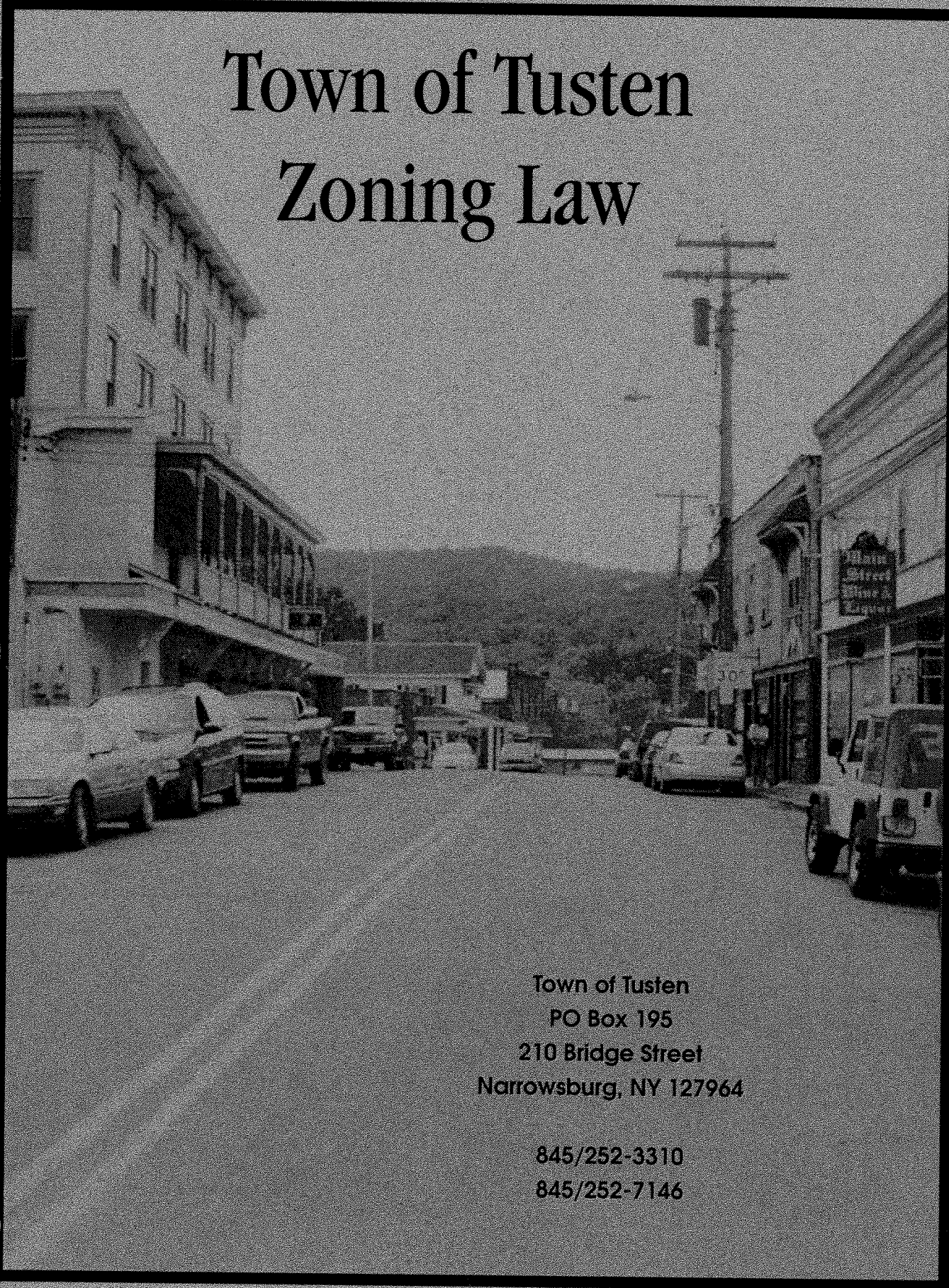
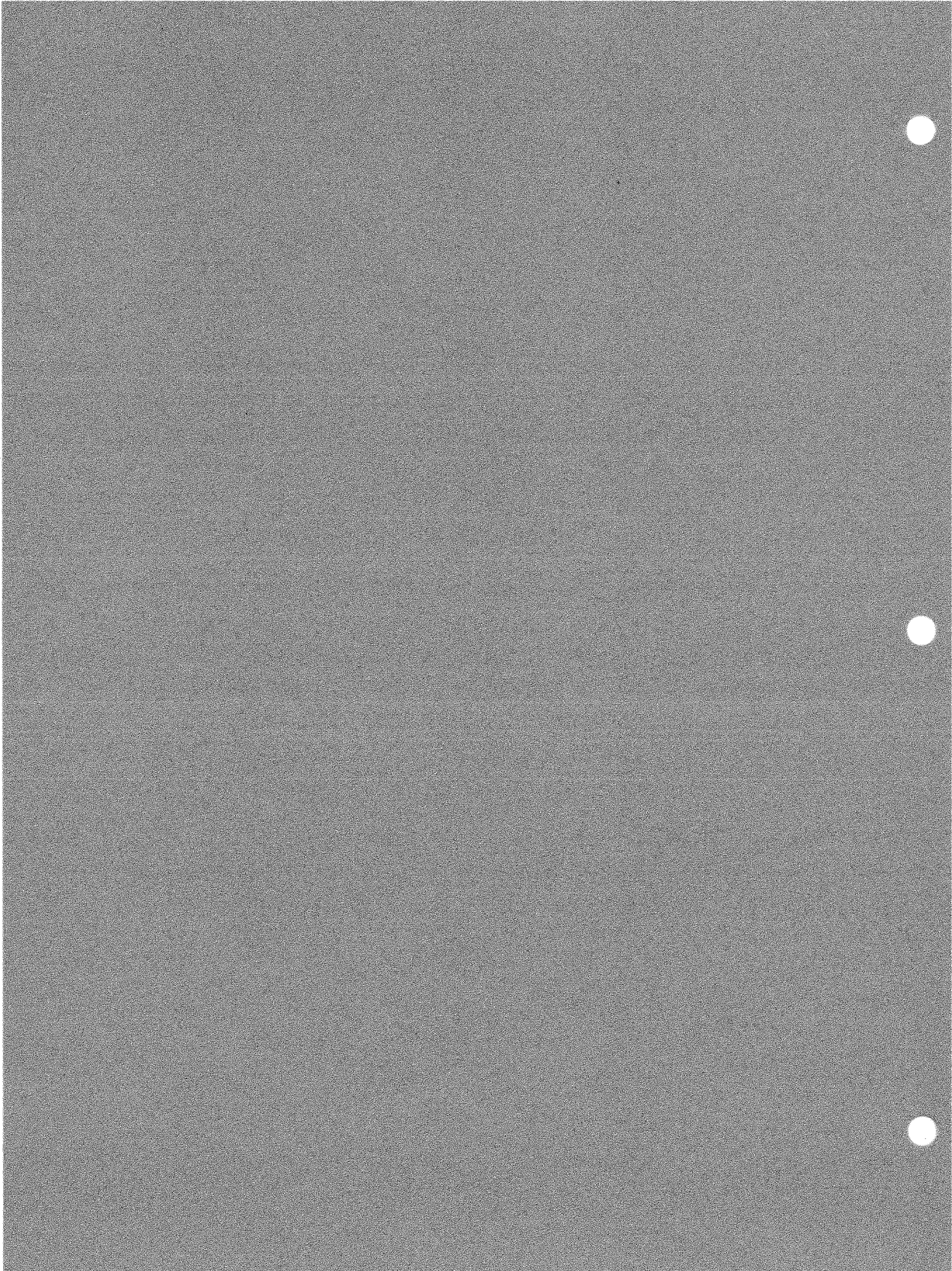


Town of Tusten Zoning Law



Town of Tusten
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210 Bridge Street
Narrowsburg, NY 127964

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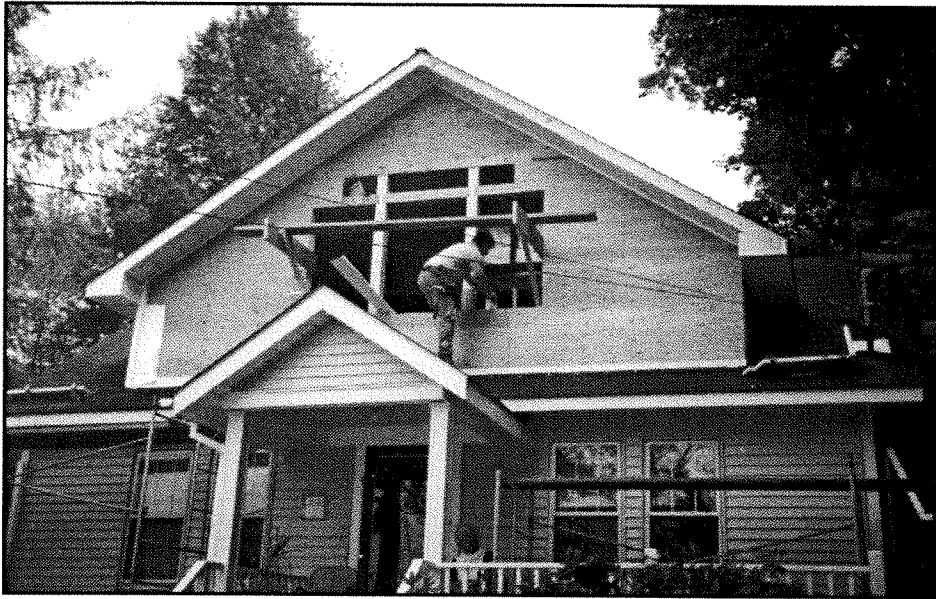




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Upper Delaware Council, Narrowsburg, NY 12764
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TABLE OF CONTENTS

	<u>Page</u>
1.0 GENERAL PROVISIONS	7
1.1 Title	7
1.2 Purpose	7
1.3 Repeal and Replacement	7
1.4 Effective Date	7
1.5 Authority and Supersession	7
1.6 Conflicts and Interpretation	7
1.7 Severability	7
2.0 DEFINITIONS	8
3.0 DISTRICT REGULATIONS	13
3.1 Establishment of Districts	13
3.2 District Boundaries	13
3.3 Special Use Procedures	14
3.4 Small-Scale Enterprises	17
4.0 GENERAL SUPPLEMENTARY REGULATIONS	18
4.1 Exceptions to District Regulations	18
4.2 Access to Structures	18
4.3 Accessory Buildings	18
4.4 Fences and Walls	18
4.5 Permits for Temporary Building	18
4.6 Calculation of Lot Coverage	19
4.7 Abandonment of Construction or Excavation	19
4.8 Minimum Habitable Floor Area	19
4.9 Residential Front Yard Grade	19
4.10 Swimming Pools	19
4.11 Parking, Storage of Vehicles/RV/Equipment	19
4.12 Landscaping Requirements Applicable to Special Uses	19
4.13 Commercial Performance Standards	21
4.14 Areas of Special Flood Hazard	22
4.15 Non-conforming Uses	25
4.16 Parking, Loading, Access & Traffic Standards	31
4.17 Wellhead Protection Overlay District Regulations	32a



5.0	SPECIAL SUPPLEMENTARY REGULATIONS	33
5.1	Manufactured Homes and Parks	33
5.2	Mineral Extraction	34
5.3	Forest Management	34
5.4	Signs	35
5.5	Conservation/Cluster Subdivisions	38
5.6	Multi-Family Residential Uses	39
5.7	Upper Delaware River Provisions	42
5.8	Campgrounds	43
5.9	Animal Husbandry	43
5.10	Home-Based Businesses	43
5.11	Communication Structures	44
5.12	Junkyards	46
5.13	Adult Oriented Businesses	49
6.0	ADMINISTRATION AND ENFORCEMENT	51
6.1	Code Enforcement Officer	51
6.2	Permit Requirements	51
6.3	State Environmental Quality Review Act Compliance	52
6.4	Violations and Penalties	52
6.5	Fees	52
7.0	ZONING BOARD OF APPEALS	53
7.1	Establishment and Membership	53
7.2	Powers and Duties	53
7.3	Procedures	54
APPENDICES:	SCHEDULE OF DISTRICT REGULATIONS	Centerfold
	ZONING DISTRICT MAP	

1.0 GENERAL PROVISIONS

1.1 Title.

This document shall be known and may be cited as the **"TOWN OF TUSTEN ZONING LAW."**

1.2 Purpose.

The purpose of this Zoning Law, its regulations, and its zoning districts as outlined on the zoning map is to provide for orderly growth in accordance with a comprehensive plan, to lessen congestion in streets, to secure safety from fire, flood, and other dangers, to provide adequate light and air, to prevent overcrowding of land, to avoid undue concentration of population, to make provision for, in so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore, to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements, and to promote the health, safety, and general welfare of the public.

1.3 Repeal and Replacement.

This law, upon its effective date, shall repeal, in its entirety, the Town of Tusten Zoning Ordinance adopted in July, 1993 and all subsequent amendments thereto, replacing said Ordinance with this new Zoning Law. All other laws, ordinances or provisions thereof which are inconsistent herewith are also repealed to the extent of such inconsistencies. Applications filed prior and/or works in progress at the time this law goes into effect shall be governed by such laws, ordinance or provisions thereof which shall have been effective when the applications for such projects were made.

1.4 Effective Date.

This law shall take effect immediately upon filing in the Office of Secretary of State.

1.5 Authority and Supersession.

This law regulates, by district, the use of land, buildings and structures in the Town of Tusten in the County of Sullivan. It further provides for the administration and enforcement of these regulations and fixes penalties for this violation. It is adopted under the authority of Article 16 of the New York State Town Law as well as the Municipal Home Rule Law and shall be known as the "Town of Tusten Zoning Law". It is also, pursuant to the authority granted under Section 10 of the Municipal Home Rule Law, the intent of this local law to amend and supersede Sections 130, 274(a), 274(b), 267, 276, 277 and 278 of Town Law to permit the coordinated

and comprehensive regulation of mobile homes and mobile home parks, campgrounds and recreational parks, multi-family dwellings, junkyards and conservation subdivisions and specifically to allow:

1.5.1 The coordination and combination of subdivision and zoning controls as they pertain to multi-family dwellings, and conservation subdivisions.

1.5.2 The integration of junkyard, campground and recreational vehicle park and mobile home park regulations adopted pursuant to Section 130 of the Town Law with site plan and special use review criteria adopted pursuant to Sections 274(a) and 274(b) of the Town Law.

1.5.3 The establishment of special-use and site plan review procedures which provide for State Environmental Quality Review Act ("SEQRA") action following public hearings rather than before, the use of preliminary site plans and employment of renewable special use permits.

1.5.4 Authorization for the Planning Board to require the use of the conservation subdivision techniques and allow density bonuses for using it in supersession of Section 278.3.(b) of the Town Law.

1.5.5 Establishment of a procedure for designation of alternate members on the Zoning Board of Appeals.

1.6 Conflicts and Interpretation.

In the interpretation and the application of the provisions of this law, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other laws, rules, regulations, ordinances or private covenants, provided that where this law imposes greater restrictions upon the use of buildings or premises or upon the height or bulk or a building or requires larger open spaces, the provisions of this law shall apply. In the event of a conflict in any terms or conditions of this law, the more restrictive provisions shall apply.

1.7 Severability.

Should any provision of this law be judged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this law and it is hereby declared that the Town Board would have enacted the remainder of this law had such provision not been included.

2.0 DEFINITIONS

Accessory Building - any building which is subordinate to and whose use is incidental to the use of the principal building on the same lot or an adjoining lot under the same ownership.

Accessory Use - a use subordinate to the main use. In no case shall such use dominate in area, extent or purpose, the principal use.

Acre - for the purpose of calculating lot area under this Law, an acre shall be considered to consist of 43,560 contiguous square feet.

Agriculture - shall include the cultivation of the soil for food products or other useful or valuable growths of the field or garden, tillage or animal husbandry; and shall include but is not limited to dairying, raising of livestock, fowl or birds; provided any of these activities are carried on as a business or gainful operation with gross receipts of \$10,000 or more per year. Agricultural activities conducted as hobbies shall be limited to sites with established principal uses.

Alteration - a change or rearrangement in the structural parts of a building or an enlargement, whether by extending to a side or by increasing the height.

Animal Husbandry the care and breeding of domestic animals, including but not limited to cattle, hogs, horses, poultry and sheep. For purposes of this Law, operation of a kennel shall be considered animal husbandry. Animals for educational or cultural projects and individual household pets such as dogs and cats are exempted.

Automobile, Vehicle and Equipment Sales - The use of any building, land area or other premise for the display and sale, under license by the State of New York, of new and used automobiles of presently operable condition; panel trucks or vans; mobile homes or trailers; recreational vehicles; or farm and construction equipment; including any warranty repair work and other repair service as an accessory use. This term is meant to include auto sale lots but such lots shall be restricted automobile and non-commercial truck sales. It shall also include other automotive uses as may be allowed in each district. None of these terms, however, shall under any circumstance be deemed to include junkyards, collectors of itinerant vehicles or vehicle dismantling operations for other than routine repairs.

Base Flood - the flood having a one percent chance of being equaled or exceeded in any given year.

Basement - that space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the established curb level or finished grade of the ground adjoining the building.

Bed and Breakfasts - An existing residence which is used, in the manner of a home-based business, to provide overnight lodging with breakfast as part of the consideration and involving shared bath and dining facilities, also including youth hostels.

Board of Appeals - the Town of Tusten Zoning Board of Appeals.

Boarding House - a dwelling or part thereof, other than a hotel, motel, or restaurant having not more than six guest rooms and housing not more than fifteen persons for compensation. Meals may or may not be provided. Not to include rest homes or homes for the aged.

Building - a structure wholly or partially enclosed with exterior walls and a roof, affording shelter to persons, animals or property.

Building Height - the height in feet of a building measured from the average elevation of open space which are suitable for the approach of fire department equipment, and curb levels where established, both of which are within 50 feet of the exterior walls of the building to the highest level of a flat or mansard roof, or to the average height of a pitched, gabled, hip or gambrel roof.

Building Setback Line - shall mean the line, designated on a plan, beyond which no part of a building, other than parts expressly permitted, shall extend.

Business and Professional Offices - offices in which an occupation or vocation requiring training and advanced study in a specialized field is practiced. Examples are medical, law and real estate offices.

Campground or Recreational Vehicle Park - a parcel of land used or intended to be used to provide five (5) or more sites for the parking of travel trailers, placement of tents or other temporary or movable sleeping accommodations, which meets all New York State Department of Environmental Conservation and Department of Health regulations.

Canoe Livery - a suitable parcel of land upon which related facilities exist for the leasing or renting of water-borne vessels (primarily canoes) for outdoor water-based recreation.

Certificate of Occupancy and/or Compliance - a form of protection afforded the owner or occupant of a structure by serving as proof of compliance or alteration.

Children's Camp - a facility including buildings for eating and sleeping and amenities such as swimming pools, base ball fields, and tennis courts which are available for use by youths for a fee.

2.0 DEFINITIONS

Aboveground Storage - Storage in a tank or other container that is not entirely covered with earth or other backfill material.

Accessory Building - any building which is subordinate to and whose use is incidental to the use of the principal building on the same lot or an adjoining lot under the same ownership.

Accessory Use - a use subordinate to the main use. In no case shall such use dominate in area, extent or purpose, the principal use.

Acre - for the purpose of calculating lot area under this Law, an acre shall be considered to consist of 43,560 contiguous square feet.

Agriculture - shall include the cultivation of the soil for food products or other useful or valuable growths of the field or garden, tillage or animal husbandry; and shall include but is not limited to dairying, raising of livestock, fowl or birds; provided any of these activities are carried on as a business or gainful operation with gross receipts of \$10,000 or more per year. Agricultural activities conducted as hobbies shall be limited to sites with established principal uses.

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Board of Appeals - the Town of Tusten Zoning Board of Appeals.

Boarding House - a dwelling or part thereof, other than a hotel, motel, or restaurant having not more than six guest rooms and housing not more than fifteen persons for compensation. Meals may or may not be provided. Not to include rest homes or homes for the aged.

Building - a structure wholly or partially enclosed with exterior walls and a roof, affording shelter to persons, animals or property.

Building Height - the height in feet of a building measured from the average elevation of open space which are suitable for the approach of fire department equipment, and curb levels where established, both of which are within 50 feet of the exterior walls of the building to the highest level of a flat or mansard roof, or to the average height of a pitched, gabled, hip or gambrel roof.

Building Setback Line - shall mean the line, designated on a plan, beyond which no part of a building, other than parts expressly permitted, shall extend.

Bulk Storage - Materials stored in large quantities which are usually dispensed in smaller units for use or consumption.

Business and Professional Offices - offices in which an occupation or vocation requiring training and advanced study in a specialized field is practiced. Examples are medical, law and real estate offices.

Campground or Recreational Vehicle Park - a parcel of land used or intended to be used to provide five (5) or more sites for the parking of travel trailers, placement of tents or other temporary or movable sleeping accommodations, which meets all New York State Department of Environmental Conservation and Department of Health regulations.

2.0 DEFINITIONS

Canoe Livery - a suitable parcel of land upon which related facilities exist for the leasing or renting of water-borne vessels (primarily canoes) for outdoor water-based recreation.

Certificate of Occupancy and/or Compliance - a form of protection afforded the owner or occupant of a structure by serving as proof of compliance or alteration.

Children's Camp - a facility including buildings for eating and sleeping and amenities such as swimming pools, base ball fields, and tennis courts which are available for use by youths for a fee.

Clearcutting - removal from a tract of land of substantially all trees, vegetation and underbrush excluding commonly accepted agricultural activities.

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

Commercial Recreation - a parcel of land which may include facilities or equipment for recreational purposes, utilized by the public for a fee. Activities include but are not limited to bowling alleys, ski slopes, canoe liveries, campgrounds, tennis courts and golf courses.

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

Concentrated Animal Feeding Operation - A feeding operation in which animals are kept for more than 45 days in a year and there is no vegetation.

Conservation/Cluster Subdivision - A form of development for single-family and two-family residential subdivisions that permits a reduction in lot area and bulk requirements as compared to conventional subdivisions, provided the saved land area is expressly dedicated to open space.

Contamination - The degradation of natural water quality as a result of human activities to the extent that its usefulness is impaired.

Day Care Centers - facilities, both residential and non-residential, that provide supervision and care of six (6) or more children or adults for period of less than twenty-four (24) hours per day.

Deicing Compounds - Any bulk quantities of chloride compounds and/or other deicing compounds (e.g., urea or calcium magnesium acetate) intended for application to roads, including mixtures of sand and chloride compounds in any proportion where the chloride compounds constitute over eight percent of the mixture. Bulk quantity of deicing compounds means any quantity, but does not include any chloride compounds in a solid form which are packaged in waterproof bags or containers which do not exceed one hundred pounds each.

Disposal - The abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing by any other means of any solid waste, petroleum, radioactive material, hazardous substance, hazardous waste, or wastewater into or onto land or a surface water body.

Dwelling - a building designed or used as the living quarters for one or more families. The term dwelling shall include seasonal homes, modular homes, and mobile homes, provided that they meet all of the requirements of this Law, the New York State Uniform Fire Prevention and Building Code, and all other regulations applicable to dwellings.

Dwelling, one-family - a building containing only one dwelling unit, and occupied by one family.

Dwelling, two-family - a building designed for and occupied exclusively as a home or residence for not more than two families.

Dwelling, multiple-family - a building containing three or more dwelling units with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling Unit - a building or entirely self-contained portion thereof containing housekeeping facilities for only one family, including any domestic employees employed on the premises, and having no enclosed space (other than vestibules, entrances or other hallways or porches) and no cooking or sanitary facilities in common with any other "Dwelling Unit." A boarding house, dormitory, hotel, inn, nursing home or other similar structure shall not be deemed to constitute a dwelling unit. Various dwelling units are regulated differently in some instances (e.g., see "Mobile Home" definition).

Eating and Drinking Establishments - facilities primarily used for the sale of prepared food or beverages for public consumption.

2.0 DEFINITIONS

Educational Institutions - an institution, either public or private, providing full time day instruction and a course of study which meets with the requirements of the New York State Education Law, or a nursery, day care, or kindergarten which meets all pertinent requirements set by the New York State Education Law and the New York State Health Code.

Family - one or more persons occupying a single dwelling unit. No more than five persons unless related by legal adoption, blood, or marriage shall occupy a single family dwelling unit.

Farm - any parcel of land containing at least ten acres which is used for gain in the raising of agricultural products, livestock, poultry, dairy products and cultivation and harvesting of trees. It includes necessary farm structures within the prescribed limits and the storage of equipment used.

Farm Stand - a business operated on a seasonal basis to sell regionally grown farm products.

Fertilizers - Any commercially produced mixture generally containing phosphorous, nitrogen, and potassium which is applied to the ground to increase nutrients from plants.

Flood or Flooding - a general or temporary condition of partial or complete inundation or normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map - the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Forest Management - management of natural vegetation, including but not limited to timber harvesting, firewood, wildlife habitat improvement, and water quality.

Garages - Private - An accessory building or part of a principal building used for the storage of one or more motor vehicles provided that no business, occupation or service is conducted for profit therein. Carport or similarly covered area for the storage or housing of one or more automobiles, with or without walls, but not fully enclosed, is part of this definition.

Garages, Public - Any garage, other than a private garage, operated for gain and available on a rental basis for the storage of motor vehicles.

Groundwater - Water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

Hazardous Substance - Any substance listed as a hazardous substance in 6 NYCRR Part 597, Hazardous Substance List, or a mixture thereof. In general, a hazardous substance means any substance which: (1) because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed; (2) poses a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; (3) because of its toxicity or concentration within biological chains, presents a demonstrated threat to biological life cycles when released into the environment.

Hazardous Waste - A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous wastes include but are not limited to petroleum products, organic chemical solvents, heavy metal sludges, acids with a pH less than or equal to 2.0, alkalies with a pH greater than or equal to 12.5, radioactive substances, pathological or infectious wastes, or any material exhibiting the characteristics of ignitability, corrosivity, reactivity, or fails the Toxicity Characteristic Leaching Procedure (TCLP).

Home-Based Business - shall mean a subordinate use of a non-residential nature which is conducted within a dwelling unit, or building accessory thereto, by an occupant of the dwelling unit, which is clearly incidental and accessory or secondary to the use of the property for residential purposes, and which meets the following additional conditions:

- (1) the occupation or activity shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
- (2) not more than two (2) persons outside the resident household shall be employed in the occupation or as assistants.

2.0 DEFINITIONS

- (3) there shall be no exterior display, or sign except as permitted under this Law; no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the lot or of the surrounding neighborhood.
- (4) no offensive odor, noise, vibration, smoke, dust, heat or glare shall be produced.
- (5) the home occupation shall not generate traffic in any greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the occupation shall be met off the street and in accordance with the regulations of this Law.
- (6) the habitable floor area of the home occupation shall not exceed the habitable floor area of the principal use.

In particular, a home-based business includes, but is not limited to the following: art studio, dressmaking, teaching (with musical instruction limited to a single pupil at a time), and the professional office of a physician, surgeon, dentist, lawyer, engineer, architect, real estate broker or insurance agent within a dwelling occupied by the same.

Hotel - shall mean a building containing rental units occupied for sleeping purposes by guests and where, in general, kitchen and dining room are provided within the building or in an accessory building. A small hotel shall be one of twelve (12) or fewer rental units.

House of Worship - shall mean any structure used for worship or religious instruction including social and administrative rooms thereto.

Human Excreta - Shall mean human feces and urine.

Impervious Surface - any material which reduces and prevents the absorption of storm water into previously undeveloped land.

Light Industrial Use - an establishment, other than a home occupation, used for the assembly, manufacturing, or processing of goods, not including farming.

Livestock Unit - for purposes of this Law a livestock unit shall be one cow or two calves or two horses or two ponies or two pigs or two goats or two sheep or one-hundred fowl or fifty rabbits or equivalent thereof.

Lot - a parcel of land occupied or unoccupied.

Lot Area - the total horizontal area included within lot lines.

Lot, Building - land occupied or to be occupied by a building and its accessory buildings, or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this Law, having not less than the minimum area and width required by this Law for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit for a building on such land.

Lot, Clearing - the percentage of the lot area from which natural vegetation is to be removed.

Lot Coverage - the percentage of the lot area that is occupied by the ground area of a building, its accessory buildings, and other impervious surfaces.

Lot Line - any boundary of a lot. Any lot line not a rear line nor a front line shall be deemed a side line.

Lot Width - the average distance from one side lot line to the other, measured parallel to the front street line.

Major Mineral Extraction - operations extracting greater than 750 cubic yards per year of material such as gravel, rock, stone, sand, fill or minerals from the surface or below the ground, or an operation two acres of active face at one time plus an area equal in size to the active face necessary for accessory use.

Manure - Shall mean animal feces and urine.

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

Manufactured/Mobile Home Park - a parcel or contiguous parcels or land which has been designated and improved for the purpose of placing three (3) or more manufactured homes for occupancy as single-family dwellings.

Mobile Home (a/k/a "Manufactured Home") - a factory-built single-family dwelling constructed on a chassis to facilitate its transportation to the site. Such structures shall be self-contained single units (excludes modular homes), and shall meet the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban

2.0 DEFINITIONS

Development and applicable standards of the New York State Uniform Fire Prevention and Building Code. A manufactured home shall not be construed to be a travel trailer or a recreational vehicle. Double-wides shall be considered manufactured homes, not modular homes.

Modular Home - a factory-built single-family dwelling which is not constructed on a chassis so as to allow repeated towing.

Motel - a building or group of buildings which: (a) contains living or sleeping accommodations used primarily for transient occupancy, and (b) has individual entrances from outside the building to serve each accommodation. A small motel shall be one of twelve (12) or fewer living or sleeping accommodations.

Non-conforming Use - a building, structure or use of land lawfully existing at the time of enactment of this Ordinance which does not conform to the regulations of the district or districts in which it is located.

On-site Consumption - The use of petroleum to heat or cool a residential or non-residential structure or to operate machinery necessary for agricultural activities. On-site consumption does not include the on-site use of petroleum for processing or manufacturing activities or the sale or distribution of petroleum for or into vehicles, except vehicles used for agricultural operations on that site.

Open Space - undeveloped land which is used only for passive recreational purposes, forestry or agriculture.

Outdoor Recreation (Active) - an intensive recreational use particularly oriented to and utilizing the outdoor character of an area of land. Active outdoor recreation involves a certain amount of physical alteration to the land. It may involve the use of motorized vehicles. It shall include, but is not limited to snowmobile, trail bike, jeep and all terrain vehicle trails; skiing facilities and similar activities.

Outdoor Recreation (Passive) - any recreational use particularly oriented to and utilizing the outdoor character of an area of land. Passive outdoor recreation typically involves little or no physical alteration to land and no use of motorized vehicles. It shall include, but is not limited to, cross-country ski trails; hiking and backpacking trails; bicycle trails; horse trails; playgrounds, picnic areas or similar uses.

Performance Bond - a financial guarantee approved by the Town Board and its Attorney, after a review by the Planning Board, which is used to ensure certain improvements will be instituted in the future by the developer.

Pesticide - Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other form of plant or animal life or viruses, except viruses on or in living man/or other animal; and any substance or mixture of substances intended for use a plant regulator, defoliant, or desiccant. These substances include but are not limited to: herbicides, fungicides, insecticides, and rodenticides.

Petroleum - Any petroleum-based oil of any kind which is liquid at 20 degrees Celsius under atmospheric pressure and has been refined, re-refined, or otherwise processed for the purpose of: 1) being burned to produce heat or energy; 2) as a motor fuel or lubricant; or 3) in the operation of hydraulic equipment.

Planned Unit Development - a development design technique concentrating buildings on specific areas of a site to allow the remaining land to be used for recreations, open space, and preservation of environmentally sensitive features.

Principal Permitted Use - for purpose of this Ordinance, any use which is allowed by right in a zoned district without review by the Planning Board or Zoning Board of Appeals.

Public Facilities and Utilities - land set aside for the development and maintenance of services provided for the public good by governmental agencies.

Radioactive Material - Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials which are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or the United States Nuclear Regulatory Commission.

Recreation Vehicles and Equipment - includes motorized boats, boat trailers, trailers, pickup campers or coaches (designed to be mounted on automotive or truck vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Refuse - Anything putrescible or nonputrescible that is discarded or rejected as useless or worthless.

Retail Store - enclosed store for sale of retail goods, personal service shop, department store; shall exclude any drive-up service, free-standing retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

2.0 DEFINITIONS

River Access Facility - a property used as an area of entry to the river for the purpose of launching or landing of watercraft. It may include ancillary facilities, other than base operations for watercraft rentals, and may be operated as a private business.

Septage - The contents of a septic tank, cesspool, or other individual wastewater treatment work which receives domestic sewage wastes.

Service Establishment - a store or office offering the following types of services:

- (1) personal convenience services, including, but not limited to, barber shops, beauty shops, shoe repair, and dry cleaning shops.
- (2) specialty services, including but not limited to, photo studios, tailors, taxidermists, and catering services.
- (3) financial services, including, but not limited to, banks, credit units, and other financial institutions.
- (3) funeral parlors.

Service Station - any garage other than a private garage available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, fueling, or equipping of automobiles or other motor vehicles.

Sewage - The combination of human and household waste with water which is discharged to the home plumbing system.

Sign - any material, structure or device, or part thereof, composed of lettered or pictorial matter, or upon which lettered or pictorial matter is placed when used or located out of doors or outside or on the exterior of any building, including window display area, for display of an advertisement, announcement, notice, directional matter or name, and includes sign frames, sign boards, painted wall signs, hanging signs, illuminated signs, pennants, fluttering devices, projecting signs or ground signs, and shall also include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person or business when the same is placed in view of the general public.

Sign Area - the entire area within a single continuous perimeter enclosing all elements of the sign which form an integral part of the display. The structure supporting a sign shall be excluded unless the structure is designed in a way to form an integral background for the display.

Sludge - The solid, semi-solid, or liquid waste generated from a waste processing facility, but does not include the liquid stream of effluent.

Solid Waste - Any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities.

Special Use - a use which because of its unique characteristics requires individual consideration through a review procedure established by the Planning Board, and may require certain conditions and safeguards before being granted a Special Use Permit.

Spill - Any escape of a substance from the containers employed in storage, transfer, processing, or use.

Structure - anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground.

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

Substandard Lot - any lot on record in the office of the County Clerk which does not meet the minimum area, width, or yard requirements for the district in which that lot is located.

Substantial Improvement - any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) before the improvement or repair is started; or
- (2) if the structure has been damaged and is being restored, before the damage occurred.

For the purpose of this definition "substantial improvements" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

2.0 DEFINITIONS

The term does not, however, include either:

- (1) any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

Surface Water Body - Those water bodies which are identified as drainage features (perennial stream or river, intermittent stream, canals, ditches, etc.), lakes, ponds, reservoirs, springs, or wetlands on United States Geological Survey or New York State Department of Transportation 7.5-minute topographic maps, United States Department of Agriculture soil survey maps, or wetland maps by the New York State Department of Environmental Conservation.

Underground Storage - Storage within a tank or other container which is completely covered with earth or other backfill material.

Variance - a modification of a provision of this Law by the Zoning Board of Appeals where strict enforcement of said provisions would cause undue hardship, owing to circumstances unique to the individual property on which the variance is sought and having not been self-created.

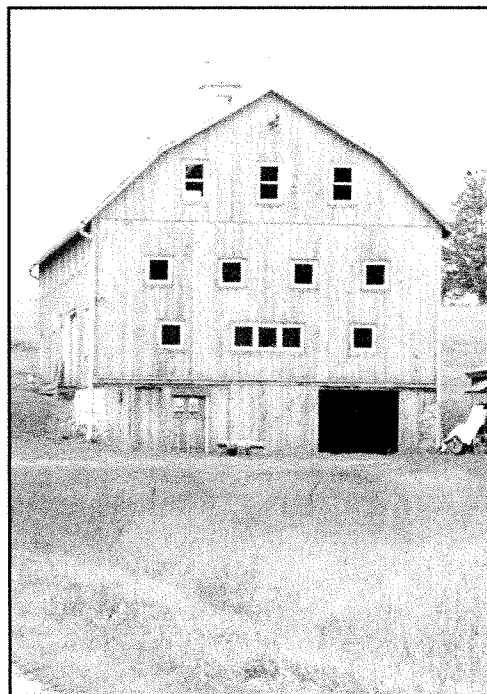
Wastewater - Aqueous carried waste including, but not limited to, dredge spoil, solid waste, hazardous waste, incinerator ash and residue, septage, garbage, refuse, sludge, chemical waste, infectious waste, biological material, radioactive materials, heat, and commercial, industrial, municipal, and agricultural waste.

Wildlife Management - management of natural wildlife and associated habitats with the intent of enhancing such to include both big and small game hunting and fishing activities.

Yard, Front - an open space extending across the entire width of the lot between the building line or front main wall of a building and the center line of the street or road right-of-way 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 into which space there shall be no extension of building parts other than steps, open porches, eaves, cornices and similar fixtures.

Yard, Side - an open space extending across the entire length of the lot between the side wall of the principal building and the side line of the lot and extending through from the front yard to the rear yard, and into which space there shall be no extension of building parts other than steps, open porches, eaves, cornices and similar fixtures. Side yards shall be measured in a line perpendicular to the side lot line.



3.0

DISTRICT REGULATIONS

3.1 Establishment of Districts

3.1.1 Zoning Districts

For the purpose of promoting the public health, safety, morals and general welfare of the Town of Tusten, the Town is hereby divided into the following types of districts:

- (1) Rural Residential (R-1)
- (2) Residential Business (R-2)
- (3) Recreational River (RR)
- (4) Scenic River (SR)
- (5) Downtown Business (DB)
- (6) Roadside Business (RB)
- (7) General Residential (GR)

There is also hereby created three different overlay zones – a Floodplain (FP) District encompassing those portions of the Town mapped by the Federal Insurance Administration as Special Flood Hazard Areas, a Scenic Overlay (SO) District which shall extend to two-hundred-fifty (250) feet on each side of the Route 97 right-of-way edge, and a Wellhead Protection (WHP) Overlay District that has been mapped by New York Rural Water Association as set forth on the Wellhead Protection Overlay District Map dated 5/24/01 and filed with the Town Clerk. Section 4.14 thereof shall apply to FP Districts. The SO District shall require that no building exceed twenty (20) feet in height, front yards be increased by fifty (50) percent, no greater than 60% of vegetation shall be removed (except in RB Districts) and all uses other than residential shall proceed as Special Uses. Section 4.17 thereof shall apply to WHP Districts.

3.1.2 Schedule of District Regulations

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

3.1.3 Zoning Permits

Whenever any owner or occupant of any property in the Town of Tusten shall establish a new use, change an existing use, erect a new building or move, alter, add to or enlarge any land use or building for any purpose or in any manner, such owner or occupant shall first comply with the requirements of this Law and obtain a zoning permit, unless specifically exempted from such requirements by this Law. A zoning permit shall also be required whenever a change in land use occurs, regardless whether any new construction is involved or not.

3.1.4 Uses Not Provided For

If a proposed use is not specifically listed in any category of uses or within any zoning district on the Schedule of District Regulations, the Planning Board shall render a formal determination as to whether or not the use is permitted in a given district and if the use is permitted, it shall then process the application as a Special Use. The Planning Board shall make its determination on the basis of similarities of the use to other specifically listed uses within various districts, taking into consideration the impacts of the use on the community and the neighborhood in which it is proposed. This shall not permit the Planning Board to reclassify uses which are already listed nor shall the Planning Board allow any use which is not listed in a particular district if that use is already permitted in another district.

3.1.5 Minimum Development Standards

The development standards contained herein, including for yards, are minimums and shall apply to each dwelling unit unless otherwise specifically provided. A two-family dwelling shall, for example, require the equivalent of two minimum sized lots insofar as lot area, and yards, as will any two dwelling units on the same property. An exception may be granted as a Special Use, however, when the second unit is restricted to the occupancy of a parent, child or other family member requiring assistance with the activities of daily living.

3.2 District Boundaries

3.2.1 Zoning Map

The boundaries of each of the Districts listed in Section 3.1 are hereby established as shown upon the duly adopted Zoning Map which accompanies this Law, and which with all notations, references, and other matters shown thereon, is hereby declared a

3.0 DISTRICT REGULATIONS

part of this Law and shall be kept on file in the office of the Town Clerk.

3.2.2. Interpretation

- (1) Generally. The District boundary lines, unless shown otherwise, are intended generally to follow street centerlines, railroad right-of-way boundary lines, or their centerlines, other similar right-of-way lines, or lot lines or boundaries of subdivisions, or Town boundary lines, all as shown on the Zoning Map. Where a District boundary line does not follow such a line, but is shown parallel to such a line on the Zoning Map, the distance between the parallel lines shall be as dimensioned on the Zoning Map. Such dimensions shall be construed to read from the centerline of all rights-of-way rather than from their outside edges.
- (2) Scaling. When the location of a District boundary line cannot be otherwise determined, the determination thereof shall be made by scaling the distance on the Zoning Map from a line of known location to such District boundary line.
- (4) Interpretation by Board of Appeals. In the case of uncertainty as to the true location of a District boundary line in a particular instance, an appeal may be taken to the Board of Appeals, as provided in this Law.
- (5) Division of lot. When a District boundary line divides a lot in a single ownership at the effective date of the Ordinance or any subsequent amendment thereto, the Board of Appeals may permit extension into one District of a lawful conforming use existing in the other District as hereinafter provided.

3.3 Special Use Procedures

The Town of Tusten Planning Board is authorized, in accordance with Sections 274-a and 274-b of the New York State Town Law, to review and approve, approve with modifications or disapprove Special Uses and site plans connected therewith. Site plan review shall be required for all Special Use permits and such other uses as the Town Board may from time to time designate by local law. The following procedures shall apply:

- 3.3.1 Preliminary Site Plan. An applicant for a Special Use permit may submit a preliminary site plan for review and advice by the Planning Board. Such a preliminary site plan should provide locations and dimensions of the proposed use in relation to the property boundaries and adjacent uses. It should also indi-

cate all accesses and improvements both existing and proposed and any site features which could have a bearing on the project including the general topography and existing ground cover. This preliminary plan shall be used by the Planning Board as a basis for advising the applicant regarding information it shall require on the site plan before it conducts a public hearing or takes any action with respect to the plan. The Planning Board shall give no approval or disapproval regarding any preliminary site plan but may use it to schedule a public hearing, determine if any provisions of this article should be waived or begin its review of the application under the New York State Environmental Quality Review Act ("SEQR").

- 3.3.2 Application and Site Plan Required. The Planning Board shall be under no obligation to schedule a public hearing or take any action with respect to a Special Use permit application until formal application has been made on forms provided by the Board and a detailed site plan providing the following information has been submitted:

- (1) The location of all existing watercourses, wooded areas, rights-of-way, roads, structures or any other significant man-made or natural feature, if such feature has an effect upon the use of said property.
- (2) The location, use and floor or ground area of each proposed building, structure or any other land use, including sewage disposal and water supply systems.
- (3) The location of all significant landscaping and ground cover features, both existing and proposed, including detailed planting plans and a visual depiction or rendering of the final appearance of the property after all landscaping and other physical improvements are completed.
- (4) The location, dimensions and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or regrading involved.
- (6) The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
- (7) The location and identification of proposed open spaces, parks or other recreation areas.

3.0 DISTRICT REGULATIONS

- (8) The location and design of buffer areas and screening devices to be maintained.
 - (9) The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
 - (10) The location of public and private utilities, including maintenance facilities.
 - (11) The specific locations of all signs existing and proposed, including a visual depiction of the latter.
 - (12) Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height and general design or architectural styling.
 - (13) A completed SEQR Environmental Assessment.
 - (14) Any other information required by the Planning Board which is clearly necessary to ascertain compliance with the provisions of this law and limited to such information.
- 3.3.3 Waivers. The Town of Tusten Planning Board shall, pursuant to Section 274-a(5) of the Town Law, have the right to waive, when reasonable, any of the requirements of this article for the approval, approval with modifications or disapproval of Special Use permits and site plans submitted for approval. This waiver authority may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or are inappropriate to a particular site plan. Any such waiver shall be subject to the following conditions:
- (1) No waiver shall result in allowing a use not permitted within the applicable Zoning District.
 - (2) No waiver shall be given with respect to standards outside the scope of this article which would otherwise require a variance from the Zoning Board of Appeals.
 - (3) Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data and create unnecessary costs with regard to deciding the matter at hand, due to the scope or nature of the project involved. The proposed enclosure of a deck or a simple change of use with no significant structural modifications in the case of a commercial property, for example, might not require typical cross-sections for proposed regrading or water supply data.
- (4) An applicant for site plan approval who desires to seek a waiver of certain of the above-referenced requirements pertaining to such applications shall submit a preliminary site plan as provided above. The Planning Board shall review the preliminary site plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such site plan as adequate when, in its judgment, the information submitted is sufficient to make a determination of compliance with the development standards contained herein and the intent of site plan review criteria found below.
 - (5) Nothing herein shall authorize the Planning Board to waive State Environmental Quality Review requirements.
- 3.3.4 Hearing and Decision. The Planning Board shall fix a time, within sixty-two (62) days from the day an application for a Special Use permit or site plan approval is made, for the hearing of any matter referred to under this section. It shall give public notice of such hearing at least five (5) days prior to it in a newspaper of general circulation in the Town and decide upon the application within sixty-two (62) days after such hearing. It shall not, however, grant approval before a decision has been made with respect to environmental impacts pursuant to SEQR. The decision of the Planning Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five (5) business days after such decision is rendered.
- 3.3.5 Conditions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental the proposed Special Use permit or site plan. Upon approval of said permit and/or plan, any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the applicant to provide parkland or to provide fees in lieu thereof pursuant to Section 274-a(6) of the New York State Town Law.
- 3.3.6 Referrals. The Planning Board is authorized to refer Special Use permit applications and site plans to other local or regional agencies, groups or professionals employed or used by the Town for review and comment and to charge the applicant fees for any reasonable expenses connected therewith. The Board shall, in particular, ensure that the requirements of Section 239-m of the General Municipal Law regarding review by the Sullivan County Division of Planning and Community Development are met. It shall

3.0 DISTRICT REGULATIONS

also comply with all requirements of the New York State Environmental Quality Review Act.

- 3.3.7 Appeals. Any person aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.
- 3.3.8 Effect of site plan approval. The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board. The site plan shall remain effective, as an authorization to establish the use, for a maximum of two (2) years from the date of approval unless the Planning Board shall have granted an extension in writing. Absent such an extension the Special Use shall be deemed to have expired. A Special Use which has been discontinued for a period of two (2) or more years shall also be deemed to have lapsed.
- 3.3.9 Renewal of permits. The Planning Board may require, at the time it is initially granted, that any Special Use approval be renewed periodically. Such renewal shall be granted following public notice and hearing and may be withheld only upon a determination that the conditions attached to any previous approval have not been met. A period of sixty-two (62) days shall be granted the applicant in such cases to make remedies and bring the use into full compliance with the terms of the Special Use approval. Should the applicant fail to make such remedies, the Special Use approval shall be revoked and the use immediately discontinued.
- 3.3.10 Planning Board Review. The Planning Board, in reviewing the Special Use application and site plan, shall consider its conformity to the Town of Tusten Comprehensive Plan and the various other plans, laws and ordinances of the Town. Where appropriate, the Upper Delaware River Management Plan may also be considered. Conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire town shall be part of the Planning Board review. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The Planning Board shall further consider the following:
- (1) Building design, lighting, location and signs insofar as suitability for the use intended and impact on and compatibility with the natural and man-made surroundings.

- (2) Storm drainage, flooding and erosion and sedimentation control.
- (3) Adequacy of community services and utilities including police protection, emergency services and the educational system.
- (4) Environmental impacts in any form including, specifically, those affecting the Upper Delaware National Scenic and Recreational River and the objectives of the River Management Plan.
- (5) Impacts on housing availability.
- (6) The potential for nuisance impacts such as noise, odors, vibrations or glare.
- (7) The adequacy of the trees, shrubs and other landscaping to buffer or soften a use in terms of visual or other impacts on adjoining property owners, Town residents and those visitors on whom the local economy often depends.
- (8) Impacts on nearby property values.
- (9) Any other factors which reasonably relate to the health, safety and general welfare of present or future residents of the Town of Tusten.

3.3.11 The Planning Board, in acting upon the Special Use application and site plan, shall also be approving, approving with modifications or disapproving the Special Use permit application connected therewith taking into consideration not only the criteria contained above but also the following:

- (1) Whether the proposed use will result in an overconcentration of such uses in a particular area of the Town or is needed to address a deficiency of such uses. The Board shall, in this regard, consider the suitability of the site proposed for a particular use as compared to the suitability of other sites in the immediate area.
- (2) Whether the proposed use will have a detrimental or positive impact on adjacent properties or the health, safety and welfare of the residents of the Town of Tusten.
- (3) If the proposed use is one judged to present detrimental impacts, whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
- (4) Whether the use will have a positive or negative effect on the environment, job creation, the

3.0 DISTRICT REGULATIONS

economy, housing availability or open space preservation.

- (5) Whether the granting of an approval will cause an economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies and fire-fighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply, but not be limited to, additional fees to support fire-district expenses.
- (6) Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character this Law and the Town's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

3.4 Small-Scale Enterprises

Small-Scale Enterprises listed for RB and DB Districts shall be processed as Principal Permitted Uses, notwithstanding their classification on the Schedule of District Regulations and provided the uses are allowed in the district as Special Uses. The following factors shall be applied to determine if a use will qualify as a Small-Scale Enterprise. The determination shall be made by the Town of Tusten Planning Board.

- 3.4.1 The proposed activity or expansion of an existing conforming activity shall use less than 5,000 square feet of building floor area.
- 3.4.2 The proposed use shall not involve the outside storage of materials or supplies except for minor incidentals and a maximum of three (3) vehicles used in everyday service on behalf of the business.
- 3.4.3 Regardless of its classification, the proposed use shall comply with landscaping, parking, sign and other performance standards and shall not involve any activity which could be construed as a junkyard within the meaning of this Law.
- 3.4.4 The activity shall not pose the potential to cause a nuisance to surrounding property owners; adversely

impact the peace, health, or safety of neighborhood residents; or cause a deviation from the character of the neighborhood. Factors for evaluating this standard shall be:

- (1) Traffic - whether or not the business is generating traffic that is excessive and/or detrimental to the neighborhood. A Small-Scale Enterprise will be allowed to generate no greater than one-hundred (100) vehicle trips per day, based on estimates provided by the Institute of Transportation Engineers. However, based on the characteristics of a specific neighborhood, these amounts may be lowered or raised, at the discretion of the Planning Board. The factors which shall be used for such a determination include, but are not limited to, pertinent characteristics of the neighborhood such as width of properties, width of the streets, hills, curves, the number of children present and the ability to secure a highway occupancy permit.
- (2) Parking - whether or not parking problems could result from the use. Factors shall include, but not be limited to: 1) except for special gatherings, parking required for the business shall be provided on-site or be limited to the area along the frontage of the property on the street; 2) parking on the property shall be on a surface equal in quality to the paving surface of any existing driveway unless there is no surface other than the ground, in which case a gravel surface shall be provided; and 3) no Small-Scale Enterprise shall be permitted which requires parking of tractor-trailer combinations along the street on a continuing basis.
- (3) Nuisance - whether or not the use is presently or could potentially cause a nuisance to surrounding property owners or is deviating from the character or appearance of the neighborhood.

No Small-Scale Enterprise, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this Law. Any addition or expansion, excepting for those of less than 5,000 square feet to an existing conforming use, which takes a use above the upper limits established for a Small-Scale Enterprise shall be processed as a Special Use.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.1 Exceptions to District Regulations

4.1.1 Height Exceptions

The height limitations of these regulations shall be waived for farm structures, private home antennae, spires, belfries, cupolas, water tanks, ventilators, chimneys, solar energy devices, windmills, transmission towers, flag poles, skylights, or other opportunities usually required be placed above the roof level and not intended for human occupancy.

4.1.2 Yard Requirements

The following structures are exempted from the yard requirements indicated in Section 3.0:

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

4.1.3 Corner Lots.

- (1) Front yard setbacks are required on both street frontages and one yard other than such front yards shall be deemed to be the rear yard and the other a side yard.
- (2) No obstructions to vision, including but not limited to fences, walls, signs, brush, dense low trees, or earth, shall be permitted at street intersections within the triangle formed by the intersections of street center lines and a line drawn between points along such lines 75 feet distant from their point of intersection.

4.2 Access to Structures

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

4.3 Accessory Buildings

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

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

4.4 Fences and Walls

- 4.4.1 Shall not exceed six (6) feet in height from ground level, except as Special Uses.
- 4.4.2 Shall conform to corner lot requirements where applicable.
- 4.4.3 Shall provide for emergency equipment access and, except for farm fences, require the consent of adjoining property owners when placed on a property line.
- 4.4.4 Shall be maintained in good repair.

4.5 Permit for Temporary Building

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

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.6 Calculation of Lot Coverage

In determining the percentage of lot coverage, all principal buildings, roofed porches, garages, carports and other accessory buildings or impervious surfaces shall be included.

4.7 Abandonment of Construction or Excavation

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

4.8 Minimum Habitable Floor Area

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

4.9 Residential Front Yard Grade

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

4.10 Swimming Pools

- 4.10.1 Swimming pools having a depth of two (2) feet or more shall not be located within required yard areas.
- 4.10.2 All fencing associated with swimming pools shall comply with the New York State Uniform Fire Prevention and Building Code requirements for the same.

4.11 Parking, storage or use of motor vehicles and recreational vehicles and equipment

- 4.11.1 It shall be unlawful to park or store unregistered or unlicensed motor vehicles or trailers of any kind on any lot other than in an enclosed building, EXCEPT THAT one unregistered unlicensed motor vehicle or trailer may be parked or stored upon an occupied residential property, provided it is visually screened from the road or adjacent lot or lots.

- 4.11.2 Recreational vehicles or other equipment may be parked or stored on any occupied lot or approved campground provided it complies with the front, side and rear setback requirements and further that it not be parked closer to the front lot line than the principal building, unless the front yard is the only available parking area.

- 4.11.3 No such recreation vehicle or equipment shall be used for living, sleeping, or housekeeping in excess of 14 days in a sixty day period when parked on an individual parcel or in any location except an approved campground, and then only when a temporary camping permit has been issued by the Code Enforcement Officer and the appropriate camping fee, as established by the Town Board has been paid. The owner of a residential lot occupied by a principal dwelling is exempted from the camping fee. All other articles of this law shall be complied with.

- 4.11.4 Existing recreation vehicles shall be brought into compliance with this standard within sixty(60) days of the enactment of this ordinance.

- 4.11.5 All New York State Department of Health regulations, including the disposal of sewage, must be complied with.

4.12 Landscaping Standards Applicable to Special Uses

- 4.12.1 The Planning Board shall, to assure an acceptable buffer between adjacent residential and non-residential uses and create a healthy, safe and aesthetically pleasing environment in the Town, require a landscape plan be prepared as part of any Special Use application. Such a plan shall also be required whenever any non-residential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other and other uses.

- 4.12.2 The landscape plan shall specify locations of all mature shade trees or other species of six (6) inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.12.3 Landscape plans shall be prepared by a licensed landscape architect or other design professional qualified to perform such services and include consideration of all man-made and natural features, including signs. The provider of materials shall be also permitted to prepare plans provided they are in sufficient detail to meet the standards herein.

4.12.4 The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals and seek the non-binding advice of interested civic organizations concerned with community beautification. The Board shall also specifically consider the following before approving, approving with modifications or disapproving the Special Use:

- (1) The plan should promote attractive development, preserve existing vegetation to the maximum extent possible, enhance the appearance of the property and complement the character of the surrounding area.
- (2) The plan should use landscaping to delineate or define vehicular and pedestrian ways and open space.
- (3) The plant material selected should be of complementary character to buildings, structures and native plant species and be of sufficient size and quality to accomplish its intended purposes.
- (4) The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.
- (5) The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to climate planting zone 4 as the designation is used in the nursery industry.

4.12.5 Landscaping Standards. All new landscaping required shall meet the following minimum specifications:

- (1) The minimum branching height for all shade trees shall be six (6) feet.
- (2) Shade trees shall have a minimum caliper of two and one-half (2-1/2) inches (measured 1 foot above grade) and be at least twelve (12) feet in height when planted.
- (3) Evergreen trees shall be a minimum of six (6) feet in height when planted.

- (4) Shrubs shall be a minimum of 24" in height when planted. Hedges shall form a continuous visual screen within two (2) years after planting.
- (5) A buffer screen at least fifteen (15) feet in width along any residential lot line shall be provided. It shall include, at a minimum, an opaque wooden stockade fence six (6) feet in height and one (1) evergreen tree for every fifteen (15) linear feet of property line. An additional row of evergreens meeting these standards and off-set such that each row serves to place trees between the gaps of the other, shall be permitted as a substitute for the stockade fence. No stockade or similar fence, however, shall exceed eight (8) feet in height or be placed in such a way as to purposely interfere with the views from or admission of light and air to an adjoining residential property. Other yards shall be landscaped in accord with subsection (6) below.
- (6) A landscape strip at least fifteen (15) feet in width, that includes at least one (1) deciduous tree for every 35 linear feet of perimeter lot line shall be required for any non-residential use. Such deciduous trees shall also be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the highway but still allow for visibility of the use. The width of this buffer may be reduced along the rear and side lot lines for good cause, but not along the front lot line.
- (7) All lot area (except where existing vegetation is preserved) shall be landscaped with grass, ground cover, shrubs, or other appropriate cover.
- (8) The preservation of mature shade trees shall be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Code Enforcement Officer or Planning Board, as the case may be, determines the purpose of this section is achieved.

4.12.6 Where it is determined that a proposed Special Use would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified but not be waived unless no new construction is involved.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.12.7 A performance guarantee in the amount of one-hundred-twenty-five percent (125%) of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition one (1) full year and any required fencing is properly maintained. The Code Enforcement Officer or Planning Board, as the case may be, shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Code Enforcement Officer shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned or infested plant materials. The requirement to maintain such fencing and landscaping shall continue beyond the period of the guarantee and the Code Enforcement Officer may proceed as provided herein to remedy any deficiencies in this regard.

4.12.8 All applicable requirements of these landscaping regulations shall be fully met prior to the Code Enforcement Officer granting a Certificate of Occupancy for a new building or use subject to these regulations.

4.13 Commercial Performance Standards

Wherever a commercial or manufacturing or other non-residential use, with the exception of agricultural activities and home-based businesses, is proposed as a Special Use, the following performance standards shall apply and be an additional basis for review of the Special Use application. The Code Enforcement Officer shall ensure these standards are met prior to issuing a Certificate of Occupancy for the use and may require the applicant(s) to provide documentation of compliance.

4.13.1 Where a commercial or manufacturing use is contiguous to an existing residential use in any District (including those situated on the opposite side of a highway), the Planning Board may require that the minimum front, side and rear yards be increased by up to fifty percent (50%). The Board may also require, for purposes of separating incompatible activities or shielding the residence from negative impacts, that a buffer consisting of a solid fence of wood and/or a twenty (20) feet wide dense evergreen planting not less than six (6) feet high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded.

4.13.2 All activities involving the manufacturing, production, storage, transfer or disposal of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Fire-fighting and fire suppression equipment and devices shall be provided pursuant to National Fire Protection Association guidelines. Burning of waste materials in open fires is prohibited. Details of the potential hazards and planned safety and accident response actions shall be provided by the applicant and the Planning Board may require that greater front, side and rear yards and/or fencing.

4.13.3 No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.

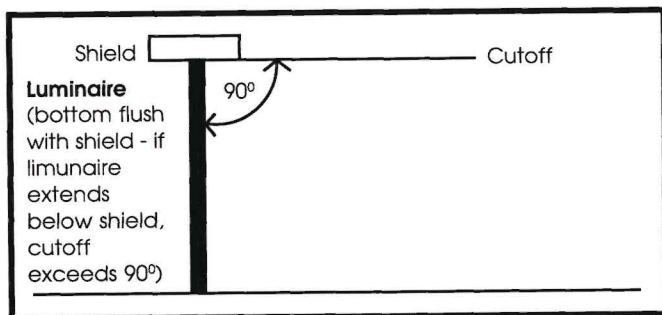
4.13.4 The outdoor day-night average sound level (DNL) from any activity, in decibels at the property line, shall not exceed seventy (70) decibels. The Code Enforcement Officer in the investigation of a violation may initially estimate DNL using the "Walk-Away Test" as described in the U.S. Department of Housing and Urban Development's Noise Assessment Guidelines. Should the test indicate a DNL exceeding 70 decibels the Officer shall notify the owner and any aggrieved party of his findings and the potential violation. He shall also recommend appropriate abatement measures. Should a subsequent investigation still indicate a problem the average sound level shall be determined using a sound level meter. The Planning Board, in reviewing a Special Use application, may also apply such noise standards as are recommended for the proposed use by State or Federal authorities or industry sources. Sound levels from activities on a site need not be continuous but must regularly occur for a violation to exist. Examples include speakers, motors and blasting, any of which are operated or performed on a recurring basis. Agricultural activities shall be exempt from these requirements.

4.13.5 No vibration shall be permitted on a regular or continuing basis which is detectable without instruments at the property line.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

- 4.13.6 All lighting shall be designed so as to avoid unnecessary or unsafe spill-over of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source. Light sources shall comply with the following standards:

Type of Light Source	Maximum Illumination Permitted at Property Line	Maximum Permitted Height of Light
Globe light	0.20 Footcandles	15 Feet
>90% Cutoff	0.75 Footcandles	25 Feet
<90% Cutoff	2.00 Footcandles	30 Feet



No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line on a regular or continuing basis, shall be permitted.

- 4.13.7 No emission shall be permitted on a regular or continuing basis from any chimney or otherwise, of visible grey smoke of a shade equal to or darker than No. 2 on the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954.
- 4.13.8 No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted on a regular or continuing basis which can cause any damage to health, to animals, vegetation, or other forms of property, or which can cause any excessive soiling.
- 4.13.9 All activities involving the possible contamination of surface or ground water shall be provided with adequate safety devices to prevent such contamination. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and planned safety devices and contamination response actions shall be provided by the developer.

- 4.13.10 Whenever a vehicle and equipment sales, mechanical and body repair use is proposed as a Special Use, or as an expansion of an existing non-conforming use, the following additional performance standards shall apply:

- (1) All mechanical and body repair work shall be performed within buildings.
- (2) All automobile or vehicle parts, new or used, shall be stored within buildings, including waste oil products.
- (3) Vehicles which are temporarily on the property awaiting to be repaired, shall be stored in an area which meets the minimum yard and buffer requirements applicable for the district and the use.

- 4.13.11 Persons engaged in activities involving the disposal of food wastes, animal wastes or other products or processes which have the potential to generate persistent noxious odors shall ensure such odors do not extend beyond the property line and take such measures as required to ensure the same. The Code Enforcement Officer shall determine what constitutes a persistent noxious odor in a given circumstance. To be noxious an odor must generate a severe olfactory response in a typical human being.

4.14 Areas of Special Flood Hazard

- 4.14.1 Establishment and Delineation of Areas of Special Flood Hazard.

4.14.2 Permitted Uses

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

- (1) Agricultural uses such as pasture or grazing as long as they do not require development within the flood plain.
- (2) Private and public recreational areas such as swimming areas, open space, wildlife or natural preserves, hunting and fishing areas, hiking and horseback trails as long as they do not require development within the flood plain.

4.0

GENERAL SUPPLEMENTARY REGULATIONS

- (3) No uses shall diminish or constrict the capacity of the channel or floodway of any watercourse, or any tributary to the main stream, or any other watercourse, drainage ditch or any other facility or system to discharge the waters from the base flood.

4.14.3 Issuance of Building Permits

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

4.14.4 Building Standards for Variances

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

- (1) New construction or substantial improvement of any residential structures shall have the lowest habitable floor, including basement, elevated to at least one foot above the base flood elevation at that point.
- (2) New construction or substantial improvement of any non-residential structures shall either have the lowest floor including the basement, elevated to, or above, the base flood level, or together with attendant utility and sanitary facilities, be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting external water pressure and effects of buoyancy. The design of

flood proofed structures may include the following measures or techniques as appropriate:

- (a) Anchorage to resist flotation and lateral movement.
 - (b) Reinforcement of walls to resist water pressure.
 - (c) Installation of watertight doors, bulkheads and shutters.
 - (d) Use of paints, membranes, or mortars to reduce seepage of water through walls.
 - (e) Addition of mass or weight to resist flotation.
 - (f) Installation of pumps to lower water levels in structures.
 - (g) Pumping facilities to relieve water pressure on external walls and basement floors.
 - (h) Elimination of gravity flow drains.
 - (i) Construction to resist rupture or collapse caused by water pressure or floating debris.
- (3) Mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors. Specifically:
 - (a) Over-the-top ties shall be provided at each of the four corners of the mobile home with two additional ties per side at intermediate locations, except that a mobile home less than 50 feet in length requires only one additional tie per side.
 - (b) Frame ties shall be provided at each corner of the mobile home with five additional ties per side at intermediate points, except that a mobile home less than 50 feet long need have only four additional ties per side.
 - (c) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
 - (d) Any additions to the mobile home shall be similarly anchored.
 - (4) All new construction or substantial improvements of buildings and other structures, including new

4.0 GENERAL SUPPLEMENTARY REGULATIONS

or replaced utility and sanitary facilities, shall include the following measures as appropriate:

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

4.14.5 Encroachments

In all areas of special flood hazard in which base flood elevation data has been provided, the cumulative effect of any proposed development, when combined with all other existing and antici-

pated development, shall not increase the water surface elevation of the base flood more than 1 foot at any point.

4.14.6 Local Submission, Filing, and Public Record

- (1) Application for a variance within a Special Flood Hazard Area shall, in addition to standards set forth in Section 4.14, be accompanied by written certification of either a professional engineer or architect licensed to practice in the State of New York that the appropriate standards of Section 4.14 have been met, and all necessary permits have been obtained from those federal, state, and local governmental agencies from which prior approval is required. Such application shall be kept on file with the Town Clerk and shall be available for public inspection.
- (2) The Code Enforcement Officer shall obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structure contains a basement. He shall also obtain, verify, and record the actual elevation to mean sea level to which any new or substantially improved non-residential structures in a Special Flood Hazard Area have been flood proofed. All such records shall be maintained for public inspection.

4.14.7 Subdivision Proposals

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

4.14.8 Watercourse Alteration

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

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.15 Non-conforming Uses

4.15.1 Rights to Continue Nonconforming Uses.

- (1) A use, building, lot or structure lawfully in existence as of the effective date this law and non-conforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Code Enforcement Officer may issue Certificates of Non-Conformance to owners or operators of bona fide non-conforming uses, buildings or structures who desire confirmation of their rights hereunder.
- (2) It is the purpose of this Section to limit the injurious impact of non-conforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of non-conforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration.
- (3) It is further the purpose of this Article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a non-conforming use and to establish when Town review and approval shall be required for such actions.
- (4) The protections extended by this Article to existing non-conforming uses, buildings, lots or structures, commonly known as "grandfathering", shall not extend to any non-conforming activity occurring subsequent to the effective date of this law, as amended.

4.15.2 Normal Maintenance and Repairs.

- (1) Normal maintenance and repair activities, such as painting, replacing a roof or fixing gutters, shall be permitted. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas or result in extended or increased non-conforming use of a building, lot or structure.
- (2) Increases in outside storage or display of retail or wholesale inventory, which in the ordinary course of business would be sold within one year, shall

be permitted, junkyards excepted, provided they do not eliminate parking spaces, unoccupied open spaces or accesses required by this law. Notwithstanding this provision, however, the Planning Board, in reviewing any Special Use application for expansion or upon determining, with respect to any present use, that a condition exists which requires remedies, may establish limits on such storage or display or require removal of inventory (altogether or to another location on the site) to preserve adequate sight distances and residential buffers or otherwise protect public health, safety and welfare.

4.15.3 Restoration, Reconstructions or Re-establishment.

- (1) If less than 75% of the floor area of any non-conforming use, building or structure is damaged, it may be restored or reconstructed within eighteen (18) months of the date of the damage, with an extension in time allowable where proven necessary to the Planning Board. If more than 75% is affected, then the replacement or reconstruction shall be permitted by Special Use permit.
- (2) A non-conforming use, building or structure may be re-established within a period of twelve (12) months after it has been abandoned.
- (3) A non-conforming use, building or structure shall be considered abandoned under the following circumstances:
 - (a) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or assessments or other measures which demonstrate the enterprise is going out of business or the use is otherwise ending; or
 - (b) The building has not been occupied for two (2) years or more; or
 - (c) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town; or
 - (d) The equipment and furnishings used in furtherance of the non-conforming use have been removed from the premises.
- (4) The Code Enforcement Officer, on determining these circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use is considered abandoned and

4.0 GENERAL SUPPLEMENTARY REGULATIONS

may not be re-established once a period of twelve (12) additional months has expired. If an owner cannot be reached through the mail, the Code Enforcement Officer shall publish the notice once in a newspaper of general circulation in the Town and the owner shall be presumed to have been notified.

4.15.4 Changes and Additions.

Excepting for activities provided for in 4.15.2 above and accessory uses, all changes and additions to non-conforming uses shall be considered Special Uses, and permits for alterations, changes in use or additions shall be granted only after a determination by the Planning Board that the following conditions have been, or will be, satisfied.

- (1) There shall be no expansion in the amount of land area outside a non-conforming facility which is used for storage of materials, supplies and/or products, excepting with respect to those types of uses outlined 4.15.2 above and sub-section (2) below.
- (2) Where the non-conforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
- (3) No addition, change or expansion of a non-conforming use shall further violate setback and/or height regulations of the district in which it is located in any material way. Moreover, no change of use shall be to one of less restrictive classification, as determined by the Planning Board. A non-conforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.
- (4) There shall be no increase in the amount of storm water runoff for the site over what was existing as of the date of the enactment of this law. The U.S.D.A. Soil Conservation Service, a Professional Engineer or other appropriate professional may be relied upon to recommend appropriate measures to control storm water runoff. Such measures shall be attached as conditions of approval by the Planning Board.
- (5) In no case will a change, addition or extension of a non-conforming use be allowed which would result in a traffic increase of 50% or more, the di-

version of traffic closer to a nearby residence or a violation of any of the parking and unloading requirements of this law. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this law, the Planning Board may require vegetative screening of the parking area from nearby residential areas.

- (6) The use may only be expanded or extended onto another property of record if; that property is immediately adjacent to the lot on which the original structure or use was located as of the effective date of this law or amendments hereto and the use is not one which has been altogether prohibited as a new use under this law.
- (7) Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this law, the requested expansion or extension shall be denied.

4.15.5 Non-Conforming Lots.

All proposals for use of non-conforming lots (those not meeting area, frontage, width or yard requirements) shall be subject to Special Use approval by the Planning Board. Upon the Board's approval the Code Enforcement Officer shall issue a building permit provided:

- (1) The lot was on record in the office of the County Clerk prior to this enactment of this Law.
- (2) The proposed use can comply with the requirements of the Town of Tusten Sewage Disposal Ordinance.
- (3) No yard is reduced to less than one-half the normal requirements applicable to the zoning district in which the proposed use is located.
- (4) No part of any septic system is located closer than fifty (50) feet to a property line or one-hundred (100) feet to a well on the same property or another.
- (5) No well is located closer than fifty (50) feet to a property line or one-hundred (100) feet to any part of a septic system on the same property or another.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

4.16 Parking, Loading, Access and Traffic Standards.

4.16.1 Off-street parking, loading and unloading facilities shall be provided as necessary in connection with every use. Single-family and two-family residential uses shall be provided with two (2) or more off-street parking spaces per dwelling unit. Parking needs with respect to all other uses shall be determined in conjunction with site plan review. The amount of parking required shall be based on the following factors:

- (1) Industry studies of parking needs for the type of use proposed or actual case-study comparisons for projects of similar character. The Planning Board may require the developer or applicant to gather and submit such data in support of its proposed parking provisions. The National Parking Association and the Urban Land Institute are examples of such industry sources.
- (2) The characteristics of the proposed customers, residents, occupants or visitors to a given facility. Housing for the elderly would, for example, require fewer spaces per dwelling unit than time-shared recreational units, though the number of dwelling units might be the same.
- (3) The expected occupancy rates, traffic levels and numbers of employees in connection with any enterprise and the degree to which these directly relate to parking requirements.
- (4) Recommendations, if any, from other public agencies or information sources which suggest, based on experience, the appropriate amount of parking in connection with a given use.
- (5) The likelihood that parking will be shared with adjoining facilities, the impact of daily peak visitation or use periods on demand and the hours of operation as compared to other neighborhood activities. Shared parking is encouraged but no parking space shall be counted more than once in meeting the standards herein
- (6) Where industry standards are inadequate for the particular use or site involved or such standards are unavailable, the following standards may be applied by the Planning Board or Code Enforcement Officer, as the case may be:

(a) Home-Based Businesses

1 space per 100 sq. ft. of floor area devoted to use

(b) Hotels/motels

1 space per rental room

(c) Industrial uses

1 space per 400 sq. ft. floor area

(d) Commercial uses

1 space per 200 sq. ft. floor area

(e) Places of public assembly

1 space per 5 seats

(f) Offices

1 space per 300 sq. ft. floor area

(g) Restaurants

1 space per 50 sq. ft. floor area

(h) Auto service stations

4 spaces plus 1 per employee

4.16.2 Each parking space shall consist of not less than an average of two hundred seventy (270) square feet of usable area for each motor vehicle, including interior driveways, driveways connecting the garage, or parking space, with a street or alley. Garages, carports, and driveways not in the public right-of-way may be considered parking spaces.

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

4.16.4 All parking areas which are designed to accommodate twelve (12) or more vehicles shall be landscaped using materials of sufficient growth and height to aesthetically balance the impact of the open paved area and provide effective stormwater control. The following minimum layout standards shall apply:

- (1) No more than twelve (12) parking spaces shall be allowed in a continuous row uninterrupted by landscaping. Raised planting beds shall be located at intervals of twelve (12) spaces and at the end of each row. Such beds shall be a minimum of five (5) feet in width and each planted with at least one (1) shade tree of 2 - 1/2 inch caliper. The remainder of the bed shall be surfaced with flowers, grass, groundcover, low maintenance shrubs and/or mulches (no crushed stone or chips).
- (2) Planting beds meeting the above standards shall also be required along the perimeter of all parking areas and between parking areas and buildings. The area between a parking area and any building shall be a minimum of ten (10) feet in width, however.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

- (3) No parking areas shall be designed such that a vehicle might directly back out onto a public highway or through road within the development. Traffic flows through a parking area shall be minimized and limited to connections from one lot to another and to the public highway or through road.
- (4) All parking spaces associated with commercial uses shall be located not more than three-hundred (300) feet distant from the nearest entrance to the inside of the structure wherein the enterprise is situated.
- (5) Parking areas shall generally be located in the rear yard of any use, with the principal building situated at or near the front lot line. This is for the purpose of maintaining the continuity of the building line along any highway and avoiding the effective merger of parking areas along a highway into one mass of pavement where entrances and exits become difficult to identify.

4.16.5 Any building erected, converted or enlarged for commercial, office, manufacturing, wholesale, institutional or similar uses shall, in addition to the off-street parking space required above, provide adequate off-street areas for loading and unloading of vehicles. Public rights-of-way shall, under no circumstance, be used for loading or unloading of materials. The minimum size loading space shall be sixty (60) feet in depth and twelve (12) feet in width, with an overhead clearance of fourteen (14) feet.

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

- (1) Access drives shall not open upon any public right-of-way within (80) feet of the nearest right-of-way line of any intersecting public street or highway or where the sight distance in either direction would be less than two-hundred (200) feet. Access drives onto state highways shall be subject to New York Department of Transportation standards.
- (2) There shall be no more than one entrance and one exit to any business or parking area on any one highway unless safety considerations should demand it. Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits.

In no case shall one entrance and exit be located within 80 feet of any other on the same property or adjoining property along the same public right-of-way. Non-conforming lots, however, shall be exempt from this requirement.

4.16.7 All non-residential parking and loading areas and parallel circulation and service lanes shall be separated from the paving edge of a public thoroughfare or adjoining property lines by a planting strip at least twenty (20) feet in depth.

4.16.8 The Planning Board, at its discretion, may require a traffic impact study with any Special Use application involving an activity likely to generate more than five-hundred (500) trip-ends per day based on the following daily rates:

Residential uses	9.6 trip-ends per dwelling unit
Industrial uses	3.3 trip-ends per employee
Restaurants	7.9 trip-ends per seat
Fast-food restaurant	23.9 trip-ends per seat
Convenience market	605.6 trip-ends per 1,000 sq. ft. gross floor area
Supermarket	177.6 trip-ends per 1,000 sq. ft. gross floor area
Car wash	108.0 trip-ends per car stall
Offices	6.0 trip-end per employee
Other commercial uses	50.0 trip-ends per 1,000 sq. ft. gross floor area
Institutional uses	4.0 trip-ends per employee
Other uses	See "Trip Generation" - Institute of Transportation Engineers

The study shall examine existing and projected traffic flows before and after development and generally follow the guidelines set forth for such studies by the Institute of Transportation Engineers. Its purpose shall be to ensure that proposed developments do not adversely affect the transportation network and to identify any traffic problems associated with access to the site from the network. It shall identify solutions to potential problems and any improvements needed. The scope of the study shall be approved in advance by the Planning Board with the final product incorporated in the SEQR submission.

4.0

GENERAL SUPPLEMENTARY REGULATIONS

4.17 Wellhead Protection Overlay District Regulations

4.17.1 The purpose and intent of establishing a Wellhead Protection District (WHP) is to facilitate the adequate provision of water through the elimination or prevention of groundwater contamination in the vicinity of public drinking water supply wells operated by the Narrowsburg Water District.

4.17.2 There is hereby established within the Town of Tusten, a Wellhead Protection Overlay District. This district is delineated on the Town Zoning Map and/or are contained on a map entitled Wellhead Protection Overlay District Map dated 5/14/2001 and filed with the Town Clerk's office.

4.17.3 The Wellhead Protection Overlay District shall be considered as overlaying other existing districts as shown on the zoning map. Any uses not permitted in the underlying district shall not be permitted in the Wellhead Protection Overlay District. Any uses permitted in the underlying district shall be permitted in the Wellhead Protection Overlay District, except where the overlay district prohibits or imposes greater or additional restrictions and requirements. In any cases where conflicts arise between these requirements and any other existing regulations, the more restrictive regulations shall apply.

4.17.4 Should any part of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

4.17.5 Prohibited Uses and Activities. The following uses and activities are specifically prohibited in the Wellhead Protection Overlay District in order to safeguard groundwater resources:

- (1) Establishment of any solid waste management facility or hazardous waste treatment, storage, or disposal facility, including but not limited to: solid waste storage area or facility; transfer station; rail-haul or barge-haul facility; raw waste landfill; sanitary landfill; solid waste landfill; ash landfill; construction and demolition debris landfill; disposal facility; solid waste incinerator; refuse-derived fuel processing facility; pyrolysis facility; construction and debris processing facility; land application facility; composting facility; surface impoundment; used oil storage, reprocessing, and rerefining facility; recyclables handling and recovery facility; waste tire storage facility; junkyard; salvage yard; impoundment yard; dump; radiological waste facility; pathological

or medical waste facility; or hazardous waste treatment, storage, or disposal facility.

- (2) Establishment of the following uses: airport; appliance/small engine repair shop; asphalt/concrete/coal tar plant; auto repair and body shop; boat service, repair, and washing establishment; cemetery; chemical/biological laboratory; chemical processing/manufacturing plant; car wash; cleaning service (dry cleaning, laundromat, commercial laundry); concentrated animal feeding operation with more than 300 livestock units; electric/electronic/communications equipment manufacturer; fuel oil distributor; furniture manufacturer/stripplier/painter; gasoline station; golf course; jewelry and/or metal plater; lawn care business; machine shop; metal manufacturer/fabricator/finisher; oil and gas drilling and production; pesticide store; pest control business; petroleum product refiner and/or manufactures; photo processor and/or printer; road and maintenance depot; trucking or bus terminal; or wood preserving/treating establishments.
- (3) Surface land application of septage, sewage, sludge, human excreta, or wastewater.
- (4) Disposal of solid waste, petroleum, radioactive material, hazardous substance, or hazardous waste into or onto land or a surface water body.
- (5) Use of the following types of wells to inject non-hazardous fluids to the subsurface: air conditioning return flow wells; large capacity cesspools including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides; cooling water return flow wells used to inject water previously used for cooling; drainage wells used to drain surface fluids, primarily storm runoff, into the subsurface; dry wells used for the injection of wastewater to subsurface formations; septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank; injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; injection wells used in experimental technologies; motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, or any facility that does any vehicular repair work.

4.0 GENERAL SUPPLEMENTARY REGULATIONS

- (6) Outdoor uncovered stockpiling or bulk storage of coal, deicing compounds, manure, pesticides, or fertilizers.
- (7) Discharge from the washing of fertilizer/pesticide application equipment into any surface water body.
- (8) Use of water directly from a surface water body for fertilizer/pesticide makeup.
- (9) Disposal of snow containing deicing salts/chemicals removed from streets, roads, and parking areas that has been transported from areas outside of the Wellhead Protection Overlay District.
- (10) Deicing salts application in excess of the minimum amount needed for public safety (note: calcium chloride shall be used instead of sodium chloride where necessary to limit sodium input to groundwater). In determining the minimum amount needed for public safety, entities should consider best management practices developed by the New York State Department of Transportation.
- (11) Construction of commercial pipelines or piping systems that carry petroleum or liquid hazardous substances/waste.
- (12) Construction of on-site wastewater treatment systems designed for or capable of surface or subsurface discharges of one thousand gallons per day (1,000 gpd) or more.
- (13) Underground storage of petroleum products, hazardous substances, hazardous waste, pesticides, and fertilizers.
- (14) Aboveground storage of petroleum except for replacement of existing facilities or for on-site consumption.
- (15) Outdoor, aboveground storage of hazardous substances or hazardous waste.
- (16) New mining or commercial extraction of soils, sands and gravels except for the purpose of on-site construction.

4.17.6 Site Plan Review. Except for the development of one (1) single-family or two-family dwelling unit, any proposed use wholly or partially within the Wellhead Protection Overlay District shall be required to have site plan approval by the Planning Board

prior to the issuance of a zoning permit or a certificate of occupancy by the Code Enforcement Officer. Except for residential uses, site plan approval must be obtained by the Planning Board for any alteration, reconstruction, or structural change of a use or activity within the Wellhead Protection Overlay District that is non-conforming with Section 4.17.

4.17.7 Requirements of site plan submission. Applicants proposing a use in the Wellhead Protection Overlay District which requires a site plan review in accordance with Section 4.17.6 shall include the following information in addition to, and not instead of, any other required information on a site plan:

- (1) Map(s), plan(s), and a narrative report that details the location of the premises and all features of the system necessary for the satisfactory conveyance, storage, distribution, use and disposal of stormwater, process wastes, wastewater, petroleum, hazardous substances and wastes, solid waste, and incidental wastes.
- (2) A description of the means of water supply. For uses involving withdrawal of groundwater, an estimate of the total daily withdrawal rate.
- (3) A complete list, including an estimate of the volume in pounds dry weight and liquid gallons, of all petroleum, chemicals, pesticides, fuels and other hazardous substances/wastes to be used, generated, and stored on the premises.
- (4) A description of proposed measures to protect all storage containers or facilities associated with such materials from vandalism, accidental damage, corrosion and leakage.
- (5) A description of the proposed measures for containing and cleaning up a spill of hazardous substances/waste and notifying the Town of Tusten and other appropriate local and state officials of a spill, leak, or other discharge as required by law, including but not necessarily limited to, chemical and bulk storage guidelines by the New York State Department of Environmental Conservation (NYSDEC).
- (6) A description of proposed storage facilities for hazardous wastes and provisions for the disposal of these wastes by licensed waste haulers.
- (7) A description of proposed measures to control runoff and drainage from the site.

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- (8) A landscape plan that indicates predevelopment areas of undisturbed, natural vegetation and proposed post development areas of undisturbed, natural vegetation.
- (9) Copies of any permits and applications made to any other governmental agencies.
- (10) A completed Full SEQRA Environmental Assessment Form.
- (11) Information and materials as may be required elsewhere.
- (12) Comments on the proposed use provided by the Narrowsburg Water District Superintendent.

4.17.8 Site plan approval criteria. A site plan within the Wellhead Protection Overlay District shall be approved by the Planning Board only after the proposed use meets the following criteria:

- (1) The proposed use complies with all pertinent requirements as set forth in Section 4.17.
- (2) The proposed use affords adequate protection to prevent contamination and depletion of the groundwater resources that provides drinking water for municipal wells operated by the Narrowsburg Water District. In making such determination, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of any control measures proposed and the degree of threat to water quality and quantity which would result if the control measures failed.

GENERAL SUPPLEMENTARY REGULATIONS

- (3) The Planning Board may require changes or additions to the Site Plan as a condition of approval to safeguard groundwater resources. No building permit and no certificate of occupancy shall be issued unless and until such conditions have been fully met or performed. All improvements to the site shall be completed in strict conformance with the site plan as approved

4.17.9 Nonconforming Uses and Activities.

- (1) A use or activity lawfully in existence as of the effective date of Section 4.17 and non-conforming with Section 4.17, may be continued, except where specifically prohibited from continuing by these rules and regulations.
- (2) A use or activity within the Wellhead Protection Overlay District that is non-conforming with Section 4.17 shall not be enlarged in size so as to occupy a greater area of land or floor area than was committed to the nonconforming use at the time of enactment of Section 4.17.
- (3) A use or activity within the Wellhead Protection Overlay District that is non-conforming with Section 4.17 shall not be altered, reconstructed, or structurally changed in any way that increases its nonconformity or degree of threat to groundwater quality at the time of enactment of Section 4.17.
- (4) Except for residential uses, site plan approval must be obtained by the Planning Board for any alteration, reconstruction, or structural change of a use or activity within the Wellhead Protection Overlay District that is non-conforming with Section 4.17.



5.0 SPECIAL SUPPLEMENTARY REGULATIONS

5.1 Manufactured Homes and Parks

Manufactured (a/k/a "mobile") homes and manufactured home parks shall be subject to the requirements of the Town of Tusten Manufactured Home Law and the following standards and review criteria.

- 5.1.1 Individual manufactured homes shall be subject to all the regulations applicable to other single-family detached dwellings. They may be installed in Districts where permitted (see Schedule of District Regulations) or on a single lot not in a manufactured home park, provided they meet the following specific standards.

- 5.1.2 Standards applicable to individual manufactured homes.

- (1) Every manufactured home, whether sited individually or situated in a manufactured home park shall have not less than twelve (12) feet in width and five-hundred (500) square feet of living area. This standard shall not be met by including any living area later added to the basic manufactured unit.
- (2) All manufactured homes shall be sited on a reinforced slab or a masonry foundation, which foundation and the area up to the floor level of the manufactured home shall be screened from view from the highway and from adjoining properties by skirting acceptable to the Planning Board. The Planning Board may individually approve such skirting and associated landscaping plans or adopt appropriate standards for use of the Code Enforcement Officer in administering this provision.
- (3) All manufactured homes and associated structures shall comply with the New York State Uniform Fire Prevention and Building Code to the extent that such Code is applicable.

- 5.1.3 Manufactured Home Park Special Use and Site Plan Review Criteria

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

- (1) The location of the park shall be one demonstrably suitable for such use, with proper drainage and provisions for stormwater control such that the amount of water leaving the site after devel-

opment shall not be greater than prior to development.

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

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

opment, however, shall comply with the requirements of this law and the Town of Tusten Subdivision Law.

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

5.2 Mineral Extraction

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

5.3 Forest Management

- 5.3.1 Any person proposing to engage in commercial logging or forestry operations within the Town of Tusten shall first obtain a permit from the Town Code Enforcement Officer for each project. A permit may

be amended in writing to cover additional locations. Such permit shall be good for six (6) months duration but may be extended for successive periods of six (6) months each provided the operation continues to comply with all requirements contained herein. The permit application shall be made on forms to be developed by the Code Enforcement Officer and shall be accompanied by a \$25 fee, which fee amount may be adjusted from time to time by resolution of the Town Board. The application shall require only the following information; (1) names, addresses and phone numbers for the property owner and commercial logger, (2) the dates between which timber harvesting will take place, and (3) a location map depicting where the logging will take place, the site of any landing and the proposed access to the public highway system.

- 5.3.2 No permit issued hereunder for clearcutting of more than one (1) acre or more of forest land shall be allowed without prior review by the Planning Board.
- 5.3.3 Logging roads constructed to provide access to County, State or Town roads shall be improved with crushed stone at the entrance for a minimum distance of one-hundred (100) feet into the property being logged to reduce the tracking of mud and debris onto such roads except where the amount and duration of the activity is, in the judgment of the Code Enforcement Officer, so small as to not warrant such measures.
- 5.3.4 During the period of operation the operator shall comply with New York State Department of Environmental Conservation Forest Practice Board standard practice requirements and timber harvest guidelines and no operations shall take place without a permit from the Town or while one is revoked.
- 5.3.5 The purpose of this permit system shall be to ensure repairs, where necessary, to any Town roads and compliance with good forest practice as defined by the New York DEC Forest Practice Board. The Code Enforcement Officer shall be authorized to immediately revoke the permits of any commercial logger who shall not comply with these requirements until such compliance is secured and failure to comply shall require the permanent ceasing of all activity by said logger within the Town of Tusten. Commercial loggers who shall fail to comply with these requirements shall also be ineligible for any future logging permits within the Town.

5.4 Signs

5.4.1 Exempt signs.

The following signs are permitted in any district:

- (1) Directional or informational signs not exceeding four (4) square feet.
- (2) Signs necessary for public safety or welfare erected by any federal, State, County or Town agencies.
- (3) Signs identifying a construction project and the specialists concerned, not exceeding eight (8) square feet for a dwelling and ten (10) square feet for other buildings.
- (4) Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or non-profit organizations; not to exceed six (6) square feet in area.
- (5) Flags and insignia of any government, except when displayed in connection with commercial promotion.
- (6) Name and number plates, identifying residents, which may be mounted on a post, house, apartment, or mailbox. Numbers shall not be less than four (4) inches in height and clearly marked.
- (7) Lawn signs identifying residents, not to exceed one (1) square foot in area, or two (2) square feet if double-faced.
- (8) Non-illuminated warning, private drive, posted or no trespassing signs, not to exceed two (2) square feet per face.
- (9) One on-premise sign, either free standing or attached, in connection with any residential building in any zoning district, for permitted professional offices or home occupations, not to exceed five (5) square feet and set back at least ten (10) feet from the highway right-of-way. Such sign shall state name and location only. Illumination shall not produce a direct glare beyond the limits of the property line.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

- (10) Temporary signs for garage sales and auctions, not to exceed ten (10) square feet for a period not to exceed ten (10) consecutive days in any thirty (30) day period except with a sign permit.
- (11) Temporary non-illuminated "For Sale", "For Rent", real estate signs and signs of a similar nature, concerning the premises upon which the sign is located. In any zoning district one sign not to exceed ten (10) square feet per side in area. All such signs shall be removed immediately after the sale, lease or rental of the premises.
- (12) One temporary sign for a roadside stand selling agricultural produce providing that such sign not exceed ten (10) square feet in area and be set back at least ten (10) feet from the public right-of-way.
- (13) Temporary, non-illuminated window signs and posters providing such do not exceed twenty-five (25) percent of the window surface.
- (14) Holiday decorations, including lighting may be displayed in any district without a permit.
- (15) At gasoline stations:
 - (a) Integral graphics or attached price signs on gasoline pumps.
 - (b) Two (2) auxiliary signs per station, each not exceeding two (2) square feet in area.
 - (c) One (1) portable sign per station, not exceeding twelve (12) square feet in area, and four (4) square feet in height.
- (16) Political posters, banners, promotional devices and similar signs, not exceeding four (4) square feet in area and in residential district nor sixteen (16) square feet in area in the business district providing:
 - (a) Placement shall not exceed forty-five (45) days and any and all such signs must be removed within seven (7) days following the event which was promoted. If a sign is left posted after the seven (7) day expiration, it will be considered as litter.
 - (b) The name and address of the sponsor and of the person responsible for removal is identified.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

5.4.2 Additional Permitted Signs

Additional signs, meeting the standards below, are permitted in all Districts other than SR and GR, provided the total area of all such signs does not exceed two (2) square feet for each one lineal foot of building frontage or one (1) square foot for each lineal foot of lot frontage. Within the RR District such additional signs shall be permitted but be limited to one (1) square foot per two (2) lineal feet of building frontage. Such signs shall be subject to Planning Board review as Special Uses if they exceed twenty-four (24) square feet in size and all off-premises signs shall be so reviewed.

5.4.3 Prohibited Signs

- (1) No off premises signs such as billboards and advertising signs shall be allowed other than as specifically permitted herein and none shall exceed thirty-two (32) square feet in surface area.
- (2) Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.
- (3) Signs or graphics which impair or cause confusion of vehicular or pedestrian traffic, by design, color or placement. No sign shall obstruct the sight distance of the motorist at a street corner or intersection by placement and location within twenty-five (25) feet of the intersection of the street or highway lines.
- (4) Signs placed upon the roof of any building.
- (5) Signs consisting of banners, pennants, ribbons, streamers, spinners or similar moving fluttering or revolving devices.
- (6) Advertising messages spread over more than one sign placed along a street or highway.
- (7) Signs with more than two (2) faces.
- (8) Portable signs, except as otherwise permitted herein.
- (9) Signs attached with nails, spikes, staples or similar devices to utility poles or trees not on the sign owners property, and without his or her permission.

5.4.4 Standards for Permitted Signs

The following standards shall apply to permitted signs:

- (1) All signs other than those specified in Section 5.4.1 above as exempt shall require a sign permit issued by the Town of Tusten Code Enforcement Officer.
- (2) No sign shall exceed thirty-two (32) square feet in total sign area or more than twenty (20) feet in height from ground level.
- (3) Ground signs, where the bottom of the sign is flush or nearly flush with the ground, the area around the sign is landscaped and the sign does not exceed eight (8) feet in height, may be as large as forty-eight (48) square feet in sign surface area on each side.
- (5) Where groups of four (4) or more contiguous stores are located together in a shopping center, one ground sign shall be permitted, not exceeding one-hundred (100) square feet in area, denoting the name of the shopping center and the stores contained in it. Additional signage pertaining to each store may be permitted as provided above but shall be limited to signs placed on the walls of the enterprise. No other free-standing signs, other than exempt signs, shall be permitted.

5.4.5 Special Signage Requirements for SR and RR Districts

Due to the recognized need to maintain the scenic quality of the Town the following additional requirements pertain to all signs with the Recreational River (RR) and Scenic River (SR) Districts:

- (1) All signs should be subdued in appearance, harmonizing in design and color with surroundings employing earth-tone colors wherever possible.
- (2) All commercial businesses are limited to one identification sign located on the premises and related to the use.
- (3) All directional signs for commercial buildings or businesses shall comply with any uniform signage identification program established through the cooperation of local, state, and federal governmental agencies.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

5.4.6 Construction Standards for Signs

The following standards are directed at assuring that all signs in the municipality are constructed in a manner to assure the safety of the community:

- (1) All signs shall be securely anchored.
- (2) All signs, sign finishes, supports, and electric work shall be maintained clean, neatly painted, and free from all hazards, such as, but not limited to, faulty wiring and loose supports, braces, guys and anchors.
- (3) Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of eight (8) feet.
- (4) All free standing signs shall be at least ten (10) feet from any highway right-of-way line, and least twenty (20) feet from any other lot line.
- (5) Signs may be illuminated by a steady light, provided that lighting does not illuminate adjacent property. Sign illumination shall not impair or cause confusion of vehicular or pedestrian traffic, said determination to be made by the Code Enforcement Officer.

5.4.7 Non-Conforming Signs

- (1) No non-conforming sign shall be enlarged or replaced by another non-conforming sign.
- (2) No alteration or repair shall be made to a non-conforming sign involving a cost in excess of 50 percent of the value of the sign.
- (3) A non-conforming sign may be temporarily removed for painting or other normal maintenance for a period not to exceed one (1) month.

5.4.8 Procedure for a Sign Permit

- (1) Application for a sign permit shall contain or have attached thereto the following information and material:
 - (a) A fee as established by the Town Board.
 - (b) Drawings at an appropriate scale as necessary to show the design, dimensions, and colors of the graphics and sign structure, details of any illumination sources, and placement of the sign relative to the building or

structure on which it is located and/or in relation to nearby buildings, structures, street lines and property lines.

- (c) Such other information as the Code Enforcement Official may reasonably require to determine full compliance with this and other ordinances, laws and regulations.
- (2) The Code Enforcement Officer or designated official shall transmit one copy of the application and accompanying material to the Planning Board for their information and files.
- (3) If a sign authorized by a permit is not completed and in place within 6 months, said permit shall become null and void.
- (4) Design, construction, and placement of a sign shall not deviate in any substantial manner from the plans approved for issuance of permit.
- (5) The Code Enforcement Officer or designated official may, at his or her discretion, have the Planning Board review individual sign application permits for their comments and suggestions concerning recommendations for approval or denial of such application. See also § 5.4.2 above.

5.4.9 Removal of Signs

Any sign, existing on or after the effective date of this law, which no longer advertises an existing business conducted or product sold shall be removed according to the following procedures:

- (1) If the Code Enforcement Officer shall find that any sign regulated in this law is not used, not properly maintained, is allowed to continue to exist in a de-faced or vandalized condition, is abandoned, unsafe or insecure, or is a menace to the public, he shall give written notice to the named owner of the land upon which it is located, who shall remove or repair the sign within 30 days from the date of the notice. If the sign is not removed or repaired within the time period, the Code Enforcement Officer shall revoke the permit issued for such sign if any, and may remove or repair the sign and shall assess all costs incurred for such service against the owner of the sign.
- (2) The Code Enforcement Officer may cause any sign which is a source of immediate peril to persons or property to be removed immediately and without notice.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

- (3) If the sign is in good repair, the owner has 90 days from the time the sign no longer advertises an existing business conducted or product sold to either change the advertisement to advertise a new business or product sold, or remove the sign.

5.5 Conservation/Cluster Subdivisions.

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

5.5.2 The Planning Board may require conservation/cluster subdivisions, as a form of development, in those instances where conventional subdivisions or residential developments would cause significant loss of open space or otherwise result in significant negative environmental impacts.

5.5.3 Conservation/cluster subdivisions provide for single-family or two-family dwelling units wherein dwelling units are grouped in sections in order to maximize the amount of common open space and to preserve the natural settings. Proposed developments shall be processed in the same manner as a major subdivisions and in accord with the standards below.

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

5.5.5 The maximum permitted number of dwelling units shall be determined by deducting from the total tract area:

- (1) All areas within the rights-of-way of any existing or proposed streets; and

- (2) All areas occupied by public utility easements.
- (3) All wetlands, floodplains, slopes of 15% or more, water bodies and other undevelopable areas.

The net figure shall then be divided by the minimum lot size applicable and rounded to the nearest whole number of dwelling units permitted.

5.5.6 Only single-family detached and two family dwellings shall be employed in this concept. All other dwelling types shall be considered multi-family dwellings.

5.5.7 Development standards for lot size, lot width and lot depth may be reduced, provided no dwelling structure (single-family or two-family) is located on less than 43,560 square feet of land where on-site sewer and water facilities are to be provided or 21,780 square feet of land where centrally supplied sewer and water facilities are to be provided; and further provided the total density (in individual dwelling units) for the tract shall not exceed that which would result from a conventional subdivision plan designed in accord with this Law plus a bonus of up to 20%, as determined from the basic Sketch Plan submission. Yard requirements may also be reduced, but in no instance to less than forty (40) feet from the front yard and thirty (30) feet for the side and rear yards.

5.5.8 No individual parcel of common open space shall be less than one (1) acre except as to roadway median strips, traffic islands, walkways, trails, courtyards, play areas, recreation facilities, drainageways leading directly to streams, historic sites or unique natural features requiring common ownership protection. No less than 50% of the total land area of the conservation subdivision shall be dedicated to permanent open space and at least 50% of the such open space shall be usable for active recreational activities by residents of the subdivision and not include water bodies, wetlands, floodplains, slopes over 15% in grade or other undevelopable areas.

5.5.9 The open space resulting from conservation subdivision design shall be permanently protected through a conservation easement titled to a property owner's association (POA), land conservancy, municipality or similar entity, prior to the sale of any lots or dwelling units by the subdivision. Membership in any POA shall be mandatory for each property owner within the subdivision and successive owners 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

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

the lots or units. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities. Each property owner must be required to pay their proportionate share of the POA's cost and the POA must be able to file liens on the lot/unit owner's property if levied assessments are not paid. The POA must also have the ability to adjust the assessment to meet changing needs.

5.6 Multi-Family Residential Uses.

5.6.1 Multi-family dwelling projects shall be considered major subdivisions. This "major subdivision" classification shall apply to all subdivisions of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision. Application for preliminary approval of multi-family dwelling projects, accordingly, will be made to the Town in the manner provided under Town Subdivision Regulations. The subdivider shall also submit all information required by such Regulations plus the following additional data;

- (1) An application for multi-family dwelling approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.
- (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this Law. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in Town of Tusten. Setbacks from property lines, improvements and other buildings shall also be indicated.

- (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this Law to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed covenants and restrictions, but shall in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either; (1) activities intended for the sole benefit of the occupants of the particular project proposed or, (2) permanent open space as herein-after provided.

5.6.2 The Planning Board shall act on the Preliminary Plat and Special Use application concurrently provided an Environmental Assessment is also conducted pursuant to the New York State Environmental Quality Review Act. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any Preliminary Plat, shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to Preliminary approval. This requirement notwithstanding, the building permit application shall be made with the Preliminary Plat and shall, if granted, be valid for a period equal to that for Preliminary Plat approval. If the Preliminary Plat shall be rejected no building permit shall be granted.

5.6.3 Following Preliminary Plan approval, the developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. Building improvements shall similarly be completed or guaranteed prior to the applicant's request for Final Plat approval. No Certificate of Occupancy (where the same is required) shall, however, be issued until such time as; (1) Final Plat approval shall have been granted in accordance with the procedures and requirements of this Law and (2) buildings have been completed and inspected by the Town Code Enforcement Officer.

5.6.4 Complete final building plans shall also be submitted as part of the Final Plat Application.

5.6.5 No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

thereon except in accord with the provisions of this Law, unless and until Final Plat approval shall have been granted (unless the improvements shall have been guaranteed), and the Plan has been recorded in the Office of the Sullivan County Clerk.

5.6.6 Multi-family dwelling density shall be granted a 100% density bonus above the number of dwelling units per acre which would be permitted within the district if the parcel on which the units are to be constructed were to be developed for single-family residential use. Senior housing projects shall be permitted as many as twelve (12) units per acre in recognition of their reduced traffic and other impacts. Density shall be calculated by taking the total acreage of the development and deducting the following acreages;

- (1) Land contained within public rights-of-way;
- (2) Land contained within the rights-of-way of existing or proposed private streets. (where formal rights-of-way are not involved, the width of the street shall be assumed as fifty (50) feet wide);
- (3) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service; and dividing by the number of proposed units; and
- (4) All wetlands, floodplains, slopes of 15% or greater grade, water bodies and other undevelopable areas.

5.6.7 All areas of a multi-family development not conveyed to individual owners; and not occupied by buildings and required or proposed improvements shall remain as permanent open space or be dedicated to recreation area to be used for the sole benefit and enjoyment of the residents of the particular units being proposed. No less than 50% of the tract shall be used for this purpose and fees in lieu of dedication may not be substituted for such space. Such open space shall be subject to the following regulations:

- (1) No less than 50% of the open space to be provided (25% of the total tract) shall be dedicated to recreational area for the sole benefit and enjoyment of the residents of the particular units proposed. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the pro-

posed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in sub-section (2) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.

- (2) Land designated simply as open space shall be permanently maintained as open space and may not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all plats. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however, shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a "pre-approved plan" if density or other zoning requirements shall have been modified to preclude such development.

- (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by either one or both of the following mechanisms:

- (a) Dedication to a property owners association which assumes full responsibility for maintenance of the open space.
- (b) Deed-restricted private ownership or dedication to a conservancy, POA, municipality or similar entity which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open space is guaranteed.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

- (c) Whichever mechanism(s) may be used, the developer shall provide, to the satisfaction of the Town Attorney and prior to the granting of any Final Plat approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.

- (d) Developments of 50 units or more shall provide one-half acre of playground area per 50 units unless restricted to adult occupancy only.

5.6.8 All multi-family developments shall be served with centrally supplied sewage facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multi-family buildings and structures as a minimum.

5.6.9 The following design criteria shall apply to multi-family developments;

- (1) There shall be no more than ten (10) dwellings in each multi-family building except in the case of senior housing projects.
- (2) No structure shall be constructed within fifty (50) feet of the edge of any access road to or through the development or within ten (10) feet of the edge of any parking area.
- (3) Access roads through the development shall comply with minor street requirements as specified in this Law and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
- (4) No multi-family development shall be served by more than one entrance and one exit from any public highway, unless topography or other physical circumstances would preclude the use of a single entrance in a safe manner.
- (5) Parking spaces of two (2) per unit shall be provided plus, for every two (2) units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods. Senior housing projects may provide less parking subject to Planning Board review.

- (6) No more than sixty (60) parking spaces shall be provided in one lot, nor more than fifteen (15) in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and so arranged as to direct light in away from residences.

- (7) No structure shall be erected within a distance equal to its own height of any other structure.

- (8) All multi-family structures shall be a minimum of 100 feet from any of the exterior property or boundary lines of the particular project involved and 75 feet from any public right-of-way.

- (9) Where a property line is not wooded, a planting strip of fifty (50) feet in width shall be required to buffer adjoining property owners and ensure privacy. Similar buffering of areas adjoining County and State highways shall be required. A landscaping plan shall also be prepared and submitted to the Planning Board for approval.

- (10) Multi-family developments shall be subject to the stormwater management requirements of the Subdivision Regulations and facilities shall be designed to accommodate storms of a 25 year frequency unless a more stringent standard shall be recommended by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development shall not exceed that estimated for the site prior to development. In instances where stormwater facilities are impractical for engineering reasons the Town Engineer may modify this standard as it applies to a particular project but shall provide for the maximum practical reduction in flow which can be achieved under the circumstances.

- (11) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.

5.6.10 Maintenance of a multi-family project shall be vested in (1) an association or other legal entity organized prior to the offering of the first unit for occupancy, or (2) a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or (3) the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five (5). If the devel-

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

oper shall opt to manage the project or designate a manager, the preliminary application shall include financial statements, a description of previous management experience and other data sufficient for the Planning Board to ascertain the financial responsibility of the manager.

- 5.6.11 The association or manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units. The project instruments shall specify the expenses which the maintenance organization may incur and collect from purchasers as a maintenance fee and secure maintenance of the project as well as enforcement of applicable covenants and restrictions in perpetuity. The Planning Board may require that a Certified Public Accountant review such financial data for purposes of determining that proposed fees are, in fact, adequate to secure maintenance on a continuing basis.
- 5.6.12 The developer shall, in filing a Preliminary Plat, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from on-going routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance and care of the units and common facilities during any sales program, based on which the Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer and/or with the occupants.
- 5.6.13 Any developer who proposes to construct multi-family dwellings and convey the common elements of said multi-family dwelling project, including recreation areas, to an association of purchasers of units therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements. Such maintenance bond or other guarantee shall;
- (1) Be for a period of not less than fifteen (15) years from the date of the final approval of said multi-family dwelling use by the Town;

- (2) Be in an amount equal to the amount collected or to be collected for long-term maintenance (as indicated in the budget referenced above) by the developer or other responsible parties from each purchaser during the first year after sales to such purchases begin, multiplied by the total number of expected purchasers.

- 5.6.14 If the development shall be subject to the New York State statutes governing the sale of real property used for multi-family occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this sub-section such certification shall suffice as to conformance with these requirements.
- 5.6.15 Conversions of motels, hotels or other existing structures to multi-family dwelling use regardless of whether such conversions involve structural alterations, shall be considered subdivisions and, moreover, be subject to the provisions of this Law. If the proposed project does involve structural alterations, the Preliminary Plat shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound and that the proposed conversion will not impair structural soundness. However, the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units shall be exempt from these requirements, unless such units are intended to be a condominium. This shall not, however, exempt an owner from any requirements of the State Building Code or other portions of the Town Zoning Law as they may pertain to such activities or density.

5.7 Upper Delaware River Provisions

- 5.7.1 Areas within the boundaries of the Upper Delaware National Scenic and Recreational River shall be subject to the following requirements of the Town of Tusten, the purpose of these provisions and others of this Law, being to conform with the recommendations of the Upper Delaware River Management Plan:
- (1) Potential impacts on the River from stormwater runoff and waste disposal shall be assessed in connection with any Special Use proposed within the corridor.
 - (2) Junkyards and salvage operations, solid waste disposal sites, light manufacturing, commercial uses which involve more than two-thousand (2,000) square feet of floor area or five (5) employees and major airports shall not be permitted in the River corridor. This shall not be con-

strued, however, to permit any use not otherwise provided for in the respective zoning districts on the Schedule of District Regulations.

- (3) Outdoor recreation facilities shall be limited to those which are designed for relatively short use periods and do not provide other than rudimentary visitor services or include infrastructure development other than as required to meet State health codes. Major commercial recreational development which could have significant impacts on land and water resource values, including but not limited to amusement parks, drive-in theaters, auto race tracks, sports arenas, etc. shall not be permitted in the corridor.
- (5) Where permitted, small hotels and motels within the corridor shall be located adjacent to arterial roads and designed to be compatible with the natural and scenic characteristics of the River corridor.
- (6) Buildings shall not be located so close to the ridgeline of the River valley as to create potential erosion, sedimentation or landslide conditions.

5.8 Campgrounds

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

- 5.8.1 Evidence that all New York State Department of Environmental Conservation and Health Department regulations applicable to campgrounds will be met.
- 5.8.2 A 25 foot planted or natural landscaped border will be provided for on all perimeters of the campground property.
- 5.8.3 A minimum of ten (10) acres of land must be provided for the campground, the property must be served with central water and sewage facilities, density shall not exceed 8 sites per acre and permanent occupancy shall be strictly prohibited.
- 5.8.4 These regulations shall only apply to facilities with five (5) or more campsites.

5.9 Animal Husbandry

The following additional standards must be provided for in conducting animal husbandry:

- 5.9.1 No offensive odor or dust producing substance or

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

any use producing incessant odor or dust may be permitted within 100 feet of any property line.

- 5.9.2 In districts where animal husbandry is allowed a special use permit is necessary where animal husbandry is in excess of one-quarter livestock unit per acre of land. Any use which exceeds this standard shall be considered an intensive livestock operation.
- 5.9.3 Any animal husbandry use shall require a minimum of 2 acres.

5.10 Home-Based Businesses

5.10.1 Home-based businesses, including businesses which rely upon attraction of the general public (e.g. retail sales) are permitted as Accessory Uses provided they do not detract from the residential character, appearance, or make-up of the neighborhood in which the business is located. Because of the need these types of businesses may have for advertising and display, and the unpredictability of traffic generation, owners of such businesses must be very cautious about how they operate their business to ensure they do not adversely impact the surrounding neighborhood. The following factors shall be used to determine if a home-based business will comply with or is in violation of this ordinance. The determination may be made on any one, or a combination, of these factors and shall be made by the Code Enforcement Officer, who may consult with the Planning Board in arriving at a final determination.

- (1) Extent of the business - whether or not the residential use is still the primary use of the property. Factors that shall be used to determine the primary use of the property shall include, but are not limited to, the area of the property used for the business and the amount of time the business is operated on a daily basis.
- (2) Appearance from an adjacent street - whether or not the use of the property as a business is distinguishable from an adjacent street. Except for a non-illuminated, permanent identification sign no larger than four (4) square feet in size, there shall be nothing that occurs on the property that can be observed from adjacent streets that make it readily apparent that a business is being operated on the premises. Factors for evaluating this standard shall be that the residential dwelling not be altered to change its residential appearance, and no activity related to the con-

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

duct of the home-based business shall be permitted to occur in such a manner as to be obtrusive to the neighborhood, attract attention to the business or adversely impact the residential character of the neighborhood.

- (3) Impact on the neighborhood - whether or not the business activity is causing a nuisance to surrounding property owners; is adversely impacting the peace, health, or safety of neighborhood residents; and/or is causing a deviation from the residential character of the neighborhood. Factors for evaluating this standard shall be:
- (a) Traffic - whether or not the business is generating traffic that is excessive and/or detrimental to the neighborhood. A home-based business will be allowed to generate no greater than twenty-five (25) vehicle trips per day, based on estimates provided by the Institute of Transportation Engineers. However, based on the characteristics of a specific neighborhood, these amounts may be lowered or raised, at the discretion of the Planning Board. The factors which shall be used for such a determination include, but are not limited to, pertinent characteristics of the neighborhood such as width of properties, width of the streets, hills, curves, and the number of children present.
- (b) Parking - whether or not parking problems could result from the business use. Factors which shall be used to evaluate this criteria include, but are not limited to the following: 1) parking required for the business shall be provided on-site or be limited to the area along the frontage of the property on the street; 2) parking on the property shall be on a surface equal in quality to the paving surface of any existing driveway unless there is no surface other than the ground, in which case a gravel surface shall be provided; and 3) no home-based business shall be permitted which requires parking of tractor-trailer combinations along the street on a continuing basis.
- (c) Nuisance - whether or not the business activity is causing a nuisance to surrounding property owners or is deviating from the residential character or appearance of the neighborhood.

- 5.10.2 No home-based business, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this law and such permission or establishment shall not be a basis for a later application to establish a principal commercial use. Moreover, the conversion of a residence with a home-based business to a commercial use by the abandonment of the residence or sale, rent or transfer of the business to a party which does not reside on-site is strictly prohibited unless the business is then moved centrally supplied.

5.11 Communication Structures.

5.11.1 Special Definitions.

ANTENNA - A device used to collect or transmit telecommunications or radio signals. Examples are: panels, microwave dishes, and single pole known as whips.

TELECOMMUNICATIONS FACILITY - Consists of the equipment and structures involved in receiving or transmitting telecommunication or radio signals, but limited to those facilities with respect to which the State and Federal governments have not, under public utility laws, strictly pre-empted the Town from regulating.

TELECOMMUNICATIONS EQUIPMENT BUILDING - The building in which the electronic receiving and relay equipment for a telecommunications facility is housed.

TOWER - A structure that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures includes monopoles and lattice construction steel structures.

- 5.11.2 Design and location standards. The following design and location standards shall apply to all telecommunications facilities all of which shall be processed as Special Uses.

- (1) The location of the tower and equipment building shall comply with all natural resource protection standards of this law.
- (2) An evergreen screen consisting of a row of evergreen trees planted ten (10) feet on center maximum, shall be located around the perimeter of the security fence and existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

- (3) An eight (8) foot high security fence shall completely surround the tower (and guy wires if used) and equipment building.
 - (4) The tower shall be designed and constructed to all applicable standards of the American National Standards Institute, ANSI/EIA-222-E manual, as amended.
 - (5) A soil report prepared by a Professional Engineer shall be submitted to the Planning Board to support the design specifications of the foundation for the tower, and anchors for the guy wires, if used.
 - (6) Towers and antennae shall be designed to withstand wind gusts of at least 100 miles per hour.
 - (7) An antenna may not be located on a building or structure that is listed on a historic register or within five-hundred (500) feet of such a structure.
 - (8) Telecommunications facilities, which shall be permitted only in R-1 Rural Residential Districts, shall be subject to Special Use procedures and the following:
 - (a) Minimum lot size. Five (5) acres
 - (b) Minimum setback requirements. Two-hundred (200) feet
 - (c) Maximum height. Tower - Two-hundred (200) feet. Equipment building - Twenty-eight (28) feet
 - (9) A telecommunications facility shall be permitted on a property with an existing use subject to the following conditions:
 - (a) The telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance.
 - (b) Minimum lot area. The minimum lot area required above shall apply, provided the land remaining for accommodation of the principal use on the lot shall also continue to comply with the minimum lot area for the district.
 - (c) Minimum setbacks. The minimum yards required above shall apply, provided the land remaining for accommodation of the principal use on the lot shall also continue to comply with the minimum yards for the district.
 - (d) Access. The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - (e) Maximum height: Tower - Two-hundred (200) feet
Equipment building - Twenty-eight (28) feet
 - (10) Where an antenna for a telecommunications facility is to be attached to an existing structure or building it shall be subject to the following conditions:
 - (a) Maximum height. Fifty (50) feet above the existing building or structure.
 - (b) If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with the minimum setback requirements for the subject zoning district, an eight (8) foot high security fence shall surround the building, a buffer yard shall be planted as required above and vehicular access to the building shall not interfere with the parking or vehicular circulations on the site for the principal use.
 - (c) Elevations of existing and proposed structures showing width, depth, and height, use statistical data on the antenna and support structure shall be presented.
 - (11) Notwithstanding minimum yards provided for above, any tower shall be setback from all property lines a distance that is at least equal to the height of the tower. The tower shall also be setback from any active recreation facilities or fields a distance that is at least equal to the height of the tower.
- 5.11.3 Special Use review criteria. Telecommunications facilities shall be subject to all the ordinary review criteria applicable to Special Uses in general plus the following:
- (1) The applicant shall demonstrate that the tower for the communications facility is the minimum height necessary for the service area and that the site chosen is the one which will afford the opportunity to construct the lowest height communications tower possible, taking into consideration all lands available within a reasonable distance including those which may lie within adjoining municipalities.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

- (2) The applicant shall present documentation that the tower is designed in accordance with the standards of this Law for communications towers.
- (3) The applicant shall demonstrate that the proposed tower adequately addresses all aspects of aviation safety in view of known local aviation traffic as well as FAA requirements.
- (4) The need for additional buffer yard treatment shall be evaluated. Proximity of the communications structure to existing or platted residential properties shall be considered in applying such requirements. Existing trees on the site which serve to provide a natural buffer shall be preserved unless absolutely required to be removed for purposes of access or safety.
- (5) The applicant shall provide visual depictions or studies to indicate how the communications facility will appear once constructed in relation to the surrounding natural environment and from the perspective of adjacent or nearby residents as well as travelers.
- (6) Where the telecommunication facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement for the proposed facility and that vehicular access is provided to the facility.
- (7) Free-standing pole-type communications structures shall be given preference over towers supported by guy wires.
- (8) All communications structures shall be lighted for safety in a manner consistent with industry best practices and where lighted additional setbacks may be imposed to shield adjacent properties from the effects of such lighting.
- (9) All property owners and adjacent municipalities within five-hundred (500) feet of the outside perimeter of the communications structure, including guy wires, shall be notified by certified mail prior to the Planning Board making a recommendation on an application for Special Use approval for such a structure. This responsibility shall be the applicant's and such applicant shall provide proof of notification as part of their final application.
- (10) Should any tower cease to be used as a communications facility, the owner or operator or then owner of the land on which the tower is located, shall be required to remove the same within one (1) year from the abandonment of use. Failure to do so shall authorize the Town to remove the facility and charge back the cost of removal to the foregoing parties. The Town may also file a municipal lien against the land to recover the costs of removal and attorney's fees.
- (11) An applicant for approval of a communications structure shall include with the application evidence of written contact with all wireless service providers who supply service within the Town for the purpose of assessing the feasibility of co-located facilities. Should co-location not be feasible, the applicant shall demonstrate that a good faith effort has been made to mount the antenna on an existing building or structure, including of proof of contacts, building investigations and similar evidence. Should such efforts fail to result in a suitable site, a new communications tower may be permitted, but shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities.

5.11.4 Satellite Dish Antenna. All satellite dish antennas shall be located in either the side or rear yards, unless the owner can establish in a Special Use hearing that the window of reception is in the front yard. The antenna may be placed on the roof in which case a Special Use permit is required if more than 3' in diameter.

5.12 Junkyards

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

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

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

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

- (1) Storage areas for officially recognized and operable antique or classic automobiles or other operable special purpose vehicles.
- (2) Agricultural equipment which is utilized as part of an active farming operation or contractors' construction equipment which is part of an active contracting business.
- (3) Automobile repair businesses or automobile, vehicle and equipment sales operations managed by State licensed dealers. Sales of two (2) or more unlicensed vehicles per year absent such licensing shall be considered a junkyard operation.

No right to establish or continue a junkyard operation shall be conveyed by the existence of a State license or the presence of any of the above activities on a site.

5.12.4 Definition. The term "junkyard" shall mean:

- (1) An area of land, with or without buildings, used for the storage, outside a completely enclosed building, of used materials, including but not limited to wastepaper, rags, metal, glass, building materials, house furnishings, machines, vehicles or parts thereof, with or without the dismantling, processing, salvage, sale or other disposition of the same.
- (2) Any place where two (2) or more old, second-hand, abandoned, partially disassembled, dilapidated or unlicensed vehicles or parts of vehicles, no longer intended or in condition for legal operation on the public highways, are stored outside for any purpose for a period of six (6) months or more. The Town of Tusten Code Enforcement Officer(s) shall determine when a vehicle or part thereof shall meet these conditions and it shall be the burden of the landowner in such instance to demonstrate conclusively, within a period of seven (7) days after notice, that a vehicle is legally operable at the present time if he or she shall disagree with the Code Enforcement Officer's determination.

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

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

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

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

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

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

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

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

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

5.12.12 Standards Applicable to New Junkyards

All new junkyards shall conform to the following standards:

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

(7) All continuing dismantling operations shall take place inside an enclosed structure and any parts of vehicles or equipment shall similarly be stored inside an enclosed structure. All vehicles awaiting dismantling or retained for sale or use intact shall be stored in improved parking areas specifically designated for this purpose.

(8) The Planning Board, in acting upon the Special Use application for any new junkyard, shall consider aesthetics and the impact on surrounding property consistent with the demands of § 136-7 and 8 of the General Municipal Law.

5.12.13 Standards Applicable to Existing Junkyards

All existing junkyards shall conform to the following standards:

- (1) Existing nonconforming junkyards shall, within a period of two (2) years following the effective date of this law shall be removed unless a license shall have been obtained for continued operation and the facility has been made to conform to the regulations provided below. Junkyards created subsequent to the enactment of this Law and discontinued shall be subject to the same standard.
- (2) Applications for licenses to continue operating existing non-conforming junkyards shall, unless the owners thereof have indicated in writing their intention to discontinue operations as provided above, be made within one (1) year following the effective date of this law.
- (3) Applications for licenses to continue operation of existing non-conforming junkyards shall include a site plan depicting the existing operation and any planned improvements as may be required by this law.
- (4) The plan shall comply with the requirements applicable to new junkyards to the maximum extent practical and shall include provisions for screening of the view of the junkyard from adjacent property as well as the public highway. A six (6) foot high fence along the side and rear boundaries of the property adequate to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals shall be required unless physical circumstances would make such fencing wholly impractical.

- (5) All fencing must be approved by the Town of Tusten Planning Board and produce a screen through which one generally cannot see. Various materials, including evergreen screening, may be used. The Town Board shall be responsible for taking measures, including securing injunctive relief, to ensure maintenance of such fencing or screening.
- (6) The license application and site plan for the existing non-conforming junkyard shall be processed in a manner identical to that for special use applications and shall include other information as may be required to determine compliance with these regulations. The Planning Board, in acting upon the application, shall consider the following:
 - (a) The impacts of the use on the enjoyment and use of adjoining properties as well as the community as a whole.
 - (b) The degree to which the use can economically be made to comply with requirements for new junkyards.
 - (c) The effectiveness of screening available or to be provided, visibility from the highway and the extent to which the operator's plans address various health, safety and aesthetic concerns.
 - (d) The extent to which continuing dismantling operations can or do take place inside an enclosed structure and whether or not all parts of vehicles or equipment are similarly stored inside an enclosed structure. Likewise, the Board shall consider whether or not vehicles awaiting dismantling or retained for sale or use intact are or will be stored in improved parking areas specifically designated for this purpose.
- (7) Existing junkyards shall not be expanded except in conformance with the regulations contained herein for new junkyards, and in no case will any change in an existing junkyard which would lessen its conformity with these regulations be permitted.
- (8) No junkyard shall be used as a dumping area for refuse or as a place for the burning or disposal of trash.

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

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

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

5.13 Adult Oriented Businesses.

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

5.13.1 Because adult oriented businesses can lend themselves to ancillary unlawful and unhealthy activities they shall be separated from other uses which could be severely impacted by their presence or which, in combination with the adult oriented business, accentuate the negative impacts on the area. Adult oriented businesses, therefore, shall not be located within one-thousand (1,000) feet of any residence, residential facility, institution, health facility, church, synagogue, school, public or semi-public use, public park or recreation facility, any other establishment

5.0 SPECIAL SUPPLEMENTARY REGULATIONS

which sells alcoholic beverages or any other existing adult oriented business. This setback is consistent with the open rural character of the Town within which numerous locations exist that can meet this standard.

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

5.13.3 No exterior display or interior display which is visible from outside the business shall be made to identify or portray the type of activity which occurs at an adult oriented business excepting for one (1) approved ground sign not to exceed a surface area of twenty (20) square feet for both sides combined. Such sign shall be subject to all other limitations applicable to signs. It shall not incorporate any obscene material but shall be otherwise unlimited as to message.

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

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

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

5.13.6 All adult oriented businesses shall otherwise comply with the Town of Tusten regulations governing female attire.

These prohibitions are further based on the findings of the U.S. Supreme Court in the case of *Banes v. Glen Theater*, 501 U.S. 560, 115 L.Ed 2d 504 (1991) and are intended to fulfill purposes identical to those upheld in that case. Moreover, there exists within Sullivan County substantial experience with these activities which indicates they, indeed, have the types of negative impacts on the community that the Indiana statute was designed to address and produce general deterioration of the character of the area in which they were located, leading to commercial and residential blight.



6.0 ADMINISTRATION AND ENFORCEMENT

6.1 Code Enforcement Officer.

The Town Board shall provide for the services of a Code Enforcement Officer to simultaneously enforce the provisions of this Law and the Town's Uniform Fire Prevention and Building Code Enforcement Law. Such Code Enforcement Officer shall examine all applications for permits, issue permits and/or certificates of occupancy for construction and uses which are in accordance with the requirements of this law, record and file all applications for permits with accompanying plans and documents and make such reports as may be required. Permits requiring site plan review and Special Use approval, however, shall only be issued with approval of the Town of Tusten Planning Board. Likewise, permits requiring variances of this law shall only be issued with approval of the Town of Tusten Zoning Board of Appeals.

6.2 Permit Requirements.

- 6.2.1 No person shall construct, erect, alter, convert or use any building or structure, or part thereof, nor change the use of any land, subsequent to the adoption of this law, until a building permit and/or Certificate of Occupancy has been issued by the Code Enforcement Officer. Applications for such permits shall be made to the Code Enforcement Officer prior to any construction activity and/or change in the use of land. The Officer shall review such applications and act upon them according to the requirements of this law, taking no action, however, until the Planning Board and/or Zoning Board of Appeals has first taken action, should the approval of either Board be required. A building permit shall authorize the applicant to proceed with construction proposed.
- 6.2.2 Prior to use of the structure or the change in use of the land, a Certificate of Occupancy shall be required and shall be issued by the Officer, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this law. The Code Enforcement Officer shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this law.
- 6.2.3 The Code Enforcement Officer, with approval of the Town Board, may issue a temporary permit for an otherwise non-conforming structure or use which will promote public health, safety or welfare, provided such permit shall be of limited duration and the use or structure shall be completely removed within ninety (90) days of expiration of the activity for which it was granted. A temporary permit shall not be valid beyond this period or three (3) years from the date of issuance, whichever is shorter.
- 6.2.4 The Code Enforcement Officer shall ensure that all water supply and sewage disposal facilities proposed in connection with any building permit or Certificate of Occupancy application shall conform with New York State Department of Health guidelines.
- 6.2.5 It shall be the duty of the Code Enforcement Officer to issue a building permit, provided that he is satisfied that the structure, building, sign and the proposed use conform with all requirements of this law, and that all other reviews and actions, if any, called for in this law have been complied with and all necessary approvals secured therefor.
- 6.2.6 When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this law, he shall refuse to issue a building permit or Certificate of Occupancy, as the case may be, and the applicant may appeal to the Zoning Board of Appeals.
- 6.2.7 A building permit or Certificate of Occupancy may be revoked by the Code Enforcement Officer upon a finding that information provided in the application was inaccurate or invalid or that the construction or use has proceeded in a manner not consistent with the permit(s) granted.
- 6.2.8 No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this law. Any person desiring to change the use of his premises shall apply to the Code Enforcement Officer for a Certificate of Occupancy. No owner, tenant or other person shall use or occupy any building or structure or premises thereafter erected or altered, the use of which shall be changed after the passage of this law, without first procuring a Certificate of Occupancy; provided, however, that a Certificate of Occupancy, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenants or occupants.
- 6.2.9 Though compliance with the development and use standards of this Law will still be required, the following activities shall not demand permits, except as may be required by the New York State Uniform Fire Prevention and Building Code:
- (1) Above-ground swimming pools of two (2) feet or less in depth.
 - (2) Portable structures of less than one-hundred-forty-four (144) square feet in size which are unoccupied and intended for storage.

6.0 ADMINISTRATION AND ENFORCEMENT

- (3) Signs of less than twelve (12) square feet in surface area.

- (4) Patios, fences and landscape improvements.

- (5) All non-structural accessory uses of a residential or temporary nature (30 days or less).

6.2.10 All applications shall be made on forms as shall be developed and periodically updated by the Code Enforcement Officer. Applications shall include plot plans and such other information as is required to determine compliance with the requirements of this law.

6.2.11 A zoning permit shall expire after twenty-four (24) months if the applicant fails to complete the improvements as approved. An extension may be approved by the Code Enforcement Officer for good cause (such as seasonal weather conditions) provided that any extension of more than twelve (12) months or subsequent extension of any length shall require approval of the Town Board.

6.2.12 Accessory building permits shall not be issued in advance of permits for principal permitted or Special Uses or without an existing principal use in place and being operated on an on-going basis. Passive uses such forestry shall not qualify for this purpose. Accessory uses permitted under such circumstances shall be limited to those with the tangible and primary purpose of serving the principal use.

6.2.13 The Code Enforcement Officer may issue a Certificate of Occupancy and/or Compliance to any legally existing use, provided the owner thereof so certifies and the Officer's investigations do not indicate otherwise.

6.2.14 No permits shall be issued for any new uses where there are unremedied existing violations.

6.3 State Environmental Quality Review Act Compliance.

All actions taken with respect to this law shall comply with the New York State Environmental Quality Review Act ("SEQRA") and applicants shall be responsible for providing such data as may be required to determine the significance of any environmental impacts associated with such actions.

6.4 Violations and Penalties.

6.4.1. Whenever a violation of this law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. Nothing herein shall, however, restrict the right of the Code Enforcement Officer to act on a violation absent a complaint.

6.4.2 Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this law, the Town Board or the Code Enforcement Officer, in addition to other remedies, may institute an appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

6.4.3 A violation of this law shall be subject to those penalties provided for in the Uniform Fire Prevention and Building Code Enforcement Law of the Town of Tusten.

6.4.4 The Code Enforcement Officer or acting Code Enforcement Officer, as the case may be, is hereby authorized to issue appearance tickets pursuant to the Criminal Procedure Law in the enforcement of this or any related laws of the Town of Tusten.

6.5 Fees.

The Town Board shall, by resolution, establish and periodically update a schedule of uniform fees, charges and expenses associated with the administration and enforcement of this law. Such schedule may provide for the assessment to applicants of professional costs incurred in the processing and/or review of the applications made pursuant to this law.

7.0 ZONING BOARD OF APPEALS

7.1 Establishment and Membership.

7.1.1 There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of five (5) members of staggered 5-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.

7.1.2. The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law and, during the annual reorganization meeting of Town Board, appoint an alternate member of the Zoning Board of Appeals to serve for a term of one (1) year or until a successor is appointed. Such alternate member shall attend meetings and act in the capacity of a full member whenever regular members cannot attend or must recuse themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

7.2 Powers and Duties.

7.2.1 The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official(s) charged with the enforcement of this law and to that end shall have all powers of the administrative official(s) from whose order, requirement, decision, interpretation or determination the appeal is taken.

7.2.2 Use variances.

- (1) The Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.

- (2) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restrictions of this law have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that;

- (a) he or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence;
- (b) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (c) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (d) the alleged hardship has not been self-created.

- (3) 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.

7.2.3 Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this law, to grant area variances as defined herein.
- (2) In making its determination, the 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 of Appeals shall also consider:

- (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

7.0 ZONING BOARD OF APPEALS

- (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) whether the requested area variance is substantial;
- (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) 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.

- (3) 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.

7.2.4 The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

7.2.5 Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision; however, the Board may extend this time by an additional ninety (90) days for a good cause.

7.3 Procedures.

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

7.3.2 Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board 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 examinations and other official actions.

7.3.3 Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record. Every decision of the Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.

7.3.4 The Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.

7.3.5 Except as otherwise provided herein, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative officials charged with the enforcement of this law. The concurring vote of three (3) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

7.3.6 Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officials charged with the enforcement of this law by filing with such administrative official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

7.0 ZONING BOARD OF APPEALS

- 7.3.7 An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed 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 administrative official from whom the appeal is taken and on due cause shown.
- 7.3.8 The Board of Appeals shall fix a reasonable time, no more than sixty-two (62) days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.
- 7.3.9 The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
- 7.3.10 The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- 7.3.11 At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal; and to the Sullivan County Planning Department, as required by Section 239-m of the General Municipal Law. No Board of Appeals decision shall be made except in conformance with such 239-m procedures including requirements for an affirmative vote of no less than four (4) members of the Board if it shall determine to approve an application which the County has recommended it disapprove or modify.

