

LOCAL LAW #3 of 2012

AMENDED

ZONING ORDINANCE

VILLAGE OF HERKIMER

NEW YORK

ADOPTED : NOVEMBER 7<sup>TH</sup>, 1962

AMENDED:           OCTOBER 7<sup>TH</sup>, 1963  
                      AUGUST 2<sup>ND</sup>, 1965  
                      MARCH 20<sup>TH</sup>, 1967  
                      NOVEMBER 16<sup>TH</sup>, 1978  
                      JUNE 17<sup>TH</sup>, 1996  
                      FEBRUARY 21, 2012

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PRINTED: SEPTEMBER, 2002

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PURPOSE

For the purpose of promoting the health, safety, morals, or the general welfare of the community, and to lessen congestion in the streets, to secure safety from fire, panic, and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements, under and pursuant to Article VI-A of Chapter 64 of the Consolidated Laws, the size of buildings and other structures, the percentage of lot area that may be occupied, the size of yards, the density of population, and the use of buildings, structures and land for trade, industry, residence or other purposes, are hereby restricted and regulated as hereinafter provided.

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. For the purpose of this ordinance certain words and terms shall have the following meaning:

- a. Words in the present tense include the future, the singular number includes the plural and the plural the singular; the word LOT includes the word PLOT and the word BUILDING includes the word STRUCTURE; the word OCCUPIED; the word USED includes the words ARRANGED, DESIGNED OR INTENDED TO BE USED.
- b. A LOT is a parcel of land occupied or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this ordinance and such open spaces as are arranged and designed to be used in connection with such building.
- c. A CORNER LOT is a lot which has an interior angle of less than one hundred and thirty-five degrees at the intersection of two street lot lines. A lot abutting upon a curved street or streets shall be considered a corner lot if the tangents to the curve at its points beginning within the lot or at the points of intersection of the side lot lines with the street line intersect at an interior angle of less than one hundred thirty-five degrees.
- d. A FRONT LOT LINE in the case of a lot abutting upon only one street is the line separating such lot from such street. In the case of a lot that abuts more than one street, each street line shall be considered to be a front lot line.
- e. A REAR LOT LINE is that lot line which is opposite and most distant from the front lot line.
- f. A SIDE LOT LINE is that lot line, not a front lot line or a rear lot line.
- g. A FAMILY is two or more persons living together as a single housekeeping unit. To distinguish a family for a club, fraternity, or boarding house, not more than two members of a family shall be other than blood relatives, adopted children or foster children.
- h. A DWELLING is any building used wholly for habitation.
- i. A DWELLING UNIT is any dwelling or portion thereof used or intended to be used by one family, and providing complete housekeeping facilities therefor.

- j. A MOBILE HOME is a movable living unit designed for year-round occupancy, sometimes termed a house trailer. For the purpose of this ordinance a mobile home shall not be considered a dwelling.
- k. A SINGLE FAMILY DETACHED DWELLING is a dwelling accommodating or designed to accommodate but a single family in a single dwelling unit.
- l. A TWO-FAMILY DWELLING is a dwelling accommodating or designed to accommodate two families in two separate dwelling units.
- m. A MULTI-FAMILY DWELLING is a dwelling accommodating or designed to accommodate three or more families in separate dwelling units including apartment houses, apartment hotels, and flats.
- n. A ROW DWELLING OR TOWN HOUSE is a dwelling accommodating or designed to accommodate but a single family in a single dwelling unit, the walls on two sides of which may be in common with the walls of adjoining dwellings and are party or lot line walls.
- o. A ROOMING HOUSE is a dwelling where rooms for more than two but less than ten people are offered for hire, with or without meals, sometimes termed a boarding house or lodging house.
- p. A TOURIST HOUSE is a rooming house primarily offering overnight accommodations for more than two but less than ten transients.
- q. A HOTEL is a dwelling where rooms for ten or more persons are offered for hire, with or without meals.
- r. A MOTEL is a hotel intended primarily for transient motorists.
- s. A HOSPITAL is an establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatoria and sanatoria, and shall be limited to the treatment or other care of humans.
- t. A NURSING or CONVALESCENT HOME is any dwelling with less than fifteen (15)-sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.
- u. A PRINCIPAL BUILDING is the building in which is conducted the main or principal use of the lot on which it is located. Any building, which provides sleeping quarters shall be, considered a principal building.

- v. AN ACCESSORY BUILDING is a building subordinate to the principal building on the lot and used for purposes customarily incidental to those of the main building.
- w. A NON-CONFORMING USE is a building, structure, or use of land existing at the time of enactment of this ordinance, or an amendment thereto, and which does not conform to the regulations of the district in which it is situated.
- x. A YARD is the space on a lot not occupied by a building.
- y. A FRONT YARD is a yard between the front lot line and the front line of a building extended to the side lot lines of the lot.
- z. A REAR YARD is a yard between the rear lot line and the rear line of the principal building extended to the side lot lines of the lot.
- aa. A SIDE YARD is a yard between the principal building and a side lot line and extending through from the front yard to the rear yard.
- bb. THE HEIGHT of a building is the vertical distance measured from the average elevation of the proposed grade line of the ground about the building to the mean height between the eaves and ridge for pitched roofs, and to the highest part of roof for parapet roofs. Towers, steeples, cupolas, chimneys, and similar structures are exempted in height computations.
- cc. A HOME OCCUPATION is an occupation or a profession which:
- (1) is customarily carried on in a dwelling unit or in a building or other structures accessory to a dwelling unit, and
  - (2) is carried on by a member of the family residing in the dwelling unit, and
  - (3) is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and
  - (4) which conforms to the following additional conditions:
    - (a) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
    - (b) Not more than one person outside the family shall be employed in the Home Occupation.

- (c) There shall be no exterior display or exterior sign except one unlighted identification sign, not more than two square feet in area, no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building.
- (d) No offensive noise, vibration, smoke, dust, odors, heat, light, or glare shall be produced.

In particular, a Home Occupation includes, but is not limited to the following: Barbering, Hairdressing, Laundering, Home Cooking, Teaching (musical instruction limited to a single pupil at a time), and the skilled practice by an accountant, architect, artist, dentist, doctor, engineer, insurance agent, lawyer, musician, realtor, or member of any other profession within a dwelling occupied by the same.

However, a Home Occupation shall not be interpreted to include the following: Commercial stables and kennels, restaurants and tea rooms, musical instruction to groups, dancing instruction, tourist homes, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles, and other trades and business of a similar nature.

- dd. Multiple Dwelling for Aged: A building or buildings designed to provide living accommodations and other supportive services and facilities for aged or physically handicapped persons.



## ARTICLE II

### ESTABLISHMENT OF DISTRICTS

Section 2.1 Establishment of District. For the purpose of this ordinance the Village is hereby divided into nine (9) classes of zoning districts, as follows:

R - 1	Residential District
R - 2	Residential District
R - 3	Residential District
C - 1	Limited Commercial District
C - 2	General Commercial District
C - 3	Central Commercial District
I - I	Industrial District
L	Land Conservation District
P	Planned Development District

Said districts are shown, defined and bounded on the map entitled Village Zone Map filed in the office of the Village Clerk.

Section 2.2 District Boundaries. Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zone Map, the following rules shall apply:

- a. The district boundaries are lot lines unless otherwise shown, and where the designation of the Zone Map indicates a boundary approximately upon a lot line such lot line shall be construed to be the boundary.
- b. Distances shown on the Zone Map are perpendicular distances from the street lines measured back to the zone boundary line, which lines in all cases where distances are given are parallel to the street line.
- c. In other cases the boundary line shall be determined by use of the scale of the Zone Map.

Section 2.3 Lots in More than One District. Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulation for the less restricted portion of such lot shall extend not more than thirty (30) feet into the most restricted portion, provided that the lot has frontage on a street in the less restricted portion.

## ARTICLE III

### USE REGULATIONS

Section 3.1 R-1 Residential Districts. In R-1 Residential Districts no building or structure shall be erected, altered, or extended and no land, building, structure, or part thereof shall be used for other than one or more of the following uses:

- a. Dwelling.
- b. Church or other place of worship, convent, parish house.
- c. Public library, public school, private nursery school or kindergarten, parochial school.
- d. Public park, public playground or athletic field and field house or other accessory buildings not conducted for profit.
- e. Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood but only upon approval of the Village Board of Trustees. The Board may require the submission of plans and specifications of the proposed structure or facility prior to taking action.
- f. Bulletin board or sign in connection with the uses permitted by paragraphs b, c, and d of this section; one sign advertising the sale, hire, or lease only of the land or building on which it is located; provided that such bulletin board or sign shall not exceed twelve square feet in area, nor shall such sign or bulletin board be permitted within any required yard.
- g. Such accessory uses as are customarily indicated to the above uses, including home occupations, subject to the provisions of Article V.

Section 3.2 Residential Districts. In R-2 Residential Districts no building or structure shall be erected, altered, or extended, and no land, building, structure or part thereof shall be used for other than one or more of the following uses:

- a. Any use permitted in R-1 Residential Districts.

Section 3.2.1 Two-Family Homes and Multiple Dwellings shall be prohibited in R-1 and R-2 Residential Districts, except where the relationship of parent and child exists between at least one member of the family occupying one dwelling unit and one member of the family occupying the other dwelling unit, and the general construction is such as not to impair the residential quality of the area.

Section 3.3 R-3 Residential Districts. In R-3 Residential Districts no building or structure shall be erected, altered, or extended, and no land, building, structure, or part thereof shall be used for other than one or more of the following uses:

- a. Any use permitted in R-2 Residential Districts.
- b. Hospital, sanitarium, nursing or convalescent home, for the treatment of human beings, other than a penal or correctional institution.
- c. Boarding house, lodging house, rooming house, tourist house, but not tourist camps or cabins.
- d. Bulletin board or sign in connection with the uses permitted by paragraph b of this section provided that such bulletin board or sign shall not exceed twelve (12) square feet in area; one sign in connection with the uses permitted by paragraph c of this section; provided that such sign shall not exceed six (6) square feet in area, nor shall such bulletin board or sign be permitted within any required yard.
- e. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Article V.
- f. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.

Section 3.4 C-1 Limited Commercial Districts. In C-1 Limited Commercial Districts no building or structure shall be erected, altered, or extended and no land, building, or structure, or part thereof, shall be used for other than one or more of the following uses:

- a. Any use permitted in R-3 Residential Districts.
- aa. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.
- b. Fraternity, Sorority, Dormitory, or ClubHouse.
- c. Banks or monetary institutions.
- d. Business or Professional Offices.
- e. Mortuary.

- f. Bulletin Board or sign for the purposes of identification of the uses permitted by paragraphs b, c, d, and e of this section provided that such bulletin board or sign shall not exceed six (6) square feet in area, nor shall such sign or bulletin board be permitted within any required yard.
- g. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Article V.

Section 3.5 C-2 Commercial Districts. In C-2 General Commercial Districts no building or structure shall be erected, altered, or extended and no land, building, or structure, or part thereof, shall be used for other than one or more of the following uses:

- a. Any use permitted in C-1 Limited Commercial Districts including Multiple Dwelling for Aged, but excepting all other structures used solely for residential purposes.
- aa. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.
- b. Retail store or Coin Operated business.
- c. Restaurant or other place for the serving of food or beverages.
- d. Hotel or Motel.
- e. Theater, bowling alley, skating rink, or other place of amusement or assembly.
- f. Offices of Veterinarians and small animal hospitals.
- g. Place of business of a similar nature to the above, provided that any manufacture or processing of goods on the premises is clearly incidental to a retail business conducted on the premises.
- h. Gasoline sales station, and/or garage for the storage, adjustment or repair of motor vehicles and other similar uses, which shall be permitted only upon special authorization by the Village Board of Trustees, according to the provisions of Article VII, Section 7.1, after receiving a report and recommendation from the Chief of Police concerning traffic generation and the disruption of traffic flow, and a report and recommendation from the Fire Chief concerning the possible hazards of fire and explosion.

- i. Billboard, sign, or advertising device in connection with the uses permitted in this section and referring only to the use of the premises, provided that such billboard, sign, or advertising device shall not be located less than one-half (1/2) the required depth of the front yard from the street line.
- j. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Article V.

**Section 3.6 C-3 Central Commercial Districts.** In C-3 Central Commercial Districts no building or structure shall be erected, altered or extended and no land, building, or structure, or part thereof, shall be used for other than one or more of the following uses:

- a. Retail store, including storage, wholesale, and service operations customarily incidental thereto, specifically excluding businesses mentioned in Section 3.5 (h) of this ordinance.
- b. Banks or monetary institutions.
- c. Businesses or professional offices.
- d. Restaurant or other place for the serving of food or beverages.
- e. Hotel, Motel
- f. Theatre, bowling alley, skating rink, clubrooms, or other place of amusement or assembly.
- g. Commercial printer or publisher
- h. Place of business of the following and businesses of a similar nature, provided that any manufacture or processing of goods on the premises is clearly incidental to a retail business conducted on the premises.

Appliance Service and  
Repairman  
  
Baker  
Hairdresser  
Cleaner  
Photographer  
Dressmaker

Upholsterer  
Florist  
Furrier  
Caterer  
Optician  
Decorator  
Shoemaker

Tailor  
Barber  
Milliner  
Confectioner  
Shoe Shiner  
Dyer

- i. Parking lots and/or parking garages.

- j. Municipal or public utility structures or facilities, except a correctional facility, correctional institution, or a jail.
- k. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of article V.

Section 3.7 I.I. Industrial Districts. In I-I. Industrial Districts no building or structure shall be erected altered or extended, and no land , building or structure, or part thereof, shall be used for other than the following permitted uses, subject to the performance standards as set forth in Article VII, Section 7.2.

- a. Sexually oriented business shall be located only in industrial districts and in no other district within the village, provided further that sexually oriented business shall not be operated within 1,000 feet of:
  - (1) a church, synagogue, or regular place of religious worship;
  - (2) a public or private elementary or secondary school;
  - (3) a boundary of any residential district;
  - (4) a public park;
  - (5) a licensed daycare center; or
  - (6) another sexually oriented business.
- b. Any legal use except:
  - (1) Those uses which, because of danger to the general public due to hazards of fire and explosion, including those uses where explosives, combustible gases or flammable liquids are manufactured, or stored, shall be permitted only upon special authorization of the Village Board of Trustees according to the provisions of Article VII, Section 7.1 and only in conformance with the State Building Construction Code and Labor Law of the State of New York.
  - (2) Uses of an extractive nature, including but not limited to the operation of sand and gravel mines, topsoil removal, and mineral removal work.
  - (3) Any dwelling other than the quarters of a watchman.
  - (4) A correctional facility, correctional institution, or a jail.

Section 3.8 Land Conservation Districts.

The purpose of the Land Conservation District is to delineate those areas where substantial development of the land in the way of buildings or structures is prohibited because of:

- a. Special or unusual conditions of topography, drainage, flood plain or other natural conditions, whereby considerable damage to buildings or structures and possible loss of life may occur due to the procession or nature, and
- b. The lack of proper facilities or improvements resulting in the land not being suitable for development at the present time, and where such facilities or improvements must be undertaken on an area rather than individual parcel basis in order to serve adequately the area at a reasonable cost to the Village.

To promote this purpose, in Land Conservation Districts no building or structure shall be erected, altered or extended and no land, building, structure or part thereof, shall be used for other than one or more of the following uses:

- a. Farm and other agricultural operations, including gardens, nurseries, and usual farm accessory buildings not including dwellings. Keeping of farm animals is specifically excluded.
- b. Park, playground, athletic field, golf course, and other similar uses, including usual accessory buildings.
- c. Municipal or public utility structures or facilities.
- d. Disposal facilities, sanitary landfill operations, and similar uses shall be permitted only upon special authorization by Village Board of Trustees according to the provisions of Article VII, Section 7.1.

Whenever it is shown that the special or unusual conditions causing the land to be placed in the Land Conservation category have been corrected or otherwise taken care of, such land may then be rezoned as provided by law for amendment of the Zoning Ordinance.

Section 3.9 Planned Development Districts.

In Planned Development Districts, land and buildings may be used for any lawful purpose as authorized by the Village Board of Trustees in accordance with the provisions set forth herein.

- a. Planned Development Districts shall comprise no less than three (3) acres.

- b. Application for establishment of a Planned Development District shall be made to the Village Board of Trustees. The Village Board of Trustees shall refer the application to the Planning Board for consideration.
- c. The Planning Board may require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development. In reaching its decision on the proposed development, the Planning Board shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located, and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property.
- d. The Planning Board shall approve, approve with modifications or disapprove such application and shall report its decision to the Village Board of Trustees.
- e. The Village Board of Trustees shall hold a public hearing on the proposal, with public notice as provided by law in the case of an amendment to the Zoning Ordinance.
- f. The Village Board of Trustees may then amend the Zoning Ordinance so as to define the boundaries of the Planned Development District, but such action shall have the effect only of granting permission for development of the specific proposal in accordance with the Zoning Ordinance within the area so designated with the specification plans and elevations submitted.



## ARTICLE IV

### AREA AND YARD REGULATIONS

Section 4.1 Lot Area, Frontage, Yards, Coverage, and Height Regulations. The minimum requirements of lot area and frontage for residential uses and the minimum requirements for yards and the maximum permissible height and land coverage for all districts and uses are summarized on Schedule I.

Section 4.2 Variation of Requirements. Upon special authorization of the Village Board of Trustees, according to the provisions of Article VII, Section 7.1, the requirements concerning lot area, frontage, side yards, and coverage may be varied for a development of not less than three (3) acres, provided that the maximum density of the overall development is not greater than that normally allowable in the district in which it is located. Such land may be made available under this section shall be devoted to common purposes for all residents, including, but not limited to, a park, playground, or garden for the use of surrounding residents.

Section 4.3 Existing Lots. Other provisions of this Ordinance NOTWITHSTANDING, nothing shall prohibit a lot of less area than that required for a single-family dwelling in the district in which the lot is locating to be used for a single-family dwelling, provided that all other provisions of this ordinance are complied with, when such lot, at the time of the passage of this Ordinance was held under separate ownership or lesseeship from the adjoining lots.

Section 4.4 Yards on Corner Lots. Any yard adjoining a street shall be considered a front yard for the purpose of this ordinance and shall comply with all requirements for a front yard in the district in which located.

Section 4.5 Front Yard Exceptions. Where front yards in any district have been established for more than fifty percent (50%) of the frontage in any block at a depth greater than the minimum required for the district, the depth of required front yards shall be increased to comply with such established depth. In no case shall the depth of the required front yard be less than that specified for the district in which it is located.

Section 4.6 Open Porches, and Attached Carports and Garages. In DETERMINING THE PERCENTAGE OF BUILDING COVERAGE OF A LOT or the size of yards for the purpose of this ordinance, porches or carports open at the sides but roofed, and all attached garages shall be considered as a part of the principal building.

Section 4.7 Fences, Walls, and Hedges. The provisions of this ordinance shall not apply to fences, hedges, or walls not over six (6) feet high above the average natural grade, except as limited by Section 4.8, nor to terraces, steps, unroofed porches or other similar features not over three (3) feet high above the level of the floor of the ground story.

Section 4.8 Corner Visibility. In any district except a Central Commercial District, no structure, fence, or shrubbery over three (3) feet in height shall be maintained on any corner lot within a triangular area formed by the lot lines along the streets to the points on such lines a distance of forty (40) feet from their intersection, and a line connecting such points.

Section 4.9 Projection in Yards. Every part of a required yard shall be open from its lowest part to the sky unobstructed except for the ordinary projections of sills, belt cornices, pilasters, leaders, chimneys, eaves, and ornamental features, provided that no such projections may extend more than three (3) feet into any required yard.

Open or enclosed fire escapes, fireproof outside stairways, and balconies projecting into a required yard not more than four and one-half (4½) feet may be permitted by the Zoning Enforcement Officer where such projections are so placed as not to obstruct light and ventilation.

Section 4.10 Reduction of Lot Area. Whenever a lot upon which stands a building or structure is changed in size or shape so that the area and yard requirements of this ordinance are no longer complied with, such building shall not thereafter be used until it is altered, reconstructed or relocated so as to comply with these requirements. The provisions of this section shall not apply when a portion of a lot is taken for a public purpose.

## ARTICLE V

### ACCESSORY USES

#### Section 5.1 Accessory Uses in Residence Districts.

Accessory uses permitted in Residence Districts shall be such only as do not alter the character of the premises on which they are located or impair the neighborhood and shall be located on the same lot with the use to which it is accessory.

Permitted Accessory Uses shall include the following:

- a. The sale of produce raised on the premises, provided that no goods or products are publicly displayed on the premises.
- b. Customary home occupation, provided that no goods or products are publicly displayed on the premises.
- c. Garage space or parking space for not more than two motor vehicles, provided that for each two thousand (2,000) square feet that the area of the lot exceeds five thousand (5,000) square feet, one additional motor vehicle may be garaged or parked. Space for one motor vehicle may be garaged or parked. Space for one motor vehicle, which must be non-commercial, may be rented to persons not residents on the same lot. Notwithstanding the above, in the case of multi-family dwellings, the provisions of Article VII, Section 7.3 shall apply.
- d. A temporary building for commerce or industry in a Residence District where such building is necessary or incidental to the development of a residential area. Such building may not be continued for more than one year.

#### Section 5.2 Accessory Uses in Limited Commercial Districts.

Accessory uses permitted in Limited Commercial Districts shall be such as do not alter the character of the premises on which they are located or impair the neighborhood, and shall not include any use not on the same lot with the use to which it is accessory.

Permitted accessory uses include the following:

- a. Any accessory use permitted in Residence Districts.
- b. The following uses, subject to the provisions hereinafter set forth:
  - (1) Dispensary or Pharmacy for the sale of drugs, medicines, medical or dental supplies and accessories.

- (2) Licensed Opticians, place of business for the sale of prescription glasses.
- (3) Lunchroom or lounge for the sale of light lunches and non-alcoholic beverages.
- (4) Uses of a similar nature, provided such use is clearly incidental to a primary permitted use.

The accessory uses set forth in subsection 2 above are permitted subject to the following conditions, restrictions, and limitations:

- a. Such uses shall be solely for the rendering of service and sales to the tenants or occupants of the buildings located on the same lot as the accessory use, and to their employees, clients, or patients.
- b. There shall be no direct exterior public entrance or exit from the specific areas occupied by such accessory use except for fire or emergency purposes.
- c. No sign, display, or advertising device directly or indirectly relating to any such accessory use shall be visible from a street.
- d. The aggregate area occupied by all such accessory uses shall not exceed twenty percent (20%) of the rentable space contained in the one building or building complex.

#### Section 5.3 Accessory Uses in General and Central Commercial Districts.

Accessory uses in General and Central Commercial Districts shall be such only as do not alter the character of the premises on which it is located, shall be clearly incidental to a permitted primary use, and shall be located on the same or adjacent parcel of land, except for parking facilities, which shall be governed by Article VII, Section 7.3.

#### Section 5.4 Accessory Buildings.

Accessory buildings may not occupy any required open space other than a rear yard, and any such accessory building may occupy not more than forty percent (40%) of any required rear yard and shall be not less than three (3) feet from any lot line, except that a private garage may be built across a common lot line by mutual agreement between adjoining property owners. Accessory buildings shall in no case exceed twenty (20) feet in height. Garages built into or attached to a principal building shall not be considered accessory buildings, but part of the principal building.

## ARTICLE VI

### NON-CONFORMING USES

Section 6.1 Continuation of Non-Conforming Uses. Except as provided in Sections 6.2 and 6.3 of this article, any use of land, or a building or structure or part thereof, existing at the time that this ordinance, or any amendment hereto, becomes effective, may be continued, subject to the provisions of Sections 6.4, 6.5, and 6.6 of this article, although such building or structure or use does not conform to the provisions of the district in which it is situated.

Section 6.2 Abandonment of Use. When a non-conforming use has been discontinued or abandoned for a period of not less than one year, it shall not thereafter be re-established, and the future use shall be in conformity with the provisions of this ordinance.

Section 6.3 Junk Yards and Billboards. Notwithstanding any other provision of this ordinance, any automobile or other junk yard, or any billboard or non-conforming sign or advertising device in existence in a residence district at the time of the adoption of this ordinance or any amendment hereto shall be discontinued within three (3) years from the date of such adoption or amendment.

Section 6.4 Changes in Non-Conforming Use. No non-conforming use shall be changed to other than conforming use for the district in which it is situated.

Section 6.5 Maintenance of a Non-Conforming Use. A non-conforming use is hereby required to be maintained in such condition as will not constitute a danger to the safety, health or general welfare of the public. Alterations and extensions of the non-conforming use, in order to comply with the provisions of this section, are permitted, provided that such alteration or extension shall not tend to increase the inherent nuisance, nor shall such alteration or extension violate any provisions of this ordinance regarding yards, lot area or lot coverage for the district in which it is situated, or to increase any existing violation or such provisions.

Section 6.6 Restoration. Nothing herein shall prevent the restoration within one year, and continued use of a non-conforming building or structure damaged by fire, flood, earthquake, act of God, or act of the public enemy. In any case where a building or structure is destroyed, such building or structures shall not be restored as a non-conforming use.

## ARTICLE VII

### GENERAL PROVISIONS

Section 7.1 Special Authorization. In every case where special authorization by the Village Board of Trustees is required by the provisions of this ordinance before a use may be permitted in any particular district, such special authorization shall be given only after:

- a. Referral to the Planning Board for their recommendation and the receipt of their report, and
- b. A public hearing conducted by the Village Board of Trustees in the manner set forth for an amendment to the Zoning Ordinance.

The applicant for such special authorization may be required to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development, and such authorization may be made conditional upon the provision of adequate safeguards to protect the health, safety, and general welfare of the public and to minimize possible detrimental effects of the proposed use on adjacent property.

Section 7.2 Industrial Performance Standards. The following performance standards, together with such other Village Ordinances, which may apply, shall be applied to all industrial uses of land, buildings or structures within the village.

- a. Noise. It shall be unlawful for any person, firm, or corporation to permit the emission of measurable noises, as measured at the individual property lines, to exceed seventy (70) decibels during periods between 6:00 A.M. and 10:00 P.M. or sixty (60) decibels during periods between 10:00 P.M. and 6:00 A.M. The sound level may exceed these established levels for a period not to exceed six minutes in any single sixty minutes, and then shall not exceed these established sound levels by more than ten (10) percent. Noises shall be muffled so as not to become unreasonable offensive due to intermittence, beat frequency or high frequency.
- b. Noxious Gases. It shall be unlawful for any person, firm, or corporation to permit or cause the escape of such quantities of noxious acids, fumes, or gases in such a manner and concentration as to endanger the health, comfort, and safety of any person, or to cause or have tendency to cause injury or damage to property, business or vegetation.

- c. Glare and Heat. It shall be unlawful for any person, firm, or corporation to carry on a process such that a direct or sky-reflected glare, whether from flood lights or from high temperature processes such as combustion or welding or other such process that is unreasonably offensive when visible at the individual property lines. No lighting of signs or buildings shall be allowed unless it is of such low intensity or brilliance as not to cause glare or impair the vision of the driver of any motor vehicle.
- d. Fire and Safety Hazards. Operations and processes that are commonly held to be unusually dangerous or hazardous, including the manufacturing or storage of explosives, combustible gases and flammable liquids, together with junk yards or other salvage operations, shall comply with the provisions of the State Building Construction Code, the Labor Law of the State of New York, and the Village Ordinances pertaining thereto.
- e. Industrial Sewage Wastes. It shall be unlawful for any person, firm, or corporation to permit the discharge of industrial wastes, or wastes of any nature, into open stream, until it is treated according to the regulations set by the New York State Health Department. Any wastes discharged into a public sewer shall be treated in accordance with the regulations established in the Plumbing Code of the Village.
- f. RadioActive Materials. It shall be unlawful for any person, firm, or corporation to permit the emission of such quantities of radioactive materials, in any nature whatever, such as to be unsafe as established by the United States Bureau of Standards.
- g. Non-Compliance. When it has been adequately demonstrated to the Board of Appeals that compliance with the terms of this ordinance cannot be effectively and immediately made, the Board of Appeals may authorize the Zoning Enforcement Officer to grant a temporary permit for the continued operation of such non-complying equipment, but only in the event that the party has taken all necessary steps to secure compliance with the ordinance. Such temporary permit shall be issued for no longer a period than three months, at the expiration of which period of time, the party holding such permit shall be deemed to be in violation of the provisions of this ordinance. Any violation or offense on separate days shall be deemed to be separate offenses for the purposes of this ordinance, and thus subject to separate penalties and fines.

Separate 7.3 Parking Requirements. For every building or structure hereafter erected, altered, or extended, there shall be provided parking facilities or vehicle storage as set forth below. Off-street parking or vehicle storage shall not be required in those areas of the village included within the Central Commercial District zone category, where land is generally highly developed, is extremely valuable, lot areas generally small, and there exists little possibility for vehicle storage.

- a. Residential Requirements. Every structure used for dwelling purposes, shall have provided, on the same lot as the principal structure, or on a lot adjacent thereto and in the same ownership, off-street parking facilities for automobiles to the number not less than one for the first dwelling unit and not less than one and one-half the number the dwelling units in such principal structure in excess of the first dwelling unit.
- b. Places of Public Assembly. For every structure used a theater, auditorium, including a school auditorium, stadium, church, lodge halls, or other places of public or private assembly which provides facilities for seating people, other than those in the Central Commercial District, there shall be provided and maintained accessible off-street parking facilities on the same lot therewith, or within three hundred (300) feet thereof, to the number at least equal to space for one automobile for every four (4) seats, or fraction thereof, provided in such place of assembly.
- c. Commercial Requirements. For every business or commercial use other than those in the Central Commercial District there shall be provided in connection therewith on the same lot as the principal use or a lot adjacent thereto under the same ownership, parking facilities to the number at least equal to one parking space for each two hundred (200) square feet or fraction thereof of floor area devoted to such use.
- d. Industrial Requirements. For every industrial use there shall be provided in connection therewith, on the same lot or a lot adjacent thereto under the same ownership, off-street parking facilities to the number of at least equal to two-thirds of the total number of employees employed on the premises in such industrial use on the maximum shift.

Section 7.4 Loading Space. In connection with every use involving vehicles for receipt or distribution of goods, merchandise or materials, adequate off-street vehicle standing or storage space shall be provided so as to avoid undue interference with the public use of streets, alleys, walks or other public ways.

Section 7.5 Rear Dwellings. No building in the rear of a principal on the same lot shall be used for residence purposes, except that an accessory building may house domestic employees of the occupants of the principal building.

Section 7.6 Location of Certain Activities. Other provisions of this ordinance notwithstanding, the following uses or activities shall not be permitted within two hundred (200) feet of any residence district:

- a. Garage or shop for painting of automobiles or for the repairing of automobile bodies or fenders involving hammering or other work causing loud or unusual noise or fumes or odors.



- b. Animal hospital, kennels, or places for the boarding of animals.

Section 7.7 Access of Commercial or Industrial Use. No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any residence district for the servicing of a commercial, or industrial use located in a Commercial or Industrial District.

Section 7.8 More than One Building on a Lot. When there is more than one principal building on a lot in any district, the space between such buildings shall be no less than the sum of the side yard required, or the sum of the rear and the front yards, as the case may be minimum lot area requirements shall apply to each structure.

Section 7.9 Mobile Homes. The use of a mobile home for dwelling purposes in any zone over forty-eight (48) hours, except in a duly licensed trailer or mobile home court established according to the provisions for a Planned Development District, whether on wheels or otherwise supported, is prohibited.

## ARTICLE VIII

### ADMINISTRATION

Section 8.1 Enforcement. This ordinance shall be enforced by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall not approve an application or issue a building permit or certificate of occupancy for any purpose, except in compliance with the provisions of this ordinance and such other ordinances, rules and regulations of the Village together with any applicable laws, rules and regulations of the State of New York.

Section 8.2 Building Permit. No building or structure shall be begun nor shall any building or structure be extended or structurally altered except pursuant to a building permit issued by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall in no case, except under a written order of the Board of Appeals, grant any building permit for any building or structure where the proposed construction, alteration or use thereof would be in violation of any provision of this ordinance.

The fee to be charged for the issuance of a building permit shall be based upon the floor area of the building or structure or addition there to be constructed, and shall be determined as follows:

- a. Residential Construction: Fifty cents (\$.50) for each one-hundred (100) square feet of floor area, or portion thereof, provided that such fee shall not be less than three dollars nor more than twenty-five dollars.
- b. Other than Residential Construction: Twenty-five cents (\$.25) for each one hundred (100) square feet of floor area, or portion thereof, provided that such fee shall not be less than ten dollars (\$10.00) nor more than one-hundred dollars (\$100.00).

A building permit shall become void after a period of six (6) months from the date of issuance unless actual construction has been started pursuant to such building permit, in which case the building permit shall become void after a period of twelve (12) months from the actual date of the start of construction. When the time of starting construction or the time of completion of construction exceeds the above periods, application may be made for a new permit and the minimum charge for such new permit shall apply.

Section 8.2.1 Demolition Permit. No building or structure shall be demolished except pursuant to a demolition permit issued by the Zoning Enforcement Officer. Demolition permits for buildings situated in residential zones shall be valid for a period of thirty (30) days from the date of issuance at which time the demolition must be completed. Demolition permits for buildings situated in other than residential zones shall be valid for a period of ninety (90) days. No demolition permit shall be issued until proof has been furnished that utilities including but not limited to water, sewer, electricity, and gas have been disconnected from the building or structure to be demolished.

Section 8.3 Certificate of Occupancy. No building hereinafter erected, altered, or extended and no land, the use of which is hereafter changed, shall be used until a certificate of occupancy has been issued by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall in no case, except under a written order of the Board of Appeals, grant any certificate of occupancy where the use of any building, structure or land would be in violation of the terms and provisions of this ordinance.

Section 8.4 Board of Appeals. A Board of Appeals of three (3) members is hereby established in accordance with the provisions of Section 179b of the Village Law. The Board of Appeals shall, consistent with the Village Law, determine its own rules and procedures and shall have the power and duties granted to it in the Village Law and as specified in this ordinance.

The Board of Appeals shall, in accordance with the provisions hereinafter set forth in this section, hear and determine appeals from any refusal of a building permit or certificate of occupancy by the Zoning Enforcement Officer, or review any order or decision of the Zoning Enforcement Officer where such order or decision is based upon the requirements of this ordinance. The Board of Appeals shall have the power, in passing upon appeals, to vary or modify the application of any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. The Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass by the terms of this ordinance.

In deciding such matters referred to it by the terms of this ordinance, the Board of Appeals shall give consideration to the health, safety, morals and general welfare of the community. In harmony with the general purpose and intent of this ordinance the Board of Appeals shall determine that a need for the use in question exists, and that the convenience and prosperity of the community will be served and that neighboring persons and property will not be adversely affected.

Specifically, no variance shall be granted by the Board of Appeals unless it finds:

- a. That the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of the land or building for which such variance is sought, that the granting of the variance is necessary for the reasonable use of such property, and that the variance granted by the Board is the minimum variance that will accomplish this purpose; and
- b. That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the vicinity or neighborhood, and have not resulted from any act of the applicant subsequent to the adoption of this ordinance: and

- c. That the granting of the variance will be in harmony with the general purpose of this ordinance, will not be injurious to the neighborhood, and will not alter the essential character of the locality. In granting a variance the Board of Appeals may prescribe appropriate conditions or safeguards that are necessary or desirable to carry out the requirements of this sub-section.

Section 8.5 Penalties. Any person, firm, or corporation who violates, disobeys, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance, shall on conviction thereof, be subject to a fine of not more than fifty dollars (\$50.00) for each offense. Each day a violation is continued, shall be deemed a separate offense. In addition to the foregoing penalty, a violation of this ordinance shall constitute disorderly conduct, and the person violating the same shall be a disorderly person: and such violation shall constitute disorderly conduct, and such person shall be a disorderly person.

In addition to other remedies, the Village may institute any appropriate action or proceeding to prevent any unlawful erection, alteration, conversion, maintenance or use, to correct or abate such violation, to prevent the occupancy of a building, structure or land, or to prevent any illegal act, conduct, business, or use.

Section 8.6 Amendments and Variances. This ordinance may be amended from time to time as provided by Section 179 of the Village Law and after a report concerning such proposed amendment by the Planning Board. A petition requesting a change in regulation, provisions or district boundaries, as set forth in this ordinance, shall be typewritten and signed and acknowledged by the person presenting it, in the same manner as required for the recording of a deed to real property, and shall be filed with the Village Clerk in triplicate. Each petition for a change of zone or variance\* shall be accompanied by a fee of twenty-five dollars (\$25.00), payable to the Village and presented to the Village Clerk. The Planning Board or the Board of Trustees may require a plan of the proposed development and use of any area for which a change of zone or variance is sought in order to assist them in their understanding of any proposed change.

Section 8.7 Performance Bond. In the case of a change in zone petition filed in accordance with the provisions of Section 3.8 with respect to a Planned Development District, or Section 8.6 where a plan of the proposed development or use may be required, and where the Village Board of Trustees approves such change, the Village Board of Trustees may provide that such change shall not become effective until the petition has filed a performance bond in such amount and under such conditions as the Village Board of Trustees may deem to be in the best interests of the public, and so as to insure that the proposed development of the area will be in compliance with the provisions of the accepted development and use plan.

\* Variance fee changed as per fee schedule ordinance.

Section 8.8 Interpretation. In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety, morals, or general welfare.

Section 8.9 Validity. The validity of any section or provision of this ordinance shall not invalidate any other section or provision thereof.

Section 8.10 When Effective This ordinance shall be in full force and effect immediately upon adoption as provided by law.

VILLAGE OF HERKIMER, N. Y.

ZONING TABLE & SETBACK SCHEDULE

JAN. 8, 1919

ZONE	MINIMUM RESIDENTIAL LOT AREA & FRONTAGE				MAXIMUM COVERAGE (%)	MAXIMUM HEIGHT (FEET)	MINIMUM YARDS (FEET)				
	ONE FAMILY (50 FT.)	FRONTAGE (FEET)	TWO FAMILIES (50 FT.)	FRONTAGE (FEET)			MIN. ADDITIONAL LOT AREA FOR EACH FAMILY OVER TWO (50 FT.)	FRONT	SIDE		REAR
									MIN.	TOTAL	
R-1 RESIDENTIAL	18,000	100	SEE SECTION 3.2.1	NOT PERMITTED	15	35	35	20	50	35	
R-2 RESIDENTIAL	9,000	75	SEE SECTION 3.2.1	PERMITTED	20	35	25	10	20	35	
R-3 RESIDENTIAL	5,000	50	2,500	60	25	35	25	5	20	35	
C-1 LIMITED COMMERCIAL	5,000	50	6,000	50	30	40	35	12	30	35	
C-2 GENERAL COMM.	5,000	50	6,000	50	40	40	20	8	20	35	
C-3 CENTRAL COMM.	RESIDENTIAL USES										
I-1 INDUSTRIAL	NOT PERMITTED										
L LAND CONSERVATION	NOT PERMITTED										
P PLANNED DEVELOPMENT	REQUIREMENTS SPECIFICALLY DETERMINED FOR EACH DEVELOPMENT										

NOTES: ① PARKING AND LOADING SPACE SHALL NOT COVER MORE THAN AN ADDITIONAL 40% OF THE LOT  
 ② SEE SECTION 4.4 FOR CORNER LOT EXCEPTIONS  
 ③ SPECIFIC STANDARDS FOR MULTIPLE DWELLINGS FOR THE AGED SHALL BE DETERMINED BY THE BOARD OF TRUSTEES FOR EACH PROPOSAL SUBMITTED, PURSUANT TO THE PROVISIONS OF ARTICLE VII, SECTION 21 OF THIS ORDINANCE.

SCHEDULE 1

VILLAGE OF HERKIMER

Local Law No. 4 of the Year 1978

A Local Law amending the Zoning Ordinance of 1962, as amended on October 7, 1963; August 2, 1965; and March 20, 1967.

Be it enacted by the Board of Trustees of the Village of Herkimer, New York, as follows:

SECTION 1. Article 1, Section 1.1 is amended to include a new subdivision definition as follows:

dd. Multiple Dwelling for Aged: A building or buildings designed to provide living accommodations and other supportive services and facilities for aged or physically handicapped persons.

SECTION 2. Article III, Section 3.3. R-3 Residential Districts is amended to include a new subsection, as follows:

k. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.

SECTION 3. Article III, Section 3.4. C-1 Limited Commercial District is hereby amended by adding a new subdivision to be known as follows:

aa. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.

SECTION 4. Article III, Section 3.5. C-2 General Commercial Districts subparagraph a is amended to read:

a. Any use permitted in C-1 Limited Commercial Districts including Multiple Dwelling for Aged, but excepting all other structures used solely for residential purposes.

SECTION 5. Article III, Section 3.5. C-2 General Commercial Districts is further amended by adding a new subdivision to be known as follows:

aa. Multiple Dwellings for the Aged shall be permitted only upon special authorization by the Village Board of Trustees according to the provisions of Article VII, Section 7.1 of this ordinance.

SECTION 6. The Zoning Table and Setback Schedule is amended as follows:

Next to the words "minimum additional lot area for each family

over two square feet" a footnote shall be added to be called No. 3. At the bottom of the notes the footnote 3 shall read as follows: Specific standards for Multiple Dwelling for Aged are to be determined pursuant to the provisions of Article VII, Section 7.1 of this ordinance.

SECTION 7. This Local Law shall take effect immediately.

*Felicia Griffin*  
Village Clerk

Dated: October 31, 1978  
and presented to the Village Board.

*Carl H. Scavia*  
Village Attorney



A LOCAL LAW AMENDING THE ZONING ORDINANCE OF THE VILLAGE OF  
HERKIMER, NEW YORK

LOCAL LAW SIX OF 1989

Section 1. The Zoning Ordinance adopted November 7, 1962 is hereby amended in

- ARTICLE III, Section 3.9. Planned Development Districts,
- ARTICLE VII, Section 7.3c. Parking Requirements - Commercial,
- ARTICLE IV, Section 4.8. Corner Visibility.

SEE ATTACHED PAGES

Section 2. These Zoning Amendments shall take effect immediately.

\*\*\*\*\*  
Section 3.9

The regulations hereinafter set forth in this Section are intended to provide a means for the development of large scale residential, business, commercial, manufacturing, recreational, solar energy systems, or mixed use areas in a manner which will foster flexible and imaginative design concepts. These regulations are also intended to provide the Village with adequate supervision and control over such projects, through the Planning Board, to insure that the spirit and intent of this Zoning Ordinance/Local Law will be respected and preserved. No specific requirements are established with respect to minimum lot sizes within the district, lot coverage, building height, yard dimensions, off street parking or density of development. Rather, within the overall context of the planned development concept, the Planning Board and Village Board should be guided by the requirements established for neighboring districts in determining reasonable requirements for comparable uses within a planned development district.

The General Planning Development Process:

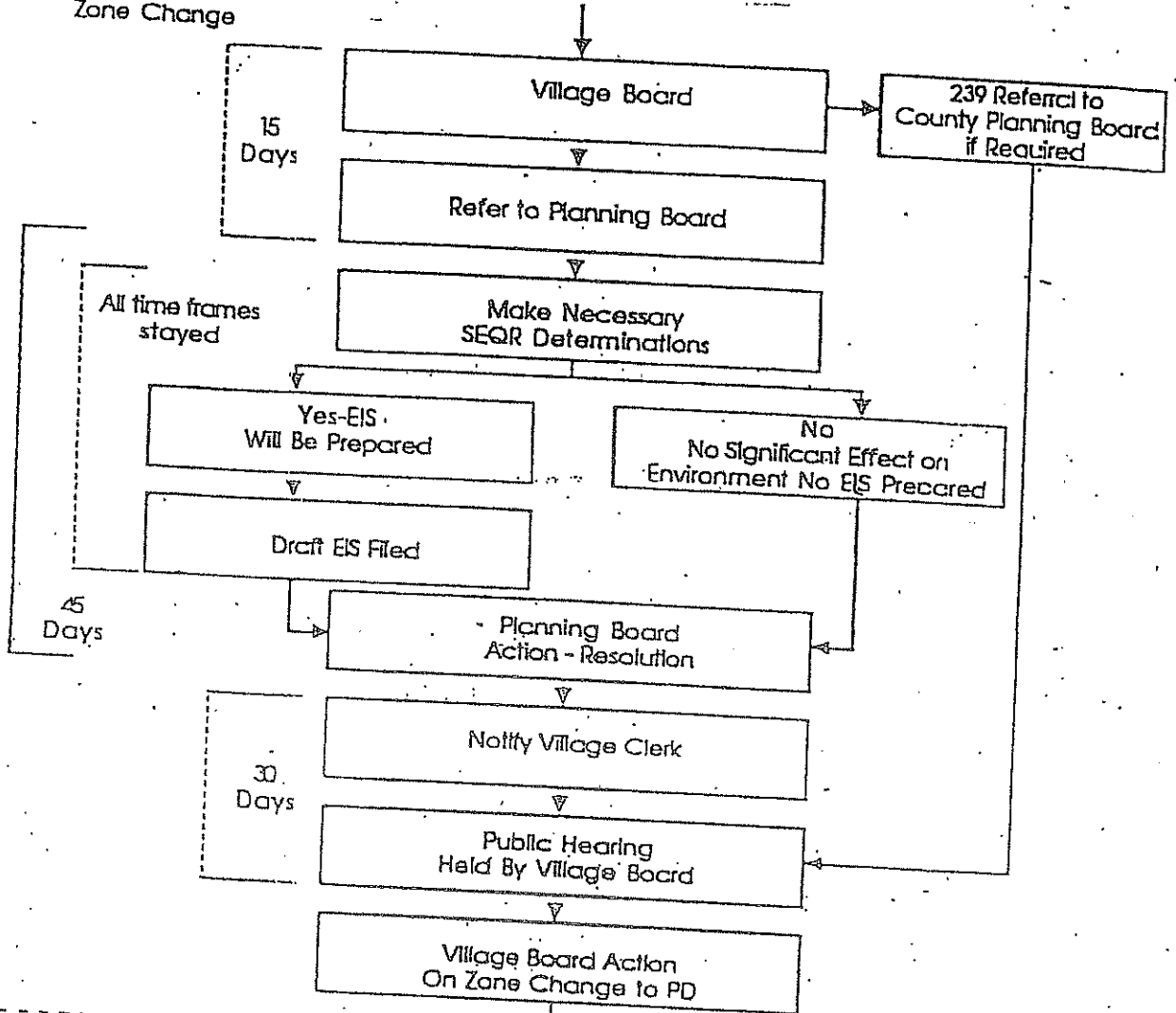
The planned development process consists of two basic steps, First is the change of zoning district designation. Second is a review of the specific site plans for the area.

Any change to a Planned Development (PD) district shall be based on a specific development proposal. Although the designation for all planned development will be PD, each district will reflect the type of use which was the basis for the zone change.

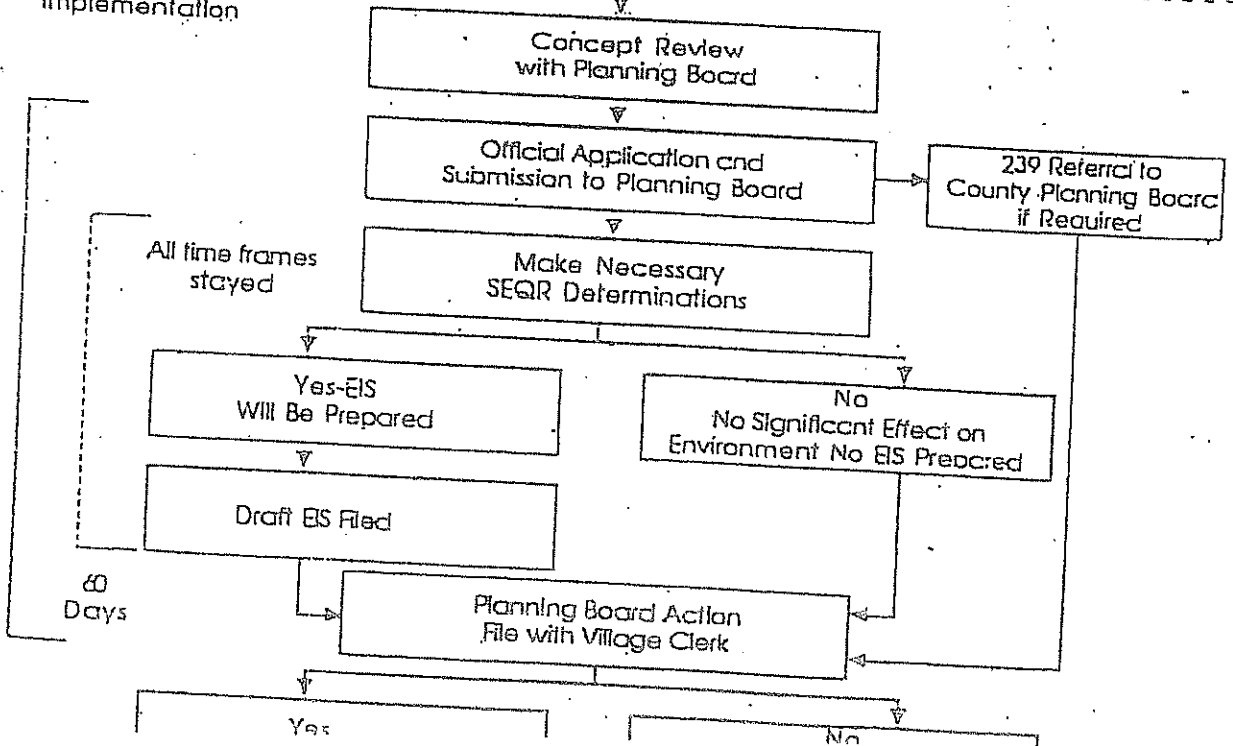
Procedure for the Establishment of a Planned Development District (PHASE I):

# Application Procedure For Change To Planned Development District

## Phase I Zone Change



## Phase II Implementation



## 1. Pre-application Conference

Before submission of a preliminary application for approval of a Planned Development District, the developer shall meet with the Village Planning Board to determine the feasibility and suitability of the application prior to entering into binding commitments or incurring substantial expenses of site and plan preparation.

## 2. Application Procedure

Application for the establishment of the planned development district shall be made to the Village Board. Each application shall be accompanied by a fee of five hundred dollars (\$500). The Village Board shall refer the application and all application materials to the Village Planning Board within fifteen (15) days of receipt of the application.

## 3. Planning Board Review:

Within forty-five (45) days of the receipt of the application, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Village Board. Failure of the Planning Board to act within 45 days or such longer period as may be consented to, shall be deemed to be a grant of approval of the plan as submitted. Prior to issuing its recommendation to the Village Board, the Planning Board shall hold a public hearing on the proposal. Notice of the time and place of the public hearing shall be published and posted as required by law. In the event that approval subject to modifications is granted, the applicant may, within ten (10) days after receiving a copy of the Planning Board's decision notify the Village Board in writing of his refusal to accept all said modifications, approval of the application, subject to such modifications, shall stand as granted.

### a. Submission Requirements

Application to the Village Board must include a petition for the zone change. The applicant must provide proof of full legal and beneficial ownership of the property, or proof of an option or contractual right to purchase the property. Two complete copies of the preliminary plan shall be submitted, including:

- A completed short Environmental Assessment Form (EAF) to comply with the provisions of the State Environmental Quality Review process (SEQR).

- Preliminary Plan - for consideration of the creation of a Planned Development District:

Site Plan - To be prepared at a minimum scale of 1" = 100' (preferred scale of 1" = 40'), unless otherwise approved by the Planning Board, to include:

- 1) Title, scale, north arrow and date.
  - 2) Location map showing location of proposed development of project in the Village, boundaries of the tract, contiguous properties and any zoning districts and easements.
  - 3) Topographic data based on USGS or equivalent and other site characteristics including soils, drainage and tree cover.
  - 4) Existing land use on and immediately adjacent to the parcel.
  - 5) Proposed lot and/or building layout, including adequate means to identify each lot and block or group of buildings, and minimum set-back or building line.
  - 6) Street layout, including right-of-way and improved surface widths and typical cross sections of proposed roadways.
  - 7) Location and description of utilities on and adjacent to the tract and proposed connection thereto, or alternative means of water supply, sewage disposal, electric, telephone, and other service facilities.
  - 8) Location, dimension and purpose of any easement.
  - 9) Existing drainageways and provisions for collecting and discharging surface drainage and stormwater run-off.
  - 10) Location, dimension and description of land or facilities to be dedicated or reserved for public use.
- The applicant must demonstrate that alternative design concepts have been explored.
  - A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties and the effect of the proposal on the overall Village development plan.
  - A written description of the probable impacts on the natural systems of the Village.
  - A written description of the probable fiscal impacts including a summary of new costs and revenues to the Village as a result of the project.
  - Description of any solar energy systems to be incorporated as part of the proposal.
- b. Review Criteria

In considering the application for the creation of a planned development district, the Planning Board may require such changes in the preliminary plans and specify such additional requirements

as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the community. In reaching its decision on the proposed development and changes, if any, in the preliminary plans, the Planning Board shall consider, among other things, the following:

- The need for the proposed land use in the proposed location.
- The existing character of the neighborhood or area.
- The location of principal and accessory buildings on the site in relation to one another and in relation to buildings and uses on properties adjoining the proposed district.
- The general circulation and open space pattern relative to the structures.
- The traffic circulation features within the site, and the amount, location, and access to automobile parking areas.
- The environmental factors on the Environmental Assessment Form (EAF).
- The quantity and quality of available solar energy at the site if solar equipment is being proposed.
- The impacts of this development on the solar access of adjacent properties.

#### 4. Planning Board Action

Establishment of a planned development district is a rezoning action and may be subject to the State Environmental Quality Review process (SEQR). Therefore, the planning board should make a two-part recommendation to the Village Board as part of this process.

First, the planning board should identify the type of action the zone change is according to the SEQR regulations. Depending on a number of factors the zone change itself may be a TYPE I or an UNLISTED action. In making this determination, the planning board should consult Part 617 of Article 8 of the State Environmental Quality Review Act (6 NYCRR Part 617). The planning board should review the Environmental Assessment Form (EAF) submitted by the applicant and make a preliminary determination of environmental significance.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete, and therefore the review clock does not start, until a determination of no significance has been made, or until a draft environmental

impact statement has been completed. When the draft environmental impact statement is completed, the time frame for planning board review begins (45 days). If another agency has determined that the proposal in question may have a significant effect on the environment, the planning board shall not issue a decision until a final environmental impact statement has been filed.

The second part of the recommendation is a decision of the zone change request itself. The decision of the Planning Board shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval, specifying with particularity in what respects the proposal contained in the application would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

- a. In what respects the plan is or is not consistent with the statement of purpose set forth in this section.
  - b. The extent to which the proposal departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.
  - c. The nature and extent of the common open space in the planned development district, the reliability of the proposals for maintenance and conversion of such open space and the adequacy or inadequacy of the amount and function of the open space in terms of the densities of residential uses and the types thereof where residential uses are proposed.
  - d. The plat of the proposal and the manner in which such play does or does not make adequate provision for public services, control over vehicular traffic and the amenities of light and air, and visual amenities.
  - e. The relationship, beneficial or adverse of the proposed planned development district upon the neighborhood in which it is proposed.
  - f. In case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect the interests of the public and the residents of the district in the integrity of the plan.
5. The resolution required by this section shall be filed with the Village Clerk and shall be available during regular office hours for inspection by any person.
  6. Upon the filing of such resolution with the Village Clerk, the Village Board shall within thirty (30) days hold a public hearing on said proposal after giving the public notice required

by law.

7. The Village Board may thereafter amend this Ordinance/Local Law so as to establish the proposed planned development district and define the boundaries thereof. Such action shall have the effect only of establishing a planned development district for the use proposed by the applicant. Such amendment of this Ordinance/Local Law shall not constitute or imply a permit for construction or final approval of plans.

8. In the event that construction has not commenced within 18 months (1 1/2) years from the date that the zoning map amendment establishing the Planned Development District became effective, the Planning Board may so notify the Village Board and the Village Board may, on its own motion, institute a zoning map amendment to return the Planned Development District to its former classification pursuant to section 3.9 of this Ordinance/Local Law.

#### Final Development Plan Review (PHASE II):

Completion of the preliminary plan review and adoption of the zoning map amendment establishing the Planned Development District in no way implies approval to proceed with the actual development of the project. Upon approval of the rezoning request, the applicant is required to follow the procedure outlined hereinafter.

##### 1. Concept Review

Before proceeding with the final design for the area in question, the developer shall meet with the Planning Board and the Village Board to clarify any conditions that either Board has requested. This should promote and understanding by all parties before the preliminary concepts are changed to detailed designs and before the developer spends large amounts of money.

##### 2. Planning Board "Review"

Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Village Board. Within sixty (60) of the receipt of the application, the Planning Board shall grant approval with conditions or disapproval of the application.

##### a. Submission Requirements

Before final approval of the plan, the applicant must show evidence of full legal and beneficial ownership interest in the land.

The final plan shall include, but not be limited to, the following:

- A completed short or full Environmental Assessment Form

(EAF) to comply with the provisions of the State Environmental Quality Review process (SEQR).

- A mapped final development plan of the property in question. Such a plan shall be a certified survey showing all existing and proposed grades, existing and proposed structures, existing and proposed vegetation, the layout of all roadways, walkways, and parking areas. Construction details for such areas described above shall also be submitted.
- A separate map showing all existing and proposed water lines, sewer lines, electric lines, natural gas lines, and other utility and service lines, refuse storage and disposal and fuel storage facilities, and rights-of-way.
- If the project will involve construction of new water supply and infra-structure, new sewage treatment systems, and/or new or alternative power systems the design and details of such proposals must be included.
- A plan showing the treatment of stormwater runoff.
- The total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, the phasing plan, and the approximate completion date of the entire project.
- The Planning Board may require any additional materials it deems necessary to adequately evaluate the proposed project.

b. Review Criteria

The Planning Board may not in all cases have the expertise to review the detailed design and construction drawings. If they do not the Planning Board may confer with the Village Engineer, the Department of Environmental Conservation (DEC), the County Health Department, the County Planning Department and other agencies to insure that review of those areas outside the board's scope is being attended. Any and all costs incurred by the Planning Board in the course of its review may be charged to the applicant. Within its own capabilities the "Board may use the following criteria as general guidelines:

- The height and bulk of buildings and their relation to other structures in the vicinity.
- The proposed location, type, and size of signs, vehicular and pedestrian circulation, loading zones and landscaping.
- The safeguards provided to prevent possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.



- Storm drainage and sanitary waste disposal in and adjacent to the area.
- The compatibility of uses proposed for such districts where a combination of uses are proposed.
- The provisions of adequate and sufficient public utilities.
- The criteria cited for review of the planned development district rezoning process.
- The environmental factors on the Environmental Assessment Form (EAF).

NOTE: The Planning Board may require as a condition of final approval the posting of a bond to assure the completion of all requirements of all the Board including the dedication, maintenance and completion of all streets, easements and open space or recreational areas, creation or extension of special districts or improvement areas, construction of storm and sanitary sewers, landscaping and other such improvements.

### 3. Planning Board Action

First, the Planning Board should identify the type of action the proposed development is according to the State Environmental Quality Review regulations (SEQR). Depending on the size, location, and other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Planning Board should consult Part 617 of Article 8 of the State Environmental Quality Review Act (6 NYCRR Part 617). The Planning Board should also review the Environmental Assessment Form (EAF) submitted as part of the application. The action type and related procedure will dictate the next steps, if any, to be taken to comply with the SEQR regulations.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames, and deadlines are delayed until a draft environmental impact statement is filed. An application is not complete, and therefore the review clock does not start, until a determination of no significance has been completed. When the draft environmental impact statement is completed, the time frame for planning board review begins (60 days). If another agency has determined that the proposal in question may not have a significant effect on the environment, the Planning Board shall not issue a decision until a final environmental impact statement has been filed.

When compliance with SEQR is complete and within the established sixty (60) day review period, the Planning Board shall either grant such approval subject to specified conditions or deny final approval and forthwith file its decision with the

Village Clerk and notify the applicant thereof. Thereupon within 90 days the applicant shall file with the County Clerk the final plat of any subdivision proposed and shall make application with the proposal as finally approved.

4. No building permit shall be granted for the construction of any building or structure other than as approved by the Planning Board and no improvement shall be constructed at variance with the proposal as finally approved except upon resubmission and approval of the Planning Board.

5. The applicant may appeal to the State Supreme Court a decision of the Planning Board denying final approval or granting final approval subject to conditions with which the applicant is unwilling to comply. Such action shall be taken within thirty (30) days of the filing with the Village Clerk of the decision of the Planning Board.

Section 7.3C Commercial Requirements: For every business or commercial use other than those in the Central Commercial District there shall be provided in connection therewith on the same lot as the principal use or a number at least equal to one parking space for each 200 square feet or fraction thereof of floor area devoted to such use.

Section 4.8 Corner Visibility: In any District except a Central Commercial District, no structure, fence or shrubbery over three feet in height shall be maintained on any corner lot within a triangular area formed by the lot lines along the streets to the points on such lines a distance of twenty feet from their intersection, and a line connecting such points.