N/A	N/A	N/A	Must be temporary, non illuminating signs or posters providing they do not exceed 25% of the window surface.

Downtown Business District-DB		INTENT: The DB-Downtown Business District is intended to accommodate existing high density commercial activity located along Bridge, Main, and Fifth Streets and (Erie Avenue) adjacent thereto, higher density residential development and associated service activities.					
TYPE OF SIGN	ALLOWED USE	PERMIT REQUIRED	NUMBER ALLOWED PER PARCEL	MAX AREA	MAX HEIGHT	REQUIREMENTS/STIPULATIONS	
A-Board/Sandwich Signs	Y	N	1	10 sq .ft.	N/A	Maintain 4 ft. from public pedestrian walkway. Allowed during regular business hours.	
Banners	Y	N	1	N/A	See Require.	Minimum road clearance 16 feet. Allowed for 30days.	
Billboard Signs	N	N/A	N/A	N/A	N/A	N/A	
Pole Signs	Y	Y	1	32 sq .ft.	20 ft.	Shall be at least 10 feet from any highway right-of-way, and at least 20 ft. from any other lot line. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).	
Construction Site Identification Sign	Y	N	1	8 sq. ft.	6 ft.	Not to exceed eight (8) sq. ft. for a dwelling and ten (10) for other buildings.	
Directional/Informational Sign	Y	N	1 per driveway	4 sq. ft.	6 ft.	N/A	
Election Sign	Y	N	No Set Number. See Requirements.	4 sq. ft.	3 ft.	Placement shall not exceed 45days and any and all such signs must be removed within 7 days following the event which was promoted. If said sign is left posted after the seven day expiration, it will be considered as	

									litter, and the address of the sponsor will be identified.
Electronic Message/Flashing/Oscillating/Revolving Signs	N		N/A	N/A	N/A	N/A	N/A	N/A	Allowed if necessary for public safety or welfare.
Flags	Y		N		N/A	N/A	N/A	N/A	Permit and review is required when displayed in connection with commercial promotion.
Free Standing Sign	Y		Y		1		48 sq. ft.	8 ft.	Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors whenever possible. Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of eight (8) feet. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Garage Sale/Auction Signs	Y		N		1		10 sq. ft.	6 ft.	Not to exceed 10 consecutive days in any 30 day period except with a sign permit.
Gasoline Station Signs	N		N/A		N/A		N/A	N/A	N/A
Home Address/Identification Signs	Y		N		1		2 sq. ft.	6 ft.	Numbers shall not be less than four (4) inches in height and clearly marked.
Holiday Decorations	Y		N		N/A		N/A	N/A	N/A
Home Business Sign	Y		N		1		5 sq. ft.	6ft.	Setback must be at least 10 feet from highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.
Marquee	N		N/A		N/A		N/A	N/A	N/A
Monument Signs	Y		Y		1		48 sq. ft.	8 ft.	Area around said sign must be landscaped. Said sign shall be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors

									whenever possible. Said sign may be illuminated by a steady light, providing that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made the Code Enforcement Officer (CEO).
Neon Signs	Y		Y		1		5 sq. ft.	See Require.	Neon is only to be used/mounted inside the window. All transformers, ballast, etc., shall be contained within the building or otherwise shielded from view. The use of neon bulbs to frame the façade of a building is prohibited. The depiction of any part of the human body is prohibited. Signs may remain illuminated only during the business hours of the business.
Political Message Sign	Y		N		1		4 sq. ft.	6 ft.	Not to exceed 10 consecutive days except with a sign permit.
Off-Site/Off Premise Ad. Sign	N		N/A		N/A		N/A	N/A	N/A
Off Premises Portable Sign	N		N/A		N/A		N/A	N/A	N/A
Non-Illuminated Private Drive/Warning/Posted/No Trespassing Signs	Y		N		N/A		2 sq. ft.		Not to exceed 2 sq. ft. per face.
Projecting Sign	Y		Y		1		16 sq. ft.	20 ft.	Setback must be at least 10 feet from public right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line. Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of eight (8) feet.
Roadside Stand Sign	Y		Y		1		10 sq. ft.	6 ft.	Setback must be at least 10 feet from public right-of-way.
Real Estate/Leasing Sign	Y		N		1		10 sq. ft.	6 ft.	Such sign shall not exceed 10 sq. ft. per side in area. All such signs shall be removed immediately after sale, lease or rent of the

Roof Signs	N	N/A	N/A	N/A	N/A	N/A	premises.
Wall Signs	Y	Y	1	20%	N/A	N/A	N/A
Window Signs	Y	N	1	25%	N/A	N/A	Allowed providing they do not exceed 25% of the window surface.

#### **13.4    MAINTENANCE**

Each sign shall be maintained in good order and repair at all times so that it does not constitute any danger or hazard to public safety, and is free of peeling paint, major cracks, or loose and dangling materials.

#### **13.5    NONCONFORMING SIGNS**

Any sign lawfully existing or under construction on the effective date of this Law, that does not conform to one (1) or more of the provisions of this Law, may be continued in operation and maintained as a legal non-conforming sign. Normal maintenance of such signs, including changing of copy, necessary repairs, and incidental alterations that do not extend or intensify the non-conforming features of the sign, shall be permitted. However, no enlargement or extension shall be made to a legal non-conforming sign unless it will result in the elimination of the non-conforming features of the sign. If a legal non-conforming sign is damaged or destroyed by any means, Planning Board review is required to replace said sign.

The following criteria apply to nonconforming signs:

1. No non-conforming sign shall be enlarged or replaced by another non-conforming sign.
2. No alteration or repair shall be made without review and approval by the Planning Board.
3. A non-conforming sign may be temporarily removed for painting or other normal maintenance for a period not to exceed one (1) month.

#### **13.6    REMOVAL OF CERTAIN SIGNS**

##### **13.6.1    Obsolete Signs**

Any sign, whether existing on or erected after the effective date of this Law, that advertises a non-residential use no longer being conducted or a product no longer being offered for sale in or from the premises on which the sign is located, shall be removed within one (1) year upon the cessation of such non-residential use or sale of such product by the owner, agent, or person having the beneficial interest in the building or premises on which such sign is located. If the Code Enforcement Officer (CEO) shall find that any such sign advertising a non-residential use no longer being conducted or a product no longer being offered for sale in or from the premises on which the sign is located has not been removed within one (1) year upon the cessation of such non-residential use or sale of such product, he shall give written notices to the owner, agent, or person having the beneficial interest in the building or the premises on which such sign is located. Removal of the sign shall be affected within ten (10) days after receipt of the notice from the Code Enforcement Officer (CEO).

**13.6.2    Damaged or Unsafe Signs**

If the Code Enforcement Officer (CEO) shall find that any sign is damaged, in disrepair, vandalized, unsafe or insecure, he shall give written notice to the owner, agent, or person having the beneficial interest in the building or the premises on which such sign is located. Correction to the condition that caused the Code Enforcement Officer (CEO) to give such notice shall be effected within ten (10) days after receipt of the notice.

**ARTICLE XIV — EXPLICITLY PROHIBITED USES**

**14.1 Findings**

The Town Board of the Town of Tusten has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Article XIV, and a copy of the text of such findings, determinations, and declarations are set forth at **Appendix A** attached to this law.

**14.2 Purposes**

Article XIV of this Law is enacted so as to take proactive steps to protect and preserve the Town's rural residential character, the quality of the Town's air and water and scenic and other natural resources, and other assets, to encourage the tourism industry, and to further the Purposes described at Section 1.3 of this Law. Without limiting the generality of the foregoing, this Article XIII is intended and is declared by the Town Board to:

- (1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, stormwater detention facilities, and fire, police, and other emergency response services in the Town;
- (2) promote the health, safety and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the prohibited uses described in this section of this Law were allowed to be conducted within the Town;
- (3) protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if the prohibited uses described in this section of this Law were allowed to be conducted within the Town; and
- (4) protect the Town's irreplaceable historic, recreation, tourism sites, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the prohibited uses described in Article XIV of this Law were allowed to be conducted within the Town.

**14.3 Declaration of Intent**

(1) Exercise of Police Power and Zoning Authority. This Law in general and Article XIV of this Law in particular is a police power, public nuisance and land use regulation, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and agricultural resources, preservation of the character of the Town, protection of underground drinking water supplies, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts resulting from industrial use activities designated as prohibited uses within the Town in Section 14.5 of this Law.

(2) Consistency with the Town's Comprehensive Plan. Without limiting the generality of the foregoing, Article XIV of this Law is made in specific consideration for: (i) the preservation of the quality of life



associated with the unique rural and historic character of the Town; (ii) the unsuitability of the Town's public facilities and services (including police, fire, and emergency medical services) in containing or mitigating possible dangerous spillover effects of high impact industrial use activities.

(3) Prohibition Against Specified Solid Wastes. Article XIV of this Law intends to regulate, in a manner consistent with law, including without limitation, NY ECL § 27-0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection and disposal of materials herein defined as "deleterious substances" on lands within the Town.

(4) Protection of Private Drinking Water Supplies. Article XIV of this Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge on the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(5) Matters of Local Concern. Article XIV of this Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(6) Negative Externalities. Article XIV of this Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(7) Land Use Control. Article XIV of this Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and police power that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the proper location for varying land use activities within the Town and the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Law is not intended to regulate the operation and processes of permitted businesses. Article XIV of this Law is a law of general applicability and is intended to promote the interests of the community as a whole.

(8) Consistency with State Environmental Objectives and Policies. As stated above, Article XIV of this Law is intended to and is hereby declared to address matters of local concern, and it is not the intention of the Town Board to address matters of statewide concern. Subject always to the foregoing, Article XIV of this Law is intended to complement the corresponding state objectives and policies set forth at Appendix A attached to this law.

#### **14.4 Authority**

This Article XIV is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board under the New York State Constitution, and the laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2(x)(ii)(6), 10;

Municipal Home Law § 10(1)(ii)(a); Statute of Local Governments §10, Environmental Conservation Law §17-1101 and §27-0711, and Public Health Law §§228(2), (3).

#### **14.5 Prohibited Uses**

The following uses and activities are expressly and explicitly prohibited in any zoning district within the Town, and no building or structure shall be created, altered or erected, and no land or building thereon shall be used, for any of such uses or activities:

- (a) Deleterious substance disposal/storage facility.
- (b) Disposal of deleterious substances (including without limitation on any public or private thoroughfare or vehicular right-of-way);
- (b) Disposal of radioactive material.
- (c) Dump.
- (d) High-impact industrial use.
- (e) Injection well.
- (f) Land application facility.
- (h) Large scale water use.
- (g) Natural gas compression facility.
- (h) Natural gas processing facility.
- (i) Non-regulated pipeline.
- (j) Solid waste disposal facility.
- (k) Staging facility.
- (l) Terminal for bulk oil or gas.
- (m) Truck stop
- (n) Underground injection of deleterious substances
- (o) Underground natural gas storage.
- (p) Any use of land that is likely to result in degradation of private water systems in the Town.
- (q) Any use of land not otherwise specified above, but which is likely to result in degradation of water or pollution within the Town.

Any condition caused or permitted to exist in violation of this Section 14.4 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this law as an “Explicitly Prohibited Use,” and any combination of more than one such use may also be referred to as “Explicitly Prohibited Uses.”

#### **14.5 Prohibition Against Deleterious Substances**

The Town of Tusten hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained any deleterious substance, anywhere within the Town.

**ARTICLE XV — ZONING VESTED RIGHTS**

**15.1 PURPOSE.**

The purpose of this Article is to convey expectations of applicants who intend to develop in the Town. As such, this Article seeks to: (1) strike an appropriate balance between private expectations and the public interest, while protecting the public health, safety, and welfare of the Town of Tusten, and (2) recognize the concept of vested rights and the terms under which such rights exist when an applicant undertakes to complete the development and use of property under the terms and conditions of an approved site plan in the Town of Tusten.

**15.2 ESTABLISHMENT OF A ZONING VESTED RIGHT**

The approval of a site plan results in a two-year vested right commencing upon issuance of a valid building permit by the applicant within the required time frame after governing board approval of the project (i.e., Planning Board and/or Zoning Board). As such, a two year vested right shall exist only if the following conditions are met:

- a. The applicant secures approval from the appropriate governing board (Planning Board and/or Zoning Appeals Board) following public notice, public hearing, and board review.
- b. The applicant secures the required variance relevant to the use and/or bulk requirements of the proposed project if required.
- c. Upon governing board approval, the applicant shall secure a valid building permit within the required time period set forth by the Town after governing board approval and the applicant shall maintain a valid permit that shall not expire.
- d. If conditions (a) through (c) are met, upon application by the landowner of the property with a vested right at the end of the two-year vested right term to the local governing body that approved the site plan, the term shall be extended on an annual basis for up to four (4) annual extensions, provided there have been no amendments to this Article which precludes or prohibits any aspect of the site plan and/or subdivision plat plan.
- e. A zoning vested right is not a personal right, but shall attach to and run with the applicable property/parcel based on the requirements in (a) to (d).

**15.3 REVOCATION AND TERMINATION**

A zoning right that has been vested as provided in this article shall terminate or be revoked:

- a. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed or where said building permit is not renewed;
- b. With the written consent of the affected landowner;
- c. Upon findings by the appropriate governing body, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and

welfare if the project were to proceed as contemplated in the site specific development plans;

- d. Upon findings by the governing board after notice and a hearing, that the applicant or applicant's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
- e. Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site plan in which case the approval authority may modify, after notice and a hearing, the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on such plans.

**APPENDIX A: FINDINGS OF FACT FOR ARTICLE XIV — EXPLICITLY PROHIBITED USES**

**APPENDIX A**

**Text of Findings of Fact.**

The Town Board of the Town of TUSTEN has found, determined, and declared that:

1. TUSTEN is a community in the Upper Delaware River Region that takes great pride in its rural residential character, scenic and other natural resources, and small-town atmosphere.
2. Preservation of the Town's irreplaceable historic, recreation, and tourism sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
3. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate or people will want to live in and visit a place.
4. The prohibited uses described in Article XIV of this Zoning Law are in conflict with the **TOWN OF TUSTEN COMPREHENSIVE PLAN**, and would impair the existing character of the Town, because by their very nature such uses have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.
5. If one or more of the prohibited uses described in Article XIV of this Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
6. Allowing one or more of the prohibited uses described in Article XIV of this Law to be conducted within the Town could negatively impact the tourism industry within the Town, and could impair the Town's ability to attract additional tourism-related businesses.
7. If one or more of the prohibited uses described in Article XIV of this Law are conducted within

the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the prohibited uses described in Article XIV of this Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive and may not restore the water resource to a quality acceptable for domestic use.
9. If one or more of the prohibited uses described in Article XIV of this Law are conducted within the Town, noise, vibrations, and light caused by the proposed operation could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.
10. The creation, generation, keeping, storage or disposal of deleterious substances within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
11. The high costs associated with the disposal of deleterious substances have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.
12. The explicit proscription of the Explicitly Prohibited Uses stated in Article XIV of this Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws:

As the United States Supreme Court stated in *Village of Belle Terre v. Borass*, 416 U.S. 1 (1974):

*the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*  
416 U.S. at 6.

[...]

*A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one [....] The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.* 416 U.S. at 9.



And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a Town's prohibition of mining throughout the Town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the Town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y. 2d at 683, 684. (emphasis added.)*

\_\_\_\_\_ End of Findings.

**APPENDIX B: TOWN OF TUSTEN ZONING MAP**

