

*Town of Clifton Park, NY  
Monday, April 13, 2015*

## Chapter 208. Zoning

[HISTORY: Adopted by the Town Board of the Town of Clifton Park 10-21-1996 by L.L. No. 10-1996. This local law repealed former Ch. 208, Zoning, adopted 8-8-1967 by L.L. No. 2-1967. Amendments noted where applicable.]

### **GENERAL REFERENCES**

Department of Building and Development — See Ch. **5**.  
Comprehensive Plan — See Ch. **6**.  
Environmental Conservation Commission — See Ch. **13**.  
Department of Planning — See Ch. **36**.  
Planning Board and Zoning Board of Appeals — See Ch. **65**.  
Building construction and fire prevention — See Ch. **73**.  
Construction and design standards — See Ch. **86**.  
Fees — See Ch. **103**.  
Flood damage prevention — See Ch. **119**.  
Freshwater wetlands and stream protection — See Ch. **124**.  
Conservation easements — See Ch. **125**.  
Land development — See Ch. 141.  
Sewers — See Ch. **169**.  
Subdivision of land — See Ch. **179**.  
Planned development districts — See Ch. **A217**.

## Article I. General Provisions

### § 208-1. Title.

This chapter shall be known and may be cited as the "Local Law Relating to Zoning for the Town of Clifton Park" or by the short title "Clifton Park Zoning Law."

### § 208-2. Purpose.

There is hereby established a newly restated Comprehensive Zoning Law for the Town of Clifton Park, New York, applicable to all of the area within the geographical bounds of the Town of Clifton Park, which law is set forth in the text and maps that constitute this chapter. Said chapter is adopted pursuant to the laws of the State of New York, which, in the interest of the protection and promotion of the public health, safety and welfare, shall be deemed to specifically include the following among others:

- A. The facilitation of the efficient and adequate provision of public facilities and services.
- B. The protection of residential areas and the provision of privacy for families.
- C. The prevention and reduction of traffic congestion and the provision of safe and adequate traffic access to uses generating large volumes of traffic.
- D. The gradual elimination of nonconforming uses.
- E. The protection of business areas by the reduction of traffic congestion caused by insufficient roadway capacity and/or design and inadequate parking facilities.
- F. The preservation of historic and natural features and the accommodation of new development in such a way as to maintain and enhance the desirable aesthetic qualities of the Town.
- G. The protection from fire and other natural and civil disorders.
- H. The protection of water resources available to residents of the Town, principally aquifers and their recharge areas.
- I. The assurance of adequate sites for residence, industry and commerce.
- J. The enhancement of the appearance of the Town of Clifton Park as a whole, including its open and exurban environment.
- K. The general protection of the environment.
- L. The encouragement of flexibility in the design and development of land in such a way as to produce the most appropriate use of lands, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open lands.
- M. The protection of viable open space and agricultural resources within Clifton Park.  
[Added 5-9-2005 by L.L. No. 5-2005]

## § 208-3. Enumeration of districts; boundary descriptions.

- A. For the purpose of this chapter, the Town of Clifton Park is hereby divided into the following classes of districts, designated as follows:  
[Amended 10-6-2003 by L.L. No. 6-2003; 5-9-2005 by L.L. No. 5-2005]
  - Residence R-1 Districts
  - Residence R-3 Districts
  - Conservation Residential Districts
  - Hamlet Residential Districts
  - Business B-1 Districts
  - Business B-2 Districts
  - Hamlet Mixed-Use Districts
  - Business B-3 Districts
  - Business B-4 Districts
  - Business B-4A Districts
  - Business B-5 Districts

Planned Unit Development Districts (PUD)  
Land Conservation Districts (LC)  
Light Industrial Districts(LI)  
Public/Institutional/Recreational Districts (PIR)

- B. A description of district boundaries is on file in the office of the Town Clerk, as well as a map upon which the districts are laid out for ready reference.

## § 208-4. Interpretation of District boundaries.

- A. Unless shown to the contrary on the Zoning Map, the boundary lines of districts are property lines, the center lines of streets or such lines extended, railroad right-of-way lines and the center lines of creeks and waterways. Questions concerning the exact location of the district boundary lines shall be resolved by the Zoning Enforcement Officer.
- B. The provisions of this section do not apply to Land Conservation Districts.

## § 208-5. Conformance required.

- A. The general zoning regulations and zoning districts as herein set forth are approved and established. No building or land shall be used or developed and no building shall be erected, reconstructed, structurally altered or demolished except in conformity with the regulations as herein prescribed.
- B. The Building Inspector or his designee is hereby exclusively authorized and directed to make the initial determination as to whether a proposal delineated in a particular application submitted pursuant to this chapter is in compliance with the requirements of said chapter.
- C. No application of any nature required to be submitted pursuant to the provisions of this chapter shall be granted by any Town official without first obtaining a written verification from the Building Inspector that the proposed use described in said application is permitted in the zoning district where it is proposed to be located or developed and that the proposal otherwise appears to be in compliance with the provisions of this chapter.
- D. An application for zoning verification shall include but not be limited to the following:
- (1) A description of the permits and/or approvals being applied for and a narrative description of the proposed use and project.
  - (2) A proposed plot plan (sketch) with all buildings and structures shown (both existing and proposed), showing dimensions of all buildings and structures and the property and building setbacks, proposed building heights, road frontages on public highways and paper streets, zoning district boundaries within 500 feet of the subject property and existing and proposed property lines.
  - (3) Identifying street address for the proposed project and the Tax Map number(s) and section, block and lot information for the subject property.
  - (4) Such other information as the Building Inspector may deem reasonably necessary to make his determination.

- E. After the Building Inspector has determined that a proposed use is permitted within the subject zoning district, said determination shall be transmitted to the appropriate Town officials, who may then further process the subject application(s). If, as the project progresses through the approval process, compliance with any other requirements of this chapter is identified as an issue(s), the Building Inspector shall also determine such issue(s) of compliance with provisions of this chapter, and such issues must be resolved before the permit(s) being applied for may be granted by any Town official.

## § 208-6. Additional standards for administration and enforcement.

For the purposes of administration and enforcement the Town of Clifton Park incorporates herein the following additional standards:

- A. The New York State Uniform Fire Prevention and Building Code.
- B. Permit Number GP-0-10-002, entitled "SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), SPDES Permit Number NYR20A035," issued by the NYS Department of Environmental Conservation pursuant to Article 17, Titles 7 and 8, and Article 70 of the Environmental Conservation Law. (Details of the Town of Clifton Park requirements are found in this chapter, Article **XVI**, Site Plan Review and Approval.)  
[Amended 12-17-2007 by L.L. No. 13-2007; 2-7-2011 by L.L. No. 6-2011]
- C. The Western Clifton Park Design Guidelines contained in the Western Clifton Park Land Conservation Plan GEIS.  
[Added 5-9-2005 by L.L. No. 5-2005]

### § 208-6.1. Expenses.

In addition to any fees required under any section of the Town Code (see especially Chapter **103**), the Planning Board, Zoning Board and Town Board shall require each applicant for any review, permit or approval of any planned unit development district, special use permit, site plan or subdivision review or a variance to deposit an amount established by the respective Board as its estimate to pay for the fees and/or costs of any engineer, consultant or attorney designated by the Board to review such application or to perform inspections during construction. The fees and/or costs charged by such engineer, consultant or attorney in connection with such review or inspections will be charged against the sum deposited. Any portion of the review amount remaining shall be returned to the applicant within 45 days of final action on the application, and any portion of the inspection amount remaining shall be returned to the applicant within 45 days after issuance of the certificate of occupancy. The amount of the fees and/or costs shall be established by the Board to which the applicant seeks approval.

## Article II. Definitions

### § 208-7. Definitions and word usage.

- A. Certain words and terms used in this chapter are defined, for the purposes thereof, as follows:

**ACCESSORY BUILDING**

See "building, accessory."

**ACCESSORY RETAIL**

The retail sales of various products (including food service) intended to be ancillary to the primary uses within an office or industrial complex. Accessory retail is intended to meet the daily needs of immediate employee populations through the offering of goods and services in close proximity in order to promote sustainability and reduce traffic. Typical accessory retail uses include, but are not limited to, a cafe, coffee/sandwich shop, automated teller machine, bank, and mini-market/newsstand. [Added 2-28-2011 by L.L. No. 7-2011]

**ACCESSORY USE**

See "building, accessory use of."

**AGRICULTURE**

An enterprise in which activities include the cultivation of food, fiber or horticultural crops or the raising of livestock or poultry.

**ANIMAL-CARE FACILITIES**

Veterinary offices and commercial boarding/kennel facilities.

**ANIMAL/VETERINARY OFFICE/HOSPITAL**

A facility where animals are given veterinary care and treatment and the boarding of animals is limited to short-term care incidental to the hospital use. Hospital/office facilities which treat large nondomestic animals shall only be allowed in light industrial and rural residential areas. In rural areas, the facility shall be situated on a minimum lot size of five acres. Facilities specifically for the care and treatment of small domestic animals can be located in the Light Industrial and Highway Business Zones. Along with other requirements of the zoning district, these facilities shall be buffered from neighboring properties and mitigation measures provided to lessen noise impact as the Town deems appropriate.

**ANIMALS, DOMESTIC**

Household pet, including but not limited to dogs, cats, birds, fish, etc.

**ANIMALS, NONDOMESTIC**

Animals, including but not limited to sheep, horses, cattle, goats, swine, fowl, ducks and geese.

**AREA, LAND**

When referring to the required area per dwelling unit, the net land area, the area exclusive of street and other public open space.

**AREA, TOTAL FLOOR**

The sum of the gross horizontal area of the several floors of the principal building on a lot, excluding the area of porches and patios, covered or uncovered, and excluding cellar and basement floor area not devoted to residential use. All dimensions shall be measured between exterior faces or walls.

**ASSEMBLY**

The fabrication from standardized parts of a distinct object differing from the individual components.

**AUTO BODY SHOP**

The use of an area or portion of any lot or plot, whether inside or outside a building, for the repair or painting of an auto body.

### **AUTOMOBILE SERVICE STATION**

Any building, land area or other premises or portion thereof used or intended to be used for the retail dispensing or sales of vehicular fuels, and including, as an accessory use, the sale and installation of lubricants, tires, batteries and similar accessories.

[Amended 5-16-2005 by L.L. No. 6-2005]

### **AUTOMOBILE JUNKYARD**

See "junkyard."

### **AUTOMOTIVE REPAIR SHOPS AND GARAGES**

Establishments primarily engaged in furnishing automotive repair, rental, leasing and parking services to the general public. This category includes all the components of the automotive industry except retail sales, including parking lots and structures, all types of repairs, car washes and rental and leasing activities so long as these components are incidental to and an accessory to a facility primarily engaged in furnishing automotive repair, rental, leasing or parking services to the general public.

[Amended 5-16-2005 by L.L. No. 6-2005]

### **AUTOMOTIVE SALES**

Establishments primarily engaged in the retail sale of new and/or used vehicles where service and repairs are incidental to the use.

### **BASE DENSITY**

Measurement of the capacity of a parcel or parcels to support the creation of lots or development sites as expressed in dwelling units (lots) per acre, which is calculated by subtraction of the constrained land acreage from the total acreage of the parcel(s).

[Added 5-9-2005 by L.L. No. 5-2005]

### **BED-AND-BREAKFAST**

A house or portion thereof where short-term lodging rooms and meals are provided for in-house guests. The operator of the facility shall live on the premises.

### **BENEFIT AREA**

General vicinity of the permanent open space.

[Added 5-9-2005 by L.L. No. 5-2005]

### **BOARDINGHOUSE**

A dwelling in which three or more rooms, with or without meals, are offered for rent. A house or a finished rooming house shall be deemed a boardinghouse if more than two rooms within it are available for rent.

### **BUILDING**

A structure wholly or partially enclosed within exterior walls or within exterior and party walls and a roof, affording shelter to persons, animals or property.

### **BUILDING, ACCESSORY**

A supplemental building, the use of which is customarily incidental to that of a main or principal building, and which is located on the same lot as that occupied by the main building.

### **BUILDING, ACCESSORY USE OF**

A use customarily incidental to the use of a building for dwelling purposes, not occupying more than 25% of the total floor area thereof used for residential purposes, including the office or studio of an accountant, acupuncturist, architect, artist, audiologist, barber, chiropractor, dentist, engineer, hairdresser, landscape architect, land surveyor, lawyer, musician, notary, nurse (visiting nurse), occupational therapist, optometrist, osteopath, physician, physical therapist, podiatrist, private investigator, psychologist, social worker, speech pathologist, surveyor or teacher, residing on the premises, provided that there is no advertising display visible from the street other than a small, unlighted nameplate not over two square feet in area. The above shall not be interpreted to include the office or place of business of a mortician.

### **BUILDING, ALTERATION OF**

Any change in supporting members of a building, except such changes as may be required for its immediate safety, any addition to a building, any change in use from one district classification to another or removal of a building from one location to another.

### **BUILDING CODE**

The current Uniform Fire Prevention and Building Code of the State of New York.

### **BUILDING COVERAGE**

The percentage of the plot or lot area covered by the building area.

### **BUILDING, HEIGHT OF**

The vertical distance measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof, to the declivity of a mansard roof and to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

### **BUILDING LINE**

(1) **BUILDING FRONT LINE**

The line extended to each side lot line from the outermost point of any part of a building, excluding porches, steps, attached garage or other accessory structure, and parallel to the street line.

(2) **BUILDING SIDE LINE**

The line extended to the building front line and building rear line from the outermost point in any part of the building and parallel to the side wall.

(3) **BUILDING REAR LINE**

The line extended to the side lot lines and parallel to the building front line from the outermost point of any part of the rear of the building.

### **BUILDING OR STRUCTURE, NONCONFORMING**

An established building or structure, lawful prior to and at the time of the adoption of this chapter or any amendment thereto affecting such building which, because of its inherent nature or construction, does not conform to the provisions of this chapter for the district in which it is located.

### **BUILDING, PRINCIPAL**

A building, including enclosed porches, in which is conducted the principal use of the lot on which it is situated. In any residence district, any dwelling shall be deemed the principal building on the lot on which the same is situated.

**BUILDING INSPECTOR**

The Director of Building and Zoning of the Town of Clifton Park and/or his designee.

**CAR WASH**

An area of land and/or a structure with machine- or hand-operated facilities used principally for the cleaning, washing, polishing or waxing of motor vehicles.

**CENTER LINE OF STREET OR ROAD**

A line midway between and parallel to two street or road property lines or as otherwise defined by the Planning Board.

**CENTRAL SEWER AND CENTRAL WATER SYSTEMS**

Communal sewage disposal systems and communal water supply systems approved by the Town Board and any other public agencies having jurisdiction thereof.

**CERTIFICATE OF OCCUPANCY**

A document issued by the Building Inspector allowing the occupancy or use of a building and certifying that the structure or use has been constructed and can be used in compliance with applicable state codes and/or Town regulations.

**COMMERCIAL RECREATION FACILITY**

An indoor and/or outdoor privately run business involving playing fields, courts, arenas or halls designed to accommodate sports and recreational activities, such as but not limited to billiards, bowling, gymnasiums, health spas, skating rinks, indoor shooting ranges, tennis courts, swimming pools and golf facilities.

**COMMUNITY RESIDENCE**

A residence for a dependent population, sponsored by a charitable, religious or government agency, providing a homelike environment and supervision for the housing and care of dependent persons in a setting that is integrated within the community, established similar to a single-family residence with shared living area, kitchen and bathroom facilities. The definition includes group homes, halfway houses and supervised living facilities.

**COMPREHENSIVE LAND USE PLAN**

The long-range plan intended to guide growth and development of the Town, expressing official contemplations on the course of its housing, public utilities, community facilities, transportation and land use distribution and intensity.

**CONDOMINIUM**

A building or group of buildings in which units are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional undivided basis and the sole owner or all the owners of which have submitted the subject property to the provisions of the Condominium Act (New York State Real Property Law Article 9-B).

**CONDOMINIUM ASSOCIATION**

The community association which administers and maintains the common property and common elements of a condominium.

**CONSERVATION-BASED DESIGN**

An approach to land conservation and development planning and design that emphasizes the protection of important natural and cultural resources as a way to preserve these resources to the maximum extent practicable as land becomes developed.



[Added 5-9-2005 by L.L. No. 5-2005]

### **CONSERVATION SITE**

A parcel or parcels that will be the location for the establishment of a community benefit of permanent open space through the Town of Clifton Park Zoning Ordinance. The permanent open space may be accomplished on a conservation site through either outright fee simple land purchase/donation or purchase/donation of development rights. Proof of perpetuity is required to be documented in writing to the Town of Clifton Park Town Board.

[Added 5-9-2005 by L.L. No. 5-2005]

### **CONSTRAINED LAND**

A parcel's acreage that includes surface water bodies, NYSDEC-regulated freshwater wetlands, federally regulated wetlands, one-hundred-year floodplains, floodways, and lands with slopes 20% or greater (measured over a fifty-foot horizontal distance).

[Added 5-9-2005 by L.L. No. 5-2005]

### **CONVENIENCE FOOD STORE**

A facility of 5,000 square feet of gross floor area or less with any combination of the following primary characteristics:

- (1) Retail sale of food and beverages for consumption off-premises.
- (2) Sale of prepared foods, such as sandwiches, soups, ice cream, etc., for consumption on or off the premises and may include indoor seating for such purposes.
- (3) Sale of gasoline or other fuel, oil or other lubricating substances or other motor vehicle accessories and generally of a self-service type. [A facility with more than four sets of fuel-dispensing devices (pumps) or more than 12 nozzles shall be considered to be an automobile service station.] Any convenience food store which sells fuel under the provisions of this subsection shall also meet the criteria for automobile service stations found in § 208-93.

### **DAY CARE**

Daytime care or instruction of three or more individuals away from their own homes for more than three but less than 24 hours per day on a regular basis by an individual, association, corporation, institution or agency, whether or not for compensation or reward.

### **DAY-CARE CENTER**

A place other than an occupied residence, providing or designed to provide day care for any number of individuals, or an occupied residence providing or designed to provide day care for seven or more individuals, and which meets the criteria contained in Part 418 of Title 18 of the New York Code of Rules and Regulations.

### **DAY-CARE HOME**

A family home, which is a personal residence and occupied as a family residence, which provides child day care on a regular basis for compensation or otherwise and, for purposes of this chapter, includes both of the following as defined in Parts 416 and 417 of Title 18 of the New York Code of Rules and Regulations and which meets the criteria as contained in those two Parts:

- (1) Family day-care home: for three to six children (Part 417).
- (2) Group family day-care home: for seven to 12 children (Part 416).

### **DIRECTORY**

A sign which lists the occupant(s) of and/or the business, trade, profession or occupation of the occupant(s) of an establishment.

**DOUBLE-FRONTAGE LOT**

A lot with the rear and front lot lines abutting existing or proposed streets.

**DRAINAGE CHANNEL**

An area where surface water flows sufficiently to produce a defined channel. The flow of water may be intermittent or ephemeral; the channel need not contain water year-round.

**DRAINAGE CORRIDOR**

The landscape features on both sides of a drainage channel, including soils, slopes and vegetation, whose alteration can directly impact the drainage channel's physical characteristics and biological properties.

**DWELLING**

A house, apartment building or other building designed or used primarily for human habitation. The word "dwelling" shall not include tourist homes, motels, hotels or other structures designed or used for transient residence.

**DWELLING, MULTIFAMILY**

A permanent building containing three or more dwelling units.

**DWELLING, ONE-FAMILY**

A permanent building containing only one dwelling unit.

**DWELLING, SEMIDETACHED**

A detached building containing two dwelling units separated by a party wall, each having one side yard.

**DWELLING, TWO-FAMILY**

A building having two side yards and accommodating but two families, with one family living over the other.

**DWELLING UNIT**

One or more rooms for ownership, lease or rent, designed, occupied or intended for occupancy by one family and physically independent of any other groups of rooms or dwelling units which may be in the same structure, containing independent cooking, sanitary and sleeping facilities.

**ENACTMENT**

Refers to the date of the enactment of this chapter.

**ENGINEER**

An individual duly qualified and licensed to perform engineering work in the State of New York.

**ESTABLISHMENT**

A building or structure in which or at which one or more businesses, trades, professions or occupations or any combination thereof is (are) conducted. Each office or room in such a building or structure or each section of such building or structure devoted to a business, trade, profession or occupation shall not be considered an establishment.

**FAMILY**

- (1) Purpose: to maintain and preserve the character of the residential districts devoted to family values and to reduce traffic and parking congestion, population density, noise and other disturbances conflicting with the stable, uncongested residential environment. It is the intent of this chapter to permit families and all groups who are the functional equivalent of the family to live in districts set aside for residential purposes and to allow those uses recognized by the state to constitute familial-type living arrangements.
- (2) Definition:  
[Amended 4-18-2011 by L.L. No. 10-2011]
  - (a) One, two, or three persons occupying a dwelling unit and living together as a family; or
  - (b) Four or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.
- (3) It shall be presumptive evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.  
[Added 4-18-2011 by L.L. No. 10-2011]
- (4) In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:  
[Added 4-18-2011 by L.L. No. 10-2011]
  - (a) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit, including a head or heads of household;
  - (b) The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family; and
  - (c) The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
  - (d) The group is permanent and stable. Evidence of such permanency and stability may include:
    - [1] The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
    - [2] Members of the household have the same address for purposes of voter's registration, driver's license, motor vehicle registration and filing of taxes;
    - [3] Members of the household are employed in the area;
    - [4] The household has been living together as a unit for a year or more, whether in the current dwelling unit or other dwelling units;
    - [5] There is common ownership of furniture and appliances among the members of the household; and
    - [6] The group is not transient or temporary in nature.
  - (e) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

**FARM**

Any parcel of land containing at least five acres which is used in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used, storage of produce and processing and sale of farm produce. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.

**FINISHED GRADE**

The natural surface of the ground within 10 feet of the building or the surface of the ground within 10 feet of the building after completion of any change in contour.

**FIRST FLUSH**

The delivery of a disproportionately large load of pollutants during the early part of storms due to the rapid runoff of accumulated pollutants. The first flush is defined as the first 1/2 inch of runoff (or runoff resulting from a one year, twenty-four-hour storm, whichever is greater) from all land areas for which the perviousness or other drainage characteristics have been changed from predevelopment conditions due to construction or other soil-disturbing activities.

**FRONTAGE**

The length of the property line separating a lot from the street right-of-way line, measured along the street right-of-way line. For the purposes of determining yard requirements on corner lots, all sides of a lot adjacent to rights-of-way meeting Town road width requirements shall be considered frontage.

**GARAGE, PRIVATE**

Any enclosed space for the storage of one or more motor vehicles and within which space no business activity or industry connected directly or indirectly with motor vehicles is conducted nor space therein for more than one car is leased to a nonresident of the premises.

**GARAGE, PUBLIC**

Any garage other than a private garage, used for storage and housing of vehicles or where such vehicles are equipped for operation or kept for remuneration, hire or sale.

**GREEN SPACE**

That portion of land shown on a site plan, development plan, Comprehensive Plan or Official Map whose purpose is intended for open space preservation, recreation (active or passive), landscaping or parkland. Unless otherwise required by the Planning or Town Boards, said lands shall be undisturbed and seeded and planted with appropriate materials or left in their natural state. They shall not contain buildings or structures other than fences and shall not be used for the display or storage of any merchandise or material or used for the parking of vehicles.

**GROSS FLOOR AREA**

As used herein for calculation of parking requirements, includes the sum of the gross horizontal area of the several floors of all buildings on the parcel, including the area of porches or patios, covered or uncovered.

**HOME OCCUPATION**

Any occupation or a profession which:

- (1) Is customarily carried on in a dwelling;
- (2) Is carried on only by a member(s) of the family residing in the dwelling;

- (3) Is clearly incidental and secondary to the use of the dwelling for residential purposes and does not occupy more than 10% of the total floor area thereof used for residential purposes; and
- (4) Conforms to the following additional conditions:
  - (a) The occupation or profession shall be carried on wholly within the dwelling and not in any structure accessory thereto.
  - (b) There shall be no exterior display, no exterior sign, no exterior storage of materials and no other exterior indication of the home occupation and no exterior variation from the residential character of the dwelling.
  - (c) No offensive odor, noise, vibration, smoke, dust, heat, light or glare shall be produced.
  - (d) Machinery or equipment not customary in a dwelling shall not be permitted.
  - (e) No parking of or storage of commercial vehicles related to the occupation or profession shall be permitted unless the vehicle is used by the person(s) residing in the dwelling and unless the vehicle is stored within a completely enclosed building.
  - (f) The entrance to the space devoted to such occupation shall be only from within the dwelling.
  - (g) No employee(s), whether or not compensated, other than a member(s) of the family residing in the dwelling, shall conduct or participate in the occupation or profession in the dwelling.
  - (h) No more than two customer motor vehicles shall be parked on-site or off-site at any one time.

**HOSPITAL**

An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanitariums, and shall be limited to the treatment or other care of humans.

**HOTEL**

A building in which lodging is provided in guest units and offered to the public for compensation and in which ingress and egress to and from all rooms are made through an inside lobby or office, supervised by a person in charge at all hours. The guest unit shall consist of a room arranged or designed to be available for use as sleeping quarters for transient guests on a daily or weekly basis. The term "hotel" does not include boardinghouses.

**INCENTIVE SITE**

All or part of a parcel or parcels that will be allowed an increase in density through of the Town of Clifton Park Zoning Ordinance.

[Added 5-9-2005 by L.L. No. 5-2005]

**INCENTIVE ZONING**

The system by which specific incentives are granted, pursuant to § 261-b of the Town Law and the provisions of this chapter, on condition that specific physical, social or cultural benefits or amenities would inure to the community.

[Added 5-9-2005 by L.L. No. 5-2005]

**JUNKYARD**

Any place of storage or deposit outside of a building where two or more uninspected, inoperable or unregistered vehicles, no longer intended or in condition for legal use on the public highways, are stored. Such term shall include any place of storage or deposit outside of a building for any purpose, including the reclamation or reuse of used or spare parts or waste materials from vehicles which, taken together, are equivalent in bulk to two or more such vehicles; provided, however, that the term "junkyard" shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes only. The term "junkyard" shall also be construed to mean any place of storage or deposit outside of a building, whether in connection with another business or not, where there is accumulated therein and thereon any secondhand or used property of whatever material or any waste material, whether composed of wood, paper, cloth, cardboard, plastics, metals, stone, cement or otherwise, which, taken together, exceeds in bulk three cubic yards. For the purpose of this section any place of storage in a carport or similar structure, where such vehicle, parts thereof, or other items being stored are visible from any public road or highway, shall be considered to be outside of a building.

[Amended 8-20-2007 by L.L. No. 9-2007]

### **KEYHOLE LOT**

A lot located to the rear of another lot that meets all the requirements of this chapter and has access to a public right-of-way by a strip of land in fee simple ownership, at least 40 feet wide.

### **LETTER OF CREDIT**

A commitment secured by an owner from a bank to the Town that provides that a specific amount of money may be drawn upon by the Town only to secure the completion of construction and adherence to all requirements contained in an approved site plan and/or required soil conservation measures.

### **LIGHT INDUSTRY**

Industrial uses which meet the performance standards, bulk controls and other requirements established in this chapter.

### **LINE-OF-SIGHT PROFILE**

A profile is a graphic depiction of the depressions and elevations one would encounter walking along a straight path between two selected locations. A straight line depicting the path of light received by the eye of an imaginary viewer standing on the path and looking towards a predetermined spot along the path constitutes a line of sight. The locations along the path where the viewer stands and looks are the control points of the line-of-sight profile.

[Added 2-28-2011 by L.L. No. 7-2011]

### **LIVING AREA**

That area comprised of the enclosed, occupied living accommodations within a residence, exclusive of unfinished cellars, garages and open porches.

### **LOT**

A piece, parcel or plot of land occupied or to be occupied by a principal building and its accessory building or buildings, including the yards and other open spaces required by this chapter.

### **LOT AREA**

The total area contained within the lot lines of a lot.

### **LOT, CORNER**

A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of

the same street, forming an interior angle of less than 135°. A lot abutting upon a curved street or streets shall be considered a "corner lot" if the tangents to the curve at its points beginning within the lot or at the points of intersection of the side lot lines with the street line intersect at an interior angle of less than 135°. A corner lot has no rear lot line but has at least two front lot lines.

**LOT, INTERIOR**

A lot other than a corner lot.

**LOT LINE**

A line or record bounding a lot which divides one lot from another lot or from a public or private street or any other public areas.

**LOT LINE ADJUSTMENT**

A lot line adjustment is the realignment of property lines between two or more existing adjacent parcels where the land taken from one parcel is added to an adjacent parcel and where no new lots are created, and where the proposed lots will comply in all respects with the existing Town Code and zoning laws.

[Added 3-2-2009 by L.L. No. 1-2009]

**LOT LINE, FRONT**

The lot line separating a lot from a street.

**LOT, NONCONFORMING**

A lot, the area or dimension of which was lawful prior to the adoption, revision or any amendment of this chapter, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

**LOT LINE, REAR**

The lot line opposite and most distant from the front lot line. A corner lot has no rear lot line but has at least two front lot lines.

**LOT LINE, SIDE**

Any lot line other than a front or rear lot line.

**LOT WIDTH**

The distance between side lot lines at the required minimum front yard depth measured along a line parallel to a line connecting the end points of the front lot line.

**LOT OF RECORD**

A lot which exists as shown or described on a plot or deed in the records of the local registry of deeds.

**LOW-IMPACT DEVELOPMENT**

Includes the protection of soil and water resources as part of development projects, such as provision for vegetative buffers along drainage courses.

[Added 5-9-2005 by L.L. No. 5-2005]

**MANUFACTURING**

The mechanical or chemical transformation of materials or substances into products, including the assembling of component parts, the manufacturing of products and the blending of materials.

**MARINA**

A facility for storing, servicing, fueling, berthing and securing, or any combination thereof, pleasure

boats.

### **MINIMUM AREA OF LOT**

The smallest lot area established by this chapter on which a use or structure may be located in a particular zoning district.

### **MOBILE HOME**

A vehicle known as a "mobile home" under the specifications set forth by the Mobile Home Manufacturer's Association used as a place of residence for living purposes, standing on wheels or rigid supports and not including recreational vehicles as set forth below. The term "mobile home" also includes the term "trailer."

[Added 4-6-1998 by L.L. No. 2-1998]

### **MOBILE HOME PARK**

Any tract of land where two or more mobile homes are parked or which is used or held out for the purpose of supplying to the public a parking space for two or more mobile homes. Each mobile home park shall be subdivided into park units with a minimum lot size of 9,600 square feet. The minimum setback from adjacent properties shall be 50 feet with a twenty-five-foot vegetated buffer on all sides.

[Added 4-6-1998 by L.L. No. 2-1998]

### **MODULAR HOME (also called "factory-manufactured home")**

A housing unit constructed off site and incorporating structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. Every modular (factory-manufactured) home or component shall bear an insignia of approval issued by the New York State Fire Prevention and Building Code Council.

### **MOTEL**

A building or group of buildings, whether detached or in connected units, containing living and sleeping accommodations used for transient occupancy and which has individual entrances, from outside the building, to serve each guest unit. The guest unit shall consist of a room arranged or designed to be available for use as sleeping quarters for transient guests away from their place of residence on a daily or weekly fee basis. They may also provide additional services, such as restaurants, meeting rooms and recreation facilities. No motel room designed to accommodate any person or persons overnight shall contain a kitchen; however, a kitchenette may be contained within a motel room designed to accommodate any person or persons overnight, provided that not more than 10% of the rooms contained in any one building of a motel complex contain kitchenettes and provided that not more than 10% of all the rooms designed to accommodate any person or persons overnight in the entire motel complex contain kitchenettes. The term "motel" includes buildings designed as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses or tourist cabins. Each structure must have at least eight rental units.

### **NONCONFORMING USE**

The use of a building, structure or use of land, existing at the time of enactment of this chapter or amendment thereto, which does not conform to the regulations of the district or zone in which it is situated.

### **OFFICE**

A building or portion of a building wherein services are performed involving predominantly administrative, professional or clerical operations.



**OPEN SPACE**

An area that is intended to provide light and air and is designed for either environmental, scenic or recreational purposes. Open space may include but is not limited to lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas and watercourses. Open space shall not be deemed to include driveways, parking lots or other surfaces designed or intended for vehicular travel.

**OPEN SPACE PLAN**

The Clifton Park Open Space Plan 2003.  
[Added 5-9-2005 by L.L. No. 5-2005]

**OVERSIZED VEHICLE**

Every vehicle having an overall length of more than 25 feet or an overall width of more than eight feet or an overall height (exclusive of antennas or similar accessories) of more than eight feet or weighing more than 8,000 pounds gross weight. All such widths are inclusive of loads and attachments.

**PARCEL**

Any tax parcel, contiguous tax parcels under single ownership or contiguous tax parcels proposed to be developed as a unit. For the purposes of this chapter, each tax parcel shall be identified on the Tax Map of the Town of Clifton Park dated March 1, 2005, and single ownership shall be determined by deed as filed on March 1, 2005.  
[Added 5-9-2005 by L.L. No. 5-2005]

**PARKING SPACE**

The area required for parking one automobile, which in this chapter is held to be a nine-by-eighteen-foot stall, with aisles a minimum of 22 feet in width and handicap stalls in accordance with Americans With Disabilities Act (ADA) standards.

**PARK UNIT**

The lot or space in my mobile home park which shall be assigned to or used and occupied by any one mobile home.  
[Added 4-6-1998 by L.L. No. 2-1998]

**PERMANENT FARM LABOR HOUSING**

A new or existing single- or multifamily dwelling and/or other permanent structures converted into apartments on agricultural property of 10 acres or more, that are occupied by farm employees and their family members including spouses, domestic partners, children and adult family.  
[Added 5-2-2011 by L.L. No. 11-2011]

**PERMANENT OPEN SPACE:**

The area within a parcel that is established for conservation of natural and cultural resources in perpetuity.  
[Added 5-9-2005 by L.L. No. 5-2005]

**PERSON**

Any individual, corporation, partnership, association, trustee, firm, company, group, society or other legal nongovernmental entity.

**PERSONAL SERVICE ESTABLISHMENT**

A retail business with the primary purpose of providing work done or duties performed for individual consumers, such as shoe repair, dry cleaning, laundromat, barbershop, beauty parlor or tailor shop.

**PLACE OF WORSHIP**

Any structure used for worship or religious instruction, including but not limited to a church, chapel or synagogue, and including administrative rooms accessory thereto.

**PLANNED UNIT DEVELOPMENT**

A tract of land which is developed as a unit with a grouping of residential, commercial and/or industrial buildings, together with their accessory buildings and all appurtenant roadways, parking areas, loading areas, open and/or green spaces, and service buildings and facilities.

**PLANNING BOARD**

The Planning Board of the Town of Clifton Park.

**PORCH, OPEN**

A porch open on three sides, except for wire screening. A porch shall not be considered open if enclosed by either a permanent or detachable glass sash or if heated. A structure having a driveway running to it, under it or through it shall not be considered to be an open porch.

**PRIVATE CLUB**

A facility operated by a corporation, association or group of people for the social, educational or recreational intent of the dues-paying members and their guests but not primarily for profit nor to render a service which customarily is carried on as a business. Commercial organizations, such as but not limited to tennis clubs, racquet clubs and physical fitness clubs, shall not be considered private clubs.

**PROFESSIONAL OFFICE**

Any building which houses a business which requires licensure or certification by the New York State Education Department and also including attorneys.

**PUBLIC UTILITY STRUCTURES**

Public utility structures and facilities, such as electric lines and poles, gas mains, water mains and telephone and telegraph lines and poles, not including, however, high-voltage transmission lines and poles therefor.

[1]

**RESEARCH LAB**

A building or structure built, altered and/or equipped for experimental or scientific study or testing and analysis for experimental research in the natural, physical or social sciences or engineering and development as an extension of investigation with the objective of creating end products, including the limited construction of pilot or test models and materials and which does not emit or pass off sound, vibration, light, odors, smells, smokes or other noxious or bothersome products beyond the boundaries of the structure.

**RESTAURANT**

Any premises where food and/or beverages are commercially sold for on-premises consumption to patrons seated at tables or counters and where table service is provided. Any facility without table service or providing parking lot service to cars where the food is to be eaten outside of the structure and/or off the premises shall not be considered a restaurant for the purposes of this chapter and shall be deemed to be a drive-in or fast-food restaurant.

**RESTAURANT, DRIVE-IN OR FAST-FOOD**

Any establishment whose principal business is the sale of foods, frozen desserts or beverages to the

customer in a ready-to-consume state, usually served in paper, plastic or other disposable containers, for consumption within the restaurant building and elsewhere on the premises or for carryout.

**RETAIL ESTABLISHMENT**

A use devoted exclusively to the retail sale of commodities directly to consumers.

**REVIEW**

A preliminary, nonbinding review by the Town Board of an application for use of incentive zoning to determine the merits of applying the incentive zoning concept to a particular project.

[Added 5-9-2005 by L.L. No. 5-2005]

**RIDING ACADEMY**

Any establishment where horses are kept and/or used for riding, driving or stabling for compensation or incidental to the operation of a ranch or similar establishment.

**ROADSIDE STANDS**

A stall or booth for business which shall be limited to the sale of farm products.

**SCHOOL, PRIVATE**

An institution, not owned by a public agency, which offers to its students formal education and is chartered by the Board of Regents of the University of the State of New York.

**SCHOOL, PUBLIC**

An institution under the jurisdiction of a school district or other public agency and legally constituted by the State of New York to offer free formal education to residents of the district.

**SCREENING**

Fences, shrubs or trees or other natural and/or artificial material which obscures the visual character of any given building or use of land.

**SEQRA**

The State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law, as amended, and the regulations promulgated hereunder.

[Added 5-9-2005 by L.L. No. 5-2005]

**SETBACK, FRONT**

The required minimum distance between the front line of a building and the related front lot line. (See "building line" and "lot line, front.")

**SETBACK, REAR**

The required minimum distance between a rear lot line and the rear of a building. The building rear line shall be measured from any bay windows, covered porches, whether enclosed or unenclosed, or any projections thereof, which are over 50 square feet in area.

**SETBACK, SIDE**

The required minimum distance between a side lot line and the closest side of a building. The building side shall be measured from any bay windows, covered porches, whether enclosed or unenclosed, or any projections thereof which are over 50 square feet in area.

**SEWER, CENTRAL**

See "central sewer and water system."

**SHOPPING CENTER**

A group of stores, shops and similar entities, occupying adjoining structures, all of which may be deemed one building if designed as an architectural unit, the minimum land area of which is 10 acres with a minimum width of 400 feet at the building line.

**SOIL-DISTURBING ACTIVITY (SDA)**

Any activity which directly or indirectly disturbs more than one acre of soil and, therefore, requires a building permit. This does not include soil disturbance for emergencies, household gardening, governmental activities and customary agricultural or single lot, single-family residential activities which are exempt. (See § 208-114C.)

**SOLAR ARRAY, GROUND- OR POLE-MOUNTED**

Any solar collector, controls, solar energy storage device, heat exchangers, or solar-thermal energy system which is directly installed on the ground and not affixed to an existing structure.

[Added 3-21-2011 by L.L. No. 9-2011]

**SOLID WASTE MATERIAL**

All putrescible and nonputrescible solid wastes, including tree stumps, branches and other wood debris products, garbage, rubbish, ashes, incinerator residue, street cleanings, dead animals, demolition and construction debris, abandoned vehicles, offal, agricultural, commercial and industrial wastes, hazardous and toxic waste and wastes from domestic and municipal sewer systems and treatment facilities, including sludges of any kind.

**SPECIAL USE**

A specified use of property that is deemed appropriate to a given district if certain conditions are satisfied, including compatibility with adjacent uses, but which may be incompatible within the district if conditions are not satisfied. (See 208-79.)

**STABLE**

Any structure or building for the sheltering and/or feeding of horses.

**STABLE, COMMERCIAL**

Any stabling of horses for financial or other considerations.

**STREAM**

That portion of any surface freshwater course, except lakes or ponds having a surface area greater than 10 acres at mean low-water level, for which the New York State Department of Environmental Conservation has adopted or may hereafter adopt, pursuant to § 17-0301 of the Environmental Conservation Law, any of the following classifications or standards: AA and AA(T); A and A(T); B and B(T); C(T); or C and D.

**STREET**

Any public way dedicated to public travel, greater than 20 feet in width. The word "street" shall include the words "road," "highway" and "thoroughfare."

**STREET LINE**

The right-of-way line of a street as indicated by dedication or by deed of record.

**SWIMMING POOL**

Any artificial pool or structure intended for bathing or swimming purposes, made of concrete, masonry, metal or other impervious material, over 12 inches in depth, and shall include both aboveground and in-ground pools.

**TELECOMMUNICATION TOWERS****[Added 12-9-1996 by L.L. No. 11-1996]**

- (1) RADIO INSTALLATIONS, AMATEUR (LICENSED AMATEUR RADIO OPERATORS, known as "HAMS") Any devices, antenna support structures, including poles and support towers placed in the yard area of a lot to be utilized by amateur radio operators licensed by the Federal Communications Commission.
- (2) ALL OTHER TELECOMMUNICATION TOWERS Any structure greater than 15 feet in height, which is capable of receiving and/or transmitting signals (for the purpose of communication). This definition does not apply to amateur radio installations as defined in Subsection A above.

**TIMBERING**

The cutting of trees six inches or more in diameter at breast height at a rate of more than 12 trees per acre. This shall not include the cutting of dead or diseased trees or trees creating a dangerous condition; the cutting of trees necessary for construction activities as approved by the Building Inspector; or cutting of trees by the landowner for personal use, unless otherwise prohibited. Cutting, as defined herein, cannot result in less than 30 square feet per acre of remaining basal area.

**TRANSIENT RESIDENCE**

The occupying or using by other than one family of a single habitable residence, unit or structure intended to be used for living, sleeping and/or cooking for less than 20 consecutive days. Paying for lodging or use of a residence, unit or structure on a per diem or weekly basis shall constitute evidence of the intention to utilize accommodations as a transient residence.

**TRANSPORTATION SERVICES, ACCESSORY**

Establishments furnishing services incidental to transportation, such as park-and-ride and parking services and the arranging of passenger or freight transportation.

**TRANSPORTATION SERVICES, LOCAL**

Establishments primarily engaged in furnishing local and suburban passenger transportation, including taxicabs, passenger transportation charter service, school buses and terminal and service facilities for motor vehicle passenger transportation.

**TOWN BOARD**

The Town Board of the Town of Clifton Park.

**UNCONSTRAINED LAND**

A parcel's remaining acreage after constrained land is subtracted. Unconstrained land shall be the basis for calculating maximum allowable density.

[Added 5-9-2005 by L.L. No. 5-2005]

**UPLAND**

Land elevated above surrounding lands, in particular, that land upland from streams or wetlands.

**VARIANCE**

Permission by the Zoning Board of Appeals to use land for a use or in a configuration which is not in accordance with or is prohibited by the applicable zoning regulations. (See also § 208-109C.)

**VARIANCE, AREA**

Permission by the Zoning Board of Appeals to construct or alter a structure in a manner otherwise inconsistent with the yard, height or other dimensional requirements of this chapter. [See also § 208-

**109C(3).]****VARIANCE, USE**

Permission by the Zoning Board of Appeals to use a parcel for a use which is otherwise prohibited by this chapter. [See also § 208-109C(2).]

**VISUAL ASSESSMENT**

Analytical techniques that employ viewsheds, and/or line-of-sight profiles, and descriptions of aesthetic resources, to determine the impact of development upon aesthetic resources; and potential mitigation strategies to avoid, eliminate or reduce impacts on those resources.

[Added 2-28-2011 by L.L. No. 7-2011]

**WAREHOUSING, PRIVATE**

Terminal facilities operated for a specific establishment or group of establishments in a particular industrial or economic field.

**WAREHOUSING, PUBLIC**

Terminal facilities available to the general public, at a fee, for the storage of farm products, furniture and other household goods or commercial or private goods of any nature, with the exception of chemicals or petroleum products unless incidental to the main use.

**WATER SYSTEM, CENTRAL**

See "central sewer and water system."

**WESTERN CLIFTON PARK**

The area of Clifton Park consisting of the study area as described in the Western Clifton Park Land Conservation Plan and Generic Environmental Impact Statement and to include the Conservation Residential (CR), Hamlet Mixed Use (HM), and Hamlet Residential (HR) Zoning Districts.

[Added 5-9-2005 by L.L. No. 5-2005]

**WETLAND**

Land areas meeting either Federal Clean Water Act (Section 404) or New York State Environmental Conservation Law (Article 24) definition of a wetland.

**WHOLESALE ESTABLISHMENT**

A building or buildings used as a wholesale distribution center and/or nonretail sales.

**YARD, FRONT**

An open space extending across the entire width of the lot between the building line of a principal building and the front lot line and into which space there shall be no extension of building parts other than steps, open porches, eaves, cornices and similar fixtures.

**YARD, REAR**

An open space extending across the entire width of the lot between the rear wall of the principal building and the rear lot line, unoccupied except for accessory buildings and open porches which, in the aggregate, shall occupy not more than 35% of the area.

**YARD, SIDE**

An open, unobstructed space on the same lot with a principal building between the principal building and the side line of the lot and extending through from the front yard to the rear yard, into which space there shall be no extension of building parts other than eaves with an overhang of not more than two feet, rainwater leaders, windowsills and other such fixtures and open steps for a distance not

exceeding four feet.

### **ZONING BOARD OF APPEALS**

The Board of Appeals of the Town of Clifton Park.

### **ZONING DISTRICT**

A finite area of land, designated by its boundaries on the Official Map, throughout which specific and uniform regulations govern the use of land and/or the location, size and use of buildings.

### **ZONING ENFORCEMENT OFFICER**

The Director of Building and Zoning of the Town of Clifton Park or his designee.

[1]: *Editor's Note: The definitions of "radio installations, amateur (HAMS)," and "radio, television tower," which immediately followed this definition, were repealed 12-9-1996 by L.L. No. 11-1996.*

- B. Word usage. The present tense shall include the future; the singular number shall include the plural, and the plural, the singular. The word "shall" is always mandatory. The term "person" includes a corporation as well as an individual. The term "lot" includes the word "plot" or "parcel." The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied." All terminology is gender neutral, i.e., "he" means "he or she," "his" means "his or hers," etc.

## **Article III. Residential Districts**

### **§ 208-8. Agricultural/Residential 3 Districts (R-3).**

- A. General provisions. The Agricultural/Residential 3 Districts (R-3) are primarily for agriculture and nonfarm or exurban residential uses. The purpose is to provide areas within the Town for the development of very low-density residential uses appropriate with environmentally limiting conditions while protecting the rural character of these portions of the Town. Development which occurs within the district should be sensitive to the rural nature of the district and the environmental limitations of lands within the district and should preserve open space and agricultural land to the maximum extent possible. The Town has an approved agricultural district (which does not directly affect zoning). A copy of the map of this district may be reviewed in the Town Clerk's office.
- B. Permitted uses; restrictions. In Agricultural/Residential 3 Districts (R-3), no building or other structure or land shall be used and no building or other structure shall be built, altered or erected for any purpose other than that of:
- (1) Any form of agriculture or horticulture, including the storage, processing and sale of farm products, except as follows:
    - (a) The following uses are prohibited on lots smaller than five acres in size:
      - [1] Keeping livestock or poultry, such as hogs, cows, horses, goats or chickens.
      - [2] Commercial greenhouses.
      - [3] Roadside stands or other structures for the sale of farm products.
    - (b) All necessary odors, noises and agricultural chemicals associated with approved farming practices

shall be permissible.

- (2) A one-family dwelling and its accessory buildings.
- (3) Public utility structures.
- (4) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
- (5) (Reserved)<sup>[1]</sup>
  - [1]: *Editor's Note: Former Subsection B(5), regarding residential cluster development, was repealed 5-9-2005 by L.L. No. 5-2005.*
- (6) Home occupation.
- (7) Radio installations, amateur (HAMS). See § **208-95A**.
- (8) All other telecommunication towers on shared sites as in § **208-95B**.  
[Added 12-9-1996 by L.L. No. 11-1996]
- (9) Other uses and other buildings and structures as provided by the following sections:
  - (a) Only the following special uses shall be considered pursuant to § **208-79** et seq.:
    - [1] Cemeteries.
    - [2] Accessory use of a building.
    - [3] Timbering (See Chapter **184** of this Code)
    - [4] Animal/veterinary office/hospital.
    - [5] Excavation and removal of stone, sand and gravel.
    - [6] Day-care home.
    - [7] Riding stable or riding academy, under the provisions of § **208-85**.
    - [8] Roadside sales, under the provisions of § **208-100**.
    - [9] Bed-and-breakfast facilities.
    - [10] Dwelling, two-family and/or semidetached.
    - [11] Church or other place of worship.
    - [12] Facilities for the sale and/or consumption of farm- and country-related edible and nonedible products at farm markets. Such facilities shall be consistent with the customary activities and operations normally associated with a farm.
    - [13] Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use, except a business office, storage yard, or repair shop, and subject to the provisions of § **208-79E(2)**.
    - [14] Storage of liquefied petroleum (LP) gas in excess of 1,100 gallons.
    - [15] Ground- or pole-mounted solar arrays.



[Added 3-21-2011 by L.L. No. 9-2011]

- [16] Permanent farm labor housing. (Requires an operational, commercial farm with a minimum of 10 acres under production.) Farm workers housed under this section must be integral to farm operations in the determination of the Zoning Officer. The farm employee must be employed on an operational commercial farm, and must be integral to farm operations. Farm employees who work on agricultural operations at least 51% of the time in the year are presumed to be integral to farm operations under this section. Family members of such farm workers may occupy premises constructed under this section.

[Added 5-2-2011 by L.L. No. 11-2011]

- [a] Farm operations holding a special use permit for permanent farm housing shall certify to the Building Department that the housing units are occupied by farm employees or family members integral to farm operations, upon request from the Building Department pursuant to Subsection **B(9)(a)[15]**.

(b) Section **208-96**, Temporary uses and structures.

C. Space and bulk standards. See § **208-11**.

## § 208-9. (Reserved)

[1]: *Editor's Note: Former § 208-9, Residential 2 Districts (R-2), as amended, was repealed 5-9-2005 by L.L. No. 5-2005.*

## § 208-10. Residential 1 Districts (R-1).

- A. General provisions. Residential 1 Districts (R-1) are primarily for suburban residence uses and to accommodate relatively dense residential development at densities appropriate with environmental restrictions and which transition between the Town's primary commercial development districts and lower-density districts both in density and allowable land uses. The Town has an approved Agricultural District (which does not directly affect zoning). A copy of the map of this district may be reviewed in the Town Clerk's office. (See also Article **XII**, Vischers Ferry Road Corridor).
- B. Permitted uses; restrictions. In Residential 1 Districts (R-1), no building or other structure or land shall be used and no building or other structure shall be built, altered or erected for any purpose other than that of:
- (1) Any form of agriculture or horticulture, including the storage, processing and sale of farm products, except as follows:
    - (a) The following uses are prohibited on lots smaller than five acres in size:
      - [1] Keeping livestock or poultry, such as hogs, cows, horses, goats or chickens.
      - [2] Commercial greenhouses.
      - [3] Roadside stands or other structures for the sale of farm products.
    - (b) All necessary odors, noises and agricultural chemicals associated with approved farming practices shall be permissible.

- (2) A one-family dwelling and its accessory buildings.
  - (3) Public utility structures.
  - (4) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
  - (5) Residential cluster development, under the provisions of § **179-37** of the Code of the Town of Clifton Park.
  - (6) Home occupation.
  - (7) Radio installations, amateur (HAMS). See § **208-95A**.
  - (8) All other telecommunication towers on shared sites as in § **208-95B**.  
[Added 12-9-1996 by L.L. No. 11-1996]
  - (9) Other uses and other buildings and structures as provided by the following sections:
    - (a) Only the following special uses shall be considered pursuant to § **208-79** et seq:
      - [1] Cemeteries.
      - [2] Accessory use of a building.
      - [3] Timbering. (See Chapter **184** of this Code)
      - [4] Excavation and removal of stone, sand and gravel.
      - [5] Day-care home.
      - [6] Bed-and-breakfast facilities.
      - [7] Dwelling, two-family and/or semidetached.
      - [8] Church or other place of worship.
      - [9] Facilities for the sale and/or consumption of farm- and country-related edible and nonedible products at farm markets. Such facilities shall be consistent with the customary activities and operations normally associated with a farm.
      - [10] Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use, except a business office, storage yard, or repair shop, and subject to the provisions of § **208-79E(2)**.
      - [11] Storage of LP gas in excess of 1,100 gallons.
      - [12] Ground- or pole-mounted solar arrays.  
[Added 3-21-2011 by L.L. No. 9-2011]
    - (b) Section **208-96**, Temporary uses and structures.
- C. Space and bulk standards. See § **208-11**.

## § 208-11. Space and bulk standards.

[Amended 5-9-2005 by L.L. No. 5-2005; 3-21-2011 by L.L. No. 9-2011]

Space and bulk standards for residential districts shall be as follows (For CR Zone also refer to § 208-16, and for HR Zone also refer to § 208-17.):

| <b>Standards</b>                                   | <b>R-3</b>   | <b>R-1</b>   | <b>CR</b> | <b>HR</b> |
|--|--------------|--------------|-----------|-----------|
| Minimum land area per dwelling (square feet)       |              |              |           |           |
| With central sewer and central water               | 80,000*      | 20,000       | 10,000    | 6,000     |
| With central sewer only                            | 90,000       | 30,000       | 20,000    | 20,000    |
| Without central water or sewer                     | 100,000      | 40,000       | 40,000    | 40,000    |
| Units per acre                                     | 0.43 to 0.55 | 1.11 to 2.17 | N/A       | N/A       |
| Minimum width of lot at front building line (feet) | 150          | 100          | 80        | 60        |
| Front yards (feet)                                 | 50           | 50           | 30        | 50        |
| Rear yards (feet)                                  | 50           | 25           | 25        | 25        |
| Side yards, each (feet)                            | 20           | 10           | 10        | 5         |
| Minimum floor area (square feet)                   | 960          | 960          | 960       | 960       |

**NOTES:**

- a. (See \* above). In the R-3 District only, if cluster zoning is utilized, then the smallest permissible lot size with central water and sanitary sewer shall be 20,000 square feet, and the number of units per each developed parcel shall be based upon density requirements of 40,000 square feet.
- b. Height. For each foot the height of a building or other structure exceeds 35 feet, the width of each side yard shall be increased by one foot.
- c. The minimum width of all lots at the front building line along those streets listed in § 208-98 shall be 200 feet in all residential districts.
- d. The above shall not apply to prevent construction of a one-family dwelling on a lot existing prior to the original date of enactment (August 8, 1967) and not adjoined at the side by other unoccupied land in the same ownership, and having an area of not less than 20,000 square feet and a width of not less than 100 feet at the front building line, for the R-3 District, and not less than 10,000 square feet and a width of not less than 60 feet at the front building line, for the R-1 District.
- e. Ground- or pole-mounted solar arrays are not permitted without a minimum lot size of 20,000 square feet.

## § 208-12. Accessory buildings.

- A. No detached barn, garage or other accessory building shall be placed closer to a side or rear property line than 10 feet, closer to a front property line than 80 feet or closer to a side-street line than a distance equal to 1/2 of the width of the lot at the front building line, up to a distance which need not exceed 75 feet, except that in an R-1 District (and in cluster zones where the Planning Board has not specified otherwise), the offset from the rear and side property lines shall be five feet and shall be increased by one foot for each foot the height of such building exceeds 15 feet. (See also § 208-85, Stables and riding academies.) In relation to an attached garage or carport built as a structural part of a dwelling, with or without breezeway connection, the same side and front yards shall be required as for a dwelling, and such side yards shall be measured from the outer walls or rooflines of such garage or carport. An attached garage or carport may extend into a rear yard.

- B. Private garages on steep slopes. Where the topography is such that the slope of land exceeds 15% and, therefore, access to a private garage built back of the front building line as required by this chapter is impracticable, it shall be permissible to place such building, not exceeding 12 feet in height, within the front yard space, but not closer to the front street line of the street than 18 feet.

## § 208-13. Special parking.

In any residential district, no person, corporation or association shall cause, allow, permit or suffer any oversized vehicle registered in its name or operated by it or its agent to be parked in any manner or place upon a public street or in the street right-of-way except if such vehicle is actively assisting in an emergency, such as a fire or traffic accident, or the vehicle is in the active process of being loaded or unloaded.

## § 208-14. Other applicable requirements.

See Article **XIV**, Exceptions and Special Provisions, for other applicable requirements.

## § 208-15. Area, yard, height and floor area requirements for public utility structures.

[Added 4-6-1998 by L.L. No. 2-1998]

Public utility structures shall conform to the setbacks of the zone in which they are located, however minimum lot size requirements do not apply.

## § 208-16. Conservation Residential Zones.

[Added 5-9-2005 by L.L. No. 5-2005]

- A. Purpose. The district is established to provide and maintain land area to promote and support ongoing open space and agricultural uses and activities to sustain the rural character of this predominantly natural, agricultural and low-intensity residential setting. The purpose of the Conservation Residential (CR) Zoning District is to protect and enhance the rural character, the natural and scenic qualities of open space, and the agricultural heritage, while providing for well-planned new development that complements the traditional settlement pattern, and protects the health, safety, economic base and quality of life in Western Clifton Park for all of its residents.
- B. Objectives:
- (1) New development should complement and harmonize with the traditional, open, rural, wooded, agricultural, natural and environmental resources, low-intensity residential and hamlet landscapes, agricultural lands and working landscapes, and scenic views and resources as valued by the community in Western Clifton Park.
  - (2) The district includes lands and resources that the community supports for permanent conservation and protection as agricultural lands and open space lands identified in the public planning process of

the Clifton Park Open Space Plan, the Clifton Park Comprehensive Plan, and the Western Clifton Park GEIS. Development projects in this district should contribute to the network of Town-wide, permanently protected open space areas and habitat corridors, both within large parcels of land and among parcels throughout the Town in accordance with the open space vision and criteria set forth in the Clifton Park Open Space Plan, the Clifton Park Comprehensive Plan, and the Western Clifton Park GEIS. Thus, these agricultural and open space lands would be included as Town-wide priorities for conservation, including the application of open space amenity zoning initiatives.

- (3) Development should be sited and laid out using conservation-based design and low-impact design in support of creative solutions to minimize impacts to open space lands and agricultural lands.
- (4) Development should support uses compatible with surrounding land uses and to provide and design for adequate buffering of adjoining properties, particularly between agricultural and residential uses.

C. Applicability.

- (1) This Conservation Residential Zoning District applies to all parcels shown as located within the bounds of said district on the Town of Clifton Park Zoning Map.
- (2) No parcel as shown on the Tax Map of the Town of Clifton Park in existence as of March 1, 2005, may be changed or reconfigured for the purposes of avoiding the provisions of this section of the Zoning Code.

D. Permitted uses.

- (1) The following uses are the permitted, principal uses within the CR District, except within the permanent open space:
  - (a) Agricultural and forestry uses:
    - [1] Farm operations.
    - [2] Any form of agriculture or horticulture, provided that such operations are consistent with §§ 150 and 308 of the Agriculture and Markets Law of the State of New York, including the storage, processing and sale of farm products, except for as noted.
    - [3] The keeping of livestock or poultry, such as hogs, cows, horses, goats or chickens, with a lot of a minimum of five acres.
    - [4] Commercial greenhouses only with a minimum of five acres.
    - [5] Roadside stands or other structures for the sale of farm products with a minimum of five acres. Such facilities shall be consistent with the customary activities and operations normally associated with a farm.
    - [6] Forestry uses for timber harvesting; no clear cutting.
    - [7] Odors, noises, and agricultural implements or chemicals associated with approved best-agricultural-environmental management practices shall be permissible.
  - (b) Residential uses:
    - [1] One-family dwelling and its accessory buildings.
  - (c) Open space uses:

- [1] Open space land.
  - [2] Conservation easements: permanent easements and term easements for agricultural, historic, or open space conservation.
- (d) Recreation uses:
- [1] Passive recreation.
  - [2] Active recreation if the lands are municipally owned.
  - [3] Off-road pedestrian and bicycle trails and paths.
- (e) Utility and other types of potentially necessary uses for the CR District:
- [1] Public utility structures.
  - [2] Radio installations, amateur (HAMS), as defined in § 208-95A.
  - [3] All other telecommunication towers on shared sites as defined in § 208-95B.
- (2) Allowable on the permanent open space. Within the CR District, the following uses are the permitted, principal uses allowed on any lands designated as "permanent open space." When the principal use of preserving the open space or a part thereof is the protection/buffering of natural resources, such as freshwater wetlands, aquifers, steep slopes, mature forests, wildlife habitats or stream corridors, open space uses shall be limited to those which are no more intensive than passive recreation for that approximate portion of open space which warrants protection/buffering.
- (a) Agricultural and forestry uses:
- [1] Any form of agriculture or horticulture, provided that such operations are consistent with §§ 150 and 308 of the Agriculture and Markets Law of the State of New York, including the storage, processing and sale of farm products, except for as noted.
  - [2] Lands reserved for agricultural purposes, but not in active production. Such lands may be required to be maintained using best-agricultural / environmental management practices.
  - [3] The keeping of livestock or poultry, such as hogs, cows, horses, goats or chickens, with a lot of a minimum of five acres.
  - [4] Forestry uses for timber harvesting; no clear cutting.
  - [5] Odors, noises, and agricultural implements or chemicals associated with approved best-agricultural-environmental management practices shall be permissible.
- (b) Nature preserve uses:
- [1] Conservation of water, plant, or wildlife habitat
  - [2] Nature preserve, wildlife habitat, or open space lands for no active human use
  - [3] Off-road pedestrian and bicycle trails and paths.
- (c) Park uses:
- [1] Passive recreation area.

- [2] Active recreation area, if lands are municipally owned and dedicated public active recreation fields (no active recreation facility buildings).
  - [3] Off-road, multiuse pedestrian and bicycle trails and pathways, accessible for disabled, otherwise nonmotorized uses, located within the development and creating connections (or leaving opportunities for connections) to existing or proposed pathways or trails in the Clifton Park Open Space Plan and the Clifton Park Trails Master Plan.
  - [4] Public building for environmental educational uses, restrooms, and a visitors center, with a maximum of building footprint of 2,000 square feet.
- (3) Other uses and other buildings and structures, as provided by the following sections.
- (a) Only the special uses shall be considered pursuant to § **208-79** et seq.:
    - [1] Temporary uses and structures, pursuant to § **208-96**.
    - [2] Large concerts, festivals, and events with potential to attract more than 1,000 people in one day.
    - [3] Commercial stable.
    - [4] Commercial greenhouses on less than five acres.
    - [5] Animal clinic/veterinary clinic/office/animal hospital.
    - [6] Tack shop.
    - [7] Private, public building open to the public for agricultural education purposes, restrooms, visitors center, with a maximum of a building footprint of 2,000 square feet.
    - [8] Dwelling, two-family attached or semi-detached.
    - [9] Roadside sales, nonagricultural, under the provisions of § **208-100**.
    - [10] Home occupation
    - [11] Bed-and-breakfast facilities.
    - [12] Day care as a home occupation, for children or for adult day care.
    - [13] Excavation and removal of stone, sand and gravel.
    - [14] Accessory use of a building for nonagricultural uses.
    - [15] School.
    - [16] Church or other place of worship.
    - [17] Cemeteries.
    - [18] Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use, except a business office, storage yard, or repair shop, and subject to the provisions of § **208-79E(2)**.
    - [19] Storage of liquefied petroleum (LP) gas in excess of 1,100 gallons.

[20] Radio installations, amateur (HAMS). See § **208-95A**.

[21] All other telecommunication towers on shared sites as in § **208-95B**.

[22] Ground- or pole-mounted solar arrays.  
[Added 3-21-2011 by L.L. No. 9-2011]

[23] Permanent farm labor housing. (Requires an operational, commercial farm with a minimum of 10 acres under production.) Farm workers housed under this section must be integral to farm operations in the determination of the Zoning Officer. The farm employee must be employed on an operational commercial farm, and must be integral to farm operations. Farm employees who work on agricultural operations at least 51% of the time in the year are presumed to be integral to farm operations under this section. Family members of such farm workers may occupy premises constructed under this section.  
[Added 5-2-2011 by L.L. No. 11-2011]

[a] Farm operations holding a special use permit for permanent farm housing shall certify to Building Department that the housing units are occupied by farm employees or family members integral to farm operations, upon request from the Building Department pursuant to procedures developed under this section.

E. Standards. The following minimum standards shall apply to all parcels in the CR District:

- (1) Base density. The maximum allowable dwelling units that may be built within the CR District shall be a calculated based on the acreage of unconstrained land included in the development parcel(s). The base density of the parcel (the maximum allowable number of units) is the result of dividing the unconstrained land acreage by maximum development density as set forth herein. Applicants may round down fractional units of 0.5 or less and round up fractional units greater than 0.5.
- (2) Development options:
  - (a) Development on less than 10 acres. A parcel consisting of less than 10 acres may be developed at a maximum density of one dwelling unit per three acres of unconstrained land. A parcel which is less than three acres but larger than 20,000 feet may be developed with one dwelling unit.
  - (b) Development on 10 acres or more. A parcel consisting of 10 acres or more may be developed at a density of one residential dwelling unit per 10 acres, provided there is at least one acre of unconstrained land available to accommodate a residential use, including any required well and septic system. In lieu of development at said density, such parcel may be developed at a density not to exceed 0.33 unit per acre of unconstrained land, provided 50% of the area of the development site is designated as permanent open space pursuant to the other conditions set forth herein. For example, if an applicant owns a seventy-acre parcel, and 10 acres are identified as constrained, the maximum allowable density with a fifty-percent open space set aside is 20 dwelling units. This example is calculated as follows: 70 acres minus 10 constrained acres equals 60 acres of unconstrained land. This 60 acres multiplied by 0.33 results in a maximum allowable base density of 20 units. These 20 units must be placed on the unconstrained sixty-acre portion of the site in this example.
  - (c) A one-time, single-lot exception is allowed, meaning a subdivision of one parcel, as it existed as of January 1, 2005, into a maximum of two lots to be used for single-family residential purposes only shall not be required to follow the conservation approach, although it is highly encouraged to be protective of the natural and cultural resources of the community. This shall only be permitted for parcels greater than 10 acres and shall only be allowed if both of the newly created lots will be



initially owned by family members, at the discretion of the Planning Board. The newly created lot shall be a minimum of two acres, and all principal buildings shall have a minimum setback of 50 feet from all property lines.

- (3) Minimum permanent open space (land area).
  - (a) Where permanent open space is proposed, it must include a minimum of 25% of the unconstrained land of the parcel.
  - (b) For any permanent open space, the fee simple title to the permanent open space may be held privately, but for all permanent open space, the area shall be designated on the site and subdivision plat as applicable and shall be so designated on the Zoning Map of the Town of Clifton Park.
  - (c) Permanent open space may be held in private ownership, or, if proposed for public ownership, shall be dedicated to the Town of Clifton Park. (See Subsection **G** on proof of preservation in perpetuity of permanent open space.)
- (4) Conservation-based development design. Development of any parcels in the CR District shall comply with the requirements of this Code (conservation design layout), along with the development guidelines in the "Western Clifton Park Design Guidelines" attached hereto by reference.<sup>[1]</sup>

[1]: *Editor's Note: The Western Clifton Park Design Guidelines are contained in the Western Clifton Park Land Conservation Plan GEIS, on file in the Town offices.*
- (5) The minimum land area (lot size) per dwelling:
  - (a) With municipal water and sewer: 10,000 square feet.
  - (b) With municipal sewer only: 20,000 square feet.
  - (c) With municipal water only: 30,000 square feet.
  - (d) With no municipal water and sewer: 40,000 square feet.
- (6) Minimum floor area: 960 square feet for a dwelling unit.
- (7) Minimum width of lot at front building line: 80 feet.
- (8) Minimum front yard as is applicable to road character, except as required per § **208-98**:
  - (a) A local traffic, subdivision road: 25 feet.
  - (b) All other Town or county roads: 75 feet.
  - (c) A state highway: 125 feet.
- (9) Minimum rear yards: 25 feet.
- (10) Minimum side yards, each: 10 feet.
- (11) Maximum permitted height: For each foot the height of a building or other structure exceeds 35 feet, the width of each side yard shall be increased by one foot.
- (12) Minimum distance for environmental features consisting of Land Conservation (LC) Zoning District conservation lands and floodplains. No residential dwelling units or on-site wastewater disposal systems shall be located within the bounds of these environmental features. No residential dwelling or

wastewater disposal system shall be placed within 50 feet of a wetland meeting federal jurisdictional requirements.

(13) Conservation design layout.

(a) Criteria and design process for establishing the permanent open space and siting development on a parcel.

[1] The following text outlines the procedures for conducting a conservation-based design and layout for site plans and subdivision plans in the Conservation Residential Zoning District. The conservation design layout procedure is as a four-step process designed to assist the applicant, the Planning Board and the public in preparing and analyzing the materials for site plan and subdivision applications within the Conservation Residential (CR) Zoning District.

[2] The conservation design layout's four-step resource analysis procedure is as follows:

[a] Develop an existing resources and site analysis plan of the natural, cultural, and scenic features.

[b] Conduct a conservation analysis and develop the conservation concepts.

[c] Demonstrate a proposed layout of the development concept that works with and complements the conservation concepts.

[d] Prepare a summary preliminary plan that shows the synthesized conservation and development concepts.

[3] The purpose of conducting such a resource analysis is for the applicant to demonstrate significant application and incorporation of the community resource values for Western Clifton Park as developed and presented in the Town of Clifton Park Open Space Plan, the Town of Clifton Park Comprehensive Plan, and the Western Clifton Park GEIS.

(b) Step [1] Develop an existing resources and site analysis plan of the natural, cultural, and scenic features.

[1] The purpose of this step is to analyze the unique features of the subject parcel. An existing resources and site analysis plan shall be prepared by the applicant to provide the applicant and the Planning Board with a comprehensive analysis of existing conditions, including the natural, cultural and scenic resources, both on the site in detail as set forth below, and describe in a more general manner land uses, road systems, and natural and cultural resources within 500 feet of the perimeter of the proposed development site. The applicant and the Planning Board must identify the existing site conditions and conduct a site analysis to understand the unique landscape features of the parcel and the relationship of the parcel to the adjoining lands as a basis for advancing any proposed permanent open space and proposed development area concepts for the Planning Board to consider.

[2] The existing conditions and site analysis process shall include analyses of physical and environmental resources, forest resources, agricultural resources, historic and cultural resources, and potential as passive and recreational resources. The analysis may take the form of several maps and layers of data presented in a meaningful way to the Planning Board for its review and decision-making in conjunction with the applicant.

[3] The following resources must be mapped and illustrated for the review of the Planning Board:

- [a] All contiguous land owned or under option by the owner and/or applicant.
- [b] Contour lines at a minimum of two-foot intervals to United State Geological Survey datum within the parcel.
- [c] Slopes in excess of 20% or more, measured over a fifty-foot horizontal distance.
- [d] Ridgelines, hills and geologic formations, including but not limited to rock outcrops and other important land features based on available published information or more detailed data obtained by the applicant.
- [e] Watershed boundaries shall be identified.
- [f] Groundwater aquifers and/or recharge areas as mapped on the Town's Official Aquifer Protection Map.
- [g] Lakes, ponds, regulated streams, streams, and natural drainage swales.
- [h] Field delineation and survey of both NYS Department of Environmental Conservation freshwater wetlands and their associated one-hundred-foot adjacent areas, and federal jurisdictional wetlands as regulated by the U.S. Army Corps of Engineers.
- [i] Watercourses, streams and other drainage corridors as classified pursuant to the New York State Department of Environmental Conservation Stream Classification System and as mapped on the Town of Clifton Park's Official Stream Protection Map.
- [j] The Town of Clifton Park Land Conservation (L-C) Zones.
- [k] Flood hazard areas [from a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map], or site-specific flood elevation determination data if none is available otherwise through FEMA.
- [l] Vegetative cover conditions on the property according to general cover type, including cultivated land, permanent grassland, old field, hedgerow, significant forest areas, woodlands, wetlands, isolated trees or small groups of trees with a caliper in excess of 12 inches, and the actual canopy line of existing trees and woodlands. Vegetative types shall be described by plant community, age and condition.
- [m] Any designated critical environmental area, and other important unique environmental areas.
- [n] Habitat areas of rare, threatened or endangered species.
- [o] Agricultural lands: active farmland within a New York State certified agricultural district in Saratoga County, lands within 500 feet of a New York State certified agricultural district, or soils classified as soils of statewide significance and prime farm soils as mapped by the U.S. Department of Agriculture, Natural Resources Conservation Service in the Saratoga County Soil Survey.
- [p] Lands and parcels enrolled in the Town of Clifton Park's term open space, agricultural, or historic resources term conservation easement program.
- [q] Lands identified along scenic road corridors as defined in the Town of Clifton Park Open Space Plan, Town of Clifton Park Comprehensive Plan, and the Town of Clifton Park Western Lands GEIS.

- [r] As located on the site, the location and dimensions of all existing and proposed utilities and utility rights-of-way, existing streets, paved and unpaved roads and paths, buildings, agricultural barns, silos and any other agricultural structures, utilities, remains of buildings and structures, stonewalls, fences, and other man-made improvements.
  - [s] Historic resources. Locations of all historically significant sites or structures on the site and on any abutting site within 500 feet of the site's property boundary, including but not limited to those sites and parcels identified as locally important historic resources in the Town of Clifton Park Open Space Plan, the Town of Clifton Park Comprehensive Plan and the Town of Clifton Park Western Lands GEIS, and according to the New York State Office of Parks, Recreation and Historic Resources, State Historic Preservation Office, that tracks sites, buildings and parcels identified with the state register or the federal register historic designation.
  - [t] Proximity to nearest hamlet or other existing or proposed neighborhood.
  - [u] Trails: existing and potential trails, bikeways and pedestrian trails that are in public use or are proposed conceptually in the Town of Clifton Park Open Space Plan, or specifically on the Town of Clifton Park Town-wide Trails Master Plan Map, on the Mohawk Towpath Scenic Byway, or other routes of Town, state, federal, or Saratoga County significance.
  - [v] Recreation. Lakes, ponds, active public parks, Town park district lands, or other Town, county, and state recreational areas, or opportunities or sites designated in the Town of Clifton Park's Comprehensive Plan.
  - [w] All other boundaries of environmental or other areas to be left undisturbed and/or protected through deed restrictions, conservation easements or other agreements and encumbrances of property which are or have been filed of record with the Saratoga County Clerk's office shall be shown on the plan.
- (c) Step 2. Conservation analysis and prioritizing of conservation concepts.
- [1] Once the site analysis has been accomplished and reviewed with the Planning Board, the applicant may develop concepts for prioritizing which of the existing resources should be conserved and for what proposed future conservation use. Only after this step has been taken may the concepts for development be factored into the site layout.
  - [2] Below are the key conservation principles for Western Clifton Park to assist in prioritizing conservation concepts within the CR District:
    - [a] Conserve the scenic, rural landscape character: the unique setting of this parcel as it contributes to the unique setting of Western Clifton Park.
    - [b] Conduct creative site planning that maintains residential and pastures and rural character allowing for direct visual access to open land, woodlots, farms, scenic views, etc.
    - [c] Protect farms and agricultural lands and uses; protect the core agricultural areas of Western Clifton Park; protect prime farm soils.
    - [d] Permanent protection of larger contiguous areas of significant open space resources which are visible to the general public. including farmlands, woodlands, and other

ecological and natural wildlife habitats and corridors.

- [e] Buffer and protect existing protected open space resources: design that respects and buffers existing term conservation easements, permanent conservation easements and other permanently protected lands and resources, such as not but not limited to the Grooms Tavern Site, the Vischer Ferry Historic and Nature Preserve, including the remains of the Erie Canal, and the Mohawk Towpath Scenic Byway.
- [f] Conserve and protect the Town-identified open space, natural and cultural resources that are priorities for future conservation.
- [g] Conserve and design with respect to the existing hamlet settlement patterns, existing neighborhoods and existing residences; buffer existing residences and public views from new development.
- [h] Preserve natural water features and watersheds and provide for connected water habitats
- [i] Protect natural landforms and conserve open lands habitat.
- [j] Conserve woodland areas and connected woodlands habitats.
- [k] Support the restoration and adaptive reuse of previously developed landscapes, including the adaptive reuse of farm structures that preserves the agricultural setting and uses such as the farmstead and barns and surrounding fields.
- [l] Connect people to the special resources; provide trail connections within neighborhoods and link to regional paths.
- [m] Protect dark, nighttime skies for the whole community.

(d) Step 3. Development concept. Once the proposed conservation lands have been identified in Step 1 and prioritized in Step 2, this Step 3 is to identify the area for development [primarily within the unconstrained land and protective of the priority conservation area(s)], the remaining land area of the site which may be focused on for siting the access, circulation for streets and pedestrian paths, and locating the proposed number of residential units and other development.

(e) Step 4. Summary preliminary plan of development and conservation concepts. The proposed subdivision application must follow applicable subdivision regulations as outlined in Chapter **179** regarding the submission, timing, review process, etc. This step involves formalizing the "drawing in" of the lot lines and the preparation of a plan meeting requirements for concept submission pursuant to Chapter **179** of the Town Code, Subdivision of Land.

F. Proof of preservation in perpetuity of permanent open space for sites in private ownership.

- (1) Perpetuity. For all required, dedicated permanent open space, the open space restrictions must be in perpetuity and shall be so noted on any plat or plan submitted for approval to the Town.
- (2) Type of proof required. A deed restriction or a permanent conservation easement must be placed on the parcel and/or lot(s) with permanent open space.
- (3) The proof of such restriction of open space land in perpetuity is required and shall be supplied to the Town of Clifton Park Planning Board and filed prior to the final plat approval of a site plan or subdivision plat.

- (4) The Town of Clifton Park Planning Board may not grant final approval to any site plans or subdivision plats that require permanent open space, until the Planning Board receives the proof of the restriction on the open space land of a permanent conservation easement.
  - (5) The Planning Board may not approve a final plat until the proof is presented at a Planning Board meeting.
  - (6) A perpetual conservation easement and/or other rights to property which have the minimum effect of restricting development of the open space land and allowing use only for agriculture, forestry, active or passive recreation, watershed protection, wildlife habitat or other open space use and prohibiting residential, industrial and/or commercial use of such open space land, pursuant to § 247 of the General Municipal Law, shall be granted to the Town of Clifton Park, or to a qualified, not-for-profit land conservation organization or land trust as may be acceptable to the organization, municipality and to the Planning Board.
  - (7) The type of conservation easement may be site-specific and customized according to the proposed use of the open space land, and selected from the following options: open space conservation easement, environmental conservation easement, agricultural conservation easement, or historic resources conservation easement.
  - (8) The aforesaid conservation easement instrument shall describe the open space land of a parcel in metes and bounds and by a property survey, and shall bear the statement: "This tract or parcel of land is open space land with a permanent conservation easement subject to the provisions of the Town of Clifton Park Zoning Law substantially restricting its use."
  - (9) Open space created by the use of this section must be clearly labeled on the final plat and site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of the subdivision to such land, and to the general public. The plan or plat shall clearly show that the open space land is permanently reserved for open space purposes and shall not be platted for building lots and shall indicate the liber and page of any conservation easements or deed restrictions required to be filed to implement such reservations.
  - (10) Such proposed conservation easement or other rights shall be reviewed and approved by the Town Attorney's office and be required as a condition of plat or plan approval.
  - (11) Said conservation easement shall not be amendable to permit commercial, industrial, or residential development and shall be recorded in the Saratoga County Clerk's office prior to filing an approved final site plan or final subdivision plat in the CR Zoning District.
- G. Ownership and maintenance of open space land and common facilities. The Planning Board must find the form of ownership of any open space land adequate to fulfill the purposes of this section. The following methods may be used either individually or in combination, for ownership of open space land (exclusive of its conservation easement) and common facilities. The appropriate form of ownership shall be based upon the purpose of the permanent open space reservation as stated above in the Subsection **F**, entitled "Proof of preservation in perpetuity of permanent open space." Ownership methods shall conform to the following:
- (1) Open space land may be held in private, noncommon ownership.
    - (a) The required open space land may be included within one or more large conservancy lots that are entirely open space land, provided the open space is permanently restricted from future development, except for those uses listed above in Subsection **D(2)**. This option may be preferable for open space land that is intended for agricultural use.

- (b) The applicant shall provide the Town of Clifton Park with a written description and proof of instrument of the use restrictions of the open space land.
- (2) Open space land may be held in private, common ownership by a homeowners' association (HOA).
- (a) Open space land and common facilities may be held in common ownership by a homeowners' association subject to all of the provisions for homeowners' associations as set forth in New York State regulations and the General Business Law.
  - (b) The open space restrictions must be in perpetuity.
  - (c) The applicant shall provide the Town with a description of the organization of the proposed homeowners' association, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for common facilities.
  - (d) Such a homeowners' association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the conveyance of the first lot in the development.
  - (e) The HOA must be responsible for liability insurance, local taxes, and the maintenance of any open space land and any other common facilities.
  - (f) Membership in the homeowners' association shall be mandatory for each property owner within the subdivision and successive owners in title with voting of one vote per lot or unit, and the subdivider's control, therefore, passing to the individual lot/unit owners on sale of the majority of the lots or units.
  - (g) Each lot or unit owner must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance and maintenance of open space, and, as applicable, any private roads and any other common facilities.
  - (h) Property owners must pay their pro rata share of the HOA costs as listed above in Subsection H(2)(e), and the assessment levied by the HOA must be able to become a lien on the property.
  - (i) The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his or her dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
  - (j) The HOA must be able to adjust the assessment to meet changed needs.
  - (k) The applicant shall make a conditional offer of dedication to the Town of Clifton Park, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Town Board, upon failure of the homeowners' association to take title to the open space from the applicant or current owner, upon dissolution of the association at any future time or upon failure of the HOA to fulfill its maintenance obligations or to pay its property taxes.
  - (l) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
  - (m) Written notice of any proposed transfer of common facilities by the association or the assumption of maintenance for common facilities must be given to all members of the association and to the Town of Clifton Park no less than 30 days prior to such event.

- (n) The association shall have adequate resources to administer, maintain, and operate such common facilities.
- (o) The Town Attorney's office shall review and find that the HOA documents presented as part of the application satisfy the conditions outlined above and such other conditions that the Planning Board shall deem necessary.
- (3) Open space land may be offered fee simple dedication to the Town or an open space or park district controlled by the Town, provided that:
  - (a) There is no substantial cost of acquisition to the Town.
  - (b) The Town agrees to and has access to maintain such open space.
  - (c) Such facilities for public use shall be accessible to residents of the Town.
- (4) Open space land may be offered for conveyance or for sale as fee simple dedication to the county or state governments, a nonprofit land trust or other land conservation organization.
- (5) Maintenance and monitoring standards for open space land.
  - (a) Ongoing maintenance and monitoring standards shall be established, enforceable by the Town against an owner of open space land as a condition of site plan or subdivision approval, to assure that the open space land is used for the purposes intended in this chapter and specifically pursuant to the approval of the project rendered by the Town and to ensure the use of the open space land does not detract from the character of the neighborhood context. Such maintenance standards may include the obligation to mow open fields to maintain their scenic character and to maintain dedicated trails.
  - (b) If the Town Board finds that the open space land is being maintained in such a manner as to constitute a public nuisance or otherwise not in conformance with standards established herein, it may, upon reasonable written notice to the owner, enter the premises for necessary maintenance or other action necessary and appropriate, and the cost of any such maintenance by the Town shall be assessed ratably against the owner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a tax lien on said properties.
  - (c) Unless otherwise agreed to by the Town of Clifton Park Planning Board, the cost and responsibility of maintaining open space and facilities shall be borne by the private owner, the homeowners' association, the conservation organization or land trust or, in the case of lands and facilities deeded to the Town of Clifton Park, the municipality. Likewise, if any lands restricted as open space land are deeded to the county or the state, these respective municipal governments would be responsible.

H. Open space incentive zoning option. (See Article VB Open Space Incentive Zoning.)

- (1) In exchange for the protection of an equivalent acreage of permanent open space under the provisions of Article VB entitled "Incentive Zoning," Town of Clifton Park, open space incentive zoning, a parcel or parcels greater than 10 acres in area may be developed at a density of up to one residential unit per 1.5 developable acres or 0.66 unit per acre, provided that development also meets the following conditions and limitations.
  - (a) Increases in dwelling unit density shall not exceed allowable base density by more than 100%.
  - (b) Community open space benefits or amenities may only be located within the CR District.



- (2) For example, if the base density of a one-hundred-acre site in the CR District is 33 dwelling units, then the maximum density that can be potentially achieved by applying for open space incentive zoning is 66 dwelling units.
  - (3) Application for open space incentive zoning must be done prior to or in conjunction with an application for subdivision approval to the Planning Board.
- I. Site plan and subdivision review. Applications will be considered and processed by the Town of Clifton Park Planning Board in accordance with § 278 of the Town Law, Article **XVI**, Site plan review and approval, Chapter **179**, Subdivision of Land, and the Town of Clifton Park Design Guidelines.<sup>[2]</sup> As part of that process, the Town of Clifton Park Planning Board shall, at a minimum, apply the limitations and conditions of this section.
- [2]: *Editor's Note: The Park Design Guidelines are contained in the Western Clifton Park Land Conservation Plan GEIS, on file in the Town offices.*

## § 208-17. Hamlet Residential (HR) District.

[Added 5-9-2005 by L.L. No. 5-2005]

### A. Purpose.

- (1) The purpose of the Hamlet Residential (HR) District is to prevent adverse impact to the character of Western Clifton Park and to the Hamlet of Rexford and to ensure that future growth is consistent and complementary to the existing hamlet settlement patterns. New development within the HR District shall adhere to the guidelines and standards set forth in the Western Clifton Park Design Guidelines.<sup>[1]</sup> In general, development should:
    - (a) Enhance existing, unique, traditional hamlet settlement patterns within Western Clifton Park.
    - (b) Restore, conserve and enhance the "sense of place" of the Hamlet of Rexford through complementary, compact, new development, infill development and redevelopment layout and design
    - (c) Support a primarily residential setting within the HR District that connects and transitions to the nearby Hamlet Mixed-Use Zone to the north in the rest of the Hamlet of Rexford.
    - (d) Foster pedestrian-friendly, walkable environments.
    - (e) Utilize area master planning, and site plan layouts and architectural styles consistent with the form of traditional Hamlet of Rexford.
    - (f) Support connections within the Hamlet of Rexford and the vicinity both within the hamlet and outside of the Hamlet,
    - (g) Create access and connections such as to the Mohawk River waterfront and to the Mohawk Towpath Scenic Byway, and other existing and proposed Town-wide and regional pathways and trails
- [1]: *Editor's Note: The Park Design Guidelines are contained in the Western Clifton Park Land Conservation Plan GEIS, on file in the Town offices.*

- (2) This section is further intended to support the protection of Town-identified open space within

Western Clifton Park with the provision of potential density incentives and transfer of development from Town-identified open space areas to the HR Zone as is applicable.

- B. Permitted uses: restrictions. In Hamlet Residential Districts (HR), no building or other structure or land shall be used, and no building or other structure shall be built, altered or erected, for any purpose other than that of:
- (1) One-family dwellings.
  - (2) Accessory structures.
  - (3) Home occupation.
  - (4) Public utility structures.
  - (5) Radio installations, amateur (HAMS). See § **208-95A**.
  - (6) Other uses and other buildings and structures as provided by the following subsections:
    - (a) Only the following special uses shall be considered pursuant to § **208-79** et. seq.:
      - [1] Two-family dwellings, attached or semidetached.
      - [2] Community residences.
      - [3] Day-care homes.
      - [4] Bed-and-breakfasts.
      - [5] Facilities for the sale or consumption of farm- and country-related edible and nonedible products at farm markets. Such facilities shall be consistent with the customary activities and operations normally associated with a farm.
      - [6] Electrical substations, gas district governor stations, telephone exchanges or other public utility buildings, structures or uses, except as business offices, storage yards, or repair shops, and subject to the provisions of § **208-79E(2)**.
      - [7] Churches or places of worship.
      - [8] Ground- or pole-mounted solar arrays.  
[Added 3-21-2011 by L.L. No. 9-2011]
    - (b) Section **208-96**, Temporary uses and structures.
- C. Area and bulk standards. Residential uses:
- (1) Base density: 0.33 unit per acre.
  - (2) Minimum lot size: 6,000 square feet.
  - (3) Front yard: 50 feet.
  - (4) Rear yard: 25 feet.
  - (5) Side yard: five feet (10' adjacent to commercial units).
  - (6) Maximum building height: 35 feet.

(7) Ground- or pole-mounted solar arrays are not permitted without a minimum lot size of 20,000 square feet.

[Added 3-21-2011 by L.L. No. 9-2011]

D. Density bonus (through open space incentive zoning provisions). Residential bonus: Applicants may propose and seek Town approval for an increase in the density of residential units within the Hamlet Residential (HR) Zoning District per § 208-4[3] 5 and Article VB upon securing the required applicable development rights to Town-identified open space parcels within Western Clifton Park.

E. Site plan review. Applications will be considered by the Planning Board in accordance with Article XVI, Site Plan Review and Approval, and the Western Clifton Park Design Guidelines.<sup>[2]</sup>

[2]: *Editor's Note: The Park Design Guidelines are contained in the Western Clifton Park Land Conservation Plan GEIS, on file in the Town offices.*

§ 208-18. (Reserved)

§ 208-19. (Reserved)

§ 208-20. (Reserved)

§ 208-21. (Reserved)

§ 208-22. (Reserved)

§ 208-23. (Reserved)

§ 208-24. (Reserved)

§ 208-25. (Reserved)

§ 208-26. (Reserved)

§ 208-27. (Reserved)

## § 208-28. (Reserved)

## § 208-29. (Reserved)

# Article IV. B-1 and B-2 Districts Business Nonretail

## § 208-30. Purpose; delineation of zones.

The purpose of the B-1 and B-2 Districts is to provide suitable locations for various types of general and professional offices as opposed to retail businesses. These districts are primarily for the location of medical, legal, financial, real estate and corporate offices and other general office uses which are not primarily engaged in the sale of merchandise but are oriented toward providing services to the general public. These districts are intended to be a buffer between the larger retail areas and the residential districts that exist in close proximity to major transportation systems, largely because the hours of operation of these types of office uses, the noise levels associated with these uses and the general overall aesthetics of office site plans are generally more acceptable as transition zones to residential areas. Further, the B-1 and B-2 Districts are intended to preserve the infrastructure of the transportation systems along the New York State Route 146 corridor by limiting density and thereby reducing the traffic impacts associated with high-density commercial uses.

- A. The B-1 District, as delineated on the attached maps,<sup>[1]</sup> generally includes the New York State Route 146 corridor east of the intersection of Vischer Ferry Road and New York State Route 146A to the intersection of Plank Road and New York State Route 146 near Exit 9 of I-87, portions of New York State Route 146 west of New York State Route 146A and east of Tanner Road, parts of Maxwell Drive, Plank Road south from its intersection with Bent Pine Hollow, a portion of the north side of Ushers Road near I-87 and portions of New York State Route 146 in Rexford, a parcel along Crescent Road near Southbury Road, Tax Map No. 284.-1.-21. It serves to allow the conversion of existing residential dwellings and vacant lots into general office uses while maintaining the area's residential character. The areas immediately adjacent to but not fronting these major transportation systems continue to be approved for residential use according to the Town's Comprehensive Plan. It is the intent of the Town to preserve the property values and the character of these neighborhoods by requiring standards for the B-1 District that will maintain residential footprints for site plans located within this district. It is intended that buildings in this district be compatible in size and appearance with residential dwellings.

[Amended 3-15-1999 by L.L. No. 2-1999; 5-17-1999 by L.L. No. 4-1999]

[1]: *Editor's Note: The Zoning Map is on file in the Town offices.*

- B. The B-2 District generally encompasses areas along New York State Route 146, south of the intersection of Blue Barns Road and Glenridge Road, the south side of Van Patten Drive and the north side of Ushers Road, east of Wood Dale Drive and parts of the New York State Route 146 east-west corridor, all identified on the supplemental zoning maps accompanying this article.<sup>[2]</sup> The purpose of this district is to provide a suitable location for more traditional office buildings and office parks containing general and/or professional uses while providing for and maintaining a transition between retail uses and residential neighborhoods. The buildings located in the B-2 District shall not be subjected to the residential footprint standards of the B-1 District but shall, however, meet all the requirements of the Planning Board and the Town Code in addition to the specific requirements of this article as they pertain to the B-2 District.

[2]: *Editor's Note: The Zoning Map is on file in the Town offices.*

## § 208-31. Maps.

The location and boundaries of the B-1 and B-2 Districts are declared and delineated on the Official Zoning Map as attached hereto.<sup>[1]</sup>

[1]: *Editor's Note: The Zoning Map is on file in the Town offices.*

## § 208-32. Permitted uses.

A. The following uses are permitted in the B-1 and B-2 Districts:

- (1) General business offices in accordance with the purposes of this article, excluding offices devoted to the on-site sale, rental or distribution of merchandise, either retail or wholesale, unless clearly incidental to the approved use.
- (2) Medical and dental offices and clinics, excluding overnight occupancy by patients.
- (3) Attorneys' offices.
- (4) Offices for licensed professionals, for example, architects, accountants, engineers, psychologists, optometrists and chiropractors.
- (5) Insurance offices of independent or general agents, including regional or district offices of individual companies.
- (6) Mortuaries or funeral homes.
- (7) Center for the day care of children.
- (8) Real estate offices.
- (9) Banking institutions, which shall be allowed in the B-2 District only.
- (10) Financial services, e.g., investment counseling and tax services.
- (11) Private schools, excluding business, dancing, trade or any other commercially oriented school.
- (12) Nonprofit institutions for charitable, religious, cultural or community purposes.
- (13) Animal hospital/veterinary offices, with the exclusion of outdoor runs and commercial kennels.
- (14) One and two-family dwellings, which shall be allowed in the B-1 District only.
- (15) Combined residential dwellings/offices.
- (16) Community residences.
- (17) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
- (18) Buildings accessory to the above which are an integral part of any of the above uses and are not in

conflict with the purposes of this article as set forth above, which determination shall be made by the Planning Board.

- B. Only the following special uses shall be considered pursuant to § **208-79** et seq.:
- (1) Excavation and removal of stone, sand and gravel.
  - (2) Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use, except a business office, storage yard or repair shop.
  - (3) Timbering. (See Chapter **184** of this Code.)
  - (4) Storage of LP gas in excess of 1,100 gallons.
  - (5) All other telecommunication towers as in § **208-95B**.  
[Added 12-9-1996 by L.L. No. 11-1996]

## § 208-33. B-1 regulations.

This section covers the rehabilitation of existing buildings or the construction of new buildings in the B-1 District. In the case of rehabilitated buildings, standards in this article shall be met where physically possible.

- A. The rehabilitation or remodeling of a preexisting building in the B-1 District into an allowable use shall be allowed by the Planning Board, provided that the original building is determined to be structurally safe and able to meet the Code requirements of the Town and New York State as determined by the Building Inspector.
- B. No preexisting building(s) shall be rehabilitated or remodeled or new building(s) constructed on a vacant lot to a size greater than 12% of the lot size, with no single building to have a maximum square footage exceeding 4,800 square feet. Multiple buildings on a lot are allowed as long as the overall density limitations of this article are not exceeded.
- C. Landscaping. Landscaping shall be in accordance with that similarly associated with residential dwellings, i.e., lawn area and trees and shrubs and other plantings to maintain a residential character.
- D. Architecture. The architectural design of a rehabilitated or newly constructed building shall be consistent with the designs compatible for residential dwellings. The design shall take into consideration the existing neighborhood, the exterior facade in regard to building materials and color and other appurtenances, such as rooflines, dormers, windows, chimneys and other items that create a residential appearance. All exposed mechanical equipment and service and storage areas shall be screened from public view. The architectural design should give the appearance of compatibility with the surrounding neighborhood and shall try, to the maximum extent possible, to avoid the creation of a monolithic mass by implementing architectural relief within the building design. Long, unbroken lengths of walls and the appearance of huge massive structures within an area of residentially sized buildings should be discouraged.
- E. Hours of operation. All businesses in the B-1 District shall be limited to hours of operation, for the public, between 7:00 a.m. and 10:00 p.m. In addition, if the proposed use abuts an existing residence, no outside commercial activities, e.g., garbage pickup, etc., shall take place between the hours of 10:00 p.m. and 6:30 a.m.

## § 208-34. B-2 regulations.

The following performance standards shall apply to B-2 District. In the case of rehabilitated buildings, standards shall be met where physically possible. Multiple buildings shall be allowed on one lot, provided that the overall density limitations of this article are not exceeded.

- A. Landscaping. The overall intent of this standard is to achieve a well-balanced landscaped site. In order to accomplish this, the Planning Board shall take into consideration the existing vegetation on the site and the location of parking areas and buildings. The site shall include plantings for screening and buffering purposes as well as decorative and aesthetic purposes. Consideration shall be given to plantings along property lines. In addition, unplanted areas shall be seeded with grass or other types of ground cover. Mulch and other similar materials shall only be used around the base of plantings.
- B. Architecture. The architectural design and choice of exterior facades and building materials for buildings located in the B-2 District shall take into consideration the character of the area and the purposes of this article as they pertain to this district's use as a transition zone between commercial retail uses and residential properties. The architectural design shall try, to the maximum extent possible, to avoid the creation of a monolithic mass, devoid of environmental consideration, by implementing architectural relief within the building design. Long, unbroken lengths of walls and the appearance of huge massive structures that are out of character with the surrounding neighborhood and/or environment should be discouraged. Roof structures, exposed mechanical equipment and service and storage areas shall be screened from view.
- C. Hours of operation. There are no limitations in the B-2 District concerning hours of operation unless the property abuts a residence; then the same restrictions apply as in the B-1 District. In addition, no outside commercial activities shall be allowed, e.g., garbage pickup, between the hours of 10:00 p.m. and 6:30 a.m. if the use abuts a residential lot.

## § 208-35. Space and bulk standards.

The following shall be required in the B-1 and B-2 Districts. In the case of rehabilitated buildings, the dimensional standards shall be met where physically possible. In no case shall approvals be given that would increase the inherent, nonconforming nuisance.

- A. Ingress/egress. There shall not be more than one curb cut per lot unless the Planning Board finds that traffic safety will be improved with the addition of another curb cut. The curb cut shall be designed to accommodate, safely and in accordance with accepted traffic control standards approved by the Town's engineer, the traffic generated by the use and, further, shall meet all the firesafety requirements of the Town of Clifton Park. The distance between the proposed curb cut to one on adjoining parcels shall be a minimum of 100 feet measured from the center line of the curb cut. Design should be encouraged to take into consideration future development in order to promote the construction of shared driveways where possible. In the case of a corner lot, no curb cut shall be located closer to an intersection than 100 feet.
- B. Utilities. Uses approved in these districts shall be serviced by sanitary sewers, adequate drainage control through an approved stormwater management plan and a community water system. If none is available at the time of approval, the Planning Board shall require the owner to hook up to public water and sewer systems as soon as they become available, as defined by the New York State Uniform Fire Prevention and Building Code.

- C. Lot area. The minimum lot area per establishment shall be 40,000 square feet, and the minimum width at the front building line shall be 150 feet, except along those streets listed in § 208-98 where the minimum width shall be 180 feet.
- D. Setbacks.
- (1) Front yard. No building shall be located closer to the front property line than 70 feet, into which there shall be no encroachment of buildings or parking or anything other than a wall, berm or sign, unless the Planning Board finds, in the case of keyhole lots or other similar lot configurations, that the intent of this chapter is better met by allowing construction within the front yard setback. Building setbacks specifically established by § 208-98 shall take precedence over the above.
  - (2) Side/rear yards. No building or parking shall be placed closer to a side or rear property line than 25 feet.
  - (3) Lot coverage. Buildings, parking areas, including maneuvering areas, stormwater retention areas and other site amenities that are an integral and necessary part of the use shall not occupy more than 50% of the total lot area. The remaining 50% shall be calculated as the green space requirement for this district. The stormwater retention area may be included as green space upon proof that the stormwater retention area will be improved and maintained as an integral part of the landscaping scheme and would enhance the overall aesthetics and thus serve the purpose of the green space requirements of this article.
  - (4) Buffer. There shall be established a minimum ten-foot buffer area, within the minimum side and rear yard setback, along the property lines. The buffer shall be planted for purposes of screening from adjoining properties. The Planning Board shall take into consideration any natural vegetation which exists and serves the intent of this article.
  - (5) Height. No building or structure shall exceed two stories or 35 feet in height.

## Article V. Neighborhood Business Districts B-3

### § 208-36. General provisions.

The Neighborhood Business Districts B-3 are primarily for the accommodation of neighborhood businesses and related structures and uses.

### § 208-37. Permitted uses.

In Neighborhood Business Districts B-3, no building or other structure or land shall be used and no building or other structure shall be built for any purpose other than:

- A. A use permitted in Residential Districts R-1 and R-3 or Business Districts B-1 and B-2.  
[Amended 10-16-2006 by L.L. No. 14-2006]
- B. The following uses:  
Animal-care facilities, provided that any structure or area used for such purposes, including pens or exercise runnings, shall be at least 100 feet distant from any residential district



Bank or savings-and-loan association

Boardinghouse

Bowling alley

Church or other place of worship

Convenience food store

Day-care center

Dry-cleaning establishment, where not more than five persons are employed and where no flammable cleaning fluids are used

Emergency ambulance facilities if and only as long as, these facilities are under contract to the Town of Clifton Park to provide general health services to the Town

Federal, state, county or Town municipal building

Personal service establishments

Restaurant; restaurant, drive-in or fast-food; or barroom, provided that no portion of the portion of a building occupied by such uses shall be located within 300 feet of the boundary line of any residential district

Shopping center, subject to the provisions of § **208-89**

C. Other uses and other buildings and structures as provided for by the following sections:

(1) Only the following special uses shall be considered pursuant to § **208-79** et seq.:

(a) Commercial recreation facility, subject to the provisions of § **208-94**.

(b) Car wash.

(c) Public library.

(d) Excavation and removal of stone, sand and gravel.

(e) Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use.

(f) Storage of LP gas in excess of 1,100 gallons.

(g) Timbering (See Chapter **184** of this Code.)

(2) Section **208-96**, Temporary uses and structures.

## § 208-38. Space and bulk standards.

A. Residential buildings. All buildings intended for residential use, in whole or in part, shall conform to the space and bulk standards of Residential Districts R-1, § **208-11**.

B. Area and lot dimensions. Unless otherwise provided in § **208-37** or § **208-38A** above, the minimum net land area per establishment shall be 40,000 square feet and the minimum width of the lot at the front building line shall be 150 feet.

C. Front yards. There shall be a minimum front yard of 80 feet, into which space there shall be no encroachment of structures other than a fence, a wall or a sign not larger than 20 square feet and no encroachment of commercial usage other than parking space. There shall be no parking allowed within 30

feet of the front lot line. Building setbacks specifically established by § 208-98 shall take precedence over the above.

- D. Side yards. No building shall be placed closer to a side property line than 20 feet, and no automobile parking space shall extend nearer to a side property line than 20 feet.
- E. Rear yards. No building shall be placed closer to a rear property line than 50 feet if the adjacent district is a residential district or closer to the rear property line than 30 feet with no encroachment by structures or parking if the adjacent district is any other class of district.
- F. Height. For each foot the height of a building exceeds 35 feet, the offset from the side and rear property lines shall be increased by two feet.
- G. Green space shall be 35%.
- H. When abutting a residential zone, a minimum buffer of 100 feet shall be maintained and supplemented as deemed appropriate by the Planning Board.

## § 208-39. Entrances and exits upon public thoroughfares.

There shall be not more than one entrance and one exit per establishment upon any individual public thoroughfare, and the distance between the entrance and exit center lines, if separated, shall be not less than 100 feet.

## § 208-40. Landscaping.

The property margins at the sides from the front building line to the rear property line shall be planted with trees and shrubs for a width of not less than 10 feet.

## § 208-41. Group of establishments.

It shall be allowable to construct a group of establishments in accordance with an integrated site and architectural plan. Minimum land area for such consideration shall be five acres, with a minimum width of 400 feet at the building line.

## § 208-42. Other applicable requirements.

See Article **XIV**, Exceptions and Special Provisions, for other applicable requirements.

## § 208-43. (Reserved)

# Article VA. Hamlet Mixed Use (HM) District

[Added 5-9-2005 by L.L. No. 5-2005]

## § 208-43.1. Purpose.

- A. The purpose of the Hamlet Mixed-Use (HM) District in Western Clifton Park is to provide primarily for focused business development to serve adjacent residential hamlets and neighborhood areas and to allow for a creative mix of commercial and complementary residential uses. However, the district may remain primarily commercial uses, such as a mix of offices and retail uses. The allowance for residential uses is intended to foster the creation of places within the Town where one could walk from home to work to neighborhood businesses. In addition, the HM district is intended to allow for development that generates a low traffic impact. Finally, the site layout and related designs for development within the HM District should be in a manner that respects and enhances the traditional hamlet context of the proposed project within the specific HM district location.
- B. In general, development should:
  - (1) Enhance existing, unique, traditional hamlet settlement patterns within Western Clifton Park.
  - (2) Restore, conserve and enhance the "sense of place" of the Hamlet of Rexford through complementary, compact, new development, infill development and redevelopment layout and design.
  - (3) Support a primarily business and residential setting within the HM District that connects and transitions to the nearby Hamlet Residential District to the south and the rest of the hamlet of Rexford.
  - (4) Foster pedestrian-friendly, walkable environments.
  - (5) Utilize area master planning, and site plan layouts and architectural styles consistent with the form of traditional Hamlet of Rexford.
  - (6) Support connections within the Hamlet of Rexford and the vicinity both within the Hamlet and outside of the Hamlet.
  - (7) Create access and connections such as to the Mohawk River waterfront and to the Mohawk Towpath Scenic Byway, and other existing and proposed Town-wide and regional pathways and trails
- C. This article is further intended to support the protection of Town-identified open space within Western Clifton Park with the provision of potential density incentives and transfer of development from Town-identified open space areas to the HR Zone as is applicable.

## § 208-43.2. Permitted uses.

[Amended 3-21-2011 by L.L. No. 9-2011]

The following are permitted uses:

**Uses**

**Business Uses**

General business offices

**Permitted (P) or Special  
Permits(s) Pursuant to § 208-  
79 et seq.**

P

P

|  |   |
|--|---|
| Medical and dental offices and clinics, excluding overnight occupancy by patients  | P |
| Attorneys' offices   | P |
| Offices for licensed professionals; for example, architects, accountants, engineers, psychologists, optometrists and chiropractors   | P |
| Insurance offices of independent or general agents, including regional or district offices of individual companies   | P |
| Mortuaries or funeral homes  | P |
| Center for the day care of children  | P |
| Real estate offices  | P |
| Banking institutions   | P |
| Financial services, e.g., investment counseling and tax services   | P |
| Animal hospital/veterinary offices, with the exclusion of outdoor runs and commercial kennels  | P |
| Mixed-use buildings, with combination of commercial uses on ground floor with residential units on upper floors*   | P |
| Home occupations   | P |
| Day-care homes   | P |
| Bed-and-breakfast facilities   | S |
| Facilities for the sale and/or consumption of farm- and country-related edible and nonedible products at farm markets. Such facilities shall be consistent with the customary activities and operations normally associated with a farm. | S |
| Animal-care facilities, provided that any structure or area used for such purposes, including pens or exercise runs, shall be at least 100 feet distant from any residential district  | P |
| Bank or savings-and-loan associations  | P |
| Boardinghouses   | P |
| Bowling alleys   | P |
| Convenience food stores  | P |
| Day-care centers   | P |
| Self-storage facilities that appear residential in character   | P |
| Dry-cleaning establishments, where not more than five persons are employed and where no flammable cleaning fluids are used   | P |
| Personal service establishments  | P |
| Restaurants; or barrooms, provided that no portion of the portion of a building occupied by such uses shall be located within 300 feet of the boundary line of any residential district  | P |
| Commercial recreation facilities, subject to the provisions of § 208-94  | S |
| <b>Municipal Uses</b>  |   |
| Private schools, excluding business, dancing, trade or any other commercially oriented school  | P |
| Nonprofit institutions for charitable, religious, cultural or community purposes   | P |
| Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town   | P |

|  |   |
|--|---|
| Public utility structures  | P |
| Radio installations, amateur (HAMS) (See § 208-95A)  | P |
| Electrical substations, gas district governor stations, telephone exchanges or other public utility buildings, structures or uses, except business offices, storage yards, or repair shops, and subject to the provisions of § 208-79E(2).       | S |
| Federal, state, county or Town municipal buildings   | P |
| All other telecommunication towers as in § 208-95B   | P |
| Cemeteries   | S |
| Churches or other places of worship  | P |
| Section 208-96, Temporary uses and structures  | S |
| Public libraries   | S |
| <b>Residential Uses</b>  |   |
| Solar arrays: Ground- or pole-mounted solar arrays   | S |
| One-family dwellings   | P |
| Two-family dwellings   | P |
| Community residences   | P |
| Dwellings, two-family and/or semidetached  | P |
| Accessory structures: buildings accessory to the above which are an integral part of any of the above uses and are not in conflict with the purposes of this article as set forth above, which determination shall be made by the Planning Board | P |

**Notes:**

\*See "mixed-uses" (§ 208-43.4 below)

### § 208-43.3. Space and bulk requirements.

Space and bulk requirements are as follows:

- A. One-family-detached dwellings: limited to no more than 25% of a parcel's total potential density:
  - (1) Base density: one unit per acre.
  - (2) Minimum lot size: 6,000 square feet.
  - (3) Minimum lot width: 50 feet.
  - (4) Minimum lot frontage: 50 feet.
  - (5) Front yard: five feet.
  - (6) Rear yard: 25 feet.
  - (7) Side yard: five feet (20 feet adjacent to commercial units).
  - (8) Maximum building height: 35 feet.
  - (9) Minimum lot size for all ground- or pole-mounted solar arrays is 20,000 square feet. [Added 3-21-2011 by L.L. No. 9-2011]

- B. Commercial uses and two-family, semidetached, and multifamily dwellings: limited to no more than 25% of the parcel's total potential density.
- (1) Base density:
    - (a) Requirements.
      - [1] Office uses: 4,000 gross square feet per acre.
      - [2] Retail uses: 2,000 gross square feet per acre.
      - [3] Two-family, semidetached and multifamily dwellings: 3,000 gross square feet per acre.
    - (b) For example, a project that includes 4,000 gross square feet of office space, 2,000 gross square feet of retail space, and 3,000 square feet of multifamily space would require three acres of unconstrained land.
  - (2) Minimum lot size: 12,000 square feet.
  - (3) Minimum lot width: 80 feet.
  - (4) Minimum lot frontage: 50 feet.
  - (5) Front yard: 10 feet.
  - (6) Rear yard: 30 feet.
  - (7) Side yard: zero feet (20 feet adjacent to residential uses).
  - (8) Maximum building size - office: 40,000 gross square feet (20,000 gross square feet footprint).
  - (9) Maximum building size - retail: 20,000 gross square feet.
  - (10) Maximum building size - mixed: 40,000 gross square feet (20,000 gross square feet footprint).
  - (11) Maximum building height: 40 feet.
  - (12) Minimum greenspace: 25%.

## § 208-43.4. Mixed-use buildings.

- A. Residential uses may be allowed above commercial uses.
- B. Buildings in the HM District may include residential units as subordinate uses to primary ground floor commercial use subject to the following provisions:
- (1) Residential units shall not be permitted over an auto service station or establishments storing or retailing flammable or fume producing goods.
  - (2) The habitable area of each residential unit shall be at least 500 square feet.
  - (3) Each residential unit shall be a separate dwelling unit with provisions for complete living, including sanitary and sleeping facilities for year-round use by one family.
  - (4) Residential units shall not be located on the first floor of the building, and each apartment shall contain

all services for safe and convenient habitation meeting the New York State fire, building, health and environmental codes.

- (5) Residential units shall have access to the outside of the building, which must be distinct from the access to uses on the first floor.
- (6) Each residential unit shall meet all applicable Town of Clifton Park off-street parking requirements.

## § 208-43.5. Density bonuses (amenity zoning).

- A. Residential bonus. Applicants may propose and seek Town approval for an increase in the density of residential units within the Hamlet Mixed-Use (HM) Zoning District per Article VB, Open Space Incentive Zoning, upon securing the required applicable development rights to town-identified open space parcels within Western Clifton Park.
- B. Office and retail bonus. Applicants may propose and seek Town approval for an increase in the density of gross square footage of commercial units within the Hamlet Mixed-Use (HM) Zoning District per Article VB, Open Space Incentive Zoning, upon securing the required applicable development rights to Town-identified open space parcels within Western Clifton Park.

## § 208-43.6. Site plan review.

All building and zoning permit applications in the HM District shall be subject to site plan approval. Applications will be considered by the Planning Board in accordance with Article **XVI** Site Plan Review and Approval, and the Western Clifton Park Design Guidelines.<sup>[1]</sup>

[1]: *Editor's Note: The Park Design Guidelines are contained in the Western Clifton Park Land Conservation Plan GEIS, on file in the Town offices.*

## § 208-43.7. (Reserved)

## § 208-43.8. (Reserved)

## § 208-43.9. (Reserved)

# Article VB. Open Space Incentive Zoning

[Added 5-9-2005 by L.L. No. 5-2005]

## § 208-43.10. Purpose and objectives.

- A. It is the purpose of this article to empower the Town Board to grant incentives to the private sector engaged in the land development process to advance the town's specific policies in accordance with the Town's GEIS for the western lands of Clifton Park, the 2003 Comprehensive Plan update, the 2003 Open Space Plan, and in coordination with other community planning mechanisms or land use techniques.
- B. This authority may be used by the Town Board to assist the following objectives from the Town's GEIS for the western lands, Comprehensive Plan, and Open Space Plan:
- (1) To protect wildlife nature preserves, watersheds and water quality, highly valued ecological resources and environmentally sensitive areas.
  - (2) To protect active farm operations.
  - (3) To ensure that all development occurs in an ecologically sound manner.
  - (4) To preserve important open spaces; develop a comprehensive trails and pathway system; preserve scenic roads, cultural resources, and historic and archaeological resources.
  - (5) To protect wetlands and stream corridors for their benefits to wildlife habitat, flood and stormwater control, groundwater protection, erosion control, and recreation.
  - (6) To preserve open space for ecological, aesthetic, and recreational purposes.
  - (7) To preserve and enhance the existing diverse residential, rural, and historic character of Clifton Park, and to provide for a diversity of housing.
  - (8) To allow for an increase in density on a given site, providing the overall density of the western lands of Clifton Park is balanced.
  - (9) To establish permanent easements on Town-identified open space parcels to prevent further development.
  - (10) To allow for an increase density of both commercial and residential development within the HM Zone to create a more viable, walkable hamlet community.

## § 208-43.11. Authority.

In accordance with § 261-b of the Town Law of the State of New York, the Town Board is empowered to provide for a system of zoning incentives as the Town Board deems necessary and appropriate, consistent with the purposes and conditions set forth herein.

## § 208-43.12. Applicability.

This article applies only to Western Clifton Park zoning districts: Conservation Residential CR, Hamlet Residential HR, and Hamlet Mixed Use HM Districts in the Town of Clifton Park, as shown on the Town of Clifton Park Zoning Map.

## § 208-43.13. Permitted incentives.



The Town Board may grant the following specific incentives within the procedures set forth in this article:

- A. Incentive A. Single-family residential incentives: increases in single-family dwelling unit density beyond the base density within the HM, HR, or CR Districts.
- B. Incentive B. Commercial, two-family, and semidetached residential incentives: increases in commercial uses and two-family dwelling and semidetached dwelling unit density only in the HM District.  
[Amended 9-20-2010 by L.L. No. 7-2010]

## § 208-43.14. Community benefits or amenities.

- A. The following community benefits or amenities may, at the discretion of the Town Board, be accepted in exchange for an incentive as provided in "Permitted Incentives" above. These community benefits or amenities may be either on or off the site of the subject application and may involve one or more parcels of land. Community benefits or amenities may only be located within the CR District.
  - (1) Permanent conservation easements: agricultural conservation, open space, scenic, ecological, historic or other types of permanent conservation easements would be acceptable, on Town-identified open space parcels within Western Clifton Park. Proof of perpetuity (signed purchase contract or easement title) is required in writing to the Town of Clifton Park Town Board prior to approval of an open space incentive zoning proposal.
  - (2) Permanent protection of land in fee simple for conservation and other community benefit purposes on Town-identified open space parcels within Western Clifton Park. Proof of perpetuity (executed purchase contract or transfer of ownership of title) is required in writing to the Town of Clifton Park Town Board prior to approval of an open space incentive zoning proposal.
  - (3) Cash in accordance with the Special Conditions below, paid to the Town of Clifton Park's dedicated open space fund account for utilization by the Town exclusively for the permanent protection of open space and farmland in Clifton Park. Proposed cash must be placed in an escrow account to be held by the Town and documented in writing to the Town of Clifton Park Town Board in accordance with the following schedule of payments:  
[Amended 9-20-2010 by L.L. No. 7-2010]
    - (a) For total projects greater than five lots:
      - [1] One-third (33%) of the total payment is due at the Town Planning Department within 30 days of Town Board approval by Town Board resolution. At the time of the first payment, at the first building permit, either a bond, cash, or letter of credit is required to cover the balance of the remaining amount. The bond, cash, or letter of credit instrument may be reduced as payments are received.
      - [2] An additional 1/3 (33%) of the total payment is due at the Town Planning Department within 30 days of the date of the building permit granted upon completing 20% of the project's units.
      - [3] The final 1/3 (33%) of the total payment is due at the Town Planning Department within 30 days of the Town engineering inspection letter verifying that the project is 80% complete or within 60 months of the original approval by the Town Board; whichever is first will trigger payment.

- (b) For total projects of five lots or less: The entire payment is due at the time of or before the issuance of the date of the first building permit.
- (c) For projects that received Town Board approval of their open space incentive zoning proposals prior to March 15, 2010, the following payment plan shall apply:
  - [1] One-third (33%) of the total payment is due at the time of the first building permit authorization.
  - [2] One-third (33%) of the total payment is due within 30 days of the date of the building permit granted upon completing 20% of the total project units.
  - [3] The final 1/3 (33%) of the payment is due at the Town Planning Department within 30 days of the Town engineering inspection letter verifying that the project is 80% complete.
- (4) Any combination of the above-listed community benefits or amenities.
- B. These amenities will be in addition to any other mandated requirements pursuant to other provisions of the Town of Clifton Park Code and any other applicable law or regulation.

## § 208-43.15. Special conditions.

- A. All proposed amenities to be provided by the applicant must show a demonstrable benefit to the benefit area.
- B. Where Incentive A (increase in single-family residential density) is sought, the Town Board shall only receive amenities per the following conditions:
  - (1) The incentive granted will be in a one-to-one proportion to the development potential of the unconstrained land, as described in the table below and determined by the Town Board at the time of application.

### Determination of Amenity Required for Single-Family Dwelling Unit Incentive

| Development               | Density Increase | Amenity Required              |
|---------------------------|------------------|-------------------------------|
| Single-family residential | 1 unit           | 3 acres of unconstrained land |
| OR                        |                  |                               |
| Single-family residential | 1 unit           | \$30,000                      |

- (2) Residential unit density increases will be granted in increments, according to the table above, of double the original base density, or in other words, not to exceed an increase of 100% of the original base density for the incentive site.
- C. Where Incentive B (increase in commercial, two-family, and/or semidetached residential density) is sought, the Town Board may only receive amenities per the following conditions:
  - [Amended 9-20-2010 by L.L. No. 7-2010]
  - (1) Determination of incentive.
    - (a) The incentive granted will be in proportion to the development potential of the conservation site provided in terms of unconstrained land, as outlined in the table below and determined by the Town Board at the time of application.

### Determination of Amenity Land Required for Commercial, Two-Family, and

**Semidetached Dwelling Incentives**

| <b>Development</b>  | <b>Density Increase</b>      | <b>Amenity Required</b>  |
|---|------------------------------|--|
| Office  | 1,000 gross square feet      | 1 acre of unconstrained land or \$20,000 (\$20/gross square foot)    |
| Retail  | 1,000 gross square feet      | 1.5 acres of unconstrained land or \$30,000 (\$30/gross square foot) |
| Two-family, semidetached, and apartments over commercial or retail ground floor space | One equivalent dwelling unit | 2 acres of unconstrained land or \$20,000                            |

- (b) For example, a project that is seeking a density increase of 2,000 square feet of office, 2,000 square feet of retail space, and two residential units beyond the base density would be required to provide nine acres of unconstrained land as a conservation site. Alternatively, \$140,000 could be paid to the Town's open space fund.
- (2) Commercial and two-family and semidetached, residential density increases will be granted in increments equal to the development potential of the amenity land provided per the above table, of double the original base density, or not to exceed an increase of 100% of the original base density for the incentive site.

**§ 208-43.16. Criteria and procedure for approval.**

- A. Optional preapplication review. It is recommended that the applicant meet informally with Town planning staff prior to completion of an application for purposes of gathering information for the proposed amenity/incentive exchange. The applicant is advised to review the GEIS, the Comprehensive Plan, the Open Space Plan, and any other materials the Town may have on file regarding the open space incentive zoning program.
- B. Applications requesting incentives in exchange for providing community benefits will be submitted to the Town Board in accordance with adopted procedures for requests to amend this chapter. The application will include the following information:
- (1) The requested incentive.
  - (2) The proposed amenity.
    - (a) The location of the proposed conservation site must be demonstrated. The proposed conservation site should be one of the priority open space lands identified in the Land Conservation Plan in the Western Clifton Park GEIS and the Town of Clifton Park Open Space Plan.
    - (b) The site's constrained land and unconstrained land must be mapped, and submitted as part of the application. The proposed unconstrained land area that is the basis for the requested incentive must be specifically identified and highlighted on the map.
    - (c) The base density calculation that is the basis for the proposed exchange for incentives must be provided.

- (d) The proposed conservation site proposed for permanent protection must include this unconstrained land area and may include constrained land. Any proposed subdivision of land related to the efforts to obtain control of land for the incentive zoning proposal must be approved by the Town as applicable.
  - (3) The estimated cash value of the proposed amenity.
  - (4) A narrative which demonstrates the following:
    - (a) The benefits to the community, including the benefit area, from the proposed amenity.
    - (b) Consistency with the goals and objectives of the Town's Comprehensive Plan, Open Space Plan, and western lands of Clifton Park GEIS.
    - (c) The relative importance and need for the amenity.
    - (d) That there are adequate sewer, water, transportation, waste disposal and fire-protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive may place on these facilities beyond the demand that would be placed on them if the district were developed to its fullest potential.
    - (e) That all conditions and other applicable requirements of the law are met.
  - (5) Any other information or support materials as needed or requested by the Town Board.
- C. Review by Town Board. Within 45 days of submission of an application, pursuant to Subsection **B** herein, the Town Board will prepare a brief response to the proposal, outlining in writing the Town Board's determination on whether the proposal is worthy of further consideration and the basis for that determination. The Town Board may engage a consultant to assist in review of the application, the cost of which will be borne by the applicant. Suggested modifications to the proposal may also be provided by the Town Board to the applicant. At this point, the Town Board reserves the right to deny the project. However, with a supporting determination, the proposed application will be transferred to the Planning Board for review.
- D. Advisory referral to Planning Board.
- (1) The application will be submitted to the Planning Board for its nonbinding advisory opinion to the Town Board. The review at this stage is intended to obtain the input of the Planning Board for the subject land use decision. It is not intended to serve as a site or subdivision review, which would only occur after a decision by the Town Board on the incentive zoning request.
  - (2) The Planning Board will schedule a public workshop on the application, which may be conducted as part of its regularly scheduled meeting. The intent of the workshop is to share information between the applicant, the Planning Board and interested members of the public. The workshop will not supplant the formal hearing, which will be conducted by the Town Board later in the review process.
  - (3) Within 45 days of receipt of the application from the Town Board, the Planning Board will prepare an advisory report to the applicant and the Town Board. The Planning Board's report will describe the beneficial aspects of the proposal and make recommendations for the amelioration of any adverse aspects of the proposal. The Planning Board's report and the application will then be transferred back to the Town Board for its final decision on the application. The Planning Board reserves the right to deny the project, and describe why in its findings back to the Town Board.
- E. Compliance with SEQRA.

- (1) Every decision by the Town Board concerning an application for use of incentive zoning on a particular project will fully comply with the provisions of SEQRA.
  - (2) The applicant will submit a long form environmental assessment, Part 1, to the Town Board after the referral by the Planning Board.
  - (3) The Town Board will establish itself as SEQRA lead agency for all applications submitted pursuant to this article.
- F. Public hearing by Town Board. Prior to its final decision and in conjunction with its SEQRA review, the Town Board will conduct a public hearing in accordance with the standard procedures for adoption of an amendment to the zoning ordinance or local law. At least five days' notice (14 days if a draft environmental impact statement or supplemental environmental impact statement was required) of the time and place of the hearing will be published in the official newspaper of the Town.
- G. Findings and final decision.
- (1) Following the public hearing and completion of the SEQRA process, the Town Board will approve, approve with modifications or conditions or deny the proposed incentive zoning application. A written statement of the findings will be prepared by the Town Board documenting the basis of its decision. The findings will include, but not be limited to, the following:
    - (a) SEQRA: that all requirements of SEQRA have been met, including the required findings under that law.
    - (b) Development capacity: that the proposed project, including the incentive, can be adequately supported by the public facilities available or provided as a result of the project, including but not limited to sewer, water, transportation, waste disposal and fire protection, without reducing the availability of such facilities for projects permitted as of right under the Town of Clifton Park Code.
    - (c) Public benefit: that the public benefit realized by the amenity provided by the applicant is commensurate with the incentive granted by the Town Board, and that there is specifically a demonstrable benefit to the incentive area.
    - (d) Project quality: that the project is in harmony with the purpose and intent of this article and with the stated objectives and will promote the purposes herein, that the project is sufficiently advantageous to render it appropriate for grant of an incentive and that the project will add to the long-term assets of the Town of Clifton Park.
    - (e) Comprehensive plan: that the use of incentive zoning for the particular project is consistent with the GEIS, Comprehensive Plan, and Open Space Plan.
  - (2) The Town Board may impose conditions on a project to ensure that the above findings are ensured through the subsequent plan review and construction phases of the project.
- H. Plan review. Following the receipt of a favorable decision by the Town Board, an application for approval may be submitted pursuant to the applicable provisions of the Town of Clifton Park Code.

## § 208-43.17. Sunset provision.

[Added 9-20-2010 by L.L. No. 7-2010]

Should the project not start construction within 60 months from the date of the open space incentive zoning approval by the Town Board, or if construction should start and not be continued without substantial interruption, then the open space incentive zoning approval for any additional density will be extinguished and the zoning shall revert to its existing zoning status as it appeared in the Clifton Park Town Code on the date of such approved by the Town Board. Any remaining bond, cash escrow or letter of credit held for the open space incentive zoning, will be extinguished upon the sunset of the project's open space incentive approval.

## § 208-43.18. (Reserved)

## § 208-43.19. (Reserved)

# Article VI. Highway Business Districts B-4

## § 208-44. General provisions.

The Highway Business Districts B-4 are established for the purpose of providing areas for business uses which are mainly oriented to the automobile.

## § 208-45. Permitted uses.

In Highway Business Districts B-4, no building or other structure or land shall be used and no building or other structure shall be built for any purposes other than:

- A. A use permitted in Neighborhood Business Districts B-3, except dwellings, which will not be allowed by special exception or otherwise.
- B. The following uses:
  - Animal/veterinary office/hospital, provided that any structure or area used for such purposes, including pens or exercise runnings, shall be at least 100 feet distant from any residential district
  - Auto body shop
  - Automobile service station
  - Automotive repair shops and garages
  - Automotive sales establishments
  - Car wash
  - Commercial greenhouse and plant nursery, including offices and sales yards, provided that no building for any such use shall have a heating plant, ventilating flue or other opening, except stationary windows, within 100 feet of any residential district
  - Farm implement or contractor's equipment display, hire and sales establishment, service part repair shop, provided that no portion of a building used for repair shall have any opening, other than stationary windows, within 100 feet of any residential district
  - Funeral home
  - Hospital

Hotel or motel, subject to § **208-90**

Ice storage and/or vending three tons or less incapacity

Private club

Public garage

Public library

Retail business or retail service, including the making of articles to be sold at retail on the premises, provided that any such manufacturing or processing shall be incidental to a retail business or service and not more than five persons shall be employed in such manufacturing or processing

Theater

C. Other uses and other buildings and structures as provided for by the following sections:

(1) Only the following special uses shall be considered pursuant to § **208-79** et seq.:

(a) Commercial Recreation Facility, subject to § **208-94**.

(b) Excavation and removal of stone, sand and gravel.

(c) Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use.

(d) Storage of LP gas in excess of 1,100 gallons.

(e) Timbering. (See Chapter **184** of this Code.)

(2) Section **208-96**, Temporary uses and structures.

## § 208-46. Space and bulk standards.

In addition to the specific restrictions established in connection with permitted uses listed in § **208-45** and the requirements listed in Article **XIV**, the following regulations apply to all uses permitted in Highway Business Districts B-4:

- A. Area and lot dimensions. The minimum net land area per establishment shall be one acre (43,560 square feet) and the minimum width of lot at the front building line shall be 150 feet.
- B. Front yards. There shall be a minimum front yard of 80 feet, into which space there shall be no encroachment of structures other than a fence, a wall or a sign not larger than 20 square feet and no encroachment of commercial usage other than parking space. There shall be no parking allowed within 30 feet of the front lot line. Building setbacks specifically established by § **208-98** shall take precedence over the above.
- C. Side yards. No building shall be placed closer to a side property line than 30 feet, and no automobile parking space shall extend nearer to a side property line than 20 feet.
- D. Rear yards. No building shall be placed closer to a rear property line than 50 feet if the adjacent district is a residential district or closer to the rear property line than 30 feet with no encroachment of structures or parking if the adjacent district is any other class of district.
- E. Height. For each foot the height of a building exceeds 35 feet, the offset from the side and rear property lines shall be increased by two feet.

- F. Green space shall be 35%.
- G. When abutting a residential zone, a minimum buffer of 100 feet shall be maintained and supplemented as deemed appropriate by the Planning Board.

## **§ 208-47. Entrances and exits upon public thoroughfares.**

There shall be not more than one entrance and one exit per establishment upon any individual public thoroughfare, and the distance between the entrance and exit center lines, if separated, shall be no less than 100 feet.

## **§ 208-48. Landscaping.**

The property margins at the sides from the front building line to the rear property line shall be planted with trees and shrubs for a width of not less than 15 feet.

## **§ 208-49. Group of establishments.**

It shall be allowable to construct a group of establishments in accordance with an integrated site and architectural plan. Minimum land area for such consideration shall be five acres with a minimum width of 400 feet at the building line.

## **§ 208-50. Other applicable requirements.**

See Article **XIV**, Exceptions and Special Provisions, for other applicable requirements.

# **Article VIA. Highway Business/Restricted Retail Districts B-4A**

[Added 10-6-2003 by L.L. No. 6-2003]

## **§ 208-50.1. General provisions.**

The Highway Business/Restricted Retail Districts B-4A are established for the purpose of providing areas for business uses which are mainly oriented to the automobile.

## **§ 208-50.2. Permitted uses.**



In Highway Business/Restricted Retail B4-A, no building or other structure or land shall be used and no building or other structure shall be built for any purposes other than:

- A. A use permitted in Neighborhood Business Districts B-3 except dwellings, which will not be allowed by special exception or otherwise.
- B. The following uses:
- Animal/veterinary office/hospital, provided that any structure or area used for such purposes, including pens or exercise runnings, shall be at least 100 feet distant from any residential district
  - Auto body shop
  - Automobile service station
  - Automotive repair shops and garages
  - Automotive sales establishments
  - Car wash
  - Commercial greenhouse and plant nursery, including offices and sales yards, provided that no building for any such use shall have a heating plant, ventilating flue or other opening, except stationary windows, within 100 feet of any residential district
  - Farm implement or contractor's equipment display, hire and sales establishment, service part repair shop, provided that no portion of a building used for repair shall have any opening, other than stationary windows, within 100 feet of any residential district
  - Funeral home
  - Hospital
  - Hotel or motel, subject to § **208-90**
  - Ice storage and/or vending three tons or less in capacity
  - Private club
  - Public garage
  - Public library
  - Retail business or retail service, including the making of articles to be sold at retail on the premises, provided that any such manufacturing or processing shall be incidental to a retail business or service and not more than five persons shall be employed in such manufacturing or processing, and no retail establishment within a building or structure shall contain total gross floor space equal to or exceeding 30,000 square feet.
  - Theater
- C. Other uses and other buildings and structures as provided for by the following sections:
- (1) Only the following special uses shall be considered pursuant to § **208-79** et seq:
    - (a) Commercial recreation facility, subject to § **208-94**.
    - (b) Excavation and removal of stone, sand and gravel.
    - (c) Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use.
    - (d) Storage of LP gas in excess of 1,100 gallons.
    - (e) Timbering. (See Chapter **184** of this Code.)
  - (2) Section **208-96**, Temporary uses and structures.

## § 208-50.3. Space and bulk standards.

In addition to the specific restrictions established in connection with permitted uses listed above and the requirements listed in Article **XIV**, the following regulations apply to all uses permitted in Highway Business/Restricted Retail Districts B-4A:

- A. Area and lot dimensions. The minimum net land area per establishment shall be one acre (43,560 square feet) and the minimum width of lot at the front building line shall be 150 feet.
- B. Front yards. There shall be a minimum front yard of 80 feet, into which space there shall be no encroachment of structures other than a fence, a wall or a sign not larger than 20 square feet and no encroachment of commercial usage other than parking space. There shall be no parking allowed within 30 feet of the front lot line. Building setbacks specifically established by **§208-98** shall take precedence over the above.
- C. Side yards. No building shall be placed closer to a side property line than 30 feet, and no automobile parking space shall extend nearer to a side property line than 20 feet.
- D. Rear yards. No building shall be placed closer to a rear property line than 50 feet if the adjacent district is a residential district or closer to the rear property line than 30 feet with no encroachment of structures or parking if the adjacent district is any other class of district.
- E. Height. For each foot the height of a building exceeds 35 feet, the offset from the side and rear property lines shall be increased by two feet.
- F. Green space shall be 35%.
- G. When abutting a residential zone, a minimum buffer of 100 feet shall be maintained and supplemented as deemed appropriate by the Planning Board.

## § 208-50.4. Entrances and exits upon public thoroughfares.

There shall be not more than one entrance and one exit per establishment upon any individual public thoroughfare, and the distance between the entrance and exit center lines, if separated, shall be no less than 100 feet.

## § 208-50.5. Landscaping.

The property margins at the sides from the front building line to the rear property line shall be planted with trees and shrubs for a width of not less than 15 feet.

## § 208-50.6. Group of establishments.

It shall be allowable to construct a group of establishments in accordance with an integrated site and architectural plan. Minimum land area for such consideration shall be five acres with a minimum width of 400

feet at the building line.

## § 208-50.7. Other applicable requirements.

See Article **XIV**, Exceptions and Special Provisions, for other applicable requirements.

## Article VII. Corporate Commerce Districts B-5

### § 208-51. Purpose.

[Amended 2-28-2011 by L.L. No. 7-2011]

The primary purpose of the Corporate Commerce District B-5 is to permit, where appropriate, the construction of facilities providing research and information and communication services, light manufacturing, processing, assembly and fabrication facilities, warehouse and storage facilities. This district is primarily for the location of high-technology facilities, office parks, research and development facilities and offices.

### § 208-52. Location and boundaries.

The location and boundaries of the B-5 District are herein declared and delineated on the Official Zoning Map, as attached hereto.<sup>[1]</sup>

[1]: *Editor's Note: The Zoning Map is on file in the Town offices.*

### § 208-53. Permitted uses.

[Amended 12-9-1996 by L.L. No. 11-1996; 2-28-2011 by L.L. No. 7-2011]

- A. An owner shall be permitted to have more than one tenant in an approved facility as long as all occupancies fall within the permitted use. The following uses are permitted within the interior of enclosed buildings or structures in a B-5 District:
- (1) Research and development of materials, methods or products, including engineering and laboratory research and commercial and physical research.
  - (2) Information and communication services, including commercial computer services.
  - (3) Offices, including single or multibuilding office parks.
  - (4) Finance and insurance services, including brokerage houses, investment counseling services and processing of insurance information, except that no on-site direct retail sales to the public is allowed.
  - (5) Engineering and management consulting services.
  - (6) Public administration.

- (7) Day-care services.
  - (8) Buildings accessory to the above which are an integral part of any of the above uses and not in conflict with the purpose of this article as set forth above, which determination shall be made by the Planning Board.
  - (9) Light manufacturing, processing, assembly and fabrication facilities, equipment maintenance, warehouse and storage facilities.
  - (10) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
  - (11) Accessory retail.
- B. Only the following special uses shall be considered pursuant to § **208-79** et seq.:
- (1) The excavation and removal of stone, sand and gravel.
  - (2) Electrical substation, gas district governor station, telephone exchange or other public utility building, structure or use.
  - (3) Timbering (See Chapter **184** of this Code.)
  - (4) Storage of LP gas in excess of 1,100 gallons.
  - (5) All other telecommunication towers as in § **208-95B**.

## § 208-54. Space and bulk standards.

- A. Lot area. The minimum lot size shall be one acre (43,560 square feet), and the minimum width at the front building line shall be 150 feet, except along those streets listed in § **208-98**, where the minimum width shall be 180 feet. The minimum frontage may be calculated along property abutting a public right-of-way, or along a privately owned and maintained road, which allows access to more than one parcel or lot, which is normally open to the public and upon which persons other than the owner located thereon may also travel. Any structure shall be set back a minimum of 100 feet from the nearest property line of any residential district property boundary.  
[Amended 2-28-2011 by L.L. No. 7-2011]
- B. Lot coverage. Structures, parking areas, including maneuvering areas, stormwater retention areas and other site amenities that are an integral and necessary part of the use shall not occupy more than 50% of the total lot area. Notwithstanding the requirement in § **208-116A(8)**, the green space requirement for this district is 50%. The stormwater retention area may be included in the green space calculation upon proof that the stormwater retention area will be improved to form an integral part of the landscaping scheme and would enhance the overall aesthetics and thus serve the purpose of the green space requirements of this article.
- C. Buffer. No building shall be located closer to any residential district property line than 100 feet, and there shall be no encroachment into this area by anything other than natural vegetation or planted landscaping. In addition, there shall be established a minimum ten-foot planted buffer along the rear and side property lines of all parcels, or multibuilding office complexes; the extent of internal buffering to be determined during site plan review.  
[Amended 2-28-2011 by L.L. No. 7-2011]

- D. Height. Permitted height of buildings and structures shall be 50 feet. For any building or structure proposed over 35 in height, the Planning Board will conduct a visual assessment and require the applicant to complete Appendix B of the State Environmental Quality Review, Visual EAF Addendum for its consideration. The Planning Board shall also require a line-of-sight-profile with control points to be determined by the Board. [Amended 2-28-2011 by L.L. No. 7-2011]
- E. Setbacks.
- (1) Front yards. No building shall be located closer than 50 feet to the front property line, into which space there shall be no encroachment of structures other than a fence or similar structure or sign. No parking or maneuvering area shall be allowed in the front yard unless the Planning Board finds that, in the case of keyhole lots or lots with similar configuration, the intent of this chapter is better met by allowing construction within the front yard setback. Building setbacks specifically established by § **208-98** of this Code shall take precedence over the above.
  - (2) Side yards/rear yards. In order to allow and promote the purpose of this article for maximum flexibility of design in order to preserve as much of the natural environment as possible, there is established a ten-foot rear and side yard setback which shall be treated as a buffer area except for each parcel of a multibuilding office complex; the extent of internal buffering to be determined during site plan review. This buffer area shall contain natural or planted vegetation for the purpose of screening uses from adjacent properties.  
[Amended 2-28-2011 by L.L. No. 7-2011]
  - (3) Setbacks for accessory buildings. No building approved as an accessory to the main use shall be constructed closer than 25 feet to a property line.

## § 208-55. Development standards.

- A. Ingress/egress. There shall not be more than one curb cut per lot unless the Planning Board finds that traffic safety will be improved with the addition of another curb cut. Such curb cut shall be wide enough to accommodate safely and in accordance with accepted traffic control standards approved by the Town's engineer the type of traffic to be generated by the use and shall meet all of the fire safety requirements of the Town of Clifton Park. The distance between curb cuts on two separate parcels shall be a minimum of 100 feet measured from the center line of the curb cut. Design should take into consideration the possibility of shared curb cuts with adjacent properties. In the case of a corner lot, no curb cut shall be located closer than 100 feet to an intersection.
- B. Landscaping. The overall intent of this standard is to achieve, where possible, a well-landscaped site that takes into consideration the surroundings and the total environment. That is, consideration shall be given to preservation of natural and existing vegetation as well as new plantings throughout the entire site plan. The Planning Board shall take into consideration the location of the structures and parking areas and their proximity to adjacent buildings and/or lots. Consideration shall be given to planting along property lines, buffer areas and along the walls of the building or structure, where possible, without impeding the operations of the facility. However, if there is substantial natural vegetation on site that serves the requirements, i.e., screening, aesthetics, etc., the Planning Board shall not require additional landscaping except where deficiencies exist.
- C. Architectural. The architectural design shall consider building facade, including color, and other significant design features such as exterior materials and treatments, roof structures, exposed mechanical equipment and service and storage areas. Architectural block or similar facades, especially along the road frontage,

shall be required.

- D. Utilities. Uses proposed within a B-5 District shall be served by sanitary sewers, adequate drainage control and/or storm sewers and a community water system where available. If none is available at the time of approval, the Planning Board shall require the owner to hook into a community water and sewer system as soon as one becomes available as defined by the New York State Uniform Fire Prevention and Building Code.

## Article VIII. Public/Institutional/Recreational District PIR

### § 208-56. Purpose.

[Amended 4-6-1998 by L.L. No. 2-1998]

The Town of Clifton Park recognizes the need and desirability of maintaining suitable lands in the Town of Clifton Park for the recreational, institutional and public assembly needs of its residents. It is the policy of the Town of Clifton Park to provide appropriate locations for public assembly, including by way of example, churches or other places of worship, a publicly financed senior citizen center, a youth center, general meeting space, publicly financed senior citizen housing, governmental and public school facilities and other related uses and facilities. It is also the policy of the Town of Clifton Park to foster and encourage active and passive recreational uses and facilities. To that end, the Town Board of the Town of Clifton Park, in furtherance of the relevant provisions of the Master Plan of the Town of Clifton Park related thereto, hereby creates a new zoning district to be known as the "Public/Institutional/Recreational District PIR" and imposes upon such zoning district the following area and use restrictions. The creation of this district serves to provide for and, in so doing, preserve for the residents of the Town of Clifton Park certain lands for public, institutional and recreational use. It is the intent of the Town to ensure the existence of lands located within the Town of Clifton Park dedicated to the enjoyment of its residents.

### § 208-57. Location and boundaries.

This zoning district shall encompass those portions of the Town of Clifton Park as shown on the Official Zoning Map, as amended, as "public/institutional/recreational."

### § 208-58. Permitted uses.

- A. To promote the purposes of the Public/Institutional/Recreational District, no building or other structures shall be built or altered or erected nor shall land be used for any purposes other than for the following enumerated uses:
- (1) Governmental facilities.
  - (2) Public recreational facilities.
  - (3) Athletic fields.
  - (4) Baseball and softball diamonds.

- (5) Play lots.
  - (6) Playfields.
  - (7) Playgrounds.
  - (8) Basketball courts.
  - (9) Tennis courts.
  - (10) Swimming pool, indoor and outdoor.
  - (11) Ice-skating rink; roller-skating rink.
  - (12) A publicly owned outdoor theater.
  - (13) Gymnasium.
  - (14) A youth center.
  - (15) Publicly financed senior citizen center.
  - (16) Publicly financed senior citizen housing.
  - (17) Other places of public assembly directly related to the advancement of governmental purposes.
  - (18) Other accessory buildings and uses, including but not limited to athletic equipment storage barns, sheds and concession stands.
  - (19) Handball courts.
  - (20) Picnic areas.
  - (21) Facilities operated by a not-for-profit entity for the purpose of carrying out the inherent uses set forth above.
  - (22) Public school facilities.
  - (23) Public library.
  - (24) Public safety buildings.
  - (25) Emergency services facilities.
  - (26) Community residences.
  - (27) Churches or other places of worship.  
[Added 4-6-1998 by L.L. No. 2-1998]
- B. No type of motorized activity shall be permitted in this zone. By way of example, motorized activity shall include but shall not be limited to the following: activities wherein motorized rides are used, go-cart facilities, motorized vehicle racing, all-terrain vehicles and snowmobiles.  
[Amended 12-9-1996 by L.L. No. 11-1996]
- C. Only the following special uses shall be considered pursuant to § **208-79** et seq.:  
[Added 12-9-1996 by L.L. No. 11-1996]

- (1) All other telecommunication towers as in § 208-95B.

## § 208-59. Space and bulk standards.

- A. Area. The minimum net land area per establishment shall be determined by the Planning Board, consistent with the purposes as set forth herein.
- B. Height. The maximum height for any structure shall be 35 feet.
- C. Front yards. No structure or part of a structure shall extend nearer than 80 feet to the front street line of any street.
- D. Rear yards. The rear yard depth shall be not less than 25 feet.
- E. Side yards. There shall be two side yards with a minimum width of 20 feet each.

## § 208-60. Group of establishments.

Nothing contained in this article shall prohibit the erection of more than one establishment per parcel. The site plan is subject to approval by the Planning Board. The minimum land area for consideration as a group of establishments shall be five acres.

## § 208-61. Development standards.

- A. Ingress/egress. The number of curb cuts per lot shall be determined by the Planning Board, taking into consideration the type of traffic to be generated by the use and generally accepted traffic control standards as approved by the Town's engineer.
- B. Landscaping. In determining the need for landscaping, the Planning Board shall take into consideration the location of structures, parking areas and the proximity of the neighboring structures and parking areas. If there is substantial natural vegetation on site that serves these requirements, the Planning Board shall not require additional plantings except where deficiencies exist. Consideration shall be given to preservation of natural and existing vegetation as well as new planting throughout the site.
- C. Architecture. The architectural design shall be consistent with the use proposed and shall take into consideration color, exterior materials and treatments, roof structures, exposed mechanical equipment and service and storage areas.
- D. Utilities. Uses proposed within the PIR District shall be served by sanitary sewers, adequate drainage control and/or storm sewers and a community water system where available. If none is available at the time of approval, the Planning Board shall require the owner to hook into a community water and sewer system as soon as one becomes available, as defined by the New York State Uniform Fire Prevention and Building Code.
- E. Green space. The green space requirement within the Public/Institutional/Recreational District shall be not less than 45% for any proposed new construction. For any developed existing site, the green space shall not be reduced to less than what currently exists, if less than 45%, or 45%.



[Added 3-15-1999 by L.L. No. 3-1999]

## Article IX. Light Industrial Districts LI

### § 208-62. Purpose.

[Amended 5-16-2005 by L.L. No. 6-2005; 2-28-2011 by L.L. No. 7-2011]

In furtherance of the Town's Comprehensive Plan, the primary purpose of the Light Industrial District LI is to permit light manufacturing, processing, assembly and fabrication facilities, wholesale warehouses and storage facilities, equipment maintenance and research and development. This district is primarily for selective industries whose activities do not adversely impact the environment or quality of life of the residents of the Town or create an impact which is injurious to the public health, safety or general welfare of the residents or property owners of the Town of Clifton Park. Accordingly, due to the potential adverse and/or harmful impact of heavy industrial uses, such uses are explicitly excluded from this district.

### § 208-63. Location and boundaries.

[Amended 5-16-2005 by L.L. No. 6-2005]

The location and boundaries of the LI District are as set forth on the Official Zoning Map, as attached hereto.<sup>[1]</sup> This article shall apply to the entire LI District as set forth on the attached Official Zoning Map, except that the permitted uses set forth in § 208-64A shall apply only to those portions on the Official Zoning Map of the LI District designated as "LI-1." The uses set forth in § 208-64B shall apply only to those shaded portions on the Official Zoning Map of the LI District designated as "LI-2."

[1]: *Editor's Note: The Zoning Map is on file in the Town offices.*

### § 208-64. Permitted and prohibited uses.

#### A. Permitted uses; LI-1 area.

[Amended 12-9-1996 by L.L. No. 11-1996; 5-16-2005 by L.L. No. 6-2005]

- (1) An owner shall be permitted to have more than one tenant in an approved facility, provided that all occupancies fall within the permitted use. The following uses are expressly permitted in the LI-1 area of the LI District, subject to the district regulations and performance standards as set forth herein.
  - (a) Assembling/fabrication, processing or light manufacturing of products, provided that such activity is not violative of the district regulations as set forth herein, and further provided that such activity does not result in any noxious noise or odor outside the district and does not have a deleterious effect on the air or water quality.
  - (b) Storage, warehousing or distribution of manufactured products.
  - (c) Animal care facilities.
  - (d) Warehousing, public.

- (e) Public utility uses, including but not limited to electrical substations, telephone exchange or other similar use.
  - (f) Research and development facilities.  
[Amended 2-28-2011 by L.L. No. 7-2011]
  - (g) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
  - (h) Buildings accessory to the above which are an integral part of any of the above uses and are not in conflict with the purpose of this article as set forth above.
  - (i) Offices and office parks.  
[Amended 2-28-2011 by L.L. No. 7-2011]
  - (j) Equipment maintenance.  
[Added 2-28-2011 by L.L. No. 7-2011]
  - (k) Accessory Retail.  
[Added 2-28-2011 by L.L. No. 7-2011]
- (2) Only the following special uses shall be considered pursuant to § **208-79** et seq.:
- (a) All other telecommunication towers as in § **208-95B**.
- (3) All applicants for projects proposed in the LI-1 area shall be required to conduct a tree survey which indicates the location of all trees and other plants with a diameter of six inches or more on the property. The applicant shall ensure that at least 50% of the trees and other plants of six (6) inches or more in diameter, outside of the site improvement areas, are preserved. Site improvement areas include, but are not limited to, building footprints and parking lots.
- (4) All projects proposed for the LI-1 area shall incorporate architectural standards which reflect the existing natural and developed aesthetics of the LI-1 and surrounding area.
- B. Permitted uses; LI-2 area. An owner shall be permitted to have more than one tenant in an approved facility, provided that all occupancies fall within the permitted use.  
[Amended 12-9-1996 by L.L. No. 11-1996; 4-6-1998 by L.L. No. 2-1998; 5-16-2005 by L.L. No. 6-2005]
- (1) Assembling/fabrication, processing or light manufacturing of products, provided that such activity is not violative of the district regulations as set forth herein, and further provided that such activity does not result in any noxious noise or odor outside the district and does not have a deleterious effect on the air or water quality.
  - (2) Storage, warehousing or distribution of manufactured products.
  - (3) Transportation services, accessory and local.
  - (4) Automobile and truck rental facilities and public garages.
  - (5) Automotive repair shops and garages and auto body shops.
  - (6) Warehousing, public and private.
  - (7) Public utility uses, including but not limited to electrical substation, telephone exchange, water facility or other similar use.

- (8) Animal-care facilities.
  - (9) Emergency ambulance facilities if and only as long as these facilities are under contract to the Town of Clifton Park to provide general health services to the Town.
  - (10) Automobile service stations.
  - (11) Buildings accessory to the above which are an integral part of any of the above uses and are not in conflict with the purpose of this article.
  - (12) Only the following special uses shall be considered pursuant to § **208-79** et seq.:  
[Added 4-6-1998 by L.L. No. 2-1998]
    - (a) All other telecommunication towers as in § **208-95B**.
  - (13) Offices.  
[Added 2-28-2011 by L.L. No. 7-2011<sup>[1]</sup>]  
[1]: *Editor's Note: This local law also renumbered former Subsection B(13) as Subsection B(17).*
  - (14) Research laboratory and facilities.  
[Added 2-28-2011 by L.L. No. 7-2011]
  - (15) Equipment maintenance.  
[Added 2-28-2011 by L.L. No. 7-2011]
  - (16) Accessory retail.  
[Added 2-28-2011 by L.L. No. 7-2011]
  - (17) Mobile home park; overlay established; boundaries.
    - (a) An overlay is hereby established for mobile home parks within a portion of the LI-2 area of the Light Industrial District as shown on the Zoning Map. All zoning requirements of the LI District, which are not superseded herein, shall apply to the overlay area.
    - (b) The boundaries of the overlay area are superimposed over those portions of the LI District described as the area wholly contained within the boundaries of NYS Route 9 to the west, the LI Zone boundary to the east and south, and NYS Route 9 to the north, except it shall also include a small area depicted on the Zoning Map in the northwest corner of the LI-2 area of the LI Zone, generally bounded by the Town boundary on the north, Interstate 87 on the west, and Wood Road on the south and east.
- C. Prohibited uses. In accordance with the purpose of this article as set forth in § **208-62**, the following is a list, while not all inclusive, of examples and uses which do not meet the intended purpose of this zone and are therefore prohibited. The following uses are expressly prohibited in the LI District as constituting either heavy industrial use or incompatible light industrial use:
- (1) Asphalt plant.
  - (2) Manufacture or storage of fireworks, explosives or munitions.
  - (3) Manufacture of cement or abrasives.
  - (4) Manufacture of fertilizer or glue.
  - (5) Manufacture, processing, storage, production or refining of petroleum or other flammable liquids or

gasses.

- (6) Manufacture of alcohol, dye or rubber.
- (7) Manufacture of corrosive acid or alkali.  
[Amended 2-28-2011 by L.L. No. 7-2011]
- (8) Manufacture or production of hazardous and/or toxic chemicals, as defined in 15 U.S.C. § 1261.  
[Amended 2-28-2011 by L.L. No. 7-2011]
- (9) Manufacture of ammonia, chlorine, bleaching powder, boilers, large steel tanks, large steel vessels, asphalt, brick, tile, glutinous derivatives, lampblack, lime cement, plaster of Paris, oil cloth, linoleum, paint, varnish, turpentine, printing ink, pyroxoline plastic or articles made therefrom, soap, starch, glucose, dextrine products, sulfurous products, nitric acid, hydrochloric acid, tar or tar products, crude rubber products, alcohol or carcinogenic dyes.
- (10) Assaying any metal except gold or silver.
- (11) A crematory.
- (12) Distillation of coal, wood, bones or tar.
- (13) Rendering or reduction of fats, tallow, grease, lard or any organic material, including garbage, offal, dead animals of any kind or refuse of any kind.
- (14) An iron, steel, brass or copper foundry.
- (15) Structural steel or metal fabrication where a drop hammer is used.
- (16) Refining of petroleum.
- (17) Tanning, storage or curing of rawhides or skins.
- (18) Slaughtering of animals or birds.
- (19) Packing, curing or processing of raw fish or raw fish products.
- (20) Smelting of metals.
- (21) Corralling of livestock or poultry for slaughter or transshipping.
- (22) Motor vehicle, snowmobile or other motorized vehicle racing or track operation or car or midget auto races.
- (23) Auto wrecking yards or scrap metal storage.
- (24) Stone or gravel crushing.
- (25) Residential dwellings, except that one caretaker dwelling unit per property shall be permitted. The Planning Board may require evidence that such a dwelling unit is necessary and will be established solely for security and maintenance purposes.
- (26) Power-generation plants.
- (27) Any storage or warehousing of chemicals or petroleum products that are not ancillary or incidental to the main on-site use and that does not adhere to all requirements of state and federal regulations,

including but not limited to NYS DEC, US OSHA and US EPA regulations.

[Amended 2-28-2011 by L.L. No. 7-2011]

(28) Atomic power facilities, storage of nuclear waste or related nuclear research and development.

(29) Any other use which produces objectionable noise, dust, vibrations, noxious fumes, smoke or odors, all as defined below.

D. District regulations.

(1) The manufacture of any of those products set forth under permitted uses shall be prohibited if the following can be detected beyond the boundary limits of the LI District:

(a) The noise can be clearly heard.

(b) Any vibration can be clearly felt.

(c) Fumes or odors can be plainly smelled.

(d) Dust either settles from or floats through the air and can be distinctly seen.

(e) Light flashes are discernible to the naked eye beyond the boundary limits of the LI District.

(2) All structures constructed in the LI District shall be fully and completely enclosed.

E. The determination as to the suitability of any use shall be made by the Zoning Enforcement Officer in writing pursuant to the criteria set forth herein.

F. Performance standards.

(1) Measurement of noise. Sound levels in the Light Industrial District shall not exceed 45 decibels from 11:00 p.m. to 6:00 a.m., nor 65 decibels at other times, the measurement of which shall be made with a sound-level meter meeting the standards prescribed by the American National Standards Institute. Measurement of noise levels shall be made at the property line of the property on which such noise is generated or perceived and shall be taken at least four feet above ground level. Compliance with the established noise limits is to be maintained at all elevations at the boundary of each property.

(2) Discharge of toxic or noxious matter. No activity in the LI District shall permit any type of discharge either on or off site of any toxic or noxious matter in such concentrations as to be detrimental to or endanger the health of the public or significant bird and mammal wildlife. For purposes of this legislation, "noxious" is defined as that which causes or tends to cause injury to health.

(3) Vibration. In no case shall any vibration from the LI District be perceptible without the aid of instruments along the boundary line of the zone, except during initial construction of the facility.

(4) Heat or glare. No use shall be permitted that will produce heat or glare beyond the property line of the lot on which the facility is located.

(5) Odor. No emission of any odorous matter shall be permitted so as to be detected outside the property line of the lot on which the facility is located. Any facility which may involve the emission of any odor shall be equipped with a secondary safeguard system, so that control will be maintained if the primary system should fail.

## § 208-65. Space and bulk standards.

- A. Lot area. The minimum lot area per establishment shall be one acre (43,560) square feet, and the minimum width of the lot at the front building line shall be 150 feet, except along those streets listed in § **208-98** where the minimum width shall be 200 feet. The minimum frontage may be calculated along property abutting a public right-of-way, or along a privately owned and maintained road, which allows access to more than one parcel or lot, which is normally open to the public and upon which persons other than the owner located thereon may also travel.  
[Amended 2-28-2011 by L.L. No. 7-2011]
- B. Lot coverage. Buildings, parking areas, including maneuvering areas, stormwater retention areas and other site amenities that are an integral and necessary part of the use shall not occupy more than 60% of the total lot area. Notwithstanding the requirement in § **208-116A(8)**, the green space requirement for this district is 40%. The stormwater retention area may be included in the green space calculation upon proof that the stormwater retention area will be improved to form an integral part of the landscaping scheme and would enhance the overall aesthetics and thus serve the purpose of the green space requirements of this article.
- C. Buffer. No building shall be located closer to any residential district property line than 100 feet, and there shall be no encroachment into this area by anything other than natural vegetation or planted landscaping. Where the Light Industrial District line abuts the Saratoga County Sewer easement established at an approximate minimum width of 65 feet in the northeastern corner of the Town of Clifton Park, the buffer shall be 40 feet. The resultant buffer will be approximately 100 feet. In addition, there shall be established a minimum twenty-five-foot planted buffer along the rear and side property lines of all parcels.
- D. Height. Permitted height of buildings and structures shall be 50 feet. For any building or structure proposed over 35 feet in height, the Planning Board will conduct a visual assessment and require the applicant to complete Appendix B of the State Environmental Quality Review, Visual EAF Addendum for its consideration. The Planning Board shall also require a line-of-sight-profile with control points to be determined by the Board.  
[Amended 2-28-2011 by L.L. No. 7-2011]
- E. Setbacks.
- (1) Front yards. No building shall be located closer than 50 feet to the front property line, into which space there shall be no encroachment of buildings other than a fence or similar structure or sign. No parking or maneuvering area shall be allowed in the front yard. Building setbacks specifically established in § **208-98** of this Code shall take precedence over the above. No parking or maneuvering area shall be allowed in the front yard unless the Planning Board finds that, in the case of keyhole lots or lots with similar configurations, the intent of this article is better met by allowing construction within the front yard setback.
  - (2) Side yards/rear yards. In order to allow for maximum flexibility of design, to preserve as much of the natural environment as possible and to promote the purpose of this article, there is established a twenty-five-foot minimum side and rear yard setback, which shall be considered a buffer area and which shall contain natural or planted vegetation for the purpose of screening uses from adjacent properties. No parking shall be permitted in the buffer area.
  - (3) Setbacks for accessory buildings. No building approved as an accessory to the main use shall be constructed closer than 25 feet to a property line.

## § 208-66. Development standards.

- A. Ingress/egress. There shall not be more than one curb cut per lot unless the Planning Board finds that traffic safety will be improved with the addition of another curb cut. The approved curb cut shall be wide enough to accommodate safely and in accordance with accepted traffic control standards approved by the Town Engineer the type of traffic to be generated by the use and shall meet all of the firesafety requirements of the Town of Clifton Park. The distance between curb cuts on two separate parcels shall be a minimum of 120 feet measured from the center line of the curb cut. Design should take into consideration the possibility of shared curb cuts with adjacent properties and parallel service roads in order to minimize the amount of curb cuts in a given area. In the case of a corner lot, no curb cut shall be located closer than 100 feet to the intersection.
- B. Landscaping. The overall intent of this standard is to promote and achieve, where possible, a well-landscaped site that takes into consideration the surroundings and the total environment. Consideration shall be given to preservation of natural and existing vegetation as well as new plantings throughout an entire site. The Planning Board shall take into consideration the location of the structures and parking areas and their proximity to adjacent buildings and/or lots. Consideration shall be given to planting along property lines, buffer areas and along the walls of the structure, where possible, without impeding the operations of the facility. However, if there is substantial natural vegetation on site that serves the requirements, e.g., screening, aesthetics, etc., the Planning Board shall not require additional plantings except where deficiencies shall exist.
- C. Architecture. The architectural design shall consider building facade, including color, and other significant design features, such as exterior materials and treatments, roof structure, exposed mechanical equipment and service and storage areas. Architectural block or similar facade along the road frontage shall be required.
- D. Utilities. Uses provided within an LI District shall be served by sanitary sewers, adequate drainage control and/or storm sewers, and a community water system where available. If none is available at the time of approval, the owner shall be required to hook into a community water and sewer system as soon as one becomes available as defined by the New York State Uniform Fire Prevention and Building Code.
- E. Each change of use in any existing facility in the LI District shall require site plan approval by the Planning Board in order to ensure that future uses are in keeping with the purpose of this article. (If the use is within the same category of uses, i.e., storage, from furniture to tools, no new site plan approval is required. However, if the use involves a change from storage to fabrication, then a new site plan approval is required.) In addition to any other requirements of the Town Code or New York State law, a site plan shall be provided to the Planning Board for review, outlining any changes to the site plan necessitated by the change in use. The Planning Board shall take into consideration current code requirements in an effort to bring outdated site plans into conformance as reasonably as possible.
- F. No underground fuel storage tanks shall be allowed where there is evidence that an aquifer (or aquifer recharge area) exists or is within 500 feet of the site for tanks or if the building lot is located adjacent to or adjoins a Land Conservation Zone. The Planning Board shall refer to the aquifer/recharge maps officially recognized by the Town Board in order to assess whether testing is required to make a determination.

## § 208-67. Other applicable requirements.

See Article **XIV**, Exceptions and Special Provisions, for other applicable requirements.

## § 208-68. (Reserved)

# Article X. Land Conservation Districts L-C

## § 208-69. Purpose.

[Amended 4-6-1998 by L.L. No. 2-1998]

The purpose of the Land Conservation District (hereinafter "L-C") is to delineate, preserve, protect and conserve wetlands and streams and their respective regulated adjacent areas, as designated by the New York State Department of Environmental Conservation, and to preserve natural floodplains, as designated by the Town of Clifton Park. It is the policy of the Town of Clifton Park to preserve these natural resources and the benefits derived therefrom, prevent the destruction and despoliation of such areas and to regulate development in these areas such that their natural benefits are secured, consistent with the general welfare and beneficial social and economic development of the Town.

## § 208-69.1. Location and boundaries.

[Amended 4-6-1998 by L.L. No. 2-1998]

A. The locations and boundaries shall be as follows:

- (1) Freshwater wetlands. The L-C boundaries associated with wetlands consist of those freshwater wetlands inventoried and mapped by the New York State Department of Environmental Conservation pursuant to Article 24 of the Environmental Conservation Law and the one-hundred-foot adjacent area measured horizontally from the border of the wetland.
- (2) Stream. Classified streams located in the Town of Clifton Park that have been indexed and/or mapped by the New York State Department of Environmental Conservation, and a fifty-foot adjacent area (buffer) on each side of the outer bank of the high-water mark, except that:
  - (a) The buffer area for the Stony Kill (Stony Creek) downstream from the Stony Creek Reservoir will be 100 feet from each side of the outer bank of the high-water mark.
  - (b) The buffer area for the Cooley Kill downstream from Carlton Road until it reaches the Dwaas Kill will be 100 feet from each side of the outer bank of the high-water mark.
  - (c) The buffer area for that portion of the Dwaas Kill downstream from Kinns Road will be 100 feet from each side of the outer bank of the high-water mark.
  - (d) The buffer area for that portion of the Alplaus Kill, which is in Clifton Park will be one hundred feet from each side of the outer bank of the high-water mark.
- (3) In addition to the buffer area described in Subsection B(2) above, for streams within the Town of Clifton Park that are listed under Section 303 (d) of the Federal Clean Water Act, applicants for new construction projects disturbing one acre or more shall employ site specific stormwater management strategies to prevent adverse impacts upon such waters.

[Added 12-17-2007 by L.L. No. 13-2007<sup>[1]</sup>]

[1]: *Editor's Note: This local law also provided for the renumbering of former Subsection B(3) as Subsection B(4).*



- (4) Floodplains. The L-C boundaries associated with floodplains are defined by the official flood boundary and floodway map (FBFM) of the community published by the Federal Emergency Management Agency.
- B. Each applicant for a building permit, soil disturbance permit, subdivision or site plan within or containing areas zoned L-C due to freshwater wetlands shall contact the New York State Department of Environmental Conservation to verify the exact location of the wetlands boundaries and regulated adjacent areas. A copy of the delineation must be filed with the Planning Department, who will distribute it to other affected departments within the Town of Clifton Park.

## § 208-69.2. Permitted uses.

[Amended 12-9-1996 by L.L. No. 11-1996; 4-6-1998 by L.L. No. 2-1998]

- A. To promote the purposes of this article, no building or structure shall be built, expanded or altered and no land shall be expanded or altered for any purpose within the areas depicted on the Official Zoning Map as L-C other than for:
  - (1) Park, residential boat launch, nature preserve, game preserve or other similar use, provided that the use is in accordance with the purposes set forth in this chapter, including accessory structures which are an integral part of the uses listed in this subsection.
  - (2) Utility work and repairs and utility transportation systems, including (but not limited to) water, sewer and cable crossings.
  - (3) Roadway or driveway crossings, provided that the applicant demonstrates that there is no other reasonable means of access available and the applicant obtains appropriate permits from the New York State Department of Environmental Conservation.
  - (4) Creation of freshwater wetlands as part of required mitigation for losses of wetlands on site or off site.
- B. Other uses and other buildings and structures as provided for by the following sections:
  - (1) Only the following special uses shall be considered pursuant to § 208-79 et seq.:
    - (a) Selective cutting of timber, per Chapter 184 of the Code of the Town of Clifton Park.
    - (b) Telecommunication towers as defined in § 208-95B.
  - (2) Temporary uses and structures, per § 208-96, provided that the activity is in support of permitted construction within the L-C Zone.
- C. Application for uses that are not considered permitted uses (as described in the preceding subsections) will be reviewed pursuant to the review application procedure in Chapter 124, Freshwater Wetlands and Stream Protection, the standards indicated in § 208-69.3 of this chapter and the variance procedures given in § 208-109, Board of Appeals, of the Code of the Town of Clifton Park.

## § 208-69.3. Additional standards for permit.

[Amended 4-6-1998 by L.L. No. 2-1998]

- A. Each application for a building permit, soil disturbance permit, subdivision or site plan within or containing areas zoned L-C due to freshwater wetlands shall be reviewed for conformance with Chapter **124** of the Code of the Town of Clifton Park; in addition, the applicant must furnish sufficient data to demonstrate that the proposed activity will not result in any of the following:
- (1) Alteration of aquifer capacities.
  - (2) Reduction of flood-carrying capacities of watercourses or increased hazards associated with flooding.
  - (3) Deterioration of water quality or impairment of best usage of waters.
  - (4) Alteration of water retention capabilities; increase in siltation of surface water bodies and adjacent areas.
  - (5) Significant disturbance to fish and wildlife populations and natural plant communities.
  - (6) Impairment of any natural function of a wetland or its adjacent buffer area.
  - (7) Alteration of the flow pattern of a watercourse area.
  - (8) Increase in the velocity of surface water runoff.
- B. For any projects involving work in areas of special flood hazard, project review shall be conducted pursuant to Chapter **119**, Flood Damage Prevention, of the Code of the Town of Clifton Park.

## § 208-70. Space and bulk standards.

The following requirements apply to the uses delineated at § **208-69.2** hereinabove:

- A. Area. The minimum area for any application pursuant to this article shall be 100,000 square feet.
- B. Front yards. Each proposal pursuant hereto shall include a front yard with a depth of not less than 80 feet.
- C. Rear yards. Each proposal pursuant hereto shall include a rear yard with a depth of not less than 50 feet.
- D. Side yards. Each proposal shall include two side yards, each having a minimum width of 20 feet.
- E. Height. For each foot by which the height of a building or other structure exceeds 35 feet, the total width of each of the two side yards shall be increased by two feet.

## Article XI. XI Planned Unit Development Districts PUD

[1]: *Editor's Note: See also Ch. **A217**, Planned Development Districts.*

### § 208-71. Purpose.

- A. Provision is made here for Planned Unit Development Districts to permit establishment of areas in which one use or diverse uses may be created together, containing both individual building sites and common properties, in a compatible and unified development. In adopting this section, the Town Board declares its

intent to encourage innovations in development and the most efficient use of land by enabling greater flexibility in siting, design and type of structure permitted under certain circumstances in the Town. In order to carry out the intent of this section, a planned unit development shall strive to achieve the following objectives:

- (1) More usable open space, preserve lands and/or recreational areas shall be created.
- (2) Trees, topography, water resources and outstanding natural features shall be preserved where possible.
- (3) A creative use of land and related physical development which allows an orderly transition of land from a vacant state to a developed state.
- (4) An efficient use of land resulting in economical networks of utilities and streets.
- (5) A development pattern in harmony with the planning objectives of the Town.

B. General requirements.

- (1) Permitted uses. Uses within an area designated as a Planned Unit Development District are determined by the provisions of this section as well as the conditions of the approval of any actual planned unit development project.
  - (a) Mixed-use planned unit development. A mixed-use planned unit development may incorporate a variety of housing types, such as detached, attached or any combination thereof. Accessory uses, including neighborhood commercial facilities, mixed-use structures, religious institutions, educational facilities, private and public clubs and recreational facilities, may be allowed as determined appropriate by the Town Board.
  - (b) Commercial planned unit development. A commercial planned unit development shall permit principally commercial and business uses of a variety of types, such as research and development facilities, high-technology assembly, professional offices, commercial recreation facilities and such other uses as may be deemed appropriate by the Town Board for the area under construction. Accessory uses, including eating establishments, newsstands and day-care centers, are allowed when exclusively intended and designed for use by the users of the permitted principal use.
- (2) Minimum area. The minimum area requirement for consideration of a Planned Unit Development District designation shall be 10 contiguous acres of land.
- (3) Location. The planned unit development may be applicable to any area of the Town where the applicant can demonstrate that the characteristics of his holdings will meet the objective of this article.
- (4) Density. Because land is used more efficiently in a planned unit development, improved environmental quality can usually be produced with greater density than is usually permitted in traditional zoning districts. The Town Board shall determine in each case the appropriate land use intensity and/or dwelling unit density for individual projects. The determination of land use intensity or dwelling unit density shall be thoroughly documented, including all facts, opinions and judgments justifying the selection.
- (5) Ownership. The tract of land under application for consideration for a planned unit development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners or their agent(s) of all property included in the project. In the case of multiple ownership, the approved plan shall be binding

upon all property owners, and such owners shall provide written certification of such binding agreements.

## § 208-72. Procedure.

- A. Prior to making any formal submission, the applicant is encouraged to meet with the Planning Department for a preapplication conference, in order that the nature of the proposal and application procedure can be discussed.
- B. Application requirements.
  - (1) The applicant shall submit an application and 10 copies of a preliminary development plan to the Town Board. A preliminary development plan shall consist of the following:
    - (a) A narrative description of the project setting forth its purpose, desirability and impact on the area in which the project is proposed, as well as its projected effect on the Town in general, paying particular attention to schools, traffic, population, utilities, aesthetics, recreation, taxes and compatibility with neighborhood character.
    - (b) A survey of the property, showing existing site features, including contours, buildings, structures, streets, utility easements, rights-of-way and land uses within 500 feet.
    - (c) A preliminary site plan, as described in Article **XVI** of this chapter, and including the notifications required in § **208-115F**.
    - (d) Information on the intended construction sequence for buildings, parking areas and landscaping.
    - (e) A public utilities plan documenting the proposed location, size and quantity of water, effluent and storm drainage facilities.
    - (f) Additional studies and reports as may be necessary for the Planning Board to determine appropriate intensity of land use and development density.
    - (g) State environmental quality review documents as required by the Planning Board.
  - (2) At the time of submission of the application for a Planned Development District as provided for herein, the applicant shall submit, in addition to otherwise required documentation, the following:
    - (a) A reproduced copy of the Tax Map or extract of the Tax Map depicting the parcel(s) of land proposed for the district and all lands within 500 feet distance from the perimeter thereof.
    - (b) A schedule of the names and addresses of the property owners within 500 feet distance from the perimeter of the lands proposed for the district as ascertained from the office of the Town Assessor.
    - (c) Notice.
      - [1] Satisfactory proof that the property owners within 500 feet of the perimeter of the lands proposed for the district approval have been notified in writing of the nature (include a brief narrative about the project and its location, number of units, approximate commercial square footage, etc.) of the proposed district. Such notification shall include the following written statement: "An application for a planned development district for lands within 500

feet of your property is being proposed. The permit application will be filed with the Town Clerk of the Town of Clifton Park and may be reviewed by you during normal business hours at the Town Hall. Please call the Town Clerk at 371-6651 if you have any questions about the procedures to review this application and the process for consideration of the proposal.” Proof shall be deemed satisfactory for purposes hereof if the applicant provides evidence of mailing, by certified or registered mail or certificate of mailing, and files the receipts with the submission. Regular mail is not satisfactory notice.

[2] In the event that the applicant or a related company or corporation owns lands adjacent to the lands proposed for the district and within 500 feet of the perimeter of the lands proposed for the district, then, in such event, the notice required herein shall be provided to property owners within 500 feet of the parcel adjacent to the parcel proposed for the district by the applicant.

(3) For purposes of Subsection **B** only, the term “applicant” shall include owner, agent or applicant.

C. Referral of the application. The Town Board may refer the application and accompanying documents to the Planning Board for its review and recommendation, and to the County Planning Board, if required under the provisions of § **208-112** of this chapter.

[Amended 1-3-2006 by L.L. No. 1-2006]

## § 208-73. Planning Board review and recommendation.

A. Upon completion of its review, the Planning Board shall transmit, in writing, to the Town Board its recommendation for approval, approval with conditions or modifications or disapproval of the application, including a discussion of the proposal’s compliance with the following:

- (1) That the proposal conforms to the Town’s comprehensive planning objectives.
- (2) That the proposal meets the intent and objectives of a planned unit development as expressed in this article.
- (3) That the proposal complies with the general requirements listed above in this article.
- (4) That the uses proposed shall not be detrimental to the natural characteristics of the site or adjacent land uses.
- (5) That each phase of the development, as it is proposed to be completed, contains the required parking facilities, landscaping and utilities necessary to create and sustain each phase independently.
- (6) That the proposal is conceptually sound in that it meets local and area-wide needs and that the proposed roadways, pedestrian system, land use configuration, open space system, drainage system and scale of elements shall function singly and cumulatively and conform to accepted design principals.
- (7) That there are adequate service and utilities available or proposed to accommodate the development.
- (8) That the traffic generated by the proposal shall not have an adverse impact on the existing transportation network.

B. In addition, the report shall include a determination of the applicability of the State Environmental Quality

Review Act.<sup>[1]</sup>

[1]: *Editor's Note: See Art. 8 of the Environmental Conservation Law.*

## § 208-74. Action by the Town Board.

- A. Upon receipt of the report from the Planning Board, the Town Board may accept or reject the recommendation. Upon acceptance of the report from the Planning Board, the Town Board shall set a date for and conduct a public hearing for considering planned unit development districting for the applicant's plan.
- B. If the change of zone is approved by the Town Board, the Official Town Zoning Map shall be amended so as to define the boundaries of the Planned Unit Development District, and such amendment shall be advertised and recorded in accordance with the requirements of § 265 of New York State Town Law.
- C. The Town Board may, if it believes it necessary in order to fully protect the health, safety and general welfare of the community, attach to its zoning resolution approving the zoning change additional conditions or requirements the applicant must meet. Such requirements may include but are not limited to:
- (1) Visual and acoustical screening.
  - (2) Land use mix.
  - (3) Schedule of construction and occupancy.
  - (4) Pedestrian and vehicular circulation system.
  - (5) Parking and snow removal.
  - (6) Sites for public services.
  - (7) Protection of natural and/or historical features.
- D. Uses requiring special use permits.<sup>[1]</sup>  
[Added 3-21-2011 by L.L. No. 9-2011]
- (1) Applications for ground- or pole-mounted solar arrays in existing Planned Unit Development Districts approved or constructed prior to the adoption of this section shall be referred to the Planning Board for review and recommendation pursuant to the standards for review contained in § 208-179. The Planning Board shall make its recommendation within 90 days following referral by the Town Board of any application for amendment to an existing Planned Development District for ground or pole mounted solar arrays.

[1]: *Editor's Note: See § 208-179, Special use permits.*

## § 208-75. Final development plan approval.

- A. Prior to the issuance of a building permit, the applicant shall submit a final development plan for a full site plan review and approval by the Planning Board in accordance with Article **XVI** of this chapter.
- B. Prior to final site plan approval, the Planning Department shall assure that said finalized plans are consistent with the original concept plans and the conditions set by the Town Board in the rezoning of the parcel to

planned unit development.

## § 208-76. Building permit required.

In the event that the applicant does not request a building permit within one year of the Town Board action provided for in § 208-75 above, the permission granted in § 208-75 is automatically rescinded. If a permit is granted, it shall be subject to all of the terms of § 208-107.

## Article XII. Vischer Ferry Road Corridor Overlay Zone

### § 208-77. Vischer Ferry Road Corridor Overlay Zone.

- A. An overlay zone is hereby established for the Vischer Ferry Road Corridor (hereinafter "VFRC"). The VFRC shall hereafter be zoned by density. The provisions of this section supersede any other applicable zoning requirements with regard to minimum land area per dwelling unit. All other zoning requirements set forth under Chapter 208, Zoning, of the Clifton Park Town Code shall apply to the VFRC.
- B. All parcels within the VFRC shall be subject to a density limitation of one dwelling unit per 40,000 square feet. As per this density restriction, the total square footage of all property within any one application before the Planning Board for subdivision, excluding all New York State Department of Environmental Conservation and Federal Wetlands, shall be divided by 40,000 square feet, with the product equaling the number of dwelling units permitted.
- C. The green space requirement for nonresidential uses shall be 50%.
- D. There shall be no exceptions or variations from the provisions set forth hereinabove unless and to the extent that the Town Board passes legislation authorizing a Planned Development District (PDD). However, any PDD must be consistent with the GEIS, statement of findings and the Capital Improvement Plan.
- E. Once a parcel brought before the Planning Board has been subdivided in accordance with the restrictions set forth herein, the resulting parcels may not be further subdivided.

## Article XIII. Historic Preservation

### § 208-78. Historic Preservation.

[Amended 10-10-2006 by L.L. No. 10-2006; 12-1-2008 by L.L. No. 9-2008]

- A. Purpose. It is hereby declared as a matter of public policy and the intent of the Town of Clifton Park to essentially follow the terms of the National Historic Preservation Act of 1966 which established a national historic preservation policy and authorized the National Park Service to oversee the Act. Additionally, it is the intent of the Town of Clifton Park to essentially follow the mandates of the New York State Commissioner of Parks, Recreation and Preservation Officer. In this capacity the protection, enhancement and perpetuation of landmarks and historic buildings is necessary to promote cultural and educational

opportunities for the public. In as much as the identity of a people is founded on its past and recognizing that Clifton Park has many significant historic, architectural and cultural resources which constitute its heritage, this article is intended to:

- (1) Protect and enhance the buildings, structures, objects, sites and districts which represent distinctive elements of Clifton Park's historic, architectural and cultural heritage;
  - (2) Foster civic pride in the accomplishments of the past;
  - (3) Protect and enhance Clifton Park's attractiveness to its residents and visitors and the support and stimulus to the economy thereby provided;
  - (4) Ensure the harmonious, orderly, and efficient growth by integrating future development of Clifton Park with our historic past; and
  - (5) The Historic Preservation Commission, as outlined below in Subsection **C(1)**, will be available to provide guidance and technical assistance to owners of landmark properties when restoration work is being contemplated.
- B. Definitions. When used in this article, unless a different meaning clearly appears from the context, the terms listed below shall have the following meanings:

**CERTIFICATE OF APPROPRIATENESS**

A written authorization from the Planning Board that permits alterations, restoration, reconstruction or other construction with respect to a building, structure, site or object that has been designated a landmark.

**CERTIFICATE OF COMPATIBILITY**

A written authorization from the Planning Board indicating any new proposed construction within an Historic District meets the general design, character, continuity and scale of other buildings in the Historic District.

**COMMISSION**

The Clifton Park Historic Preservation Commission.

**FACADE**

That area of a building, place or site that is clearly visible from any adjacent public street or highway, generally constituting the outer shell of the structure that can be observed by the passing public.

**HISTORIC DISTRICT**

A district that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

**HISTORIC PRESERVATION**

The identification, study, documentation, protection, acquisition, restoration, rehabilitation, management, maintenance and use of buildings, structures, objects, sites and historic districts, significant in the history, architecture, or culture of the Town of Clifton Park, the State of New York or the United States.

**HISTORIC PROPERTY**

Any building, structure, object, site or district that is of significance in the history, architecture, archeology, or culture of the Town of Clifton Park, the State of New York, or the United States. Listed below, but not limited to these categories, are examples of historic properties.



- (1) Examples of buildings include:
- Administration building
  - Carriage house
  - Church
  - City or town hall
  - Courthouse
  - Detached kitchen, barn, or privy
  - Dormitory
  - Fort
  - Garage
  - Hotel
  - House
  - Library
  - Mill building
  - Office building
  - Post office
  - School
  - Shed
  - Social hall
  - Stable
  - Store
  - Theater
  - Train station
- (2) Examples of structures include:
- Aircraft
  - Apiary
  - Automobile
  - Bandstand
  - Boats and ships
  - Bridge
  - Cairn
  - Canal
  - Carousel
  - Corncrib
  - Dam
  - Earthwork
  - Fence
  - Gazebo
  - Grain elevator
  - Highway
  - Irrigation system
  - Kiln
  - Lighthouse
  - Railroad grade

Silo

Trolley car

Tunnel

Windmill

(3) Examples of objects include:

Boundary marker

Fountain

Milepost

Monument

Sculpture

Statuary

(4) Examples of sites include:

Battlefield

Campsite

Cemeteries significant for information potential or historic association

Ceremonial site

Designed landscape

Habitation site

Natural feature (such as a rock formation) having cultural significance

Petroglyph

Rock carving

Rock shelter

Ruins of a building structure

Shipwreck

Trail

Village site

(5) Examples of districts include:

Business districts

Canal system

College campuses

Estates and farms with large acreage/numerous properties

Groups of habitation sites

Industrial complexes

Irrigation system

Residential areas

Rural historic districts

Rural villages

## **LANDMARK**

A historic building or structure that has been placed on the Town, State or National Register of Historic Places, the owner has requested and received a historic preservation conservation easement, and the building or structure has been designated a landmark by the Town Board. This classification is unique to the Town of Clifton Park.

**MATERIAL EXTERNAL ALTERATIONS**

External changes to a home, including landscaping, fencing, or other alterations. Painting and other regular and ordinary items of maintenance are not "material external alterations" to a property.

**NATIONAL REGISTER**

The National Register of Historic Places authorized by the National Historic Preservation Act of 1966.

**PLANNING BOARD**

The Town of Clifton Park Planning Board.

**STATE REGISTER**

The State Register of Historic Places established pursuant to § 14.07 of the New York State Parks, Recreation and Historic Preservation Law.

**TOWN BOARD**

The Town Board of Clifton Park.

**TOWN REGISTER**

The Clifton Park Town Register of Historic Places established pursuant to Town Board Resolution 16 of 1999, a local honorary listing of buildings, structures, objects, sites and historic districts deemed by the Commission to be of significant historic value. Property owners on the Historic Register have no restrictions on what they may do with their property.

- C. Historic Preservation Commission. There is hereby created a Commission to be known as the "Clifton Park Historic Preservation Commission."
- (1) The Commission shall consist of 15 members to be appointed, to the extent available in the community, by the Town Board as follows: There shall be at least one each of the following: architect, historian, licensed real estate broker, attorney and resident of an historic district and at least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation or other serious interest in the field. So as not to weigh the Historic Preservation Commission decision making process unfairly:
    - (a) Members shall not be affiliated with the same professional office; and
    - (b) Members shall not be related by marriage or immediate family members.
  - (2) Commission members shall serve at the discretion of the Town Board.
  - (3) The Chairman of the Commission shall be appointed by the Town Board for a one-year term.
  - (4) The purpose of the Commission shall include:
    - (a) Making recommendations to the Town Board for its consideration and approval so that it may employ staff and professional consultants as necessary to aid the Commission in carrying out its duties.
    - (b) Promulgation of rules and regulations as necessary for the conduct of its business. Any such rules or regulations are subject to the approval of the Town Board.
    - (c) Conduct surveys of significant historic buildings, structures, objects and districts within the Town.

- (d) Recommending to the Town Board certain criteria for selection of historic buildings, structures, objects, sites and historic districts in the Town of Clifton Park to be placed on the Town Register of Historic Places.
  - (e) Recommending to the Town Board suggested buildings, structures, objects and sites which should be listed on the Town Register of Historic Places.
  - (f) Recommendations to the Town government concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this article.
  - (g) Recommendations to the Town Board as to those areas of the Town which should be designated as Town historic districts.
  - (h) Increasing public awareness of the value of preserving historic buildings, structures, objects and sites by developing and participating in public education programs, conducting preservation workshops, and providing technical assistance and guidance to owners of historic properties.
  - (i) Making recommendations to Town government concerning the utilization of state, federal or private funds to promote the preservation of historic buildings, structures, objects and sites within the Town of Clifton Park.
  - (j) Recommending the acquisition of historic buildings, structures, objects and sites by the Town government where their preservation is essential to the purposes of this article and where private preservation is not feasible.
  - (k) Serving in an advisory capacity to the Town Board, Planning Board, Zoning Board of Appeals and Building Department on all matters that affect or impact on designated Register properties or historic districts.
  - (l) In its capacity to advise the Town Board and the Planning Board, the Commission will review and offer comments and assist to bring about a successful integration of proposed new projects, developments or building additions for registered properties or for properties within a Historic District.
- (5) The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any two of the Commission members or on the call of the Chairman of the Commission or the Chairman of the Planning Board.
- (6) A quorum for the transaction of business shall consist of one or more than 1/2 of the Commission's members.
- D. Designation of Historic Districts, buildings, structures, objects and sites on the Town Register of Historic Places.
- (1) Pursuant to Town Board Resolution No. 16 of 1999, the Commission may recommend, for designation by the Town Board, a building, structure, object, historic district or site for the Town Register of Historic Places if it:
    - (a) Is associated with events that have made a significant contribution to the broad patterns of our history; or
    - (b) Is identified with historic personages or the lives of persons significant in our past; or
    - (c) Embodies distinctive characteristics of a type, period, or method of construction, or that

represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) Has yielded, or may be likely to yield, information in prehistory or history.

- (2) Each building, structure, or object added to the Town Register of Historic Places will receive a plaque acknowledging placement on the Register.
- (3) The Clifton Park Town Register of Historic Places is strictly a local honorary listing. Properties placed on the Register are given only Town-wide historic recognition. Owners of properties on the Historic Register have no restrictions on the use or maintenance of their property as a result of this designation.
- (4) Each site or Historic District added to the Town Register of Historic Places will receive an historic road marker acknowledging its history and placement on the register.

E. Landmarks.

- (1) Once a site or structure has been listed on the Town Register of Historic Places, the site or structure becomes eligible for tax relief under the Historic Preservation Easement Law (Local Law No. 12 of 1996, Conservation Easement Law, Chapter **125**, as amended by Local Law No. 1 of 2004). If the owner elects to submit an application, and the Commission establishes that the building, structure, or site continues to meet the required criteria it may be approved by the Town Board and thus be eligible for a historic conservation easement.
- (2) The Town Board shall hold a public hearing prior to granting a historic preservation easement (Local Law 12 of 1996). Within 30 days after the conclusion of the public hearing, the Town Board shall grant the application for a preservation easement, and thereby designate the property as a landmark, or shall deny such designation.
- (3) Upon designation by the Town Board, the Town Clerk shall record and forward notice of each property designated as a landmark to the Town of Clifton Park Assessor and the Director of Building and Zoning.
- (4) Upon accepting a historic preservation easement and the property thereby receiving landmark status, the property owner agrees to preserve the historic building or structure as follows.

(a) Certificate of appropriateness. Any alterations, modifications or additions to a landmark building or structure shall be aesthetically and architecturally compatible with the existing building. No person shall carry out any exterior alteration, restoration, reconstruction, demolition or new construction or move a landmark, nor shall any person make any material changes in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance of the landmark, without first obtaining a review by the Historic Preservation Commission and a certificate of appropriateness, unless, in the opinion of the Director of Building and Zoning, such activity is necessary to prevent the property or structure from posing a danger to the public at large. In making a recommendation to the Planning Board on an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public, or to architectural features that are not visible from a public street or alley.

[1] Any material external alterations of existing property shall be compatible with the property's historic character, as well as with the surrounding district.

(b) Certificate of appropriateness application procedure.

- [1] Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Planning Board. The application shall contain:
  - [a] Name, address and telephone number of applicant.
  - [b] Location and photographs of property.
  - [c] Elevation drawings of proposed changes, if available.
  - [d] Samples of color or materials to be used.
  - [e] Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the sign's location on the property.
- [2] No building permit shall be issued for such proposed work until a certificate of appropriateness has first been approved by the Planning Board. The certificate of appropriateness required by this article shall be in addition to and not in lieu of any building permit that may be required by this chapter or any other local law of the Town of Clifton Park.
- [3] The Planning Board shall approve, approve with modifications or disapprove the application within 45 days from receipt of the completed application and recommendation from the Historic Preservation Commission.
- [4] All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk. The Board shall state in writing the reason for its action. A copy of the Board's decision shall also be forwarded to the Director of Building and Zoning and to the Chairperson of the Zoning Board of Appeals.

F. Demolition of any building or structure more than 49 years old.

- (1) Prior to issuing any demolition permit on a building or structure more than 49 years old, the Town Building Department shall notify the Historic Preservation Commission, by providing 30 days' written notice, identifying the building or structure for which such permit is sought by address and name of owner or owners, unless, in the opinion of the Building Department, the structure poses an imminent danger to health and safety.
- (2) The Commission shall evaluate and document the building or structure for historic or architectural significance appropriately, as may be necessary, during the thirty-day notice period prior to issuance of any such demolition permit. The Commission may request an additional 14 days to evaluate and document such significant structures in cases where extensive research is required, which may be granted in the sole discretion of the Building Department.
- (3) In the event that the Building Department has received no comment from the Historic Preservation Commission within 30 days after such notification, the Building Department shall issue the requested permit for demolition if the same is deemed otherwise appropriate.

## Article XIV. Exceptions and Special Provisions

## § 208-79. Special use permits.

### A. Purposes and general provisions.

- (1) The purpose of this article is to set forth the application procedure for consideration of special uses within individual zoning districts. These procedures apply to certain land uses and activities which, due to their particular characteristics or the nature of the area in which they are to be located, require special consideration so that they may be properly located and planned with respect to the objectives of this chapter and their effect on the surrounding properties and community character.
- (2) Special uses for each district are set forth in Articles **III** through **XI** of this chapter.
- (3) The special uses for which conformance to additional standards is required by this article are deemed by their inclusion within such zoning district to be permitted uses in their respective districts, subject to demonstration by the applicant of sufficient proof of the satisfaction of the requirements and standards set forth herein. All such uses are declared to possess characteristics of such a unique and special nature that each specific application shall be considered an individual case, and the granting of a special use permit for one special use in a zoning district shall be limited to its own facts and circumstances and shall have no precedential effect entitling or implying that a similar use would be capable of satisfying the requirements and standards set forth herein.

### B. Administration by Planning Board. The Planning Board is hereby authorized to administer and carry out the intent established in this article.

### C. Application procedures prior to Board review.

- (1) An application for a special use permit shall be made by the applicant to the Building Inspector. It shall be the duty of the Building Inspector to determine if the special use is permitted in the zone in which the use is proposed to be located. In the event that the Building Inspector determines that the use is permitted, the application for a special use permit shall be forwarded to the Planning Board as set forth hereinbelow.
- (2) The Planning Board shall review such applications for special use permits as set forth in **§ 208-79D** below.

### D. Application procedures to Planning Board.

- (1) Upon receipt of the application for a special use permit, the Planning Board shall hold a public hearing after public notice and in accordance with **§ 208-109E** of this chapter. Unless otherwise extended by mutual consent of the Planning Board and the applicant, the Planning Board shall act upon the application within 62 days from the date of the public hearing. In the event that a determination is not made by the Planning Board within said sixty-two-day period, the application shall be deemed approved.
- (2) At least seven days but not more than 20 days before the date of the hearing, the applicant shall mail a copy of legal notice of the hearing to all property owners of property within 500 feet of the applicant's parcel following the procedure contained in **§ 208-115F** of this chapter.
- (3) Prior to taking action on a special use permit application for properties which fall under **§ 239-m** of the General Municipal Law, the Board shall make referrals to the county planning agency in accordance with **§§ 239-l** and **239-m** of the General Municipal Law.

- (4) Prior to granting any approvals relative to the proposed application, the appropriate lead agency shall undertake SEQRA review and determination in accordance with New York State Environmental Conservation Law and 6 NYCRR Part 617.
- (5) As a condition of approval of a special use permit, the Planning Board may require a performance bond, client fund account, or letter of credit to guarantee satisfactory performance of the required improvements. Such security shall be part of or in addition to any required by the Planning Board as part of a site plan review application.
- (6) The Planning Board shall attach such conditions and safeguards to the special use permit as are determined by the Planning Board to be necessary or desirable to ensure conformance with the letter and spirit of all applicable standards and requirements and to protect the public health, safety and general welfare. The Planning Board may require any off-site, off-premises improvements that might be necessary to mitigate the impacts of the proposal.
- (7) Fees. See § **103-16** for fees associated with a special use permit.

E. Standards for special use permits.

- (1) Before granting approval to any special use, the Planning Board shall determine whether the proposed special use will, among other things, satisfy the following considerations:
  - (a) That the use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts.
  - (b) That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located.
  - (c) That the public health, safety, general welfare or order of the Town will not be adversely affected by the proposed use in its location.
  - (d) That the use will be in harmony with and promote the general purposes and intent of the Comprehensive Plan and this chapter.
  - (e) That the character of the existing uses and approved future development in the district will not be adversely affected by the location of the proposed special use in the proposed location.
  - (f) The conservation of property values in the vicinity of the proposed specially permitted use and the encouragement of the most appropriate use of land.
  - (g) The effect that the location of the proposed use may have on the increase of vehicular traffic congestion on public streets and highways.
  - (h) That the proposed site provides adequate parking facilities to protect against hazardous traffic and/or parking conditions.
  - (i) The availability of adequate and proper public or private facilities for water and for the treatment, removal or discharge of sewage, refuse or effluent (whether liquid, solid, gaseous or otherwise) that may be caused by or as a result of the proposed use.
  - (j) Whether the use or materials incidental thereto or produced may give off obnoxious odors, smoke or soot or will cause disturbing emissions of electrical charges, dust, light, vibration or noise detrimental to the public health, safety and general welfare.
  - (k) Whether operations of the special use will cause undue interference with the orderly enjoyment



by the public of parking or of recreational facilities, if existing or if proposed by the Town or by other governmental agencies.

- (2) Additional standards applicable to electrical substations in residential zones. No special use permit shall be granted for an electrical substation in any residential district or Business District B-3 unless the Planning Board shall conduct a public hearing at a regularly scheduled Town Board meeting.
- (3) Solar arrays: ground- or pole-mounted solar arrays.  
[Added 3-21-2011 by L.L. No. 9-2011]
- (a) Factors to be considered by the Planning Board in determining the siting requirements for solar installations under this section:
- [1] The setbacks proposed and available in relation to other applicable setbacks for the zone within which the installation is proposed.
- [2] The proposed height, width and dimensions of the installation and housing structures, and whether the proposed installation is compatible with adjacent uses in terms of scale, siting, design, lighting and noise generation.
- [3] The maximum surface area of the proposed installation in relation to the available lot size for the host parcel.
- [4] Energy load of the primary residence or buildings to be powered by the installation.
- (b) Additional design standards for ground- and pole-mounted solar arrays:
- [1] All installations shall be screened with an appropriate combination of natural vegetative buffer, landscaping, or other such screening as the Planning Board shall determine, and installations shall be sited so as to minimize significant adverse visual and/or auditory impacts.
- [2] The Planning Board may require visual simulations sufficient to determine potential visual impacts during the review process, as well as other information and reasonably necessary in the Board's discretion.
- (c) The Planning Director may waive the requirement for a special use permit in all residential zones for a ground- or pole-mounted solar array of less than 325 square feet cumulative panel area, upon good cause shown, and upon such terms and conditions as he or she shall determine.
- (4) Additional standards for review for applications for permanent farm labor housing pursuant to § **208-16D**.  
[Added 5-2-2011 by L.L. No. 11-2011]
- (a) Permanent farm labor housing as defined in this section may be allowed under the following circumstances and conditions:
- [1] Only by special use permit issued by the Planning Board. The Planning Board will determine the nature of site plan review to be required based upon the number of units, size and complexity of the housing to be provided.
- (b) Farm labor housing units that cease to be used as such for a period of 2 1/2 years shall be removed, subdivided from the farm property, or converted to an appropriate farm use on application to the Planning Board by the Code Enforcement Office.

- F. Revocation of permit: enforcement.
- (1) A use authorized by special use permit may be revoked by the Planning Board if it is found and determined, after a public hearing, that there has been a material failure of compliance with any one or more of the terms, conditions, limitations or requirements imposed by said permit.
  - (2) All special use permits shall be subject to the provisions of Article **XV** of this chapter.
- G. Modifications and additions to special uses.
- (1) An amendment or modification to an existing special use is any change in the size or configuration of the structures or appurtenances associated with the facilities constituting the special use. A change in the nature of the use of the lot(s) in question is to be considered a proposed new special use of the affected lot(s) and will require an application for and consideration of a special use permit pursuant to § **208-79C**.
  - (2) Any amendment or modification of an existing special use will be subject to site plan review by the Planning Board pursuant to Article **XVI** of this chapter. Application for a special use permit for the proposed amendment or modification will not be required.
  - (3) Subject to the foregoing, any amendment or modification will be limited to a twenty-five-percent expansion of the improved area subject to the special use. The amendment/modification must be consistent with the presently permitted special use.

## § 208-80. (Reserved)

## § 208-81. (Reserved)

## § 208-82. (Reserved)

## § 208-83. (Reserved)

## § 208-84. (Reserved)

## § 208-85. Stables and riding academies.

- A. Applications for the use of stables and riding academies (both commercial and noncommercial) shall be subject to site plan review by the Planning Board. The minimum area for the commercial stabling of horses on any lot shall be 10 acres, and the maximum number of horses allowed shall be two horses per acre. There shall be no stabling of animals, storage or use of manure or other dust-producing substances or riding rings within a distance of 50 feet to any lot line, nor shall any public trail-riding business trail cross a public way, road, street or highway unless by approval of the Highway Superintendent, who may require the

establishment of a safe crossing to include horse crossing signs. All outdoor lighting shall be so located and directed as not to directly illuminate any adjoining property, nor shall any beam of light cross the property line. Unless specifically decided otherwise by the Planning Board, screening shall be required between such use and any other nonagricultural use.

- B. In passing upon any application for a stable or riding academy, the Planning Board shall consider the drainage, percolation and topography of the proposed site and its proximity to public or private water supplies.
- C. Any stable or riding academy which becomes a nonconforming use by virtue of the adoption of this section shall, within six months from the effective date of this section, be required to apply dust palliative to all riding areas to the extent that the dust created by any activity does not become a health hazard or serious nuisance to any neighboring properties, as determined by the Building Inspector. If, after treatment has been administered, later weather conditions cause the area to become so dry that a health hazard or serious nuisance is being created, as determined by the Building Inspector, then all activities shall cease until these conditions are corrected either by nature or otherwise. Any failure to comply with the requirements of this section shall be deemed a violation and subject to the penalties as listed in § **208-111** of this chapter.

## § 208-86. Keyhole lots.

- A. Keyhole lots may be permitted by the Planning Board only in Residential Districts R-1 and R-3 and only in rare instances when required due to unusual conditions of the area. Keyhole lots shall not be created for any use other than a single-family dwelling.  
[Amended 10-16-2006 by L.L. No. 11-2006; 10-16-2006 by L.L. No. 14-2006]
- B. Space and bulk standards for keyhole lots shall be the same as delineated in § **208-11** for the district in which they are located, except that all setbacks, whether front, side or back yards, shall be a minimum of 50 feet for the main building/structure. Setbacks for accessory structures shall be as required by § **208-12**, Accessory buildings, for residential districts or as specifically noted in commercial districts.  
[Amended 10-16-2006 by L.L. No. 11-2006]
- C. The minimum width of the building line for a keyhole lot shall normally be measured parallel to the street line, unless determined otherwise by the Planning Board during subdivision approval.
- D. All driveways to keyhole lots shall be constructed and maintained at a minimum of 16 feet wide and to meet the standards contained in § **73-19** of Chapter **73** of the Code of the Town of Clifton Park, i.e., "A driveway over 500 feet in length must be accessible and able to hold a fifty-thousand-pound, thirty-foot-long vehicle, as determined by a licensed engineer, with facilities for turning around to be available within 100 feet of any structure."
- E. To ensure privacy for adjacent lots, a landscaped buffer shall be planted on the keyhole lot wherever deemed necessary by the Planning Board. The buffer shall contain sufficient planting materials as needed to screen the keyhole lot from other existing uses. This requirement may be waived by the Planning Board if topographic conditions or existing vegetation provide adequate screening.
- F. Appropriate signage must be provided as indicated in the following note which will be placed on the final plat of any subdivision containing a keyhole lot:  
"STANDARD NOTE FOR ADDRESS IDENTIFICATION. The street number of a dwelling situated on a keyhole lot shall be permanently and conspicuously displayed on a sign, with lettering no less than 3 inches nor greater than 8 inches in height, and placed no more than 25 feet from the road pavement. The sign shall be

displayed for both directions of travel and be reflective. Identification markers must also be placed at any location where a common drive splits.”

## § 208-87. Height exceptions.

Nothing herein contained shall be interpreted to limit or restrict the height of church spires, cupolas and domes not intended for human occupancy, public utility structures, monuments, commercial radio or television transmission towers, observation towers, belfries, clock towers, windmills, water tanks, elevator bulkheads, chimneys, flagpoles, stage towers, scenery lofts or similar structures.

## § 208-88. Fire escapes.

Nothing herein contained shall prevent the projection of an open, fireproof escape into a rear or side yard for a distance of up to eight feet.

## § 208-89. Shopping centers.

Upon the standards, conditions and procedures set forth in § 208-79, the Planning Board may authorize the issuance of a permit or permits for the construction of a shopping center for the conduct of retail business in any district. Such proposed shopping center shall conform to the following requirements:

- A. Area. The minimum area shall be 10 acres.
- B. Initial construction. Satisfactory assurance shall be given that initial construction will comprise not less than 50% of the planned total construction as measured in terms of bulk of the buildings proposed to be built.
- C. Plan. The proposed development shall be in accordance with a unified site plan and architectural scheme. However, it shall not be required that the whole of the development be in a single ownership or built or financed by a single party if satisfactory evidence is shown that all parties who are financially or otherwise concerned in the development are legally bound to conform to the above-required unified site plan and architectural scheme.
- D. Entrances upon streets and highways. All vehicular entrances and exits upon public roads shall be approved by the appropriate highway official.
- E. Off-street parking. Based on the general guideline of five spaces per 1,000 square feet of gross floor space, the Planning Board shall determine the amount of automobile parking space to be provided as, in the opinion of the Planning Board, may be necessary to safeguard public health, comfort and convenience upon the following standards and conditions:
  - (1) The general character of the surrounding area and of the structure or structures and types of business.
  - (2) The professions to be carried on therein or other uses to which the structures are to be put.
- F. Off-street loading and unloading space. Off-street loading and unloading space shall be provided, in addition to the space required by § 208-89E above.

- G. Boundary treatment. No building shall be placed closer to any street line or to any other property line than 100 feet. No parking space shall extend nearer to any street line than the established building line or closer to any other property line than 50 feet, and the boundaries along all side and rear property lines abutting upon any residence district shall be appropriately landscaped and maintained by a border not less than 30 feet in width, measured inward from any such boundary line. For the side property lines, the landscaping shall commence at the front building line. For the rear property line, the landscaping shall run from side property line to side property line. Where the shopping center area is directly adjoined by land in any business or industrial district or by a railroad right-of-way, buildings may extend to within 30 feet of the property line, and any automobile parking space may extend to the property line.

## § 208-90. (Reserved)

## § 208-91. Septic systems.

Where a public sanitary sewer main is not available as defined by the New York State Uniform Fire Prevention and Building Code, other proper provisions approved by the Building Inspector shall be made for the disposal of sanitary waste. Individual septic systems may be permitted as indicated herein provided that they are designed by a New York State licensed professional engineer and conform to the requirements of the New York State Department of Health.

## § 208-92. Private swimming pools as accessory uses.

A private swimming pool installed or maintained as an accessory use in a residence district shall meet the following requirements:

- A. It shall be used only as an accessory use to a dwelling or as an accessory use to a special permit use in a residence district for the private use of the owner or occupant of such dwelling or building or his or her family, guests or employees.
- B. All swimming pools must have the required enclosure as specified in the New York State Uniform Fire Prevention and Building Code, and such enclosures shall be maintained as long as the pool exists.
- C. All pools shall be maintained in a manner sufficient to meet the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.
- D. All pools shall be equipped with an integral filtration system and filter pumps and may be equipped with other electrical or mechanical devices, including lighting and loudspeakers, all of which shall be so located and constructed or operated as not to interfere with the peace, comfort and repose of the occupant of any adjoining property.
- E. The Building Inspector may request a statement by a professional engineer, licensed by the State of New York, that provisions for the drainage of the swimming pool are adequate and will not interfere with the public water supply or existing sanitary facilities and that adequate ground fault circuitry will be installed as specified by the National Electrical Code.

## § 208-93. Public garages and automobile service stations.

- A. No public garage or automobile service station or private garage for more than five cars shall have a vehicular entrance closer than 200 feet to an entrance to a church, school, hospital, public park, playground or fire station. Such measurement shall be taken as the shortest distance between such entrances, across the street if the entrances are on opposite sides of the street and along the street frontage if both entrances are on the same side of the street or within the same square block. All vehicular entrances and exits upon public roads shall be approved by the appropriate highway official.
- B. All gasoline storage tanks appurtenant to any automobile service station and the automobile service station shall be situated upon the same premises.
- C. All automobile service stations shall be so arranged and all gasoline pumps shall be so placed as to require all servicing on the premises and outside the public way, and no gasoline pump shall be placed closer to any property line than 50 feet.

## § 208-94. Recreation centers.

During all periods of time after sundown that the recreation center shall be open and conducting the business of a recreation center, the entire premises, including land area wherein the public is invited, shall be fully and adequately lighted so that no area shall be in darkness.

## § 208-95. Communications towers.

[Amended 12-9-1996 by L.L. No. 11-1996; 4-6-1998 by L.L. No. 2-1998; 2-4-2002 by L.L. No. 2002; 10-16-2006 by L.L. No. 14-2006; 8-6-2007 by L.L. No. 8-2007; 9-15-2008 by L.L. No. 5-2008]

- A. Legislative intent. The Federal Telecommunications Act of 1996 ("the Federal Act") affirmed the authority of municipalities over decisions regarding the placement, construction, siting, operation and modification of wireless communications facilities subject to certain limitations enumerated in the Federal Act. Since its passage, the Town of Clifton Park has updated its Comprehensive Plan, and the Town has generated additional planning documents, including the open space plan of 2003, Western Clifton Park land conservation plan and GEIS, and has updated its zoning laws to reflect these changes. In order to ensure that the priorities expressed in those documents and the overall commitment to the Town's character and culture are preserved, and in order to ensure that the placement, construction and modification of communications towers, antennas and accessory communications structures conforms to the Town's purpose and intent of this section, the Planning Board is hereby authorized to grant special use permits for all new construction of communications towers and facilities within the Town of Clifton Park. The Planning Board is also authorized to grant approval for placement of antennas and accessory equipment pursuant to this article. The Town Board hereby adopts an overall policy with respect to a special use permit for communications towers, antennas and accessory communications structures for the express purpose of achieving the following goals:
  - (1) Implementing an application process for person(s) seeking a special use permit for new, co-located, or modified wireless facilities and communications towers, antennas and accessory communications structures.

- (2) Establishing a policy for examining an application for and issuing a special use permit for communications towers, antennas and accessory communications structures that is both fair and consistent.
- (3) Establishing reasonable time frames for granting or not granting a special use permit for communications towers, antennas and accessory communications structures or recertifying or not recertifying or revoking the special use permit granted under this article.
- (4) Promoting and encouraging, wherever possible, the sharing and/or co-location of communications towers, antennas and accessory communications structures among service providers.
- (5) Promoting and encouraging, wherever possible, the design and placement of communications towers, antennas and accessory communications structures, and to promote and encourage the design and utilization of alternative tower structures and stealth technology, in such a manner as to cause minimal disruption to aesthetic considerations of the land, lot, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such communications towers, antennas and accessory communications structures.
- (6) Minimizing adverse visual and auditory effects from wireless communications facilities by requiring careful siting, visual and auditory impact assessment and appropriate screening and the maximum usage of noise-reduction technology.
- (7) Incorporate and reference the general and environmental goals expressed in the Town's Master Plan, as well as subsequent Town planning documents, including the Town of Clifton Park open space plan, and Comprehensive Plan, as well as Western Clifton Park land conservation plan and FGEIS, and the Western Clifton Park rural design guidelines into the Telecommunications Act as an expression of the Town's desire to maintain, preserve and enhance the character of the Town and to protect the exceptional scenic, cultural, and historic resources of the community to the maximum extent consistent with the Federal Telecommunications Act of 1996 (the Federal Act).
- (8) Based upon the Town's experience with the implementation of its five-hundred-foot buffer for communications equipment which was enacted by Local Law No. 2 of 2002, the Town Board finds and determines that that a buffer of at least 500 feet from the nearest residential property line for new communications towers represents an appropriate expression of Town policy by providing a minimum of assurance that the aesthetic character of residential neighborhoods within the Town be protected and so as to provide a minimum buffer between residential uses and communications uses. Therefore, Town policy prohibiting new communications towers, as defined in this article, within 500 feet of the property line of residential properties within the Town is restated and reinforced within this section. Any application seeking variance or relief from this prohibition shall be subject to strict scrutiny under the Federal Act as well as the State Environmental Quality Review Act (SEQRA).
- (9) Providing a comprehensive framework for the review and consideration of applications for placement of communications equipment throughout the Town of Clifton Park that is consistent with the Town's character, aesthetic, cultural and historic resources, as well as legitimate need for wireless communications facilities as defined by the Federal Act.

B. Definitions. The following definitions shall apply to this article:

#### **ACCESSORY COMMUNICATIONS STRUCTURE**

Any accessory facility, structure or building serving or being used in conjunction with a communications tower or antenna. Examples of such structures include utility or transmission equipment storage sheds or cabinets.

**ALTERNATIVE TOWER STRUCTURE**

Clock towers, bell steeples, light poles and similar existing or new structures or other man-made structures which suitably camouflage or are designed to camouflage or conceal the presence of antennas and other wireless communications equipment without the necessity of constructing new freestanding communications towers.

**ANTENNA**

Any device or exterior apparatus mounted on a tower, building, utility pole, light pole or other structure, designed for telephonic, radio, data, Internet or television communications to transmit or receive communications signals or electromagnetic waves for the purpose of providing cellular services, telecommunications services, personal communications services, personal wireless services, wireless cable, commercial paging, data or wireless services, and its attendant base station.

**COLOCATION**

Arrangement or juxtaposition of multiple antennas and equipment of multiple users on a single communications tower, water tower, or other existing tall structure, or multiple communications towers on a single site.

**COMMUNICATIONS TOWER**

Any tower, pole, monopole or lattice tower or other freestanding structure that is proposed to be higher than the existing height restrictions within the applicable zoning district and is designed and constructed for the purpose of supporting one or more antennas intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, digital, telephone, wireless Internet, or other forms of electronic communications, including, without limit, freestanding towers, guyed towers, lattice towers, monopole towers, self-supporting towers or any other structure designed or proposed to attach, house, hold or support wireless communications facilities such as antennas or accessory equipment as that term is commonly known within the telecommunications industry. The term is intended to cover freestanding communications towers as currently known within the industry and includes the structure and any support elements, such as guy wires. Monopoles or extensions of existing utility poles or other poles for the purpose of supporting antennas or wireless Internet or other wireless communications facilities shall be considered "new tower construction" under this section.

**EXISTING TALL STRUCTURE**

Tall buildings, existing communications towers or silos capable of supporting communications antennas and ancillary equipment without the necessity of constructing new freestanding communications towers.

**MODIFICATION or MODIFY**

The addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. A modification shall not include the replacement of any components of a communications facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a communications facility without adding, removing or changing anything.

**ONE-HUNDRED-TEN-PERCENT CLEAR ZONE**

The requirement that new communications towers be set back a minimum of 110% of its own height from adjacent property.



## REVIEWING BOARD

The Town Board, Planning Board, or Zoning Board of Appeals charged with reviewing applications for special use permit, zoning variance, site plan approvals, or zoning change or amendment, such as amendment to a planned development district necessary or proposed to allow the siting or placement of wireless communications facilities.

## ROOF TOWER

A tower constructed on top of a preexisting building or structure.

- C. Applicability; exemptions; conflict with other legislation; authority of reviewing board.
- (1) These regulations shall apply to all zoning districts.
  - (2) Exemptions to these regulations are limited to:
    - (a) New uses that are accessory to residential uses, such as satellite dishes and television antenna(s), and less than 30 feet in height.
    - (b) Amateur radio facilities as licensed by the Federal Communications Commission (FCC).
    - (c) Lawful or approved uses existing prior to the effective date of these regulations.
    - (d) Applications pending prior to the adoption of this section.
  - (3) Where these regulations conflict with other laws and regulations of the Town of Clifton Park, the more restrictive shall apply, except for tower height regulations that shall be governed by these special use standards.
  - (4) Authority. In the case of action required by the Town Board, Planning Board or Zoning Board of Appeals under this section, procedures and required disclosures provided for in this section shall apply equally to proceedings before such boards as the appropriate reviewing board.
- D. Location.
- (1) Below are the priorities an applicant must follow in the selection of any new communications tower structure or co-location facility. Additionally, applicants must refer to the Town's overall planning documents, including the Comprehensive Plan, Western Clifton Park GEIS and design guidelines, open space plan and applicable scenic resources study, to help minimize aesthetic and visual impacts to the community character in the detailed site planning and design for any project.
  - (2) An applicant shall locate, site and erect communications towers, structures, antennas and accessory structures, alternative tower structures, or other tall structures in accordance with the following priorities expressed within this section, Subsection **D(3)(a)** being the highest priority and Subsection **D(3)(h)** being the lowest priority. An applicant may not bypass sites of higher priority by stating the site presented is the only site it has leased or selected to cover the area of its demonstrated area of need. An application shall address co-location on an existing communications facility or tall structure as a primary option, and if such option is not proposed, the applicant must explain why co-location is commercially impracticable or is technologically infeasible as demonstrated by substantial evidence in the written record. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
  - (3) Prioritization.
    - (a) Existing communications sites or tall structures.

- (b) Alternative tower structures.
  - (c) L2 or L1 Zones.
  - (d) Commercial PDD/PUD, B4, B4A, B5 Zones.
  - (e) B3, B2, B1 and HM Zones.
  - (f) PIR Zones and Town property, excluding nature preserves and beyond 500 feet of any residential property line.
  - (g) CR Zones.
  - (h) R1, R3, HR, CS Zones or Residential PDD/PUD. New communications towers are prohibited in these zones.
- (4) Site selection evaluation criteria.
- (a) In all cases, co-locating on existing tall structures or utilizing alternative tower structures or nonresidential structures are preferred methods of providing service within these areas, provided there is no significant adverse impact to residential property within 500 feet of said structures or accessory equipment that cannot be mitigated.
  - (b) If the proposed property site is within a zone listed in Subsection **D(3)(g)** or below, then a detailed explanation must be provided as to why a site of a higher priority was not selected for the provision of service to the service area identified in the application. The person seeking such an exception must satisfactorily demonstrate by objectively verifiable data why a site in higher-priority zones were not selected to provide the service improvement. The reviewing board shall review such applications with strict scrutiny under the Federal Act and SEQRA.
  - (c) The application shall demonstrate the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
  - (d) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the application may be disapproved for any of the following reasons:
    - [1] Conflict with safety and safety-related codes and requirements.
    - [2] Conflict with the historic nature of a neighborhood or historical district.
    - [3] Adverse aesthetic impact upon the overall character of the neighborhood and surrounding community, or conflict with fundamental policy as expressed within the Town's Comprehensive Plan, open space plan, Western Clifton Park GEIS, and related existing planning documents.
    - [4] Applicant's failure to demonstrate, through submission of objectively verifiable data, that the facility is needed in order to fill service gaps within the Town under the Federal Act.
    - [5] The applicant fails to satisfy any criteria for siting under this section.
    - [6] Adverse environmental impacts or resulting cumulative impacts which cannot be mitigated pursuant to review of the application under SEQRA.

## E. Procedure.

- (1) All applicants for a special use permit for communications towers, co-location facilities or any modification of such a facility shall follow the procedure for site plan approval set forth in § **208-113** et seq., as well as the procedures for special use permits as set forth in this § **208-95**. In addition, such applications shall comply with the requirements set forth in this section.
- (a) The Planning Board is the designated agency or body of the community to which applications for a special use permit for communications towers, antennas and accessory communications structures must be made and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for communications towers, antennas and accessory communications structures.
- (b) An application for a special use permit and for site plan approval for communications towers, antennas and accessory communications structures shall be signed by the applicant (or by a person acting on behalf of the applicant who has prepared the same and who has knowledge of the contents and representations made therein), attesting to the truth and completeness of the information. The owner of the land on which the communications towers, antennas and accessory communications structures are proposed to be located, if different from the applicant, shall also sign the application. Any material false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction and may impact the time required to review and verify future applications from the applicant.
- (c) The applicant shall include a statement in writing verifying that the applicant's proposed communications towers, antennas and accessory communications structures will be maintained in a safe manner and in compliance with all conditions of the special use permit, without exception, as well as all applicable local codes, local laws, ordinances, and regulations and all applicable county, state and federal statutes, laws, codes, rules, and regulations.
- (d) No communications towers, antennas and accessory communications structures shall be placed, constructed, used or modified in the Town unless and until a special use permit therefor has been granted by the Planning Board pursuant to this article. No construction or modification of communications towers, antennas and accessory communications structures for which a special use permit has been issued shall take place unless and until a building permit therefor has been issued by the Town Code Enforcement Officer.
- (e) Application. All applications for a special use permit for the construction or installation of new communications towers, antennas and accessory communications structures shall be filed with the Town Planning Department and shall be accompanied by a report containing the information hereinafter set forth, which said report shall be signed by a licensed professional engineer or qualified radio frequency consultant. Certifications required by Subsection **E(1)(e)[17]** and **[18]** of this article shall be made by a qualified radio frequency consultant. The certification required by Subsection **E(1)(e)[20]** shall be made by a licensed professional engineer. Determinations as to the qualifications of nonlicensed professionals shall be made in the reasonable discretion of the reviewing board.

[1] Name, address, and phone number of the person preparing the report.

[2] Name, address, and phone number of the property owner, operator, and applicant, including information about the legal status of the applicant.

[3] The Tax Map parcel number of the property and 911 addresses, if available.

- [4] Zoning district or designation in which the property is situated.
- [5] Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines.
- [6] Location of nearest residential structure, and distance from nearest residential property lines.
- [7] Location, proposed height and dimensions of all structures currently on the property and those proposed for the property that is the subject of the application.
- [8] Location and dimensions of all proposed and existing antennas and all appurtenant structures.
- [9] Type, locations, and dimensions of all proposed and existing landscaping and fencing.
- [10] The number, type, and design of the communications tower(s), antenna(s) and accessory communications structure(s) proposed, and the basis for the calculations of the physical capacity to accommodate co-location multiple site users.
- [11] The make, model, and manufacturer of the proposed communications tower.
- [12] A description of the proposed tower and antenna(s) and related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color, and lighting.
- [13] The frequency, modulation, and class of service of radio or other transmitting equipment.
- [14] A statement identifying the maximum effective radiated power (ERP) per channel for all equipment proposed.
- [15] Identification of the manufacturer and model identification of all antennas proposed, including proposed antennas pattern and specification sheet.
- [16] Application's proposed tower maintenance and inspection procedures and related system of records.
- [17] Certification of the nonionizing electronic radiation (NIER) levels resulting from the proposed equipment, and certification that such levels are within Federal Communications Commission guidelines.
- [18] A statement within the application that the applicant will exercise good faith efforts to avoid interference with existing communications devices and work to attempt interference resolution when necessary.
- [19] A copy of the FCC license applicable for the use of the communications tower, antenna(s) and/or accessory communications structure(s), with particular license information for the proposed site highlighted.
- [20] Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrata and the proposed drainage plan, the site is adequate to assure the stability of the proposed drainage plan and the site is adequate to assure the stability of the proposed communications towers, antennas and accessory communications structures on the proposed site. Notwithstanding any other

provision of this section, this requirement can be fulfilled prior to the issuance of a building permit in the discretion of the Planning Board.

- [21] Documentation that demonstrates and proves the need for the wireless communications facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site, all adjoining proposed, in-service, existing or approved sites that demonstrate a significant gap in coverage and/or, if a capacity need, including an analysis of current and projected usage. The studies provided shall utilize the current and best software technology currently used by each applicant.
  - [22] If the proposed location for the site is within two miles of the geographic boundary of the Town of Clifton Park, the propagation studies shall include studies showing the existing and proposed coverage to the nearest neighbor sites, regardless of the jurisdiction or municipality of such neighbor sites.
  - [23] Location, layout, and dimensions of off-street parking and loading facilities, vehicular entry, exit, and circulation on the site and neighboring roads, including any and all grading and drainage plans for the site, which shall be subject to the approval of the Town Stormwater Management Officer;
  - [24] Type, size, and location of all proposed screening, signs, and physical features meant to protect adjacent land uses.
  - [25] Identification in writing of all other sites owned, optioned or leased by the applicant in the Town for which no application for special use permit or other approvals for telecommunications facilities have been made, as well as identification of all other sites that the applicant is planning to consider or review for communications towers, antennas or accessory wireless communications facilities within the Town for a two-year period following the date of the application.
  - [26] Disclosure in writing of any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new communications towers, antennas and accessory communications structures that he constructs.
  - [27] Notification of nearby landowners. The applicant shall be required to mail notice of the public hearing in accordance with Article **XVI, § 208-115F**.
- (f) Information provided by applicants pursuant to Subsection **E(1)(e)[25]** above shall be kept separately and excluded from disclosure under the Freedom of Information Act (Public Officers Law § 87 et seq.), pursuant to Public Officers Law § 87, Subdivision 2(d), upon a showing by the applicant that disclosure of the material would result in substantial competitive injury. Determinations on the showing required to demonstrate competitive injury under this subsection shall be made by the Planning Director in consultation with the Town Attorney.
- (2) Applications requiring change of zoning in planned development districts.
- (a) Applications for new communications towers, facilities or equipment, including co-locations, existing tall structures, and those utilizing alternative tower structures requiring a change in use within an existing PUD or PDD shall be made to the Director of Planning, who shall refer the application for zoning change to the Town Board.
  - (b) The Town Board may, within 30 days of its receipt of an application pursuant to this section, refer the application to the Planning Board for review and for its recommendation consistent with this

article. The Planning Board shall hold a public hearing on the application and forward its recommendations to the Town Board within 90 days of receipt of a complete application, unless for good cause reasonable extensions are required, by the Planning Board or applicant. The reviewing board, along with its consultant, shall reasonably determine when an application is complete under this section. The Planning Board's recommendations shall be advisory in nature and shall include a recommendation that the application be approved, disapproved, or approved with any restrictions that it recommends. The recommendations of the Planning Board shall be in writing and shall contain the factual basis for the recommendation upon a written record. The Town Board shall make a final determination upon the application within 45 days of its receipt of the Planning Board's written recommendation pursuant to this subsection.

- (c) In cases where the Town Board declines to refer an application to the Planning Board under this section, the Town Board shall schedule a public hearing on the application and review the application as the reviewing board under this article. In such cases, the Town Board shall hold the public hearing and make a final determination on the requested zoning change within 90 days of receipt of the complete application, unless, for good cause, reasonable extensions of time are required, by the Town Board or the applicant. Final determinations regarding any required change in zoning shall be made by the Town Board, in writing, and upon a written record.
- (3) New communications towers, poles, or any other structures intended to house wireless communications equipment. In addition to the procedures detailed above, applications for new towers or structures shall provide the following information and meet the following requirements:
- (a) Notwithstanding any other provision of this section, the construction of new communications towers is prohibited in R1, R3, HR Zones and within Residential Planned Unit Development Zones.
  - (b) In addition to the prohibition contained in Subsection **E(3)(a)**, above, new communications towers are prohibited within 500 feet of the property line of any existing residential property within the zones identified in Subsection **E(3)(a)**, above. Any application seeking variance or relief from this prohibition shall be subject to strict scrutiny under the Federal Act as well the State Environmental Quality Review Act.
  - (c) In the case of new communications towers, structures, monopoles, poles or any other new structure proposed to hold, house or affix antennas and accessory communications structures within or onto, the applicant shall be required to submit a written report demonstrating all efforts to secure shared use of existing communications towers, antennas and/or accessory communications structures or use of existing buildings or other tall structures within the Town, as well as the use of alternative tower structures or other stealth technology to meet the coverage need addressed in the application. Copies of written requests and responses for shared use shall be provided to the reviewing board.
  - (d) New towers: future shared use. The applicant for a new communications tower should examine the feasibility of designing the proposed new communications tower to accommodate future demand for up to four additional commercial applications, for example, co-locations. The tower shall be structurally designed to accommodate, or to be extended to accommodate, at least four antenna arrays equal to those of the primary applicant, unless the applicant demonstrates that it is infeasible to do so, with substantial evidence submitted within a written record. The applicant shall submit to the board a letter of intent committing the owner of the proposed new tower and his/her successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Planning Director. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner and his/her successors in

interest to:

- [1] Respond within 90 days to a request for information from a potential shared-use applicant.
  - [2] Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
  - [3] Upon approval and construction of any new communications tower, to negotiate in good faith with other licensed wireless service providers for future shared use of the communications tower structure and site. Future co-locations shall be subject to the involved parties reaching agreement on reasonable terms and conditions pursuant to current industry standards, as well as adequate structural capacity and space to accommodate such co-location.
- (e) Prior to issuance of a certificate of compliance, the applicant shall also furnish written certification that both the foundation and attachments of the communications tower(s), structure, antenna(s) and/or accessory communications structure(s) are designed and constructed ("as built") to meet all applicable county, state and federal structural requirements for loads, including wind and ice loads.
- (f) After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the communications towers, antennas and accessory communications structures and related facilities are grounded, bonded so as to protect persons and property, and installed with appropriate surge protectors.
- (g) Applicants for a permit for a new communications tower shall submit a completed full EAF and a completed visual EAF addendum, upon request from the reviewing board or its consultant. Applications for co-locations on existing structures or towers shall include a short-form EAF upon such request.
- (h) Applicants for a permit for a new communications tower or alternative tower structure shall furnish a visual impact assessment that shall include:
- [1] A Zone Visibility Map, which shall be provided in order to determine locations where the tower can be seen.
  - [2] Pictorial representations of before and after views from key viewpoints both inside and outside of the Town, including but not limited to county roadways, highways and other major roads; parks and preserves, as well as other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to the public at large. Any key views requested by the Town's Planning Director or consultant shall be provided at the initial meeting of the Planning Board or at any preapplication meeting where requested. Pictorial representations shall exclude foreground trees, telephone poles, wires, and other obstructions to the best possible degree in order to provide accurate presentations of actual visual impact. The Planning Board, acting in consultation with its consultants or experts, hired at the expense of the applicant, will provide guidance concerning the appropriate key sites at a preapplication meeting.
  - [3] An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting properties and streets shall also be provided.
  - [4] The applicant shall, in a manner approved by the reviewing board, demonstrate in writing how he will effectively screen from view the base and all related facilities and structures of

the proposed communications towers, antennas and accessory communications structures.

- [5] All communications towers, antennas and accessory communications structures and accessory facilities shall be sited so as to have the least practical adverse visual effect on the environment and its character and on the residences in the area of the communications towers, antennas and accessory communications structures site.
  - [6] Both the communications towers, antennas and accessory communications structures and accessory facilities shall maximize use of building materials, colors, and textures designed to blend with the structure to which they may be affixed and/or to harmonize with the natural surroundings, including the utilization of stealth or concealment technology, techniques or designs as may be required by the Planning Board or other reviewing board in order to mitigate adverse impact to the aesthetic, scenic, environmental and cultural assets within the community.
  - [7] All accessory communications structures shall be designed, sited and screened to minimize their visibility from surrounding public streets or neighborhoods, using suitable materials, colors, textures, screening and landscaping. All accessory antennas, equipment and facilities, as well as the Tower Base area, shall have appropriate visual screening to screen their view from neighboring residences, recreation areas or public roads. Such screening shall include the maximum feasible retention of existing vegetation and shall provide such screening as necessary commensurate with the height of the structures to be screened from view. The Planning Board or other reviewing board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities or conservation or historic areas within the view of the public.
- (i) In cases where the application is for a communications tower on property abutting another municipality or for a site within 500 feet of another municipality, the applicant shall notify, in writing, the legislative body of each municipality that borders the Town of Clifton Park, the Saratoga County Planning Board and the Director of Saratoga County Emergency Services. Notification shall include the exact location of the proposed tower and a general description of the project, including but not limited to the height of the tower and its capacity for future use. Such notification shall be made to the Saratoga County Planning Board and Saratoga County Emergency Services, regardless of proximity of the proposed facilities to other municipalities. In addition:
- [1] Documentation of this notification shall be submitted to the Planning Board at the time of application.
  - [2] Notification of nearby landowners. The applicant shall be required to mail notice of the public hearing in accordance with Article **XVI, § 208-115F**.
  - [3] In order to fully inform the public in the case of an application for a new communications tower or structure, the applicant shall, prior to the public hearing on the application, hold a "balloon test" as the Planning Board, reviewing board or its consultant shall deem appropriate. The dates (including a second date, in case of poor visibility or adverse weather conditions on the initial dates), times and location of this balloon test(s) shall be subject to notice per Article **XVI, § 208-115F**, and advertised by the applicant at seven days and 14 days in advance of the first test date in the officially designated newspaper for legal notices within the Town of Clifton Park.
  - [4] Unless waived by the Planning Director, there shall be a preapplication meeting attended by



the applicant as well as a member of the Planning Board or other reviewing board with jurisdiction. The purpose of the preapplication meeting will be to address issues that will help to expedite the review and permitting process. A preapplication meeting may also include a site visit, if required. The applicant shall request a preapplication meeting by correspondence directed to the reviewing board. The applicant may file the application upon expiration of 45 days following delivery of the correspondence requesting same, if such preapplication meeting is not scheduled by the appropriate reviewing board within 45 days. In cases of an application requiring a change in zoning for an existing or proposed PDD or PUD, the preapplication meeting may include a member of the Town Board.

- (j) All new communications towers or structures must be sited, designed and constructed in such a manner as to guarantee a one-hundred-ten-percent clear zone in case of tower failure.

F. Additional requirements applicable to all applications for special use permits.

- (1) Any and all representations made by an applicant to the reviewing board, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Planning Board.
- (2) The applicant shall employ the latest current industry standard in sound-minimizing technology and demonstrate to the satisfaction of the reviewing board that all reasonably available technology will be implemented so as to minimize auditory impacts from generators or other ancillary equipment resulting from the proposal to adjacent properties to a reasonable level in the judgment of the reviewing board.
- (3) All utilities leading to and away from the site of any communications towers, antennas and accessory communications structures shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code and shall be installed underground and in compliance with all applicable ordinances, local laws, codes, rules, and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate.
- (4) Communications towers shall not be artificially illuminated unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen shall, to the fullest extent possible, cause the least disturbance to the surrounding areas. Upon request from the reviewing board, the applicant shall provide a copy of any analysis indicating a requirement for lighting under Federal Aviation Regulation Part 77. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided to the reviewing board in a timely manner.
- (5) Equipment or vehicles not used in direct support, renovation, additions or repair of any accessory communications structure, antenna or communications tower shall not be stored or parked on the facility site.
- (6) No signs or advertising materials of any nature shall be allowed on any communications tower or antenna unless such signs consist of warning signs or other notifications designed to alert the public to safety concerns.
- (7) A person or entity who holds a special use permit for communications towers, antennas and accessory communications structures shall construct, operate, maintain, repair, modify or restore the permitted communications towers, antennas and accessory communications structures in strict compliance with all current technical, safety and safety-related codes adopted by the Town and state, including but not limited to the most recent editions of the New York State Uniform Fire Prevention and Building Code. The codes referred to are codes that include, but are not limited to, construction, building, electrical,

fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

- (8) A person or entity holding a special use permit granted under this article shall maintain, all permits and licenses required by applicable law, rule or regulation and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction thereof and shall provide adequate documentation thereof to the Planning Director upon request.
- (9) Subject to and in accordance with the State Environmental Quality Review Act (SEQRA), the Planning Board shall be the lead agency for the purpose of conducting the environmental review of the application for a special use permit. The Planning Board shall conduct an integrated comprehensive environmental review of the proposed project in combination with its review of the application under this article. In cases where an application seeks zoning change pursuant to Subsection **E(2)**, the Town Board shall be lead agency for SEQRA review.
- (10) An applicant shall submit no fewer than 14 copies of the entire completed application to the Planning Board, Planning Department for distribution to the Planning Board and a copy of notice of the application to the Town Clerk. Where an application also requires action by the Zoning Board of Appeals, applicants shall submit an additional 14 copies of such applications. Where an action also requires action by the Town Board, such as where a zoning change to a PUD or Planned Development District would be required, pursuant to Subsection **E(2)**, the applicant shall submit an additional seven copies of the application to that Board.
- (11) The holder of a special use permit for wireless communications facilities shall notify the Town of any intended modification of a communications tower, antenna or accessory communications structure and shall apply to the Planning Department to modify, relocate, or rebuild the same. Whenever modifications or replacement of antennas involve changes to antennas patterns, propagation, or additional transmission capability, the applicant shall submit current and updated radio frequency (RF) propagation plots that demonstrate existing and proposed RF coverage. However, antenna changes that do not alter any visually discernible components of the facility, involve changes to antennas patterns or propagation, or routine maintenance work not impacting antenna patterns do not require further review pursuant to this section.
- (12) Notice and hearing. Within 90 days of receipt of a completed application, the Board shall publish a notice in the newspaper officially designated for legal notices for the Town, of general circulation in Clifton Park, setting forth the name of the applicant, the location and owner of the property, the use proposed and the time and place of a public hearing to be held by the Planning Board no sooner than five business days after the day of publication. After the Planning Board has set a date for the hearing, the applicant shall also serve notice to property owners pursuant to § **208-115F**.
- (13) In the case of a co-location on an existing communications tower or an application for antennas and accessory facilities on an existing tall structure where there is no increase in the height of the communications tower or tall structure, no public hearing is required. All other procedures and requirements contained within this § **208-95** shall apply.
- (14) Decision by the Zoning Board of Appeals. In the case of an application that requires prior approval for a use variance by the Zoning Board of Appeals, the ZBA shall forward its decision to the Planning Board within 60 days of any decision, which decision shall be in writing and shall contain the basis for the decision and determination.
- (15) Decision by the Planning Board. The Planning Board may authorize and direct the approval or denial of the issuance of the special use permit for on the basis of the criteria and requirements set forth in this

§ 208-95. The Planning Board shall attach to such permit such restrictions, in addition to or in lieu of the bulk density regulations and general standards of the district, as are necessary or desirable, in its judgment, to ensure the compatibility of the proposed use with surrounding property and the overall development of the community.

(16) Compliance.

- (a) Following construction of the facilities for which the special use permit was obtained, the Planning Department and Town Engineer shall cause an inspection to occur upon the land or structure where the special use is located in order to ascertain that the applicant has complied with all of the conditions of the approved special use permit and site plan listed and ordinances applicable to said permit and property affected.
- (b) The Building Department and the Planning Department shall keep records of all communications tower and facility special use permits issued pursuant to this section and inspect existing tower sites and wireless communications facilities as necessary to ensure continuing compliance with the criteria and requirements under which the relevant special use permits were issued. The Town designates the Planning Department as the repository of official set of records under this section.
- (c) A permit holder who is not in compliance shall be issued a written order to comply and remedy said violations within 30 days or is subject to revocation.

(17) Revocation. Upon submission to the Planning Board of a written report of the Town Engineer that the permit holder is in violation of the conditions established and has failed to remedy the violations or comply with the regulations herein, the Planning Board shall have the power to revoke the previously issued special use permit upon findings, after appropriate notice and opportunity to be heard, that the holder has failed to remedy or comply with applicable conditions and/or ordinances.

(18) Abandonment of use. All special use permits issued under this section shall expire and terminate upon the cessation or abandonment of the use permitted, after a one-year period.

(19) Exceptions. A special use permit, which when granted and approved by a reviewing board, designates the use to be continuous and will run with the land, shall be irrevocable and subject only to the restrictions of this section and any conditions attached thereto.

(20) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this section may make such request at the preapplication meeting or, subsequently, to the Planning Director. Any request for waiver or exemption from any aspect of this section shall be contained in the original application for either a special use permit or, in the case of an existing or previously granted special use permit, a request for modification of its communications tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service or the ability of the reviewing board to conduct its review pursuant to this section.

G. Fees.

- (1) At the time that a person or entity submits an application fee for a special use permit for a new communications tower, such person or entity shall pay a single, nonrefundable application fee of

\$5,000. If the application is for a special use permit for co-locating on an existing communications tower or tall structure, where no increase in height of the tower or structure is required, the application fee shall be \$2,000, which is nonrefundable. Such fee shall be paid to the Planning Department, which shall maintain records of payment in consultation with the Town Comptroller.

- (2) In addition to the application fee described in Subsection **G(1)** above, applicants shall deposit a separate review fee in the amount of \$7,500, which shall be utilized for all reasonable costs of consultants and expert reviews of any application, including, where applicable, preapproval evaluation as well as during construction or modification of sites, once permitted. Such experts and consultants as shall be reasonably required by the Town shall be made available to the appropriate reviewing board. The Town shall maintain a separate escrow account for such review fee funds and shall return the unused portion of any such funds to the applicant within 60 days of any final action on any application or formal withdrawal of same. If at any time during the review process this escrow has a balance less than \$2,000, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that the balance shall be at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action is taken on the application. The escrow amount for review fees shall apply to both new communications tower applications and those for colocations and shall be paid to the Planning Department, which shall maintain a separate accounting of the fees and disbursements from said escrow, for each application, in consultation with the Town Comptroller.

#### H. Lot standards.

- (1) A lot leased or owned for the purpose of construction of a tower as part of an accessory communications structure, antenna or communications tower shall not result in the creation of a nonconforming lot.
- (2) All accessory communications structures, antennas or communications towers shall comply with the greater setback standards of the underlying zoning district and shall be subject to review by the Planning Board for noise, aesthetics, and safety concerns.

#### I. Security.

- (1) Accessory communications structures, antennas or communications towers shall be surrounded by a fence or wall of a reasonable height and design approved by the Planning Board but with limited visual impact.
- (2) Motion-activated or staff-activated security lighting around accessory communications structures, antennas or communications towers may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeter has been entered.
- (3) There shall be no permanent climbing pegs within 30 feet of the ground on any tower.
- (4) A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

#### J. Engineering and maintenance.

- (1) All accessory communications structures, antennas or communications towers shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent applicable standards of the Institute of Electronic Engineers (IEEE) and the American National Standards Institute (ANSI) and any other applicable documents.
- (2) All accessory communications structures, antennas or communications towers shall be inspected at

least every fifth year for structural integrity by a licensed New York State professional engineer at the cost of the owner of the accessory communications structure, antenna or communications tower. A copy of the inspection report shall be submitted to the Code Enforcement Office.

K. Removal.

- (1) The applicant shall submit an agreement, in writing, to remove all accessory communications structures, antennas or communications towers if such facilities become technically obsolete or cease to be used for their original intended purpose for more than 12 consecutive months. Upon removal of said facilities, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soil.
- (2) The applicant must submit an analysis by a New York State licensed professional engineer of the cost of removal of the accessory communications structure, antenna and/or communications tower and surrounding property restorations.
- (3) Prior to obtaining a building permit, the applicant must provide a financial security bond or letter of credit reasonably acceptable to the reviewing Board for the removal of the accessory communications structure, antenna and/or communications tower, with the Town of Clifton Park as the designated assignee, in an amount approved by the Planning Board which is equal to the current projected cost for the removal of the type of facility permitted, plus a reasonable escalation rate based upon the anticipated useful life of the facility.

L. Amateur radio equipment. Radio installations; amateur radio operator equipment. Radio installations for amateurs (HAMs) are permitted uses in an R-1 District to a maximum height of 50 feet and in R-3 Districts to a maximum height of 80 feet, subject to the following additional conditions:

- (1) A building (installation) permit must be obtained from the Department of Building and Development. Application for a permit shall include, at a minimum, the following information:
  - (a) A site plan, drawn to scale, showing the location of all buildings on the lot, lot lines, easements, if any, on the lot, and location of any existing poles on the lot (utility, flag, etc.). The site plan shall also clearly indicate the location of the antenna support structure on the lot and its dimensions and characteristics, such as height and width, and shall indicate the type of anticlimb devices to be installed.
  - (b) Manufacturer's specifications or generally recognized engineering handbooks for installation for antenna support structures, details of footings, guys, braces or any other necessary aspect of installation.
  - (c) Applicants shall provide the Department of Building and Development with a copy of their license issued by the Federal Communications Commission, together with proof that all required county, state and/or federal permits have been obtained.
  - (d) The permit is for the initial construction of the antenna support system. Future additions or replacements to the installation which do not affect its structural integrity do not require an additional permit, so long as the conditions set forth herein are met.
  - (e) The antenna support structure shall only be placed in the rear or side yard area of the lot and must conform to all side and rear setback requirements. The antenna span shall not encroach into any neighboring property line.
  - (f) All antenna support structures shall be bordered by appropriate landscaping, so as to shield the

view of the lowermost six feet of the structure from the road and any neighboring yard.

- (2) No antenna support structure greater than eight feet in height shall be mounted on the roof of any principal or accessory building unless the applicant can show proof that such installation is essential to the receipt of normal signals intended for this area.
  - (3) Any person desiring to erect or install an antenna support structure higher than the height permitted must obtain a variance from the Zoning Board of Appeals, except in an R-3 Zone, where no variance shall be permitted.
- M. Severability. If any clause, sentence, paragraph or part of this article or application thereof to any person or circumstance shall be adjudged by any court to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof or the application thereof to the other persons and circumstances but shall be confined in its operation to the clauses, sentence, paragraph or part thereof and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

## § 208-96. Temporary uses and structures.

Temporary permits may be issued by the Building Inspector for a period not exceeding one year for nonconforming uses incident to housing and construction projects, including such structures and uses as the storage of building materials and machinery, the processing of building materials and a real estate office located on the tract being offered for sale, provided that such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or use upon expiration of the permit. Such permits may be renewed upon application to the Building Inspector for additional periods not exceeding one year each upon proof that progress on construction projects is continuous and diligent.

## § 208-97. Nonconforming land, structures and uses.

- A. Continuation and prior approval. The use of land, buildings or structures lawful at the time of adoption or subsequent applicable amendment of this chapter may continue although such use does not conform to the provisions of this chapter. Nothing herein contained shall require any change in the plans, construction or designated use of a building complying with previous laws and for which a building permit had been duly granted prior to the effective date of this chapter or any applicable amendment thereto.
- B. Regulation of nonconforming uses. Except as provided herein, no nonconforming use may be enlarged, extended, reconstructed, substituted or structurally altered.
- (1) Change of use.
    - (a) A nonconforming use may not be changed into another nonconforming use.
    - (b) A nonconforming use may be changed into a conforming use in accordance with this chapter.
  - (2) Repairs, maintenance and structural additions.
    - (a) Normal maintenance, repairs and alterations incidental to a building or other structure containing a nonconforming use are permitted, provided that they do not extend the area or volume of space occupied by the nonconforming use.

- (b) A building or other structure containing residential nonconforming uses may be altered in any way to improve interior livability, provided that no alterations shall be made which would increase the number of dwelling units, tenants or square footage.
- (c) A nonconforming lot or structure may be the site of a minor exterior structural addition or alteration (defined as an unenclosed porch, deck, stairway or other similar facility), provided that such proposed construction conforms in all respects to the affected district's height, setback and yard requirements and does not increase the degree of any yard, bulk, parking or other nonconformity of the existing property.

C. Termination of nonconforming uses.

- (1) Abandonment. The discontinuance of a nonconforming use for a period of one year shall be considered an abandonment thereof, and such nonconforming use shall not be revived.
- (2) Change of use. The change of a nonconforming use to a more-restricted or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not be revived.

D. Damage or destruction.

- (1) Partial damage.
  - (a) Where any nonconforming structure or use is partially damaged or destroyed, other than by demolition, to the extent of 50% or less of the cost of replacement of the entire structure new, the proof to be supplied by the applicant in written estimate form of replacement value and work to be done by a minimum of two reputable agencies, repairs may be made to reconstruct the structure, upon issuance of a building permit, and it shall be used as it existed prior to the damage. No repairs or restorations shall be made which increase the degree of any yard, bulk, parking or any other nonconformity existing prior to the damage.
  - (b) In the event that a structure remains vacant due to a partial damage, the owner or agent shall have one year to receive a building permit. In the event that the building remains vacant for one year without a building permit, it shall constitute an abandonment as regulated under § **208-97C** and shall not be restored. Proof of proper application within allowable periods shall be the responsibility of the applicant.
- (2) Substantial damage or destruction. In the event that any nonconforming structure or use is substantially damaged or destroyed, by any means other than demolition, to the extent of more than 50% of the cost of replacement of such structure new, proof should be supplied by the applicant in written estimate form of replacement value and work to be done by a minimum of two reputable agencies. Such structure shall not be restored unless, if within 30 days after the substantial damage, the owner of said nonconforming use notifies the Building Inspector, in writing, of his intent to restore said nonconforming use substantially to the conditions existing prior to the disaster. It is the owner's responsibility to provide documentation of existing nonconforming conditions prior to the disaster to satisfy the Building Inspector. In that instance, the Building Inspector shall permit the issuance of a building permit within 30 days of receipt of the written notice of intent and necessary plans and specifications for the work to be performed for such substantial restoration without further action. Restoration under this subsection shall be commenced within six months of the date of issuance of the building permit, and restoration shall be completed within one year of the issuance of the building permit. In the event that the Building Inspector is not notified of the intent to restore the nonconforming use within the time limit stated, such structure shall not be restored unless the structure and use thereof shall conform to all current regulations of this chapter.

- (3) Demolition. Where any nonconforming structure or use is partially or substantially damaged or destroyed by demolition, repairs may not be made to reconstruct the nonconforming use as it existed prior to the damage. Any and all restoration shall conform to all current regulations of this chapter.

E. Regulation of nonconforming lots.

- (1) Single unimproved lots. A single, unimproved, lawfully nonconforming lot held in single ownership as of the effective date of this chapter, which is not contiguous with any other lot owned by the same party, may be used as if it were a conforming lot, provided that all of the following conditions are met:
  - (a) The proposed use is permitted by current regulations of the particular district.
  - (b) The use conforms spatially to all other requirements of the particular district, including all space and bulk requirements, except lot size, frontage and depth, or a variance has been obtained from the Zoning Board of Appeals.
  - (c) The use conforms to all other applicable local and state land use regulations.
  - (d) The lot has a minimum width of 100 feet and minimum area of at least one acre, if located within an R-3 District or if located within any other district, a minimum area of at least 23,000 square feet.  
[Amended 10-16-2006 by L.L. No. 14-2006]
- (2) Multiple unimproved lots. Two or more contiguous, unimproved nonconforming lots held in the same ownership of record as of the effective date of this chapter shall be combined to the extent necessary to comply with the space and bulk regulations of the district in which they are located and thereafter shall be considered under the provisions of § **208-97E(1)**. This shall include unimproved nonconforming lots contiguous to improved nonconforming lots held in the same ownership of record.
- (3) Lots within approved subdivisions.
  - (a) Any lot in a subdivision whose final plat has been approved by the Planning Board and properly filed with the officer of the county prior to the effective date of this chapter with area and dimensions less than the specified minimum lot requirement of this chapter for that district but in compliance with the minimum standards set forth in § **208-97E(1)** may be considered in compliance with this chapter, and no variance shall be required.
  - (b) Any lot on an approved final plat, filed with the officer of the county prior to the effective date of this chapter, with area dimensions of less than the specified minimum lot requirement of this chapter and not in compliance with the minimum standards set forth in § **208-97E(1)** shall be exempt from compliance with such revised minimum lot requirements for a period of three years after the filing of the subdivision plat or first section thereof.
- (4) Termination of nonconforming lots. Notwithstanding anything heretofore contained in this section, all nonconforming lots for which a building permit for a permitted use has not been issued for a period of three years after the effective date of this chapter shall thereafter be required to meet all of the space and bulk standards of the district in which it is located, except that, if said lot continues in the same continuous ownership existing on the effective date of this chapter, then this requirement to conform shall not take effect until six years after the effective date of this chapter.

## § 208-98. Special setback lines.



On the streets and roads listed below, no building or part of a building, other than steps, eaves and similar fixtures, shall extend nearer to the center line of the street or road than 100 feet in the case of a building in a residential district or 130 feet in the case of a building in any other district.

New York - U.S. Route 9

State Road Nos. 146 and 146A

Blue Barn Road

Crescent Road

Elnora-Jonesville Road (Main Street)

Grooms Road

Kinns Road (from Plank Road to Route 146A)

Long Kill Road

Vischer Ferry Road

Lapp Road

Plank Road

Riverview Road (Vischer Ferry Road to Route 146)

Ushers Road

## § 208-99. Off-street parking and automobile storage space.

### A. General provisions.

- (1) Minimum off-street automobile storage, parking or standing space shall be provided as set forth below at the time of the erection of any building or structure, at the time any building or structure is enlarged or increased in capacity by adding dwelling units, guest rooms, seats or floor area or before conversion from one zoning use or occupancy to another. No required front yard or portion thereof in any residence district shall be utilized to provide parking space required in this chapter.
- (2) If the vehicle storage space or standing space required by this chapter cannot be reasonably provided on the same lot on which the principal use is conducted, the Board of Appeals may permit such space to be provided on other off-street property, provided that such space lies within 400 feet of the main entrance to such principal use. Such vehicle parking space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
- (3) Vehicle parking or storage space maintained in connection with an existing and continuing principal building, structure or land use on the effective date of this chapter shall be continued and may not be counted as serving a new building, structure, addition or land use, nor shall any required parking space be substituted for an off-street loading and unloading space, nor shall any required loading or unloading space be substituted for a parking space.
- (4) The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that 1/2 of the parking space required for churches, theaters or assembly halls, whose peak attendance will be at night or on Sunday, may be assigned to a use which will be closed at night or on Sunday.
- (5) No off-street automobile parking or storage space shall be used or designed, arranged or constructed

to be used in a manner that will obstruct or interfere with the free use of any street or adjoining property.

- (6) The parking spaces provided, along with their necessary driveways and passageways, shall be paved in a manner adequate to eliminate dust and mud problems. Plans for such parking spaces are to be included with the plans for the construction of buildings and other structures and are to be presented to the Building Inspector at the time application for building permits are to be filed. Such parking areas are to be kept free of obstruction and unsightly objects. Intersections of parking areas with sidewalks or street pavements must be made in an approved manner. Provisions must be made for the adequate drainage of parking areas.

B. Requirements.

- (1) Parking requirements shall be as follows:  
[Amended 5-14-2007 by L.L. No. 3-2007]

**Use**

**Minimum Parking Spaces Required**

Apartment houses

1.3 per apartment

Automobile service station

1 for each gas pump, 3 for each grease rack, plus 1 for every 2 employees on the maximum working shift

Auditoriums, churches, theaters or other similar places of assembly

1 for each 4 seating spaces

Bowling alleys

4 for each alley (lane)

Clubs and restaurants

1 for each 75 square feet of customer service area (i.e., all area other than kitchen and storage) or 1 for each 3 seats, whichever is greater

Funeral homes

1 for each 60 square feet of space available for public use or 1 for each 3 seats, whichever is greater

Hotels/motels

1 space per rental room or unit, plus 1 space for each 2 employees regularly employed on the premises

Light industrial uses

1 for each 500 square feet of gross floor area or 1 for each 2 employees on the maximum working shift, whichever is greater

Medical/Dental offices

1 for each 150 square feet of gross floor area but not less than 3 per practitioner

Office buildings other than medical or dental

1 for each 300 square feet of gross floor area

Public swimming pools

1 for each 40 square feet of pool area, excluding wading pools

Recreation establishments, exhibit halls or other similar places of assembly

1 for each 200 square feet of gross floor area

Residences

1 for each dwelling unit, plus 1 for each 100 square feet of floor space devoted to approved home occupations

Retail stores, banks or personal service establishments

1 for each 200 square feet of gross floor area

Sanatoriums or nursing or convalescent homes

1 for every 3 beds, plus 1 for each 2 employees on the maximum working shift

Wholesale, warehouse and storage

1 for each 2,000 square feet of gross floor area, plus 1 per employee; for commercial self-service warehouse and storage facilities, 1 per 10 storage units

- (2) The requirements listed above are based in large part on a study of parking generation produced by the Institute of Transportation Engineers. Local conditions, such as a particular site’s location, public transportation service, ride-sharing programs, proximity to other developments and other special characteristics, may indicate an adjustment of the above listings. They are provided here as a guide to the project planner, and the Planning Board shall reserve the right to amend these requirements based upon local or unique conditions. [Such amendments will not, therefore, require a variance from the Zoning Board of Appeals but are subject to administrative review as provided in § 208-109C(1) of this chapter.]

## § 208-100. Roadside sales.

No merchandise, personal property, equipment or article for sale, lease or commercial display shall be permitted to be displayed or stored within 25 feet of highways, roads or rights-of-way in the Town of Clifton Park, except for farm produce and farm products or nursery stock, which shall be allowed by special permit pursuant to this chapter. The 25 feet shall be measured from the right-of-way line and is not intended to be measured from the center line.

## § 208-101. Frontage on public streets.

No dwelling shall be erected on a lot which does not abut on at least one street for a distance of not less than 40 feet.

## § 208-102. Lot area reductions prohibited.

- A. No lot, although it may consist of one or more adjacent lots of record, shall be reduced in area to the extent that yards, lot area per family, lot width, building area or other requirements of this chapter are not maintained. This subsection shall not apply when a portion of a lot is required for a public purpose.
- B. No space applied or necessary under this chapter to satisfy the yard or other open space requirements in relation to any building or area, whether now or subsequently built or occupied, shall be counted as part of a required open space in relation to any other building.

## § 208-103. Obstruction of vision.

In all districts, on a corner lot, within the triangular area formed by the center lines of streets from the intersection, as shown on the schedule below, there shall be no obstruction to vision between the height of two feet and the height of 10 feet above the average grade of each street on the center line thereof. The requirements of this section shall not be deemed to prohibit the construction of any necessary retaining wall.

### Sight Distance for Various Street Widths

| Street Right-Of-Way<br>(feet) | Distance From Intersection<br>(feet) |
|-------------------------------|--------------------------------------|
| 60 or more                    | 30                                   |
| 59 or less                    | 20                                   |

## § 208-104. Existing violations.

No permit shall be issued for a property where there is an existing violation of this Zoning Chapter or Chapter 179, Subdivision of Land, of the Town of Clifton Park.

## Article XIVA. Adult Use Businesses

[Added 12-17-2001 by L.L. No. 18-2001]

### § 208-104.1. Title.

This article shall be known as the "Adult Use Business Regulations Law of the Town of Clifton Park."

### § 208-104.2. Findings.

Based upon a comprehensive study of the adverse secondary impacts of adult use establishments as documented in accordance with the ruling of the U.S. Supreme Court in the matter of the City of Renton v. Playtime Theaters, Inc. [475 U.S. 41 (1986)] and commissioned by the Town Board of the Town of Clifton Park, the Town of Clifton Park finds that:

- A. There are adverse secondary impacts associated with the establishment and operation of adult-oriented businesses within a community;
- B. Among these adverse secondary impacts are a deterioration in the local quality of life, an adverse effect upon local property values, an adverse effect upon local economic viability, an imposition, whether intentional or unintentional, of exposure to adult-oriented expression undesired by neighbors, pedestrians and passersby, an increase in traffic, noise, litter and nuisance, criminal and illicit sexual behavior, a threat to the health and safety of children and young adults and an undermining of the established sense of community;
- C. These adverse secondary impacts of the establishment and operation of adult-oriented businesses are a threat to the general health, safety and economic viability of the community;
- D. The unregulated establishment and operation of adult-oriented businesses would lead to the wide-spread imposition of adverse secondary impacts upon the residents, businesses, economic viability, property values, and quality of life of the Town and would therefore be detrimental to the general health, safety and economic viability of the community;
- E. The U.S. Constitution, and the Constitution and laws of the State of New York grant to the Town of Clifton Park the powers, especially police powers, to enact reasonable legislation and measures to regulate the location and operation of adult-oriented businesses, hereinafter defined, in order to protect the general health, safety and economic viability of the community.

### § 208-104.3. Intent.

- A. It is the express intent of the Town of Clifton Park in adopting this article to:
- (1) Ameliorate, mitigate, reduce or prevent the widespread and unregulated imposition of the adverse secondary impacts of adult-oriented businesses upon the residents, businesses, economic viability, property values, quality of life and general health, safety and welfare of the community;
  - (2) Protect the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
- B. It is not the intent of the Town of Clifton Park in adopting this article to:
- (1) Deny any person the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses; or
  - (2) Impose upon any person any additional limitations or restrictions upon the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression. These constitutionally protected rights are understood to include the right to sell, distribute and exhibit the legal goods and services offered by adult-oriented businesses; or
  - (3) To impose upon any person any additional limitations or restrictions upon the right to obtain, view or partake of any communications guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression; or
  - (4) To estimate, decide, determine, resolve, consider, conclude, judge or qualify in any manner or fashion the quality or value of the content, nature, message, form, format, appearance, substance or presentation of the free expression guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
- C. Aware that, according to numerous decisions by both federal courts and courts of the State of New York, the regulation of the location of adult businesses must be based upon a finding of the adverse secondary impact of these businesses upon the community and must be directed solely toward the mitigation of these impacts, not be directed toward any form of speech or expression, be no broader than necessary and must provide alternative locations within the Town for adult use businesses, the Town of Clifton Park hereby adopts the following amendment to its Town Zoning Law.

## § 208-104.4. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

### **ADULT USE BUSINESS**

- A. Any business which:

- (1) Is the use of land, structures or location for an adult entertainment business or as an adult physical contact establishment as herein defined; and
  - (2) Is any use of land, structure or location which, by the provisions of the Penal Law, is required to restrict the access thereto by minors; and
  - (3) Is an establishment, location, building or structure which features topless dancers, nude dancers or strippers, male or female; and
  - (4) Is a location, building or structure used for presenting, lending or selling motion-picture films, videocassettes, cable television or any other such visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis of matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below.
- B. Adult use businesses, including adult bookstores, adult video stores, adult motion-picture theaters, adult mini-motion-picture theaters, adult cabarets, and adult drive-in theaters, shall be defined as follows:
- (1) **ADULT BOOKSTORE**  
An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below.
  - (2) **ADULT VIDEO STORE**  
An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below.
  - (3) **ADULT MOTION-PICTURE THEATER**  
A building with a capacity of 50 persons or more used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for the observation of patrons therein.
  - (4) **ADULT MINI-MOTION-PICTURE THEATER**  
An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for the observation of patrons therein.
  - (5) **ADULT CABARET**  
An establishment which features live go-go dancers, exotic dancers, strippers, male or female, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity.
  - (6) **ADULT DRIVE-IN THEATER**  
A drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for the observation of patrons therein.
  - (7) **ADULT PHYSICAL CONTACT ESTABLISHMENT**

Any establishment which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as physical therapists or physical therapist assistants and electrolysis, karate, judo and dance studios are not to be considered adult physical contact establishments under this section.

#### **SPECIFIED SEXUAL ACTIVITIES**

- A. Human genitals in a state of sexual stimulation or arousal; or
- B. Acts of human masturbation, sexual intercourse or sodomy; or
- C. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

#### **SPECIFIED ANATOMICAL AREAS**

- A. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; or
- B. Human male genitals in a discernable turgid state, even if completely or opaquely covered.

### **§ 208-104.5. Overlay district established; boundaries.**

- A. LI-A District. An overlay zone is hereby established for adult use businesses within a portion of the Light Industrial District and shall be known as the "LI-A District" as shown on the Zoning Map. All zoning requirements of the LI District, which are not superceded herein, shall apply to the LI-A District.
- B. The boundaries of the overlay zone known as the "LI-A District" are superimposed over those portions of the LI District described as the area wholly contained within the boundaries of Interstate 87 to the west, Tax Map Parcel #264.-3-69 and Parcel #259.-2-44 to the north, the border of the Towns of Clifton Park and Halfmoon to the east and Tax Map Parcel #265.-1-14.2 and 265.-1-15.3 to the south.

### **§ 208-104.6. Locational requirements; exterior appearance; sign requirements; construction standards.**

- A. No adult entertainment business shall be established within 500 feet of any of the following:
  - (1) Public or private school.
  - (2) Church or other house of worship.
  - (3) Licensed day-care center, nursery school or preschool.
  - (4) Public library.
  - (5) Public park, playground or forest preserve.
  - (6) Public recreation or community center.

- (7) Senior center.
  - (8) A fire station or ambulance/emergency response facility.
- B. No adult entertainment business shall be established within 500 feet of any residential dwelling.
- C. Any private booths or areas within such adult use businesses, either for the viewing of motion pictures or live performances, shall be subject to the following requirements:
- (1) Any and all such booths, cubicles, studios, studies and rooms for the private viewing of adult motion pictures and/or live performances or areas shall not be open to public view from the common areas of the establishment and that there shall not be any doors, curtains, blinds or other structures or devices that shall obstruct observation of the viewing areas from the common area of the establishment;
  - (2) Such private viewing areas shall be well lighted and readily accessible at all times and shall continuously be open to view.
  - (3) Lighting throughout the adult establishment shall be sufficient to illuminate every area to which patrons are permitted access.
- D. All adult use businesses shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window, or by means of a depiction or decoration, or to allow to be displayed or exhibited, any specified anatomical areas or specified sexual activities.
- E. The exterior appearance of any building containing an adult use business shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood.
- F. Adult use businesses shall conform with all existing applicable sign regulations in addition to the following specific requirements:
- (1) Signs which are illuminated in neon or which contain flashing lights shall be prohibited.
  - (2) Exterior signs, displays or other advertisements which contain nude, semi-nude or provocative pictures or silhouettes shall be prohibited.
  - (3) Interior signs, displays, posters or other advertisements which contain nude, semi-nude or provocative pictures shall be located a minimum of six feet from any window or door, and shall not be visible from the exterior of the establishment.
  - (4) Permanent and/or temporary window and door signs shall not occupy more than 20% of each window or door.
- G. Adult use businesses shall be required to meet all zoning and construction standards and requirements of the laws of the Town of Clifton Park, including, but not limited to, lot and bulk regulations, parking requirements, signage, facade and screening regulations.

## § 208-104.7. Penalties for offenses.

The violation of this article shall be a Class A misdemeanor. In addition, any person violating this article shall be liable to a civil penalty of \$500 to be recovered by the Town in a civil action or special proceeding. Each day such violation continues shall constitute a separate violation of this article. The Town may also maintain an action or special proceeding for an injunction or other equitable relief to compel compliance with, or to restrain the



violation of, this article. The use of any remedy shall not prevent the use of any other remedy hereafter.

## Article XV. Administration and Enforcement

### § 208-105. Building department; authority.

The provisions of this chapter shall be administered and enforced by a Building and Development Department, pursuant to § 268 of the Town Law, and by a Building Inspector and other enforcement officers, pursuant to § 138 of the Town Law, as appointed by the Town Board, or by such other officer as the Town Board may, from time to time, designate. Such appointees to the Building and Development Department shall have charge of the enforcement of such codes, ordinances, rules and regulations of the Town and of this Zoning Chapter of the Town as directed by the Town Board and by this chapter. The Building Department shall have the special authority to serve appearance tickets pursuant to § 150.20, Subdivision 3, of the Criminal Procedure Law. The Building Inspector and other enforcement officers are hereby authorized to enforce the New York State Uniform Fire Prevention and Building Code, the Town Code, Chapter 179, Subdivision of Land, Town site plan requirements, special conditions attached to variances and special use permits and other applicable Town laws pertaining to property located within all of the zoning districts of the Town.

### § 208-106. Issuance of licenses and permits; records.

Any license or permit required shall be issued by the Building Inspector, and the Town Board may direct that fees for licenses and permits issued by the Building Inspector shall be payable to and collected by such Inspector. The Building Inspector shall keep a record of all permits issued or denied, with a notation of all special conditions involved. He shall safely file and keep copies of all plans submitted, which shall form a part of the records of his office and shall be available for use of the Town Board and other boards and officials. The Building Inspector shall not approve any application or issue a building permit or certificate of occupancy for any purpose not in compliance with the provisions of this chapter and such other ordinances, rules and regulations of the Town, including but not limited to the New York State Uniform Fire Prevention and Building Code, together with any applicable laws, rules and regulations of the State of New York. (See § 208-6.)

### § 208-107. Building permits; powers and duties of Building Inspector.

[Amended 12-19-2005 by L.L. No. 12-2005; 10-10-2006 by L.L. No. 8-2006; 12-18-2006 by L.L. No. 20-2006]

#### A. Building permits required.

- (1) Except as otherwise provided in Subsection **B** of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure, or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement

Officer.

(2) Permits are also required for the following:

- (a) Any excavation for or the construction of any building or structure, including fireplaces, chimneys and accessory buildings.
- (b) Any excavation for or the construction of a subsurface sanitary disposal system.
- (c) The moving, alteration or demolition of, or any addition to any building or structure.
- (d) Reroofing of any building or structure.
- (e) Initial erection of a radio installation, amateur (HAMS).
- (f) Commencement of any soil disturbing activity (SDA), as defined in this chapter.
- (g) Initiation of any construction of infrastructure, including roads, utilities and drainage systems, for any approved subdivision or site plan.
- (h) Ground- or pole-mounted solar arrays.  
[Added 3-21-2011 by L.L. No. 9-2011]

B. Exemptions. No building permit shall be required for work in any of the following categories:

- (1) Construction or installation of up to two single-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided that the gross floor area does not exceed 144 square feet each. No more than two sheds of any size shall be allowed per parcel.  
[Amended 2-7-2011 by L.L. No. 6-2011]
- (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above the ground;
- (4) Installation of fences which are not part of an enclosure surrounding a swimming pool;
- (5) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (6) Construction of temporary motion picture, television and theater stage sets and scenery;
- (7) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (8) Installation of partitions or movable cases less than five feet nine inches in height;
- (9) Painting, wallpapering, tiling, carpeting, or other similar finish work;
- (10) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (11) Replacement of any equipment, provided that the replacement does not alter the equipment's listing

or render it inconsistent with the equipment's original specifications; or

(12) Repairs, provided that such repairs do not involve:

- (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
- (b) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
- (c) The enlargement, alteration, replacement or relocation of any building system; or
- (d) The removal from service of all or part of a fire-protection system for any period of time.

C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection **B** of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

D. Applications for building permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) A description of the proposed work;
- (2) The Tax Map number and the street address of the premises where the work is to be performed;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) At least two sets of construction documents (drawings and/or specifications) which:
  - (a) Define the scope of the proposed work;
  - (b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
  - (c) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
  - (d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
  - (e) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection **D(5)** of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted

construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.

- F. Issuance. In applying to the Building Inspector for a building permit, the applicant shall submit a dimensioned sketch or plan, to scale, indicating the shape, size, height and location in relation to all property lines and to street lines of all buildings or structures to be erected, altered or moved and of any building or structure already on the lot. This sketch shall be accompanied by a written statement from a qualified engineer or other satisfactory evidence to the effect that the line of the bounding street has been accurately located and staked on the ground. The applicant shall also state the existing or intended use of all such buildings and supply other information as may be required by the Building Inspector to ensure that the provisions of this chapter are being observed. If the proposed excavations, construction, alterations or moving set forth in the application are in conformity with the provisions of this chapter and other local laws or ordinances of the Town of Clifton Park then in force, the Building Department shall issue a permit for such excavation, construction, alteration or moving.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Refusal. If a building permit is refused, the Building Inspector shall state such refusal in writing, with the cause, and shall immediately mail notice of such refusal to the applicant at the address indicated on the application.
- J. Upon project completion, the applicant shall submit a final set of as-built plans and specifications on a CD utilizing software acceptable and usable by the Town of Clifton Park. This shall apply only to those plans requiring the stamp and signature of a professional engineer or registered architect. This requirement may be waived at the sole discretion of the Director of Building and Zoning.
- K. Term. Every such permit shall expire at the end of one year from the date of issue. The Building Inspector may grant up to two six-month extensions at no additional cost to the permittee, provided that the permittee applies for such extension prior to expiration.
  - (1) If the permittee does not renew the permit for a six-month extension prior to the permit expiration date but does apply for the extension within 30 days of the expiration date, a fee of \$45 for residential permits and \$150 for commercial permits shall be paid as outlined in § **103-16**, Building permit fees.
  - (2) If construction is not completed within the allowed two-year maximum, the applicant may request a final extension from the Building Inspector, provided that proof of substantial completion (90% of the project cost or more) of the project is submitted and a definitive time line of six months or less is provided. The fee for this final extension shall be \$300 for commercial projects and \$90 for residential projects so long as a new review of some portion of the project is not required. Review fees, if needed,

are outlined in Chapter **103**.

- (3) If the project is not substantially complete and/or cannot be completed within six months of the two-year maximum, the applicant shall apply for a new permit (with new document submission) and pay all fees associated with a new permit as outlined in Chapter **103**.
- L. Revocation of building permit. The Building Inspector may revoke a building permit theretofore issued in the following instances:
- (1) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.
  - (2) Where he finds that the building permit was issued in error and should not have been issued in accordance with the applicable law.
  - (3) Where he finds that the work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications.
  - (4) Where the person to whom a building permit has been issued fails or refuses to comply with a stop order, as hereinafter defined, issued by the Building Inspector.
- M. Stop-work orders. Whenever a Building Inspector or his designee has reasonable grounds to believe that any work is being prosecuted in violation of the provisions of the applicable zoning or building laws or regulations or other sections of the Town Code, including but not limited to the New York State Uniform Fire Prevention and Building Code, or not in conformity with the provisions of an application, plans or specifications on the basis of which a permit was issued or in an unsafe and dangerous manner, he may order the owner of the property or the owner's agent or the person performing the work to suspend all work, and any such persons shall forthwith stop such work and suspend all related activities until the stop order has been rescinded. Such order shall be in writing and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building or area of concern and sending a copy of the same by certified mail to the address set forth in the application for the permit or to the owner's address of record in the Assessor's office. The person to whom a stop-work order has been issued shall report to the Department of Building and Development to determine the corrective action required to get the stop-work order rescinded. If said person desires such information in writing, he may submit a written request and the Department will provide such information in writing within three working days after receipt of the request.
- N. Right of entry. Any building official, upon showing of proper credentials and in the discharge of his duties, may enter upon any building, structure or premises at any reasonable hour, and no person shall interfere with or prevent such entry. However, no such building official may, without the expressed consent of the owner or occupant of suitable age and discretion, enter a residence after a certificate of occupancy has been issued therefor, without having first obtained an order or warrant from a court of competent jurisdiction.
- O. Tests. Whenever there are reasonable grounds to believe that any material, construction, equipment or assembly or the installation thereof does not conform to the requirements of the applicable building laws or regulations, the Building Inspector may require the same to be subjected to tests in order to furnish proof of such compliance and/or may request certification by a licensed engineer. The cost of any such tests or certifications and the cost of furnishing proof of such compliance shall be borne by the owner of the property or the person performing the work and in no event shall be borne by the Town of Clifton Park.
- P. Effect. The issuance of a permit shall in no case be construed as waiving any provision of this chapter.

- Q. Fee. The fee specified in or determined in accordance with the provisions set forth in § **103-16**, Building permit fees, must be paid at the time of issuance of a building permit or an amended building permit or for renewal of a building permit.

## § 208-107.1. Construction inspections.

[Added 12-18-2006 by L.L. No. 20-2006]

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection **B** of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- (1) Work site prior to the issuance of a building permit;
  - (2) Footing and foundation;
  - (3) Preparation for concrete slab;
  - (4) Framing;
  - (5) Building systems, including underground and rough-in;
  - (6) Fire-resistant construction;
  - (7) Fire-resistant penetrations;
  - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
  - (9) Energy Code compliance;
  - (10) A final inspection after all work authorized by the building permit has been completed.
  - (11) Stormwater pollution prevention and erosion and sediment control measures.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or the Energy Code. Work not in compliance with any applicable provision of the Uniform Code or the Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § **103-16**, Building permit fees, must be paid prior to or at the time of each inspection performed pursuant to this section.

## § 208-107.2. Operating permits.

[Added 12-18-2006 by L.L. No. 20-2006]

- A. Operating permits required.
- (1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below:
    - (a) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1;
    - (b) Hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a by-product, fruit and crop ripening, and waste handling;
    - (c) Use of pyrotechnic devices in assembly occupancies;
    - (d) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
    - (e) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Clifton Park.
  - (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection **A** shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- D. Multiple activities. In any circumstance in which more than one activity listed in Subsection **A** of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- E. Duration of operating permits. Operating permits shall remain in effect until reissued, renewed, revoked, or suspended.
- F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.
- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § **103-16**, Building permit fees, must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

## § 208-108. Certificates of occupancy.

- A. Requirement. No land or building or other structure or portion thereof hereafter erected or altered in its use or structure shall be used or occupied until the Building Inspector shall have issued a certificate of occupancy stating that such land, building or structure and the proposed occupancy or use thereof are found to be in conformity with the provisions of this chapter or other applicable local laws or ordinances. For purposes of this section, "occupancy" shall include the placing of any personal property into the premises under permit, including but not limited to clothing, furniture and/or appliances (which are not part of the purchase contract).
- B. Issuance. Within five days after notification that a building or structure or premises or part thereof is ready for occupancy or use, it shall be the duty of the Building Inspector to make a final inspection thereof and issue a certificate of occupancy if the land, building, structure or part thereof is found to conform within the provisions of this chapter or other applicable local laws or ordinances.
- C. Refusal. If the Building Inspector, after such final inspection, refuses to issue a certificate of occupancy, he shall state such refusal in the form of an inspection report and provide a copy to the permittee or his agent at the job site. If he desires, the permittee may visit the Department of Building and Development and request, in writing, a written explanation of the refusal. The Department will provide such information, in writing, within three working days after receipt of such a request.
- D. Underwriters' electrical certificates. The Building Inspector shall not issue a certificate of occupancy unless The Inspector, LLC, the Commonwealth Electrical Inspection Service, Inc., or Middle Department Inspection Agency, Inc., or Atlantic Inland, Inc., certifies, in writing or otherwise, that the electrical installation(s) and equipment are in conformity with the New York State Uniform Fire Prevention and Building Code. If the Building Inspector finds that the electrical inspection(s) by The Inspector, LLC, the Commonwealth Electrical Inspection Service, Inc., the New York Board of Fire Underwriters or Middle Department Inspection Agency, Inc., or Atlantic Inland, Inc., has (have) not been made within a reasonable time after the request(s) therefor has (have) been made, the Building Inspector may issue a temporary conditional certificate of occupancy. Such temporary conditional certificate of occupancy shall be deemed revoked, null and void after 60 days from the date of its issuance, unless a certificate from The Inspector, LLC, Commonwealth Electrical Inspection Service, Inc., the New York Board of Fire Underwriters or Middle Department Inspection Agency, Inc., or Atlantic Inland, Inc., certifying that the electrical installation(s) and equipment are in conformity with the New York State Uniform Fire Prevention and Building Code is presented to the Building Inspector prior to 60 days after the date of issuance of such temporary conditional certificate of occupancy.  
[Amended 8-23-1999 by L.L. No. 7-1999; 2-7-2011 by L.L. No. 6-2011]
- E. Partial certificates of occupancy. If a portion of the work covered by a building permit has been completed and if the proposed occupancy and use of such completed portion or portions are found to be in conformity with the provisions of this chapter or other applicable local laws or ordinances and if such completed portion or portions may be occupied or used safely and without endangering life or public welfare, the Building Inspector may issue a certificate of occupancy for the such completed portion or portions. If the Building Inspector refuses to issue such a partial certificate of occupancy, he shall state such refusal in writing, with cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated on the application.
- F. Conditional certificate of occupancy.
- (1) If a portion of the work covered by a building permit has not been completed, but if the proposed occupancy and use are otherwise in conformity with the provisions of this chapter or other applicable local laws or ordinances, and if such completed and uncompleted portions may be occupied or used safely and without endangering life or public welfare, the Building Inspector may issue a conditional certificate of occupancy. The Building Inspector shall set forth, in writing, in such conditional



certificate of occupancy the conditions under which such certificate of occupancy is issued, including but not limited to the following:

- (a) The expiration date, as determined by the Building Inspector.
  - (b) The items of work to be completed before a certificate of occupancy may be issued.
- (2) The Building Inspector may, in his discretion, require a bond, client fund account or letter of credit, in favor of the Town of Clifton Park, in an amount sufficient to pay the cost of completing the aforesaid items of work.
- (3) Such conditional certificate of occupancy shall be signed by the applicant and shall contain the following words: "The applicant understands and agrees to the above conditions. If applicant fails to complete such items of work on or before \_\_\_\_\_, 20\_\_\_\_, applicant consents to an order of a court of competent jurisdiction, enjoining applicant from occupying or using the above described premises or permitting the occupancy or use thereof."  
[Amended 2-7-2011 by L.L. No. 6-2011]
- (4) If the Building Inspector refuses to issue a conditional certificate of occupancy, he shall state such refusal in writing, with cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated on the application.
- G. Certificates for heat-producing appliances. The Building Inspector shall not issue a certificate of occupancy unless the Building Inspector or the Chief of the Bureau of Fire Prevention has issued a certificate of compliance for the fireplace, chimney and structures or equipment related to any heat-producing appliances on the property.
- H. Complete payment of all fees. The Building Inspector shall not issue a certificate of occupancy unless and until all fees required pursuant to this chapter or other ordinance, rule or regulation shall have been paid.

## § 208-109. Board of Appeals.

- A. Creation, composition and appointment.
- (1) Creation. A Board of Appeals is hereby established in accordance with § 267 of the Town Law.
  - (2) Composition. The Board of Appeals shall consist of seven members.
  - (3) Appointment. The Town Board shall appoint the members of the Board of Appeals and shall designate its Chairman. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. The appointment provision of this section is set forth pursuant to Municipal Home Rule Law § 10, Subdivision 1(ii)d(3), which provides a Town with supersession authority. This section provides that a Town may amend or supersede "any provision of the Town Law relating to the property, affairs or government of the Town or to other matters in relation to which and to the extent to which it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature shall have prohibited the adoption of such a local law." The Town Board specifically desires to act by local law to provide that membership on the Zoning Board of Appeals shall consist of seven members, each appointed for a five-year term. The Town Board further recognizes that pursuant to Municipal Home Rule Law § 10, Subdivision 1(i), the Town Board has the power to adopt local laws which are "not inconsistent with provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government." Terms of office for

each member of the Zoning Board of Appeals shall be for a period of five years.

- (4) Removal. The Town Board shall have the power to remove any member of the Board for cause after public hearing.
- (5) Vacancies. Vacancies shall be filled by the Town Board. If vacancies shall occur otherwise than by the expiration of term, they shall be filled by appointment for the unexpired term.
- (6) Compensation. The Town Board may provide for compensation to be paid to Board members, experts, clerks, a secretary and for other such expenses as may be necessary and proper.

B. General procedures.

- (1) Meetings. All meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine, and a quorum of the Board's membership is required for any meeting. All meetings of such Board shall be open to the public.
- (2) Oaths. The Chairman or, in his absence, the Acting Chairman may administer oath and compel the attendance of witnesses.
- (3) Minutes. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Town Clerk and shall be a public record.
- (4) Rules and regulations. The Board of Appeals is hereby authorized to establish rules and regulations not inconsistent with this chapter or the statutes authorizing the same and may modify, amend or repeal such rules. Every such rule, regulation, amendment or repeal thereof shall be filed in the office of the Town Clerk and shall be a public record.

C. Powers. The Board of Appeals shall have the following powers:

- (1) Orders, requirements, decisions, interpretations and determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
- (2) Use variances.
  - (a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
  - (b) 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:

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial

- as demonstrated by competent financial evidence;
- [2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
  - [3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - [4] The alleged hardship has not been self-created.
- (c) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (d) Notifications. At the time of submission of the application for an use variance, the applicant shall submit, in addition to otherwise required documentation, the following:
- [1] A reproduced copy of the Tax Map or extract of the Tax Map depicting the parcel(s) of land in question and all lands within 500 feet distance from the perimeter thereof.
  - [2] A schedule of the names and addresses of the property owners within 500 feet distance from the perimeter of the parcel in question as ascertained from the office of the Town Assessor.
  - [3] Satisfactory proof that the property owners within 500 feet of the perimeter of the parcel have been notified in writing of the nature of the request for a use variance (include a brief narrative). Such notification shall include the following written statement: "An application for a use variance for lands within 500 feet of your property is being proposed. The permit application will be filed with the Building and Zoning Department of the Town of Clifton Park and may be reviewed by you during normal business hours at the Town Hall. Please call the Building and Development Department at 371-6651 if you have any questions about the procedures to review this application and the process for consideration of the proposal." Proof shall be deemed satisfactory for purposes hereof if the applicant provides evidence of mailing, by certified or registered mail, or certificate of mailing and files the receipts with the submission. Regular mail is not satisfactory notice.
  - [4] In the event that the applicant or a related company or corporation owns lands adjacent to the parcel in question, then, in such event, the notice required herein shall be provided to property owners within 500 feet of the parcel adjacent to the parcel in question.
  - [5] For purposes of this § **208-109C(2)** only, the term "applicant" shall include owner, agent or applicant.
- (e) Review of applications.  
[Added 4-21-2003 by L.L. No. 2-2003]
- [1] Referral of the application. The Zoning Board of Appeals shall refer all applications and accompanying documents for a use variance in the Land Conservation District, in whole or in part, to the Planning Board for its review and recommendation, and to the County Planning Board, if required under the provisions of § **208-112** of this chapter.
  - [2] Planning Board recommendation.

- [a] Upon completion of its review, the Planning Board shall transmit, in writing, to the Zoning Board its recommendation for approval, approval with conditions or modifications or disapproval of the application, including a discussion of the proposal's compliance with the following:
  - [i] That the proposal conforms to the Town's comprehensive planning objectives.
  - [ii] That the proposal complies with the general requirements listed above in this article.
  - [iii] That the uses proposed shall not be detrimental to the natural characteristics of the site or adjacent land uses.
  - [iv] That each phase of the development, as it is proposed to be completed, contains the required parking facilities, landscaping and utilities necessary to create and sustain each phase independently.
  - [v] That the proposal is conceptually sound in that it meets local and area-wide needs and that the proposed roadways, pedestrian system, land use configuration, open space system, drainage system and scale of elements shall function singly and cumulatively and conform to accepted design principals.
  - [vi] That there are adequate services and utilities available or proposed to accommodate the development.
  - [vii] That the traffic generated by the proposal shall not have an adverse impact on the existing transportation network.
  - [viii] That the proposal is generally consistent with the purpose of the Land Conservation Zone per § **208-69**.
- [b] In addition, the Planning Board's report shall include a determination of the applicability of the State Environmental Quality Review Act.
- [3] The recommendations of the Planning Board shall not be considered binding on the Zoning Board of Appeals, but shall be advisory in nature.
- [4] The Planning Board will provide its recommendation to the Zoning Board of Appeals within 30 days of receipt of the request.

(3) Area variances.

- (a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
- (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
  - [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
  - [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for

the applicant to pursue, other than an area variance;

- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(d) Notifications. The formal notifications as required for use variances in § 208-109C(2)(d) above will not normally be required in the case of a request for an area variance. However, if the situation warrants it, the Chairman of the Zoning Board of Appeals may require the applicant to accomplish such notifications.

(4) The concurring vote of a majority of the Board shall be necessary to grant either an area or use variance.

D. Special procedures relative to appeal for administrative review or variance.

- (1) Who may appeal. An appeal to the Board of Appeals for administrative review or variance may be taken by any person, firm or corporation aggrieved or by any government officer, department, board or bureau affected by any decision of the Zoning Enforcement Officer or other administrative officer based in whole or in part upon the provisions of this chapter. Such appeal shall be taken by filing with the Board of Appeals and the Zoning Enforcement Officer a notice of appeal specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken.
- (2) Time of appeal.
  - (a) In the case of the refusal of the Zoning Enforcement Officer to issue a building permit or a certificate of occupancy, said notice of appeal shall be filed within 62 days from the date upon which such notice of refusal of building permit or certificate of occupancy is mailed by the Zoning Enforcement Officer. Failure to file such notice of appeal within 62 days shall constitute a waiver of the right of appeal.
  - (b) In the case of the granting by the Zoning Enforcement Officer of a building permit or a certificate of occupancy, said notice of appeal shall be filed within 62 days from the date upon which such notice of granting of building permit or certificate of occupancy is mailed by the Zoning Enforcement Officer or within 30 days after construction is commenced under said building permit or occupancy is commenced under said certificate of occupancy. Failure to file such notice of appeal within the time limited above shall constitute a waiver of the right of appeal.
- (3) Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer from which the appeal is taken certifies to the Board of Appeals, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a

court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

- E. Hearing, notice, public notice, notice to parties and costs.
- (1) Hearing. The Board of Appeals shall fix a reasonable time for the hearing of any application for a variance, any appeal for administrative review or any application for a special permit.
  - (2) Notice. The Board of Appeals shall give public notice of the hearing of any application for a variance or any appeal for administrative review in the official paper at least five days prior to the date thereof and shall, at least five days before such hearing, mail notice thereof to the applicant and to the Regional State Park Commission having jurisdiction over any state parkway or parkways within 500 feet of the property affected by such appeal and shall decide the same within 62 days after the final hearing.
  - (3) Reference to the Saratoga County Planning Board. In accordance with the policy and procedures provided for by §§ 239-l and 239-m of the General Municipal Law, any proposed variance affecting land or buildings within 500 feet of the boundary of the Town of Clifton Park or from the boundary of any county or state park or other recreational area or from the right-of-way of any county or New York State park, thruway, expressway or other controlled-access highway or from the right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines or from the boundary of any county- or state-owned land in which a public building or institution is situated, shall be referred to the Saratoga County Planning Board. If the Saratoga County Planning Board disapproves the proposal or recommends modifications thereof, the Board of Appeals shall not act contrary to such approval or recommendation, except by a majority vote of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.
- F. Provisions of appeal. If the variance is granted or other action by the appellant or applicant is authorized, the necessary permit shall be subject to the terms of § 208-107J. Should the appellant or applicant fail to comply with these provisions, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn and abandoned the appeal or the application and such permission and variances granted shall be deemed automatically rescinded by the Board of Appeals.
- G. Rehearing. Upon motion initiated by any member and adopted by the unanimous vote of the members present but not less than a majority of all the members, the Board of Appeals shall review at a rehearing, held upon notice given as upon an original rehearing, any order, decision or determination of the Board not previously reviewed. Upon such rehearing, and provided that it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon the concurring vote of all of the members then present, reverse, modify or annul its original order, decision or determination.

## § 208-110. (Reserved)

## § 208-111. Penalties for offenses.

- A. Notwithstanding any other inconsistent provision contained in this chapter and in addition to any and all provisions contained in this chapter or in other applicable laws, it shall be unlawful for any person, firm or corporation to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any land area, building or structure or portion thereof in violation of any provision of this chapter or applicable building laws and regulations, including the New York State Uniform Fire Prevention and Building Code, or

to fail in any manner to comply with a notice, directive or order of the building official or to construct, alter or use and occupy any land area, building or structure or part thereof in a manner not permitted by an approved permit or certificate of occupancy.

- B. Any person who shall fail to comply with a written order, notice, directive, permit or certificate of a duly authorized employee or agent of the Building, Development, Planning or Zoning Department within the time fixed therein for compliance therewith, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction or use of any building or property who shall knowingly violate any of the applicable provisions of this chapter or any such lawful order, notice, directive, permit or certificate, shall be guilty of an offense and, upon conviction thereof, shall, except as provided in Subsection **C** below, be subject to a fine not to exceed \$1,500, or a term of imprisonment not to exceed 15 days, or both such fine and imprisonment, for each offense. Each day that a violation continues shall be deemed a separate offense, and the violation shall be deemed to have commenced on the earlier of the date of, or the date contained in, the written order, notice, directive, permit or certificate of the building official.  
[Amended 5-2-2005 by L.L. No. 4-2005]
- C. Any person convicted of the offense of a failure to comply with a notice of violation of the provisions of an approved site plan or subdivision plot as delineated in § **208-123B** of this chapter shall be subject to a fine of not less than \$1,000, nor more than \$2,000, or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, subject to a fine of not less than \$1,500 nor more than \$4,500, or imprisonment for a period not to exceed 30 days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, subject to a fine of not less than \$5,000, nor more than \$15,000, or imprisonment for a period not to exceed 90 days, or both. Each week or part thereof that a violation continues shall be deemed a separate offense, and the violation shall be deemed to have commenced on the earlier of the date of, or the date contained in, the notice of violation.  
[Amended 5-2-2005 by L.L. No. 4-2005]
- D. Civil penalties.  
[Added 11-1-2010 by L.L. No. 8-2010]
- (1) Separate from and in addition to all other penalties in Subsections **A** through **C**, above, any person or entity may be liable for a civil penalty of up to \$250,000 pursuant to New York State Town Law § 135 upon a judicial finding of willful violation of any notice of decision, or any special condition on any site plan or subdivision plat issued by the Planning Board, or Zoning Board of Appeals requiring the preservation, restoration, rehabilitation or reconstruction of any structure as a condition of any subdivision, site plan, or variance approval or zoning change, as the case may be.
  - (2) The Town Attorney shall initiate a special action in any court of competent jurisdiction to enforce this section upon Town Board authorization.

## § 208-112. Amendment of provisions; referral to County Planning Board.

The regulations, restrictions and boundaries established by this chapter may from time to time be amended, supplemented, changed or modified or repealed as provided by § 265 of the Town Law. However, all amendments to this chapter which would change the district classification of or the regulations applying to real property lying within a distance of 500 feet from the boundary of the Town of Clifton Park or the boundary of

any county or state park or other recreational area or from the right-of-way of any county or state parkway, thruway, expressway or other controlled-access highway or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines or from the boundary of any county- or state-owned land on which a public building or institution is situated, shall be referred to the Saratoga County Planning Board. If the Saratoga County Planning Board fails to report within 30 days after receipt of a full statement of such referred matter, the Town Board of Clifton Park may act without such report. If the Saratoga County Planning Board disapproves of the proposed amendment, supplement, change or modification or recommends modification of the proposal of the Town of Clifton Park, the Town Board shall not act contrary to such disapproval or recommendation, except by a majority vote of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary act.

## Article XVI. Site Plan Review and Approval

### § 208-113. Purpose and applicability.

- A. Purpose. The purpose of this article is to establish clear procedures for review of site plans, establish standardized and clear requirements for site plan applications, assure functional and attractive development and minimize adverse impacts on the natural and man-made environment. The Town of Clifton Park considers the site plan to be a form of contract between the owner and the public (represented by the Town) in which the Town agrees to permit certain development in return for commitments on the part of the owner to fulfill and maintain all of the requirements of the approved site plan.
- B. Applicability.
- (1) In all cases where this chapter requires a special use permit and/or site plan approval by the Planning Board, no building permit shall be issued by the Building Inspector except upon approval of and in conformity with a site plan approved by the Planning Board. Receipt of an approved site plan from the Planning Department or written correspondence from the Director of Planning authorizing the release of the building permit for a project is required prior to the issuance of a permit. An approved site plan shall be required prior to any field inspections by the Building Inspector. Generally, a site plan approval is required for all uses of land, new construction or expansion of existing uses for other than one- and two-family dwelling units and uses accessory thereto. This includes, but is not limited to, all Planned Unit Development Districts (except those containing only one- and two-family dwelling units which shall require subdivision approval), all applications for a soil disturbing activity (SDA), all changes of use in the Light Industrial District as required by § **208-66E** of this chapter and all other telecommunication towers as required by § **208-95B** of this chapter.  
[Amended 12-9-1996 by L.L. No. 11-1996; 10-16-2006 by L.L. No. 15-2006]
  - (2) In instances where the building exists, the site is in conformity with a previously approved site plan (as determined by the Building Inspector) and a change of occupancy is occurring without structural changes to the building, the following procedures shall be followed:
    - (a) If the new use is of the same type and intensity (i.e., office to office, sit-down restaurant to sit-down restaurant, etc.), no Planning Board action will be required prior to the issuance of a building permit and/or certificate of occupancy or tenancy. When issuing the building permit and/or certificate of occupancy or tenancy the Building Inspector shall provide the owner with a copy of the approved site plan for that location and obtain a signed receipt for same from the



owner and/or his agent.

- (b) If the new use is not of the same type and intensity (i.e., office to retail, sit-down restaurant to fast-food restaurant, etc.), the new owner shall, if required by the Building Inspector, appear before the Planning Department to arrange to appear before the Planning Board to determine if a revised site plan approval will be required prior to the issuance of a building permit and/or certificate of occupancy or tenancy.
- (3) In instances where the building exists, the site is not in conformity with a previously approved site plan and a change of occupancy is occurring without exterior structural changes to the building, a revised site plan approval shall be required prior to the issuance of a building permit and/or certificate of occupancy.
- (4) In instances where the building exists, a change of occupancy is occurring and exterior structural changes will be made to the building, a revised site plan approval shall be required prior to the issuance of a building permit and/or certificate of occupancy.
- (5) In instances where the building exists, no change of occupancy is occurring and structural changes will be made to the building, the new occupant shall appear before the Planning Board to determine if a revised site plan approval will be required prior to the issuance of a building permit and/or certificate of occupancy.
- (6) Site plan approval will be required for applications normally approved by the Building Inspector but where the Building Inspector has determined that, due to the nature of the action, the application requires review and approval by the Planning Board.
- (7) Should more than six months have elapsed from the date of preliminary approval before the applicant seeks final site plan approval, the Planning Board may, in its sole discretion, require the applicant to resubmit his preliminary site plan and pay an additional preliminary fee pursuant to the provisions of this section.  
[Added 3-2-2009 by L.L. No. 1-2009]
- (8) The Planning Board, in its discretion, may require a fee upon final submission of the site plan by the applicant in the same amount as required for preliminary submission. This final fee requirement may be waived by the Planning Board in the interest of justice if requiring such final fee will, in the opinion of the Board, create an undue hardship on the applicant.  
[Added 3-2-2009 by L.L. No. 1-2009]
- (9) Lot line adjustment procedures.  
[Added 3-2-2009 by L.L. No. 1-2009]
  - (a) Applications for lot line adjustments shall be made in writing to the Planning Director and shall consist of the following documentation:
    - [1] Map. A survey map prepared by a licensed engineer or surveyor which indicates the existing lot lines as well as the proposed adjusted lot line on a scale no smaller than one inch equaling 100 feet.
    - [2] Copies of the deeds to the properties in their current configuration, and a proposed deed for the parcel to be conveyed as a result of the lot line adjustment. A metes and bounds description of the properties in their present configuration and the proposed new configuration.

[3] Fee. The lot line application fee shall be \$100.

[4] Documentation demonstrating consent from the owner(s) of the property from which any portion of the parcel is proposed to be taken.

- (b) The Planning Director will forward the application to the Town Zoning Officer, who shall review the application to ensure that the lot line adjustment will not result in any code violations.
- (c) The Planning Director, in consultation with the Town Zoning Officer, shall review and approve or deny an application for a lot line adjustment within 45 days. If the application is approved, the Director of the Department of Building and Development shall issue a certificate of lot line adjustment, which the applicant shall file with the Saratoga County Clerk concurrently with the deed effecting the lot line adjustment.
- (d) If the approval of the lot line adjustment would result in an increase in the development potential of any parcel, then the Planning Director shall refer the application to the Planning Board for site plan review.

C. Fees. (See also Chapter **103**.)

(1) The fee for an application for a lot line adjustment shall be \$100.

[Added 3-2-2009 by L.L. No. 1-2009]

(2) Should more than six months have elapsed from the date of preliminary approval before the applicant seeks final site plan approval, the Planning Board may, in its sole discretion, require the applicant to resubmit his preliminary site plan and pay an additional preliminary fee pursuant to the provisions of this section.

(3) The Planning Board, in its discretion, may require a fee upon final submission of the site plan by the applicant in the same amount as required for preliminary submission. This final fee requirement may be waived by the Planning Board in the interest of justice if requiring such final fee will, in the opinion of the Board, create an undue hardship on the applicant.<sup>[1]</sup>

[1]: *Editor's Note: Former Subsection D, Reimbursable costs, which immediately followed this subsection, was repealed 4-6-1998 by L.L. No. 2-1998.*

## § 208-114. Conceptual plan.

Upon receipt of an application for site plan review, a sketch plan conference shall be held between the Planning Board and the applicant to review the basic site design concept and generally determine the information to be required on the preliminary site plan. At the sketch plan conference, the applicant shall provide the data discussed below, in addition to a statement or rough sketch describing what is proposed.

- A. An area map showing the parcel under consideration for site plan review and all properties, subdivisions, streets and easements within 200 feet of the boundaries thereof.
- B. A map of site topography at no more than ten-foot contour intervals. Where required by the Town Engineer or Stormwater Management Officer, a topographical map showing contour intervals of not more than two feet of elevation shall also be provided.  
[Amended 12-17-2007 by L.L. No. 13-2007]
- C. For any soil disturbance activity not otherwise requiring site plan approval, a stormwater management and

erosion control plan, together with an estimate of the cost thereof for the Planning Board to establish the amount of the soil disturbance security (bond, client fund account or letter of credit).

- (1) It shall be the responsibility of the Planning Board and the Stormwater Management Officer to determine the suitability of stormwater management and erosion control measures proposed for each individual site. Due to the uniqueness of each site, definitive measures will be approved for each application. (See also Chapter **86**, Article **II**, § **86-7** of this Code.)  
[Amended 12-17-2007 by L.L. No. 13-2007]
- (2) Prior to the commencement of any soil disturbing activity (SDA), a sketch plan shall be presented to the Planning Department. At a minimum, this plan shall include:
  - (a) A general vicinity map.
  - (b) A description of all intended site work and soil disturbance activities.
  - (c) A statement and/or simple mapping of any environmentally sensitive features on the site, including wetlands, stream and other drainage corridors, flood hazard areas (from FEMA flood insurance rate map), groundwater aquifers and/or recharge areas; Town Land Conservation Zones; ponds; reservoirs; habitat areas of rare, threatened or endangered species; significant forested areas; and any other important environmental features (NOTE: If mapped, features may be added to the site topography map described in § **208-114B**.)
  - (d) Identification of any temporary and/or permanent stormwater management and erosion control measures that will be used to mitigate any impacts, complete with existing and finish grades (NOTE: Grading may be shown on the site topography map described in § **208-114B**.)
- (3) The Planning Board and the Stormwater Management Officer shall review the sketch plan and narrative to determine the suitability of the stormwater management and erosion control plan. A soil disturbance security, as approved by the Director of Planning, shall be established prior to the issuance of a building permit. This security shall cover the full cost of constructing and maintaining all stormwater management and erosion control measures and shall be kept in effect until the Town determines that soil stabilization has occurred. Written acceptance of the plan by the Planning Board shall constitute permission for the owner to complete his building permit application.  
[Amended 12-17-2007 by L.L. No. 13-2007]
- (4) For more complex soil disturbance activities and those involving disturbances of greater than five acres, the Planning Board shall require the submission of an application for preliminary site plan approval.
  - (a) If the soil disturbance activities exceed a total area of five acres, then a phasing plan shall be developed to ensure that no more than five acres are disturbed at any given time unless a waiver is granted by the NYSDEC.  
[Added 12-17-2007 by L.L. No. 13-2007]

## § 208-115. Application for preliminary site plan approval.

An application for preliminary site plan approval shall be made in writing to the Planning Department and shall include the following:

- A. Description. All landscaping plans shall include a written narrative description of the proposed project

addressing its scope of application, purpose, justification and impact on the immediate area of influence and the Town in general (schools, traffic generation, population, utilities, aesthetics and land use compatibility).

- B. Site plan. A site plan, drawn to a scale of not smaller than one inch equals 30 feet, shall be submitted, which shall include the following information:
- (1) All existing and proposed property lines, building setback lines, easements and right-of-way lines, with dimensions, azimuths or angle data and curve data.
  - (2) All existing zoning and Planned Development District boundary delineations.
  - (3) All monuments, iron pipes and bench marks.
  - (4) The names of owners of all adjacent property.
  - (5) Street names.
  - (6) A North arrow.
  - (7) A standard title block.
  - (8) A key map.
  - (9) Proposed use.
  - (10) Contour lines at two-foot intervals, minimum United States Geological Survey datum.
  - (11) Wetlands, stream and other drainage corridors, flood hazard areas (from FEMA Flood Insurance Rate Map); groundwater aquifers and/or recharge areas, Town Land Conservation Zones; ponds; reservoirs; habitat areas of rare; threatened or endangered species, significant forested areas; and any other important environmental features. Additionally, the boundaries of environmental areas to be left undisturbed and/or protected through deed restrictions, conservation easements or other agreements shall be shown. (These boundaries shall also be marked in the field prior to the start of soil disturbance activity, other than to install temporary soil erosion control measures, and left on-site until the Building and Development Department has made the final inspection.)
  - (12) The location of outdoor storage, if any.
  - (13) Provision for pedestrian access.
  - (14) The location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls, berms and fences.
  - (15) The location of fire and other emergency zones, including location of fire hydrants.
  - (16) A description of the method of sewage disposal and location, design and construction materials for such facilities.
  - (17) A description of the method of securing water and the location, design and construction materials for such facilities.
  - (18) Traffic circulation shown so as to provide for the safety and ease of vehicular movement.
  - (19) The location, design and construction materials of all parking and truck loading areas.

- (20) Parking provisions.
- (a) No on-street parking is permitted.
  - (b) A parking plan shall delineate the number of parking spaces and the parking arrangement, including parking and pedestrian walkways for the handicapped.
- (21) All buildings, sidewalks and lighting, as well as the location of heating and air-conditioning units, trash bins and any other outdoor storage or machinery, shall be shown on the plans.
- (22) The location of all outdoor lighting facilities.
- (23) A delineation of the arrangement, location, species and dimensions of all existing and proposed landscaping materials. All landscaping vegetation shall be labeled with both the common and botanical names.
- (24) A planting schedule listing each plant, shrub or tree, its approximate initial size and the quantity of each proposed.
- (25) Proposed site grading.  
[Amended 12-17-2007 by L.L. No. 13-2007]
- (26) Stormwater pollution prevention plan. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Local Law Number 15 of 2007<sup>[1]</sup> shall be required for preliminary site plan approval. The SWPPP shall meet the performance and design criteria and standards in Section C of this local law.<sup>[2]</sup> The approved preliminary site plan shall be consistent with the provisions of this local law.<sup>[3]</sup>  
[Amended 12-17-2007 by L.L. No. 13-2007<sup>[4]</sup>

[1]: *Editor's Note: See § 86-7B, C and D.*

[2]: *Editor's Note: See § 86-7C.*

[3]: *See § 86-7B, C and D.*

[4]: *Editor's Note: This local law also repealed Subsection B(27), relating to buffer areas, and provided for the renumbering of former Subsection B(28) as Subsection B(27).*

- (27) The final site plan shall contain the signature and seal of a professional engineer registered in New York State or a qualified land surveyor under § 7208, Subdivision n, of the Education Law.

- C. Lighting plan. All site plans shall include a lighting plan, which shall delineate the type of fixture to be used and the subsequent lighting pattern, the height of the fixture and the wattage of the light systems utilized.
- D. Stormwater management and erosion control plan. For applications involving soil disturbance of more than five acres and for those with one to five acres of soil disturbance that, due to the nature of the disturbance, require additional detail, a stormwater management and erosion control plan shall be submitted in accordance with Chapter 86, Article II, § 86-7, stormwater management and erosion control design standards, of the Code of the Town of Clifton Park.  
[Amended 12-17-2007 by L.L. No. 13-2007]

- (i) Within the above context, the following outline details the structure and content of a stormwater management and erosion control plan:

- (a) Background information.

[1] Project description.

- [a] Describe what is being proposed (i.e., residential lot subdivision, planned unit development, commercial/retail development or industrial development).
  - [b] Describe project size (i.e., number of acres, number of dwelling units, other buildings and density).
  - [c] Describe other improvements which will be made on project site, including streets and roads and utilities (water, sewer, etc.), and give particular attention to acreage of land that will become paved and covered with buildings. Lawn acreage should also be specified.
  - [d] Provide a location map based on USGS mapping.
  - [e] Provide a statement describing how this project will meet stormwater management objectives established by the municipality.
  - [f] Provide a general description of the approaches which will be taken to control erosion and sedimentation and stormwater runoff.
- [2] Existing (predevelopment) conditions.
- [a] Provide a map showing topography (contours) under existing conditions. On this same map, show drainage patterns, including ditches, culverts, permanent streams, intermittent/ephemeral streams and other drainage channels, wetlands or other waterbodies, and existing roads. Indicate sizes of existing culverts. Delineate watershed and subwatershed boundaries on the map.
  - [b] Show existing land use, open space, public facilities, utility lines, water supply wells on site and predominant vegetation cover types (forested, brushland, grassland, cropland, pasture, etc.).
  - [c] Obtain soils survey information and, by sub-catchment, provide tabular information detailing the number of acres that are in each of the Soil Conservation Service (SCS) Hydrologic Soils Groups A,B,C, or D in Table 10 in Chapter III of the April 1992 NYS DEC publication entitled "Reducing the Impacts of Storm Water Runoff from New Development." Soils information should be considered by conducting a site-specific soil survey.
- [3] Proposed future (development) conditions.
- [a] Provide a map showing, by subcatchment, the completed project, including typical lot layout, approximate location of buildings, streets and other paved surfaces, final contours, utility lines, water supply wells, individual sewage disposal systems and location and types of easements.
  - [b] Provide tabular information, by subcatchment, showing the acres of impervious area created in the proposed development, as well as the extent of lawn and areas where the land will have been made more impervious than predevelopment conditions.
- (b) Comparison of predevelopment with post-development runoff.
- [1] Methodologies.
    - [a] Describe or identify the methodology used to compare and evaluate pre- with post-

development runoff conditions in terms of volumes, peak rates of runoff, routing and hydrographs.

- [b] Peak discharge rates and total runoff volumes from the project area for existing site conditions and postdevelopment conditions for the one-year, ten-year and one-hundred-year, twenty-four-hour storm events should be calculated. The relevant variables used in this determination, such as curve number and time of concentration, should be included.
  - [c] Downstream analysis of the one-hundred-year, twenty-four-hour event, including peak discharge rates, total runoff volumes and evaluation of impacts to receiving waters and/or wetlands, should be evaluated.
  - [d] If appropriate, storage volume and surface area requirements necessary to provide flood control for runoff generated during one-year, ten-year and one-hundred-year, twenty-four-hour storm events should be calculated.
  - [e] Discharge provisions for the proposed control measures, including peak discharge rates, outlet design, discharge capacity for each stage, outlet channel design and a description of the point of discharge, should be provided.
  - [f] Water quality treatment facilities should be designed to capture and treat runoff from all land areas for which the perviousness has been changed over predevelopment conditions due to soil disturbance activity in accordance with the NYS Stormwater Design Manual.
  - [g] The necessary storage volumes should be calculated and the proposed stormwater measure(s) should be described in detail. The plans should provide sufficient detail of the water quality control measures to ensure that the relevant design criteria will be met.
  - [h] Specific information should include surface area dimensions, depths, inlet designs, planting specifications for use of aquatic vegetation, discharge rates and outlet design.
  - [i] Sufficient detail should be provided to show that the stormwater facility(ies) is/are capable of withstanding the discharge from the one-hundred-year storm event.
- [2] Calculations.
- [a] State any assumptions in making the calculations.
  - [b] Provide assumptions and coefficient values used in the hydrologic calculations to making above comparisons. Evaluate the postdevelopment effect of stormwater runoff on identified floodplains or designated flood hazard areas in the community.
- (c) Stormwater management.
- [1] Stormwater management facilities.
    - [a] Describe in a narrative and show on the map, by subcatchment, proposed stormwater management facilities. A soil profile below the stormwater management facility should be provided.
    - [b] If appropriate, provide designs of proposed structural stormwater management

facilities.

- [c] Calculations for sizing stormwater facilities should be provided.
- [d] Provide designs and calculations for siting and sizing such specialized measures and devices as filter strips, water quality inlets (oil/grit separator), forebays, etc., which will be used to remove sediment, oil-based products and other contaminants found in urban runoff.
- [e] Provide information on the design provisions that address safety considerations (e.g., gentle slopes and benches in ponds) and accommodate maintenance needs (including access to conduct maintenance operations).

[2] Stormwater conveyance system.

- [a] Describe in a narrative the stormwater conveyance (drainage) system. Indicate which segments of the drainage system are open channels and which segments are piped (culverts).
- [b] Hydrologic calculations for siting and sizing the stormwater conveyance system should be provided.

(d) Erosion and sediment control.

[1] Erosion and sediment control facilities.

- [a] Describe temporary and permanent structural and vegetative practices which will be used to provide short-term (during construction) and long-term control of erosion and sedimentation when construction activities are completed and the project site is restored.

(e) Implementation schedule and maintenance.

- [1] Provide an implementation schedule for staging of all stormwater management facilities. Describe how this schedule will be coordinated with the staging of erosion and sediment control facilities and construction activities.
- [2] Provide a description of the arrangements which will be made for ensuring long-term maintenance of stormwater management and erosion control facilities. Backup contingency plans should be provided and described. Those responsible for performing maintenance should be identified.

E. Architectural plan. Whenever a site plan is required pursuant to this article and new construction is proposed for the site or the exterior facade of an existing building is to be modified in any way, the applicant shall, in addition, submit architectural drawings which shall include building elevations drawn to a scale equal or greater than 1/16 inch equals one foot. The elevations submitted shall include at least the following: front view, rear view and side view. The elevations shall show doorways, windows, loading areas, foundations, landscape planting, etc., and shall indicate the materials and exterior finishes to be used in construction. Pedestrian walkways, entrances and exits for use by the handicapped shall be provided in accordance with the New York State Uniform Fire Prevention and Building Code.

F. Notification.

- (1) At the time of submission of the application for preliminary site plan approval as provided for herein,



the applicant shall submit, in addition to otherwise required documentation, the following:

- (a) A reproduced copy of the Tax Map or extract of the Tax Map depicting the parcel(s) of land proposed for site plan approval and all lands within 500 feet distance from the perimeter thereof.
- (b) A schedule of the names and addresses of the property owners within 500 feet distance from the perimeter of the lands proposed for site plan approval as ascertained from the office of the Town Assessor.
- (c) Proof required.

[1] The applicant shall submit satisfactory proof that the property owners within 500 feet of the perimeter of the lands proposed for site plan approval have been notified in writing of the nature (include a brief narrative about the project and its location, including number of units, approximate commercial square footage) of the proposed site plan, and such notification shall also include the following written statement: "An application for site plan approval of lands within 500 feet of your property is being proposed. The site plan application will be filed with the Planning Department of the Town of Clifton Park and may be reviewed by you during normal business hours at Town Hall. Please call the Planning Department at 371-6651 if you have any questions about the procedures to review this application and the process for consideration of the proposal."

[2] Proof shall be deemed satisfactory for purposes hereof if the applicant provides evidence of mailing, by certified or registered mail, or certificate of mailing and files the receipts with the submission. Regular mail is not satisfactory notice.

- (2) In the event that the applicant or a related company or corporation owns lands adjacent to the lands proposed for site plan approval and within the 500 feet of the perimeter of the lands proposed for site plan approval, then, in such event, the notice required herein shall be provided to property owners within 500 feet of the parcel adjacent to the parcel proposed for site plan by the applicant.
- (3) For purposes of this subsection only, the term "applicant" shall include owner, agent or applicant.

## § 208-116. Review of preliminary site plan; public hearing.

- A. The Planning Board's review of a preliminary site plan shall include, as appropriate, but is not limited to, the following considerations:
  - (1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, channelization structures and traffic controls.
  - (2) Adequacy and arrangements of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
  - (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
  - (4) Location, arrangement, size, design and general site compatibility of buildings and lighting.
  - (5) Adequacy of drainage, stormwater management and soil erosion control facilities.
  - (6) Adequacy of water supply and sewage disposal system.

- (7) Adequacy, type and arrangement of trees, shrubs and other landscaping. Especially important is the creation of visual and/or noise deterring buffers between the applicant's and adjoining lands, utilizing the maximum retention of existing vegetation where feasible.
  - (8) The adequacy and amount of the green open space, especially in the case of an apartment complex or other multiple dwelling, where care should be given that the open space consist of land suitable for recreation use. Where no other requirement for green space exists elsewhere in this chapter, the minimum allowable green open space shall be 35% of the total area of the project site, unless the applicant can demonstrate that the project site is so unique that undue hardship will result from strict compliance with this thirty-five-percent requirement and the reduction of green open space will not cause substantial damage to the general character of the neighborhood.
  - (9) Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
  - (10) Adequacy of fire lanes and other emergency zones and the provisions of fire hydrants.
  - (11) Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to flooding, ponding and/or erosion.
  - (12) The size, design, shape, location and illumination pattern of all lighting facilities proposed for the site.
  - (13) The overall aesthetics of the site plan.
  - (14) Any other construction which the Planning Board deems appropriate due to the unique characteristics of a particular site.
- B. Consultant review. The Planning Board may, in the course of its review, consult the Town Building Inspector, Bureau of Fire Prevention, Highway Superintendent, Town Board, Zoning Board of Appeals, Environmental Conservation Commission, Parks and Recreation Committee, County Planning Board, other local and county officials and its designated private consultants and, in addition thereto, may consult with any representatives of the federal and state agencies whose advice would, in the opinion of the Planning Board, be helpful in making its determination, including but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
- C. Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the application for preliminary site plan approval and shall be advertised in the designated official newspaper of the Town and, in addition, if felt desirable, in a newspaper of general circulation in the Town at least five days before the public hearing. In determining whether or not to hold a hearing, the Planning Board will consider the degree of interest shown by other persons for the project and the extent to which a public hearing can aid in its decisionmaking process by providing a forum for and an efficient mechanism for the collection of public comment. Whether to hold a public hearing is solely in the discretion of the Planning Board.

## § 208-117. Determination of board on preliminary site plan.

Within 62 days of the receipt by the Board of an application for a preliminary site plan approval or the preliminary public hearing, if one is held, the Planning Board shall act on it. If no decision is made within said sixty-two-day period, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement, embodying the terms of the Planning Board's motion on the application, and

shall state whether or not the preliminary site plan is approved, approved with modifications or disapproved. The Planning Board's statement may include required modifications to be incorporated in the final site plan, and conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

## § 208-118. Application for final site plan approval.

- A. After receiving approval, with or without modifications, from the Planning Board on a preliminary site plan, the applicant shall submit a final, detailed site plan to the Planning Board for approval. If more than six months have elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
- B. The final site plan shall conform substantially to the approved preliminary site plan. It shall incorporate any modifications that may have been required by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission. Any noncompliance shall also be noted. The following additional information shall accompany an application for final site plan approval:
- (1) Record of application for and approval status of all necessary permits from state and county officials.
  - (2) Detailed construction drawings and final material specifications of all required improvements.
  - (3) An estimated project construction schedule.
- C. Public hearing. The Planning Board may conduct a public hearing on the final detailed site plan. Whether or not to hold such a public hearing is solely within the discretion of the Planning Board, following the guidelines set forth in § 208-116C for a preliminary public hearing.
- D. Stormwater pollution prevention plan: A stormwater pollution prevention plan consistent with the requirements of Local Law Number 15 of 2007 shall be required for site plan approval.<sup>[1]</sup> The SWPPP shall meet the performance and design criteria and standards in Section C of this local law.<sup>[2]</sup> The approved Site Plan shall be consistent with the provisions of this local law.  
[Added 12-17-2007 by L.L. No. 13-2007]
- (1) Prior to final site plan approval and issuance of a building permit, the applicant shall certify that the appropriate stormwater permits have been secured for stormwater discharges associated with construction activities and that the SWPPP has been prepared in accordance with the NYS SPDES requirements.

[1]: *Editor's Note: See § 86-7B, C and D.*

[2]: *Editor's Note: See § 86-7C.*

## § 208-119. Determination of board on final site plan.

Within 62 days of receipt of the application for final site plan approval, the Planning Board shall render a decision

to the Building Inspector. If no decision is made within the forty-five-day period, the final site plan shall be considered approved.

- A. Upon approval of the final site plan or conditional approval of the final site plan, and the adequate demonstration to the Planning Board that all conditions have been met and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Building Inspector.
- B. Upon disapproval of a final site plan, the Planning Board shall so inform the Building Inspector, and the Building Inspector shall deny a building permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval.

## § 208-120. Expiration of approval; extension.

- A. The Planning Board approval shall be valid for one year from the date of issuance. If compliance with the site plan is not made by the applicant before the termination of this one-year period, said approval shall automatically terminate, except as provided in § 208-120B below. In this event, the Building Inspector shall revoke the building permit issued to the applicant pursuant to the provisions of § 208-107E hereof, and the applicant must resubmit either preliminary or final site plan for Planning Board review and approval, as directed by the Board. Any developed use of the parcel, lot and building after the termination of such approval pursuant hereto shall be a violation hereof.
- B. The Planning Board may, in its sole discretion, at the applicant's written timely request and, in any event, at least 30 days prior to the expiration of the initial one-year approval, grant the applicant an extension of time within which to comply with the site plan, provided that the applicant has made reasonable, good faith efforts to complete construction and implement the site plan as provided within the aforesaid one-year period, and further provided that such extension shall in no event exceed one year. No further extensions shall be permitted.

## § 208-121. Declaration of covenants, restrictions, conditions and easements.

- A. The Planning Board may request as part of the final site plan approval process that the applicant execute and cause to be recorded in the Saratoga County Clerk's office, a declaration of covenants, restrictions, conditions and easements, imposing affirmative duties on the applicant in conjunction with and in furtherance of the site plan.
- B. Special conditions regarding preservation.  
[Added 11-1-2010 by L.L. No. 8-2010]
  - (1) No owner shall order, allow, or suffer the demolition or destruction of any building or structure in violation of any special condition requiring its preservation on any site plan approved by the Planning Board.
  - (2) In addition to any other remedies available at law, violations of this subsection may be punishable in a civil action for civil penalties pursuant to § 208-111D.

## § 208-122. Issuance of certificate of occupancy upon completion of site plan.

The Building Inspector shall not issue a permanent certificate of occupancy until such time as the Planning Board or its agents shall notify the Building Inspector that the site plan work has been completed in full compliance with the final approved site plan.

## § 208-123. Security requirements.

- A. The Planning Board shall require the applicant to provide the Town of Clifton Park with adequate security to ensure prompt and continuous compliance with the site plan, such security being in the form of a letter of credit or a client fund account, to be held by the Town pending satisfactory completion of the site plan. The amount of such security in whatever form shall be equal to the full estimated cost of the completed site plan. The amount of security necessary shall be determined by the Planning Board after a review of the cost estimate of the site plan prepared by the applicant or his representative. The security may be reduced as implementation of the site plan progresses. It shall not be reduced to less than the amount determined for that work which is still uncompleted plus 20% of the amount determined for that work which is completed and approved. The reduced security shall remain in effect for one year after the date of issuance of the permanent certificate of occupancy, unless required to be extended further as provided for in the following section.
- B. Compliance with Board requirements subsequent to issuance of permanent certificate of occupancy: penalties for noncompliance.
- (1) It is the intent of this subsection that compliance with all Board-approved special conditions shall be required. In that regard, this subsection shall be applicable to all site plan requirements set by the Planning Board (PB), to all special conditions attached to a variance by the Zoning Board of Appeals (ZBA) and to all special conditions attached to a special use permit. In the following subsections of this section, the term "Board" shall mean either the Planning Board or the Zoning Board of Appeals and the term "special conditions" shall mean either a site plan, variance or special use permit, as appropriate.
  - (2) The Town shall, at all times, have the right to reinspect the premises if any Building Inspector has reason to believe the site is not in compliance, either by personal observation, a report from a Town official or board member or upon the receipt of a signed, written complaint alleging that the site is not in compliance and detailing the manner in which the compliance is lacking.
  - (3) Upon receipt of an application for a change of tenancy which affects an entire site (as opposed to a change of an interior tenant, such as the occupant of a single office or a retail store within a mall complex), the Building Inspector shall provide the applicant with a copy of the special conditions and shall have the premises inspected to determine whether the site is in compliance with those approved special conditions. If the site is found to be in compliance, then the applicant shall be so notified. If not, the applicant shall be so advised in writing and no new certificate of occupancy or tenancy shall be issued until the violation has been corrected. If the violation is not correctable (i.e., removal of existing trees which were required to be protected), then the applicant will appear before the appropriate Board to determine what mitigation will be acceptable and, upon completion thereof, a new certificate of occupancy or tenancy shall be issued.

- (4) If, at any time subsequent to the issuance of a permanent certificate of occupancy, the Building Inspector finds that any special conditions have been violated, the owner and/or occupant shall be issued a notice of violation in writing (in the same manner as provided for stop orders in § 208-107F of this chapter) and given 30 days to either bring the site into compliance or to appear before the appropriate Board to determine mitigation and/or secure a time extension, if required. If the owner/occupant elects to appear before the appropriate Board, then the Building Inspector shall issue a revised notice of violation based on the determinations made by the Board.
- (5) If, after having received a notice of violation (or revised notice of violation), the owner fails to correct the violation within the time period stated therein, then the Building Inspector shall issue an appearance ticket under the provisions of § 208-105 of this chapter.

## § 208-124. Waiver of provisions.

Upon written application of an applicant setting forth the reasons why a waiver of any provision of this article is necessary or desirable, the Planning Board may entertain such application. If the Planning Board finds that, because of unusual circumstances of shape, topography or other physical features of the proposed site, extraordinary hardship would result from the strict compliance with this article, it may waive certain provisions of this article so that substantial justice may be done and the public interest secured, provided that no such waiver shall be granted which will have the effect of nullifying the intent or purpose of the Official Map and other articles of this Zoning Chapter or Chapter 179, Subdivision of Land, of the Town. In permitting such a waiver, the Planning Board may require such conditions as will, in its sole discretion, substantially secure the objectives of the standard requirements so changed or modified.

## § 208-125. Integration of additional land use procedures.

Whenever the particular circumstances of the proposed development require compliance with any other land use approval, permit or variance, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this article with the procedural and submission requirements for such other compliance.

## Article XVII. Amendments; Interpretation; Severability

### § 208-126. Amendments.

- A. The Town Board may, from time to time, on its own motion, after public notice and hearing as prescribed by law, amend any portion or all of this chapter. Every such proposed amendment shall be referred to the Town Planning Board for report.
- B. The Town Board is also empowered to adopt such additional rules, regulations and/or procedures as may be deemed necessary in the interest of public health, safety and welfare to implement this chapter and any amendments thereto.

### § 208-127. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the purposes set forth in Article I. Except where expressly provided otherwise, it is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any rule, regulation or ordinance of the Town relating to the use of land or building; nor is it intended by this chapter to interfere with or abrogate or annul any easement, covenant or other agreement between parties; provided, however, that where this chapter imposes a greater restriction upon the use of land or buildings than is imposed or required by any other statute, ordinance, rule or regulation or by any easement, covenant or agreement, the provisions of this chapter shall control. In the event of conflict in the terminology of any section or part thereof of this chapter, the more restrictive provisions shall prevail.

## § 208-128. Severability.

- A. If any provision of this chapter is declared invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to that provision of this chapter directly involved in the controversy which gave rise to the judgment and shall not affect or impair the validity of any other provision of this chapter.
- B. Nothing in this chapter shall be construed to affect any suit or proceeding now pending in any court or any rights arising prior to its enactment pursuant to provisions of law then in effect.

## § 208-129. Effective date.

This chapter shall take effect on January 1, 1997. However, nothing herein contained shall require any change in the plans, construction or designated use of a building for which a permit has been issued or which is actually under construction at the time of passage of this chapter and which entire building shall be completed within one year from the effective date of this chapter.