

**TOWN OF TUSTEN**  
**ZONING ORDINANCE**

**NOVEMBER 1990**



**TOWN OF TUSTEN  
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**ZONING ORDINANCE  
FOR THE  
TOWN OF TUSTEN  
SULLIVAN COUNTY, NEW YORK**

Title of Ordinance

This shall be an Ordinance regulating the location, construction and use of buildings, structures, and the use of land in the Town of Tusten and for said purpose dividing the Town into districts.

Enacting Clause

Pursuant to the authority conferred by Article 16, Section 261 of the Town Law of the State of New York, the Town Board of the Town of Tusten hereby adopts and enacts as follows.

ARTICLE I PURPOSE

Section 100. Purpose of Zoning Ordinance

The purpose of this Zoning Ordinance, 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, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, and to promote the health, safety, and general welfare of the public.

ARTICLE II DEFINITIONS

Section 200. Definitions of Key Terms

Accessory Building - A building subordinate to the main building located on the same lot. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

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



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

Administrator - The Federal Insurance Administrator, to whom the Director has delegated the administration of the local Flood Insurance Program (Program 34 FR 2680-81, February 27, 1969, as amended 39 FR 2787, January 24, 1974.)

Agricultural - The use of a parcel of land for agricultural purposes, including tilling of the soil, dairying, pasture, agriculture, or boriculture, horticulture, floriculture, aquatic farming, harvesting of trees and tree products and animal husbandry. It includes the necessary accessory uses and structures for packing, treating, and storing of products, produce and equipment provided that the operation of any such accessory use should be secondary to that of normal agricultural activities.

Agricultural Practices - The use of land for the raising of crops, horticulture, gardening and the necessary accessory uses for packing, treating and storing the produce.

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 or the moving from one location to another.

Alternative Energy Systems - Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity, or other forms of energy, from solar, wind, water and other sources.

Animal Hospitals - A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

Animal Husbandry - The care and breeding of domestic animals, including but not limited to cattle, hogs, horses, poultry and sheep. (See definition of Livestock Unit.) For purposes of this Ordinance operation of a kennel shall be considered animal husbandry. Animals for educational or cultural projects are exempted.

Bed and Breakfast - An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee. Meals may or may not be provided. Tourist homes, boarding houses, and inns are included here; however, resthomes or homes for the aged are not.



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 resthomes 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.

Bulk Storage - The storage of chemicals, petroleum products and other materials in above-ground containers for subsequent resale to distributors or retail dealers or outlets.

Business and Professional Offices - Offices in which an occupation or vocation requiring advanced study in a specified field is practiced. Examples are: medical, law, engineering, surveying, insurance and real estate offices.

Campground - A parcel of land used or intended to be used to provide two or more sites for the parking of travel trailers, placement of tents, or other temporary or movable sleeping accommodations. A campground must meet all New York State DEC and Health Department regulations.

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

Cemetery - An area of land set aside as permanent open space for a final resting place; a space for the dead.

Certificate of Occupancy - A form of protection afforded the owner or occupant of a structure by serving as proof of compliance with the regulations in effect at the time of construction or alteration.

Clearcutting - The removal from a tract of land of substantially all trees, vegetation and underbrush.

Club - Any organization catering exclusively to members and their guests or premises and buildings, for recreational or athletic purposes and not open to the general public, which are not conducted primarily for gain, provided there are no vending stands, merchandising or commercial activities, except as required for the membership and purposes of the club. Clubs shall include lodges; fraternal organizations; social and service organizations; gun, hunting, and fishing clubs; mutual benefit societies and other like organizations.





Cluster Subdivisions - A form of development for single-family residential subdivisions that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision and the resultant land area is devoted to open space.

Code Enforcement Officer - An individual appointed by the Town Board and given the responsibility to oversee and enforce all codes set forth in the Town relating to the maintenance of the general public welfare.

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

Commercial Storage - A structure or set of structures containing separate storage spaces of varying sizes leased or rented on an individual basis.

Condominium - A building or group of buildings, in which units are owned individually; and the common areas and facilities are owned by all the owners on a proportional, undivided basis.

Cultural Recreation - Indoor or outdoor establishments promoting social and intellectual advancement such as libraries, museums, art galleries, concert halls and theaters, but excluding movie houses and drive-ins.

Day Care Center - Facilities (including non-residential structures that provide supervision and care of six or more children for periods of less than 24 hours per day.

Development Limitations - An assessment of existing natural and man-made elements relating to land, water, air, plant, animal, people, and community character and an indication of the suitability of particular areas for development.

Director - The Director of the Federal Emergency Management Agency.

Dish Antenna - Any concave, circular or dish-shaped device designed for receiving communication or television signals from space, but not including conventional television, radio and amateur radio antennas.

Drive In Use - An establishment, which by design, physical facilities, services or by packaging procedure, encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.



Dump - Any place used for the disposal and leaving of paper, garbage, rubbish, trash, construction materials, toxic chemicals and substances, and other waste material of any nature by the public or by any person.

Dwelling - A building designed or used as the living quarters for one or more families. The term dwelling shall include modular homes, provided that they meet all of the requirements of this Ordinance, the New York State Uniform Fire Prevention and Building Code, and all other regulations or ordinances applicable to dwellings. Mobile homes shall not be included in this definition.

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. All two-family homes shall be owned via one deed.

Dwelling, Multiple - A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided. All multiple dwellings shall be owned by one deed.

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

Dwelling Unit - A building or entirely self-contained portion thereof containing housekeeping facilities for only one family, including any domestic servants 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.

Eating and Drinking Establishment - A restaurant, tavern or combination thereof.

Educational Institution - An institution, either public or private, providing full-time day instruction and a course of study which meets 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/or the New York State Health Code.



Family - One or more persons living in a domestic relationship based upon birth, marriage, adoption or similar social bonds occupying a dwelling unit.

Farm - An agricultural operation where the principal income (more than one-half) is from agricultural sources.

Farm, Hobby - An agricultural operation where the keeping of animals is primarily for the enjoyment and/or food for the household.

Flea Market - An occasional or periodic market held in an open area or structure where individuals or groups of individual sellers offer goods for sale to the public.

Flood or Flooding -

a. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature which results in flooding as defined in (a) (1) of this section.

Flood Plain - Any land area susceptible to being inundated by water from any source.

Floodproofing - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damages to properties, water and sanitary facilities, structures and their contents.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood. Said flood shall be the flood having a one percent chance of being equalled or exceeded in any given year.

Floor area - The total number of square feet of floor space within a building.

Forest Management Practices - Management of natural vegetation for timber harvesting, firewood, wildlife habitat improvement, and water quality.



Garage, 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.

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

Garage, (Yard) Sale - The sale of used personal and/or household items by an individual or family from their home, porch, lawn or garage.

Health Care Facility - A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, and home health care agency.

Height - The vertical distance measured from the lowest average elevation of the finished grade to the high point of a structure.

Home Occupation - An occupation or other subordinate use of a nonresidential 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. Permissible home occupations include, but are not limited to: art studio; skilled or professional craftsmen; child care, either licensed or not, with no more than five children; dressmaking, teacher of music, dance or song and limited to five pupils at a time; and the professional home office of a clergyman, physician, surgeon, dentist, lawyer, engineer, architect, accountant, real estate broker or insurance agent. However, a home occupation shall not be construed to include such uses as the following: clinic or hospital, restaurant, animal hospital, kennel or other similar uses.

Hotel - An establishment which provides accommodations for a fee to transient guests and where only a general kitchen and dining room are provided. Customary hotel services such as maid service are commonly offered in this type of establishment.





Household Pet - An animal that is normally or can generally be kept within the immediate living quarters of a residential structure. Any member of the swine, sheep, bovine, poultry, or equidae family of quadrupeds, deer, venomous reptiles, or any other animal with a dangerous nature are not to be considered pets.

Junk - Includes, but is not limited to, vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, brush, wood or lumber.

Junk Yard - Any area of land including buildings thereon which is used primarily for the collection, storage and sale of waste paper, rags, scrap metal or material, or for the collection, dismantling and storage or salvaging of machinery or vehicles stored outside.

Kennel - A place for the care and/or breeding of dogs as defined in the Agricultural Markets Law, Section 107.

Line of Sight - That space encompassing the seen area, all inclusive, from the center of the Delaware River to such location as geographic character precludes such visibility.

Livestock Unit - For purposes of this Ordinance a livestock unit shall be one cow or two calves or one horse or two ponies or two pigs or two goats or two sheep or one hundred fowl or fifty rabbits or the equivalent thereof.

Lot - A parcel of land which may or may not be occupied or used by one principal building or use with its accessory buildings and required open space and yards.

Lot Area - The total area of a lot computed by multiplying the average distance between side of lot lines measured along the street line and the rear lot line by the average distance between the street line and the rear lot line measured along the side of lot lines.

Lot, Corner - A lot or parcel of land abutting upon two or more roads at their intersection, or upon two parts of the same road forming an interior angle of less than 135 degrees.

Lot Coverage - The percentage of the lot area that is covered by the buildings or paved areas on the lot.

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

Lot Line - Any boundary of a lot. Any lot line not a rear line or a front line shall be deemed a side line.

Lot Line, Rear - The lot line generally opposite the street line.



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

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

Mineral Extraction - Operations where gravel, rock, stone, sand, fill, topsoil or minerals are extracted from the surface or below the ground, but it does not include the process of grading a lot preparatory to the construction of a building.

Mining - Operations extracting greater than 750 cubic yards per year of material such as gravel, sand, fill or minerals from the surface or below the ground.

Mixed Use Building - A building or structure with two or more different uses, such as, but not limited to, residential, office, manufacturing, retail, public or entertainment.

Mobile Home - A factory-built, one-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 Development and the New York State Uniform Fire Prevention and Building Code. A mobile home shall not be construed to be a travel trailer or recreational vehicle. Double wides shall be considered mobile homes, not modular homes.

Mobile Home Park - A parcel of land under single ownership which has been specifically planned and improved for the long term placement (over 30 days) of three or more mobile homes for nontransient use.

Model Home - A dwelling unit used initially for display purposes which typifies the type of units that will be constructed in the subdivision.

Modular Home - A dwelling comprised of one or more sections constructed so as to be a permanent part of the real estate. Modular homes are not constructed on a chassis.

Motel - A building or group of buildings providing individual sleeping accommodations complete with bathrooms for travelers. Each lodging unit has direct access to the outside and a parking spot.



Motor Vehicle Repair Shop - A building or portion of a building arranged, intended or designed to be used for making repairs to motor vehicles and operated for gain. This shall include small motor and engine repair shops.

Non-Conforming Building or Use - A building or use that does not conform to the regulations prescribed for the district in which it is situated.

Nursery or Greenhouse - Land or greenhouses used to raise flowers, shrubs, trees, and plants.

Nursing, Convalescent Home or Home for the Aged - Any dwelling with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire, or a home operated by a non-profit group and operated as an institution.

Occupied Lot - Any lot of record having an approved dwelling unit on it.

Open Space - An area between buildings, or between a building and a boundary line of the parcel, that is situated for recreation, gardening, or other outdoor activities conducive to the principal lot use and lot size. Such space must be free of automobile traffic, parking and undue hazards as well as being readily accessible to all those by whom it shall be used.

Outdoor Recreation (Active) - An intensive, recreational use oriented to and utilizing the outdoor character of a parcel 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. Ski trails, amusement parks and similar activities affecting the character of the land shall be considered Active Outdoor Recreation.

Outdoor Recreation (Passive) - A non-intensive, recreational use oriented to and utilizing the outdoor character of a parcel of land. Passive outdoor recreation involves little physical alteration to the land. It does not involve the use of motorized vehicles. It shall include, but is not limited to, horse trails, picnic areas, nature trails, outdoor ice skating facilities, and playgrounds.

Parking Space, Curb - Curb-side parking adjacent to a road, alley, driveway, sidewalk or any other passageway shall be no less than 8 1/2 feet wide by 22 feet long for each vehicle. The parking space shall not, when used, interfere with such public emergency facilities as fire hydrants, police call boxes or emergency snow areas.



Parking Space, Off-Street - A space adequate to park one automobile with room for opening doors on both sides simultaneously while allowing sufficient access to a public street or alley without interfering with pedestrians, other motorists, or another person's property. For purposes of rough computation, an off-street parking space, including necessary access, may be estimated at 300 square feet.

Performance Bond - A guarantee through a bond which has been approved by the Town Board after review by the Planning Board that certain developments will be instituted in the future by a developer. Other forms of credit, such as letter of credit or cash, may be required in lieu of a performance bond and are included within this definition.

Performance Standard - A criterion established to control, but not limited to, noise, odor, smoke, toxic or hazardous matter, vibration, fire and explosive hazards, and glare or heat generated by, or inherent in, uses of land or buildings.

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

Person - Any individual, firm, company, association, agency, society, corporation or group.

Planning Board - Refers to the Town of Tusten Planning Board.

Principal Use - The Specific purposes for which land or a building is used, occupied or maintained.

Private Recreation, Noncommercial - Clubs or recreation facilities operated by a nonprofit organization and open only to bona fide members of such non profit organizations.

Professional Offices - Offices in which an occupation or vocation requiring training and advanced study in a specialized field is practiced. Examples can be doctor, lawyer, real estate offices. Such offices generally reflect the architectural character of the neighborhoods in which they are located.

Property Lines - Any boundary of a lot, inclusive of street lines.

Public Facilities and Utilities - All town, county, state and federal government owned buildings and land including, but not limited to, town halls, and highway department garages. In addition, included are telephone, electric and cable television lines, poles, equipment and structures; water or





gas pipe mains, valves or structures; sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations and all other facilities, equipment and structures necessary for conducting a service by a government or a public utility.

Public Parks and Recreation Facilities - Land in public ownership set aside for public use which may or may not have developed recreational facilities such as playgrounds, tennis courts, baseball fields, picnic areas, and/or lavatories.

Public Utilities - Water and sewer treatment plants, and lines, telephone, television, gas and electric facilities.

Recreational Campground - A camping area where moderate- to high-density camping activities are permitted, where general road or vehicular access is provided and where the provisions of services, including electric hook-ups, water and sanitary facilities, may be provided. River access may also be provided if appropriate. Site disturbance would be generally moderate; however, scenic quality should be maintained and vegetative screening used to minimize visual impacts. Typical site development may include road access and individual campsite development which may include, but need not be limited to, parking areas, fire grates, picnic benches and utility hook-ups. Other recreationally-associated improvements such as central showers, a children's playground, and a small convenience food store may be permitted if the activities largely serve camping visitors and are in harmony with the overall values of the area.

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

Religious Institution - Church, Temple, parish house, convent, seminary or retreat house.

Resort - A facility for transient guests where the primary attraction is generally recreational facilities or activities.

Retail Store - Enclosed store for sale of retail goods, such as a personal service shop, department store, or restaurant; shall exclude any drive-up service, freestanding retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.



River Corridor - That portion of the Town of Tusten extending from the northern to the southern Town boundaries and encompassing the area from the center of the Delaware River to the landward limits of the line-of-sight, as defined on the Town of Tusten Zoning Map.

Road - A public or private way which affords the principal means of access to abutting properties.

Road Right of Way - The right of way line of a road as indicated by usage, dedication, or by deed or record.

Seasonal Residences - Residential family dwellings intended for intermittent seasonal use; a building which is temporarily occupied by persons having permanent residence elsewhere.

Service Establishment - Establishments providing services, as opposed to products, to the general public, including, but not limited to personal business, repair, educational, and other personal convenience services, including, but not limited to, coin-operated laundry, cleaning and garment services, photographic studios, beauty shops, barber shops, shoe repair, funeral services and clothing rental.

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.

Setback, Front - The required open space extending across the entire width of the lot between the road right-of-way line and the front of the main building.

Setback, Line - The minimum allowed distance between the front line of a building or structure and front property line.

Setback, Rear - The required open space extending across the entire width of the lot between the rear lot line and the back of the main building.

Shopping Center - A group of commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

Sign - Any material, object, device, display, or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business,



product, service, event or location by any means, announcement, direction, advertisement or any other similar message either free standing or printed on a building or structure.

Sign, Advertising - A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

Sign Area - The entire face of a sign, including the advertising surface and any framing, trim or molding, but not including the supporting structure, unless the support is used to form an integral background for the display. Both faces of a double-faced sign shall be included as surface area of a sign.

Sign, Directional - A sign, either on or off premises, limited to providing information on the location of an activity, business, or event.

Sign Face - The area or display surface used for the message.

Sign, Free Standing - Any non-movable sign not affixed to a building.

Sign, Illuminated - A sign lighted by or exposed to artificial lighting, either by lights on or in the sign or directed towards the sign.

Sign, Off Premises - A sign unrelated to a business or a profession conducted or to a commodity or service sold or offered upon the premises where such sign is located.

Sign, Window - A sign that is applied to or attached to the exterior or interior of a window or located in such a manner within the building that it can be seen from the exterior of the structure through a window.

Site Plan - A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board. All Site Plans shall be submitted in a form as required by the Planning Board.

Site Plan Review - A review and approval process, conducted by the Planning Board, whereby site plans are revised utilizing criteria stated in this Ordinance and as authorized by Town Law.



Special Permit - A permit issued by the Planning Board as a means of regulating the location, character of development, and impact of certain uses which, as a general rule, would not be desirable in an area unless the standards for the principal permitted uses were substantially modified.

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

Stand, Roadside - A permanent or temporary structure used for the display, support and protection of products with the intent to sell to buyers.

Street - A public or private way which affords the principal means of access to abutting properties.

Streetline - The right-of-way of a street as indicated by usage, dedication, or by deed or record.

Structure - Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. Utility poles and their attendant lines shall not be considered structures for all purposes of this Ordinance.

Subdivision - The division or redivision of a lot, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land or lease including changes in street lines or lot lines for the purpose, whether immediate or future, of transfer of ownership or building or lot development; provided, however, that the division of land for agricultural purposes in parcels of more than ten acres, not involving any new street or easement access, shall be exempted.

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:

- a. before the improvement or repair is started, or
- b. if the structure has been damaged and is being restored to its condition before the damage occurred.

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 a National Register of Historic Places.

Usable Area - The general area requirements as found in the bulk regulations governing minimum lot sizes for on-site sewage and water and off-site sewage and water.

Variance - A modification of a provision of this Ordinance 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.

Variance, Area or Bulk - A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this Ordinance except use.

Variance, Use - A variance granted for a use or structure that is not permitted in the zoning district.

Watershed Area - That area in which all of the surface runoff is concentrated into a particular stream.

Warehousing - Storage facilities operated for a specific commercial establishment or group of establishments in a particular industrial or economic fields.

Wholesaling - Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wildlife Management - Management of natural wildlife and associated habitats with the intent of enhancing such.

Yard, Required Front - An open space extending across the entire width of the lot between the center line of the street or road right-of-way and the required yard depth and into which space there shall be no extension cornices and similar fixtures.

Yard, Required Rear - An open space extending across the entire width of the lot between the rear lot line and the required yard depth, excluding open porches.

Yard, Required Side - An open, unobstructed space on the same lot with a principal building, between the side line of the lot and the required yard depth and extending through from the front yard to the rear yard, into which space there shall be



no extension of building parts other than eaves with an overhang, rain water leaders, window sills, and other such fixtures and open steps.

Zoning Board of Appeals - A quasi-judicial zoning review organization consisting of five members appointed in accordance with Section 267 of the Town Law. Such Board shall have responsibility for interpretation and variance determination.

Zoning District - Is an area within the Town of Tusten for which the regulations and requirements governing land use and structures upon it are uniform.

Zero Lot Line - The location of a building on a lot in such a manner that one or more of the building's sides rest directly on a lot line.

### ARTICLE III ESTABLISHMENT OF DISTRICTS

#### Section 300. List of Districts

For the purpose specified in this Ordinance, the Town of Tusten is divided into the following districts:

1. Rural Residential -- R-1
2. Residential Business -- R-2
3. Recreational River -- RR
4. Scenic River -- SR
5. Hamlet (subdivided into:) -- H
  - a. Downtown Business -- DB
  - b. River Edge Business -- EB
  - c. Roadside Business -- RB
  - d. General Residential -- GR
  - e. Open Land Residential -- OR
  - f. Old Neighborhood Residential -- NR
  - g. Municipal Services -- MS
6. Scenic Overlay --SO

#### Section 310. Zoning Map

The zoning districts are shown, defined and bounded on the zoning maps accompanying this Ordinance (Figure 2 and 3). The zoning maps are hereby made a part of this Ordinance and shall be on file in the office of the Town Clerk.



## Section 320. Interpretation of District Boundaries

Questions concerned with the exact location of district boundary lines as shown on the zoning map shall be resolved by the Zoning Board of Appeals utilizing the following guidelines:

1. Boundaries shown as following or approximately following streets shall be construed to follow the centerline of such streets.
2. Boundary lines which follow or approximately follow platted lot lines or other property lines as shown on the Town of Tusten Tax Maps shall be construed as following such lines.
3. Boundaries shown as following or approximately following railroad lines shall be construed to lie midway between the main tracks of such railroad lines.
4. Boundaries shown as following a stream, lake or other body of water shall be deemed to be at the limit of the jurisdiction of the Town of Tusten unless otherwise indicated.
5. Boundaries shown as separated from, and parallel or approximately parallel to, any of the features listed in paragraphs 1-4 above shall be construed to be parallel to such features and at such distance therefrom as shown on the map.
6. Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than fifty feet into the more restricted part of such lot, provided the lot has frontage on a street in the less restricted district.
7. Boundary lines which define the extent of the River Corridor shall be construed to be the accepted limit of the line-of-sight from river center as defined on the Town of Tusten Zoning Map.

## ARTICLE IV DISTRICT REGULATIONS

### Section 400. Application of Regulations

Except as hereinafter provided:

1. No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.



2. No building shall hereafter be erected or altered
  - a. To exceed the height,
  - b. To accommodate or house a greater number of families,
  - c. To occupy a greater percentage of lot area, or
  - d. To have narrower or smaller rear yards, front yards, or side yards than are specified herein for the district in which such building is located.
3. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Ordinance shall be included as a part of a yard or other open space similarly required for another building.

Section 410.     Schedule of Regulations

Section 410.1   SR District: Scenic River District

The following regulations shall apply in the Scenic River District:

A. Permitted Principal Uses

1. Single and two family dwelling units on slopes of 15 percent or less.
2. Agriculture, exclusive of animal husbandry in excess of one livestock unit per each two acres, provided, however, that no offensive odor or dust-producing substance or any use producing incessant odor or dust be permitted within one hundred feet of any property line.
3. Forest management practices.
4. Wildlife management practices.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.





C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Single and two family dwelling units on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of such construction.
2. Sportsmen clubs or preserves, operated for benefit of members and not for gain.
3. Seasonal residences, upon submittal of site plan documentating minimal visual impact of such construction upon the River Corridor.

D. Building Height Limit

No building shall be erected to a height in excess of two stories and not to exceed 28 feet.

E. Required Lot Area

Lot area shall be not less than 5 acres and shall have not less than 200 feet minimum river and/or road frontage.

F. Set back Required

Each lot shall have front, side and rear yards with depths and widths of not less than the following:

1. Front yard depth - 50 feet from highway right-of-way.
2. Each side yard width - 35 feet.
3. Rear yard depth - 50 feet.

Section 410.2 RR District: Recreational River District

The following regulations shall apply in the Recreational District:

A. Permitted Principal Uses

1. Single and two family dwelling units on slopes of 15 percent or less.
2. Agriculture, exclusive of animal husbandry in excess of one livestock unit per each two acres, provided, however, that no offensive odor or dust-producing substance or any use producing incessant odor or dust be permitted within one hundred feet of any property line.
3. Forest management practices.
4. Wildlife management practices.



B. Permitted Accessory Uses, Located on the same Lot with the Permitted Principal Use

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Single and two family dwelling units on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of such construction.
2. Sportsmen clubs or preserves, operated for benefit of members and not for gain.
3. Seasonal residences, upon submittal of site plan documenting minimal visual impact of such construction upon the River Corridor.
4. Public park and/or recreation facility
5. Recreational campground
6. Canoe livery
7. Commercial recreation facility

D. Building Height Limit

No building shall be erected to a height in excess of two stories and not to exceed 28 feet.

E. Required Lot Area

Lot area shall be not less than 2 acres and shall have not less than 200 feet minimum river and/or road frontage.

F. Setback Required

Each lot shall have front, side and rear yards with depths and widths of not less than the following:

1. Front yard depth - 50 feet from highway right-of-way.



2. Each side yard width - 35 feet.
3. Rear yard depth - 50 feet.

Section 410.3 R-1 District: Rural Residential District

The following regulations shall apply in the Rural Residential District:

A. Permitted Principal Uses

1. Single and two family dwelling units on slopes of 15 percent or less.
2. Agriculture, exclusive of animal husbandry in excess of one livestock unit per each two acres, provided however, that no offensive odor or dust-producing substance or any use producing incessant odor or dust be permitted within one hundred feet of any property line.
3. Forest management practices.
4. Outdoor recreation with no alteration to land.
5. Mobile home dwellings on slopes of 15 percent or less.
6. Public elementary and high schools, public parks and playgrounds.
7. Churches and similar places of worship.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Uses

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V



1. Single and two family dwelling units on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of said construction.
2. Mobile home dwellings on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of said construction.
3. Outdoor recreation.
4. Agriculture, inclusive of animal husbandry.
5. Commercial agriculture and/or on-site sale of such produce.
6. Mine/Quarry.
7. Public utilities and facilities.
8. Cemeteries.
9. Mobile home parks.
10. Campgrounds.
11. Commercial recreation.
12. Nature centers.
13. Summer camps.
14. Service stations, provided:
  - a. no repair work is performed out-of-doors;
  - b. pump, lubricating or other devices are located at least 20 feet from any street line or highway right-of-way, whichever is greater;
  - c. all fuel, oil, or similiar substances are stored at least 35 feet distance from any street or lot line; and
  - d. all automobile parts, dismantled vehicles, and similiar articles are stored within a building or shielded from view by a fence or vegetative screening.
15. Sportsmen clubs or preserves.
16. Sanitary landfills.
17. Enclosed storage.
18. Health facilities.





19. Boarding houses.
20. Associated parking facilities.
21. Cluster Developments.
22. Day Care Centers.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

Lot area shall be of size adequate to support on-site sewer and water, but no less than two acres, and lot width shall be not less than 200 feet.

F. Yard Required

Each lot shall have front, side, and rear yards with depths and widths of not less than the following:

1. Front-yard depth - 50 feet from highway right-of-way;
2. Each side yard width - 35 feet; and
3. Rear yard depth - 50 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall cover not more than 10 percent of the area of the lot.

Section 410.4 R-2 District: Residential Business District

The following regulations shall apply in the Residential Business District:

A. Permitted Principal Uses

1. Single and two family dwelling units on slopes of 15 percent or less.



2. Agriculture, exclusive of animal husbandry in excess of one livestock unit per each two acres, provided, however, that no offensive odor or dust-producing substance or any use producing incessant odor or dust be permitted within 100 feet of any property line.
- B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use
1. Private garage.
  2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
  3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.
- C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V
1. Single and two family dwelling units on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of such construction.
  2. Retail shops.
  3. Service establishments.
  4. Public facilities and utilities.
  5. Commercial agriculture and/or on-site sale of such produce.
  6. Commercial recreation.
  7. Cultural recreation.
  8. Motor vehicle, trailer, boat or farm equipment service and sales.
  9. Service stations, provided:
    - a. No repair work is performed out-of-doors;
    - b. Pump, lubricating or other devices are located at least 20 feet from any street line or highway right-of-way, whichever is greater;



- c. All fuel, oil, or similar substances are stored at least 35 feet distance from any street or lot line; and
- d. All automobile parts, dismantled vehicles, and similar articles are stored within a building or shielded from view by a fence or vegetative screening.

- 10. Eating and drinking establishments.
  - 11. Storage buildings and warehouses.
  - 12. Hotels, motels, boarding houses.
  - 13. Churches and similar places of worship.
  - 14. Building supply and lumber yards.
  - 15. Mobile homes.
  - 16. Multiple family dwelling.
  - 17. Public parks and recreation facilities.
  - 18. Enclosed manufacturing establishments which produce minimal noise, odor, and glare and produce no industrial wastes which reduce the quality of air, water or land.
  - 19. Outdoor advertising signs, not to exceed 32 square feet, for on-site retail or service establishments.
  - 20. Associated parking facilities.
  - 21. Day Care Centers.
- D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

Lot area shall be of size adequate to support on-site sewer and water, but no less than one acre, and lot width shall be not less than 150 feet.

F. Yards Required

Each lot shall have front, side, and rear yards with depth and widths of not less than the following:

- 1. Front yard depth - 50 feet from highway right-of-way;



2. Each side width - 35 - feet; and
3. Rear yard depth - 50 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 30 percent of the area of the lot. In the event that a Special Use requires greater development than allowed by this provision, the required lot area shall be increased as necessary to provide that the 30 percent coverage limit is not exceeded.

Section 410.5 H District: Hamlet District

The Hamlet District encompasses seven subdistricts. Regulations pertaining to said district shall be those which apply to respective subdistricts.

Section 410.5a GR Subdistrict: General Residential Subdistrict

The following regulations shall apply in the General Residential Subdistrict:

A. Permitted Principal Uses

1. Single and two family dwelling units constructed on slopes of 15 percent or less.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Uses

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V





1. Single and two family dwelling units on slopes greater than 15 percent upon submittal of evidence documenting the structural stability of such construction.
2. Public park and recreation facilities.
3. Public facilities and utilities.
4. Limited agriculture, exclusive of animal husbandry.
5. Forest management practices.
6. Associated parking facilities.
7. Day Care Centers.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

Lot area shall not be less than 15,000 square feet when said lot is serviced by public water and sewer facilities; 20,000 square feet when serviced by either public water or sewer; one acre when serviced by neither public water or sewer.

Lot width shall not be less than 100 feet.

F. Yard Required

Each lot shall have front, side, and rear yards with depth and width of not less than the following:

1. Front yard depth - 40 feet from R-O-W;
2. Each side yard width - 25 feet; and
3. Rear yard depth - 50 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 15 percent of the area of the lot.



Section 410.5b NR Subdistrict: Old Neighborhood Residential Subdistrict

The following regulations shall apply in the Old Neighborhood Residential Subdistrict:

A. Permitted Principal Uses

1. Single and two family dwelling units.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Public facilities and utilities.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

Lot size must be, at a minimum, equal to the average of such consideration of the parcels closest to each side of the proposed structure.

F. Yards Required

Yard widths and depths must be, at a minimum, equal to the average of such considerations of the developed parcel closest to each side of the proposed structure.



#### G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more of said parcel than exhibited in the average of buildings and accessory uses closest to each side of the proposed structure.

#### Section 410.5c OR Subdistrict: Open Land Residential Subdistrict

The following regulations shall apply in the Open Land Residential Subdistrict:

##### A. Permitted Principal Uses

1. Single and two family dwelling units.

##### B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Private garage.
2. Customary home occupations or professional offices conducted solely by the resident, provided that there be no external evidence of such use except an announcement or professional sign not over six square feet in area.
3. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

##### C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Public park and recreation facilities.
2. Public facilities and utilities.
3. Public schools and related facilities.
4. Day Care Centers.

##### D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.



E. Required Lot Area

Lot area shall be not less than 15,000 square feet when said lot is serviced by public water and sewer facilities; 20,000 square feet when serviced by either public water or sewer; one acre when serviced by neither public water or sewer.

Lot width shall be not less than 100 feet.

F. Yards Required

Each lot shall have front, side, and rear yards with depths and widths of not less than the following:

1. Front yard depth - 40 feet from R-O-W;
2. Each side yard width - 25 feet; and
3. Rear yard depth - 50 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 15 percent of the area of the lot.

Section 410.5d RB Subdistrict: Roadside Business Subdistrict

The following regulations shall apply in the Roadside Business Subdistrict:

A. Permitted Principal Uses

1. Retail shops.
2. Business offices.
3. Professional offices.
4. Service establishments.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Any customary use incidental to a permitted use, but not including any outdoor storage.
2. Non-flashing signs pertaining to a permitted use on the same lot therewith.





3. Exterior spot lighting of buildings or grounds, provided such be from shaded sources and be located so that the beams are not directed toward any lot in a residential district or a public highway.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Service stations, provided:

- a. No repair work is performed out-of-doors.
- b. Pumps, lubricating or other devices are located at least 20 feet from any street line or highway right-of-way.
- c. All fuel, oil, or similar substances are stored at least 35 feet distance from any street or lot line.
- d. All automobile parts, dismantled vehicles, and similar articles are stored within a building or shielded from view by a fence or vegetative screening.

2. Eating and drinking establishments.

3. Commercial recreation.

4. Upper floor single family dwelling units.

5. Other uses which, in the opinion of the Planning Board, are of the same general character as those listed as permitted uses and which will not be detrimental to the district in which they are located.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

Lot area shall not be less than 20,000 square feet and lot width not less than 150 feet.

F. Yard Required

Each lot shall have front, side, and rear yards with depth of not less than the following:

1. Front yard - 40 feet from R-O-W;
2. Each side yard - 25 feet; and



3. Rear yard - 30 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 50 percent of the area of the lot.

Section 410.5e EB Subdistrict: River Edge Business Subdistrict

The following regulations shall apply in the River Edge Business Subdistrict.

A. Permitted Principal Uses

1. Single and two family dwelling units.
2. Professional offices.
3. Business offices.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Private garage.
2. Any customary use incidental to a permitted use.
3. Non-flashing signs pertaining to a permitted use on the same lot therewith.
4. Exterior spot lighting of building or grounds, provided such be from shaded sources and be located so that the beams are not directed toward any lot in a residential district or a public thoroughfare.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Retail shops.
2. Service establishments.
3. Eating and drinking establishments.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.



E. Required Lot Area

Lot area shall be not less than 20,000 square feet and lot width not less than 150 feet.

F. Yard Required

Each lot shall have front, side and rear yards with depth and widths of not less than the following:

1. Front yard depth - 40 feet from R-O-W;
2. Each side yard width - 25 feet; and
3. Rear yard depth - 50 feet.

G. Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 50 percent of the area of the lot.

Section 410.5f DB Subdistrict: Downtown Business Subdistrict

The following regulations shall apply in the Downtown Business Subdistrict:

A. Permitted Principal Uses

1. Retail shops.
2. Service establishments.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

1. Any customary use incidental to a permitted use, but not including any outdoor storage.
2. Non-flashing signs pertaining to a permitted use on the same lot therewith.
3. Exterior spot lighting of buildings or grounds, provided such be from shaded sources and be located so the beams are not directed toward any lot in a residential district or a public highway.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

1. Upper floor single family dwelling units.
2. Cultural recreational facilities.



3. Public facilities and utilities.
4. Eating and drinking establishments.
5. Financial establishments.
6. Professional and business offices.
7. Associated parking facilities and municipal parking lots.
8. River access facilities: i.e., stairs, ramps.

D. Building Height Limit

No building shall be erected to a height in excess of 35 feet.

E. Required Lot Area

Lot area shall be not less than 5,000 square feet and lot width not less than 50 feet.

F. Yard Required

Front, side, and rear yards are not required except:

1. Where one is provided it shall be at least 4 feet in width.
2. Where one is provided it shall be at least 4 feet in width. 2. Where one is used as a vehicular access way, it shall be at least 25 feet in width.
3. Where the side lot line abuts any lot or land area in a residential district, lot shall be at least 75 feet in width, and a 20 foot strip adjoining such residential district shall be maintained as a landscaped buffer area.

Section 410.5g MS Subdistrict: Municipal Services Subdistrict

The following regulations shall apply to the Municipal Services Subdistrict:

A. Permitted Principal Uses

1. None.





B. Accessory Uses

1. None

Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

a. Public parks and recreation facilities.

b. Public utilities and facilities.

C. No building shall be erected to a height in excess of 28 feet

Section 410.6 SO District: Scenic Overlay District

The following regulations shall apply to the Scenic Overlay District; said district extends 250 feet to either side of the Route 97 right-of-way:

A. Permitted Principal Uses

As allowed in respective districts with additional regulations. Uses other than residential shall be subject to Site Plan Review.

B. Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use

As allowed in respective districts with additional regulations. Accessory uses related to other than residential uses shall be subject to Site Plan Review.

C. Uses Permitted Upon Issuance of a Special Permit, as Provided in Article V

As allowed in respective districts with additional regulations.

D. Building Height Limit

No building shall be erected to a height in excess of 28 feet.

E. Required Lot Area

As required in respective districts.

F. Yard Required

Each lot shall have front, side and rear yards with depths and widths of not less than the following:



1. Front yard depth - As required in respective districts plus 50 percent of minimum allowable. All lots shall maintain depth of 15 feet from edge of R-O-W.
2. Each side yard width - As required in respective districts.
3. Rear yard depth - As required in respective districts.

G. Percentage of Lot Coverage

1. All buildings, including accessory buildings, shall not cover more than that percentage of the area of the lot as allowed in the respective district.
2. No greater than 60 percent of the natural vegetative cover shall be removed, except in the RB District.

ARTICLE V

SPECIAL PERMITS AND SITE PLAN REVIEW

Section 500 Standards for Special Permits

Section 500.1 General Provisions

In every case where a Special Permit is required the Planning Board shall issue such Permit only after a public hearing has been held.

Section 500.2 Required Plan

Application for a special permit shall be accompanied by three sets of preliminary plans, and/or other descriptive matter to clearly portray intentions of the owner. These documents shall become a part of the record. Such plans shall show location of all buildings, parking, traffic access and circulation drives, open spaces, landscaping and any other information necessary to determine if the proposed special use meets the requirements of this Ordinance.



### Section 500.3      Expiration

A special permit shall be construed to be authorization for only one particular special use and shall expire if the special use shall cease for more than six months for any reason. Special uses inherently of a seasonal nature including, but not limited to nature centers, campgrounds, recreation areas, and roadside stands shall have the period extended to 12 months prior to expiration of special permits.

### Section 500.4      Standards Applicable to all Special Uses

All special uses necessarily require site plan review. Site plan review may be waived if, in the opinion of the Planning Board, the following standards and conditions have been satisfied:

1. Location, use and size of structure, nature and intensity of operations involved, size of site in relation to it, and location of site with respect to existing or future streets giving access, are such that it will be in harmony with orderly development of the district.
2. Location, nature and height of buildings, walls, fences and signs will not discourage the appropriate development and use of adjacent land and buildings or impair their value.
3. Special use shall not conflict with the Comprehensive Plan.
4. Operation of any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration, or flashing lights that would be the operation of any permitted use.
5. Necessary provisions have been made to assure that all surface runoff to adjacent properties does not exceed levels in existence prior to construction.
6. Solar access of adjacent properties is not obstructed by said use.

If said conditions and standards are not met, a Site Plan Review shall be undertaken in accordance with Section 510; Site Plan Review.

No special permit shall be issued for a use on a property where there is an existing violation of this Ordinance.



In addition, when making a determination concerning a special use within an area of Special Flood Hazard, the Planning Board shall consider all technical standards specified in other sections of this Ordinance, and the following factors:

- a. The danger to life and property due to increased flood velocities caused by encroachments;
- b. The danger that materials may be swept onto other lands to the injury of others;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owners;
- d. The importance of the services provided by the proposed facility to the community;
- e. The availability of alternative locations, not subject to flooding damage, for the proposed use;
- f. The compatibility of the proposed use with existing and anticipated development;
- g. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- h. The expected height, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- i. The cost of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, electric and water systems, and streets and bridges.

#### Section 510.      Site Plan Review and Approval

##### Section 510.1      Authorization and Approval Required

- A. In all cases where the zoning ordinance requires approval of site plans by the Planning Board, no building permit shall be issued by the Code Enforcement Officer except upon authorization of and in conformity with the site plans approved by the Planning Board. The Town hereby authorizes the Planning Board to review and approve, to approve with modification, or to disapprove site plans prepared as hereinafter set forth.

##### Section 510.2      Sketch Plan Conference

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





- A. An area map showing the parcel under consideration for site plan review, and all properties, subdivisions, streets and easements within two hundred (200) feet of the boundaries thereof.
- B. A map of site topography at no more than five (5) foot contour intervals. If general site grades exceed five (5) percent or portions of the site have susceptibility to erosion, flooding or ponding, a soils overlay and a topographic map showing contour intervals of not more than two (2) feet of elevation shall also be provided.

Section 510.3      Application for Preliminary Site Plan Approval

- A. An application for preliminary site plan approval must be made in writing to the Planning Board. Applications submitted shall include a description of all proposed uses, a completed environmental assessment form as required by the State Environmental Quality Review Act (SEQR) and a site plan drawn by a qualified engineer, architect or landscape architect, showing the subject lot and all structures on adjacent properties within one hundred (100) feet of the lot lines of the subject lot and all changes or improvements proposed on the subject lot. The material submitted for approval shall include the following information:
  - 1. A location map at a scale not smaller than one to twenty-four thousand (1:24,000) showing nearby roads, neighborhoods and water bodies;
  - 2. A survey of the lot at a scale not smaller than one to one thousand two hundred (1:1,200), prepared by a qualified engineer or land surveyor, showing all boundary lines, bearings, measurements, areas, existing structures, water bodies, rock outcrops, vegetation and contours at two-foot intervals. The data shall extend at least one hundred (100) feet beyond the boundaries of the lot;
  - 3. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
  - 4. North arrow, scale and date;
  - 5. Boundaries of the property plotted to scale;
  - 6. Existing watercourses;
  - 7. Location, proposed use and height of all buildings;



8. The location, grades, names and present widths of existing and proposed streets, highways, easements, curblines, alleys, parks and other proposed public open spaces and similar facts regarding adjacent property;
9. Location, design and construction materials of all parking and truck loading areas, showing access and egress;
10. Provision for pedestrian access;
11. Location and outdoor storage, if any;
12. Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences;
13. The description of the method of sewage disposal and the location, design and construction of any existing or proposed sewage disposal system. Information shall include the results of percolation and other tests to ascertain subsurface soil, rock and groundwater conditions and depth to groundwater. If a central sanitary sewer system is available or proposed, the location of all proposed sewer lines treatment plants and pumping stations shall be shown;
14. The provisions of the Town of Tusten Zoning Ordinance applicable to the property, any zoning district boundaries affecting the property and any proposed changes in such law as it affects the property;
15. The locations and owners of all adjoining lands as shown on the latest tax records;
16. All deed restrictions, easements and covenants applying to the property;
17. The location and width of any streets and other public ways or places shown upon the Official Map and the Master Plan, if any;
18. The location and access points to the property, and the distances to the nearest intersecting street;
19. Typical cross sections of the proposed grading, roadways, sidewalks and cross sections of unusual topographic conditions;



20. The approximate boundaries of any wetland or other areas subject to flooding or stormwater overflows, including all ponding areas;
21. A list of all special improvement districts affecting the property and boundaries of such districts within the property;
22. Designation of the amount of building area proposed for retail sales or similar commercial activity;
23. General landscaping plan and planting schedule;
24. The locations, direction, power and schedule for usage for any proposed outdoor lighting or public-address system;
25. The locations, dimensions, design, and construction materials for all proposed signs;
26. The source of water supply and the location of all proposed water lines, valves, hydrants and available fire protection. Information shall include the size of water mains, culverts and drains on and immediately adjacent to the property;
27. The provisions for controlling storm drainage, in the form of a drainage plan showing grading and proposed contours;
28. The location, design and construction materials of all proposed energy distribution facilities including electrical, gas, telephone, cable TV and solar energy;
29. The location of temporary markers adequate to locate and evaluate the basic layout in the field;
30. If the property is to be developed in stages and the applicant wishes approval for only one (1) stage, a supplementary plan shall be submitted showing the ultimate development and all other stages; and
31. Any other information deemed necessary for the Planning Board to determine conformity of the site plan with the intent and regulations of the Tusten Zoning Ordinance.
32. Where the Planning Board finds that, due to the special circumstances of a particular site plan, the provision of certain required improvements is not required in the interest of the public health, safety



and general welfare or that certain elements listed above need not be provided or shown such items may be waived by the planning board.

#### Section 510.4 Planning Board Review of Preliminary Site Plan

##### General Considerations

- A. In authorizing any use, the Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general, and of the residents of the immediate neighborhood in particular, and may attach reasonable conditions and safeguards as a condition to its approval. The Planning Board shall consider the special conditions set forth below for any use requiring its authorization, and the following general objectives:
1. Fire and police protection. All proposed structures, equipment, and material shall be readily accessible for fire and police protection.
  2. Harmony. The proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
  3. Uses in or adjacent to residence district. In addition to the above, in the case of any use located in or directly adjacent to a residential district:
    - a. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therein, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, said residential district or conflict with the normal traffic of the neighborhood.
    - b. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.





### Special Conditions

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

1. Traffic access. Proposed traffic access ways shall be:
  - a. Adequate, but not excessive in number;
  - b. Adequate in width, grade, alignment and visibility;
  - c. Not located near street corners or other place of public assembly; and
  - d. In harmony with other similar safety considerations that the Planning Board may deem relevant.
2. Circulation and parking. Adequate off-street parking and loading spaces shall be provided to prevent parking in public streets of vehicles of any persons connected with or visiting the use, and the interior circulation system shall be adequate to provide safe accessibility to all required off-street parking. Adequate fire lanes, fire hydrants and other emergency zones shall be provided.
3. Drainage. Storm runoff shall be controlled in such a manner that no person, property or facilities are vulnerable to injury or damage by the discharge of stormwater or its effects. Wherever possible, runoff shall be controlled on the land surface by the use of broad, gentle swales. Erosion shall be strictly controlled by adequate grading and ground cover, and silt basins shall be constructed where necessary to control siltation in downstream water bodies. At the discretion of the planning board zero runoff increase may be required.
4. Water supply and sewage facilities. Adequate water supply and sewage disposal facilities with required permits and/or approvals from the State Health Department, the Department of Environmental Conservation and the Town shall be provided.
5. Landscaping and screening. All playground, parking and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets, and the general landscaping of the property shall be in character with that generally prevailing in the neighborhood.



Existing trees over twelve (12) inches in diameter measured at four (4) feet above the ground shall be preserved to the maximum extent possible.

6. Character and appearance. The character and appearance of any proposed use and any proposed building or outdoor signs shall be in general harmony with the character and appearance of the surrounding neighborhood and that of the Town and shall not adversely affect the general welfare of the inhabitants of the Town. Such considerations shall not include the architectural style or period of any proposed building.
  7. Wildlife and open space. The site development plan shall make provisions for open space and recreational facilities. The existing drainage courses, water bodies and scenic features shall be preserved. Wildlife habitats shall be preserved and improved to the maximum extent possible. Greenbelts and pedestrianways shall be preserved or provided wherever appropriate.
- C. Consultant Review. The Planning Board may consult with the Town Code Enforcement Officer, Fire Commissioners, the Town Engineer, other local and county officials, and its designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation. The cost for such review shall be borne by the applicant.
- D. Public Hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within forty-five (45) days of the receipt of the application for preliminary site plan approval and shall be advertised in a newspaper of general circulation in the town at least five (5) days before the public hearing. The cost for such advertisement shall be borne by the applicant.

#### Section 510.5 Planning Board Action on Preliminary Site Plan

- A. The Planning Board must act on a preliminary application within forty-five (45) days after its receipt if a public hearing is not held. If a public hearing is held the Planning Board must render a decision within forty-five (45) days following the hearing. If a decision is not



made within these time frames, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, disapproved or approved with modifications. The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, and conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

#### Section 510.6     Final Site Plan Approval

- A. Procedure for Final Site Plan Approval. After receiving approval, with or without modifications, from the Planning Board on a preliminary site plan, the applicant shall submit a final, detailed site plan to the Planning Board for approval. If more than six (6) months has elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions may have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

The final site plan shall conform substantially to the approved preliminary site plan. It should incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the Applicant on the appropriate submission.

The following additional information shall accompany an application for final site plan approval:

1. Record of application for and approval status of all necessary permits from State and County officials;
2. Detailed sizing and final material specification of all required improvements; and
3. An estimated project construction schedule.



## B. Required Referral

Prior to taking action on any final site plan that includes property which lies within 500 feet from the boundary of any village or town, or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway or from the existing or proposed boundary of any county or state owned land on which a public building is situated, the Planning Board shall refer the site plan and all attachments to the Sullivan County Planning Board for advisory review as required under Section 239-m of the General Municipal Law.

## C. Planning Board Action on Final Detailed Site Plan

Within forty-five (45) days of receipt of the application for final site plan approval, the Planning Board shall render a written decision to the applicant. If no decision is made within the forty-five (45) day period, the final site plan shall be considered approved.

1. Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Code Enforcement Officer.
2. Upon disapproval of a final site plan, the Planning Board shall so inform the Building Inspector so as to ensure that a building permit is not illegally given to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval.

D. Performance Guarantee. No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance guarantee shall be determined by the Planning Board after consultation with the Code Enforcement Officer, Town Attorney, Town Engineer or other competent persons.

E. Inspection of Improvements. The Code Enforcement Officer shall be responsible for the overall inspection of site improvements, including coordination with the highway superintendent and other officials and agencies, as appropriate.





- F. Integration of Procedures. Whenever the particular circumstances of a proposed development require compliance with either the special use procedure in this zoning ordinance or the requirements of the Town land subdivision regulations, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

#### Section 510.7    Fees

- A. All applications made to the Planning Board shall be in writing on forms prescribed by the Board and shall be accompanied by a fee as provided in the local law establishing fees.
- B. No refund. Said fees shall comprise a non-returnable review fee for a review under the terms of this section. If site plan review is simultaneous with subdivision review, the Planning Board shall, at its discretion, waive one (1) or the other of the review fees.
- C. Documentary fee. For compilation of names and addresses of all owners who shall receive certified mailing of public hearing as required by this section a fee shall be charged as provided in the local law establishing fees.
- D. Publication costs. The applicant shall also be required to pay, upon presentation, the actual costs of publication of any and all notices required by any provision of this Article or other provision of law.
- E. Appearance fee. For each additional meeting with the Planning Board other than required presentations, as requested by the applicant, there shall be a fee as provided in the local law establishing fees.
- F. Consultant fees.
1. Any applicant before the Planning Board shall be required to pay to the Town a sum of money to reimburse the Town for fees to be paid to consulting planners, engineers, attorneys or other experts retained by the Town to review the applicant's plans, maps, studies, agreements and all other papers required by the Planning Board. The amount of the fee shall be determined by the Planning Board and the professional consultants at the time the applicant files his application for sketch plan approval with the Planning Board. Each consultant that the Board deems necessary to involve shall estimate his fees



based upon the services to be rendered on behalf of the Town from the sketch plan stage to final approval by the Planning Board.

#### ARTICLE VI SUPPLEMENTARY REGULATIONS

##### Section 600.      General

The provisions of this Ordinance shall be subject to such exceptions, additions, or modifications as herein provided by the following supplementary regulations:

##### Section 600.1      Height Exceptions

The height limitations contained in the Schedule of Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar energy devices, windmills, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

##### Section 600.2      Erection of More than One Principal Structure on a Lot

In any district, more than one structure housing a permitted or permissible principal use may be erected on a single lot provided that yard, minimum lot size, and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.

##### Section 600.3      Structures to Have Access

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 structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

##### Section 600.4      Day Care Center

Day Care Centers shall create no unsafe conditions for picking up and dropping off children. Outdoor play areas shall be grassed and enclosed by a suitable six-foot high fence. Any entry gate areas shall be adequately separated from vehicular circulation and parking areas. Off street parking is required at a rate of one parking space per employee. Hours of operation may be restricted by the Planning Board. One sign, not exceeding



four square feet and five feet in height may be used to identify the center. Day Care Centers may be used in conjunction with a church, community building, hospital, public or private school, public recreation centers, or office buildings.

#### Section 600.5     Parking and Storage of Certain Vehicles

Two or more automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residential zoned property other than in completely enclosed buildings or so they are visually screened from the road and adjacent properties.

Farm vehicles shall be exempt.

#### Section 600.6     Fences and Walls

- A. Shall not exceed four feet in height from ground level.
- B. Shall be constructed with the decorative side facing outward from the property interior.
- C. Shall conform to corner lot requirements where applicable.
- D. All fences within five feet of the property line shall require a building permit to ensure proper boundaries.
- E. All fences and walls which are greater than two feet high and ten feet long shall require a building permit.

#### Section 600.7     Off-Street Parking

- A. Off-Street Parking Requirements: Off-Street parking spaces, open or enclosed are permitted accessory to any use subject to the following provisions.
  - 1. Schedule of Parking Requirements: Accessory off-street parking spaces, open or enclosed, shall be provided for any use specified below. Any land which is developed as a unit under single ownership and control shall be considered as a single lot for the purpose of these parking regulations. Reasonable and appropriate off-street parking requirements for buildings and uses which do not fall within the categories listed below shall be determined by the Planning Board upon consideration of all factors entering into the parking needs of each such use.



<u>Use</u>	<u>Minimum Parking Spaces</u>
One or Two-Family Dwelling	2 per dwelling unit
Multiple Dwellings	2 per dwelling unit
Hotels, Motels, Tourist Home, and Boarding House	1 per guest room plus one for each employee
Home Occupations except Physicians or Dentist	3 spaces per each home occupation or professional office
Office or clinic for physician or dentist	5 spaces per each physician or dentist plus one space for each employee
Bowling Alleys	5 per alley, plus one for each employee
Places of Worship, Libraries and Other Public Buildings	1 space per 200 sq. ft. of floor area, but not less than one space for each five seats where provided
Elementary Schools	2 spaces per classroom plus one space for each 5 seats in any auditorium or other place of assembly
Secondary Schools	4 spaces per classroom, plus one space for each 5 seats in any auditorium or place of assembly
Restaurant, Eating and Drinking Establishments	1 space per 3 seats or per 3 persons accommodated at capacity
Amusement Facilities except bowling alleys	1 space for each five patrons plus one for each employee
Industrial Establishments (includes manufacturing)	1 for each employee plus 5 guest spaces
Offices	2 parking spaces, plus 1 for each 200 sq. ft. of floor area





Golf Courses and Other County Clubs	2 spaces per tee plus additional parking as listed above if other amenities accompany the golf course
Commercial and Business; in groups over 20,000 square feet of business floor area	1 parking space for every 100 square feet of business area
Commercial and Business; individual establishments on separate lots	1 parking space for every motor vehicle used directly in the business, plus one parking space for every 200 square feet of business area
Auditorium, convention hall, gymnasium, theater, studio or other place of public assembly not otherwise classified	1 space per 3 seats or per 40 sq. ft. of seating floor area where fixed seating is not provided

2. Areas computed as parking spaces: Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport, or other area available for parking, other than a street or driveway. However, a driveway within a required front yard for a dwelling unit may count as parking area.
3. Size of Spaces: Two hundred square feet shall be considered one parking space exclusive of entrance and exit lanes and maneuvering aisles. Minimum parking stall width shall be 9'0".
4. Access: Unobstructed access to and from a street shall be provided. Such access shall consist of at least one 10-foot lane for parking areas with less than 20 spaces and at least two 10-foot lanes for parking areas with 20 or more. No entrance or exit for any off-street parking area shall be located within 50 feet of any street intersection without site plan review approval.
5. Drainage and Surfacing: All open parking areas shall be provided with a dustless surface, except for parking spaces accessory to a one-family or two-family dwelling.
6. Joint Facilities: Required parking spaces, open or enclosed, may be provided in spaces designed to serve jointly two or more establishments whether or not located on the same lot provided that the number of



required spaces in such joint facilities shall be not less than the total required for all such establishments.

7. Combined Spaces: When any lot contains two or more uses having different parking requirements, the parking requirements for each use shall apply. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when the other use or uses is not or are not in operation, the Planning Board may reduce the total parking spaces for that use with the least requirement.
8. Location: Required accessory parking spaces, open or enclosed, shall be provided upon the same lot as the use to which they are accessory, unless authorized by Planning Board site plan review.
9. On Lots Divided by District Boundaries: When a parking lot is located partly in one district and partly in another district, the regulations for the district containing the use shall apply to all of the lot. Parking spaces on such a lot may be located without regard to district lines.

B. Commercial Vehicles.

1. One commercial vehicle exceeding 25 feet in length may be parked on an occupied lot in any R-1 or R-2 District, but not within the required yards of such lot and in no case between the street line and the principal building.
2. Commercial vehicles exceeding 25 feet in length may be parked within a private garage in any R-1 or R-2 District.
3. Commercial farm vehicles are permitted as accessory to a commercial farm use in all districts and are exempt from parking regulations.



### C. Boats and Boat Trailers

1. A maximum of two boats and two boat trailers may be stored on an occupied lot in any District in the Town provided that such boats and boat trailers are not stored within any required side or rear yard of such lot, nor between the street line and the principal building, if possible. This requirement shall not apply to water front properties.

### Section 600.8      Landscaping Requirements

Following are minimum landscaping requirements:

1. Where any land use in a non-residential district abuts land in any residential district, a strip of land at least 20 feet wide shall be maintained by the owner as a landscaped area in front, side, and rear yards which adjoin these other districts.
2. Where any permitted non-residential land use, multiple family development or mobile home park is in a residential district, a strip of land at least 20 feet wide shall be maintained as a landscaped area in front, side and/or rear yard which adjoin these uses.
3. In a commercial district each use shall have a strip of land at least 15 feet wide in any required rear and side yard, which shall be maintained as a landscaped area.
4. Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any or all of the following: shade trees, deciduous shrubs, evergreens, well-kept grassed areas or ground cover.

### Section 600.9      Performance Standards

In all districts uses are not permitted which exceed the following standards measured at individual property lines. The Planning Board under its powers of site plan review and approval shall decide whether uses meet the standards. Uses shall meet State air and water pollution standards and shall not:

1. Emit noise in excess of 70 decibels, dbA scale, of a standard sound level meter.
2. Emit odor which is considered offensive.
3. Emit dust or dirt which is considered offensive.
4. Emit smoke in excess of Ringlemann Chart No. 2.



5. Emit noxious gases which endanger health, comfort, safety, or welfare of any person, or have a tendency to cause injury or damage to property, business or vegetation.
6. Cause, as a result of normal operations, a vibration which creates displacement of 0.003 of one inch at the property line.
7. Create glare by lighting or signs which could impair a driver's vision.
8. Cause a fire, explosion or safety hazard.
9. Cause harmful waste to be discharged into sewer, streams, or bodies of water, or to be stored on said property.

#### Section 600.10    Mobile Homes

No person shall park a mobile home which does not meet State Construction standards on any public or private property. An approved mobile home shall be placed only as follows:

1. In an approved mobile home park.
2. In a district zoned to permit such mobile homes as living accommodations.
3. In an approved mobile home sales lot.
4. Planning Board may issue a Special Permit for a mobile home to be located on a construction site of a new residence for a period not to exceed one year. Extensions may be granted if so approved by the Planning Board.

#### Section 600.11    Mobile Home Parks

##### A. Permits

1. No person shall construct or operate a mobile home park without a permit, obtained as herein provided, and failure to have such a permit shall constitute a violation of this local ordinance for each day the violation is in effect.
2. A mobile home park shall be allowed only by authorization of the Planning Board in those districts where such use is permitted.





3. Applications for a mobile home park building permit shall be filed with the Planning Board for approval. Upon authorization of the Planning Board, the Code Enforcement Officer shall upon receipt of the proper annual fee, issue a building permit for a mobile home park.
4. Permits shall not be transferable or assignable.
5. After issuance of the permit to build, the same shall be valid until the end of the calendar year and shall be renewable every six (6) months.
6. Renewal applications shall be filed with the Code Enforcement Officer before the first day of December next preceding the expiration of the original permit. Prior to the issuance of a renewal permit, the Building Inspector shall inspect the mobile home park premises for compliance with these regulations. Any deviation from the application as originally approved by the Planning Board shall require a new application before the Planning Board and shall be in conformance with these regulations. Upon approval of the Code Enforcement Officer or Planning Board, as the case may be, and payment of the proper annual fee, a renewal permit shall be issued.
7. Applications for a mobile home park permit shall be in writing, signed by the applicant, and shall state:
  - a. The name and address of the applicant(s), and, if a corporation, the name and address of each officer, shareholder [if less than ten (10)] and director;
  - b. The interest of the applicant in the property if not the owner of record; and
  - c. The name and address of the property owner.
8. Each Application shall be accompanied by a site plan indicating the following information:
  - a. Location of the proposed mobile home park, showing the boundaries and measurements of the premises, and location and number of mobile homes to be situated therein;
  - b. Means of egress and ingress to all public roads;
  - c. Watercourses and drainage ditches;
  - d. Internal roads and off-street parking facilities;
  - e. Water supply and sewage disposal facilities;
  - f. Fire extinguishers;
  - g. Fences and screening;
  - h. Location of outdoor lights, signs and other structures;



- i. Names of owners of adjoining properties;
- j. Location of all trees over eight (8) inches in diameter, measured four (4) feet from ground level, and proposed plantings;
- k. Recreation facilities; and
- l. Location and type of trash and rubbish facilities.

B. Annual fee.

- 1. The annual fee for a mobile home park permit shall be as provided in the local law establishing fees;
- 2. There shall be no apportionment of the fee for a permit of less than twelve (12) months' duration.

C. Requirements and standards.

- 1. The minimum lot area for a mobile home park shall be ten (10) acres and contain at least five thousand (5,000) square feet per mobile home site.
- 2. Sewage disposal and water supply systems shall have the approval of the New York State Department of Health or shall conform to the requirements of any ordinance or local law of the town governing such systems, whichever is more restrictive.
- 3. The area shall be well drained and shall have such grades and soil as make it suitable for mobile homes.
- 4. No mobile home shall be less than fifty (50) feet from any other mobile home.
- 5. Each mobile home site shall provide suitable connections to a central sewage disposal system and to an approved water supply system and underground electrical service approved by the Board of Fire Underwriters. All mobile home parks shall have two wells or one well with adequate storage facilities.
- 6. Garbage and refuse shall be collected and removed from the premises at least once a week. All refuse shall be stored in flytight, watertight, rodentproof containers, which shall be located not more than one hundred fifty (150) feet from any mobile home.
- 7. The outside burning of garbage, trash or rubbish is prohibited.



8. All mobile homes and other structures shall be set back at least fifty (50) feet from the right-of-way line of any public street or property line and twenty-feet (25) feet from any internal access street.
9. Access to a mobile home park from a public street shall be provided by at least two (2) connections, one (1) for egress and one (1) for ingress. All internal access streets shall be at least twenty (20) feet wide with speed bumps and shall be provided with an asphalt surface.
10. Off-street parking spaces shall be provided containing at least one hundred eighty (180) square feet per space. Three (3) such spaces shall be furnished for every two (2) mobile homes.
11. All entrances and exits, internal access streets, and other public spaces shall be adequately illuminated.
12. One (1) nonflashing, illuminated sign containing an area of not more than thirty-two (32) square feet and not more than ten (10) feet above ground level at its highest point may be displayed. Such sign shall be set back at least twenty (20) feet from any public road and at least fifty (50) feet from any property line.
13. Mobile home parks shall be landscaped in accordance with the following specifications:
  - a. A side or rear yard adjacent to an existing developed residential area shall be a minimum width or depth of one hundred (100) feet; the fifty (50) feet nearest to the residential area shall be used as a planting strip, on which shall be planted hedges, evergreens, shrubbery or other suitable plantings or screening as determined by the Planning Board; the remaining fifty (50) feet may be used for offstreet parking.
  - b. All open portions of any lot shall have adequate grading and drainage, and shall be continuously maintained in a dust-free condition by suitable landscaping with trees, shrubs or planted ground cover or by other suitable material as shall be approved by the Planning Board.
  - c. Required front yard areas shall be planned and maintained in such a manner as to provide a park-like setting for all units.



14. The operator of a mobile home park shall keep a register wherein there shall be noted the name and permanent address of every mobile home situated in the park, the registration number of same, the date it was admitted, and the date of its removal. Such register shall be signed by the owner of the mobile home or the person bringing the same into the park.
  15. Upon consideration of the intensity of development and the total number of mobile homes proposed, the Planning Board may require the reservation of not more than ten percent (10%) of the gross area of the mobile home park for the exclusive use of the residents there in for recreation purposes. The minimum area for such purpose shall be not less than one (1) acre.
  16. Sale of mobile homes shall be permitted at any properly licensed mobile home park.
- D. Regulations applicable to mobile home parks established prior to the effective date of this ordinance.
1. These regulations shall apply to all mobile home parks in operation prior to the effective date of this amendment to the zoning ordinance.
  2. The owner or operator of any mobile home park shall have thirty (30) days from the effective date of this ordinance to make an application for a mobile home park.
  3. Within one (1) year of such application said existing mobile home park shall conform to the requirements of this ordinance.
  4. The Planning Board, in such cases, may vary the strict interpretation of these regulations.
  5. Expansion of an existing mobile home park after the effective date of this ordinance shall be made only in accordance with these regulations.

#### Section 600.12 Sewer and Water Facilities

All sewer and water facilities installed as part of any construction project or individual dwelling shall meet standards set forth in the Subdivision Regulations of the Town of Tusten and in the New York State Department of Health Codes.





### Section 600.13     Public Utility Facilities

Public utility substations and similar structures, shall comply with the following:

1. Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side, and rear yards.
2. Landscaped area at least 15 feet wide shall be maintained in front, rear and side yards.
3. There shall be no equipment visible from surrounding property.
4. Low profile equipment shall be used where practical.
5. Utility poles and attendant lines will be allowed, as necessary, in all districts.

### Section 600.14     Extraction of Natural Products

In any district, removal of soil, sand, gravel or quarried stone for sale, except when incidental to, or connected with, construction of a building on the same premises shall be permitted only after issuance of a special permit. In instances where Department of Environmental Conservation (D.E.C.) permits are required, this regulation shall not apply when said D.E.C. permit is issued.

In addition:

1. Stripping of topsoil for sale or use on other premises, except as may be incidental to a construction project, is prohibited within the Town without issuance of a special permit and site plan review by the Planning Board.
2. Before approval of any new, or extension to, sand, gravel or stone quarrying operation, a performance bond shall be secured from the owner sufficient to insure that upon completion of extraction operations the abandoned site will be left in a safe, attractive, and useful condition in the interest of public safety and general welfare. The bond shall be sufficient to cover cost of redevelopment of the site as a park, recreation area, or other usable open space. The above-mentioned bond shall not be required by this Section if such bond is required and supplied to D.E.C. to accomplish the stated purpose.



#### Section 600.15 Clearcutting

Prior to obtaining final site plan or subdivision review or prior to obtaining a building permit, no person shall physically alter the groundcover of his/her land except for agricultural purposes. Timbering, mining, excavation for sand and gravel, removal or addition of topsoil and removal of vegetation are strictly forbidden unless granted as part of site plan approval or unless a building permit has been obtained. Furthermore, clearing for building purposes shall be limited to 10% of the land or one-half acre, whichever is less. If a person wishes to clear more than 10% or one-half acre, whichever is less, for building purposes, Site Plan Review by the Planning Board shall be required.

#### Section 600.16 Signs

Off-premises advertising signs, billboards and roof signs are not permitted in any district. The following signs are permitted in any district:

1. Professional residence-office and home occupation signs not exceeding six square feet.
2. One "For Rent" or "For Sale" sign not exceeding six square feet in residential districts, 32 square feet in other districts.
3. Direction or information signs not exceeding four square feet.
4. Signs necessary for public safety or welfare.
5. Signs identifying a construction project and the specialists concerned, not exceeding eight square feet for a dwelling and sixteen square feet for other buildings.
6. Signs identifying any permitted non-residential use in a residential district, one square foot of sign for each lineal foot of building frontage, but not exceeding a total of thirty-two square feet.
7. Trespassing or posted signs shall be allowed in all districts when such signs comply with the existing laws and regulations for posting property.

In addition, signs must be of sound construction and visually appealing.



#### Section 600.17 Signs by Special Permit

Other signs may be permitted after issuance of a Special Permit if the Planning Board, or other organization so designated by the Planning Board, finds that such a sign:

1. Is in the public interest and is not detrimental to public safety, welfare or surrounding properties.
2. Is of a character, size and location that will be in harmony with orderly development of the district.

#### Section 600.18 Signs in Business Districts

The following additional signs are permitted in commercial districts:

1. All signs permitted under Section 600.17 above.
2. Business signs, total area not to exceed two square feet for each one linear foot of building frontage.

#### Section 600.19 Ground Signs

Every ground sign shall:

1. Not exceed 20 feet in height above grade.
2. Be set back at least 10 feet from any street line, and at least 20 feet from any other lot line.
3. Be at least 8 feet above any pedestrian walk.

#### Section 600.20 Traffic Hazard, Safety and Obstruction Signs

Every sign shall be designed and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window or fire escape.
5. Withstand a wind pressure load of thirty pounds per square foot.



Section 600.25 Permit for Temporary Uses and Structures

1. The Code Enforcement Officer may issue a temporary permit for a period not exceeding one year, for incidental nonconforming uses as follows:
  - a. Temporary uses incidental to a construction project.
  - b. Temporary real estate sales office incidental to a subdivision.
  - c. Other similar temporary incidental uses.
2. Permits shall be conditioned upon agreement by owner to remove use on expiration of permit.
3. Permits may be re-issued for additional periods of six months.

Section 600.26 Abandonment of Construction and Excavation

1. Within three 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.
2. Unfenced excavation shall not be carried for a period in excess of sixty days.

Section 600.27 Minimum Habitable Floor Area

1. One-family and two-family dwellings shall have a habitable floor area of at least 500 square feet per unit.
2. No habitable rooms are permitted in basements of multiple family dwellings.

Section 600.28 Residential Front Yard Grade

Surface grade of residential front yards, measured at 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.

Section 600.29 Historical and Architectural significant Buildings in the Downtown Business District

Any demolition of, or alteration of buildings in the Downtown Business District must be reviewed by the Planning Board or other group designated by the Town Board. The Planning Board or other





designated group shall take into account architectural and historical significance as well as the total appearance of the streetscape.

#### Section 600.30 Vision Clearance at Intersections

No obstructions to vision between a height of two and a half and ten feet above grade, such as shrubbery, brush, trees, earth, or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 30 feet distant from their point of intersection.

The Town shall have the authority, after proper notice to the property owner and review by the Planning Board, to open existing intersections to the standards in this Section.

#### Section 600.31 Zero Lot Line

When multiple dwelling construction takes the form of townhouse units, where each unit has one or both side walls in common with an adjacent unit, the side yard requirements shall double and shall apply only to the end unit in the row.

#### Section 600.32 Corner and Through Lots

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designated by the applicant as which will be the rear yard and which will be the side yard.

#### Section 600.33 Accessory Buildings

A permitted accessory building or structure, except for farm purposes, may be located provided:

- A. Such building shall not exceed 20 feet in height.
- B. No building permit is required for any accessory use less than 144 square feet.
- C. Such building meets the setbacks provided for in each district.



#### Section 600.34     Environmental Quality Review

The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations, and as may be amended from time to time, are hereby adopted by reference.

#### Section 600.35     Dish Antenna

- A. All dish antenna shall be located in either the side or rear yards, unless the owner can prove his/her only "window of reception" is in the front yard. In the event that no "window of reception" is available on the ground, such antenna may be placed on the roof of the dwelling structure.
- B. The location and design of the dish antenna shall be such to minimize the visual impact on adjacent property.

#### Section 600.36     Dumps

The operation or maintenance of a dump is hereby prohibited in the Town of Tusten except under the following conditions.

- A. A municipality-operated transfer station and/or landfill for which proper approvals and licenses are currently issued may be permitted as a special use in the proper districts as indicated by the zoning schedule.
- B. Any person may dispose of noncommercial or nonindustrial rubbish, waste material and garbage on the property upon which such rubbish, waste material and garbage is produced. No permit is required.
- C. Any person may dispose of materials incidental to the demolition of structures or landclearing within the Town of Tusten on such lot as the material was produced, including rocks, concrete, masonry, bricks, wood, glass, metal, and non-asbestos roofing materials. No permit is required.

No materials, garbage, rubbish, or structures related to dumps, as permitted in this Ordinance, shall be closer than 50 feet to any lot line.



#### Section 600.37 Exterior Spotlighting

In no case shall any exterior spotlighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.

Existing spot lighting shall have 90 days after the effective date of this Ordinance to comply with the standards of this Section.

#### Section 600.38 Garage Sales

Garage sales shall be limited to 15 days per calendar year. Any garage sale operating for more than 15 days per calendar year shall be classified as a seasonal business and subject to the requirements of such.

#### Section 600.39 Home Occupations

Home occupations must meet the following conditions:

- A. The occupation of activity shall be carried on wholly within the principal or within a building or other structure accessory thereto.
- B. Not more than two persons outside the resident household shall be employed in the occupation or as assistants.
- C. There shall be no exterior display or sign except as permitted under this Ordinance, 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.
- D. No offensive odor, noise, vibration, smoke, dust, heat or glare shall be produced.
- E. The home occupation shall not generate traffic in any greater volume than would normally be expected, and any need for parking generated by the occupation shall be met off the street and in accordance with the regulations of this Ordinance.

#### Section 600.40 Household Pets

The keeping of exotic animals or reptiles not defined as a household pet or listed under the animal husbandry definition shall require a special permit. Any property owner keeping



animals not considered household pets shall be required to apply to the Planning Board within 90 days of the effective date of this ordinance for a special permit.

#### Section 600.41     Junk and Junkyards

The provisions of the State Junkyard Law (General Municipal Law, Section 136) are hereby adopted by reference and shall apply to all junkyards as defined in this Ordinance.

In addition to the requirements of General Municipal Law 136, all junk as defined by this Ordinance, shall not be allowed to accumulate unless the junk is stored in an enclosed building or is completely screened from nearby public roads and other private properties.

Existing junk and junkyards, as defined by this Ordinance, shall have one year after the effective date of this Ordinance to comply with the standards and licensing requirements of this Section.

#### Section 600.42     Model Homes

The Planning Board may authorize the Code Enforcement Officer to issue permits for model homes in proposed subdivisions.

Model Homes on display, not intended to be occupied and sold as is and where located, shall be required to meet all setback requirements and shall provide for adequate off-street parking spaces as prescribed by this Ordinance.

#### Section 600.43     Parking, Storage or Use of Recreational Vehicles and Equipment

- A. 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.
- B. No such equipment shall be used for living, sleeping, or housekeeping in excess of 14 days per month when parked or stored on an individual parcel or in any location, except an approved campground, without a permit from the Code Enforcement Officer. Fee for such permit shall be set by the Town Board.





C. Existing recreational vehicles shall be brought into compliance with this standard within 180 days of the effective date of this Ordinance.

D. All New York State Department of Health regulations, including the disposal of sewerage must be complied with.

#### Section 600.44     Roadside Stands

Roadside stands shall contain no more than 200 square feet of floor space.

#### Section 600.45     Seasonal Business

All seasonal use businesses or establishments must comply with the parking requirements of this Ordinance within one year of the adoption date of the Ordinance.

#### Section 600.46     Swimming Pools

##### A. Accessory to Single-Family Dwellings

Swimming pools, whether permanent or portable, having a depth of at least two feet, shall be located no closer than the existing setbacks within each district.

##### B) Accessory to Residential Developments

Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwellings, bungalow colonies, camps or multi-family dwellings, shall be of permanent construction and shall be located no closer than the existing setbacks within each district.

##### C. Non-Residential

Swimming pools that are part of non-residential uses, whether commercial or noncommercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall be of permanent construction and shall be located no closer than the existing setbacks within each district.

##### D. Fencing/Screening

Fencing shall comply with the requirements of the New York State Uniform Fire Prevention and Building Code. Screening may be required by the Planning Board through the Site Plan Review Process.



## Section 610          Non-Conforming Uses

Lots, structures, uses of land and structures and characteristics of uses which lawfully existed at the time of the enactment of these regulations and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions.

### Section 610.1          Intent

It is the intent of these regulations to permit non-conforming uses to continue until they are removed, but not to encourage their survival.

### Section 610.2          Construction Approved Prior to Adoption of Ordinance

Nothing herein contained shall require any change in plans, construction, or designated use of a building for which a building permit has been theretofore issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit.

### Section 610.3          Transference

Non-conforming use rights, subject to the provisions of this Article, remain with the land when title is transferred.

### Section 610.4          Enlargement

No non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance. The extension of a lawful use to any portion of a non-conforming building which existed prior to the enactment of this shall not be deemed the extension of such non-conforming use.

### Section 610.5          Changes

Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use. A non-conforming use may not be changed to other than a conforming use.



#### Section 610.6 Discontinuance

Whenever a non-conforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be conforming with the provisions of this Ordinance.

#### Section 610.7 Restoration and Repair

##### A. Damage or Destruction

If a non-conforming building or land use, or part thereof, has been damaged or partially destroyed by any cause, it may be rebuilt or restored with the same or less floor area and cubic content, and with the same or an improved general site layout as that of the original structure or use.

##### B. Approval of Plans

Approval of the reconstruction or restoration plan by the Planning Board shall be required and the Board may impose conditions on such approval if such conditions would improve an otherwise bad situation and bring the non-conforming use or activity more into compliance with this Ordinance.

#### Section 610.8 District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, or whenever the text of this Ordinance shall be changed with respect to uses permitted in a district, the foregoing provisions shall also apply to any non-conforming buildings or uses therein.

#### Section 610.9 Unsafe Structures

Any structure or portion thereof declared by the Code Enforcement Officer or other proper authority to be unsafe by reason of fire or any other natural or unnatural occurrence shall, within six months, be removed or restored to a safe condition.

If the owner fails to remove or restore the building or structure, the Code Enforcement Officer shall, by Certified Mail, inform the owner that he/she has 30 days to correct the situation. If no progress is made, the Town Board may order the unsafe structure to be removed and shall charge the owner of the property any costs connected therewith.



#### Section 610.10     Alterations

A non-conforming structure may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50 percent of the full value of said structure, unless the structure shall be changed to a conforming use.

#### Section 610.11     Displacement

No non-conforming use shall be extended to displace a conforming use.

#### Section 610.12     Moving

Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.

#### Section 610.13     Mobile Homes

Existing mobile homes that, for whatever reason, are to be replaced on the same lot and/or on the same site shall only be replaced with a mobile home meeting the requirements of this Ordinance and the construction standards of the New York State Uniform Fire Prevention and Building Code.

#### Section 620           Areas of Special Flood Hazard

##### Section 620.1       Establishment and Delineation of Areas of Special Flood Hazard

- A. Special Flood Hazard Areas are hereby established to accomplish the purpose of protection of the residents of Tusten from hazards due to periodic flooding. This shall include the protection of persons and property, the preservation of water quality and the minimizing of expenditures for relief, insurance and flood control projects.
- B. This provision does not imply that land outside of the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damage.
- C. The provision of Section 620, Areas of Special Flood Hazard, shall take precedence over any other zoning article to the extent that these provisions are inconsistent with such other less restrictive conflicting local laws, ordinances or codes.





D. Areas of Special Flood Hazard shall be deemed to be those areas delineated as such by the U.S. Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Maps H 01-04 for the Town of Tusten, New York, or any superseding maps uses in administering the Federal Flood Insurance Program.

#### Section 620.2      Establishment of Districts

In furtherance of the purpose of this section, the following districts are hereby established.

##### Section 620.2a      Floodway District

The Floodway District consists of an area comprising the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood. The base flood shall be the flood having a one percent chance of being equalled or exceeded in any given year. (Also known as the "100-Year Flood.") The extent of the Floodway District is depicted in Figures 1a and 1b.

##### Section 620.2b      Flood Hazard District

The Flood Hazard District means any land susceptible to being inundated by water from any source.

##### Section 620.2c      Amendment of Districts

From time to time the Floodway and Flood Hazard District boundaries may be amended by the Federal Insurance Administrator and/or the New York State Department of Environmental Conservation. Due notice of such amended District boundaries shall be given by publication in a local newspaper of general circulation ten (10) days before such amendment shall go into effect. Maps of such amended Districts shall be posted in the office of the Town Clerk and shall become the Official Flood Hazard Boundary Map.

#### Section 620.3      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 Ordinance:



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.

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.

#### Section 620.4      Issuance of Building Permits

- A. 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, modular homes or any other structure permanently affixed to a foundation shall be deemed a building.
- B. Permits will not be necessary for minor repairs, unenclosed patios, painting, plumbing, waterwells, new roofs, and accessory structures at the discretion of the Code Enforcement Officer with the approval of the Planning Board.
- C. Upon receipt of the application for building permit, the Code Enforcement Officer shall determine if the location of such proposed building falls within the Floodway District or the Flood Hazard District. Appeals to such determination shall be made to the Zoning Board of Appeals.
- D. If such proposed construction is outside the delineated boundaries of the Floodway District or the Flood Hazard District, then a building permit shall be issued pursuant to Section 3.2 of the Town of Tusten Building Permit Ordinance.

#### Section 620.5      Building Standards

All development uses within the Floodway District or the Flood Hazard District as identified in Federal Insurance Administration Flood Hazard Boundary Maps H 01-04 for the Town of Tusten, New



York, except those uses permitted by the right under Section 620.3 of this Ordinance are allowed only in compliance with the following standards:

- A. New construction or substantial improvement of any residential structures shall have the lowest habitable floor, including basement, elevated to, or above, the base flood elevation at that point.
- B. New construction or substantial improvement of any nonresidential 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 floodproofed 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 floodproofed structures may include the following measures or techniques as appropriate:
  - 1. Anchorage to resist flotation and lateral movement.
  - 2. Reinforcement of walls to resist water pressure.
  - 3. Installation of watertight doors, bulkheads and shutters.
  - 4. Use of paints, membranes, or mortars to reduce seepage of water through walls.
  - 5. Addition of mass or weight to resist flotation.
  - 6. Installation of pumps to lower water levels in structures.
  - 7. Pumping facilities to relieve water pressure on external walls and basement floors.
  - 8. Elimination of gravity flow drains.
  - 9. Construction to resist rupture or collapse caused by water pressure or floating debris.
- C. Mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors.



Specifically:

1. 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.
  2. 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.
  3. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
  4. Any additions to the mobile home shall be similarly anchored.
- D. All new construction or substantial improvements of buildings and other structures, including new or replaced utility and sanitary facilities, shall include the following measures as appropriate:
1. Anchored to prevent flotation, collapse, or lateral movement of structure.
  2. Constructed with materials and utility equipment resistant to flood damage.
  3. Constructed by methods and practices that minimize flood damage.
  4. Public facilities and utilities such as sewer, electrical, and water systems located and constructed to minimize flood damage.
  5. Adequate drainage provided to reduce exposure to flood damage.
  6. New and replacement water supply systems 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.





7. New and replacement sanitary sewer systems designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters. Design shall be in compliance as above.
  8. On-site waste disposal systems located to avoid impairment to them or contamination from them during flooding. Design shall be in compliance as above.
- E. 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, bulkheading, or other forms of cover.
- F. In any area of shallow flood the following standards shall apply:
1. New construction or substantial improvements of residential structures shall have the lowest floor, including the basement, elevated above the crown of the nearest street.
  2. New construction or substantial improvements of nonresidential structures shall meet above standards, or together with attendant utility and sanitary facilities, be completely floodproofed to, or above, that level in a manner specified in Section 620.5.
- G. No new construction, substantial improvements, or other development (including fill) shall be permitted within the Floodway unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

#### Section 620.6 Floodway

All development or uses within the Floodway, except those uses permitted by right in Section 620.3, are allowed only as special permit uses in compliance with the following standards:

- A. Encroachments including fill, new construction, substantial improvements and other developments shall be prohibited within the Floodway if such encroachment would result in any increase in flood levels during the occurrence of the base flood discharge.



- B. If Part (a) is satisfied, all new construction and substantial improvements of nonresidential structures allowed in the Floodway shall meet the standards of Section 620.5 of this Ordinance.
- C. Any new construction and substantial improvements of residential structures satisfying the requirements of Part (a) shall meet the standards of Section 620.5 of this Ordinance.
- D. No mobile home shall be placed in the Floodway except within an existing mobile home park or mobile home subdivision and only in compliance with the standards of Section 620.5.

Section 620.7      Local Submission, Filing, and Public Record

- A. Applications for a special permit within a Special Flood Hazard Area shall, in addition to standards set forth in Section 620, 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 620.5 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.
- B. 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 structures and whether or not the 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 nonresidential structures have been floodproofed. All such records shall be maintained for public inspection.

Section 620.8      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 include within such proposals base flood elevation data.



## Section 620.9      Watercourse Alteration

To maintain in compliance with those regulations pertaining to Areas of Special Flood Hazard, the Planning Board shall notify, in riverine situations, adjacent communities and the State Coordinating Office 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.



## ARTICLE VII ADMINISTRATION

### Section 700.        Enforcement

#### Section 700.1        Enforcement Officer

This Ordinance shall be enforced by the Code Enforcement Officer, who shall be appointed by the Town Board, and shall have the following duties and powers necessary to carry out his duties:

1. To make inspections of buildings on premises.
2. To issue summonses and appearance tickets.
3. To file criminal informations.
4. To commence actions in a court of competent jurisdiction for injunctive or other relief as is appropriate.
5. To issue stop work orders.

No building permit or certificate of occupancy shall be issued by him/her except where all the provisions of this Ordinance have been complied with.

#### Section 700.2        Building Permits

1. No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Code Enforcement Officer. Except upon a written order of the Zoning Board of Appeals, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition, or alteration of use thereof would be in violation of any of the provisions of this Ordinance.
2. There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact standard locations on the lot of buildings already existing, if any, the exact size and location on the lot of the building and accessory buildings to be erected, and other such information as may be necessary to determine and provide for the enforcement of this Ordinance.
3. One copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer with such permit to the applicant. Fees for construction, renovation or alteration shall be as provided in the local law establishing fees.





4. Unless there has been substantial progress in the work for which a building permit was issued, said building permit shall expire 12 months from the date of issuance.

#### Section 700.3      Certificate of Occupancy

1. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Code Enforcement Officer stating that the building or proposed use thereof complies with the provisions of this Ordinance.
2. No conforming use shall be maintained, renewed, changed or extended without a certificate of occupancy (certificate of existing use, therefore) having first been issued by the Code Enforcement Officer.
3. All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 10 days after the erection or alteration shall have been approved as complying with the provisions of this Ordinance.
4. The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.
5. No permit for excavation for, or the erection or alteration of, or repair to any building shall be issued until an application has been made for a certificate of occupancy.
6. If occupancy or use is required prior to completion of all plan details, the Town Board, upon request, may authorize the Code Enforcement Officer to issue a temporary Certificate of Occupancy for not more than 30 days.

#### Section 710              Zoning Board of Appeals

##### Section 710.1      Establishment

Pursuant to the provisions of the Town Law, a Zoning Board of Appeals is hereby established in the Town of Tusten.



## Section 710.2      Appointment

The Board shall consist of five (5) members to be appointed by the Town Board. The terms of the initial appointees shall be for one (1), two (2), three (3), four (4) and five (5) years from and after the date of appointment. Their successors, including such additional members as may be appointed by the Town Zoning Board, shall be appointed for the term of five (5) years after the expiration of the terms of their predecessors in office.

## Section 710.3      Appointment to Fill Vacancies

Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Such appointment to fill vacancies shall be made in the same manner as the original appointment. The Zoning Board may continue to legally operate while vacancies are waiting to be filled, providing there are enough members to constitute a quorum.

## Section 710.4      General Grant of Power

The Board shall perform all the duties and have all the powers prescribed by the laws of the State of New York and as herein described.

## Section 710.5      Voters Necessary for a Decision

Voters necessary for a decision. Three members of the Board shall, regardless of the number of members at a given point in time, be a quorum for purposes of conducting any business. The concurring vote of the three (3) of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the enforcement officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this Ordinance or to effect any variation of this Ordinance.

## Section 710.6      Powers and Duties

The Board shall hear and decide appeals pursuant to the provisions of the laws of the State of New York and shall have the following specific powers:

### A. Variances

The Board may vary or adapt the strict application of any of the requirements of this law where such strict application would result in practical difficulties or



unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved.

B. Appeals from Administrative decisions.

The Board shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Code Enforcement Officer in administering this law. It shall also hear and decide all matters referred to it or upon which it is required to pass under the provisions of this law.

C. Interpretation.

The Board shall, upon request from or appeals of a decision by the Code Enforcement Officer or any administrative body of the Town of Tusten, including the Town Board decide any question involving the interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

Section 710.7 Procedure

A. General Procedures.

The Board shall act in strict accordance with the procedure specified by the Town Law and by this Ordinance. All appeals and variance applications made to the Board shall be in writing on forms prescribed by the Board or provided for herein. Every appeal or variance application shall refer to the specific provision of the law involved and shall exactly set forth the interpretation that is claimed, the use which is involved or sought to the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

B. Variance requirements.

Any property owner, tenant or representative thereof may, in appealing an administrative decision of the Code Enforcement Officer with respect to this Ordinance request a variance from its literal terms. Application for a variance may be made concurrently with application for a building permit and shall be delivered to the Code Enforcement Officer who shall in acting upon the permit



application, refer the matter to the Zoning Board of Appeals for a decision on the variance request. This shall not, however, preclude an applicant whose permit request has been denied from subsequently requesting a variance in conjunction with an appeal of such action if the appeal has been timely filed.

Two types of variances may be granted by the Zoning Board of Appeals - area variances and use variances. Area variances involve relief from dimensional or other requirements for existing uses or uses allowed within the District under the terms of this law. Use variances involve a use of land not allowed in a District under the terms of this Ordinance. Each of the following findings of fact shall be made by the Board of Appeals prior to granting such variances.

1. Area Variances

- a. The strict application of the literal terms of this law would present practical difficulties in the use of the property in question from allowed uses. The term "practical difficulties" shall be deemed to exist where;
  1. The applicant has proved he cannot make a reasonable use of his land due to its particular size, shape or grade, or;
  2. The applicant has proved that economic injury will result from literal application of the standards of this Zoning Ordinance and the Town has failed to show that the public health, safety and welfare will be served by upholding the application of the standards and denying the variance.
- b. The applicant has proved the variance, if granted, would be the minimum necessary to render relief and the difficulty could not be obviated by some method feasible for the applicant to pursue, other than a variance.
- c. The applicant has proved the variance, if granted, will not change the permitted density for the parcel.
- d. The applicant has proved the variance, if granted, would not change the character of the district or be a substantial detriment to adjoining properties.
- e. The applicant has proved the variance is not requested for reasons of mere inconvenience, aesthetic tastes or more profitable use.





- f. The applicant has proved the variance would be consistent with the spirit of this law.
- g. The applicant has proved the practical difficulties are not self-created. This requirement shall be strictly enforced and practical difficulties related to properties acquired by the applicant subsequent to the effective date of this law shall be deemed self-created.

## 2. Use Variances

The strict application of the literal terms of this ordinance would produce unnecessary hardship to the applicant. "Unnecessary hardship" will be deemed to exist where the applicant has proved:

- a. A reasonable return cannot be realized through permitted uses. The applicant shall specifically prove, through at least two independent sources of professional testimony, that no use permitted by the Zoning Regulations applicable to that district would yield a reasonable return. The evidence must be specific and address the amount paid for the property, present value, maintenance expenses, taxes, mortgages and encumbrances, income from the land in question and other facts relevant to the particular circumstances of the case. Failure to sell land for a permitted purpose is evidence it will not bring a reasonable return if used for such purposes if the owner has made an active effort to sell. Mere financial loss to the individual owner or inability to achieve the most profitable use of a property shall not be sufficient justification for a variance.
- b. The hardship is not self-created.
- c. The use, if granted, would not alter the essential character of the district or be substantial detriment to adjoining properties.
- d. The variance is not requested for reasons of mere inconvenience or aesthetic taste.
- e. The variance would be consistent with the spirit of this ordinance. No variance shall be granted which would have the practical effect of redistricting the area and any use granted shall be only for the purpose of allowing the owner to achieve a reasonable return consistent with the intent of the district in question.



In reviewing a request for a use variance, the Board may consider the effects of adjacent similar uses, heavy traffic, obsolete improvements, the existence of unusable natural resources and governmental ruling unrelated to zoning.

The burden of proof with a use variance, nonetheless, shall be wholly with the applicant.

#### C. Requirements applicable to other appeals

The Town Board, Code Enforcement Officer or Planning Board of the Town of Tusten may request the Zoning Board of Appeals to decide any question involving the interpretation of any provision of this ordinance and shall refer such other matters to the Board as it is required to decide by the provisions of this ordinance. The Board's rules and regulations shall govern these matters. All matters to be referred to the Board of Appeals in such circumstances shall be in writing to the Board's Secretary and be acted on within ninety (90) days of the Secretary's receipt of the same.

Any property owner, tenant, representative thereof or other person aggrieved by an administrative act of the Town of Tusten with respect to this ordinance (believes such decision to be in error) may appeal to the Zoning Board of Appeals. An administrative act is any order, requirement, decision or determination made by the Code Enforcement Officer. The Board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the official(s) from whom the appeal is taken. An appeal must be made within thirty (30) days of the action of the administrative official appealed. The applicant must file a signed notice of appeal with the administrative official from whom the appeal is taken and with the Secretary of the Board of Appeals. Such notice shall be made on the forms provided for that purpose. The administrative official from whom the appeal is taken shall be responsible, at the direction of the Board, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be completed before an appeal is considered filed. Six (6) copies of the proper appeal form shall be filed with the Board.

#### D. Hearings

1. Time of Hearing. The Board shall schedule a hearing on all appeals or applications within sixty (60) days of the filing of the appeal or application.



2. Notice of hearing - Zoning appeal. The Applicant shall give notice of the hearing at least five (5) days prior to the date thereof by publication in the official Town paper. He shall also give notice regarding the substance of every appeal for a variance, together with notice of the hearing thereon, by mailing notices thereof by certified mail at least 10 days before the date of the hearing, to all owners of all property abutting that held by the applicant in the immediate area and all other owners within two-hundred (200) feet from the exterior boundaries of the land involved in such appeal, as the names of said owners appear on the last completed assessment roll of the Town. The certified receipt from said mailings shall be filed with the Town as proof that the public hearing and notice to adjacent landholders was legally made.

3. General rules. Any party may appear in person or by agent or by attorney.

a. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be made on the party who initiated the proceedings. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence.

Unless otherwise provided by any statute, the Board need not observe the rules of evidence observed by courts, but shall give effect to rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to these requirements, an agency may, for the purpose of expediting hearing, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

b. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials



so incorporated shall be available for examination by the parties before being received in evidence.

c. A party shall have the right of cross-examination.

d. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Board. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could be taken, every party shall be given notice thereof and shall on a timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

4. Rehearing. Upon a motion initiated by any member, and adopted by unanimous vote of the members present, but not less than a majority of all the members, the Board may review at a rehearing any order, decision or determination of the Board not previously reviewed. Notice shall be given as upon an original hearing. Upon such hearing--and provided that it shall appear that no vested rights due to reliance on the original order, decision or determination will be prejudiced thereby--the Board may, upon concurrence of all the members present, reverse, modify or annul its original order, decision or determination. Requests for rehearing, however, shall be made within 30 days of the original order, decision or determination.

#### E. Referral to County Planning Board

Prior to taking action on any matter which would cause any change in regulations or use of land or buildings on real property as specified in Section 239-m of the General Municipal Law, the Board shall make referrals to the County Planning Board.

If within thirty (30) days after receipt of a full statement of such referred matter, the County Planning Board disapproves the proposal or recommends modification thereof, the Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adoption of a resolution fully setting forth the reasons for such contrary action. The Chairperson shall read the report of the County Planning Board at the public hearing on the matter under review.





If the County fails to report within such period of thirty (30) days or such longer period as may have been agreed upon by it and the referring agency, the Board may act without such report.

The Board may also refer matters to the Town of Tusten Planning Board for review and recommendation and defer any decision thereon for a period of not more than thirty (30) days pending a report from the Planning Board.

The requirements of this sub-section and Section 239-m of the General Municipal Law shall also apply to action of the Planning Board and Town Board in administering this Zoning Ordinance.

#### F. Decisions

1. Time of decisions - Decisions by the Board shall be made not later than sixty (60) days from the date of the final hearing.
2. Form of decisions - The final decision on any matter before the Board shall be made by written order signed by the chairperson. Such decision shall state the findings of fact which were the basis for the Board's determination. The Board may reverse or affirm, wholly or partly, or may modify the order to requirements of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.
3. Basis for decision - The Board, in reaching said decision, shall be guided by standards specified herein.
4. Findings/Contents - The findings of the Board and the supporting facts shall be spelled out in detail regardless of whether it is based on evidence submitted or on the personal knowledge of the Board.
5. Expiration of permits - 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 an additional ninety (90) days.
6. Filing of decision - Decisions of the Board shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.



7. Notice of Decision - Copies of the decision shall be forwarded to the applicant, the Town Planning Board and the County Planning Board when referral to the County Planning Board is required in the particular case.
8. Certification of decision - A certified copy of the Board's decision, including all terms and conditions shall be transmitted to the Town administrative official and shall be binding upon and observed by him and he shall fully incorporate such terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the Board.

Section 710.8. Miscellaneous

- A. The Zoning Board of Appeals is hereby authorized to adopt rules and regulations for the conduct of its business consistent with this Ordinance and State statutes.
- B. All applications and appeals made to the Board of Appeals shall be in writing on forms prescribed by the Board and signed by the applicant. Every application or appeal shall refer to the specific provisions of this ordinance involved and shall exactly set forth the interpretation that is claimed, the plans associated with and the details of the variance that is applied for, in addition to the following information:
  1. The name and legal permanent address of the applicant or appellant and telephone number if available.
  2. The name and address of the owner of the district lot to be affected by such proposed change or appeal.
  3. A brief description (or copy of survey or tax map number) and location of the district lot to be affected by such proposed change or appeal.
  4. A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
  5. A reasonably accurate description of the proposed improvements and the additions or changes intended to be made under the application, indicating the size of such proposed improvements, materials and general construction thereof. In addition, there shall be



attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon.

- C. When a notice of appeal in any case where a permit had been granted or denied by the Code Enforcement Officer shall be filed, the Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers. Also, it shall be proper for the Code Enforcement Officer to recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he believes substantial justice requires the same but where he has not himself sufficient authority to grant the relief sought.
- D. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would be, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or the Supreme Court on application, on notice to the Code Enforcement Officer and on due cause shown.
- E. Any person aggrieved by a decision of the Zoning Board of Appeals may apply to the State Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk.
- F. Whenever the Board, after hearing all the evidence presented upon an application or appeal under the provisions of this chapter, denies the same, the Zoning Board of Appeals shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor or assign for a period of one (1) year, unless the Zoning Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.



## Section 720.      Violations

### Section 720.1    Violation and Penalties

A violation of this Ordinance is an offense punishable by a fine as provided in the local law establishing fees or by imprisonment for a period not exceeding 60 days or by both such fine and imprisonment. Each week's continued violation shall constitute a separate additional violation.

### Section 720.2    Complaint of Violations

Whenever a violation of this Ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report whereon to the Town Board.

### Section 720.3    Notice of Violation

Whenever, in the opinion of the Code Enforcement Officer after proper examination and inspection, there appears to exist a violation of any provision of this Ordinance, or of any rule or regulation adopted pursuant thereto, he/she shall serve a written notice of violation. Such notice of violation shall inform the recipient of:

- a. The nature and details of such violation;
- b. Recommended remedial action which if taken will effect compliance with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto;
- c. The date of compliance by which the violation must be remedied or removed.

## ARTICLE VIII CLUSTER DEVELOPMENTS

### Section 800.    Authority and Procedures

Developments which provide for single-family dwelling units and permitted accessory uses, wherein dwelling units are grouped in sections in order to maximize the amount of common open space and to preserve the natural settings, shall be designated as cluster developments. Such proposed developments shall be subject to site plan review and the Town of Tusten Planning Board shall have the authority, as provided in Section 281 of the New York





State Town Law, to approve or deny plans for cluster developments in the R-1 District by Special Permit in accordance with the standards contained herein and in the Town of Tusten Subdivision Regulations. The Planning Board may require plans to be submitted as cluster developments in accordance with Section 281 of the New York State Town Law.

Section 800.1 Site Area, Location and Requirements

- A. Minimum Size. Cluster developments shall include at least ten (10) dwelling units and ten (10) acres of land. In no case shall a Cluster Development have a greater density than allowed in the R-1 District.
- B. Permitted number of units. Total tract area less:
  - 1. All areas within the rights-of-way of any existing or proposed streets;
  - 2. All areas occupied by public utility easements;
  - 3. All State designated freshwater wetlands;
  - 4. All water bodies; and
  - 5. All slopes equal to or greater than 1:3shall be divided by the minimum lot size applicable to that District and rounded to the nearer whole number of dwelling units permitted.
- C. Types of dwellings units permitted. Only single-family and two-family detached dwellings shall be clustered.
- D. Development standards. Development standards for lot size, lot width and lot depth normally applicable within the District where clustering is proposed may, for the purpose of clustering, be reduced by the Planning Board to one-half the normal requirement provided no dwelling structure is located on less than 40,000 square feet of land where on-site sewer and water facilities are to be provided or 7,500 square feet of land where off-site sewer and water facilities are to be provided; and further provided the total density (in individual dwelling units) for the tract shall not exceed the requirements of Sub-section B above.
- E. Open space standards. No individual parcel of common open space shall be less than one (1) acre except to roadway median strips, traffic islands, walkways, courtyards, play areas, recreation facilities, streams, drainways leading directly to streams, historic sites or unique natural features requiring common ownership protection. At least 50% of the common open space shall be used for active recreational activities and shall not include wetlands, floodplain or slopes over 25% in grade.



F. Ownership. All common land and facilities shall be in single ownership or unified control as a homeowners' association. Membership shall be mandatory for each property owner within the development and successive owners with voting of one vote per lot or unit and the developer's control therefore passing to the individual lot/unit owners on sale of a majority of the lots or units. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the homeowners' association 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 his proportionate share of the homeowners' association cost and the homeowners' association must be able to file liens on the lot/unit owner's property if levied assessments are not paid.

G. Organization

A Cluster Development shall be organized as:

1. A Homeowners' Association which must be approved by the Town Board, the Town Attorney, the State Attorney General, the Federal Housing Administration and any other required entity for mortgage insurance as a Cluster Development.

The Town Board and the Town Attorney shall review and approve the articles of incorporation and the charter of said Homeowners' Association to ensure that the purpose and objectives of this legislation are carried out.

The Homeowners' Association must:

- a. Be established as an incorporated non-profit organization operating under recorded land agreements through which each lot owner or homeowner and any succeeding owner is automatically a member, and each lot or homeowner is automatically subject to a charge as provided in the charter of the Homeowners Association.
- b. Title to all common property, exclusive of land set aside for public schools, shall be placed in the Homeowners' Association, or definite and acceptable assurance shall be given that it automatically will be so placed within a reasonable period of time to be determined by the Planning Board.



- c. Each lot owner shall have equal voting rights in the Association and shall have the right to the use and enjoyment of the common property.
- d. Once established, all responsibility for operation and maintenance of the common land and facilities shall lie with the Homeowners' Association.
- e. Dedication of all common land areas shall be recorded directly in the Site Plan or Subdivision Plat, or shall be referenced on the Plat to a dedication in a separately recorded document. Resubdivision of such areas is prohibited. The dedication shall:
  - save the title to the common property to the Homeowners' Association free of any cloud of implied public dedication,
  - commit the developer to convey the areas to the Homeowners' Association at the approved time to be determined by the Planning Board,
  - grant easements of enjoyment over the area to the lot owners or homeowners,
  - give the Homeowners' Association the right to borrow for improvements upon the security of the common areas, and,
  - give the Homeowners' Association the right to suspend membership rights for non-payment of assessment or infraction of published rules.
- f. The Homeowners' Association life shall be perpetual, and it shall purchase insurances, shall pay taxes, shall specify in its character and by-laws an annual homeowner's fee and provision for assessments, and shall establish that all such charges become a lien on each property in favor of said Association. The Association shall have the right to proceed in accordance with all necessary legal action for the foreclosure and enforcement of liens, and it also shall have the right to commence action against any member for the collection of any unpaid assessments in any court of competent jurisdiction.
- g. The developer shall assume all responsibilities as previously outlined for the Homeowners' Association until a majority of the dwelling sites have been sold, at which time the homeowner's association shall be established automatically.

#### H. Deeds

Each deed to each lot sold shall include by reference all recorded declarations, such as covenants, dedications, and other restrictions (including assessments and the provisions for liens for non-payment of such.)



## I. Special Provisions

1. Prior to Site Plan Approval the developer shall file with the Planning Board a performance bond to ensure the proper installation of all park, recreation and common area improvements shown on the site plan, and a maintenance bond to ensure proper maintenance of all common lands until the Homeowners' Association is established. The amount and period of said bonds shall be determined by the Planning Board, and the form, sufficiency, manner of execution, and surety shall be approved by the Town Attorney and the Planning Board.
2. Nothing contained in this section shall relieve the owner or his agent, or the developer of a proposed Cluster Development from complying with Subdivision Plat Approval in accordance with the Town Subdivision Regulations.

### Section 800.2. Site Plan Approval for Cluster Developments

1. An applicant proposing a Cluster Development must come before the Planning Board with a preliminary plan detailing the proposed development. Said preliminary plan shall be in sufficient detail and at a sufficient scale to allow the Planning Board to determine whether the project may progress further. Said preliminary plan shall be drawn to scale though it need not be to the precision of a finished engineering drawing; and it shall indicate the following information:
  - a. The location and types of the various dwelling units and their areas in acres;
  - b. Delineation of the various residential areas indicating for each such area its general location, acreage and composition in terms of total number of dwelling units, approximate percentage allocation of dwelling units by type and the calculation of the residential density in dwelling units per gross acre of site area;
  - c. The general outlines of the interior roads system and all existing public and private rights of way and easements;
  - d. The location and area of the common open space;
  - e. The overall drainage system;





- f. A location map showing uses and ownership of abutting lands; and
- g. Provisions for sewers, water and other required utilities.

In addition, the following documentation shall accompany the preliminary plan:

1. Evidence that the proposal is compatible with the goals of the Town of Tusten Comprehensive Plan; and
  2. If the development is to be staged, a general indication of how the staging is to proceed. The sketch plan shall show the total project whether or not the proposed development is to be staged.
2. If the Planning Board determines a project meets the purposes and objectives enumerated earlier in this section, the applicant shall be instructed to prepare a site plan in accordance with Site Plan Review provisions of the Town Zoning Ordinance. Said site plan shall include areas within which buildings and structures are proposed to be located, the height and spacing of buildings, open spaces and landscaping, off-street parking, open and enclosed parking spaces, drawings and any other physical features relevant to the proposed plan.
  3. When the Planning Board receives the site plan it shall forward a copy of said site plan and all information and correspondence regarding the project to the Town Attorney and the Town Engineer who shall review the project simultaneously with the Planning Board.
  4. A public hearing for site plan approval shall be held within forty-five (45) days of receipt of a complete site plan. Said hearings may be held simultaneously with the subdivision review process if the Planning Board wishes.
  5. Within forty-five (45) days after the public hearing the Planning Board shall act to approve or disapprove the site plan.



## ARTICLE IX AMENDMENTS

### Section 900. Procedure for Amendments

The Town Board may from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or appeal the regulations and provisions of this Ordinance according to the following guidelines:

1. Official notice must be given and a public hearing held by the Town Board as required by law prior to approval of amendments or other such modifications as mentioned herein.
2. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed in triplicate, and accompanied by the required fee.
3. Every such proposed amendment shall be referred to the Planning Board for a report prior to the public hearing. The Planning Board may require a plan of proposed development for which a zoning district change is sought to assist said board in the understanding of the case.
4. In case, however, of a protest against such change signed by the owners of twenty percent or more of the area of the land included in such proposed change, or of that immediately adjacent extending 100 feet therefrom, or of that directly opposite thereto and extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four members of the Town Board as set forth by Section 265 of the Town Law of the State of New York.

## ARTICLE X MISCELLANEOUS

### Section 1000. Interpretation

Whenever the requirements of any other lawfully adopted rules, regulations, or ordinances conflict in their interpretation and application with those herein set forth, the most restrictive, or that imposing the higher standards, shall govern. The provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare.



Section 1010.    Validity

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

Section 1020.    Short Title

This Ordinance shall be known and may be cited as "The Town of Tusten, New York, Zoning Ordinance".

Section 1030.    Severability

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

Section 1040.    Effective Date

This Ordinance shall become effective on \_\_\_\_\_.

