

Chapter 123. Zoning

[HISTORY: Adopted by the Town Board of the Town of Esopus 1-11-1995 by L.L. No. 1-1995. This local law also superseded former Ch. 123, Zoning, adopted 8-20-1980 by L.L. No. 19-1980. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental Board — See Ch. **9**.

Planning Board — See Ch. **34**.

Waterfront Advisory Board — See Ch. **43**.

Appearance tickets — See Ch. **50**.

Blasting — See Ch. **54**.

Building construction — See Ch. **56**.

Unsafe buildings — See Ch. **59**.

Compensation for planning and zoning review costs — See Ch. **71**.

Fire prevention — See Ch. **77**.

Flood damage prevention — See Ch. **80**.

Subdivision of land — See Ch. **107**.

Attachment 1 - Schedule of Permitted Uses 

Article I. Scope and Purposes

§ 123-1. Scope.

This Zoning chapter, hereby enacted for the Town of Esopus, New York, shall regulate or restrict the height and size of buildings, the percentage of a lot that may be occupied, the size of yards, courts and open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes as empowered by § 261 of the Town Law of the Consolidated Laws of the State of New York. In order to accomplish the purpose of this chapter and to further the comprehensive plan for the entire town, the Town shall be divided into several districts, the regulations of which shall be administered uniformly within each district.

§ 123-2. Purposes.

This Zoning chapter is created in accordance with and as a means of effectuating a comprehensive plan for protecting and promoting public health, safety, comfort, convenience, economy and general welfare. Specifically, this chapter is intended to carry out the following goals, among others:

- A. To promote the use of land for its most appropriate, reasonable and beneficial purposes.
- B. To promote and protect the character, rights and stability of established residences and businesses.
- C. To enhance the value of land and conserve the value of buildings.
- D. To enhance the physical environment of the Town and preserve its natural, scenic and cultural resources.
- E. To improve design and adequacy of transportation facilities, traffic circulation and parking and loading facilities.
- F. To prevent excessively dense and inefficiently spaced development.
- G. To provide adequate light and air to all buildings and to prevent overcrowding of structures.
- H. To assure privacy for residences.
- I. To facilitate the proper administration and appropriate and effective enforcement of this chapter.
- J. To separate and cluster uses to their mutual advantage and to encourage flexibility in design and land use patterns so that development is most appropriate with respect to the characteristics of the land.

§ 123-3. Effect on other provisions.

This chapter is not intended to abrogate, render invalid or interfere with the application and administration of any other lawful statute, ordinance, regulation, easement, private agreement, covenant, deed restriction or other legal relationship, public or private. Wherever any lawful statute, ordinance, regulation, easement, private agreement, covenant, deed restriction or other legal relationship, public or private, imposes controls which are inconsistent with any provisions of this chapter, then those provisions which are the most restrictive or impose higher standards shall take precedence.

Article II. Enacting Clause; Short Title

§ 123-4. Enacting clause.

The Town Board of the Town of Esopus in Ulster County, New York, acting under the authority of the Municipal Home Rule Law of the State of New York, hereby adopts and enacts this chapter as the Comprehensive Zoning Law of the Town of Esopus.

§ 123-5. Short title.

This chapter shall be known and may be cited and referred to as the "Town of Esopus Zoning Law."

Article III. Establishment of Districts

§ 123-6. Zoning district purposes.

In order to fulfill the purpose of this chapter, the Town of Esopus establishes and is hereby divided into the following zoning districts for the intent indicated. The specific uses permitted in each district are listed in § **123-10**, Schedule of District Use Regulations.

- A. RF-1 Riverfront District. The Riverfront Estate District has been established to preserve the unique character of the area located between the Hudson River shoreline and Route 9W in the central area of the town's waterfront, which consists of large undeveloped tracts and private and institutional estates. This low-density area has scenic and cultural values for not only the town, but also the mid-Hudson Region. Single-family homes may be developed at a density of one unit for each five acres. However, the regulations provide opportunities to preserve open space by clustering development and to preserve large, existing landmark structures by allowing their use for purposes appropriate to the structure and the purposes of the district, such as corporate offices, inns and conference centers.
- B. RF-2 Riverfront District. The Riverfront District has been established to regulate development in low-density areas adjacent to the Hudson River which are already developed at a low density or which are visible from the water but do not have direct river frontage. This district is intended to complement the RF-1 District; the density allowed for single-family homes is one for each 2.5 acres. Clustered development is allowed to preserve open space but, since there are few large landmark structures, the range of nonresidential uses is limited.
- C. R-40 Residential District. The R-40 Residential District includes most of those areas of the Town which are generally not served by central sewer or water systems and exclude the denser hamlets in town. The regulations of this district will permit development at a suburban density of one family per acre, where possible.
- D. R-12 Moderate Density/Hamlet Residential District. The Moderate Density/Hamlet Residential District has been established to regulate development in two distinct categories of town: the areas in and around Port Ewen developed within the water and sewer districts and the rural hamlet areas in the southern part of Town which were developed at a higher density than the surrounding area but which lack central utilities. To reflect the varied utility services in this district, development density is based on a sliding scale, geared to the availability of central water and/or sewer service, ranging from 1/3 of an acre to one acre per dwelling unit. Two-family homes are also permitted and multifamily housing is permitted under certain conditions.
- E. NC Neighborhood Commercial District. The Neighborhood Commercial District has been designated to include businesses which provide goods and services for residents of the surrounding neighborhood. The districts are located primarily in the rural hamlets of the Town which do not have other nearby shopping areas. The businesses permitted are limited to those of a convenience nature and subject to standards to ensure that surrounding residential areas will not be adversely effected.
- F. BC Broadway Commercial District. The Broadway Commercial District has been delineated to recognize the unique character of the established business area in the center of Port Ewen. Unlike any other business district in town, businesses in this area have developed on small lots with little or no setbacks or on-site parking and are served by central water and sewer systems. The district regulations have been established to maintain this higher density, pedestrian scale business area.
- G. GC General Commercial District. The General Commercial District has been established to include a wide range of business uses on the town's major highways,

primarily Route 9W, which serve not only Town residents but also through traffic and visitors as well. The development standards are intended to provide adequate parking, separation of access drives and protection to adjacent residential areas.

- H. LI Light Industrial District. The Light Industrial District has been established to regulate the development of office, storage, research and light manufacturing (such as assembly or finishing, but excluding chemical or heat transformation) at a low density and lot coverage, with ample buffers, so as to provide employment opportunities while protecting the residential environment.
- I. HI Heavy Industrial District. The Heavy Industrial District has been established to regulate the industries which process or extract raw materials or engage in manufacturing using chemicals, heat or similar processes to transform materials. Such uses require large sites, ample buffers and performance standards to ensure that activities do not have effects beyond the site.
- J. W Waterfront District. The Waterfront District has been established to regulate the areas on the Rondout Creek which are the historic location of water-dependent commercial activities, such as boatyards, marinas and uses dependent on transportation of goods by water. Since suitable sites for such uses are limited, other nonwater-dependent uses are precluded except for accessory uses.
- K. WR Waterfront Recreation District. The Waterfront Recreation District includes those areas along the Rondout Creek and Hudson River which are suitable for water-dependent recreation uses, such as parks, boat launches and marinas, but due to their sensitive environmental resources, cannot support more intensive types of uses.
- L. MH Manufactured Home Overlay District. The Manufactured Home Overlay District has been established to designate the areas in which manufactured homes and manufactured home parks are permitted. As an overlay district, all other regulations of the underlying district also apply.
[Amended 11-19-2009 by L.L. No. 11-2009]
- M. Rt. 9W Overlay District. The Rt. 9W Overlay District has been created to regulate expanded opportunities for commercial development along the Rt. 9W corridor by establishing additional standards and review procedures to protect residential uses, maintain traffic safety and preserve the scenic and historic settings in this area. (See § 123-17.)
- N. PUD Planned Unit Development District. The PUD District provides the opportunity for development of large, mixed use, self-contained developments upon approval of specific proposals by the Town Board. (See § 123-52.)

§ 123-7. Official zoning map.

The location and boundaries of the zoning districts established in § 123-6 are shown on the map entitled "Official Zoning Map of the Town of Esopus." Said Map, together with everything shown thereon and all amendments thereto, is hereby adopted by reference and accompanies and is declared to be an appurtenant part of this chapter. Said Map indicating the latest amendments shall be kept up-to-date in the office of the Town Clerk for the use and benefit of the general public.

§ 123-8. Interpretation of district boundaries.

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

- A. Along center lines and right-of-way lines. Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways or public utility easements, said boundaries shall be construed to be coincident with such lines. Said boundaries shall be deemed to be moved automatically if a center-line or right-of-way line of such street, highway or public utility easement is moved a maximum of 20 feet.
- B. Along lot or boundary lines. Where district boundaries are indicated as approximately following the Town boundary line, property lines, lot lines or projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.
- C. Parallel to lot or boundary lines. Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, street lines, property lines, lot lines or center lines of public utility easements, lands or structures or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as are indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.
- D. Watercourses. Where district boundaries are indicated as following a river or stream, said boundaries shall be construed to be coincident with the center line of such river or stream, and said boundaries shall be deemed to be automatically moved if the main channels of such streams or rivers are moved by natural or artificial means up to a maximum of 50 feet.
- E. Existing physical markers. Where a street, highway, railroad or public utility easement center line or right-of-way line is coincident with a zoning boundary line and varies from the actual on-the-ground physical monument or mark, then such on-the-ground physical monument or mark shall determine said zoning boundary.
- F. Lots divided by zoning district lines. Where a lot is divided by a district boundary line, the regulations for each respective district shall apply, except that, where a district boundary line is located not farther than 50 feet away from a lot line of record, the regulations applicable to the greater part of the lot shall be deemed to apply to the entire lot.

§ 123-9. Effect of establishment of districts.

Following the effective date of this chapter:

- A. No building shall be erected, moved, altered, rebuilt or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose or in any manner except in conformity with all regulations, requirements and/or restrictions specified in this chapter for the district in which such building or land is located.
- B. No yard or open space required in connection with any building or use shall be considered as providing a required open space for any other building on the same or any other lot.
- C. No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the remaining lot comply with all requirements prescribed by this chapter for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created, unless such building and lot comply with all the provisions of this chapter.

D. Plans approved prior to adoption.

(1) Nothing contained in this chapter shall require any change in the plans, construction or designated use of land or buildings complying with and approved in accord with existing law, in the following cases: (1) A building permit or certificate of occupancy shall have been duly issued prior to the effective date of this chapter and have not expired or been revoked and the entire building shall be completed in accordance with such plans as have been filed within one year from the effective date of this chapter; or (2) A site plan, a special use permit or a PUD designation shall have been approved prior to the effective date of this chapter and shall remain valid at the time of passage of this chapter.
[Amended 11-19-2009 by L.L. No. 11-2009]

(2) See also § **123-36**, Exemption of lots on approved subdivision plats.

E. Any uses not specifically permitted herein shall be deemed to be prohibited. Any list of prohibited uses contained in any section of this chapter shall not be deemed to be an exhaustive list, but to have been included for the purposes of clarity and emphasis and to illustrate, by example, some of the uses frequently proposed that are deemed undesirable and incompatible in the particular district.

Article IV. Regulations and Standards Governing Use

§ 123-10. Schedule of District Use Regulations.

A. The attached Schedule of District Use Regulations is hereby incorporated into and made part of these zoning regulations and shall be referred to as the "Use Schedule."

^[1] The general purpose of each district is set forth in § **123-6**.

^[1] *Editor's Note: The Schedule of District Use Regulations is included at the end of this chapter.*

B. The Use Schedule is based on the categories and terminology used in the Standard Industrial Classification (SIC) Manual published by the Federal Office of Management and Budget (1987 Edition). In the case of a question or interpretation as to the classification of a particular use, the definitions and categories used in the SIC Manual shall prevail, unless otherwise specifically defined in § **123-61** of this chapter, in which case the use is noted with an asterisk (*).

C. If the same use regulations apply to all activities falling within a general heading, then only that heading and its two-digit SIC Group Code is listed. If the use regulations are different for specific uses within a general category, then the more specific activities with their respective three or four digit codes are listed. "NI" indicates "not included" and precedes an activity if that particular activity requires different regulations than those for the group within which it belongs. "Except" indicates that a specific activity within a larger group of permitted uses is prohibited. Economic activities not shown on this use schedule are also prohibited.

D. The Use Schedule is organized by the following major categories:

(1) A: Residential.

(2) B: Agricultural, extractive and building trades.

(3) C: Manufacturing.

(4) D: Transportation and utilities.

- (5) E: Wholesale and retail trade.
- (6) F: Financial, insurance and real estate services.
- (7) G: Professional, personal and business services and public administration.
- (8) H: Accessory uses.

§ 123-11. Supplementary regulations on use.

- A. Principal buildings per lot. No more than one one- or two-family dwelling may be placed on a lot in any district where such use is permitted.
- B. Home occupations. Any person may conduct one or more businesses, trades or professions from his residence, as an accessory use, in accord with the following standards:
 - (1) There shall be no permanent indication of a home occupation from any adjacent property or street other than a sign subject to the following standards:
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (a) One freestanding sign not exceeding six square feet per face area and one wall sign not exceeding four square feet shall be permitted for any property. The height of such freestanding sign shall not exceed four feet.
 - (2) Home occupations shall be conducted only within the principal building on the lot and/or an accessory structure. [See § **123-21C(5)**.]
 - (3) Home occupations shall comply with the standards and requirements of Appendix J, Section AJ102.5 of the 2003 New York State Residential Code.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (4) No more than two persons who are not residents of the dwelling unit shall be employed in the home occupations.
 - (5) Materials or equipment used in the home occupations shall not be stored or displayed outside the dwelling or permitted accessory structure, except if such storage is screened from the view of adjacent properties and streets.
 - (6) Parking spaces shall be provided for home occupations, in addition to those required for the principal residential use. Such spaces may be provided in the driveway but not elsewhere in any required front yard. Parking lots for more than five cars shall be screened from the view of adjacent properties. Parking on a public street shall not be considered as satisfying this requirement.
 - (7) The home occupation shall not result in traffic, noise, vibration, odor, fumes, dust, smoke, glare, radiation or interference with radio or television reception beyond that normally generated by permitted uses in the same zoning district.
- C. Agricultural uses and riding stables. The following provisions shall apply only to agricultural uses and accessory uses thereto, including irrigation, where plants or animals are produced, kept or maintained for sale or lease, provided that there shall be no storage of manure or other odor- or dust-producing substance or use, except spraying and dusting to protect vegetation, within 150 feet of any street or lot line:
 - (1) The raising (storage and packaging) of field and garden crops, truck gardens, the maintenance of vineyard and orchard farming and nursery or commercial

greenhouses. The seasonal sale of agricultural products is subject to the requirements of § 123-11E.

- (2) The keeping, breeding and raising of cattle (including dairies), sheep, goats, pigs and horses and rental of horses shall conform to the following special requirements:
 - (a) A maximum of two such domestic animals per acre shall be allowed on lots of over one and under 10 acres. There shall be no stable, similar animal housing or confining areas closer than 50 feet to all street or lot lines for lots under five acres and closer than 150 feet to all street or lot lines for lots over five and under 10 acres.
 - (b) On lots over 10 acres and on said lots where there exist over 100 such domestic animals, there shall be no stable, similar animal housing or confining areas closer than 750 feet to the nearest residence building on an adjoining lot. In no instance shall the minimum distance from any street or lot line be less than 150 feet.
 - (3) The keeping, breeding and raising of fowl shall conform to the following special requirements:
 - (a) A maximum of 24 fowl per acre shall be allowed on lots of over one and under five acres, with high-density confining shelters prohibited.
 - (b) A maximum of 30,000 fowl shall be allowed on lots of over five and under 10 acres, with high-density confining shelters for fowl permitted with dry litter disposal operation only and with temporary storage of waste permitted for periods not to exceed 30 days.
 - (c) High-density confining shelters for fowl on lots of 10 acres or more shall be permitted, with dry litter disposal operations, and all buildings containing fowl or litter shall be not closer than 150 feet to any street or lot line. Wet litter disposal operations are permitted subject to the following special requirements:
 - [1] All buildings containing fowl or litter shall be no closer than 150 feet from all street or lot lines and no closer than 750 feet from the nearest residence building on an adjacent lot.
 - [2] The disposal of litter on the property shall not exceed 20 tons per acre per year, and not more than two applications for such operations shall be granted annually.
 - [3] The storage area of the liquid storage tanks shall be no smaller than the floor area of the confine.
 - [4] The liquid storage tanks shall be at least six feet deep.
 - [5] Sludge or other products produced by the operation must be stored in a tank or suitable container until removed.
 - (4) Barns, silos, storage buildings and other related structures accessory to any aforementioned use.
- D. Crafts uses. Certain uses which may be included as manufacturing uses in SIC Groups 23, 25, 31, 322, 323, 326, 328, 391, 393, 394 and 396 are permitted in NC, GC and BC Districts. The intent of this provision is to permit the establishment of craft shops, including, but not limited to, furniture making, pottery and glass making,

leather crafting, jewelry making and similar uses. Such uses are permitted subject to the following conditions:

- (1) At least 25% of the goods produced on the premises are available for retail sale on the premises in space designed for display and sale of goods.
 - (2) No more than five persons whose primary function is the manufacture of goods are employed.
 - (3) The use does not generate noise, vibration, light, glare, smoke or similar emissions beyond those normally associated with retail use.
 - (4) There is no external storage or display of unfinished goods or raw materials.
- E. Roadside farm stands. When located in a residential district, roadside farm stands shall comply with the following standards. In all districts, the bulk, area and parking standards of the district shall apply.
- (1) At least five off-street parking spaces shall be provided.
 - (2) Ingress to and egress from such use shall be so arranged as to provide minimum interference with through traffic on the street.
 - (3) The gross floor area under a roof shall not exceed 2,000 square feet and at least 20% of the products for sale shall be grown on the premises or other premises owned by the operator.
- F. Logging operations.
- (1) Applicability. The provisions of this section shall apply to all parcels of three or more acres on which logging operations are proposed, whether on one lot to be harvested or two or more contiguous lots. Persons or corporations permitted to undertake logging operations shall only be those on the current list of cooperating timber harvesters, as maintained by the New York State Department of Environmental Conservation, or the property owner if undertaking the logging himself without paid employees.
 - (2) Exemptions. These provisions shall not apply to the following:
 - (a) Harvesting of trees and firewood for the personal use of the property owner on the same site.
 - (b) Reasonable site clearing preparatory to construction of a building for which a building permit has been issued or a site plan or subdivision plat approved.
 - (c) Clearing of land for rights-of-way for utilities.
 - (d) Clearing and maintenance of land for agricultural purposes.
 - (e) Harvesting of Christmas trees.
 - (f) Any other removal of timber from a lot in quantities of less than 20 standard cords of wood, 2,000 cubic feet or 10,000 board feet, as measured by the international one-fourth-inch log rule, within any given calendar year.
 - (3) Properties in state programs exempted. Lands anywhere in the Town which are enrolled under § 480-a of the New York State Real Property Tax Law, are exempted from these provisions, provided that:

- (a) A copy of a valid certificate of approval of enrollment in § 480-a is presented to the Zoning Enforcement Officer or the Logging Inspector, if one is designated by the Town Board, prior to the commencement of any commercial logging operations.
 - (b) A copy of the renewal forms certifying continued enrollment of a parcel in the § 480-a program is filed annually in years of active logging with the Zoning Enforcement Officer.
 - (c) A copy of file maps and management plan from § 480-a is submitted in conjunction with a certificate of approval.
 - (d) The standards below, pertaining to buffers and hours of operations, are complied with in full, irrespective of the requirements of § 480-a.
- (4) Submission procedure.
- (a) The Zoning Enforcement Officer shall issue the applicant a copy of Timber Harvesting Guidelines for New York and model logging contract as published by the New York State Department of Environmental Conservation and other relevant information.
 - (b) The applicant or his representative shall submit the following information to the Zoning Enforcement Officer in a form established by the Zoning Enforcement Officer:
 - [1] The name and address of the property owner and the logger.
 - [2] The date on which logging is proposed to begin.
 - [3] A copy of the most recent tax map indicating the boundaries of the property to be logged.
 - [4] A management plan and necessary agreements as described in Subsection **F(5)** and **(6)** below.
 - [5] If the applicant is not the property owner, an authorization signed by the property owner authorizing the applicant to act on his or her behalf and acknowledging receipt of the materials set forth in Subsection **F(4)(a)** above.
 - (c) The Zoning Enforcement Officer shall identify the owners of all property adjacent to the proposed logging operation from the most recent tax rolls and cause a notice to be mailed, by certified mail (return receipt requested), to each such property owner at least 20 days prior to the first date on which logging is proposed to begin. Such notice shall include the items provided for in Subsection **F(4)(b)[1]**, **[2]** and **[3]** above.
 - (d) Upon approval of the management plan and proof that all surety and insurance [as set forth in Subsection **F(6)**, **(8)** and **(12)** below] has been provided, the Zoning Enforcement Officer shall issue a logging permit.
- (5) Management plan.
- (a) A commercial forest management plan shall be submitted that shows the following information and that is consistent with the Timber Harvesting Guidelines for New York or with Section 11 of the Timber Harvesting Standards of New York State Forest Practice Board's Recommended Model Timber Harvesting Ordinance:

- [1] Land area of the site to be logged.
 - [2] Location of the site on a tax map, a USGS topographic map and a USDA soils survey map.
 - [3] Approximate existing number of trees.
 - [4] Approximate number of trees to be harvested.
 - [5] Location of streams, water bodies and wetlands on the site and the impact of logging activities upon these features.
 - [6] Identification of specific soil types and slopes present on the site and of erosion and stormwater control measures to be implemented.
 - [7] Maintenance and repair of public roads.
 - [8] Clearly defined and marked property lines and establishment of buffer zones to ensure that logging operations will not extend beyond the property line.
 - [9] Cleanup and reclamation plans.
 - [10] The location of major skid roads and loading areas.
 - [11] A time schedule for all of the above activities.
- (b) The Zoning Enforcement Officer may engage a forestry consultant from the list of Cooperative Consultant Foresters, as maintained by the New York State Department of Environmental Conservation, to review the commercial logging proposal.
- (6) Necessary agreements. Prior to final approval, the applicant shall present to the Zoning Enforcement Officer a copy of a signed contract between the logger and property owner(s), which shall include a performance bond or other form of surety to ensure proper cleanup and implementation of the forest management plan and to ensure consistency with the Timber Harvesting Guidelines for New York, or Section 11 of the Timber Harvesting Standards of New York State Forest Practice Board's Recommended Model Timber Harvesting Ordinance. However, any financial arrangements between the logger and the property owner(s) may be deleted from the copy of the signed contract submitted.
- (7) State regulations. All regulations promulgated by the New York State Department of Environmental Conservation shall be strictly adhered to, and all required stream or wetland disturbance permits shall be secured and in effect before the commencement of logging.
- (8) Access.
- (a) Where a proposed commercial logging operation is to use or develop an access onto a Town highway, such proposal shall be referred to the Town Highway Superintendent, who shall approve such access, subject to the following conditions:
- [1] Proper posting of site entrance and exit signs including "truck entrance" signs.
 - [2] No skidding of timber shall be permitted across Town highways as part of the logging operation at any time.

- [3] The Town highway shall be cleared of dirt, mud and vegetation debris on a daily basis to the satisfaction of the Town Highway Superintendent.
- [4] The logging contractor or operator shall be held responsible for any damage to the pavement, shoulder or drainage facilities of a Town highway, and the Town Highway Superintendent shall inspect the logging operation on a frequent basis to determine if such damage has occurred.
- [5] A cash bond, letter of credit, certified check or other form of financial surety in an amount recommended by the Highway Superintendent (but not less than \$2,500) shall be provided, payable to the Town for each logging operation or loading area location. The loading area shall consist of not more than 100 linear feet adjacent to one side of a Town highway. The requirement of providing financial surety may be waived only upon a written determination by the Town Highway Superintendent that such surety is not necessary.
- [6] The Highway Superintendent may issue any appropriate directive to prevent or repair damage to any Town road or bridge, caused by the logging operation.

- (b) Logging operations having access onto a state highway or county road shall have the access reviewed and approved by either the State Department of Transportation or the County Department of Public Works, and such access shall adhere to the conditions, including performance bonds, that these agencies may require.

(9) Buffers.

- (a) No logging shall take place within 50 feet of any street line or 75 feet from any pavement center line of any public street in the town.
- (b) All logging operations shall generally be located no closer than 50 feet from any property line, except to clean out dead or downed trees at the direction of the Highway Superintendent. A "logging operation" shall include the terms "landing," "logging debris" and "logging operation" as defined in Section 2 of the New York State Forest Practice Board's Recommended Model Timber Harvesting Ordinance.
- (c) An off-street parking area for logging equipment and other vehicles shall be located on the logging site and no closer than 50 feet to any street line.

(10) Hours of operation.

- (a) No logging operations shall take place between 7:00 p.m. and 7:00 a.m. local time.
- (b) Because of narrow roads and potential conflicts with school bus operations, the Highway Superintendent may recommend alternate hours during which logs may be transported over the public highway system.

(11) Site cleanup.

- (a) All debris resulting from logging operations, within 50 feet of the highway, shall be cleaned and removed by the applicant, the forester and/or the logger.

(b) No equipment shall be abandoned, nor shall any solid or liquid waste be dumped or otherwise deposited on the site under the penalty of forfeiture of surety.

(12) Insurance and liability. The applicant of any logging operation shall file a certificate of insurance with the Town Clerk, naming the Town as the co-insured or additional insured party. The liability shall hold the Town harmless in any logging operation and shall be in an amount determined by the Town Board and shall include attorney's and other legal fees.

G. Accessory apartments. Apartments accessory to the principal permitted use of a building are permitted in all districts, subject to the issuance of a building permit and the regulations and standards set forth below. It is the intent of this provision to allow more efficient use of existing buildings and to expand rental housing opportunities in the Town, particularly for small families. In furtherance of this objective, a second dwelling unit is permitted in an existing residential building or a dwelling unit in a former residential building now used for nonresidential purposes, subject to the following conditions, without an increase in lot area.

[Added 11-19-2009 by L.L. No. 11-2009]

(1) Size and location of structure. An accessory apartment shall be located in the principal dwelling, provided that such principal dwelling contains a minimum of 1,500 square feet of habitable space, or shall be located in a permitted accessory structure.

(2) Lot size. Any structure housing an accessory apartment must be located on a lot at least one acre in area, unless served by a central water and sewer and/or water system and conforming to the lot area required in the area and bulk regulations.

(3) Apartment size. The floor area for an accessory apartment shall be 350 square feet, but in no case shall it exceed 25% of the habitable area of the existing principal dwelling on the site, or 800 square feet, whichever is less. The accessory apartment shall have no more than one bedroom.

(4) Number of accessory apartments and dwelling units. There shall be no more than one accessory apartment or a total of two dwelling units per residential building or lot under this section.

(5) Water and sewer service. Prior to the issuance of a building permit for the establishment of an accessory apartment in a principal dwelling, approval of the proposed method of water supply and sewage disposal shall be obtained.

(6) Off-street parking. At least one additional off-street parking space shall be provided for the accessory apartment. In no case shall there be parking space for fewer than a total of three cars on the property.

§ 123-12. Billboards.

Billboards are prohibited in any zoning district in the Town of Esopus, following the date of enactment of this chapter, except that a billboard erected prior to enactment of this chapter may remain in place and may be relettered, painted or maintained. A billboard shall not be enlarged and, once removed, shall be deemed permanently removed and may not be replaced.

§ 123-13. Uses requiring special use permits.

[Amended 11-19-2009 by L.L. No. 11-2009]

The uses set forth below shall satisfy the following criteria, in the districts where such a permit may apply, in addition to the criteria set forth in § **123-46** and the relevant standards of the Area and Bulk Schedule.^[1]

A. Two-family dwellings.

- (1) Lot area. A two-family dwelling, where permitted, shall be situated on a lot with an area at least 1.5 times the minimum lot area required for a single-family home in the same district.
- (2) Two-family dwellings shall be permitted in the R-40 District only by conversion of an existing residential structure.

B. Multifamily dwellings.

(1) Applicability.

- (a) These regulations shall apply to the following:

- [1] New construction of multifamily dwellings.
- [2] Conversion of any existing residential structure into a multifamily dwelling having three or more dwelling units.
- [3] Conversion of any existing nonresidential structure into a multifamily dwelling.

- (b) Multifamily dwellings in the RF-1 and RF-2 Districts are only permitted in accord with the provisions of §§ **123-13R** and **S**.

(2) Area and density.

- (a) A multifamily dwelling shall be located on a lot of at least two acres or a lot of the minimum size of the district in which it is located, whichever is greater.

- (b) Multifamily apartment and townhouse dwellings shall comply with the minimum lot area per dwelling unit for the district in which they are located. For purposes of this section, dwelling units shall be computed using the following equivalents:

- [1] Efficiency apartment: 0.4.
- [2] One-bedroom apartment: 0.5.
- [3] Two-bedroom apartment: 0.7.
- [4] Three-bedroom apartment: 1.0.
- [5] Four-or-more bedroom apartment: 1.2.

- (c) Multifamily dwellings over four units per lot must be served by municipal sewer and water systems.

(3) Traffic and parking.

- (a) Off-street parking shall be provided on the same lot in accordance with § **123-24** of this chapter.

- (b) Off-street parking for multifamily dwellings shall not be located in a front yard or any other yard abutting a street, except in a driveway, and shall be screened from adjacent properties by a fence, wall or vegetative buffer of at least six feet in height.
 - (c) Vehicular entrances and exits shall be clearly visible from the street and at least 75 feet from any street intersection. Two access points onto a street, separated by at least 200 feet, shall be provided for any multifamily development of over 50 dwelling units.
 - (d) Traffic generated by multifamily dwellings shall not add undue traffic volumes onto minor or local streets serving single-family residential areas.
- (4) Bulk and screening requirements.
- (a) Multifamily dwellings shall comply with the minimum front yard, side yard, rear yard, coverage and maximum height requirements specified in § **123-20** of this chapter.
 - (b) No building shall exceed 200 feet in length.
 - (c) Maximum land coverage shall be 20%.
- (5) Recreation areas. For multifamily dwellings of over four units, there shall be located on the same lot, a recreation area suitable in size and facilities to meet the needs of the future residents.
- (6) Accessory signs. Signs accessory to a multifamily dwelling development are permitted.
- (7) Mix of housing types. Any given development of multifamily dwellings or any building located in such a development may contain a combination of townhouse and apartment style dwellings, provided that all requirements of this section are satisfied.

C. Commercial kennels and veterinarians.

- (1) Commercial kennels.
- (a) Minimum site area. Commercial boarding or breeding kennels must be located on a lot having at least 10 acres.
 - (b) Density of animals. Commercial boarding and breeding kennels shall provide a total of 100 square feet of enclosure for each animal. No less than 30% of the enclosure area shall consist of protected indoor space.
 - (c) Setbacks. All buildings housing animals, pens, runs and structures shall be located no closer than 300 feet from any lot or street line and shall also be located no closer than 500 feet from any residential dwelling that is located off the site.
 - (d) Noise and quiet hours. All dogs and other animals which present a potential nuisance by barking or other noises shall be contained within buildings between the hours of 8:00 p.m. and 8:00 a.m., local time, each day, so that such noise is not discernible beyond 100 feet of the building.
 - (e) Sanitary and veterinary review. In all instances, all animals shall be adequately housed, fed, controlled, fenced, inoculated and otherwise maintained in a sanitary and safe manner so as not to create a nuisance,

health or safety hazard to nearby properties, property owners or inhabitants of the neighborhood or the dogs themselves. The Planning Board may require that a special use permit for a kennel be reviewed annually, and may additionally require an inspection, at the owner's expense, of the premises by a licensed veterinarian, who shall prepare and submit to the Planning Board his observations on the operation of the kennel.

[Amended 11-19-2009 by L.L. No. 11-2009]

- (f) Limitations. The special use permit for a kennel shall apply to the entire property on which it is situated. If any part of the site property is subdivided or sold, the special use permit for the kennel shall become null and void.

[Amended 11-19-2009 by L.L. No. 11-2009]

- (2) Veterinarians. A veterinarian's office or animal hospital shall not be subject to the requirements for commercial kennels set forth above so long as:

- (a) No runs, pens or similar enclosures are located outside the structure.

- (b) Only animals receiving or recovering from medical care are housed on the premises.

- D. ^[2]Farm breweries, farm distilleries and farm wineries, as allowed for by the provisions of the New York State Alcoholic Beverage Control Law, are permitted in the R-40 District by special use permit, subject to the following standards.

[Added 9-17-2015 by L.L. No. 1-2015]

- (1) Location standards. A farm brewery, farm distillery and/or farm winery may be established and operated on the same lot as an existing agricultural use.

- (a) Notwithstanding the foregoing, a farm brewery, farm distillery and/or farm winery may be established on a lot without an existing agricultural use provided that such lot has frontage upon a state highway. However, the Planning Board may approve such brewery, distillery or winery with a location upon a county road or Town highway subject to a finding that safe access for vehicular traffic, especially any truck traffic, can be provided in such a manner that will minimize potential hazards to existing pedestrians, bicyclists and motorists on such county or Town roads.

- (2) Parking and loading. One parking space shall be provided for each distillery employee. Loading areas shall be suitably located on the site. Where retail sales are proposed as part of the brewery, distillery or winery operations, such activity shall provide customer parking as required in § **123-24** for retail stores.

- (3) Public assembly. Product-related events such as tasting or other activities involving the assembly of people, as otherwise permitted by state law, shall be restricted to a lot having an area of 10 acres or more.

- (4) Licenses required. The operator shall obtain all state and federal licenses to operate a farm brewery, farm distillery or farm winery within one year of the approval of the special permit by the Planning Board.

[2] *Editor's Note: Former Subsection D, regarding accessory apartments, was repealed 11-19-2009 by L.L. No. 11-2009.*

- E. Public utility stations and structures.

- (1) Community or neighborhood need. Such use must be shown by the applicant to be reasonably necessary for the service, convenience or welfare of the neighborhood in which it is to be located, and to the general public, and the

applicant must show that such use cannot be located in another district. The Planning Board must find that the use will not alter or otherwise be detrimental to the character of the neighborhood.

- (2) Minimum lot size. The minimum lot area for a public utility structure may be less than the minimum lot area otherwise required for the district in which it is located and can be the minimum needed not only to serve the needs of the applicant but also to comply with the standards of this section.
- (3) Setbacks, buffers and design.
 - (a) All public utility structures must comply with the minimum setback, maximum coverage, building height and other standards of the district in which such use is located, except that water towers and standpipes are exempt from the height regulations.
 - (b) All buildings and enclosed structures shall, wherever practicable, have the exterior appearance of a residential building if located in the RF-1, RF-2, R-40, R-12 or NC District.
 - (c) All unenclosed structures, platforms, switching gear and exposed equipment shall comply with building setback requirements to the maximum extent possible and shall be suitably screened from any public street or adjoining property.
- (4) Restriction on use. No business office may be established on the same site as a public utility structure in any residential district. No garage, storage building or equipment or storage yard is permitted on the same site as a public utility structure except in the GC, LI, HI or W District.

F. Commercial communications towers. No commercial communications tower shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a commercial communications tower unless in conformity with these regulations.

- (1) Site plan. An applicant shall be required to submit a site plan in accordance with § 123-47. The site plan shall show all existing and proposed structures and improvements, including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.
- (2) Supporting documentation. The Planning Board shall require that the site plan include a completed visual environmental assessment form (Visual EAF; available from the Planning Board) and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any clearing required. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this subsection and Subsection F(7) and (8) below.
- (3) Shared use of existing towers. At all times, shared use of existing towers shall be preferred to the construction of new towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to the proposed use.
 - (a) An applicant proposing to share use of an existing tower shall be required to document intent from an existing tower owner to allow shared use.
 - (b) The Planning Board may consider a new commercial communications tower where the applicant demonstrates that shared usage of an existing tower is

impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and response for shared use shall be provided.

- (4) Shared usage of site with new tower. Where shared usage of an existing tower is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection **F(2)** above. Any new commercial communications tower approved for an existing tower site shall be subject to the standards of Subsections **F(5)** through **(14)** below.
- (5) New tower at a new location. The Planning Board may consider a new commercial communications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared usage of an existing tower site is impractical, and submits a report as described in Subsection **F(3)(b)** above.
- (6) Future shared usage of new towers. The applicant must examine the feasibility of designing a proposed commercial communications tower to accommodate future demand for commercial broadcasting and reception facilities. The scope of this analysis shall be determined by the Planning Board. This requirement may be waived, provided that the applicant demonstrates that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:
 - (a) The number of Federal Communications Commission (FCC) licenses foreseeably available for the area.
 - (b) The kind of tower site and structure proposed.
 - (c) The number of existing and potential licenses without tower spaces.
 - (d) Available spaces on existing and approved towers.
 - (e) Potential adverse visual impact by a tower designed for shared usage.
- (7) Setbacks for new towers. All proposed commercial communications towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all icelfall or debris from tower failure and preserve the privacy of adjoining residential properties.
 - (a) All tower bases must be located at a minimum setback from any property line at a distance equal to 20% of the tower height or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, whichever is greater.
 - (b) Accessory structures must comply with the minimum setback requirements in the underlying zoning district.
- (8) Visual impact assessment. The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new tower or modification of an existing tower

shall be subject to the relevant guidelines and criteria below that are determined by the Planning Board at the presubmission conference to be appropriate.

- (a) Assessment of before and after views from key viewpoints both inside and outside of the town, including state highways and other major roads, from state and local parks, other public lands, from any privately owned preserves and historic sites normally open to the public and from any other location where the site is visible to a large number of visitors or travelers.
 - (b) Assessment of alternative tower designs and color schemes, as described in Subsection **F(9)** below.
 - (c) Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- (9) New tower design. Alternate designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new tower shall comply with the following unless superseded by the regulations of another agency:
- (a) Unless specifically required by other regulations, all towers shall have a neutral, earth tone or similar painted finish that will minimize the degree of visual impact that the new tower may have.
 - (b) Towers shall not be artificially lighted unless required by the Federal Aviation Administration (FAA).
 - (c) Towers shall be the minimum height needed to provide future shared usage.
 - (d) The Planning Board may request a review of the application by a qualified structural engineer for evaluation of the need for and design of any new tower.
 - (e) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- (10) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of feet off the ground) shall take place prior to approval of the special permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- (11) Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- (12) Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts or no more than 10 feet beyond the edge of any pavement.

Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

- (13) Parking. No parking space shall be located in any required yard.
 - (14) Fencing. Sites of proposed new towers and sites where modifications to existing towers are proposed shall be adequately fenced to prevent unauthorized access, unless the applicant demonstrates to the Planning Board that such measures are unnecessary to ensure the security of the facility.
- G. Bulk fuel storage. No outdoor storage of bulk fuel for sale or distribution shall be located within 100 feet of any residence district boundary line.
- H. Gasoline sales, automotive and marine.
- (1) The storage of gasoline or flammable oils in bulk for the purpose of retail sale on-site to automobiles, trucks, other land vehicles and watercraft shall be located fully underground and not nearer than 50 feet from any lot line other than the street line, except where superseded by the DEC or other regulating agency.
 - (2) No gasoline pumps shall be located nearer than 25 feet to any street line or 50 feet from any other property line, except where superseded by the DEC or other regulating agency.
 - (3) In the W District, retail sale of gasoline shall be limited to marine vessels only.
- I. Cemeteries.
- (1) Minimum site area. Where it is not accessory to a house of worship, a cemetery shall have a minimum area of one acre.
 - (2) Setbacks.
 - (a) Setbacks for plats. No burial or memorial plots or buildings shall be located closer than 50 feet to any residential lot line, except that when a dense evergreen hedge or a wall or landscaped strip of at least six feet in height, providing complete visual screening from all adjacent residential properties, is provided, burial or memorial plots less than six feet in height may be located no closer than 20 feet from any residential lot line.
 - (b) Setbacks for mausoleums. All mausoleum buildings shall be located no closer to any lot or street line than twice the minimum setback for any nonresidential structure permitted in the zoning district in which the mausoleum is to be located.
 - (3) Human crematories. Crematories for human remains shall be located only in the LI and HI Districts.
 - (4) Animal crematories. Crematories for animal remains shall be subject to the following:
 - (a) The facility must be owned and operated as an accessory use by a licensed veterinarian practicing in the Town of Esopus.
 - (b) The facility shall be located only in the LI and HI Districts.
- J. Automotive repair garages.

- (1) The minimum lot size for such establishments shall be 15,000 square feet, and the minimum street frontage shall be 100 feet.
- (2) Entrance and exit driveways shall have restricted widths of not less than 16 feet and not more than 24 feet, shall not be located nearer than 10 feet from any lot or street line and shall be so laid out as to avoid the necessity of any vehicle backing out across any public right-of-way.
- (3) Vehicle lifts or pits and all parts or supplies shall be located within a building enclosed on all sides.
- (4) No building permit shall be issued for any such establishment within a distance of 200 feet of a school, church, hospital or other place of public assembly designed for occupancy by more than 50 persons, between the nearest points of each of the lots or premises, regardless of the district where either premises is located.

K. Lodging places other than summer cottage colonies.

- (1) The minimum lot area shall be two acres for motels, for hotels and for tourist homes, except that residences which have been occupied as residences only for at least three years prior to becoming tourist homes may be converted to such use without lot size restrictions.
- (2) The minimum lot depth shall be 200 feet, and 2,000 square feet of additional lot area is required for each guest room over 10 units.
- (3) No building or part thereof or parking or loading area shall be situated within 30 feet of any street or lot line, except that this distance shall be increased to 50 feet when abutting a lot in residential use or a residence district boundary line.
- (4) One off-street parking space shall be provided for each guest room and one additional space shall be provided for each employee.
- (5) All areas occupied by buildings shall be suitably landscaped and maintained in accordance with § **123-47B(3)** and **(4)**.
- (6) Accessory to motel or hotel, the following uses are permitted:
 - (a) A restaurant or coffee shop covering not more than 10% of the gross floor area on the site and providing one off-street parking space for every five seats accommodated.
 - (b) Swimming pools, as regulated in § **123-21C**, and related facilities for the exclusive use of guests of the motel or hotel.
 - (c) Recreation facilities for use of guests, not to be located within 50 feet of any lot line.
- (7) Lodging places in the RF-1 District shall only be permitted in accord with the provisions of § **123-13R**.

L. Summer cottage colonies.

- (1) Minimum area. The minimum lot area for a summer cottage or bungalow colony shall be 10 acres.
- (2) Occupancy. Such bungalows, cabins and cottages shall be designed for occupancy by either one or two families per building.

- (3) Bulk and density requirements of the site.
 - (a) No building or structure or parking or recreation facility shall be located closer than 100 feet from any lot or street line or the Hudson River or the Rondout Creek.
 - (b) All buildings must be spaced at least 15 feet apart.
 - (c) Maximum site density shall be no greater than two dwelling units per acre.
- (4) Ownership. The entire site shall be in single, common or corporate ownership and used for recreational and lodging purposes only.
- (5) Utilities. Water supply and means of wastewater treatment shall be approved by the Ulster County Health Department.
- (6) Lighting. Outdoor lighting shall be arranged so as to eliminate the glare of lights toward or onto adjacent residential properties. All outdoor lighting, except that which is needed for security purposes, shall be extinguished by 11:00 p.m., local time, or completely shielded from the view of any adjacent property.
- (7) Noise. Outdoor public address systems, loudspeakers and similar equipment shall be arranged so as to eliminate sound from being heard on any adjacent property and shall only be used between the hours of 8:00 a.m. and 8:00 p.m., local time.

M. Children's camps.

- (1) No building, tent, activity area or recreation facility shall be less than 200 feet from any lot line and such shall be effectively screened therefrom as required by the Planning Board.
- (2) All outdoor lighting shall be arranged so as to eliminate the glare of lights toward nearby residential lots.
- (3) Public address systems and loudspeakers shall be arranged so as to prevent objectionable sound from being heard on any adjacent property.
- (4) No structure or part of the site shall be used as a permanent residence, except for one dwelling unit which may be used by the owner or by a caretaker.

N. Membership recreation clubs and commercial recreation facilities open to the public.

- (1) No building or part thereof or any parking or loading area shall be located within 100 feet of any street or lot line.
- (2) The sum of all areas covered by principal and accessory buildings shall not exceed 20% of the area of the lot.
- (3) Any such uses shall occupy a lot with an area of not less than five acres.
- (4) The direct source of all exterior lighting shall be shielded from the view of surrounding residential lots.
- (5) Noise. Outdoor public address systems, loudspeakers and similar equipment shall be arranged so as to eliminate sound from being heard on any adjacent property and shall only be used between the hours of 8:00 a.m. and 8:00 p.m., local time.

O. Institutional uses. Certain medical, educational and social service uses that would be classified in SIC Industry Groups 805, 806, 821, 822, 835 and 836 and which would include, but are not limited to, nursing homes and personal care facilities, hospitals, elementary and secondary schools, colleges and professional schools, child day-care centers and nursery schools and nonmedical residential care facilities, such as adult or child foster care homes, transitional service facilities and halfway and group homes, are permitted, subject to the following conditions:

- (1) No building or part thereof or any parking or loading area shall be located within 100 feet of any street or lot line.
- (2) The sum of all areas covered by principal and accessory buildings shall not exceed 20% of the area of the lot. Minimum lot size shall be two acres, except as provided below.
- (3) The entire lot, except for areas covered by buildings, parking or loading areas shall be suitably landscaped and property maintained.
- (4) Sufficient exterior illumination of the site shall be required to provide convenience and safety. All such illumination shall be shielded from the view of all surrounding streets and lots.
- (5) Any nursing home, hospital or sanitarium shall meet the following standards:
 - (a) Minimum lot size shall be 10 acres.
 - (b) All buildings shall be of fire-resistive construction.
 - (c) All such uses shall be served by adequate water and sewer systems approved by the Ulster County Department of Health.
 - (d) Patients suffering from communicable diseases shall not be permitted in any nursing home or sanitarium. (Communicable diseases are defined by the Sanitary Code of the Public Health Council of the State of New York.)
- (6) Any elementary, secondary or nursery school permitted in this section shall occupy a lot with an area of not less than five acres, plus one acre for each 100 pupils for which the building is designed and shall be:
 - (a) A nonprofit organization within the meaning of the Internal Revenue Act and shall be registered as such thereunder; or
 - (b) A nursery school licensed by the State Department of Education.

P. House of worship.

- (1) Permitted accessory structures include parish houses and meeting halls, rectories and parsonages.
- (2) All new structures shall be located at a distance of at least 1 1/2 times the minimum setback requirements for the district in which it is located.

Q. Religious communities.

- (1) Minimum lot size shall be four acres. However, where a school or medical or social institution is to be accessory to the religious community, the minimum lot size shall be 10 acres.

- (2) Maximum coverage by principal and accessory buildings shall not exceed 20% of the area of the lot.
- (3) Setbacks, landscaping and illumination shall be in compliance with § **123-130(1)**, **(3)** and **(4)**.
- (4) All hospitals and schools shall have all necessary approvals and licenses by the appropriate state authorities.

R. Conversion and reuse of large, existing landmark structures in the RF-1 District.

- (1) Intent and purpose. The intent of this subsection is to allow usage of large existing landmark structures for a variety of appropriate uses (See § **123-10**, Schedule of Permitted Uses.) while maintaining the unique scenic, aesthetic and architectural character of properties in the RF-1 District.
- (2) Uses permitted. Allowable uses in existing structures include the following and are subject to the provisions in Subsection **R(3)** below:
 - (a) Multifamily apartment residences.
 - (b) Corporate or professional offices.
 - (c) Conference centers.
 - (d) Inns.
 - (e) Transient housing accommodations.
- (3) Conditions.
 - (a) The structure must have been in existence prior to January 1, 1985.
 - (b) Gross site area shall be at least 25 acres, and gross floor area of existing buildings shall be at least 5,000 square feet. Maximum density shall be computed as in § **123-13S(2)(b)** below.
 - (c) The scale and character of the existing building shall not be substantially altered in terms of architectural detailing, size and shape of door and window openings, exterior materials and colors and similar features. Additions to eligible structures shall be kept to a minimum, and in no case shall additions to any structure exceed 20% of its aggregate floor area or cubic volume.
 - (d) All required off-street parking in excess of five spaces shall be located at least 200 feet from adjacent streets and properties and shall be fully screened therefrom.
 - (e) The Planning Board shall also consider the guidelines set forth in § **123-13S(2)(g)** when reviewing proposals.

S. Clustered single-family and townhouse dwellings in RF-1 and RF-2 Districts.

- (1) Uses permitted: clustered single-family and townhouse dwellings.
- (2) Conditions.
 - (a) The minimum gross site area shall be 25 acres.

- (b) The maximum number of dwelling units permitted shall be determined by reducing the gross site area by (excluding lands under water or an easement which precludes other use) 25% and dividing the remaining area by 40,000 square feet.
- (c) No structures shall exceed 30 feet in height.
- (d) All structures shall be set back at least 500 feet from the river's edge, except those requiring a waterfront site (i.e., boathouse, water plant, etc). This setback may be reduced to 300 feet upon a finding by the Planning Board that due to the nature of the site, such reduction will not adversely affect the guidelines set forth in Subsection **S(2)(g)** below. Structures shall also be set back at least 200 feet from all streets or property lines at the perimeter of the site to be developed.
- (e) The Planning Board shall consider the size and configuration of lots during its review in terms of the criteria set forth in Subsection **S(2)(g)** below and the provision of adequate water supply and sewage disposal systems.
- (f) At least 1/2 the gross site area in the RF-1 District and 1/3 in the RF-2 District shall be preserved as permanent open space by appropriate legal covenants and recorded as such on all filed maps. The Town may, at its discretion, accept all or part of such open space if offered for dedication. At least 1/2 of such open space shall be preserved in its natural state. The remainder may be used for active recreation facilities and may also contain water supply or sewage disposal systems if they are designed so as to preserve the scenic or functional purposes to which said open space is devoted. Open space required to satisfy this condition must have a minimum dimension of at least 200 feet at all points.
- (g) In addition to the criteria contained in §§ **123-46** and **123-47**, the Planning Board shall also consider the following guidelines and criteria in its review of a cluster development under this section:
 - [1] Open spaces preserved through clustering shall be designed and located so as to preserve significant natural features, such as streams, hillsides, ridgetops, natural wooded areas and rock outcrops, and existing landscaping.
 - [2] The visual impact of proposed development shall be minimized in terms of views from the site and adjacent roads to the river and from the river and the opposite shore to the site. Analysis shall consider the materials used, the massing of buildings, the scale of development, the use of landscaping and natural growth, etc. The possible intrusion of new development on the visual setting of estates, institutions and historic structures on nearby properties shall also be evaluated.
 - [3] Site design and construction management shall be undertaken in a manner so as to prevent adverse effects from erosion, siltation, flooding, etc.
 - [4] Provision of public access to and along the shoreline is to be encouraged, and review of site plans will include consideration of opportunities to incorporate the development of such access.
- (h) The Planning Board may require submission of a clustered development plan, in accord with the provisions of this subsection, if it finds that such type of development is necessary to preserve specific features of the site and the

general character of the district. However, the Planning Board may not require the development of multifamily dwellings in place of single-family homes.

- (i) Site plan review under the provisions of this section shall suffice for Planning Board review of subdivisions under Chapter **107**, Subdivision of Land, subject to the following conditions:
 - [1] The developer shall prepare sets of subdivision plats suitable for filing with the office of the Ulster County Clerk, in addition to those drawings required under §§ **123-46** and **123-47**.
 - [2] The developer shall plat the entire development as a subdivision; however, projects being developed in stages may be platted and filed in the same stages.
 - [3] Final site plan approval under § **123-47** shall constitute final plat approval under the Town Subdivision Regulations, and the provisions of § 276 of the Town Law requiring that the plat be filed with the Ulster County Clerk within 62 days of approval shall apply.

- T. Marinas and boatyards. The following requirements and standards shall apply to new marinas, to the expansion of existing marinas and to related uses, such as sale of marine supplies, services, fuel, equipment, boatyards, boat repairs or manufacture, assembly or repair of marine products, such as boats, sails and hardware, charter boats and fishing guide operations, boat rentals or annual membership clubs which are water dependent.
 - (1) Location. Marinas shall be located in areas where physical attributes required by marinas already exist or can be created with minimal impact and where minimal initial and subsequent maintenance dredging will be required. Such physical attributes include natural depths at or exceeding minimal navigable depths, low rates of sediment transport and sufficient tidal action to promote flushing. Dredging shall be limited to the minimum dimensions necessary for the project. Marinas shall not be permitted in areas that would require frequent maintenance dredging that would harm aquatic life or would prevent the relocation of benthic organisms. Such areas would include those which would require maintenance dredging more often than once every five years.
 - (2) Design objectives.
 - (a) To the extent feasible, marina basins shall be designed for maximum tidal flushing and circulation due to both river/creek currents and the action of wind, while maintaining safe levels of wave action within the protected basin. The following minimum design criteria to promote flushing shall be applied to the maximum extent practical:
 - [1] Basin and channel depths shall not be deeper than the prevailing depths in the water body to which they connect.
 - [2] Basin and channel depths shall gradually increase toward open water or basin entrances.
 - [3] Openings shall be provided at the opposite ends of enclosed basins to establish flow-through circulation. Only one opening must be navigable; the other opening or openings shall be as large as practicable to promote circulation. Culverts or other enclosed conduits may be used in place of open channels.

- [4] The configuration chosen shall minimize or prevent the formation of stagnant water zones that tend to collect debris or cause shoaling or flushing problems.
 - (b) The introduction of contaminants into the coastal waters from rainfall runoff polluted with oils, greases, organic and inorganic wastes and other potentially harmful substances shall be limited to the extent feasible. Therefore, new parking areas shall utilize porous pavements or other approved measures to reduce rainfall runoff, and marinas must incorporate best management practices in their design, including but not limited to the following:
 - [1] Pervious land surface and vegetative cover shall be used wherever possible to minimize stormwater runoff and to prevent polluted water from reaching adjacent waters and wetlands, to the extent feasible, by site grading or other methods.
 - [2] Runoff from parking lots, maintenance, fueling and washdown areas must be treated in a manner that prevents oils, grease and detergents from reaching adjacent waters and wetlands. Accepted treatment methods include oil and grease filtering catch basins, retention areas and exfiltration systems.
 - (c) Structures shall be sited inland from the water's edge as much as possible to maintain open space along the waterfront, to minimize exposure to flooding and to reduce runoff and nonpoint source water pollution.
- (3) Development standards.
- (a) Applicants must demonstrate that there are adequate water supply and sewage disposal facilities to serve all of the project's needs.
 - (b) Sewage pumpout facilities shall be provided at new marinas and expansion of existing marinas at a minimum rate of one pumpout station for every 100 boats accommodated or major fraction thereof.
 - (c) Adequate restroom facilities for marina users will be required to discourage any overboard discharge of sewage from boats in order to protect water quality. The number of toilets required for any given marina shall be determined by the nature and size of the marina.
 - (d) Signs must be provided to identify the location of public restrooms and pumpout facilities. Signs must also fully explain the procedures and rules governing use of the pumpout facilities.
 - (e) Trash receptacles shall be located conveniently to encourage the proper disposal of trash and waste. A maximum spacing of 100 feet between receptacles shall be maintained on all piers and docks.
 - (f) Parking spaces shall be provided at a minimum rate of 0.60 spaces per slip, plus one additional space for each two employees and additional spaces required by this code for separate retail or other uses on premises.
 - (g) The underwater members of piers and docks, including piles, shall not be constructed using creosote treated lumber.
 - (h) All marinas shall institute spill prevention emergency response plans. Automatic cut-offs for hoses in the event of an accident are mandatory.

- (4) On-board residency. Nothing in these regulations shall prevent the owner of a boat docked at a marina from living on-board for an extended period of time, subject to the following:
 - (a) Any such occupancy shall comply with all standards of this chapter as well as all other applicable health and safety regulations.
 - (b) Any boat docked at a marina shall be maintained in a seaworthy condition and shall be required to leave its dock or mooring under its own power or sail at least once every six months for a period of at least 72 hours.

U. Excavation and quarries. In those districts where excavation and quarries are permitted, such activities shall be regulated as follows:

- (1) Excavation and quarrying of more than 1,000 tons of minerals during 12 successive months is regulated under the New York State Mined Land Reclamation Law^[3] and shall conform to all standards set forth in that law. In its review of an application for a special use permit, the Planning Board shall consider the proposed reclamation plan, the location of entrances and exits on Town roads and the designation of Town roads for hauling. The Planning Board may also make recommendations to the New York State Department of Environmental Conservation regarding setbacks, barriers to restrict access, dust control and hours of operation.
[Amended 11-19-2009 by L.L. No. 11-2009]
[3] Editor's Note: See § 23-2701 of the Environmental Conservation Law.
- (2) Excavation of less than 1,000 tons of minerals during 12 successive months may be authorized by the Planning Board upon review of a mining plan which establishes setbacks, hours of operation and a detailed reclamation plan.

V. Senior citizen housing.

[Added 11-17-2005 by L.L. No. 1-2005]

- (1) Permitted uses. The following uses are permitted within a site designated for senior citizen housing, upon approval of a special use permit:
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (a) Multiple, attached or detached dwelling units for occupancy by senior citizens and their immediate families. Such occupancy does not include nursing homes, group residences or rooming houses or boardinghouses.
 - (b) Accessory structures/uses. The following accessory structures and uses are permitted:
 - [1] Any facilities necessary to meet the proper maintenance, security, storage and utility needs of the development or its residents.
 - [2] Ancillary uses providing services or amenities only for site residents, such as, but not limited to, recreation rooms, lounges, self-service laundries, exercise rooms and similar facilities.
- (2) Occupancy.
 - (a) Occupancy of dwelling units in senior citizen housing shall be limited to the following:
 - [1] A person who has attained the age of 55 years.

- [2] A husband or wife who is residing with his or her spouse who qualifies as a senior citizen.
 - [3] A live-in caregiver residing with a qualified senior citizen, provided that said caregiver is 18 years of age or older.
 - [4] The surviving spouse who was residing with a qualified senior citizen at the time of his or her death.
- (b) Exception. Notwithstanding the provisions above, one unit in a senior citizen housing site may be occupied by a project superintendent or manager and his or her family.
- (3) Development standards. Senior citizen housing shall be subject to the following standards as well as other applicable standards of this Subsection V:
- (a) Minimum lot area: five acres.
 - (b) Location in R-40 District: Senior citizen housing in the R-40 District shall be allowed only in the area east of the main line of the CSX Railroad or east of Route 9W, south of Floyd Ackert Road.
 - (c) Dwelling size: No dwelling shall contain more than two bedrooms.
 - (d) Minimum yards: same as the district in which the site is located, except that no building shall be located within 50 feet of an existing residential structure on another lot.
 - (e) Maximum density: The number of dwelling units on a site shall not exceed eight units per adjusted gross acre. Adjusted gross acreage shall be determined by deducting the following from the total site area:
 - [1] All designated state and federal wetlands.
 - [2] All easements.
 - [3] Fifty percent of all land in a designated flood hazard area.
 - [4] Fifty percent of all land with a slope in excess of 20%.
 - (f) Minimum parking: two spaces for every three dwelling units. In addition to the parking actually provided, an additional area capable of creating a total of one parking space per dwelling unit shall be indicated on the approved site plan and graded and planted with grass. The Planning Board may require, in the future, that such area be paved to meet demonstrated parking demand.
 - (g) Buffer zone: An area at least 25 feet wide shall be established along the boundary of all properties in residential use, which shall be landscaped or maintained as natural vegetation and shall not contain driveways or off-street parking or other paved surfaces. The only exception shall be entrance drives from the street and sidewalks not exceeding five feet in width.

[1] *Editor's Note: See § 123-20, Schedule of District Area and Bulk Regulations.*

§ 123-14. Manufactured homes and manufactured home courts.

[Amended 11-19-2009 by L.L. No. 11-2009]

- A. Purpose. It is the purpose of this section to promote the health, safety and welfare of the inhabitants of the Town of Esopus and regulate the maintenance of manufactured (or trailer) homes and manufactured home (or trailer) courts within the Town of Esopus and to prescribe regulations for said courts, to regulate the parking and location of trailers with the Town of Esopus and require that manufactured home courts within the Town of Esopus be laid out and constructed in accordance with approved plans.
- B. General regulations applying to all manufactured homes.
- (1) General requirements. Wherever permitted by these regulations, an individual manufactured home on its own lot shall comply with all area, bulk and parking requirements as apply to a one-family dwelling in the same district. An individual manufactured home is any such home not located in an approved manufactured home court.
 - (2) Manufactured home standards. Only manufactured homes which are certified as meeting the Manufactured Home Construction and Safety Standards of the United States Department of Housing and Urban Development and also as meeting relevant provisions of the Town of Esopus Building Construction Code and Fire Prevention Code^[1] are permitted for occupancy and only on individual lots or in approved manufactured home courts in the Manufactured Home Overlay District.
[1] Editor's Note: See Ch. 56, Building Construction, and Ch. 77, Fire Prevention.
 - (3) Existing nonconforming manufactured homes.
 - (a) Existing occupied manufactured homes that do not comply with the federal and local construction standards as summarized in Subsection **B(2)** above, are considered to be legal nonconforming structures and may remain on the premises on which they were originally established and may continue to be used for residential purposes.
 - (b) Existing occupied manufactured homes that are not located in the Manufactured Home Overlay District are considered to be legal nonconforming uses and may continue to be used for residential purposes.
 - (c) A nonconforming manufactured home, legally established prior to March 19, 1973, may be replaced with a manufactured home that meets federal and local construction standards. However, if such manufactured home is located outside of the Manufactured Home Overlay District, any replacement of such home must be installed within 180 days of removal of the original manufactured home or the right to replace it shall expire. However, upon written notice to the Building Inspector, an additional 180 days shall be granted during which such manufactured home may be replaced.
 - (4) Manufactured homes used as temporary dwellings. In the event that a one-family dwelling is partially destroyed by fire or violent acts of nature, the owners may, upon application to the Building Inspector, place a manufactured on the property until the principal residence is rebuilt. However, the manufactured home and all foundation and related appurtenances must be removed within two years, and a bond or letter of credit to insure removal must be posted with the Town Clerk in an amount in accordance with the fee schedule adopted by the Town Board, as amended, before the Building Inspector may act upon the application. Said bond

is to defray all of the expenses of the town, including reasonable attorneys fees, to cause the removal of the manufactured home.

- (5) Office trailers and manufactured homes used for nonresidential purposes. In order to provide temporary space for a permitted nonresidential use during construction of a permanent facility for such use on the same site, an individual office trailer or a manufactured to be used for nonresidential purposes may, upon application to the Building Inspector, be permitted in the NC, GC, BC, LI and HI Districts on a temporary basis, for a period not to exceed two years. All trailers to be used for nonresidential purposes must comply with current state and local building and fire prevention regulations. A bond or letter of credit to insure removal of the trailer must be posted with the Town Clerk as provided in Subsection **B(4)** above. These regulations are not intended to apply to trailers at construction sites used for offices by the contractor(s).
- (6) Sanitary facilities. All manufactured homes shall have a permanent supply of potable water and an approved sewage disposal system in accordance with the requirements of the Ulster County Health Department.
- (7) Required permit. Manufactured homes are subject to all applicable provisions of these regulations pertaining to building permits and certificates of occupancy (§§ **123-27** and **123-28**).

C. Manufactured home court licenses.
[Amended 11-19-2009 by L.L. No. 11-2009]

- (1) Summary of requirements. Operation of a manufactured court in the Town of Esopus requires, at the minimum, the following:
 - (a) Site plan and special use permit approval from the Town Planning Board.
 - (b) Approved means of water supply and wastewater treatment by the County Health Department, State Department of Environmental Conservation and/or any municipal sewer and water districts of the Town of Esopus.
 - (c) Approved access onto a public highway from the appropriate town, county or state agency.
 - (d) Building permit from the Building Inspector.
- (2) Application. An application for a manufactured home court shall be submitted in accord with § **123-46**, Special use permits, and § **123-47**, Site plan approval.
- (3) Expiration and renewal of license. Each license or renewal thereof shall expire on May 1 next following its issuance and may be renewed for a period of one year from the date of expiration after application and payment of the fees required.
- (4) Display of license required. A license to establish, maintain, operate or conduct a manufactured home court shall always be on display in the office of the manufactured home court.
- (5) Revocation of license. The Planning Board may revoke or suspend the license granted under the authority of this chapter for failure to comply with any provision of this chapter or any laws or regulations relating to any such manufactured court.

- (6) Issuance of license not waiver. The issuance of a manufactured home court license pursuant to the provisions of this article shall not be deemed to waive compliance by the holder thereof, by the property owner or by the occupants of said court with any statute of the State of New York or ordinance or health regulation of the Town of Esopus.

D. Design standards and regulations for manufactured home courts.

(1) Court site.

- (a) Minimum size. No manufactured home court shall be established, maintained, operated or conducted within the Town of Esopus, on any lot or parcel of land except in the Manufactured Home Overlay Zone, and then only on a lot or parcel of land with an area of five acres or greater.
- (b) Frontage and access. A manufactured home court site shall have a minimum frontage of 150 feet and direct access onto a state highway, county road or onto a Town highway that is designated as a collector street in the Town Development Plan and/or Official Map. Each manufactured home court containing 50 or more manufactured sites shall have at least two access points onto the public highway system. All access points shall be well marked and so arranged as not to constitute a traffic hazard.
- (c) Exterior site buffering. Each manufactured home court site shall have a landscaped area of at least 20 feet wide along exterior lot lines and street lines, suitably planted and maintained to provide visual screening from adjacent properties.

- (2) Court plan. Each manufactured court constructed, altered or extended after the effective date of this chapter shall be marked off into manufactured plots numbered consecutively, the number being conspicuously posted on each plot. Each plot shall be in conformance with the requirements below.

(a) Minimum plot size.

- [1] Where the Manufactured Home Overlay District is mapped in the R-12 District, no manufactured home shall be located on a plot of less than 5,000 square feet in area and have less than 50 feet of frontage on an interior access road, where municipal sewer and water are available. Where only municipal water is available, the minimum plot size shall be 7,500 square feet, and minimum frontage on an interior access road shall be 75 feet.
- [2] Where the Manufactured Home Overlay District is mapped where there is no municipal sewer or water, no individual manufactured home plot shall be less than 15,000 square feet in area and have less than 100 feet of frontage on an interior access road.

- (b) Occupancy. No more than one manufactured shall be permitted to occupy any one court unit.

(c) Setbacks.

- [1] Each manufactured home shall be at least 30 feet from any other manufactured home. In computing these setbacks, fully enclosed lean-tos, auxiliary rooms and similar accessories connected to the manufactured home shall be considered as part of the manufactured home.

[2] Every manufactured home within a manufactured home court shall be at least 50 feet from the property or street line forming the perimeter boundary of the court.

[3] Each manufactured home shall be at least 20 feet from any interior access road.

(d) Parking spaces. The number and dimensions of off-street parking spaces shall conform to the requirements of § **123-24A** of these regulations. Parking spaces shall be located no closer than 10 feet from any access road and shall be sealed with a dust-free surface.

(e) Interior access roads. All driveways or interior roadways shall be at least 50 feet wide, of which at least 30 feet shall be hard surfaced, well marked in the daytime and lighted at night and so located that each court unit is readily accessible.

(f) Blocks. All manufactured home court units shall be arranged in blocks of no more than 10 units wide and two units deep.

(g) Recreation area. A usable area set aside exclusively for recreation shall be provided within the manufactured home court and shall be equal in area to 200 square feet for each home court unit.

(h) Drainage and grading. All lands used as a trailer court shall be well drained, of ample size and free from heavy or dense growth of brush or weeds. The land shall be properly graded to ensure proper drainage during and following rainfall and shall at all times be so drained as to be free from stagnant pools of water.

(i) Signs.

[1] One freestanding, nonflashing, indirectly illuminated sign shall be permitted to identify the manufactured home court.

[2] Such sign shall not be greater in area than 45 square feet.

[3] No part of any sign shall be higher than eight feet above curb level.

[4] Signs and other related structures shall be located at least 20 feet from any property line or street line.

(j) (Reserved)

(k) Tie-downs. Tie-downs shall be required of all manufactured homes.

E. Manufactured home court sanitary and utility facilities.

(1) Garbage disposal.

(a) Each such manufactured home court shall provide equipment sufficient to prevent littering of the grounds and premises with rubbish, garbage and refuse and shall provide a flytight storage building or buildings of a design approved by the Ulster County Health Department, and at a convenient location, equipped with flytight metal depositories of sufficient size and number to contain all of the garbage and refuse that may accumulate between the removals from the premises.

- (b) Where separation and recycling of solid waste materials is required by either Town or county agencies, recycling bins of a design approved by said agencies shall be furnished and located conveniently throughout the manufactured home court.
 - (2) Electric, telephone and cable television service and connections. Each manufactured home court shall provide weatherproof underground electric, telephone and, where available, cable television service connections and outlets. All electric installations shall be approved by electrical inspectors designated by the Town Board of the Town of Esopus and have a certificate issued by the same.
 - (3) Other regulations. In addition to the foregoing, each manufactured home court must comply with any applicable sections of the New York State Uniform Building and Fire Code and any applicable regulations of the State of New York or County of Ulster.
- F. Management. It shall be the duty of the operator of any manufactured home court to:
- (1) Maintain upon the premises of such court at all times during its operation an authorized agent of said operator charged with the responsibility of managing the manufactured home court.
 - (2) Provide for the collection of garbage and other waste material.
 - (3) Prohibit the placing or storage of unsightly material or abandoned vehicles of any kind upon the premises occupied by the court.
 - (4) Provide for the cleaning, painting, repairing and disinfecting of all buildings and structures situated within the court.
 - (5) Take such other measures as shall be deemed necessary by the officers and board set forth herein to preserve the health, comfort and safety of all persons accommodated in the court and of the general public.
 - (6) Prevent any animal from running at large within or outside the court.
 - (7) Report to the Ulster County Department of Health all cases of communicable diseases or prospective cases of communicable diseases affecting any residents of the court.
 - (8) Prevent the committing of any nuisance on the court premises and to report immediately to the proper authorities all acts of disorderly character committed by any person or persons inside of the court and, to that end, to maintain proper policing thereof.
- G. General operating regulations.
- (1) Right of entry; inspection. The County Health Department and Town of Esopus Building Inspector shall have the right at any reasonable time to enter any manufactured home court or other premises used for the parking or location of a trailer and shall have the right at all times to inspect all parts of said premises and to inspect the records required to be kept in any manufactured home court.
 - (2) Restrictions. Every manufactured home court and individual manufactured home shall comply with the within provisions of this chapter and the following rules and regulations:
 - (a) Cooking with gasoline stoves is prohibited.

- (b) Rubber hose or other flexible tubing is prohibited for use of conveying fuel or gases to any heater or stove.
 - (c) Wood-burning or coal-burning stoves or fireplaces must meet the approval of the Fire Marshal.
 - (d) Vent pipes of heating appliances passing through a roof or side wall of trailers or manufactured homes must have at least one inch of clearance and must be entirely surrounded by terra-cotta, asbestos or other approved type of thimble.
 - (e) No manufactured home court shall burn rubbish and trash unless an approved type of incinerator is used and is located not less than 50 feet from any building, structure or manufactured home, with the approval and under instruction of the Town Fire Marshal.
 - (f) Storage of Class 1 liquids (flash point below 100° F.) is prohibited.
 - (g) Storage of combustible material, such as hay, rags or junk, which may create a fire hazard is prohibited.
 - (h) Any connection to the Port Ewen Water District to supply a mobile home court must meet with the approval of the Water District Board of Commissioners.
- (3) Approval of location of units. The location and installation of all manufactured home units and manufactured home courts within the Town of Esopus shall meet with the approval of the Town Building Inspector, the Town Fire Marshal and the Ulster County Health Department.
- H. Waiver of provisions. Where any of the provisions of this section cannot be met due to unusual circumstances, the Zoning Board of Appeals may, at its discretion, waive any of the foregoing provisions of the section.

§ 123-15. Prohibited and restricted uses.

A. Amusement parks and circuses.

- (1) Amusement parks, circuses and related activities, as defined in § **123-61** of this chapter, shall be permitted only for a temporary period of time and only by special license by the Town Board.
- (2) Application for a license shall be accompanied by a site plan.
- (3) A decision on the license by the Town Board shall be made only after the application and site plan are referred to and a report received from the Town Planning Board, in accordance with the procedures in § **123-51A** and **B** of this chapter.

B. Junkyards, used motor vehicle parts (5015) and scrap and waste material (5093).

- (1) Junkyards, as defined in § **123-61** of this chapter, including scrap and waste dismantling yards which would be classified in SIC Industry Groups 5015 and 5093, are permitted only by a license issued by the Town Board.
- (2) Application for a license shall be accompanied by a site plan.

- (3) A decision on the junkyard license by the Town Board shall be made only after the application and site plan have been referred to and a report received from the Town Planning Board, in accordance with the procedures in § 123-51A and B of this chapter.

§ 123-16. Performance standards applicable in the LI and HI Districts.

- A. Fire and explosion hazards. All activities involving and all storage of flammable and explosive materials shall be provided, at any point, with adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire-suppression equipment and devices standard in the industry. Burning of waste materials in open fires is prohibited at any point. The relevant provisions of state and local laws and regulations shall also apply.
- B. Vibration. No vibration shall be produced which transmitted through the ground and is discernible without the aid of instruments at or beyond the lot line.
- C. Noise. The maximum sound pressure level radiated by any use of a facility (other than transportation facilities) at the property line shall not exceed the values tolerable in a residential neighborhood, except by specific review and approval by the Planning Board.
- D. Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 on the Power's Micro-Ringelmann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954 (being a direct facsimile production of the standard Ringelmann Chart issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 2 on said chart may be emitted for four minutes in any 30 minutes. These provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an apparently equivalent opacity.
- E. Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable at the property line.
- F. Fly ash, dust, fumes, vapors, gases and other forms of air pollution. No emission shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling at any point on the property of others.
- G. Electromagnetic radiation. The following standards shall apply: It shall be unlawful to operate or cause to be operated any planned or intentional sources of electromagnetic radiation which do not comply with the current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation, except that for all governmental communications facilities, governmental agencies and government owned plants, the regulations of the Interdepartment Radio Advisory Committee shall take precedence over the regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation. Further, said operation in compliance with the Federal Communications Commission or the Interdepartment Radio Advisory Committee regulation shall be unlawful if such radiation causes an abnormal degradation in performance of other electromagnetic radiators or electromagnetic receptors of quality and proper design because of proximity, primary field, blanketing, re-radiation, harmonic content, modulation or energy conducted by power or telephone lines. The determination of abnormal degradation in performance and of quality and proper design shall be made in

accordance with good engineering practices as defined in the latest principles and standards of the American Institute of Electrical Engineers, the Institute of Radio Engineers and the Electronic Industries Association.

- H. Radioactive radiation. No activities shall be permitted which emit dangerous radioactivity at any point beyond the property line. The handling of radioactive materials, the discharge of such materials into air and water and the disposal of radioactive wastes shall be in conformance with the regulations of the Nuclear Regulatory Commission, as amended, and all applicable regulations of the State of New York.
- I. Heat. For the purpose of this chapter, "heat" is defined as thermal energy of a radioactive, conductive or convective nature. Heat emitted at any or all points shall not at any time cause a temperature increase on any adjacent property in excess of 10° F, whether such change is in the air or the ground, in a natural stream or lake or in any structure on such adjacent property.
- J. No direct or sky-reflected glare. No glare shall be permitted, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise.
- K. Liquid or solid wastes. No discharge shall be permitted at any point into any public sewer, private sewage disposal system or stream or into the ground, except in accord with standards approved by the State Departments of Health and Environmental Conservation, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. There shall be no accumulation of solid wastes conducive to the breeding of rodents, insects or other vermin.

§ 123-17. Route 9W Overlay District.

- A. Applicability. The Route 9W Overlay District is superimposed over nonresidential districts located along Route 9W. All provisions of the underlying districts regarding use, bulk and area shall remain in effect unless specifically superseded by the regulations of the overlay district. In addition, the following regulations shall also apply.
- B. Standards.
 - (1) New development in the LI District south of Cross Street shall maintain twenty-five-foot deep landscaped or natural buffer along the Route 9W frontage, except for driveways and one sign.
 - (2) Following enactment of this section, no new lot with a width of less than 100 feet shall be created via subdivision of an existing lot.
 - (3) The following uses shall not be permitted south of the northerly intersection of Ulster Avenue and Route 9W, except upon approval of a special use permit by the Planning Board in accordance with §§ **123-46** and § **123-47** hereof:
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (a) Laundromats or dry cleaning establishments.
 - (b) Theaters, bowling alleys, billiard halls and other commercial recreation establishments.
 - (c) Wholesaling, storing and warehousing, including building contractors and building supply and lumber yards.

District	Minimum Lot Requirements ²			Minimum Yard Requirements ²			Maximum Height (feet)	Maximum Coverage (% of site area)
	Area (square feet)	Width (feet)	Depth (feet)	Front (feet)	Side (feet)	Rear (feet)		
Central S and W ¹	12,500	100	100	30	15	30	35	30%
Central S or W ¹	25,000	100	100	30	15	30	35	17.5%
No S or W ¹	40,000	100	150	40	20	35	35	15%
NC ³	20,000	100	100	20	20	30	35	20%
BC ³	5,000	50	--	4	10	20	35	50%
GC ³	40,000	150	150	40	20	50	35	20%
LI	2 acres	200	200	30	50	50	35	20%
HI	10 acres	500	500	100	100	100	50	20%
W	--	100	--	20	20	20	35	--
WR	--	100	--	20	20	20	15	--

NOTES:

¹ S = Sewer; W = Water.

² See § 123-21B, C, D, E and F for further regulations governing lot size, yards and similar requirements.

³ Lot area and dimensions for residences shall be as required in the R-12 District.

⁴ The front yard shall be the average setback of all structures within the same block front on the same side of the street.

§ 123-21. Supplementary regulations on area and bulk.

- A. Height exceptions. The height limitations of this chapter, as shown on the Area and Bulk Schedule, shall not apply to the following structures, subject to Subsection **A(1)** and **(2)** of this section: church spires, belfries, cupolas and domes not used for human occupancy; chimneys, ventilators, skylights, water tanks, bulkheads and other necessary mechanical appurtenances usually carried above the roof level; parapet walls or cornices, provided that they do not exceed the height limit by more than 10 feet; radio or television antennas accessory to a residential use, public utility transmission towers or cable.
- (1) No such structure shall, in its aggregate coverage, occupy more than 10% of the roof area on which it is located or 5% of the lot area, if freestanding.
 - (2) Any such proposed structure exceeding 50 feet in height shall be permitted only by special permit issued by the Planning Board.
 - (3) Where the lot has frontage on two or more streets or other public rights-of-way, the height limitation on a nonresidential building shall apply only as measured from the curb level along the street with the higher elevation above sea level.
- B. Transition requirements for district boundaries.

- (1) Where a lot in a GC or LI District abuts a lot in a residential district, there shall be provided a yard of at least 100 feet in width in the nonresidential district. In said yard, a strip at least 50 feet wide abutting the residential district shall be kept free of roadways, parking or storage of any materials or goods and shall be suitably landscaped.
- (2) A lot in an HI District shall be surrounded on all sides which abut a lot in any other district by a yard of at least 150 feet in width, of which at least 100 feet adjacent to such other district shall be maintained as a landscaped buffer.

C. Standards for yards and accessory buildings.

(1) Corner lots.

- (a) On a corner lot, each side which abuts a street shall be deemed a front lot line. Of the remaining yards, one shall be determined to be the required side yard and one the required rear yard, at the discretion of the owner.
- (b) On a corner, no obstruction to vision more than two and one-half feet in height above street grade shall be erected, placed or maintained within the triangular area formed by the intersecting street lines of such lot and a straight line joining points along such street lines 15 feet distant from their point of intersection.

(2) Front yard measurement.

- (a) The required front yard shall be measured from the abutting right-of-way or street line, except that, where such street right-of-way or street parcel is less than 50 feet in width, the required front yard shall be measured from a line 25 feet from and parallel to the center line of the abutting street parcel or right-of-way.
- (b) No proposed one- or two-family dwelling shall be required to have a setback greater than the average setback of the two existing dwellings with the greatest setbacks within 200 feet on each side of the said proposed dwelling, on the same side of the street, within the same block and the same district.

(3) Yards adjacent to waterways. Unless superseded elsewhere in this chapter, a principal structure shall be set back from the Hudson River, the Rondout Creek or any protected stream, lake or water body by a distance equal to twice the required front yard in the district in which it is located. However, in the W and WR Districts, buildings or structures whose function requires a location at or nearer the water's edge shall not be bound by any yard requirement.

(4) Double frontage. For any through lot, fronting on parallel or abutting streets, both frontages shall comply with the front yard requirements of the district in which it is located.

(5) Accessory buildings.

- (a) An accessory building may be located in any required side or rear yard, provided that:
 - [1] Such building shall not exceed 15 feet in height.
 - [2] Such building shall be set back five feet from any lot line and shall not be located less than 10 feet from the principal building.

[3] All such buildings in the aggregate shall not occupy more than 30% of the area of the required rear or side yard.

(b) Accessory buildings constructed at the same time may be located in pairs or groups in the required rear or side yard along the common side lot line or rear lot line of contiguous lots.

(c) An accessory building on that portion of a lot not included in any required yard shall conform to the height regulations for principal buildings.^[1]

[1] *Editor's Note: Former Subsection C(5)(d), which stated that no accessory building should project nearer to the street on which the principal building fronts than such principal building, unless an exception was authorized by the Planning Board, and which immediately followed this subsection, was deleted 11-19-2009 by L.L. No. 11-2009.*

(6) Recreational vehicles. Recreational vehicles may be stored on any occupied lot in any residence district, provided that such vehicles are not occupied and are not stored within any required front yard of such lot. The Zoning Enforcement Officer may grant permission to park a recreational vehicle in the required front yard upon a determination that the location of buildings on the site, topography or other physical limitations render other alternatives infusible.

(7) Encroachments in required yards. The space in any required yard shall be open and unobstructed except as follows:

(a) Window sills, bay windows, cornices, eaves and other similar architectural features shall be permitted to project no more than four feet.

(b) Fences or walls not over 6 1/2 feet in height may be erected anywhere on the lot, except within the sight triangle described in § **123-21C(1)(b)**. Fences or walls with a height in excess of 6 1/2 feet but less than 15 feet shall comply with the standards for accessory structures, and those in excess of 15 feet high shall conform to the requirements set forth herein for principal buildings.

(c) Paved areas, other than such as are needed for access to the lot, shall not project within five feet of a street line or one foot of a lot line.

(d) A roofed-over, but unenclosed, projection in the nature of an entry or portico, not more than eight feet wide and extending not more than six feet out from the front wall of the building shall be exempt from front yard requirements when the building otherwise complies with all other yard requirements.

(e) Open decks may extend into a required rear yard so long as no part of such deck is closer than 15 feet to a lot line. The deck surface shall be no more than three feet above the average grade of the land around its perimeter, and any sides or railings shall be no higher than four feet above the deck surface.

(8) Waiver of yards. No side yard or rear yard shall be required in the LI, HI and W Districts, where such yard abuts an operating railroad right-of-way.

D. Flag lots. The creation of flag lots, as defined in § **123-61** of this chapter, is permitted in accordance with the standards listed below, in addition to the standards of Chapter **107**, Subdivision of Land and other applicable regulations:

(1) Minimum lot area. The minimum area of a flag lot shall be at least 1 1/2 times the required minimum lot area set forth in § **123-20** of this chapter. The area of an

access strip portion of the flag lot shall not be counted towards meeting the minimum lot area requirements.

- (2) Front yard setback. The required minimum front yard setback of a flag lot shall be measured not from the street line of the flag lot but from the interior front lot line.
- (3) Other yards and setbacks. All other yards and building setbacks shall be determined as provided for in §§ **123-20** and **123-61** of this chapter.
- (4) Access strip width. The minimum width of an access strip serving a flag lot shall be no less than 50 feet. The width of the access strip may not be reduced at any point along the entire length of the access strip.
- (5) Access strip length. The maximum length of the access strip shall be no greater than twice the required lot depth of the district in which the flag lot is located, except where the Planning Board determines that such a restriction is impractical or unwarranted.^[2]

[2] *Editor's Note: Former Subsection D(6), regarding spacing of flag lots, and which immediately followed this subsection, was deleted 11-19-2009 by L.L. No. 11-2009.*

E. Frontage and access.

- (1) Frontage. The minimum frontage of any lot may be less than the minimum width requirement of the district in which the lot is located, but in no case shall the frontage be less than either 1/2 of the minimum required lot width or 50 feet, whichever is greater.
- (2) Access. No building permit shall be issued for the construction or alteration of any building upon a lot without access to a mapped street or highway as stipulated in § 280-a of the New York State Town Law.
- (3) Open development. The Town Board may, by resolution, establish one or more open development areas within the town, as provided for in § 280-a of the New York State Town Law, wherein permits may be issued for the erection of structures to which access is given by right-of-way or easement, upon such conditions and subject to such limitations as may be prescribed by the Planning Board. The Town Board, before establishing any such open development areas, shall refer the matter to the Planning Board for its advice and shall allow the Planning Board a reasonable time to report.
- (4) Access approvals. Any proposed new access points for a lot or any existing access for a lot for which a change of land use is contemplated shall be reviewed and approved by either the New York State Department of Transportation, the Ulster County Department of Public Works or the Esopus Town Highway Department.
- (5) Driveways. No driveway shall provide access to a lot located in another district to serve a use which is not permitted in the district in which the driveway is located.

F. Minimum area requirements for residential and nonresidential uses on the same lot (mixed use occupancy).

- (1) In the RF-1, RF-2, R-40 and R-12 Districts, where a residential use and a permitted nonresidential use, other than a home occupation, are located on the same lot, the required lot area shall be the sum of the minimum required lot area for each such use as set forth in the Area and Bulk Schedule of Regulations.

- (2) In the NC, GC, BC, R-12 and R-40 Districts, where a residential and a permitted nonresidential use are located in the same structure, the required lot area shall be the larger lot area required for either use as set forth in the Area and Bulk Schedule Regulations.
- (3) In the NC, GC and BC Districts, where a residential and a permitted nonresidential use are located in separate structures, the required lot area shall be the sum of the minimum required lot area for each use as set forth in the Area and Bulk Schedule of Regulations.

§ 123-22. Average density development (cluster subdivision).

- A. Authority of Planning Board. In accord with the authority granted pursuant to § 278 of the Town Law, the Planning Board may, upon request, vary the zoning requirements as to lot size, width and yard requirements in connection with a proposed subdivision plat, subject to the standards and procedures contained below. The Planning Board is further authorized to require such modifications where it finds that it will be in the public interest to preserve significant natural features (such as wetlands, woods, drainage ways, waterfalls, streams, etc.) or important views or significant open spaces or recreation opportunities.
- B. Purposes. The purpose of modifications in accord with this section shall be to enable and encourage flexibility in design and development so as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open lands.
- C. Permitted uses. The permitted uses within a subdivision under this section shall be limited to those otherwise permitted in the zoning district in which it is located, including agricultural use and forest production.
- D. Development standards and controls. Except as specified herein, all development standards and controls otherwise applicable to residential subdivisions and uses shall also be applicable to a subdivision under this section.

(1) Number of lots or dwelling units.

- (a) The maximum permitted number of lots or dwelling units within an average density subdivision shall not exceed the number that would be achieved if the land were subdivided into lots conforming to the minimum lot size and density requirements applicable to the district in which the land is situated and all other applicable requirements. The maximum number of lots or dwelling units shall be determined as follows:

[1] The gross site area shall be reduced by 5% where a five acre lot is required, 10% where a 2 1/2 acre lot is required and 12.5% where a one acre lot is required to reflect the area that would be required for streets in a conventional subdivision.

[2] The area thus derived shall be further reduced by the area of any existing permanent easements which preclude development and 66% of the area of any designated state or federal wetland or one-hundred-year flood hazard area or slopes in excess of 20%

[3] The resulting net area shall be divided by the minimum required lot area in the district to derive the number of lots or dwelling units permitted.

- (b) As an alternate to the above formula, the applicant may submit a subdivision plat meeting all requirements of this chapter, the Land Subdivision Regulations, the Ulster County Health Department and any other applicable local, county state or federal law or regulation that demonstrates that a greater number of lots could be achieved.
 - (2) Average lot area.
 - (a) Under this section, lots may be reduced in area below the minimum lot size required in the district, provided that the average size of lots created in the subdivision is not less than the minimum required in the district.
 - (b) No lot shall have an area of less than one acre unless served by an approved central sewer and water system, in which case the area may be reduced to no less than 12,500 square feet.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (c) Land in the subdivision not proposed for building site development shall be set aside as permanent open space for common ownership and use by all lot owners in the subdivision, dedicated to and accepted by the Town or a land conservancy, or a homeowners association, if proposed, for use as a permanent open space or recreation area, or designated for permanent use for agricultural purposes or forest production. The area of such land may be included to determine the average lot size. All land designated as open space is to be served as such in accordance with the provisions of Subsection F below.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (3) Lot dimensions. All lots shall comply with the minimum requirements of the Area and Bulk Schedule for the R-40 District unless served by a central water and/or sewer system.
- E. Review critical. In acting on a proposed plan, the Planning Board shall give particular consideration to the following criteria.
- (1) That the proposed subdivision will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.
 - (2) That individual lots, buildings and streets are designed and situated to minimize alteration of the natural site features to be preserved.
 - (3) That any open space to be preserved includes irreplaceable natural features located in the tract (such as, but not limited to stream beds, significant stands of trees, individual trees of significant size and rock outcroppings) to the maximum extent feasible.
 - (4) That the proposed subdivision will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, water and sewer systems.
- F. Preservation of permanent open space. Land set aside as permanent open space shall be defined, described, and deeded as a single parcel of land, and further shall be protected by legal arrangements which are determined by the Planning Board, with the advice of the Town Attorney, to be sufficient to assure its maintenance and preservation as permanent open space.
[Amended 11-19-2009 by L.L. No. 11-2009]

- G. Prohibition to subdivide. The final plat shall include notation that any lot created under the provisions of this section, including permanent open space, shall not be resubdivided.
- H. Required use of average density procedures. The Planning Board may require that a proposed subdivision plat be modified in accordance with the provisions of this section when it finds that one or more of the following conditions exist:
 - (1) The site contains a designated wetland.
 - (2) Any portion of the site is within the one-hundred-year flood hazard area.
 - (3) The site is within an agricultural district certified pursuant to the Agricultural and Markets Law or includes soils classified within Soil Groups 1 through 4 of the New York State Land Classification System or is being used for forest production in accord with § 480-a of the Real Property Tax Law.
 - (4) The site is located over a primary, principal or sole source aquifer.
- I. Procedures. Any residential development under the provisions of this section shall be subject to applicable procedures, standards and requirements of Chapter 107, Subdivision of Land, of the Town of Esopus.

§ 123-23. (Reserved)

§ 123-24. Off-street parking and loading standards.

Off-street parking and loading spaces shall be provided at the time a new use is established through construction of a new building or alteration or conversion of an existing building, in accord with the following standards and regulations:

- A. Off-street parking.
 - (1) Required parking spaces. Off-street parking spaces shall be provided as follows, except where specifically waived in § 123-24A(2)(g) below:

Type of use	Minimum Number of Parking Spaces
Residential and Related Uses	
One-family residences	2 for each dwelling detached unit
Row houses, two-family and multifamily residences	2 for each dwelling unit
Religious facilities	1 for every 5 seats
Places of public assembly, clubs and fraternal organizations and recreation facilities	1 for every 4 seats in the largest hall or meeting area or for every four members, which- ever is greater
Cultural facilities	1 for every 500 square feet of gross floor area
Hospital	1 for every 2 beds
Convalescent home	1 for every 4 beds
Tourist home	1 for every 2 beds

Type of use	Minimum Number of Parking Spaces
Residential and Related Uses	
Home occupation	1, plus 1 additional for any nonresident employee in addition to those spaces required for residential use
Day-care center or nursery school	1 per staff member plus 1 per classroom.
Commercial and Related Uses	
Banks	3 for each teller or service window
Retail stores or service establishments	1 for each 200 square feet of gross floor area
Convenience stores	1 for each 150 square feet of gross floor area, plus 1 for every 2 seats for in-store food service
Professional or business offices	1 for each 250 square feet of gross floor area
Medical and dental offices	4 per doctor or dentist plus 1 for each additional employee
Restaurants and bars	1 for every 3 seats or 100 square feet of gross floor and bar area, whichever greater
Theaters and similar places of public assembly or recreation activity	1 for every 4 seats or participants or 100 square feet of gross floor area, whichever is greater
Undertakers	1 for each 3 seats provided under maximum occupancy
Hotel and motel	1 per guest room, plus 1 for every 3 employees
Heavy Commercial and Industrial Uses	
Wholesale, storage and warehousing	1 for every 2,500 square feet of gross floor area
Light assembly, general industrial and similar uses	1 for each 400 square feet of gross floor area
Automotive sales and repair	1 for each 200 square feet of sales area and 1 for each 500 square feet of service area
Other industrial or heavy commercial uses	1 for each 500 square feet of of gross floor area

(2) Supplementary parking regulations.

- (a) Areas computed as parking spaces. Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than a street or a driveway. However, a driveway within a required front yard for a one-family or two-family residence may count as one parking space.

- (b) Size of spaces. Minimum parking stall width shall be nine feet, the minimum length shall be 18 feet.
- (c) Access. Unobstructed access to and from a street shall be provided. Such access shall consist of at least one ten-foot lane for parking areas with less than 20 spaces and at least two ten-foot lanes for parking areas with 20 spaces or more. No entrance or exit for any off-street parking area shall be located within 50 feet of any street intersection, except for one- and two-family residences.
- (d) Drainage and surfacing. All open parking areas shall be properly drained, and all such areas shall be provided with an approved dustless surface, except for parking spaces accessory to a one-family or two-family residence.
- (e) Joint facilities. Required parking spaces, open or enclosed, may be provided in spaces designed to serve jointly two or more establishments, whether or not located on the same lot, provided that the number of required spaces in such joint facilities shall be not less than the total required for all such establishments.
- (f) Ownership. Required accessory parking spaces, open or enclosed, shall be provided upon the same lot as the use to which they are accessory. However, upon approval by the Planning Board, such spaces may be provided on a separate site, provided that all spaces are located within three-hundred-foot walking distance of the lot on which the use is located. In all cases, such parking spaces shall conform to the regulations of the district in which the parking spaces are located, and in no event shall such parking spaces be located in any residence district unless the uses to which the spaces are accessory are permitted in such residence district. Such off-site spaces shall be in the same ownership as the property to which they are accessory and shall be subject to deed restriction, approved by the Planning Board, binding the owner and his heirs and assigns to maintain the required number of spaces available, either throughout the existence of such use to which they are accessory or until such spaces are provided elsewhere.
- (g) Waiver of parking requirements. Off-street parking requirements may be waived, in part, in the following cases:
 - [1] Housing for the elderly. Where housing is designed specifically for and occupied by persons 62 years of age or older, required off-street parking may be reduced to one space for every two dwelling units.
 - [2] Joint use of spaces. In the case of two or more uses located on the same lot, the sum of the space required for all uses individually may be reduced to an amount no less than 125% of the largest number of spaces required by any single use, upon a determination by the Planning Board that such a reduced amount of parking space will be adequate to serve all uses on the lot due to their different character and hours of operation.
 - [3] Preexisting uses. Structures and uses in existence as of the effective date of this chapter shall not be subject to the parking requirements herein. However, if the parking spaces serving such structure or use are less than would be required by this chapter, they shall not be reduced; and, if the structure or use is expanded, additional parking spaces in the appropriate amount required in Subsection **A(2)(a)** above shall be provided to serve such expanded area.

(h) Location of parking spaces.

- [1] In any residential district, no open or enclosed parking area for five or more vehicles shall encroach on any required front yard. Parking areas may extend into a required side or rear yard to within 10 feet of a side or rear lot line.
- [2] In Business and Industrial Districts, open parking areas shall not extend within 10 feet of a street or right-of-way line or within 15 feet of a property line in a residential district.

(i) Screening and landscaping of parking areas.

- [1] Parking areas of five or more cars which are adjacent to or across the street from properties in a Residential District shall be screened from the view of such properties by a combination of walls, fences or hedges.
- [2] All areas in a parking lot not required for parking space or access drives shall be suitably landscaped and maintained. A landscaping plan for parking areas shall be submitted for those uses requiring site plan review by the Planning Board.

(j) Commercial vehicles. The following regulations shall apply only to commercial vehicles as defined in Subsection **A(2)(j)[1]** below:

- [1] The term "commercial vehicle" shall include any vehicle with a gross vehicle capacity of more than 15,000 pounds used to transport people, goods or materials as part of a business or service and shall include such equipment as bulldozers, backhoes, etc. The term "commercial vehicle" shall not apply to a pickup truck or van with a gross vehicle capacity of less than 15,000 pounds.
- [2] Commercial vehicles may be parked regularly on a lot in any residence district subject to the following:
 - [a] The vehicle must be owned and/or regularly operated by a permanent resident of a residence located on the same or an adjacent lot.
 - [b] Any person who has been lawfully parking a commercial vehicle in a residence district prior to enactment of this law may continue to do so and may replace any such vehicle in the future. Any additional vehicles parked in a residence district following enactment of this chapter shall be subject to the condition in Subsection A(2)(j)[2][a] above.
- [3] Farm vehicles are permitted as accessory to a farm use in any residence district and are not subject to the above requirements.
- [4] This section shall not apply to the temporary or occasional parking of delivery or service vehicles in the course of performing their normal duties for a resident of the property.
- [5] This section shall not be deemed to permit the operation or conduct of any commercial activity on a lot unless such activity has received all approvals required by this chapter.

- (k) General provisions. Commercial parking areas shall be reserved for the parking of vehicles for customer or employee use. There shall be no servicing or dismantling of automobiles or other vehicles, and no part of any parking lot shall be used for the sale, storage or abandonment of any articles or goods. This provision shall in no way apply to any customary vehicle maintenance carried out by a resident at his or her residence.

B. Off-street loading.

- (1) Required loading facilities. Off-street loading facilities shall be provided as follows:

Use	Minimum Number of Loading Berths
Undertaker	1 for each chapel
Hotels and motels	1 for each 25,000 square feet of gross floor area in excess of 10,000 square feet
Retail stores, service establishments, restaurants and other nonresidential uses not listed elsewhere	1 for the area between 5,000 15,000 square feet and 1 for each additional 25,000 square feet of gross floor area
Wholesale establishments	1 for each 10,000 square feet of gross area
Industrial and manufacturing uses	1 for the area between 5,000 and 10,000 square feet and 1 for each additional 25,000 square feet of gross floor area

- (2) Location and dimensions of loading berths.

- (a) All off-street loading berths shall be located on the same lot as the use for which they are required.
- (b) Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area or accessway.
- (c) No loading berth shall be located within 50 feet of a property line in a residential district or within 10 feet of any other property line.
- (d) Each loading berth shall be at least 35 feet long, 12 feet wide and 14 feet high (except that berths for undertakers may be 20 feet long, 10 feet wide and nine feet high).

§ 123-25. (Reserved)

Article VI. Enforcement and Administration

§ 123-26. Enforcement; penalties for offenses.

- A. Enforcement officer. It shall be the duty of the Zoning Enforcement Officer, who shall be appointed by the Town Board, to enforce the provisions of this chapter and of all rules, conditions and requirements adopted or specified pursuant thereto. The Building Inspector shall serve as the Zoning Enforcement Officer unless a different person is otherwise designated by the Town Board.

B. Powers and duties of the Zoning Enforcement Officer.

- (1) The Zoning Enforcement Officer or his duly authorized assistants shall have the right to enter any building or enter upon any land at any reasonable hour as necessary in the execution of his duties, provided that:
 - (a) The Zoning Enforcement Officer shall notify the owner and tenant 48 hours prior to conducting any inspection.
 - (b) The Zoning Enforcement Officer or his duly authorized assistants shall display identification signed by the Town Supervisor upon commencing an inspection.
 - (c) Inspections shall be commenced in the presence of the owner or his representative or tenant.
- (2) Upon determining that a violation of any provision of this chapter exists, the Zoning Enforcement Officer shall issue a written order for the proper remedying or compliance, within a reasonable period of time, of any condition found to be in violation thereof. In case of refusal of entry, the Zoning Enforcement Officer may obtain a warrant from a court of competent jurisdiction.
- (3) If an unlawful condition or use is found not to have been properly remedied or made to comply with the provisions of this chapter by the expiration of the reasonable time period granted by the Enforcement Officer, then the Enforcement Officer is empowered to immediately institute any appropriate action, charge or proceedings in the proper legal court for the prevention, cessation or discontinuance of any condition, use, occupancy or act in, on, of or around any building, structure or tract of land and for the prosecution of any owner, occupant or offender.
- (4) The Zoning Enforcement Officer shall maintain records, open to the public, of every complaint of a violation of the provisions of this chapter, as well as action taken as a result of such complaints.
- (5) The Zoning Enforcement Officer shall annually submit to the Town Board, for insertion in the Board minutes, a written report summarizing all complaints of violations and action taken as a result of such complaints.

C. Penalties for violations.

- (1) Violation of any provision or requirement of this chapter or violation of any statement, plan, application, permit or certificate approved under the provisions of this chapter shall be considered an offense punishable by a fine of not more than \$2,500 or imprisonment for a period not to exceed six months, or both.
- (2) Notice of continuing violation.
 - (a) If a violation continues after notification that such violation exists, it shall constitute a separate offense in accord with the following schedule:
 - [1] First notice: 30 days.
 - [2] Second notice: two weeks.
 - [3] Third notice: one week.
 - [4] Additional notices: one day.

- (b) Such notice shall be written by the Zoning Enforcement Officer and shall be served by certified mail or by personal service.
- (3) The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceeding to prevent an unlawful erection, construction, alteration, repair, conversion, maintenance or use or to restrain, correct or abate a violation or to prevent the illegal occupancy of a building, land or premises.

§ 123-27. Building permits.

[Amended 11-19-2009 by L.L. No. 11-2009]

No building in any district shall be erected, reconstructed, restored, or structurally altered, nor shall there be any physical disturbance and alterations of the site, including, but not limited to filling, cutting and excavations, and clearing of vegetation, without a building permit duly issued upon application to the Building Inspector, in accord with Chapter **56** of the Town Code.

- A. Every application for a building permit shall be submitted on forms issued by the Building Inspector and shall contain the data and plans required and be accompanied by the fee established therefor by the Town Board.
- B. No building permit shall be issued for any building where the site development plan of such building is subject to approval by the Planning Board, except in conformity with the plans approved by said Board.
- C. No building permit shall be issued for a building to be used for any conditional use in any district where such use is allowed only by approval of the Planning Board unless and until such approval has been duly granted by the Planning Board.

§ 123-28. Certificates of occupancy.

- A. The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Building Inspector in accord with Chapter **56** of the Town Code:
 - (1) Occupancy and use of a building erected, reconstructed, restored, structurally altered or moved or any change in use of an existing building.
 - (2) Occupancy, use or any change in the use of any land.
 - (3) A change in use of a nonconforming use.
- B. No certificate of occupancy shall be issued for any conditional use of a building or of land requiring conditional use approval by the Planning Board or for any land or use requiring site development plan approval by the Planning Board unless and until such conditional use or site development plan approval has been duly granted by the Planning Board. Every certificate of occupancy for which conditional use or site development plan approval has been granted or in connection with which a variance has been granted by the Zoning Board of Appeals shall contain a detailed statement of any condition to which the same is subject.
- C. On a form furnished by the Building Inspector, application for a certificate of occupancy for a new building or for an existing building which has been altered shall be made after the erection of such building or part thereof has been completed in

conformity with the provisions of this chapter and, in the case of a new building, shall be accompanied by an accurate plot plan or, if not available, by a survey proposed by a licensed land surveyor or engineer showing the location of all buildings as built. Such certificate shall be issued within 10 days after receipt of the properly completed application, but only provided that the application states that all requirements of all other applicable codes or ordinances in effect are complied with.

- D. If the proposed use is in conformity with the provisions of this chapter and of all other applicable codes and ordinances, a certificate of occupancy for the use of vacant land shall be issued by the Building Inspector within 10 days after receipt of a properly completed application. If a certificate of occupancy is denied, the Building Inspector shall state the reasons in writing to the applicant.
- E. In regard to those uses which are subject to the performance standards procedure, the following requirements shall also apply:
 - (1) Any normal replacement or addition of equipment and machinery not affecting the operations or the degree or nature of dangerous and objectionable elements emitted shall not be considered a change of use.
 - (2) After occupancy, if there occur continuous or frequent, even though intermittent, violations of the performance standards and other provisions for a period of five days, without bona fide and immediate corrective work, the Building Inspector shall suspend or revoke the occupancy permit of the use, and the operation shall immediately cease until it is able to operate in accordance with these regulations, at which time the occupancy permit shall be reinstated.
 - (3) The Building Inspector shall investigate an alleged violation of the performance standards, and, if there are reasonable grounds to believe that a violation exists, he shall investigate the alleged violation and for such investigation may, with the approval of the Town Board, employ qualified experts. A copy of said findings shall be forwarded to the Town Board. The services of any qualified experts employed by the Town to advise in establishing a violation shall be paid by the violator if it shall be determined that a violation is proved and otherwise by the town. No new certificate of occupancy shall be issued unless such charges have been paid to the town.

§ 123-29. Fees and costs.

- A. Statement of intent.
 - (1) The Town of Esopus can incur significant expenses in the operation of the Town Board, Planning Board, the Zoning Board of Appeals and the office of the Building Inspector.
 - (2) These expenses include, but are not limited to, administrative, legal and technical review costs, as follows:
 - (a) Administrative costs include, but are not limited to, processing applications, consultations among municipal officers and officials regarding the facts and circumstances of the application, the preparation of hearing notices, the publication of hearing notices, providing notice to other governmental agencies, the preparation of affidavits of posting and publication, the preparation and maintenance of official records regarding the application and municipal officials at public hearings, the processing of resolutions and determinations, filing fees and miscellaneous services and disbursements.

- (b) Legal costs include, but are not limited to, application review, the review and analysis of applicable zoning law provisions, the review and analysis of applicable subdivision regulations, the preparation of hearing notices, attendance at meetings and public hearings, the preparation of resolutions and determinations, the preparations of SEQR determinations, the review of bonds for public improvements, the review of offers of dedication, the review of deeds and miscellaneous services disbursements.
 - (c) Technical review costs include the review of plans at various stages, the analysis of layout and public improvements, the preparation of reports, design analysis, the review of environmental assessments, inspection fees, the preparation of improvement costs estimates, the examination of property descriptions and miscellaneous services and disbursements.
- (3) When these expenses are occasioned in connection with an appeal, application or petition made by an applicant to the Town or an instrumentality of the town, then it is proper and in the public interest for the applicant to bear the cost of these expenses.

B. Types of fees.

- (1) Applications and petitions. A fee shall accompany any application or petition to the following Town agencies and officials listed below. Such application fee shall be in accord with a fee schedule adopted, and as may be subsequently amended, by resolution of the Town Board. Said schedule shall be maintained by the Town Clerk.
- (a) Planning Board. Fees are established for the following Planning Board matters:
 - [1] Subdivision of land applications.
 - [2] Site plan applications.
 - [3] Special use permit applications.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (b) Town Board. Fees are established for the following Town Board matters:
 - [1] Petitions to amend the Zoning Regulations.
 - [2] Petitions to amend the Zoning Map.
 - [3] Licenses to operate manufactured home courts, dumps and/or circuses.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - [4] Approval of a temporary manufactured home.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (c) Zoning Board of Appeals. Fees are established for the following Zoning Board of Appeals matters:
 - [1] Area variance applications.
 - [2] Use variance applications.
 - [3] Requests for interpretation of the Zoning Law.

- (d) Building Inspector. Fees are established for the following activities of the Building Inspector:
 - [1] Building permit applications.
 - [2] Certificate of occupancy applications.
 - [3] Sign permit applications.
- (2) Additional fees for certain planning and zoning reviews. For certain applications the Planning Board, Town Board and Zoning Board of Appeals will require professional expert resources in order to make final determinations on said applications. The costs of these professional resources shall be borne by the applicant. The standards and criteria for imposition of such additional fees, and the manner in which such fees are to be paid, shall be in accord with Chapter 71 of the Town of Esopus Code (L.L. No. 3-1991), A Local Law to Compensate the Town of Esopus for the Cost of Certain Planning and Zoning Reviews, and any amendments thereto.
- (3) Environmental impact statement review. In the event that the proposed action has been determined by a Town agency acting as lead agency to have a potential significant effect upon the environment, as provided for in § 617 of the New York Code of Rules and Regulations (SEQR), and an environmental impact statement must then be prepared and submitted, the applicant shall pay the reasonable fees, disbursements and/or cost incurred by professional experts in the course of review of said environmental impact statement.
- C. Reacquaintance fees. Whenever an extension is necessary to prevent an approval from lapsing, as specified in this law, or becoming otherwise void, the first such request for an extension shall be processed at no charge, and the second and each subsequent request for an extension shall be processed only upon prior payment of the fees established by resolution by the Town Board.
- D. Abatement not to be granted. No abatement of fees shall be granted as a result of an applicant's seeking more than one approval or submitting more than one application in connection with a particular project.
- E. Amendments to approved plans to be deemed new applications. Whenever an application is submitted to amend an approved plan or permit, it shall be deemed a new application, and the fees specified pursuant to this section shall apply.

Article VII. Nonconforming Uses, Buildings and Lots

§ 123-30. Applicability; nonconforming uses.

- A. The following provisions shall apply to all buildings and uses existing on the effective date of this chapter which do not conform to the requirements set forth in this chapter and to all buildings and uses that become nonconforming by reason of any subsequent amendment to this chapter.
- B. Continuation of nonconforming uses. Any nonconforming use of buildings or open land may be continued indefinitely but shall not be:
 - (1) Enlarged, altered, extended, reconstructed or restored (except as provided in this subsection or as provided in § 123-33) or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter,

nor shall any external evidence of such use be increased by any means whatsoever.

- (2) Moved to another location where such use would be nonconforming.
- (3) Changed to another nonconforming use without approval by the Zoning Board of Appeals and then only to a use which, in the opinion of the Board of Appeals, is of a similar nature or one which is more in character with surrounding conforming uses than the existing use.

C. Discontinuance and reestablishment of nonconforming uses.

- (1) Any building or land used for or occupied by a nonconforming use which is discontinued and changed to or replaced by a conforming use shall not thereafter be used for or occupied by a nonconforming use.
- (2) Any nonconforming use of land and/or of buildings with less than 200 square feet of floor area, which is discontinued for a period of more than one year, shall thereafter be replaced only by a use which conforms to the regulations of the district in which the land is located.
- (3) Any nonconforming use occupying a building with a floor area of more than 200 square feet, which is discontinued for a period of more than five years, shall thereafter be replaced only by a use permitted in the district in which the building is located; except that, upon approval of a special use permit by the Planning Board in accord with the provisions of § **123-46**, the building may be used for a similar or more restricted use. The Board shall consider, in addition to the criteria set forth in § **123-46**, the size, condition and adaptability of the building to other uses in arriving at its decision
[Amended 11-19-2009 by L.L. No. 11-2009]
- (4) A building housing a nonconforming use which sustains damage or destruction by any cause may be repaired or reconstructed, so long as the nonconforming use is not increased or expanded, if all necessary building permits are obtained within two years and reconstruction is fully completed within four years. If discontinued for longer than four years, the use shall thereafter be replaced only by a use permitted in the district in which the property is located or changed to another nonconforming use as provided in Subsection **C(3)** above.
- (5) If the discontinuance or reconstruction referred to in Subsection **C(3)** or **(4)** above is the result of or is prolonged by legal proceedings involving the property, its tenants or its owners, the reestablishment period shall be extended until two years after the date of settlement or final determination of all legal proceedings.

§ 123-31. Nonconforming buildings.

- A. Buildings and structures which are only nonconforming in bulk may be altered, moved, reconstructed or enlarged, provided that such change does not extend beyond that part of the existing structure which causes the nonconformity or create any new, nonconforming bulk in such building and does not violate any other provisions of this chapter.
- B. A building which is nonconforming in terms of bulk or setback, which sustains damage or destruction by any cause may be repaired or reconstructed, so long as the nonconformity is not increased or expanded, if all necessary building permits are obtained within two years of such damage or destruction. If such reconstruction has

not been fully completed within four years, the provisions of § **123-30C** above shall apply. In the case of an undersized lot, the provisions of § **123-34** below shall apply.

§ 123-32. Maintenance and repairs.

Notwithstanding any of the above regulations, nothing in this section shall be deemed to prevent normal maintenance and repair of any use or building or the carrying out upon the issuance of a building permit of major structural alterations or demolitions necessary in the interest of public safety.

§ 123-33. Enlargement of floor area.

[Amended 11-19-2009 by L.L. No. 11-2009]

All nonconforming uses can be enlarged by up to 100% of the floor area of existing buildings only if a permit for expansion of the nonconforming use is granted by the Zoning Board of Appeals, following a public hearing, and if the Zoning Board finds that the expansion will comply with the general criteria set forth for special use permits, § **123-46C**, and will further comply with the bulk requirements of § **123-20** and the parking and loading requirements of § **123-24**.

§ 123-34. Existing undersized lots.

Nothing contained in this chapter shall prohibit development of any lot for which a map was filed or a deed recorded prior to the original adoption of this chapter (April 12, 1971) whose area and/or width are less than the specified minimum lot requirements of the law for the district in which it is located, and no variance shall be required, provided that:

- A. Such lot has an area of at least 5,000 square feet with a minimum width of 50 feet.
[Amended 11-19-2009 by L.L. No. 11-2009]
- B. Such lot may not be used for more than one dwelling unit.
- C. Such use satisfies all applicable requirements of the Town of Esopus and the Ulster County Health Department for potable water supply and sewage disposal facilities.
- D. All other bulk and yard requirements for that district are complied with to the maximum extent feasible.
- E. Such lot is located in the R-12 District and is served by central sewer and water.
[Added 11-19-2009 by L.L. No. 11-2009]

§ 123-35. Reduction in lot area.

No lot shall be reduced in area so that it creates a nonconforming bulk or use in violation of any regulations contained in this chapter.

§ 123-36. Exemption of lots on approved subdivision plats.

Any lot in a subdivision whose plat has been approved by the Town of Esopus Planning Board and property filed in the Office of the Ulster County Clerk prior to the passage of

this chapter and whose area and/or width are less than the specified minimum lot requirements of this chapter for the district in which it is located shall be considered as complying with such minimum lot requirements.

§ 123-37. (Reserved)

§ 123-38. (Reserved)

Article VIII. Board of Appeals

§ 123-39. Establishment; appointments; organization.

- A. Pursuant to the provisions of § 267 of New York State Town Law, the Town Board has appointed a Board of Appeals and shall designate its Chairman. No member of the Board of Appeals shall be a member of the Town Board or the Planning Board. Members of the Board of Appeals may receive compensation for their services as provided by the Town Board.
- B. A vacancy occurring for reason other than by expiration of a term shall be filled by the Town Board by appointment for the unexpired term only.
- C. The Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this chapter. Such rules, bylaws and forms shall not be in conflict with nor have the effect of waiving any provision of this chapter or any other law of the Town of Esopus.

§ 123-40. Powers and duties.

- A. The Board of Appeals is governed by and shall act in strict accordance with the procedures specified by Town law, this chapter and its own duly adopted rules, bylaws and forms. Upon proper request made in the form and manner prescribed by the Board and accompanied by a fee in accord with a schedule adopted by the Town Board, the Zoning Board of Appeals shall perform the following functions:
 - (1) Hear and decide any question properly brought before it involving the interpretation of any provision of this chapter.
 - (2) Hear and decide appeals from any decision, determination, act or failure to act of the Enforcement Officer and all matters properly referred to it by the Building Inspector.
 - (3) Hear and decide applications for variances to provisions of this chapter in accordance with § **123-44**.
- B. In exercising the above-mentioned powers and duties, the Board of Appeals may, in conformity with Town Law, reverse, affirm or modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as ought to be made in the case referred to it. To that end, the Board shall have all the powers of the Enforcement Officer from whom the appeal is made. The concurring vote of a majority of the Board of Appeals shall be necessary to

reverse any order, requirement, decision or determination of the Enforcement Officer or to decide in favor of the applicant any matter upon which such Board is required to pass.

§ 123-41. Public hearings.

The Board of Appeals, on due notice, shall hold a public hearing on every appeal and application for a variance referred to said Board or upon which it is required to pass under this chapter.

A. Notice.

- (1) Notice of each public hearing shall be published in a newspaper of general circulation in the Town of Esopus at least five days prior to such hearing. In addition, the Board of Appeals shall cause a notice of such hearing and an explanation of any change sought to be sent to the owners of all property adjacent to or directly across any street or right-of-way from the subject property. Such notices shall be sent to the last known address as shown on the most recent Town tax records and mailed at least five days prior to such public hearing.
- (2) At least five days before such hearing, the Board of Appeals shall mail notices thereof to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the county, metropolitan or regional planning agency, if the property affected by such appeal is within 500 feet any of the features specified in Article X, § 123-51, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in § 239-m, Subdivision 1, of the General Municipal Law.
- (3) The designated official for hearing notices for counties shall be the Clerk of the County Legislature. For cities, towns and villages, the designated official shall be the clerk of the municipality. In the case of state parks or parkways, the designated office shall be the Palisades Interstate Park Commission.

B. Findings and conclusions. Within 62 days after such public hearing and after considering the application, the Board of Appeals shall either grant or deny the request or appeal and make a written report on the findings and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board. Such decision shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof shall be mailed to the applicant.

§ 123-42. Interpretation of provisions.

The Board of Appeals shall, upon proper request, interpret any provision of this chapter about which there is uncertainty, lack of understanding or misunderstanding, ambiguity or disagreement, and shall determine the exact location of any zoning district boundary about which there may be uncertainty or disagreement.

§ 123-43. Appeals.

- A. Any person allegedly aggrieved by a decision, determination, act or refusal to act of the Enforcement Officer may, within 60 days of such decision, determination, act or failure to act, file an appeal with the Board of Appeals. Such request shall clearly state the decision, determination, act or failure to act of the Enforcement Officer from which the appeal is taken.
- B. Any appeal from a decision of the Enforcement Officer, properly filed with the Board of Appeals, shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the Board of Appeals that, by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life and property.
- C. The Board of Appeals shall have the power to grant a restraining order to stay all proceedings in furtherance of the action appealed from, over any action by the Enforcement Officer from whom the appeal is taken, upon notice to the Enforcement Officer and on due cause shown.

§ 123-44. Variances.

Where strict application of any of the requirements of this chapter would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of his land or building, but in no other case, the Board of Appeals shall have the power, in passing upon appeals, to grant a variance to any of the regulations or provisions of this Zoning Law relating to the area, bulk, construction or alteration of building or structures, or the use of land and buildings, so that the spirit of this chapter shall be observed; public health, safety and welfare secured; and substantial justice done. Application for such variance shall clearly state the specific provisions of this chapter from which a variance is sought, the special circumstances which allegedly justify such variance and the interpretation or ruling which is desired.

- A. Criteria for granting variances. A variance to the provisions of this chapter shall be granted by the Board of Appeals only as set forth below:
 - (1) Use variance. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
 - (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
 - (c) The requested use variance, if granted, will not alter the essential character of the neighborhood.
 - (d) The alleged hardship has not been self-created.
 - (2) Area variance. Prior to granting permission to waive the dimensional requirements applying to a parcel of land, the Board of Appeals shall consider the benefit to the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community. The Board shall consider:

- (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.
 - (b) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
 - (c) Whether the requested variance is substantial.
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - (e) Whether the alleged difficulty was self-created (which consideration shall be relevant, but not necessarily preclude the granting of the area variance).
- (3) For reasons fully set forth in the findings, the granting of the variance by the Board of Appeals shall be the minimum variance necessary.
- B. Conditions and compliance with law. In granting any variance, the Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The granting of a variance to any provisions of this chapter shall not obviate the necessity of complying in every other respect with the other provisions of this chapter.
- (1) All the provisions of this chapter relating to the Board of Appeals shall be strictly construed. Said Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein.
 - (2) Unless construction is commenced and diligently pursued within 12 months of the date of the granting of a variance, such variance shall become null and void.
 - (3) If an area variance has been granted for the purpose of subdivision and creation of a lot of nonconforming area, application for such subdivision must be made to the Planning Board within 12 months of the date the variance was granted, otherwise such variance shall become null and void.
 - (4) The granting of a variance shall not obviate the requirement that site plan approval be obtained from the Planning Board if such approval would normally be required.
 - (5) If the Building Inspector refers an applicant to the Zoning Board of Appeals for a variance, no building permit fee shall be paid at that time. If the variance is granted, then the building permit fee must be paid when the building permit is issued. If the variance is denied, no building permit fee shall be paid.
[Added 11-19-2009 by L.L. No. 11-2009]
- C. Referrals.
- (1) Referral to the Town Planning Board. At least 30 days before the date of a public hearing held in connection with any application for a variance submitted to the Board of Appeals, the Board of Appeals shall transmit to the Planning Board a copy of said application and shall request that the Planning Board submit to the Board of Appeals its advisory opinion on said application prior to the date of said hearing. Should the Planning Board fail to submit such report within the stipulated time, the Board of Appeals may proceed to make a determination.
 - (2) Referral to Ulster County Planning Board. Any application for a variance involving real property lying within 500 feet of any of the features listed under

Article X, § 123-51, shall be referred to the Ulster County Planning Board prior to final action in accord with §§ 239-l and 239-m of the General Municipal Law. The Board of Appeals shall not take action on the application until it has received comment from the Ulster County Planning Board or until 30 days has elapsed.

- D. When the Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or buildings and where said Board finds the same condition to apply generally to other land or buildings in the same neighborhood or zoning district, the Board of Appeals shall call this condition to the attention of the Town Board.

Article IX. Planning Board

§ 123-45. Powers and duties.

- A. In addition to those other powers and duties assigned to it by law, the Planning Board is hereby empowered to perform the following functions:
- (1) Issue conditional permits for those uses specifically listed as requiring such a permit in the Use Schedule^[1] in accord with the provisions of § 123-46 below.
[1] Editor's Note: See § 123-10.
 - (2) Review the site development plan for those uses requiring such review in accord with § 123-47 below.
 - (3) Review and submit advisory opinions concerning applications for variances and amendments to the Zoning Regulations, as required by this chapter.
- B. All resolutions or official actions of the Planning Board shall require the concurring vote of a majority of the entire Board.

§ 123-46. Special use permits.

[Amended 11-19-2009 by L.L. No. 11-2009]

Pursuant to an application, either directly or through the Building Inspector, the Planning Board is hereby authorized to issue a special permit only for a use specifically listed as requiring such permit in the district in which it is proposed, subject to the following regulations and procedures:

- A. Application. Each application for a special use permit shall be submitted in the number of copies and form prescribed by the Board, accompanied by a fee in accord with a schedule adopted by the Town Board and shall include the following data:
- (1) Site plan. Each application for special use permit shall be accompanied by a site plan and shall also constitute simultaneous application for site plan approval, in accord with § 123-47. The site plan must show those elements listed in § 123-47D which are relevant to the proposal and which would not cause an unusual hardship for the applicant to obtain, as determined by the Planning Board in the presubmission conference.
 - (2) Supporting documents.
 - (a) A project narrative report that describes or outlines the existing conditions of the site and the proposed development shall be submitted to supplement the sketch plan and location map. This information should include existing

data on land characteristics, available community facilities and utilities and data as to the number of dwelling units, amount of commercial floor area, number of employees, drainage and traffic assessments, protective covenants, easements and proposed utilities and improvements.

(b) The applicant shall also file a short environmental assessment form (short EAF) with the sketch plan, unless the Planning Board requests that a full environmental assessment form be submitted.

(3) Fees and costs. Each application for a special use permit shall be accompanied by all relevant fees, as specified in § **123-29**, to cover all review costs, including, but not limited to, those engineering, environmental, planning and legal analyses and filing.

B. Procedure.

(1) Presubmission conference. Prior to submission of an application for a proposed conditionally permitted use, the applicant or authorized representative shall meet in person with the Planning Board. The purpose of such conference shall be to discuss the proposed use or development in order to determine the scope and type of data, in the form of site plans and reports, to be submitted to the Planning Board in order for said Board to determine conformity with the provisions and intent of this chapter.

(2) Submission of application. Within six months following the presubmission conference, the special use permit application and related information, including, but not limited to, site plans, environmental assessment and impacts statements and technical studies, shall be submitted to the Building Inspector, in triplicate, at least 15 days prior to the Planning Board meeting at which approval is requested. If an application is not submitted within the six-month period, another presubmission conference may be required.

(3) Public hearing. The Planning Board shall schedule a public hearing to be held within 62 days of receipt of a complete application for a special use permit.

(4) Hearing notice. Notice of the public hearing shall be published once in the official newspaper of the Town, at least five days prior to the date of such hearing. In addition, the Planning Board shall cause a notice of such hearing and an explanation of the proposal to be mailed to the owners of all property adjacent to or directly across any street or right-of-way from the subject property. Such notice shall be sent to the owner's last known address as shown on the most recent Town tax assessment records and mailed at least five days prior to such hearing.

[Amended 1-25-2017 by L.L. No. 1-2017]

(5) Referral to County Planning Board. Any application for a special use permit involving real property lying within 500 feet of any of the features listed under Article X, § **123-51**, shall be referred to the Ulster County Planning Board prior to final action in accord with §§ 239-l and 239-m of the General Municipal Law. The Planning Board shall not make a decision until it has received comment from the Ulster County Planning Board or until 30 days have elapsed.

C. Decision and findings.

(1) Criteria for decisions. The Planning Board shall only approve the issuance of a special use permit if it finds that the following criteria have been met:

(a) That any specific standards set forth for the proposed use in § **123-13** have been satisfied and that the objectives for site plan review set forth in § **123-**

47 have been achieved.

- (b) That all proposed structures, equipment or material shall be readily accessible for fire and police protection and shall be adequately served by sewage disposal and water supply facilities and recreation facilities.
- (c) That the proposed use is of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- (d) That important natural features and sensitive environmental resources are protected to the maximum extent feasible and have been adequately addressed in accord with the State Environmental Quality Review (SEQR) Act.
- (e) That, in addition to the above, in the case of any use located in or directly adjacent to a residential district:
 - [1] The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous inconvenient or incongruous with said residential district or conflict with the normal traffic of the neighborhood.
 - [2] The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of screening and landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or diminish the value thereof.
- (f) That all proposed means of stormwater management, erosion and sediment control and site disturbance have been taken, and that the applicant's plan for same has been designed in accordance with the provisions of Chapter **106** of this Code and with the approval of the Town's Stormwater Management Officer. If an SWPPP is not required, the subdivision plan will include global positioning system (GPS) reference data for stormwater outfalls and permanent structures built in accordance with the New York State Stormwater Management Design Manual.
[Added 11-15-2007 by L.L. No. 9-2007]

(2) Findings and conclusions.

- (a) Within 62 days after the public hearing, unless the time has been extended by mutual consent of the applicant and the Planning Board, the Planning Board shall review its decision as to whether to issue the special use permit and shall make a written report setting forth its findings and conclusions and the basis for its decision.
- (b) The decision of the Board shall be filed with the Town Clerk within five days and a copy thereof mailed to the applicant.

(3) Time limit on validity of approval.

- (a) For special use permits that involve construction and/or demolition of buildings or structures, or renovations requiring a building permit, the

applicant must secure, within one year of the approval of the special use permit by the Planning Board, a building permit. If the applicant fails to secure a building permit within this time period, the special use permit approval shall become null and void, and the applicant must seek approval of a new special use permit from the Planning Board.

- (b) For approved uses not requiring construction, demolition of a building or structure, or renovations requiring a building permit, time limits relating to completion of site improvements, including but not limited to landscaping, screening, drainage, utilities and access improvements, shall be established as part of the approval of a site plan (see § **123-47E**) that is included within the approval of a special use permit [see § **123-46A(1)**], subject to conditions as provided for in § **123-46D**.

D. Additional conditions.

- (1) When issuing a special use permit, the Planning Board may attach such conditions and safeguards as it deems necessary to further the intent of these regulations and to protect the public interest.
- (2) Any use for which a special use permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.

§ 123-47. Site plan approval.

In all cases where this chapter requires approval of site development plans by the Planning Board, no building permit shall be issued by the Building Inspector except upon authorization of and in conformity with the plans approved by the Planning Board.

A. Effect of site development plan approval.

- (1) No building permit shall be issued for any structure covered by this section until an approved site development plan or approved amendment of any such plan has been secured by the applicant from the Planning Board and presented to the Building Inspector.
- (2) No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site development plan or approved amendment of any such plan.
- (3) Prior to final action, the Planning Board shall refer any matters involving any of the areas or features specified in Article X, § **123-51**, to the Ulster County Planning Board in accordance with § 239-m of the General Municipal Law.
- (4) Site plan approval shall not be required for the change of use or ownership of a permitted use to another permitted use in the district which has the same parking requirements as the original use.

- B. Objectives. In considering and acting upon site development plans, the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular and may prescribe appropriate conditions and safeguards as may be required in order that the result of its action may, to the maximum extent

possible, further the expressed intent of this chapter and the accomplishment of the following objectives in particular.

- (1) That proposed traffic accesses and ways are adequate but not excessive in number, adequate in width, grade, alignment and visibility, not located too near street corners or other places of public assembly and conform to similar safety considerations.
- (2) That adequate off-street parking and loading spaces are provided to prevent parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking lots.
- (3) That all parking and service areas are reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is in character with that generally prevailing in the neighborhood.
- (4) That all existing trees, wooded areas, watercourses and other natural features shall be retained to the maximum extent possible consistent with the development plan.
- (5) That all outdoor lighting is of such nature and so arranged as to preclude the diffusion of glare onto adjoining properties and streets.
- (6) That all drainage systems and the internal water and sewer systems are adequate and that all connections to Town systems are in accordance with Town standards.
- (7) That the site plan and building design accommodate the needs of the handicapped and are in conformance with state standards for construction concerning the handicapped.
- (8) That the site plan and building design consider the conservation of energy.
- (9) That all proposed signs are designed and installed in a manner that will not create a hazard to traffic flow or safety. Illumination of signs shall comply with the following standards:
[Added 11-19-2009 by L.L. No. 11-2009]
 - (a) Only white light may be used to externally illuminate a sign except in the case of neon tubing.
 - (b) The illumination from any sign shall not cause any reflection or glare upon a public street, highway, sidewalk or adjacent property.
 - (c) Except for clocks and customary time and temperature devices, no sign shall contain intermittent, moving or flashing illumination.
 - (d) Digitally illuminated signs that include or incorporate moving, scrolling or crawling text messages and/or full or partial motion video images and displays are not permitted, unless there is provided a minimum of 12 to 15 seconds of time allotted to each image or message displayed before the next image or message is displayed on the sign.

C. Procedure.

- (1) Presubmission conference. Prior to the submission of a site development plan, the applicant or authorized representative shall meet in person with the Planning

Board. The purpose of such conference shall be to discuss proposed uses or development in order to determine which of the site development plan elements listed in § **123-47D** shall be submitted to the Planning Board in order for said Board to determine conformity with the provisions and intent of this chapter.

- (2) Within six months following the presubmission conference, the site development plan and any related information shall be submitted to the Building Inspector, in triplicate, at least 15 days prior to the Planning Board meeting at which approval is requested. If a site plan is not submitted within the six-month period, another presubmission conference may be required.
 - (3) The Building Inspector shall certify on each site development plan or amendment whether or not the plan meets the requirements of all Zoning Law provisions, other than those of this section, regarding site development plan approval.
 - (4) The Building Inspector shall retain one copy and transmit two copies of the certified site development plan to the Secretary of the Planning Board at least seven days prior to the Planning Board meeting at which approval is requested.
 - (5) The Planning Board may hold a public hearing on the site plan if it determines that the matter is of wide public interest. If such a hearing is held, the provisions relating to public notice as required in § **123-46B(3)** and **(4)** for a special use permit shall be followed.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (6) The Planning Board shall act to approve or disapprove any such site development plan within 62 days after the public hearing or, if no hearing is held, within 62 days of the official submission date, unless the time has been extended by mutual consent of the applicant and the Planning Board. Failure to act within 62 days shall be deemed approval. Conditional approval or disapproval by the Planning Board shall include written findings upon any site development plan element found contrary to the provisions or intent of this chapter. In reviewing the application, the Planning Board may secure the advice or assistance of one or more expert consultants qualified to advise as to whether a proposed use will conform to the requirements of this chapter.
[Amended 11-19-2009 by L.L. No. 11-2009]
 - (7) Amendments to a site development plan shall be acted upon in the same manner as the approval of the original site plan.
 - (8) The Planning Board may require the posting of such performance guaranties as it deems necessary as a condition of site plan approval to ensure that site improvements, such as roadways, parking areas, drainage facilities, utility systems and landscaping, are satisfactorily completed in accord with approved plans.
- D. Site development plan elements. The applicant shall cause a site development plan map to be prepared by a civil engineer, surveyor, land planner, architect or other competent person. Site development plan elements shall include those listed below which are appropriate to the proposed development or use, as determined by the Planning Board in the presubmission conference.
- (1) Legal data.
 - (a) Lot, block and section number of the property, taken from the latest tax records.
 - (b) The name and address of the owner of record.

- (c) Name and address of the person, firm or organization preparing the map.
 - (d) Date, North point and written graphic scale.
 - (e) Sufficient description or information to define precisely the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.
 - (f) The locations, names and existing widths of adjacent streets and curblines.
 - (g) The locations and owners of all adjoining lands as shown on the latest tax records.
 - (h) Location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.
 - (i) A complete outline of existing deed restrictions or covenants applying to the property.
 - (j) Existing zoning.
- (2) Natural features.
- (a) Existing contours with intervals of five feet or less, based on a reference system satisfactory to the Board.
 - (b) Approximate boundaries of any areas subject to flooding or stormwater overflows.
 - (c) Location of existing watercourses, marshes, protected state and federal wetlands, wooded areas, orchards and vineyards, rock outcrops and other significant existing features.
- (3) Existing structures and utilities.
- (a) Location of uses and outline of structures drawn to scale on and within 100 feet of the lot line.
 - (b) Paved areas, sidewalks and vehicular accesses between site and public streets.
 - (c) Locations, dimensions, grades and flow direction of existing sewers, culverts and waterlines, as well as other underground and aboveground utilities within and adjacent to the property.
- (4) Proposed development.
- (a) The location of proposed buildings or structural improvements.
 - (b) The location and design of all uses not requiring structures, such as off-street parking and loading areas.
 - (c) The location, direction, power and time of use for any proposed outdoor lighting or public address systems.
 - (d) The location and plans for any outdoor signs.

- (e) The location and arrangement of proposed means of access and egress, including sidewalks, driveways or other paved areas; profiles indicating grading; and cross sections showing width of roadway, location and width of sidewalks and location and size of water and sewer lines.
- (f) Any proposed grading, screening and other landscaping, including types and locations of proposed street trees.
- (g) The location of all proposed waterlines, valves and hydrants and all sewer lines or alternate means of water supply and sewage disposal and treatment.
- (h) An outline of any proposed deed restrictions or covenants.
- (i) Elevation drawings, photographs, simulations and/or other renderings, of existing and proposed buildings, signs, landscaping and other structures and improvements.
[Added 11-19-2009 by L.L. No. 11-2009^[1]
[1] Editor's Note: This local law also provided for the designation of former Subsection D(4)(i) and D(4)(j) as D(4)(j) and D(4)(k), respectively.
- (j) Any contemplated public improvements on or adjoining the property.
- (k) If the site development plan only indicates a first stage, a supplementary plan shall indicate ultimate development.

E. Time limit on validity of approval. Approval of a site plan by the Planning Board shall be valid for a period of one year from the date thereof for the purpose of obtaining a building permit. Failure to secure a building permit for at least the first stage of development during this period shall cause the site plan to become null and void. Upon application, the Planning Board may extend the time limit on the validity of the approval to not more than two years from the date of original approval.

§ 123-48. Advisory opinions.

The Planning Board shall review all applications for variances submitted to the Board of Appeals and all proposed amendments to the text or map of this Zoning Law being considered by the Town Board referred to it in accord with the provisions of this chapter. The Board shall have 30 days prior to the public hearing in which to prepare and submit its advisory opinion. Failure to submit an opinion within 30 days shall not prevent determination and action on the proposed variance or amendment by the appropriate Board.

Article X. Amendments

§ 123-49. Authority to amend.

- A. The Town Board may, from time to time, amend, supplement or repeal, in whole or in part, this chapter, including the Zoning Map, in accord with the procedures set forth in §§ **123-50** and **123-51** below. Such amendment shall be adopted by majority vote of the Town Board, except as specified in §§ **123-49B** and **123-51B**, and may be initiated in the following ways:
 - (1) By the Town Board on its own motion.

- (2) On the recommendation of the Planning Board or the Zoning Board of Appeals.
 - (3) By the filing of a petition by Town taxpayers or residents, on a form prescribed by the Town Clerk, describing such proposed amendment, accompanied by a fee in accord with a schedule established by the Town Board.
- B. If a duly signed and acknowledged protest against a proposed amendment to this chapter is submitted to the Town Board by any one of the following, it shall not become effective except by a favorable vote of 3/4 of the members of the Board.
- (1) The owners of 20% or more of the area of the land included in such proposed change; or
 - (2) The owners of 20% or more of the land immediately adjacent to such proposed change, extending 100 feet therefrom; or
 - (3) The owners of 20% or more of the land directly opposite such proposed change, extending 100 feet from the street frontage of such opposite land.

§ 123-50. Procedures.

- A. Public hearing. No change in the text or zoning district boundary of this chapter shall become effective until a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.
- B. Newspaper notice of hearing. At least 10 days prior to the date of each such public hearing, a notice of the time and place shall appear in the official newspaper of the town. Such notice shall describe the area, boundaries, regulations or requirements that such proposed change involves.
- C. Referrals. All proposed changes to these Zoning Regulations or Map shall be referred to the appropriate body as set forth in § **123-51**.
- D. Publication and posting. Every amendment to this Zoning Law, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board, and a copy or summaries thereof, exclusive of any map incorporated therein, shall be published once in a newspaper of general circulation in the town. In addition, a copy of such Law or amendment, together with a copy of any map incorporated therein, shall be posted conspicuously at or near the office of the Town Clerk in accordance with Town Law. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.
- E. Effective date. An amendment or change in this chapter shall take effect 10 days following publication and posting in accordance with § **123-50D** and filing of the local law with the Secretary of State in accord with Article 3 of the Municipal Home Rule Law.

§ 123-51. Referrals.

- A. Referral to the Planning Board.
- (1) Procedure. All proposed amendments originated by petition or motion of the Town Board shall be referred to the Town of Esopus Planning Board 30 days prior to the required public hearing for a report and recommendations thereon. If

the Planning Board shall not have made its final report thereon prior to the public hearing, the Town Board may proceed to final action.

(2) Planning Board report. In preparing a report on a proposed amendment, the Planning Board shall consider the following:

(a) Whether such change is consistent with the objectives and purposes of the district(s) to be affected.

(b) The nature and location of uses and buildings to be affected and the manner in which they will be affected.

(c) Whether uses permitted by the proposed change will be appropriate in the affected area(s).

(d) The effect of the change on existing or proposed public facilities and services, such as schools, streets, utilities, etc.

B. Referral to the County Planning Board.

(1) Matters to be referred. Any change in the district classification of or the regulations applying to real property lying within a distance of 500 feet of the following shall be referred to the Ulster County Planning Board prior to final action in accord with §§ 239-l and 239-m of the General Municipal Law. No final action shall be taken within 30 days of such referral unless a response is received sooner.

(a) The boundary of any other municipality.

(b) The boundary of any existing or proposed county or state park or other recreation area.

(c) The right-of-way of any existing or proposed county road or state highway, parkway or other controlled access highway.

(d) The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines.

(e) The existing or proposed boundary of any county or state owned land on which a public building or institution is located.

(2) County Planning Board recommendations. If the Ulster County Planning Board fails to report its recommendations within 30 days after receipt of a full statement of such referred material, the Town Board shall construe such inaction as approval of the proposed zoning action and may act without such a report.

(3) Effect of negative report. If the Ulster County Planning Board disapproves the proposed amendment or recommends modification thereof, the proposed amendment shall not become effective except by a vote of a majority plus one of all members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such action.

C. Referral to adjacent municipalities.

(1) At least 10 days prior to the date of the public hearings, written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any adjacent city, Town or village shall be transmitted to the Town or village clerk of that city, Town or village.

- (2) The designated official for hearing notices for counties shall be the Clerk of the County Legislature. For cities, towns and villages, the designated official shall be the clerk of the municipality. In the case of state parks or parkways, the designated office shall be the Palisades Interstate Park Commission.

Article XI. Planned Unit Development

§ 123-52. Intent and objectives.

A. Intent.

- (1) The regulations and procedures in this section have been developed because it is not always possible to determine in advance the exact location, type, standards and mixture of all uses which may benefit the Town and its residents. This is particularly true of large uses which are planned and developed as a unit, which are self-contained and which occupy sites of sufficient size to provide adequate separation from adjacent uses and properties. Therefore, it is the primary objective of this article to provide procedures so that the Town may consider whether specific development proposals, which meet the general standards established herein, conform to the objectives of the Master Plan for the town, will benefit the general welfare of the community and could not be equally as well located in another zoning district already designated on the Zoning Map for the proposed use.
- (2) This article recognizes that, while the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas that are already substantially developed, these controls may restrict and inhibit the flexible techniques of land development contained in the planned unit development (PUD) concept. Further, it is recognized that a rigid set of bulk and use specifications would frustrate the application of this concept. Thus, where PUD techniques are deemed appropriate through the rezoning of land to a planned unit development district by the Town Board, the area and bulk requirements specified elsewhere in this chapter are hereby replaced by an approval process in which the approved plan becomes the basis for continuing land use controls.

B. Objectives. In order to carry out the intent of this article, a PUD shall achieve the following objectives.

- (1) A maximum choice in the types of environment, occupancy, tenure, types of housing, lot sizes and community facilities available to existing and potential Town residents at all economic levels.
- (2) More flexibility in the location and design of large scale nonresidential uses which are compatible in primarily residential areas.
- (3) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.
- (4) A creative use of land and related physical development which allows an orderly transition between lands of differing characteristics.
- (5) An efficient use of land resulting in smaller networks of utilities and streets than would otherwise develop.

- (6) A development pattern in harmony with the objectives of the Town of Esopus Comprehensive Plan.

§ 123-53. General requirements for planned unit development.

- A. Minimum area. The minimum area required for a Planned Unit Development District shall be 25 contiguous acres.
- B. Ownership. The tract of land for a PUD must be owned, leased or controlled by a single person, partnership or a corporation. Any approvals or conditions imposed shall be binding on all future owners or tenants as well.
- C. Location of PUD districts. The PUD District shall be restricted to those areas of the Town which can be served by approved sewer and water systems.
- D. Permitted uses. All uses within an area designated as a PUD District shall be governed by the provisions of this section and the plans, standards and conditions specifically approved for the project concerned. Permitted uses may include any one or a combination of the following:
 - (1) Residential uses. Residences may be of any type or combination of types, including single-family homes, townhouses or multifamily residences. A variety of building types, styles and design is encouraged so as to create a balanced community.
 - (2) Nonresidential uses. Nonresidential uses may be permitted in combination with residential uses. Consideration shall be given to the location, scale and setting of the project in determining the appropriateness of such uses and their location and design within the PUD.
 - (3) Customary accessory or associated uses. Accessory uses, such as private garages, storage places, recreational and community activities, churches and schools, shall also be permitted as appropriate to the PUD.
- E. Intensity of land use.
 - (1) Density. Because land is used more efficiently in a PUD, environmental quality can often be preserved with a greater number of dwelling units per gross site area than is usually permitted in traditionally zoned districts. The Town Board shall determine in each case the appropriate land use intensity and/or dwelling unit densities for individual projects. The determination of land use intensity ratings or dwelling unit densities shall be completely documented, including all facts, opinions and judgments justifying the selection of the rating or density.
 - (2) Size of initial development stage. The initial stage of any PUD approved under these regulations shall create a viable development unit by itself in terms of site planning elements, infrastructure design and financial resources.
- F. Common property and open space.
 - (1) Common property and open space. Common property in a PUD is land together with the improvements thereon, the use and enjoyment of which is shared by the owners and occupants of the individual building sites. Common property in a PUD shall be combined and described as a single deeded parcel of land. Common property may be in public or private ownership. When common

property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance as such common property and facilities, including private streets, drives, service and parking areas and recreation and open space areas.

[Amended 11-19-2009 by L.L. No. 11-2009]

(2) Open space.

(a) At least 20% of the gross site area in a PUD shall be set aside as open space and shall remain and be maintained open in perpetuity. Open space does not include roads, parking areas, other paved areas, utility rights-of-way, drainage channels or any other open areas with a dimension of less than 200 feet at its smallest dimension. No more than 1/4 of such open space may comprise land under water. Such open space shall not be disposed of for any future development.

(b) The ownership of open space land created as part of a PUD shall be approved by the Town Board upon the advice of the Town Attorney. The Town Board shall retain the right to review and approve the articles of incorporation and charter of any ownership entity and to require whatever conditions it shall deem necessary to ensure that the intent and purpose of this chapter are carried out.

§ 123-54. Application procedure and approval process.

A. General. Whenever any Planned Unit Development (PUD) is proposed, before any permit for the erection of a permanent building in such Planned Unit Development shall be granted and before any subdivision plan of any part thereof may be filed in the Office of the County Clerk, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with the following procedures set forth below.

B. Application to the Planning Board for sketch plan approval.

(1) Prior to submission to the Town Board, an application for PUD rezoning shall be referred to the Planning Board so that it may review the proposal and advise the Town Board. In order to establish basic design principals prior to final design, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be to scale and shall clearly show the following information:

(a) The location and distribution of the various uses and their areas in acres.

(b) The layout of the interior roadway system and all existing and proposed rights-of-way and easements, whether public or private; the location and general design of parking and loading areas; access and egress locations.

(c) The location, height and use of all buildings, plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each use type and for each subarea or section. The projected cost, sales price and rent levels shall be described.

(d) The location, function and size of recreation and open space systems and buffer areas.

(e) The overall drainage system; watercourses; wetlands; wooded areas; fences, walls, rock outcroppings, flood hazard areas and similar physical features.

- (f) A topographic map showing contour intervals of not more than five feet of elevation, along with an overlay outlining areas where grades exceed 15%, and portions of the site having a moderate to high susceptibility to erosion or a moderate to high susceptibility to flooding and ponding.
 - (g) Location and preliminary design of sewage disposal and water supply systems.
 - (h) General description of the impact of the project on community facilities, such as schools, fire protection services and cultural facilities, if any, and an indication of how these impacts are proposed to be accommodated; and
 - (i) A location map showing uses, ownership and general physical features of adjacent lands within 2,500 feet of the site and analysis of the impact on water supply, sewage disposal and surface drainage of such properties.
- (2) In addition, the following documentation shall accompany the sketch plan:
- (a) A general statement as to how common open space is to be owned and maintained.
 - (b) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan shall show the intended total project.
 - (c) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.
- C. Planning Board review. The Planning Board shall review the sketch plan and its related documents and shall render either a favorable report to the Town Board or an unfavorable report to the applicant within 90 days of receipt of all necessary application materials. The Planning Board may, at its option, hold a public hearing prior to its action.
- (1) A favorable report shall be based on the following findings, which shall be included as part of the report:
- (a) The proposal is consistent with the goals and policies contained in the Town's Master Plan and Local Waterfront Revitalization Program.
 - (b) The proposal meets the intent and objectives of Planned Unit Development.
 - (c) The proposal satisfies the general requirements of § **123-53**.
 - (d) The proposal is conceptually sound in that it meets local and area-wide needs and it conforms to accepted design principals in the proposed roadway and pedestrian system, land use configuration, open space system, drainage system and scale of the elements, both absolutely and to one another.
 - (e) There are adequate services and utilities available or proposed to be made available in the construction of the development.
- (2) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what modifications might be considered in order to receive a favorable report. The applicant may appeal an unfavorable report to the Town Board. The Board may, upon a vote of a majority plus one additional vote, proceed to hold a public hearing on its own initiative.

D. Application to the Town Board.

- (1) Upon receipt of a favorable report from the Planning Board, the Town Board shall initiate the procedures for the purpose of considering designation of a PUD District for the applicant's plan in accordance with the procedures established under § **123-50** of this Zoning Law.
- (2) Prior to holding a public hearing, the Town Board shall render a determination of environmental significance in accord with the procedures of the State Environmental Quality Review (SEQR) Act. If such a determination requires that a draft environmental impact statement (DEIS) be submitted and circulated, said DEIS shall be prepared in accord with the standards and procedures of the State Environmental Quality Review (SEQR) Act (6 NYCRR Part 617). All procedures under SEQR shall be completed prior to the Town Board's action on the application.
- (3) The Town Board shall refer the application to the County Planning Board for its analysis and recommendations, pursuant to the provisions of § 239-m of the General Municipal Law and § **123-51** hereof.

E. Action by the Town Board.

- (1) The Town Board may grant approval of the application and designate the PUD District, as requested, upon a finding that the objectives set forth in § **123-52** will be achieved and that, based on review of potential environmental effects, the proposal minimizes or avoids adverse environmental impacts to the maximum extent practicable.
- (2) The Town Board shall disapprove the application if it finds that, in its opinion, the objectives of § **123-52** will not be achieved or that adverse environmental impacts are not minimized or avoided to the maximum extent practicable.
- (3) If the Town Board grants the application for a PUD District, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements upon which the approval shall be contingent. Such requirements may include, but are not confined to, visual and acoustical screening, land use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, protection of natural and/or historic sites, other such physical or social demands, provision of satisfactory surety to guarantee that essential public and private utilities and facilities are completed in accord with the approved plan and time limits for various phases of development. The Town Board shall state at this time its findings with respect to the land use intensity or dwelling unit density as called for in § **123-53E** above.

§ 123-55. Site plan approval process for Town Board designated District.

- A. Application to the Planning Board. Application for site plan approval shall be submitted to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or landscape architect:
- (1) An area map showing the applicant's entire holding, that portion of the applicant's property under consideration and all properties, subdivision, streets

and easements within 500 feet of the applicant's property.

- (2) A site plan including all information required under § **123-47**.
- B. County Planning Board review. Upon receipt of the application for site plan approval, the Planning Board shall refer said application to the County Planning Board for its report in accord with § 239-m of the General Municipal Law.
- C. Review considerations. The Planning Board shall consider the following factors during its review of the site plan:
- (1) Adequacy and arrangement of traffic access and circulation, including intersection design, road widths, channelization structures and traffic controls.
 - (2) Adequacy and arrangement of pedestrian access and circulation, including separation of pedestrian from vehicular traffic, control of intersections with vehicular traffic and pedestrian convenience.
 - (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (4) Location, arrangement, size and design of buildings, lighting and signs.
 - (5) Relationship of the various uses to one another and their relative scale.
 - (6) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or a noise deterring buffer between adjacent uses and adjoining lands.
 - (7) Adequacy and distribution of usable open space for playgrounds and informal recreation.
 - (8) Adequacy of stormwater, water supply and sanitary waste disposal facilities, including impact on adjacent properties and systems.
 - (9) Adequacy of structures, roadways and landscaping areas with moderate to high susceptibility to flooding, ponding and/or erosion.
 - (10) Protection of adjacent properties against glare, unsightliness or other objectionable features.
 - (11) Overall environmental impact.
 - (12) Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.
- D. Planning Board action.
- (1) The Planning Board shall set a public hearing date within 60 days of receipt of a complete application. It shall render a decision within 90 days of the hearing and notify the applicant and the Town Board of its decision.
 - (2) The Planning Board's decision may include recommendations as to desirable revisions to be incorporated in the site plan, which shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.

- (3) If the site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission of the site plan to the Planning Board after it has been revised or redesigned.
 - (4) No modification of existing storm channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion or excavation for and construction of site improvements shall begin until the developer has received site plan approval. Failure to comply shall be construed as a violation of the Zoning Law.
- E. Request for changes in sketch plan. If, during site plan development, it becomes apparent that certain elements of the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved sketch plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for finding that the project should be continued as modified. Site plan approval may then be given only with the consent of the Town Board.
- F. Staging. If an applicant wishes to stage his development, and he has so indicated as per § **123-54B(2)(b)**, then he may submit only those stages he wishes to develop for site plan approval in accordance with his staging plan. Any plan which requires more than 24 months to be completed shall be required to be staged and a staging plan must be developed. It is the intent of this regulation that individual stages of the PUD will have an integrity of uses in their own right so that, if for any reason, the entire PUD would not be completed, those portions of the PUD already constructed will be an asset to the community by themselves. Staging plans must take account of this objective, and developers proposing individual stages that deviate significantly from the overall character of the PUD should present convincing evidence that such a stage is indeed in keeping with this section.

§ 123-56. Additional regulations.

- A. Regulation after initial construction and occupancy. For the purpose of regulating development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in Planned Unit Development Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests; and maintenance of the intent and function of the planned unit shall be of primary importance.
- B. Site plan review and subdivision approval. Site plan review under the provisions of this article shall suffice for Planning Board review of subdivisions under Chapter **107**, Subdivision of Land, subject to the following conditions:
- (1) The developer shall prepare sets of subdivision plans suitable for filing with the Office of the Ulster County Clerk in addition to those drawings required above.
 - (2) The developer shall plat the entire development as a subdivision; however, PUDs being developed in stages may be platted and filed in the same stages.

- (3) Final site plan approval shall constitute final plat approval under Chapter **107**, Subdivision of Land; and provisions of § 276 of the Town Law requiring that the plat be filed with the Ulster County Clerk within 60 days of approval shall apply.
- C. Performance guaranties. As a condition of final approval of a request for PUD zoning, the Town Board may require the posting of such performance guaranties as it deems necessary to insure the installation of necessary improvements. Said performance guaranty shall be for a period to be determined by the Town Board. The amount of the performance guaranty may be reduced by the Town as portions of the required improvements have been completed.
- D. Fees. Fees for applications for PUD Districting and site plan approval shall be in accord with a schedule for fees adopted by the Town Board as set forth in § **123-29**. Such fees shall be based on the size and complexity of the proposed development and shall be sufficient to cover costs of all required reviews, including those related to the review of environmental impacts, and the retention of professional assistance, if necessary.

§ 123-57. Reversion.

[Added 11-19-2009 by L.L. No. 11-2009]

In the event that a building permit has not been issued for any building construction within a designated PUD within a period of five years and a day following the grant of final site plan approval, as set forth in § **123-55**, or any extension of site plan approval, the PUD zoning designation shall be rendered null and void. In such event, the lands within the PUD District shall revert to the original zoning districts that existed prior to the PUD designation, and this reversion shall be noted on the Official Zoning Map of the Town.

§ 123-58. (Reserved)

§ 123-59. (Reserved)

Article XII. Definitions

§ 123-60. Use and interpretation of words.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings.
- B. Words used in the present tense shall include the future tense.
- C. Words used in the singular number shall include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
- D. The word "shall" is always mandatory. The word "may" is permissive.
- E. "Building" or "structure" includes any part thereof.
- F. The word "lot" includes also the word "plot" or "parcel."

- G. The word "person" includes a corporation, a copartnership, a cooperative, a firm and any other agency of voluntary action as well as an individual.
- H. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for" and "occupied for."

§ 123-61. Terms defined.

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

ACCESS

A way or means of approach to provide physical entrance to a property, as defined in § 280-a of New York State Town Law.

ACCESSORY APARTMENT

A second dwelling unit within a principal residential structure or accessory structure in which the dwelling unit conforms to the location, bulk, floor area and other standards established in these regulations.

ACCESSORY BUILDING

A structure detached from the principal building on the same lot and customarily incidental and subordinate to the principal building or use.

ACCESSORY USE

A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

ACCESS STRIP (also FLAGPOLE STRIP or FLAG LOT STRIP)

A portion of a flag lot that provides frontage and access onto a street, having less than the minimum required lot width for a distance between the street line and a point in the flag lot where the minimum lot width is attained.

ALTERATION

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

ALTERATION, STRUCTURAL

Any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimensions or configurations of the roof or exterior walls.

AMUSEMENT PARK

See "circus."

APPLICANT

Any person, firm, corporation, partnership or association, fiduciary, trust or other legal entity who, having an interest in land, either as owner, co-owner, lessee or authorized representative of the owner, shall, either directly or indirectly, propose development, use and/or sale of any property, who applies for approval of a site plan, special use permit, variance or change in the zoning regulations whether for himself, herself or itself or for the other parties.

[Amended 11-19-2009 by L.L. No. 11-2009]

ATTIC

That part of a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as one-half story in determining the permissible number of stories.

AUTOMOBILE REPAIR

General repair, rebuilding or reconditioning of engines, motor vehicles or trailers, such as collision service, body repair and frame straightening; painting and upholstering; vehicle steam cleaning; and undercoating.

AUTOMOBILE SERVICE OR GASOLINE STATION

Any building, land area or other premises used or intended to be used for the retail dispensing or sale of automobile and related fuels, including, but not limited to, gasoline, diesel fuel and kerosene, which activity may be accompanied by accessory uses, such as sales of lubricants, tires, accessories or supplies, minor repairing of automobiles or a single-bay auto wash; provided, however, that automobile wrecking, major repairing of automobiles, parking or storing automobiles for hire and operation of more than one towing vehicle shall not be deemed permissible accessory uses of an automobile service station. Sales of automobile fuels, as an accessory use to a convenience store, is subject to the standards in these regulations.

AUTOMOBILE WRECKING

The dismantling or disassembling of motor vehicles or trailers or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

BAIT, TACKLE, GUN AND AMMUNITION SHOPS, RETAIL

Establishments primarily engaged in the retail sale of outdoor hunting and fishing equipment, including, but not limited to, ammunition, firearms, fishing supplies, including live bait, and other hunting equipment.

BASEMENT

A story in a building, the structural ceiling level of which is four feet or more above the average level of finished grade where such grade abuts that exterior wall of such building which fronts on any street, and the floor level of which is below finished grade at any point on the periphery of the building.

BEDROOM

A private room planned and intended for sleeping, separable from other rooms by a door, and accessible to a bathroom without crossing another bedroom.

BED-AND-BREAKFAST DWELLING

An owner-occupied residence, resulting from the conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than 10 transient lodgers, and containing not more than five bedrooms for such lodgers.
[Amended 11-19-2009 by L.L. No. 11-2009]

BILLBOARD

A sign or structure, where the area of one face exceeds 24 square feet, which directs attention to an idea, product, business activity, service or entertainment which is conducted, sold or offered at a location other than the premises on which such sign is located.

BOARDINGHOUSE

A private dwelling in which at least three but not more than six rooms are offered for rent and table board is furnished only to roomers and in which no transients are accommodated. A rooming house or a furnished room house shall be deemed a boardinghouse.

BUILDING

Any structure which is permanently affixed to the land, has one or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or equipment or goods.

BUILDING, ACCESSORY

See "accessory building."

BUILDING AREA

The total square footage of interior floor areas measured on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps.

BUILDING, COMPLETELY ENCLOSED

A building separated on all sides from adjacent open space or other buildings by fixed interior walls or party walls, pierced only by windows and doors, and covered by a permanent roof.

BUILDING, DETACHED

A building entirely surrounded by open space on the same lot.

BUILDING, PRINCIPAL

A building in which is conducted the principal use of the lot on which said building is located.

BUILDING, SEMIDETACHED

A building attached by a party wall to another building, normally of the same type on another lot, but having one side yard.

BUILDING INSPECTOR

The person duly designated as being responsible for administration and enforcement of the building construction regulations of the Town of Esopus, New York, or his duly authorized representative.

BUILDING LINE

A line parallel to the street line and set back therefrom a distance equal to the required front yard in the zoning district in which a lot is located.

BULK

A term used to describe the size, volume, area and shape of buildings and structures and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures or other walls of the same building and all open spaces required in connection with a building, other structure or tract of land.

CARNIVAL

See "circus."

CELLAR

Any space in a building, the structural ceiling level of which is less than four feet above the average finished grade where such grade abuts that exterior wall of such building which fronts on any street. A cellar shall not be considered in determining the permissible number of stories.

CHURCH

See "house of worship."

CIRCUS

A type of public entertainment, featuring indoor and outdoor exhibits, rides and games and similar entertainment and amusement devices, that is established on a site for a temporary or transient period of time.

COMMERCIAL COMMUNICATIONS TOWER

A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone and/or microwave communications, but excluding those structures used either for fire, police or other dispatch communications or exclusively for private radio and television reception and private telephone, citizen's band and amateur radio communications.

CONDITIONAL PERMIT USE

A use of property that is basically appropriate to a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted by right everywhere within such district. A conditional permit use, therefore, is one which is allowable only when specified facts and conditions are found to exist.

CONFERENCE CENTER

A facility which is used for conferences, seminars or similar purposes and which provides housing, food service, meeting spaces, educational and recreational facilities as well as ancillary facilities for 20 or more guests.

COUNTRY GENERAL STORE

See "convenience food store."

CONVENIENCE FOOD STORE

An establishment primarily engaged in the retail sale of canned foods, dry goods, fresh fruit and vegetables, dairy products, baked goods, fresh or prepared meats, fresh or prepared foods, such as sandwiches and coffee, for either on-site or off-site consumption, and also engaged in the sale of minor amounts of automotive, household, health and stationery supplies, having under 3,000 square feet in gross floor area and having a capacity for any in-store seating of no more than eight persons. The term "convenience food store" includes similar establishments known variously as "convenience store," "corner market," "country general store," "delicatessen," "mom-and-pop store" and "quick-stop store." Such establishment may also engage in retail sale of automotive fuels as an accessory use, but may not engage in automotive repair or servicing.

COVERAGE

The lot area or percentage of lot area covered by all principal and accessory buildings and structures.

CURB LEVEL

The established elevation of the street grade at the point that is opposite the center of the wall nearest to and facing the street line.

DRIVEWAY

A private roadway providing access for vehicles to a parking space, garage, dwelling or other structure on one lot.

DUMP

See "junkyards."

DWELLING

A building designed or used principally as the living quarters for one or more families (see "residences").

DWELLING, APARTMENT

A one-family dwelling unit in a building containing at least two such units in which each unit may be located over, under or to the side of another unit and in which each dwelling unit has at least one access to the outside, either directly or via a common hallway.

DWELLING, MULTIFAMILY

A building containing three or more dwelling units, including attached townhouse dwellings.

DWELLING, ONE-FAMILY

A detached building containing only one dwelling unit.

DWELLING, TOWNHOUSE (also ROW DWELLING)

A one-family dwelling in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit and each unit is separated from any other unit by one or more common fire-resistant wall.

DWELLING, TWO-FAMILY

A building containing two dwelling units.

DWELLING UNIT

A building or entirely self-contained portion thereof designed for occupancy by only one family (including any domestic staff employed on the premises) and having complete cooking, sanitary and sleeping facilities for the exclusive use of the occupants of the dwelling unit. A boardinghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging or rooming house, nursing or other similar home or other similar structure shall not be deemed to constitute a dwelling unit.

EASEMENT

Permanent authorization by a property owner for the use by another person and for a specified purpose of any designated part of his property.

ENVIRONMENTAL ASSESSMENT FORM (EAF)

A form used by the Planning Board, Town Board and the Zoning Board of Appeals to assist in it determining the environmental significant of a proposed site plan, conditionally permitted use, variance or zoning change. A properly completed EAF should contain information to describe the proposed site plan, conditionally permitted use, variance or zoning change, the environmental setting and the potential impact of the proposed development upon the environment. There are two types of Environmental Assessment Forms:

A. FULL EAF

This is a detailed EAF that must be used by the Planning Board, Town Board or Zoning Board of Appeals to determine the environmental significance of a proposed development that meets or exceeds the thresholds for a Type 1 Action as established in the State Environmental Quality Review (SEQR) procedures. The Planning Board, Town Board or Zoning Board of Appeals may also require submission of a full EAF for a proposed development that is classified as an "unlisted action" as established in the State Environmental Quality Review (SEQR) procedures, but poses possible environmental impacts that the Board may consider to be possibly significant or potentially adverse.

B. SHORT EAF

This is a simplified EAF that may be used by the Planning Board, Town Board or Zoning Board of Appeals to determine the environmental significance or nonsignificance of an unlisted action.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A report containing the description of a proposed development or rezoning, its environmental setting, potential environmental impacts, ways to minimize the impacts and reasonable alternatives. It serves as a public disclosure of the record used by the Planning Board, Town Board or Zoning Board of Appeals in its environmental decisionmaking. There are two stages in an Environmental Impact Statement:

A. DRAFT EIS

This is a preliminary statement that is used for public review and comment.

B. FINAL EIS

This is the completed document consisting of the draft EIS, plus any revision, public comments and lead agency responses to the substantive comments.

EQUIPMENT AND MATERIALS STORAGE YARD

An area used for the open, unenclosed, storage of construction equipment and vehicles, utility and office trailers, construction, building and home garden materials, usually conducted as an accessory to the following primary business uses and services: contracting, building trades, equipment sales and rental, building and construction supply sales, home and garden supply sales and similar businesses, whether such yard is located on the same site or on a different site as the primary use.

FINISHED GRADE

The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not horizontal, the finished grade in computing height of buildings and other structures or for other purposes, shall be the average elevation of all finished grade elevations around the periphery of the building.

FLOOR AREA, GROSS

A. The aggregate sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center line of walls separating two buildings. In particular, the gross floor area of a building or buildings, shall include:

- (1) Basement spaces.
- (2) Floor space used for mechanical equipment, with structural headroom of six feet six inches or more.
- (3) Attic spaces (whether or not a floor has actually been laid) providing structural headroom of six feet six inches or more.
- (4) Interior balconies and mezzanines.
- (5) Enclosed porches.

B. However, the "gross floor area" of a building shall not include:

- (1) Cellar spaces, except that cellar spaces used for retailing shall be included for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
- (2) Accessory water tanks and cooling towers.
- (3) Uncovered steps; exterior fire escapes.
- (4) Terraces, breezeways, open porches and outside balconies.

- (5) Accessory off-street parking spaces.
- (6) Accessory off-street loading berths.
- (7) Elevator shafts and stairwells at each floor.

FLOOR AREA, LIVABLE

All spaces within the exterior walls of a dwelling unit, exclusive of garages, breezeways, unheated porches, cellars, heater rooms and basements having a window area of less than 10% of the square foot area of the room. Usable floor area shall be deemed to include all spaces not otherwise excluded above, such as principal rooms, utility rooms, bathrooms, all closets and hallways opening directly into any rooms within the dwelling unit and all attic space having a clear height of at least six feet from finished floor level to pitch of room rafter with a clear height of seven feet from finished floor level to ceiling level over 50% of the area of such attic space.

FLOOR AREA RATIO

The gross floor area in square feet of all buildings on a lot divided by the area of such lot in square feet.

FORESTRY

The operation of timber tracts, tree farms, forest nurseries, the gathering of forest products or the performance of related activities such as reforestation.

FRONTAGE

The measurement of the street line of the lot.

GASOLINE SERVICE STATION

See "automobile service station."

GUEST HOUSE

An accessory building on the same lot as a principal residential dwelling used for occupancy for either short-term guests of the owners or tenants of the principal dwelling, or for occupancy by their domestic employees, provided that such building shall contain no kitchen facilities and shall meet all applicable setback and lot coverage requirements of this chapter and those requirements related to the provision of suitable water and sewage disposal facilities.

[Added 11-19-2009 by L.L. No. 11-2009]

HEIGHT OF BUILDING

The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat and mansard roofs and to the mean height between eave and ridge for other types of roofs.

HIGH-DENSITY CONFINING SHELTER

The confinement or housing area for numbers of domestic animals or fowl larger than prescribed densities of two domestic animals or 24 fowls per acre.

HOTEL

A building or any part thereof which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and may contain one or more common dining rooms, drinking places and entertainment facilities.

HOME OCCUPATION

An activity carried out for gain by a resident in or on the property on which he resides, which is clearly incidental and secondary to the primary use of the premises for residential purposes and is in conformance with the standards of these regulations.

HOUSE OF WORSHIP

A building or structure or groups of buildings or structures which, by design and construction, are primarily intended for conducting of organized religious services and accessory uses associated therewith.

IMPERVIOUS SURFACE

Any material or combination of materials that reduces and/or prevents the absorption of stormwater into the ground. Such surfaces include roofs, sidewalks, streets and parking areas. A material shall be considered to be impervious if it has a percolation rate of 120 minutes per inch.

IMPROVEMENT

Any man-made, immovable item which becomes part of, is placed upon or is affixed to real estate, including, but not limited to, the creation of new streets, building sites, public walkways, parks and recreation areas, water supply and waste disposal facilities.

JUNKYARD

A facility meeting the definition set forth in § 136, Subdivision 2, of the General Municipal Law.

KENNEL, COMMERCIAL

An establishment in which more than six dogs or other domestic animals are housed, groomed, bred, boarded, trained or sold.

KENNEL, VETERINARY

An establishment accessory to an animal hospital or veterinarian's office in which more than six dogs or other domestic animals are housed, boarded and/or given medical treatment.

LOGGING

The removal of timber from a lot in quantities greater than 20 standard cords of wood, 2,000 cubic feet or 10,000 board feet, as measured by the international one-fourth-inch log rule, within any given calendar year.

LOT

A defined portion or parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership and the customary accessories and open spaces belonging to the same.

LOT AREA

The total horizontal area included within the lot lines.

LOT, CORNER

A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135°.

LOT COVERAGE

See "coverage."

LOT DEPTH

The minimum distance from the street line of a lot to the rear lot line of such lot.

LOT, FLAG

A lot fronting on a public or private road or street which does not meet the lot width requirements of the district in which the lot is located at the rear of the required front

yard but which widens or extends to a point where the distance between the side lot lines is equal to or greater than the required lot width.

LOT FRONTAGE

The length of the front lot line measured at the street line.

LOT, LANDLOCKED

A parcel of land, in separate ownership from any other adjacent property, having no frontage and no access onto the street system.

LOT LINE

The lines bounding a lot as defined herein.

LOT LINE, INTERIOR FRONT

A lot line of an irregular or flag lot that is not coincident with, but approximately parallel to, the street line of a lot, the length of which equals or exceeds the minimum lot width requirements and from which the required front yard setback is measured.

LOT LINE, REAR

The lot line generally opposite to the street line. If the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the "rear lot line" shall be deemed to be a line parallel to the front lot line not less than 10 feet long lying farthest from the front lot line.

LOT OF RECORD

A lot which is recorded in the office of the Ulster County Clerk.

LOT, THROUGH

A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

LOT WIDTH

The width of a lot measured parallel to the lot frontage at the rear of the required front yard.

MAIN FLOOR

The largest area found by the projection of a horizontal plane through the livable floor spaces which is enclosed by the exterior walls of the buildings.

MANUFACTURED HOME

As defined in New York State Residential Code Section R202. A factory-manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD), Manufactured Home Construction and Safety Standards, 24 CFR, Part 3280 April 1, 1993, transportable in one or more sections that, in the traveling mode, is eight feet [2,438 millimeters (mm)] or more in width or 40 feet (12,192 mm) or more in length or, when erected on site, is 320 square feet (29.7 square meters) minimum, and that was built on or after June 15, 1976 on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes plumbing, heating, air conditioning, and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the federal Department of Housing and Urban Development and complies with the standards established by the National Manufactured Housing Construction and Safety Act of 1974, as amended. The term "manufactured home" shall not include any self-propelled recreational vehicle.

[Added 11-19-2009 by L.L. No. 11-2009]

MANUFACTURED HOME COURT

A parcel of land under single or common ownership and management on which two or more manufactured homes are occupied or intended to be occupied as residences.

[Added 11-19-2009 by L.L. No. 11-2009]

MANUFACTURED HOME COURT UNIT

The lot or space in any manufactured home court which shall be assigned to or be used and occupied by a manufactured home.

[Added 11-19-2009 by L.L. No. 11-2009]

MANUFACTURING

Any process whereby the nature, size or shape of articles or raw materials are chemically or physically changed, or where articles are assembled or packaged.

MARINA

A facility for storing, servicing, berthing and securing pleasure boats.

MASTER PLAN

See "town development plan."

MINING

A facility meeting the definitions of "mining" set forth in § 23-2705 of the New York State Environmental Conservation Law other than the quantity of material to be removed.

MOBILE HOME

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

[Amended 11-19-2009 by L.L. No. 11-2009]

MODULAR HOME

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

[Amended 11-19-2009 by L.L. No. 11-2009]

MOTEL

A building or group of buildings containing individual living and sleeping accommodations primarily consisting of one bedroom and bath units, each of which is provided with a separate exterior entrance and a parking space, and is offered principally for transient occupancy by motor vehicle travelers at any time of the year. The term "motel" includes, but is not limited to, every type of similar establishment known variously as an "auto court," "motor hotel," "motor court," "motor inn," "motor lodge," "tourist court," "tourist cabins" or "roadside hotel."

MUNICIPAL SEWER AND MUNICIPAL WATER

Sewage disposal and water supply systems approved by the Town Board and operated by the Town of Esopus.

NONCONFORMING BULK

That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this chapter, either following its effective date or as a result of subsequent amendments thereto.

NONCONFORMING USE

Any use of a building, other structure or tract of land, which was lawful prior to the adoption or amendment of this Zoning Law, which does not conform to the use regulations for the district in which such use is located, either as a result of this chapter or as a result of subsequent amendments thereto.

NURSERY

An establishment where woody or herbaceous plants are grown for sale, including a structure for the sale of such merchandise.

NURSERY SCHOOL or PRESCHOOL

An establishment licensed by the New York State Department of Education providing or designed to provide daytime care or instruction by an individual, association, corporation, institution or agency, whether or not for compensation or reward, for seven or more children from the age of two to five years, inclusive, away from their homes for more than 2 1/2, but fewer than 10, hours per day.

OFFICE AND OFFICE BUILDINGS

A building or one or more rooms in a building used for conducting the affairs of a business, trade profession, service, industry or government that may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper or candy stand, but does not include facilities for manufacturing, equipment storage maintenance or repair and from which generally retail sales and services to customers are limited as an accessory use.

OFFICIAL MAP

The map established pursuant to § 270 of the New York State Town Law, showing streets, highways, parks and drainage, both existing and proposed, and additions thereto resulting from approval of subdivision plats by the Planning Board and the subsequent filing of such approved plats.

OPEN SPACE, USABLE

An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, and which is available and accessible to all occupants of the building or buildings on said lot for purposes of outdoor recreation.

PARKING LOT

An off-street area or structure for the storage of three or more operating vehicles.

PERFORMANCE GUARANTY

The security which may be accepted by the municipality in lieu of the requirement that certain improvements be made and maintained before the Planning Board gives final approval to a site plan. This security may take the form of a letter of credit, cash deposit or other form of financial surety that is satisfactory to and approved by the Town Board.

PLANNING BOARD

The Planning Board of the Town of Esopus.

PLOT PLAN

A map indicating the layout of a group of lots or plots of ground.

PREMISES

A lot, together with all the buildings and uses thereon.

PUBLIC UTILITY STRUCTURE

Facilities, including, but not limited to, telephone exchange buildings, electric substations and generating plants, water towers and treatment plants, gas metering stations, sewer pumping stations and treatment plants and all other similar structures necessary for providing a service by a government or a regulated public utility.

RECREATIONAL VEHICLE

A vehicular-type portable structure, without permanent foundation, which can be towed, hauled or driven and is primarily designed as temporary living accommodation for recreational camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

RELIGIOUS COMMUNITY

A property or site occupied and utilized by a group of individuals who constitute or are members of a religious organization (SIC Industry Group 866) on which exist structures and other facilities that are utilized in the furtherance of religious activities. Such uses and structures may include, but are not necessarily limited to, multifamily dwellings, convent or monastery dwellings, meeting halls, houses of worship, schools and other educational facilities, such as hospitals, rest homes, youth homes and economic activities relating to the religious use, such as printing and manufacturing.

RESIDENCE

A building or any part of a building which contains living and sleeping accommodations for permanent occupancy. "Residence" therefore includes all one-family and two-family houses, row houses, mobile homes, apartment houses, boarding, rooming, fraternity and sorority houses, monasteries, rectories and convents. However, "residence" shall not include the following:

- A. Transient accommodations, such as hotels, motels and camp grounds; or
- B. That part of a building containing both residences and other uses which is used for any nonresidential uses, except accessory uses for residences.

RESORT HOTEL

A facility for transient guests with complete dining accommodations and recreation facilities.

RESTAURANT, FAST-FOOD

An establishment where food and/or beverages are sold in a form ready for consumption, often via a service window in an exterior wall, and where, by design or packaging techniques, all or a significant portion of the consumption can or does take place outside the confines of the building, often in a motor vehicle on the site.

RESTAURANT, STANDARD

An establishment where food and beverages are prepared, served and intended to be consumed primarily within the principal building and where such food and beverages are not primarily packaged for removal by the customer.

RIDING STABLE

Any establishment where horses are kept for riding, driving or stabling for compensation.

RIGHT-OF-WAY

A strip of land, acquired by reservation, dedication, purchase, prescription or condemnation, used or intended to be used to afford legal access to abutting property. See also "street."

RIGHT-OF-WAY LINE

The dividing line between a lot and the adjacent right-of-way.

ROADSIDE FARM STAND

An establishment, usually a booth or stall, which is accessory to a farm, primarily engaged in the retail sale of produce and farm products to the general public and which is open no more than eight months in any calendar year.

ROOMING HOUSE

See "boardinghouse."

ROW HOUSE

A building consisting of a series of one-family attached residential dwelling units having common party walls between each dwelling unit; also "townhouse."

SENIOR CITIZEN HOUSING

A building or group of buildings, whether detached or connected, containing dwellings that are designed and operated for occupancy by persons who are elderly or disabled as defined under applicable state or federal programs designed for such persons or at least 55 years of age if no such program is applicable. Such housing may include common areas in multifamily dwellings owned and managed by a single management entity, together with normal and customary ancillary facilities or services for use by other persons.

[Added 11-17-2005 by L.L. No. 1-2005]

SETBACK

The distance in feet from the street line to the principal building on a lot.

SIC MANUAL

The Standard Industrial Classification Manual, published by the Executive Office of the President, Office of Management and Budget, which classifies establishments by their field of economic activity.

SITE PLAN

A plan that indicates the proposed development and uses of land or structures.

SKILLED NURSING HOME or CONVALESCENT HOME

A facility operated for the purpose of providing lodging, board and nursing care to sick, invalid, infirm, disabled or convalescent persons for remuneration.

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

Those rules, regulations and procedures set forth in Title 6, NYCRR (New York Code of Rules and Regulations), Part 617 which implement Article 8 of the New York State Environmental Conservation Law, where Article 8 establishes the requirement for environmental review of actions approved, funded or directly undertaken by state or local government.

STREET

A street which is one of the following: an existing Town highway, county road or state highway or street; a street shown on an approved subdivision final plat; a street shown on a map filed with the County Clerk (in accordance with § 280-a of the New York State Town Law) prior to Planning Board authorization to review subdivision; or a street shown on the Town Official Map

STREET LINE

The dividing line between a lot and a street, which forms the front lot line and frontage of a lot abutting a street, and is defined by the right-of-way or parcel of land containing a street.

STREET, PRIVATE

A street that serves two or more lots which is not under the jurisdiction or intended to be dedicated to the Town or other government agency and is maintained by agreement amongst the owners of all lots having frontage on and having a right to access to such street.

STREET WIDTH

The width of the right-of-way or the distance between property, street parcel or takings lines on opposite sides of a street.

STRUCTURE

A static construction of building materials, including buildings, mobile homes, stadia, platforms, towers, sheds, storage bins, antennas and other receivers, swimming pools and the like.

SUBDIVISION REGULATIONS

The officially adopted local law or ordinance governing the division of land into two or more parcels, specifically Chapter **107** of the Town of Esopus Code.

SUMMER COTTAGE COLONY (also BUNGALOW COLONY, TOURIST CABINS OR COTTAGES)

A group of two or more detached buildings on a single lot, each building with its own dwelling unit with a separate entrance and its own parking space, designed for seasonal occupancy and not more than one of which is used for the purpose of all-year-round residence, which premises does not contain a public lobby or dining rooms serving guests. The term "summer cottage colony" includes bungalow or cabin colonies, tourist cabins or tourist courts, but does not include a mobile home park, trailer camp, boardinghouse, hotel, motel, tourist home or bed-and-breakfast establishment.

SWIMMING POOL

An outdoor water pool which is intended to be used for swimming or bathing. An outdoor water pool shall, for the purposes of this chapter, be construed to mean any swimming pool, tank, depression or excavation in any material, dike or berm constructed, erected, excavated or maintained, which will cause the retention of water to a greater depth than 18 inches or having a plane surface area of water greater than 100 square feet, and includes in-ground as well as aboveground swimming pools.

TOURIST HOME

A building containing individual living and sleeping accommodations, each of which is accessible through interior hallways and is offered for rental use by transient guests.

TOWN

The Town of Esopus, Ulster County, New York.

TOWN ATTORNEY

The person duly designated as attorney of the Town on a permanent or consultant basis, and who is admitted to the bar in the State of New York.

TOWN BOARD

The Town Board of the Town of Esopus.

TOWN CLERK

The Town Clerk of the Town of Esopus.

TOWN DEVELOPMENT PLAN

A comprehensive master plan for the development of the Town prepared by the Planning Board, or a committee appointed by the Town Board, pursuant to § 272-a of the New York State Town Law, which indicates the general location recommended for various public works and reservations, and for the general physical development of the town, and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

TOWN ENGINEER

The person duly designated as engineer of the Town on a permanent or consultant basis and licensed as a professional engineer by the State of New York.

TOWN PLANNER

The person duly designated as planner of the Town on a permanent or consultant basis.

TOWN SUPERINTENDENT OF HIGHWAYS

The duly elected Superintendent of Highways of the Town of Esopus.

TRAILER

See "manufactured home."
[Amended 11-19-2009 by L.L. No. 11-2009]

TRAILER COURT

See "manufactured home park."
[Amended 11-19-2009 by L.L. No. 11-2009]

TRAILER, PRIVATE UTILITY

A vehicle not capable of self-propulsion, designed or used primarily for the transportation or storage of materials, equipment or personal effects, not exceeding one ton in capacity.

TRANSITIONAL SERVICE FACILITY

An authorized and licensed residence operated by a public or private agency, duly authorized and licensed by the State Division of Youth, State Department of Social Services, State Department of Mental Health, State Board of Social Welfare, State Department of Correctional Services or any other state agency having authority to license and approve said facility, which residence houses individuals being cared for by the agency and deemed by the agency to be capable of living and functioning in the community and which provides continuous professional guidance.

USE

This term is employed in referring to:

- A. The purpose for which any buildings, other structures or land may be arranged, designed, intended, maintained or occupied; or
- B. Any occupation, business activity or operation conducted (or intended to be conducted) in a building or other structure or on land.

WATER BODY

Any natural or artificial collection of water, such as a pond, lake or reservoir, whether permanent or temporary.

WATERCOURSE

Any natural or artificial stream, river, creek, kill, brook, ditch, channel, canal conduit, drain, waterway, gully or ravine in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks.

WETLANDS, DESIGNATED STATE

All freshwater wetlands as identified and/or mapped by the New York State Department of Environmental Conservation pursuant to Article 24 of the Environmental Conservation Law, as may be amended from time to time.

YARD, FRONT

An open, unoccupied space extending across the full width of the lot between the front lot line and a line drawn parallel thereto at the closest building.

YARD, REAR

An open, unoccupied space extending across the full width of the lot between the rear lot line and a line drawn parallel thereto at the closest building.

YARD, REQUIRED

That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line, for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, SIDE

An open, unoccupied space between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a street line shall be deemed a side line.

ZONING

The act of regulating the use of land and the size of and location of buildings on the land. Such regulations are designed to assure the health, safety and general welfare of a community.

ZONING ENFORCEMENT OFFICER (ZEO)

The person duly designated as being responsible for the enforcement of the zoning regulations of the Town of Esopus, New York or his duly authorized representative.

Article XIII. Adult Use and Entertainment Establishments

[Added 7-16-1998 by L.L. No. 3-1998]

§ 123-62. Legislative intent.

It is the purpose of this article to regulate the creation, opening, commencement and/or operation of adult use and entertainment establishments, as herein defined, in order to achieve the following:

- A. Preserve the character and the quality of life in the Town of Esopus's neighborhoods and business areas.
- B. Control such documented harmful and adverse secondary effects of adult uses on the surrounding areas as: decreased property values; attraction of transients; parking and traffic problems; increased loss of business for surrounding non-adult business; and deterioration of neighborhoods.

- C. Restrict minors' access to adult uses.
- D. Maintain the general welfare and safety for the Town of Esopus's residents.

§ 123-63. Restrictions on location and operation.

- A. Adult uses are defined as any use which provides products or services or any combination thereof, which appeal exclusively to the adult market for entertainment purposes, including but not limited to nude dancing, "strip clubs" and other similar uses. These restrictions shall not apply to any existing uses or to the sale of adult products that are ancillary to any other permitted use.
- B. The following restrictions shall apply to the siting of an adult use establishment in the Town of Esopus:
 - (1) No adult use establishment shall be allowed within a one-thousand-foot radius of another existing adult use establishment whether within the Town of Esopus or any neighboring community. The one-thousand-foot radius shall be measured in a straight line from the nearest point of the wall of the portion of the building in which an adult use business is conducted to the nearest point on the property of the area in question.
 - (2) No adult use establishment shall be located within a one-thousand-foot radius of a residential district or a preexisting school, library, civic or youth-oriented center, a designated historic preservation site or district, park, playgrounds, place of worship, as well as any areas designated as scenic under New York State Law. The one-thousand-foot radius shall be measured in a straight line from the nearest point of the wall of the portion of the building in which an adult use business is conducted to the nearest point on the property of the area in question.
 - (3) Sign regulations.
 - (a) Advertisements, displays or other promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or other areas, public or semi-public, and such displays shall be considered signs.
 - (b) Not more than one business wall sign shall be permitted for an adult use, and such sign shall be permitted only on the front facade.
 - (c) Sign messages shall be generic in nature, shall not contain material classified as advertising, and shall only identify the business which is being conducted.
 - (4) Curfew. It shall be unlawful for any person maintaining or operating any adult use establishment to operate said establishment between the hours of 4:00 a.m. and 8:00 a.m. Monday through Saturday, and between the hours 4:00 a.m. and 12:00 midnight on Sunday.

§ 123-64. Conflict with other laws.

All local laws and regulations inconsistent or in conflict with this article are hereby amended to the extent of such conflict or inconsistency.

§ 123-65. Definitions.

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

ADULT ARCADE

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE

- A. A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with specified sexual activities.
- B. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal business purposes" shall mean 25% or more of any of the following:
- (1) The number of different titles or kinds of such merchandise;
 - (2) The number of copies or pieces of such merchandise;
 - (3) The amount of floor space devoted to the sale and/or display of such merchandise; or
 - (4) The amount of advertising which is devoted to such merchandise, either in print or broadcast media.

ADULT CABARET

A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- A. Persons who appear in a state of nudity; or
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL

A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions.

ADULT MOTION-PICTURE THEATER

A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER

A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS

A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcade; adult bookstore or adult video stores; adult cabarets, adult motels, adult motion-picture theaters; adult theaters; escort agencies; nude model studios and sexual encounter centers. Adult use and entertainment establishments customarily exclude minors by reason of age.

ESCORT

A person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person; for consideration, agrees or offers to privately perform a striptease for another person; or, for consideration but without a license granted by the State of New York, agrees or offers to provide a massage for another person.

ESCORT AGENCY

A person or business association which furnishes, or offers to furnish, or advertises to furnish, escorts as one of its primary business purposes for a fee, tip or other consideration.

NUDE MODEL STUDIO

Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

NUDITY or a STATE OF NUDITY

The appearance of specified anatomical areas.

PERSON

An individual, proprietorship, partnership, corporation, association or other legal entity.

SEMI-NUDE

A state of dress in which clothing covers no more than the specified anatomical areas, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER

A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

SPECIFIED ANATOMICAL AREAS

- A. Unless completely and opaquely covered, human genitals, pubic region, buttocks or breasts below a point immediately below the areola; and
- B. Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES

Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions.

§ 123-66. Waiver.

Should the enforcement of this article result in undue hardship or practical difficulties, the Town Board, in its sole discretion, may waive or vary any provision of this article consistent with the purposes and objective of this article and the Town Zoning Law and public health, welfare and safety of the community.

§ 123-67. Penalties for offenses.

- A. Any person, firm, corporation or entity found to be violating any provisions of this article shall be served with a written notice by the Commissioner of Public Works or his designee, stating the nature of the violation and providing for immediate correction thereof. Such notice shall be served by one of the following methods:
 - (1) By personal service;
 - (2) By certified mail, return receipt requested, addressed to his or their last known address as shown on the latest completed assessment roll of the Town of Esopus; or
 - (3) By posting of such notice in a conspicuous place upon the premises affected, and a copy thereof mailed, addressed to his or their last known address as shown on the latest completed assessment roll of the Town of Esopus.
- B. Any person, firm, corporation or entity who shall violate any portion of this article shall be guilty of a violation and, upon conviction thereof, shall be fined in an amount not to exceed \$500 for each violation. The continuation of a violation of the provisions of

this article shall constitute, for each day the violation is continued, a separate and distinct offense hereunder.

- C. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof, where such a violation has been committed or does exist, shall be guilty of such an offense.
- D. Any person, firm, corporation or entity violating any of the provisions of this article shall become liable to the Town for any expense or loss or damage occasioned the Town by reason of such violation.
- E. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this article, or to restrain or enjoin the use or occupancy of a building, premises, or part thereof in violation of this article.