

Chapter 147

ZONING

[HISTORY: Adopted by the Town Board of the Town of Liberty 7-9-1987 by L.L. No. 4-1987. Amendments noted where applicable.]

ARTICLE I (Reserved)

§ 147-1. (Reserved)

§ 147-2. (Reserved)

ARTICLE II Definitions

§ 147-3. **General terms.**

Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "structure" shall include the word "building"; the word "used" shall include "arranged, designed, constructed, altered, converted, rented, leased or intended to be used"; and the word "shall" is mandatory and not optional.

§ 147-4. **Definitions.** [Amended 10-12-1994 by L.L. No. 1-1994; 5-12-1997 by L.L. No. 2-1997; 2-13-2001 by L.L. No. 2-2001; 6-28-2001 by L.L. No. 5-2001]

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

ACCESSORY STRUCTURE — A subordinate structure or building customarily incidental to, and located on the same lot occupied by the main structure or building. The term "accessory building" may include a private garage, garden shed or barn, private playhouse, private greenhouse, private swimming pool, as hereinafter provided. Where any part of the wall of an accessory building is part of the wall of a main building, or where the accessory building is attached to the main building by a roof, including carports however covered, such accessory building shall be deemed part of the main building.

ADULT STORES — Use of a building or land for a business which has obscene materials as a significant portion of its stock-in-trade or which involves the sale, lease, trade, gift or display of drug paraphernalia. Obscene materials include any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, photograph, figure, image, motion picture, sound recording, article, instrument or any other written or recorded matter which depicts or describes, in a patently offensive manner, sexual conduct and which, taken as a whole, does not have serious literary, artistic, political or scientific value. Drug paraphernalia includes any objects, devices, instruments, apparatus or contrivances whose primary and traditionally exclusive use is involved with the illegal use of any and all controlled substances under the New York State

statutes.

AGRI-BUSINESS — Business activities utilizing 50% or more of product grown and/or produced on the property: U-picks, CSAs, expanded road stands, corn mazes, hay rides, pumpkin patches, seasonal events, school programs, weddings and parties, farm markets, dairy barns, bakeries, farm stores and restaurants, bed-and-breakfasts, farm stays; farm support businesses such as slaughterhouse, community kitchen; and farm-compatible businesses. Farm distilleries and farm vineries.

AGRICULTURE — Any processing facilities, on-farm buildings, manure processing and handling, and practices that contribute to the production, preparation or selling of crops, livestock, and wood products, including commercial horse-boarding operations and compost, mulch or other biomass operations. Agriculture is an activity that produces food, fiber, animal products, wood products, and other goods and services from the land, including but not limited to maple syrup, bee products, and Christmas trees.

AGRI-TOURISM — Activities conducted by a farmer on-farm for the enjoyment or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life. Agri-tourism activities include, but are not limited to, on-farm bed-and-breakfasts, farm stay programs, U-pick operations, and pumpkin patches.

ALTERATION — A change, enlargement or rearrangement in the structural parts of a structure, land or building use; whether by extending on a side or by increasing in height; or moving from one location or position to another.

ANIMAL HOSPITAL — A facility for the medical or surgical care and treatment of animals, including shelters and like facilities, other than animal kennels as described herein.

AUTO BODY SHOP — Any shop or garage, other than a private garage, available to the public, operated for gain and where bodywork and painting are performed.

AUTOMOBILE SERVICE STATION — A building or place of business where repair service is the primary business use, and where gasoline, oil and greases, batteries, tires and automobile accessories may be supplied and dispensed directly to the motor vehicle, at retail.

BASEMENT — That portion of a building that is partly or completely below grade plane (see "story above grade plane" in Section 202 of the Building Code). A basement shall be considered as a story above grade plane where the finished surface on the floor above the basement is: more than six feet (1829 mm) above grade plane; more than six feet (1820 mm) above the finished ground level for more than 50% of the total building perimeter; or more than 12 feet (3658 mm) above the finished ground level at any point; or whatever the applicable and current definition in the NYS Building Code may prescribe.

BED-AND-BREAKFAST — A dwelling in which overnight accommodations not exceeding eight bedrooms and breakfast are provided for transient guests for compensation. A bed-and-breakfast must be the primary residence of the owner/proprietor; or whatever the applicable and current definition in the NYS Department of Health regulations may be.

BOARDING OR TOURIST HOME — Any dwelling in which more than three persons either individually or as families are housed or lodged for hire with meals normally but not necessarily

included as a part of the services rendered; or whatever the applicable and current definition in the NYS Department of Health regulations may be.

BUFFER AREA — The ground area of a lot which shall be left in its natural state or planted, as may be required by code and/or district regulations or the Planning Board in connection with site plan review.

BUILDING — Any structure, having a roof supported by such things as columns, posts, piers or walls and intended for the shelter, business, housing or enclosing of persons, animals, property or other materials, including any combination of materials forming any construction. The term 'building' shall include the term 'structure', as well as the following:

- A. Signs.
- B. Walls and retaining walls.
- C. Radio, television and microwave antennas, except for such antennas installed on the roof of a building and extending not more than 10 feet above the highest level of the roof of such building.
- D. Pergolas, porches, decks, outdoor bins and other similar structures.
- E. Fixed awnings.
- F. Swimming pools.
- G. Transmission towers.
- H. A structure requiring a subsurface support or base, such as a footing or sleeve for a flagpole or sign.

BUILDING COVERAGE — The horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

BUILDING HEIGHT — The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, with exceptions for certain uses as provided herein.

BUILDING, PRINCIPAL — A structure in which the principal use of the site on which it is situated is conducted. In any residential district any dwelling shall be deemed to be a principal building on the district on which the same is located.

BUILDING, SETBACK-LINE — A line parallel to the street line at a distance there from equal to the depth of the front yard required for the zoning district in which the lot is located.

BUNGALOW COLONY — See "dwelling, multiple."

CAFO — Concentrated Animal Feeding Operation.

CAFO, LARGE — Animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

700 mature dairy cows, whether milked or dry

1,000 veal calves

1,000 cattle, other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls and cow/calf pairs.

2,500 swine, each weighing 55 pounds or more

10,000 swine, each weighing less than 55 pounds

500 horses

10,000 sheep or lambs

55,000 turkeys

30,000 laying hens or broilers, if the AFO uses a liquid manure handling system

125,000 chicken, other than laying hens, if the AFO uses other than a liquid manure handling system

82,000 laying hens, if the AFO uses other than a liquid manure handling system

30,000 ducks, if the AFO uses other than a liquid manure handling system

5,000 ducks, if the AFO uses a liquid manure handling system

CAFO, MEDIUM — Animal feeding operation that stables or confines the type and number of animals that fall within any of the following ranges:

200 to 699 mature dairy cows, whether milked or dry

300 to 999 veal calves

300 to 999 cattle, other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls and cow/calf pairs.

750 to 2,499 swine, each weighing 55 pounds or more

3,000 to 9,999 swine, each weighing less than 55 pounds

150 to 499 horses

3,000 to 9,999 sheep or lambs

16,500 to 54,999 turkeys

9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system

37,500 to 124,999 chicken, other than laying hens, if the AFO uses other than a liquid manure handling system

25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system

10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system

1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system

CAFO, SMALL — Animal feeding operation that is designated by the Department of Environmental Conservation as a CAFO or requests CAFO permit coverage and is not a medium or large CAFO. Small CAFOs must meet all of the medium CAFO regulatory requirements of this general permit

CAMP, HUNTING AND FISHING — Recreational camps with year-round intermittent occupancy, dedicated to the pursuit of hunting and fishing activities.

CAMP, SCHOOL — A summer camp to conduct predominately educational activities.

CAMP, SUMMER — An educational or recreational facility with dwelling structures where organized programs are conducted primarily for youth, and where occupancy is limited to the months between May and September.

CAMPGROUND (RECREATIONAL VEHICLE PARK) — The development of a lot, tract or parcel of land for the purpose, whether immediate or future, of lease, rent, sale or transfer of ownership, for the purpose of providing a site for travel trailers, truck campers, camper trailers, motor homes, or tents for transient use.

CEMETERY — A place used for burials, whether in the ground or in mausoleums, provided that no new cemetery shall result in in-ground burials within a one-hundred-year floodplain area or the construction of any mausoleum structure of greater than 500 square feet in size any closer than 100 feet from the perimeter of the cemetery.

CLUSTER DEVELOPMENT — 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 space and to preserve the natural setting.

CODE ENFORCEMENT OFFICER — The person charge by the Town Board with responsibility for administration and enforcement of this chapter.

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

CONSERVATION EASEMENT — A voluntary but legally binding agreement between a landowner and a land trust to preserve all or some of a property's natural values. The easement states how the owner will protect these values. Usually the landowner gives up substantial development rights, but retains title to the land. The owner continues to live on the land and use it, and he can sell it, or pass it to heirs. Subsequent owners are also bound by the terms of the easement.

CONSERVATION SUBDIVISION — See "cluster development."

CONTRACTOR, COMMERCIAL — Any contracting business outside the definition of a single contractor.

CONTRACTOR, SINGLE — Small, one-person and owner-operated business suitable for location within residential zone districts (R1 and R2). Such business must not exceed a minor physical presence in the district and must not change the character of the zoning district with its

equipment, vehicles, and/or storage buildings. Generally, this means one commercial vehicle, one storage building for equipment and tools without any production or manufacturing activity, and no outdoor/visible storage of business equipment.

CONVENIENCE RETAIL ESTABLISHMENT — A retail store or personal service shop, of 2,000 square feet or less in size (excluding the canopy over any gas pumps), with or without the sale of gasoline, and designed primarily to accommodate the needs of the immediate surrounding area, but excluding vehicle and equipment sales.

CURB CUT — A small ramp built into the curb of a sidewalk to ease passage to the street, especially for bicyclists, pedestrians with baby carriages, and physically disabled people.

DAY-CARE CENTER, ADULT — A nonresidential facility which meets New York State requirements for certification intended to provide daily assistance and/or supervision to handicapped adults, the elderly or adults otherwise requiring assistance to perform activities associated with daily living.

DAY-CARE CENTER, CHILD — A nonresidential facility intended to provide the daytime care and supervision of children for a period exceeding three hours and which meets New York State requirements for certification.

DESTINATION RESORT — A self-contained development that provides visitor-oriented accommodations, developed recreation facilities and appropriate support services. Developed recreation facilities may include, but are not limited to, golf courses, tennis courts, swimming pools, ski runs, bicycle paths and similar facilities. Visitor-oriented accommodations include overnight lodging, restaurants, meeting facilities, entertainment venues, gaming casinos, and similar uses. [Amended 12-16-2013 by L.L. No. 5-2013]

DRY-CLEANING, LAUNDRY PLANT — Any dry-cleaning and/or laundry operations without on-site retail and with more than a combined total of 5,000 square feet floor space.

DWELLING UNIT — A building, or entirely self-contained portion thereof, containing complete 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) or cooking or sanitary facilities in common with any other dwelling unit. A boarding or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home, recreational vehicle or other similar structures or vehicles shall not be deemed to constitute a dwelling unit.

DWELLING, MULTIPLE — A building, or portion thereof, containing more than two dwelling units including apartment buildings, condominium units, mid-rise (three to six stories) dwelling projects, garden apartments, single-family residential conversions, row-houses, and townhouses.

DWELLING, ONE-FAMILY — A detached building designed or occupied exclusively by one family and having two side yards, with at least 960 square feet of living area, erected on a permanent foundation, with/without basement, and equipped for year-round occupancy.

DWELLING, OWNER-OCCUPIED SECOND-STORY — A dwelling unit located above a commercial space and occupied by the owner or commercial occupant of the building or, in the case of a condominium dwelling unit above a commercial space, the owner of such a condominium dwelling units.

DWELLING, TWO-FAMILY — A structure containing two dwelling units.

EATING AND DINING PLACES — An eating place is a place where food is prepared and intended for individual portion service and includes the site at which the individual portions are provided, whether consumption occurs on or off the premises. The term excludes food processing establishments, retail food stores, private homes where food is prepared or served for family consumption, and food service operations where a distinct group mutually provides, prepares, serves and consumes the food such as a "covered-dish supper" limited to a congregation, club or fraternal organization.

ELECTRONIC RECEPTION DEVICES — Any exterior device designed to receive electronic signals, including satellite dishes, television antennas and similar devices.

ESSENTIAL SERVICES — See "services, essential."

FARM — Any location where agriculture activities take place.

FARM ACCESSORY USE OR STRUCTURE — A use or structure located on a farm that is clearly incidental and subordinate to the principal activity of agriculture located on the same lot and in the same ownership.

FARM STAND — A structure whose principal use is the seasonal display and sale of agricultural products grown on the premises. A farm stand may also include a movable wagon or platform pulled by a truck or tractor and placed in proximity to a roadway to attract potential customers.

FARM, DAIRY — Farm producing primarily dairy products.

FARM, LIVESTOCK — Farm with primary purpose to raise livestock to be processed for the production of farm products.

FARM, POULTRY — Farm with poultry as primary marketable output.

FARMER — Any person, organization, entity, association, partnership, limited liability company, or corporation engaged in agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock.

FLOATING DISTRICT — A floating district is a zoning district that is added to the zoning law but that floats until an application is made to apply the new district to a certain parcel. Upon the approval of the application, the zoning map is amended to apply the floating district to that parcel of land.

GARAGE, PRIVATE — An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises. Garage space is not classed as living area when part of a dwelling. Detached garages for residences are accessory structures under the Town of Liberty Code.

GROSS SQUARE FOOTAGE — The sum square footage of the area of all floors of a building as measured from the exterior walls, plus the area of any deck structures without roof.

HABITABLE SPACE — Space occupied by one or more persons for living sleeping, eating or

cooking. Restaurants for employees and occupants, kitchens serving them and kitchenettes shall not be deemed to be habitable space.

HEALTH INSTITUTION — An establishment primarily engaged in providing services for human health maintenance or other temporary or permanent care including hospital facilities, nursing and adult homes, nursery schools, day-care centers and medical clinics and offices.

HOME OCCUPATION — Any use conducted entirely within a single-family dwelling or accessory building, and carried on by the inhabitants, which use is clearly incidental and secondary to the principal building and does not change its character.

HORSE BOARDING OPERATION — A commercial horse boarding operation provides care, housing, health, related services and training to animals kept on the premises or on other properties owned or leased by the farm operation. Riding and training activities, not open to the general public, that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and uses for such activities, are part of the farm operation. Riding academies and horse racing operations are not deemed to be a horse boarding operation.

HOTEL — A lodging facility in which ingress and egress to and from at least some rooms is made through an inside lobby or office, supervised by a person in charge at all hours, with or without a dining room or restaurant, meeting rooms and/or recreational facilities. See also "lodging facility." [Amended 8-5-2013 by L.L. No. 1-2013]

INDUSTRIAL PARK — A tract of land providing for more than one industrial use, as designated under "light industrial," designed, maintained and operated as a unit in single ownership or control and sharing certain facilities in common, such as driveways, parking areas, drainage, utilities, and screening.

INN — See "lodging facility."

INSTITUTIONS — Charitable, universally accessible, nonprofit or quasi-public uses including but not limited to places of worship, health facilities, schools, libraries, treatment center and the like.

INSTITUTIONS, RELIGIOUS — A church, synagogue, or other place of religious worship, as well as a monastery or other place of religious retreat.

INTENSIVE POULTRY AND SWINE OPERATION — An animal feeding operation (AFO) as defined and regulated pursuant to ECL Section 17-0105(16) and which is a CAFO.

JUNKYARD — An area of land, with or without buildings, used for the storage, outside a completely enclosed building of used and discarded materials, including, but not limited to, wastepaper, rags, metal, building materials, house furnishings, machines, vehicles, or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same (see Town of Liberty Junkyard Law, Chapter 93 of the Liberty Code).

KENNEL — Any enclosure, premises, building, structure, lot, or area, including kennels (as the word is commonly interpreted to mean), compounds and rescue or related facilities in which more than four dogs or six domesticated animals of at least six month of age are kept, harbored or maintained for commercial or noncommercial purposes for continuous periods of 72 hours or

more.

LIGHT INDUSTRIAL — Industrial uses such as manufacturing, processing and assemblage that are of a nonpolluting nature, particularly in regard to reservoir and groundwater resources, and in regard to ambient air quality, noise and light radiation.

LODGING FACILITY — Any hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests, with or without a dining room or restaurant, excluding bed-and-breakfast establishments.

LOT — A designated parcel, tract, or area of land occupied, established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a unit.

LOT AREA — The area of land contained within the limits of the property lines bounding that lot. Any portion of a lot included in a street right-of-way shall not be included in calculating the lot area.

LOT CORNER — A lot abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than 135°. The point of intersection of the street lot lines is the corner.

LOT COVERAGE — The percentage of the plot or lot area covered by the building area and all impervious surfaces. Parking areas, regardless of how surfaced, shall be considered impervious.

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT FLAG — A lot located in such a position that it is to the rear of a lot fronting on the same street with or without a shared curb cut.

LOT LINES — The property lines bounding the lot:

- A. **LOT LINE FRONT** — The line separating the lot from the street right-of-way. The front lot line shall be established 25 feet from the center line of the road where the right-of-way lines is unknown.
- B. **LOT LINE REAR** — The lot line opposite and most distant from the front lot line.
- C. **LOT LINE SIDE** — Any lot line other than a front or rear lot line.
- D. **LOT LINE STREET** — A lot line separating the lot from a street.

LOT, NONCONFORMING — Any district lot or combination of lots under single ownership at the date of adoption of this local law which does not conform to the minimum width, depth and area dimension specified for the district in which said lot is located.

LOT OF RECORD — Any lot which individually or as part of a subdivision has been recorded in the office of the County Clerk.

LOT WIDTH — The distance between the two side lot lines, measured at the edge of the highway right-of-way.

MACHINERY — Farm, earth-moving and excavating equipment.

MANUFACTURED HOME — Manufactured homes are built in a factory and installed on the

home site. They must meet U.S. Department of Housing and Urban Development (HUD) construction requirements. If built before the 1976 HUD Code, they are commonly called mobile homes.

MINERAL — Any naturally formed solid material of commercial value located on or below the surface of the earth. For purposes of this chapter, peat and topsoil shall be considered minerals.

MINING — The extraction or removal of minerals from the ground for sale or exchange or for commercial, industrial or municipal use. The definition shall not apply to:

- A. The excavation or grading of an area necessary to prepare a site for construction in accordance with an approved building permit, site plan or subdivision plan, provided that the excavation takes place within the project site, does not involve the sale or exchange of mineral resources to off-site locations, and is an integral part of the involved project activities.
- B. Excavations or grading undertaken to enhance the agricultural use of lands or to provide for structures or other improvements that benefit or are necessary for ongoing or imminent agricultural activities. This exemption applies only to excavations where the mineral removal and subsequent reclamation enhances the agricultural usability or productivity of the land.

MOBILE HOME — See "manufactured home."

MOBILE HOME LOT — A designated site of specific total land area which is located within a mobile home park for the accommodation of one mobile home and its occupants.

MOBILE HOME PARK — A parcel of land which has been planned and improved for the placement of three or more mobile homes which are used as dwellings and for occupancy of more than 90 consecutive days.

MOBILE HOME STAND — A durable surface located on a mobile home lot which is capable of supporting and is used for the placement of a mobile home.

MODULAR HOME — A modular home is constructed of premade parts and unit modules. A complete kitchen and bath may be preset in the house. Wall panels, trusses, and other prefabricated house parts are transported on a flatbed truck from the factory to the building site. You may even see an entire half-house moving along the highway. At the building site, these house sections are lifted onto the foundation where they are permanently anchored. Unlike manufactured homes, modular homes must conform to the building codes for the locations where they are erected. Some housing subdivisions prohibit modular homes.

MOTEL — A lodging facility with individual entrances, from outside the building, to serve each guest unit. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses. See also "lodging facility."

NATURAL RESOURCE AND EXTRACTION PROCESSING OPERATIONS — Definition to come from Farmland Protection Committee.¹

1. Editor's Note: So in original.

NONHABITABLE SPACE — See "habitable space."

NURSERY — A place where trees, shrubs, vines and/or flower and vegetable plants are propagated or grown for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before being offered for sale and transplanting.

NURSERY SCHOOL — Any private school, accredited by the Education Department of the State of New York, designed to provide daytime care and instruction for not more than 75 children from two to six years of age, inclusive.

OFFICE, BUSINESS and PROFESSIONAL — A place or establishment used for the organizational or administrative aspects of a trade, or used in the conduct of a profession or business, and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices or salesmen/women, sales representatives, architects, engineers, physicians, dentists, attorneys, insurance brokers, accountants, real estate brokers and persons with similar occupations.

OFF-SITE (CENTRAL) WATER AND SEWER — A sewage system or water supply system designed to serve more than one dwelling unit or building, whether such system(s) are publicly or privately provided.

ON-FARM MEAT PROCESSING — A structure for the slaughter and processing of animals and fowl for food as per NYS Agriculture and Markets Law Article 5-A.

ON-SITE WATER AND SEWER — A sewage disposal or water supply system service one single-family dwelling only.

OPEN SPACE — Land left in a natural state for conservation and agricultural purposes or for scenic purposes, devoted to the preservation of distinctive ecological, physical, visual, architectural, historic, geologic or botanic sites. It shall also mean land left in a natural state and devoted to active or passive recreation. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure except agricultural buildings.

OPEN SPACE, USABLE — An unenclosed portion of a lot that is not devoted to driveways or parking spaces and generally free of structures of any kind except for permitted accessory uses.

OUTDOOR STORAGE AREA — Land used for keeping of goods, wares, equipment, or supplies outside of a structure.

OVERLAY DISTRICT — Overlay districts are imposed over existing zoning districts and contain provisions that are applicable in addition to those contained in the zoning law.

PERMITTED USE — A specific main use of a building, structure, lot or land, or part thereof, which this chapter provides for in a particular district as a matter of right. Any use which is not listed as a permitted, special use or accessory use shall be considered a prohibited use.

PERSONAL SERVICES — See "services, personal."

PET, HOUSEHOLD — A small animal (generally under 150 pounds.) that is customarily kept for company or enjoyment and one that may be properly and safely kept within a dwelling unit or yard, unless otherwise regulated. "Household pets" shall include dogs, cats, pet rabbits,

domestic tropical birds, rodents (gerbils, hamsters and guinea pigs) and reptiles and amphibians.

PLANNED UNIT DEVELOPMENT — An area of minimum contiguous size, as specified herein, to be planned and developed as a single entity containing one or more residential and/or commercial uses as specified herein. [Amended 12-16-2013 by L.L. No. 5-2013]

PROPERTY OWNERS' ASSOCIATION (POA) — A community or homeowners' association which is organized in a development in which individual owners or members share common interests in open space of facilities. A POA typically holds title to certain common property, enforces covenants and restrictions, and manages various aspects of the development. For purposes of this chapter, the term shall include time-sharing agreements, cooperative agreements, condominiums and similar vehicles of common ownership with approval, where required, from the New York State Attorney General's Office.

PUBLIC BUILDINGS AND USES — Structures and uses operated by governmental agency (whether municipal, county, regional, state or federal) in the proper exercise of their jurisdiction.

RECREATIONAL VEHICLE PARK — See "campground."

RECREATIONAL VEHICLE/MOTOR HOME — A vehicle used for personal pleasure or personal travel and not in connection with any commercial endeavor. This definition includes, but is not limited to, campers, travel trailers, buses, camping trailers, pick-up trucks with slide-in campers, recreational vehicle homes and motor homes.

RESEARCH, DESIGN AND DEVELOPMENT LABORATORY — A building for experimentation in pure or applied research, design, development and production of prototype machines or of new products, and uses accessory thereto, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

RESTAURANT — See "eating and dining places."

RESTAURANTS, FAST FOOD — A business enterprise primarily engaged in the sale of quickly prepared food and beverages, selected by patrons from a limited line of prepared specialized items such as hamburgers, chicken, pizza, taco, ice cream and hot dogs, for take-out and/or on-premises consumption (in the latter case, where orders are placed at a counter as opposed to table service via wait staff, in a facility where the floor area available for dining is less than 1/2 of the gross floor area, and a major portion of the sales to the public is a drive-in or stand-up type counter. The term "fast food restaurant" shall not include bakeries, delicatessen, or similar types of retail establishments. See also "restaurant."

RETAIL AND SERVICE ESTABLISHMENTS — Stores and shops where goods and services are sold primarily at retail. Such sales are primarily made to the consumer and include, but are not limited to, goods such as food and beverages; florists; shoes and clothing; hardware, paint and wallpaper; carpeting; hobby and crafts; books; furniture; antiques; art supplies; music and musical instruments; pharmacies; jewelry; photographic supplies; pets; gifts; stationery; sporting goods; fabrics; optical goods; launderette/Laundromat and appliances; but excluding lumber yards, restaurants, and fast-food restaurants. Outside storage or display of goods for such is permitted only with site plan review by the Planning Board.

RETAIL OUTLET FOR ON-SITE INDUSTRIAL USE — An accessory retail use located

within and as part of an industrial use where the bulk of the retail goods are manufactured on-site and the retail use is limited to 10% of the total floor area or 4,000 square feet or less.

RIDING STABLE AND ACADEMY — A commercial establishment that offers riding lessons to the general public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding.

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

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

SCREENING — The blocking, shielding or concealment of views, vistas and noise through a proper and well designed scheme of planting trees, shrubs, hedges and vines or the installation of a fence approved by the Planning Board.

SENIOR CARE FACILITY — A single- or multifamily dwelling, restricted to occupancy by persons of 62 years of age or older, where such residents are supported in the activities of daily living by trained staff.

SERVICES, ESSENTIAL — The construction and maintenance of underground, surface or overhead electrical, gas, telephone, cable, water and sewage collection systems, and wireless communication for the support of emergency services, along with normal accessory activities.

SERVICES, PERSONAL — An establishment primarily engaged in providing services involving the care of a personal or personal apparel, such as a beauty parlor, barber shop, health and fitness center, tailor, or custom cleaning services.

SHED — A small storage building with less than 140 square feet of floor space.

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. All shopping centers are subject to special use/site plan review procedures and shall meet the requirements of § 147-20F.

SIGN — Any billboard, signboard, inscription, pennant, or other material, structure, exterior painting, or device composed of lettered or pictorial material that is intended for outdoor viewing by the general public (including inside a window) and used as an advertisement, announcement, or direction.

SIGN AREA — The total area of each side of a sign within which all written and graphic material is contained.

SIGN, COMMERCIAL — A sign advertising a product, use, service, or activity sold or conducted for private financial gain

SIGN, FREESTANDING — A sign and sign support structure not attached to or part of a building.

SIGN, ILLUMINATED — A sign lighted by electricity, gas, or other artificial light, including reflective or phosphorescent light, paint, or tape.

SIGN, INTERIOR — A sign located within the exterior walls of a building which is readily readable from outside the building through a window, door, or other opening.

SIGN, INTERNALLY ILLUMINATED — An illuminated sign that is made of translucent material with internal artificial lighting.

SIGN, PROJECTING — Any sign which extends from the exterior of any building more than nine inches.

SITE PLAN — The development for one or more lots in on which is shown the existing and proposed conditions of the lot including topography, vegetation, drainage, floodplains, marches and waterways, open spaces, walkways, means of ingress and egress, utility service, landscaping, structures and signs, lighting and screening devices, and other information that reasonably may be required in order that an informed decision can be made by the approving authority.

SITE PLAN REVIEW — The process provided for in § 274(a) of the Town Law whereby the Town of Liberty Planning Board reviews and approves, disapproves or approves with conditions the establishment and certain uses and site plans connected therewith.

SPECIAL USE — A special permit use subject to Planning Board approval pursuant to § 274(a) of the New York State Town Law and permitted in a particular zoning district only on showing that such use in a specified location will comply with all conditions and standards for the location or operation of such use as may be reasonably imposed according to the requirements of this chapter.

STABLE, COMMERCIAL — The use of land or of a building for the keeping of horses for hire, remuneration or sale, including riding academies. Any stable involving the keeping of more than five horses shall be considered commercial whether operated for profit or not.

STORAGE CONTAINER — A place to put belongings both for personal and business. A shipping container will only be considered for business.

STREET — Any vehicular way improved to the standards of the Town of Liberty; shown on the official map of the Town of Liberty; existing as a village, Town, county or state highway; shown on an approved subdivision plat; or a street shown on a plat filed with the County Clerk prior to the Planning Board's authorization to review subdivisions.

STREET LINE — The dividing line between a lot and a street right-of-way.

STRUCTURE — That which is built or constructed.

SWIMMING POOL — Any structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) deep. This includes in-ground, aboveground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

TEMPORARY RESIDENCE — Nonpermanent residence of less than five months' consecutive or 180 days' intermittent residence per year.

TREE FARM — A privately owned forest dedicated to producing renewable and sustainable

crops of forest products while protecting the soil, water, range, aesthetic, recreation, wood, fish and wildlife resources. A certified tree farm must maintain standards set by the American Forest Foundation and is decertified if it fails to continue to meet the standards.

TRUCK TERMINAL — An area or building where cargo is stored and where trucks load and unload cargo on a regular basis with or without truck maintenance and repair facilities.

USE, MIXED — A building or structure containing two or more uses as regulated within the NYS Building Code, none of which are primary uses and none of which are subordinate to the other. Residential structures containing home occupations are not mixed uses.

VEHICLE — Any device on wheels, treads or runners, self-propelled or towed, including but not limited to automobiles, trucks, motorcycles, trailers of all types, all-terrain-vehicles (ATVs) and snowmobiles.

VEHICLE AND EQUIPMENT SALES — A building and/or area arranged, intended or designed to be used for the rental, lease, sale and/or resale of motor vehicles, new or used; boats or trailers; or other equipment. A selection of motor vehicles, boats or trailers or other equipment may be displayed within a totally enclosed building but still others may require an outdoor area for their storage.

VETERINARY CLINIC — See "animal hospital."

WAREHOUSE — A building, or part of a building, for storing of goods, wares, and merchandise whether for the owner or for others, and whether it is a public or private warehouse.

WAREHOUSE, MINI — A structure or group of structures for the dead storage of customers' goods and wares where individual stalls or lockers are rented out to different tenants for storage and where one or more stalls of lockers have less than 500 square feet of floor area.

WILDLIFE PRESERVE — A protected area of importance for wildlife, flora, fauna or features of geological or other special interest, which is reserved and managed for conservation and to provide special opportunities for study and research. Wildlife preserves may only contain buildings, structures and roadways directly related to its purpose.

WORSHIP, PLACE OF — A structure used for religious observances, such as churches and synagogues.

YARD — Any open space which lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as herein provided.

YARD, FRONT — An open space extending the full width of a lot, which lies between the required front setback line and the front lot line, unoccupied and unobstructed from the ground upward.

YARD, REAR — An open space extending the full width of a lot, which lies between the required rear setback line and the rear lot line, unoccupied and unobstructed from the ground upward.

YARD, SIDE — An open space extending the full width of a lot, which lies between the required side setback line and the nearest side lot line, unoccupied and unobstructed.

ARTICLE III
Establishment of Zoning Districts and Zoning Map

§ 147-5. Enumeration of districts. [Amended 3-21-2011 by L.L. No. 1-2011; 8-5-2013 by L.L. No. 1-2013]

The Town of Liberty is hereby divided into the following types of districts.

- AC Agricultural/Conservation
- RD Rural Development
- R-1 Low-Density Residential
- R-2 High-Density Residential
- DCC Downtown Commercial Core
- SC Service Commercial
- IC Industrial Commercial
- PUD Planned Unit Development
- FP Floodplain
- RH Resort Hotel

§ 147-6. Zoning Map. [Amended 3-21-2011 by L.L. No. 1-2011]

The location and boundaries of the aforesaid districts (with the exceptions of the PUD District, which may be established upon application pursuant to the provisions of this chapter, and the FP District, which is an Overlay Zone depicted separately on maps provided by the Federal Emergency Management Agency) are hereby established as shown on the official Zoning Map of the Town of Liberty as amended this date or hereafter, which is attached hereto and made a part hereof.

§ 147-7. Interpretation of boundaries.

- A. Designation of district boundaries. The district boundary lines are intended generally to follow the center lines of rights-of-way, existing lot lines, the center line of streams and other waterways of Town boundary lines, all as shown on said Zoning Map. Where a district boundary line does not follow such a line, its position is typically shown on said Zoning Map by a specific dimension expressing its distance in feet from a street center line or other boundary line as indicated. Where no dimensions are given, the Code Enforcement Officer shall scale the dimension.
- B. Determination of locations of boundaries. Where the true location of a district boundary line is uncertain, the Code Enforcement Officer shall request the Zoning Board of Appeals to determine such location.

ARTICLE IV
District Regulations

§ 147-8. Schedule of District Regulations. [Amended 2-13-2001 by L.L. No. 2-2001; 3-21-2011 by L.L. No. 1-2011; 8-5-2013 by L.L. No. 1-2013]

The restrictions and controls intended to regulate development in each district are set forth in the attached Schedule of District Regulations, which is supplemented by other sections of this chapter.²

§ 147-9. Application of regulations.

Except as hereinafter otherwise provided:

- A. No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be divided, designed, used or intended to be used for any purpose or in any manner other than as permitted in the district in which such building or land is located.
- B. No building shall be erected, no existing building shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot and building regulations hereinafter designated for the district in which such building is located.
- C. No yard or other open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

ARTICLE V

Supplementary Regulations For Buildings and Lots

§ 147-10. Lot regulations.

- A. Lot dimensions. The depth of new lots shall not exceed a ratio of 6:1 to lot width unless not more than three such lots are created or lot width is two or more times the minimum required for the District. The width of new lots fronting on culs-de-sac may be reduced to 75 feet at the front lot line provided the width at the building setback line meets the lot width requirements contained on the Schedule of District Regulations. (See the Town of Liberty Subdivision Regulations for exception to street improvement requirements in the case of accesses to rear lots which might be required to comply with the above regulations.)
- B. Corner lots.
 - (1) Clear sight triangles of 75 feet depth, on each side, from the intersection of street center lines shall be maintained on all corner lots. Nothing shall be erected or allowed to grow above a height of three feet within the area. Public signs, utility poles and trees whose branches are trimmed to a height of 10 feet are exempt from this provision.
 - (2) Rear and side yards. On a corner lot, front yards are required on both street frontages, and one yard other than the front yards shall be deemed to be a rear yard and the other

2. Editor's Note: The Schedule of District Regulations, as amended, is included as an attachment to this chapter.

or others, side yards.

- C. Erection of more than one principal structure. In a district, more than one structure or building housing a permitted principal use may be erected on a single lot or parcel of land, provided that area, yard and other requirements of this chapter shall be met for each structure or building as though it were on an individual lot.
- D. Required area or space cannot be reduced. The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter, except as provided herein.

§ 147-11. Height regulations.

- A. General application. No building or structure shall have a greater height than is permitted in the district where such building or structure is located, except as noted below.
- B. Permitted exceptions to height regulations. Chimneys, cooling towers, cupolas, silos, fire towers, steeples, water towers, spires, communications towers or necessary mechanical appurtenances may exceed normal height limits provided that no tower, other than a church spire or farm silo, shall exceed the height regulations by more than 40%. No tower shall be used as a place of habitation or for tenant purposes. No sign, nameplate, display or advertising device other than one identifying the manufacturer of the structure or the geographic location shall be inscribed upon or attached to a chimney, tower, tank or other structure which extends above the height requirement.

§ 147-12. Yard regulations.

Every part of a required yard must be unobstructed except for plantings, accessory buildings in a rear or side yard and ordinary projections of open porches, balconies, steps, sills, cornices, ornamental features projecting not more than 12 inches and covered in-ground facilities such as septic systems.

- A. Permitted obstructions. Fences or walls not over six and 6 1/2 feet in height may be erected anywhere on the lot, except within clear-sight triangles. Fences or walls with a height in excess of 6 1/2 feet shall conform to the requirements set forth herein for buildings. Paved areas (other than such as are needed for access to the buildings on the lot) shall not project within 15 feet of a street line or four feet of a lot line.
- B. Front yards on narrow streets. On streets with less than fifty-foot right-of-way, the front yard requirement shall be measured from the center line of the existing roadway and 25 feet shall be added to the front yard requirement.
- C. Side yards. Side yard width may be varied. Where the side wall of a building is not parallel with the side lot line or is broken or otherwise irregular, the side yard may be varied. In such cases, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such side yard shall not be narrower at any one point than 1/2 the otherwise required minimum width.

§ 147-13. Maximum building coverage.

Land coverage by principal or accessory buildings or structures on each zone lot shall not be greater than is permitted in the district where such buildings are located. Land cleared for purposes of building shall be improved landscaped or otherwise protected from erosion. Other clearing activities are not regulated by this chapter.

§ 147-14. Accessory structure.

A. Minimum yard regulations.

- (1) Unattached accessory structures accessory structures in RH, RD, and RS Districts. Accessory structures which are not attached to a principal structure shall occupy not more than 30% of a required rear or side yard; and shall not be located within 10 feet of side or rear lot lines or in any required portion of a front yard.
- (2) Attached accessory structures in RH, RD, and RS Districts. When an accessory structure is attached to the principal building, it shall comply in all respects with the yard requirements of this chapter applicable to the principal building.
- (3) Accessory structures in other than RH, RD, and RS Districts. Accessory structures shall comply with front and side yard requirements for the principal structure to which they are accessory and shall not be closer to any rear property line than 10 feet.

B. Structural requirements. No new structure or structural change to an existing building shall be permitted which does not conform with the New York State Building Code and retired school buses, vans, railroad cars, recreational vehicles or similar vehicles or equipment shall not, under any circumstances, be permitted as principal or accessory structures for any use. Tractor-trailer vans or containers may be used for temporary storage in SC and IC districts provided the same are maintained in good repair, remain removable and meet all requirements applicable to accessory structures. All residential structures of any type, including but not limited to single-family dwellings, multiple dwellings, bungalows and mobile homes, shall be placed on and tied to a concrete pad or a poured cement or black perimeter foundation of materials meeting specifications of the New York State Building Code.

C. Permit requirements. Accessory buildings of less than 100 square feet in size shall not require permits. All other buildings and structures, including signs of more than 10 square feet and unattached electronic reception devices of more than 25 feet in height or with more than 12 square feet of surface area, shall require permits. All accessory buildings and structures, however, regardless of size, shall be located at least 10 feet from side and rear lot lines. (Also see § 147-38C.)

ARTICLE VI

Supplementary Regulations Pertaining to Certain Uses

§ 147-15. Amusement, recreation and social areas.

A. Amusement centers, bowling alleys, and similar places of activities (including concert locations, temporary or otherwise) shall be subject to the following requirements.

- (1) The use or activity shall be conducted entirely within an enclosed structure or

separated from adjoining residences by no less than 500 feet of wooded area.

- (2) Off-street parking areas shall be screened from adjoining residential properties with a solid wood fence, wall, or planting strip of dense nursery materials no less than six feet in height.
- (3) A principal structure shall be not less than 100 feet from any property line within an RS District or an entrance or exit of any public or semi-public institutions.
- (4) All amusements shall supply evidence in advance of ability to comply with commercial and manufacturing performance standards contained herein and the Code Enforcement Officer may in the instance of temporary permits, require financial guarantees of performance.

B. Annual membership clubs.

- (1) Annual membership clubs catering exclusively to members and their guests, or other recreational facilities open to the public and accessory playgrounds, swimming pools, tennis courts and recreation buildings where permitted shall not include:
 - (a) Outdoor entertainment, live or mechanical.
 - (b) The use of outdoor public-address systems for any purpose.
- (2) No building shall be erected nearer than 100 feet to any street or property line.

C. Resort establishments, including summer camps, motels and hotels, shall be subject to the following requirements.

- (1) A site to be used for a motel or resort establishment shall include an office and lobby. A hotel may include accessory uses as follows: a restaurant, coffee shop and cafeteria providing food and drink, amusement and sport facilities such as a swimming pool, children's playground, tennis or other game courts; and game or recreation rooms.
- (2) All principal and accessory buildings and structures shall cover a total of not more than 35% of the site.
- (3) Dormitory units shall not be interconnected by interior doors in groups of more than two units. The total interior floor of each dormitory unit, inclusive of bathroom and closet space, shall not be less than 250 square feet. Distance between buildings shall not be less than 25 feet, except that this distance may be reduced to 20 feet or a distance equal to the height of the taller building, whichever is greater, where no driveway passes between buildings.
- (4) Unless the use is subject to site plan review by the Planning Board, a detailed plan for the proposed development of the site and facilities shall be submitted to and approved by the Code Enforcement Officer before the issuance of any building permit. This plan shall identify the location and size of existing trees, all other landscaping proposed, the architectural style, general design, colors and materials to be used on exterior surfaces and detailed plans for any signs, as well as any other information, elevation or perspectives which will enable the Code Enforcement Officer to determine conformity with the foregoing standards.

- D. Recreational vehicles, RV parks and campgrounds. RV parks and campgrounds shall be subject to the provisions of Chapter 117 of this Code, the "Town of Liberty Campground and Recreational Vehicle Park Law." Individual recreational vehicles may be stored on any lot subject to the following restrictions.
- (1) No more than one such vehicle may be stored on any lot (permitted sales lots excepted).
 - (2) The vehicle shall not be connected to any utilities, except on a temporary basis for purposes such as testing of equipment, cleaning and similar activities, and shall neither be used as additional residential, commercial or other space for business or living purposes nor as an independent dwelling or office.
 - (3) The vehicle shall not be parked in any front yard or within 10 feet of any property line.
- E. Swimming pools. Swimming pools, whether above or below-ground, that are accessory to single-family dwellings shall not be located closer than 10 feet to any property line or within any front yard. Swimming pools accessory to more than one residential dwelling unit or to a nonresidential use shall not be located closer than 50 feet to a property line, within 50 feet of a dwelling or within any front yard. All below-ground swimming pools having a depth of two feet or more shall be completely enclosed with a wall, fence or other barrier at least four feet in height and suitably equipped to prevent the accidental entry of children to the pool area.

§ 147-16. Parking, loading and access requirements.

In all districts, in connection with every manufacturing business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected, off-street parking spaces open at no charge for employees', residents' and/or patrons' automobiles in accordance with the requirements set forth herein:

- A. Size. Each off-street parking space shall have an area of not less than 200 square feet, exclusive of access drives or aisles, and shall measure 10 by 20 feet. Except in the case of dwellings, no parking area provided hereunder shall be established for less than three spaces.
- B. Number of parking spaces required. The number of off-street parking spaces required shall be as set forth in the Off-Street Parking Schedule below. In the case of any building, structure or premises the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is similar, in the option of the Planning Board, shall apply.

Off-Street Parking Schedule

| Use | Parking Spaces Required |
|--|---|
| Churches and synagogues | 1 for each 3.5 seats |
| Community buildings and social halls | 1 for each 200 square feet of gross floor area or 1 for each 3.5 seats, whichever is greater |
| Hotel, motel, boarding and rooming houses | 1 per sleeping room or dwelling unit plus 1 per employee |
| Manufacturing plants, testing or research laboratories | 1 per employee in the maximum shift and not less than 1 per 200 square feet floor area |
| Restaurants, bars, and night clubs | 1 for each 50 square feet of patron space |
| Wholesale establishments or warehouses | 1 per employee in maximum shift and the total parking area to be not less than 25% of the building floor area |
| Offices, general | 1 for each 200 square feet of first floor area and each 300 square feet of floor area on second floor and above |
| Doctor's or dentist's office | 8 for each doctor |
| Schools | 1 per 12 seats or students |
| Home occupation or professional office | 3 spaces minimum plus 1 per nonresident employee |
| Hospital, medical center | 1 for each 3 beds |
| Single-family dwelling | 2 spaces |
| Two-family or multiple | 1 1/2 for each dwelling unit |

- C. Drainage and surfacing. All open parking areas shall be properly drained and all such areas shall be provided with a paved surface, except for parking spaces accessory to a one-family or two-family dwellings.
- D. 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.
- E. Combined spaces. When any lot contains two or more uses having different parking requirements, the parking requirements for each use shall apply to the extent of that use. 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 required for that use with the least requirement.
- F. Fire lanes and handicapped parking. Fire lanes and handicapped parking spaces shall be

provided as required by state and federal regulations and a plan for the same and enforcement of the rules providing for their availability shall be approved by the Code Enforcement Officer.

- G. Commercial vehicles of more than 2.5 tons in size shall not be parked on any residential lot except for temporary purposes for servicing that particular residence.
- H. Off-street loading.
 - (1) General requirements. Adequate off-street loading and unloading berths shall be provided for any commercial, institutional, industrial or wholesale use. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these requirements and at least one such berth shall be provided for each lot. Additional berths may be required at the discretion of the Planning Board and/or Code Enforcement Officer.
 - (2) Size, location and access. Each required loading berth shall be at least 12 feet wide, 65 feet long and 14 feet high or uncovered. All permitted or required loading berths shall be on the same lot as the use to which they are necessary and shall not include any one area used to meet parking requirements.
 - (3) In no case where a building is erected, converted or enlarged for commercial, institutional, industrial or wholesale purposes shall the public rights-of-way be used for the loading or unloading of materials.
- I. Access requirements. Access to and from all off-street parking, loading and vehicle service areas along public right-of-way shall consist of well-defined separate or common entrances and exits and shall comply with the following provisions.
 - (1) Access drives shall not open upon any public right-of-way line of any intersecting public street or highway where the sign distance in either direction would be less than 300 feet.
 - (2) There shall be no more than one entrance and one exit to any business or parking area on any one highway. Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrances and exits. In no case shall one entrance and exit be located within 60 feet of any other on the same property or adjoining property along the same public right-of-way. Nonconforming lots, however, shall be exempt from this requirement.
 - (3) Any subdivision of property within a SC or IC District shall provide no more than one common entrance and one common exit on any public right-of-way. Interior access drives shall be provided for movement of traffic to the public right-of-way.
 - (4) No access drive to any nonresidential use shall be less than 50 feet in right-of-way width or 20 feet in travelway width. Residential access drives may, consistent with Town of Liberty Subdivision Regulations, be reduced to 25 feet in right-of-way width and twelve-foot travelway provided the drive serves no more than two single-family dwellings.

§ 147-17. Signs.

Signs may be erected and maintained only when in compliance with the following provisions:

- A. Signs in RS districts. The following types of nonilluminated, nonadvertising signs are permitted in the RS District:
 - (1) Nonilluminated nameplates and identification signs not over two square feet each in area.
 - (2) Sale or rental signs not over 32 square feet in area.
 - (3) Development signs not over 32 square feet in area.
- B. Signs in other districts. Business and advertising signs are permitted in other than RS districts in accordance with the following regulations:
 - (1) No sign shall be higher than the height limit in the district where such sign is located, nor shall any sign be located upon the roof of any building.
 - (2) Not more than one such sign for each tenant on the premises shall be permitted on each wall fronting on a street.
 - (3) The aggregate area in square feet of all signs on any wall shall be no greater than two times the length in feet of such wall.
 - (4) Freestanding business signs shall be permitted as long as they comply with all yard and height requirements for the zone, and no more than one shall be permitted on each lot.
 - (5) Signs shall not project more than 19 inches beyond the face of the wall on which applied nor any distance beyond or above the building in any other direction.
 - (6) Sign directories for the purpose of advertising three or more businesses or trades shall be permitted providing the individual signs do not exceed two feet by six feet in size.
- C. Billboards. Billboards or other advertising signs shall be permitted in the SC and IC Districts in accordance with the following regulations:
 - (1) Such signs shall be maintained in good repair and not exceed 400 square feet in size of copy area.
 - (2) Such signs are structures and shall comply with all yard and height regulations.
 - (3) No two advertising signs shall be located within 2,500 feet of each other, unless back-to-back signs, and the total amount of sign area for advertising signs or billboards shall not exceed one square foot for each two lineal feet of lot frontage. [Amended 6-9-1997 by L.L. No. 3-1997]
 - (4) Such signs shall meet all applicable Federal Highway Administration regulations.
- D. Prohibited signs. The following types of signs or artificial lighting are prohibited:
 - (1) Flashing or moving signs.

- (2) Signs which compete for attention with or may be mistaken for a traffic signal.
- (3) Signs on any roof or extending over any portion of the roof or parapet to which they are attached.

§ 147-18. Commercial and manufacturing performance standards.

A. Whenever a commercial or manufacturing use is proposed as a special use (including nonprofit uses such as summer camps) the following performance standards shall apply and be an additional basis for review of the special use applications:

- (1) Fire and explosive hazards.
 - (a) All activities involving, and all storage of, flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire suppression equipment and devices standard in the industry. Burning of waste materials in open fires is prohibited.
 - (b) Facilities involving the processing and/or storage of chemical and industrial wastes, including waste petroleum products shall be located no less than 300 feet from any property line and shall be considered special uses under this chapter. The Planning Board may, in consultation with a professional engineer, impose additional specific standards or conditions to ensure the safety for neighboring residents and property owners. National Fire Protection Association standards may be used as guidelines. Gasoline service stations and similar uses where quantities of less than 100 gallons of waste petroleum products are routinely accumulated and stored for short periods of time shall be exempt from these requirements. The relevant provisions of state and local laws, including the New York State Building Code regulations, shall also apply.
- (2) Radioactivity or electric disturbance. No activities shall be permitted which emit dangerous radioactivity, or electric disturbances adversely effecting the operation of any equipment other than that of the creator of such disturbance. All applicable federal regulations shall be met.
- (3) Noise. Compliance with the Town of Liberty Code shall be required.³
- (4) Vibration. No vibration shall be permitted which is detectable without instruments at the property line.
- (5) Glare. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or otherwise, so as to be visible at the property line shall be permitted. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter.
- (6) Smoke. No emission shall be permitted or visible grey smoke of a shade equal to or darker than No. 2 on the Power's Mico-Ringlemann chart, published by McGraw-Hill

3. Editor's Note: See Ch. 107, Noise.

Publishing Company, Inc. and copyrighted 1954.

- (7) Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable, without instruments, at the property line of the lot from which they are emitted.
 - (8) Other forms of air pollution. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution or other emissions shall be permitted which can cause any damage to health, to animals, vegetation, or other forms of property.
- B. The Code Enforcement Officer shall ensure these standards are met or will be met prior to issuing a certificate of occupancy for the use.

§ 147-19. Floodplain development.

There is hereby created a special zoning district the boundaries of which shall be congruent with those areas identified as Special Flood Hazard Areas on the Flood Hazard Boundary Maps of the Town of Liberty (Community No. 360823) as issued and/or amended by the Federal Insurance Administration, or its successor agencies. This District shall be an overlay zone in which the normal provisions of the District indicated on the Official Zoning Map shall apply except that no development shall be permitted which is not completely in accord with the provisions of the Town of Liberty Floodplain Development Law,⁴ as amended.

§ 147-20. Miscellaneous uses. [Amended 5-12-1997 by L.L. No. 2-1997]

The following uses are subject to special requirements as set forth below:

- A. Natural resource extraction and processing operations. Any person proposing to engage in a natural resource extraction or processing operation shall, concurrently with submission of plan and application to the New York State Department of Environmental Conservation, file copies with the Planning Board as part of its special use application and any Town approvals shall be conditional on state approval.
- B. Home occupations.
 - (1) Evidence of use. The owner of a home occupation shall not display or create outside the building any evidence of the business, except that one nonilluminated identification design having an area of not more than four square feet shall be permitted.
 - (2) Extent of use. The home occupation shall not utilize more than 30% of the gross floor area of the dwelling unit, except for foster family or day care.
 - (3) Permitted uses. Home occupations may include medical and dental offices, other professional offices, custom dressmaking, or tailoring, artist or musician studios, foster family care (for not more than four children simultaneously), tutoring (for not more than five students at a time) or other home occupations as may be defined and limited by the Planning Board subject to special use procedures.

4. Editor's Note: See Ch. 79, Flood Damage Prevention.

- (4) Nonresidential employees. Nonresidential employees shall not exceed three persons.
- C. Conversions. Conversion of an existing structure from a one-family dwelling to a two-family or multiple dwelling where permitted (see the Schedule of District Regulations) shall be subject to the following conditions:
- (1) Such structure shall have contained, on the effective date of this chapter, 1,000 square feet of livable floor area for the first dwelling unit plus 600 square feet of livable floor area for each additional dwelling unit created.
 - (2) The lot on which such structure is located shall contain a minimum of 7,500 square feet of lot area per dwelling unit.
 - (3) One and one-half off-street parking spaces shall be provided on said lot for each dwelling unit.
- D. Junkyards and vehicle dismantling and storage operations. Junkyards, where permitted, shall be subject to the provisions of Chapter 93, Junkyards, of the Code of the Town of Liberty and special use/site plan review procedures shall be combined with operation requirements contained in such chapter. This shall not, however, relieve operators of junkyards from having to meet all other standards contained herein, including the commercial and manufacturing performance standards of § 147-18.
- E. Automobile service stations.
- (1) The minimum lot size for such service stations shall be 30,000 square feet and the minimum street frontage shall be 200 feet unless more stringent requirements shall apply to the district in question.
 - (2) Entrance and exit driveways shall have an unrestricted width of not less than 20 feet nor more than 25 feet, shall be located not nearer than 15 feet from any property line and shall be so laid out as to avoid the necessity of any vehicles leaving the property to back out across any public right-of-way or portion thereof.
 - (3) Vehicle lifts or pits, dismantled and disabled automobiles and all parts or supplies shall be located within a building enclosed on all sides.
 - (4) All service or repair of motor vehicles, other than such minor servicing as change of tires or sale of gasoline or oil, shall be conducted in a building fully enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
 - (5) The storage of gasoline or flammable oils in bulk shall be located fully underground and not nearer than 35 feet to any property line other than street lot line.
 - (6) No gasoline pumps shall be located nearer than 15 feet to any street lot line.
 - (7) No building permit shall be issued for a motor vehicle service station within a distance of 200 feet of any school, church, hospital or place of public assembly designed for the simultaneous use and occupancy by more than 100 persons, the said distance to be measured in straight line between the nearest points of each of the lots or premises regardless of the district where either premises is located.

F. Shopping centers. All shopping centers shall meet the following requirements and be subject to special use/site plan review procedures:

- (1) The minimum lot area shall be five acres with a minimum lot width of 300 feet and a minimum depth of 500 feet.
- (2) There shall be seven paved parking spaces for each 1,000 square feet of floor area plus one per employee, and such parking area shall be arranged with channelization, marking and landscaping for vehicular and pedestrian circulation, as approved by the Planning Board.
- (3) There shall be no unenclosed storage of goods or equipment.

G. Intensive use poultry and swine operations.

- (1) Intensive use poultry and swine operations (10,000 or more poultry or 100 or more hogs) where permitted outside AC District or approved New York State Agricultural Districts shall be subject to following requirements:
 - (a) The minimum lot area for any new such use shall be 50 acres plus one acre for each 5,000 birds in excess of 25,000 where poultry are involved.
 - (b) Structures in which animals are kept or manure is stored (including pits and lagoons) shall be setback a minimum of 200 feet from property lines. Manure storage and disposal plans shall be evaluated by comparison to standards recommended by the New York State Cooperative Extension Service as well as those of the New York State Department of Environmental Conservation and such facilities shall be treated as special uses subjected to site plan review when a new principal structure or addition to an existing principal structure is proposed.
 - (c) No ventilating apparatus shall discharge from any side of a poultry house or barn facing a public road.
 - (d) The minimum setback from any side or rear lot line for any poultry house or barn wall containing ventilating apparatus shall be increased by 100 feet.
 - (e) The maximum building height for a poultry house shall be 30 feet.
 - (f) Each site shall provide facilities of a minimum of three months' capacity for storage of organic fertilizer material. The construction of such storage facilities shall conform to the standards recommended by the Cornell University School of Agriculture for such use.
 - (g) The removal of manure shall be by a vehicle with a sealed storage container.
- (2) Chicken and meat processing plants shall be considered industrial enterprises and, where permitted, shall be subject to and provide documentation of compliance with all federal and state standards applicable to such operation.

H. Stables, riding academies and keeping of animals.

- (1) Private stables.

- (a) A private stable is permissible as an accessory use to a single-family residence in any AC or RD zone district provided it will comply with the following provisions:
 - [1] The tract of land on which the house and stable are located is at least 2 1/2 acres in size.
 - [2] No more than two horses are kept with the exception that one additional horse may be kept for each additional acre of land up to a total maximum of five horses.
 - [3] The building shall not exceed 400 square feet in size for one-to-two-horse stables with an additional 200 square feet for each additional horse.
 - [4] No commercial breeding, hire or sale of horses shall be permitted from a private stable.
 - [5] All horses shall be restrained from grazing or intruding on an adjoining property and any fences erected for the same shall be at least three feet from the property line.
 - [6] No stable building shall be located within 100 feet of adjoining property line or public or private road.
 - (b) These provisions are not applicable to commercial stables where permitted.
- (2) Keeping of animals.
- (a) The keeping of livestock and any other animals of a domestic or agricultural type, including but not limited to cows, steers, goats, sheep, swine, poultry and fur-bearing animals, shall not be permitted in any zone district other than AC or RD except where the tract in question is at least 10 acres in size and all animals and buildings are confined to an area not closer than 150 feet to an adjoining property line or public or private road. These restrictions shall not apply to the keeping of domestic animals in AC or RD districts or the keeping of household pets such as dogs, cats, birds, hamsters, etc.
 - (b) No premises in any district shall be used or occupied, and no structures shall be erected or maintained for the harboring of any animals except those of a domestic, household or agricultural type as provided for above. Wild animals such as wolves, large cats, reptiles and other species not indigenous to the area shall not be kept in the Town of Liberty under any circumstances.
- (3) Administration. A building permit or certificate of occupancy shall be required for the establishment of a private stable and applicants shall demonstrate the means by which they will comply with this section. All residents shall comply with the restrictions and, if, upon investigation of a complaint, any person is found to be violating these provisions, that person shall be subject to the penalties and remedies provisions of this chapter after being given a ten-day period in which to eliminate the violation. Nothing herein, moreover, shall be construed to allow continuance of any nuisance or threat to health, safety and welfare that might be created by keeping of animals

regardless of conformity with these provisions. Such nuisances are hereby prohibited and nothing herein shall limit the right of the Town to eliminate such nuisances or the right of adjoining property owners to pursue civil remedies.

- (4) Commercial stables and riding academies. A commercial stable and/or riding academy shall not be established on less than 10 acres of land and shall require a Special Use permit. An additional one acre of land shall be required for each horse in excess of five and no stable building shall be erected within 150 feet of any property line.
- I. Landfills. All solid waste generated in conjunction with any use shall be disposed of in a New-York-approved sanitary landfill. Such landfills shall only be permitted in AC or RD Districts on tracts of at least 50 acres in size with actual disposal site not closer than 500 feet to any property line. Landfill applications shall be processed in the manner of industrial uses and be contingent upon New York State approval.
 - J. Shooting ranges. Shooting ranges for commercial or public use, whether open to the general public or restricted to members of a club or organization, shall be subject to the following special requirements.
 - (1) Facilities shall be designed for discharge of all firearms in directions away from any residence in the vicinity.
 - (2) No part of the range shall be located within 500 feet of a property line.
 - (3) No range shall be operated before the hour of 8:00 a.m. or after 11:00 p.m.
 - (4) The use shall meet all safety standards which may be recommended by the National Rifle Association, the New York State Department of Environmental Conservation or other state or national organization dealing with firearm safety.
 - K. Adult stores. Adult stores shall not be located within 1,000 feet of any residence, church, synagogue, public or semi-public use or health institution.
 - L. Health institutions. A principal structure associated with any health institution shall be not less than 100 feet from any property line within an RS District or an entrance or exit of any other public or semi-public institutions.
 - M. Off-site (central) sewage treatment systems. [Added 7-16-2012 by L.L. No. 1-2012]
 - (1) Any application for a land use for which a new off-site (central) sewer system, as defined herein, is proposed for private operation by the developer or a successor entity shall be accompanied by a detailed plan setting forth the proposed ownership, management and operation of such system.
 - (2) Prior to any final plan approval, the developer or its successor shall submit a schedule of required improvements, capital costs and annual operational costs for the system together with a written certification by a professional engineer licensed in New York that the costs are a fair and reasonable estimate of the construction, operation and maintenance costs of the system. Such cost estimates shall be used to determine the financial feasibility of the proposed system.

- (3) The developer or the successor shall, by itself or through a contractual relationship with the property owners association to be established through covenants and restrictions applicable to the project, employ or contract with a sewage treatment plant operator licensed by the New York State Department of Environmental Conservation to operate the system as a public utility under the laws of the State of New York. Such operator shall have a proven track record or performance, his, her or its qualifications being subject to review and approval by the Town. The Town shall be further entitled to review the terms of such agreement. The developer or its successors shall submit contractor qualifications to the Town for approval prior to execution of any agreement. Such agreement shall be in place prior to final approval and start of construction with respect to the system.
- (4) No new off-site (central) sewer system shall be permitted for a residential project of less than 50 dwelling units in size unless the applicant is able to definitively demonstrate such system is financially feasible and will not require sewer rates of more than 1.5% of the current median household income of Sullivan County. The Town may also require guarantees of continued financial performance in such instances.

§ 147-20.1. Telecommunication facilities. [Added 6-28-2001 by L.L. No. 4-2001]

- A. Purpose. The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Town of Liberty; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, consideration of visual impact assessment and appropriate landscaping so as to minimize the impact upon the environment.
- B. Application.
 - (1) No telecommunications facility, except those approved prior to the effective date of this section, shall be used unless in conformity with these regulations. No telecommunications facility shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a telecommunications facility unless in conformity with these regulations.
 - (2) Applicants proposing a new telecommunications facilities, physical expansions of existing telecommunications facilities or the location of telecommunications facilities within or on other existing structures shall require a special use permits and site plan review hereunder.
 - (3) Applicants proposing to co-locate new telecommunications arrays on a previously approved telecommunications facilities without extending the height thereof or otherwise physically expanding the facilities except for additional equipment buildings within previously designated fenced-in areas shall not require a special use permit or site plan review but shall require accessory use permits.

- (4) All applications for special use permits to construct telecommunications facilities shall be accompanied by the following additional information where applicable:
- (a) Documentation of intent from the owner of any existing facility to allow shared use of the same.
 - (b) A site plan depicting all existing and proposed structures and improvements including antennas, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modifications of the existing facility shall also be indicated on the site plan.
 - (c) A professional engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of any existing structure, and explaining what modifications, if any, will be required in order to so certify. A soils report prepared by such professional engineer shall also be submitted to support the design specifications of the foundation for any new tower, and anchors for the guy wires, if used.
 - (d) A completed visual environmental assessment form addendum. This addendum shall be accompanied by a visual impact assessment which shall include:
 - [1] A Zone of Visibility Map, which shall be provided in order to determine locations where the tower may be seen.
 - [2] Visual representations of "before and after" views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the appropriate key sites at a presubmission conference with the applicant.
 - [3] Assessment of alternative tower designs and color schemes (see below).
 - [4] Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
 - [5] Review of those alternative sites determined to be feasible from an engineering perspective (see requirements below) to determine which would be in the best interest of preserving the aesthetic and natural character of the neighborhood.
 - (e) A certified copy of the Federal Communications Commission (FCC) license to operate the telecommunications facility.
 - (f) If land is leased, documentation of intent from the owner to allow use and affirming intent to remove the tower if abandoned, obsolete or unused for more than 24 months.
 - (g) A letter of intent committing the owner of any proposed new tower and successors in interest to negotiate in good faith for shared use of the proposed

tower by other telecommunications providers in the future. Failure to abide by the conditions outlined in the letter may be grounds for revocation of any special use permit granted. The letter shall commit the new tower owner and his/her successors in interest to:

- [1] Respond 90 days to a request for information from a potential shared-use applicant.
 - [2] Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
 - [3] Allow share use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (h) Documentation that the proposed tower adequately addresses all aspects of aviation safety in view of known local aviation traffic as well as Federal Aviation Regulations (Code of Federal Regulations, Part 77).
- (i) All property owners and adjacent municipalities within 500 feet of the outside perimeter of the communications structure, including guy wires, shall be notified by certified mail at least 10 days prior to the Planning Board granting special use approval for such a structure. This responsibility shall be the applicant's and such applicant shall provide proof of notification as part of their final application.
- (j) A site location alternative analysis, including an analysis of the location priorities set forth in Subsection A of this Section, describing the locations of other sites considered, the availability of those sites, the extent to which other sites do or do not meet the provider's service or engineering needs and the reason why the subject site was chosen. The analysis shall address the following issues:
- [1] How the proposed location of the wireless telecommunication tower or antennae relates to the objective of providing full wireless communication services within the Town of Liberty.
 - [2] How the proposed location of the wireless telecommunications tower/facility relates to the location of any existing antennas or towers within or near the Liberty area.
 - [3] How the proposed location of the wireless telecommunications tower/facility relates to the anticipated need for additional antennae or towers within and near the Town of Liberty by the applicant, and by other providers of wireless telecommunications services within the area.
 - [4] How the proposed location of the wireless telecommunications

tower/facility relates to the Town's goal of maintaining concealed or reduced tower height with groups of towers within close proximity to one another rather than isolated, taller towers with many users at greater tower heights at random locations throughout the Town of Liberty.

C. Special definitions. As used in this chapter, the following terms shall have the meanings indicated:

ANTENNA — A device of 35 or more feet in height used to collect or transmit telecommunications or radio signals. Examples are panels, microwave dishes, and single pole known as whips. This definition is not meant to include home television or amateur radio apparatus.

ARRAY — Telecommunications signal receiving or transmitting device attached to telecommunications tower and not extending the height thereof.

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

TELECOMMUNICATIONS FACILITY — Consists of the equipment and structures involved in receiving or transmitting telecommunication or radio signals, but limited to those facilities with respect to which the state and federal governments have not, under public utility laws, strictly preempted the Town of Liberty from regulating.

TOWER — A structure of 35 or more feet in height that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures includes monopoles and lattice construction steel structures.

D. Design and location standards. The following design and location standards shall apply to all telecommunications facilities:

- (1) The location of the tower and equipment building shall comply with all natural resource protection standards of this section.
- (2) An evergreen screen, consisting of a row of eight feet high evergreen trees planted 10 feet on center maximum, shall be located around the perimeter of the security fence. The Planning Board may, however, modify or waive screening requirements if the site is entirely or partially wooded so as to provide existing screening. Existing on-site vegetation shall be preserved to the maximum extent possible.
- (3) An eight-foot-high security fence shall completely surround the tower (and guy wires if used) and equipment building.
- (4) The tower and antenna shall be designed and constructed to all applicable standards of the American National Standards Institute, TAI/EIA-222-F manual, as amended, and withstand wind gusts of up to 100 miles per hour.
- (5) An antenna may not be located on a building or structure that is listed on a historic register or within 500 feet of such a structure.
- (6) Telecommunications facilities shall be permitted as a sole use on any lot in a AC, RD, IC or SC District subject to special use procedures and the following:

- (a) Minimum lot size: five acres.
 - (b) Minimum yard setback requirements: 200 feet.
 - (c) Maximum height: tower, 200 feet; equipment building, 30 feet.
 - (d) Provided no residences directly adjoin the site, minimum setback requirements may be reduced to the fall-down limit plus 15 feet, where the net effect of requiring the full setback would be to necessitate additional lighting or tower height. Maximum height requirements may be exceeded, provided such height can be demonstrated to be absolutely necessary and the additional height is matched with an equal amount of additional setbacks on all sides.
- (7) A telecommunications facility shall be permitted on a property with an existing use subject to the following conditions:
- (a) The telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance.
 - (b) Minimum lot area. The minimum lot area required above shall apply, provided the land remaining for accommodation of the principal use on the lot shall also continue to comply with the minimum lot area for the district.
 - (c) Minimum setbacks. The minimum yards required above shall apply, provided the land remaining for accommodation of the principal use on the lot shall also continue to comply with the minimum yards for the district.
 - (d) Access. The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - (e) Maximum height:
 - [1] Tower: 200 feet.
 - [2] Equipment building: 30 feet.
- (8) Where an antenna for a telecommunications facility is to be attached to an existing structure or building it shall be subject to the following conditions:
- (a) Maximum height: 75 feet above the existing building or structure.
 - (b) If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with the minimum setback requirements for the subject zoning district, an eight-foot-high security fence shall surround the building, a buffer yard shall be planted as required above and vehicular access to the building shall not interfere with the parking or vehicular circulations on the site for the principal use.
 - (c) Elevations of existing and proposed structures showing width, depth, and height, use statistical data on the antenna and support structure shall be presented.
 - (d) The antenna or array shall be camouflaged or otherwise designed to be

aesthetically compatible with the existing architectural and natural environment.

- (9) Notwithstanding minimum setbacks provided for above, any tower shall be setback from all property lines a distance that is at least equal to the height of the tower.
 - (10) Vehicular access shall be provided to the facility and be of such passable condition as to be safely accessible by emergency and maintenance vehicles and equipment. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the edge of cuts or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Parking shall be provided to assure adequate emergency and service access in accordance with the Code.
 - (11) No signs shall be permitted on either the tower or equipment building, except for those signs required by law or containing such information as owner contact information, warnings. These signs shall not exceed two square feet in total area. Absolutely no commercial advertising shall be permitted on any wireless telecommunications tower or equipment building.
- E. Plan review criteria. Communications facilities shall be subject to all the ordinary review criteria applicable to special uses plus the following:
- (1) The Planning Board shall be satisfied that the tower for the communications facility is the minimum height necessary for the service area and that the site chosen is the one that will afford the opportunity to construct the lowest height communications tower possible, taking into consideration all lands available within a reasonable distance including those which may lie within adjoining municipalities.
 - (2) The need for additional buffer yard treatment shall be evaluated. Proximity of the communications structure to existing or platted residential properties shall be considered in applying such requirements. Existing trees on the site which serve to provide a natural buffer shall be preserved unless absolutely required to be removed for purposes of access or safety.
 - (3) Visual assessment data shall be used to determine how the communications facility will appear once constructed in relation to the surrounding natural environment and from the perspective of adjacent or nearby residents as well as travelers. Camouflaging or relocation of the structure may be required. The Planning Board shall also consider alternative sites in assessing visual impacts and the imposing of conditions as may be required to minimize such impacts including requirements that any tower be of a shape, contour and finish (either painted or unpainted) that minimizes its visual impact. The Planning Board may also require a tower to be in the shape of a tree, flagpole, church steeple or other similar tall structures. Accessory structures shall similarly maximize the use of building materials, colors and textures designed to blend with natural surroundings.
 - (4) Free-standing pole-type communications structures shall be given preference over towers supported by guy wires.
 - (5) All communications structures shall be lighted for safety in a manner consistent with

industry best practices and where lighted additional setbacks may be imposed to shield adjacent properties from the effects of such lighting.

- (6) Should any tower cease to be used as a communications facility, the owner or operator or then owner of the land on which the tower is located shall be required to remove the same within one year from the abandonment of use. Failure to do so shall authorize the Town of Liberty to remove the facility and charge back the cost of removal to the foregoing parties. The Town of Liberty may also file a municipal lien against the land to recover the costs of removal and attorney's fees.
- (7) Shared use of existing structures (for example, municipal water towers, multistory buildings, church steeples and farm silos) and existing or approved towers shall be given preference over construction of new towers. Where shared use of all existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection D(11) above. Any proposals for a new telecommunications tower on an existing site shall also be subject to special use permit procedures.
- (8) An applicant for approval of a communications structure shall include with the application evidence of written contact with all wireless service providers who supply service within the Town for the purpose of assessing the feasibility of co-located facilities and co-location shall be mandatory wherever physically feasible. Should co-location not be feasible, the applicant shall demonstrate that a good faith effort has been made to mount the antenna on an existing building or structure, including of proof of contacts, building investigations and similar evidence. Should such efforts fail to result in a suitable site, a new communications tower may be permitted, but shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities, including provision of the necessary tower height to accommodate such other users without adding additional height in the future. Where co-location is proposed, the different companies using the facility shall also work from common maintenance and service buildings, if the same are located on the site.

ARTICLE VII

Moderate- to High-Density Residential and Associated Development

§ 147-21. Cluster developments.

- A. 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 Liberty Planning Board shall have the authority, as provided in § 281 of the New York State Town Law, to approve or deny plans for cluster developments in AC, RD, RH or RS Districts in accord with the standards contained herein and in the Town of Liberty Subdivision Regulations. The Planning Board may require plans to be submitted as cluster developments in accordance with § 281 of the New York

State Town Law.

- B. Minimum size. Cluster developments shall include at least 10 dwelling units and 10 acres of land.
- C. Permitted number of units. Total tract area less:
 - (1) All areas within the rights-of-way of any existing or proposed streets; and
 - (2) All areas occupied by public utility easements.
- D. Types of dwellings units permitted. Only single-family detached dwellings shall be clustered. All other dwelling types shall be considered multiple dwellings and be subject to the standards of § 147-22 of this article.
- E. 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 1/2 the normal requirement provided no dwelling structure is located on less than 30,000 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 Subsection C above.
- F. Open space standards. No individual parcel of common open space shall be less than one acre except as to roadway median strips, traffic islands, walkways, courtyards, play areas, recreation facilities, streams, and drainage ways leading directly to streams, historic sites or unique natural features requiring common ownership protection. At least 50% of the common open space shall be usable for active recreational activities and shall not include wetlands, floodplain or slopes over 25% in grade.
- G. Maintenance of open space. The open space resulting from clustering of dwelling units shall be titled to a property owners' or homeowners' association (POA) prior to the sale of any lots or dwelling units by the developer. 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 POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities. Each property owner must be required to pay their proportionate share of the POA's cost and the POA must be able to file liens on the lot/unit owner's property if levied assessments are not paid. The POA must also have the ability to adjust the assessment to meet changing needs.

§ 147-22. Multiple dwellings.

- A. Procedure.
 - (1) Multiple dwelling projects shall be special uses subject to the provisions of this chapter and shall also be considered major subdivisions subject to the jurisdictions of the Town of Liberty Subdivision Regulations. This "major subdivision" classification shall apply to all subdivision of property in connection with the development,

regardless of whether or not the same are connected with building development or conveyance of land or buildings involved, and the approvals required shall be requested and acted upon concurrently as one subdivision. Application for preliminary approval of multiple-family dwelling projects, accordingly, will be made to the Town of Liberty Planning Board in the manner provided under § 130-13 of the Subdivision Regulations. The developer shall also submit all information required by § 130-13 of said Regulations, plus the following additional information.

- (a) An application for multiple dwelling special use approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the special use and site plan review criteria contained in this chapter.
 - (b) A proposed lot plan showing the approximate (generally within five feet) location of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply and distribution system, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this chapter. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers and size of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in the Town of Liberty. Setbacks from property lines, improvements and other buildings shall also be indicated.
 - (c) A schedule or plan, and proposed agreement(s) either with the Town of a property owners' association (POA) for the purpose of dedicating, in perpetuity, the exclusive use and/or ownership of the recreation area and open space required by this chapter to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed covenants and restrictions, but shall in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either activities intended for the sole benefit of the occupants of the particular project proposed or permanent open space as hereinafter provided. If a POA is to be established, and one shall be required if any property is to be held in common, such POA shall be organized in the manner provided for cluster development.
 - (d) A completed building permit application on forms to be supplied by the Town. A copy of the completed application shall be also filed with the Code Enforcement Officer, who shall collect any fees connected with that application at the time the special use is granted.
- (2) The application package shall be processed on a schedule identical with requirements for review and approval of other preliminary plans under the Subdivision Regulations. The Town Planning Board, before taking action, shall also hold a public hearing pursuant to the requirements of the Subdivision Regulations.

- (3) The Planning Board shall act on the preliminary plan and special use building permit application concurrently, making the preliminary plan approval, if one shall be given, subject to approval by the New York State Department of Health if the same shall be required. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any preliminary plan shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to preliminary approval. This requirement notwithstanding, the special use building permit application shall be made with the preliminary plan and shall, if granted, be valid for a period equal to that for preliminary plan approval. If the preliminary plan shall be rejected, no special use building permit shall be granted.
 - (4) Following preliminary plan approval, the developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. Building improvements shall similarly be completed or guaranteed prior to the applicant's request for final approval. No certificate of occupancy, however, shall be issued until such time as final plan approval shall have been granted in accordance with the procedures and informational requirements of § 130-13 of the Subdivision Regulations, and buildings have been completed and inspected by the Code Enforcement Officer.
 - (5) Complete final building plans shall also be submitted as part of the final plan application.
 - (6) No person shall sell, transfer or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this section, unless and until final plan approval shall have been granted and the Plan has been recorded in the County Clerk's Office. However, final plan approval may be granted if a guarantee for improvements is provided to the satisfaction of the Town pursuant to the applicable provisions of the Subdivision Regulations. Nothing herein shall preclude agreements of sale or the taking of deposits consistent with New York State law.
- B. Density. Multiple dwelling density shall not exceed the number of dwelling units per acre which would be permitted within the district if the parcel on which the units are to be constructed were to be developed for single-family residential use, or four dwelling units per acre, whichever is less. Density shall be calculated by taking the total acreage of the development, deducting the following acreages:
- (1) Land contained within public rights-of-way;
 - (2) Land contained within the rights-of-way of existing or proposed private streets (where formal rights-of-way are not involved the width of the street shall be assumed as 50 feet wide); and
 - (3) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service; and dividing by the number of proposed units.
- C. Open space. All areas of a multiple dwelling development not occupied by buildings and

required or proposed improvements shall remain as either permanent open space, or recreation area to be used for the sole benefit and enjoyment of the residents of the particular units being proposed. These areas shall be subject to the following regulations:

- (1) Recreation areas for residents shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development and shall not be used to fulfill open space requirements or provide recreational areas for residents of other units. No less than 50% of the land unoccupied by buildings and improvements shall be dedicated to recreational area for the sole benefit and enjoyment of the residents of the particular units proposed.
- (2) Land designated as permanent open space need not meet the above criteria but shall be maintained as such and may not be sold separately, used to meet open space or recreation area requirements for other developments, subdivided or developed, it being understood that no previously platted lots in any development shall be included as open space.
- (3) All permanent open space and recreation areas shall be maintained so that their use and enjoyment for intended purposes are not diminished or destroyed.
 - (a) Such areas may be owned, preserved and maintained by either one or both of the following mechanisms:
 - [1] Dedication to a property owners' association which assumes full responsibility for maintenance of the open space.
 - [2] Deed-restricted private ownership which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portions of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for heating, fishing, etc.) provided the performance of the open space is guaranteed.
 - (b) Whichever mechanism(s) may be used, the developer shall provide, to the satisfaction of the Town and prior to the granting of any final plan approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.
- (4) At least 50% of the designated recreation area shall be usable for active recreational activities and shall not include swamps, quarries, slopes over 24% in grade, or acreage used for improvements. Storm drainage facilities are considered improvements and sewage effluent disposal areas shall be excluded.

D. Water and sewage. All multiple dwelling developments shall be served with off-site sewage facilities and water supplies (as defined in the Town Subdivision Regulations). Effluent disposal areas shall be subject to the setback requirements applicable to other multiple dwelling buildings and improvements.

E. Design criteria. The following design criteria shall apply to multiple dwelling developments.

- (1) There shall be no more than 10 dwellings in each multiple dwelling building.
- (2) No structure shall be constructed within 50 feet of the edge of any road to or through the development.
- (3) Roads shall comply with minor street requirements as specified in the Subdivision Regulations and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
- (4) No multiple dwelling development shall be served by more than one entrance and one exit from any public highway.
- (5) Parking shall comply with the standards of this chapter excepting that in addition to the normal required spaces per unit there shall be specifically provided, for every two units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods.
- (6) No more than 60 parking spaces shall be provided in one lot, nor more than 15 in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and also arranged as to direct light away from residence.
- (7) No structure shall be erected within a distance equal to its own height of any other structure.
- (8) All multiple dwelling structures shall be a minimum of 75 feet from any of the exterior property or boundary lines of the particular project involved and 50 feet from any public right-of-way.
- (9) Where a property line is not wooded, a planting strip of up to 50 feet in width or privacy fence may be required to buffer adjoining property owners and ensure privacy. A landscaping plan shall be prepared and approved by the Town.
- (10) Storm drainage facilities shall be designed to accommodate storms of a ten-year frequency unless a more stringent standard shall be required by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development shall not exceed that estimated for the site prior to development. In instances where stormwater facilities are impractical for engineering reasons, the Planning Board may modify this standard as it applies to a particular project but shall provide for the maximum practical reduction in flow which can be achieved under the circumstances. The developer shall provide full information, prepared by a registered professional engineer or licensed land surveyor, regarding the predeveloped stormwater flows and estimates at the time of application.

F. Nonresidential use. Nonresidential uses shall not be permitted in a multiple dwelling development unless planned as part of a planned unit development. This, however, shall not preclude such ancillary facilities as laundry areas, service buildings, recreational

facilities, and the like. Where a developer proposes nonresidential uses (other than open space uses) there shall be a minimum setback of the multiple dwelling structures from such uses of 200 feet and the parcels shall be clearly segregated.

- G. Conversions of existing structures. Conversions of motels, hotels or other existing structures to multiple dwelling projects of six or more units, regardless of whether such conversions involve structural alterations, shall be considered subdivisions and, moreover, be subject to the provisions of this section. If the proposed project does involve structural alterations, the preliminary plan shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound, the proposed conversion will not impair structural soundness and existing water and sewage disposal systems, are adequate or can be modified to meet the new demands place on them.

§ 147-23. Planned unit development districts. [Amended 5-2-2005 by L.L. No. 6-2005; 6-19-2006 by L.L. No. 6-2006]

- A. The purpose of a planned unit development (PUD) district is to foster excellence in neighborhood design and further the goals and objectives of the Town of Liberty Comprehensive Plan. These "floating districts" promote creative site layout and architectural design and secure the advantages of large-scale site planning for residential, commercial or professional office developments, or certain combinations thereof. The flexibility granted to projects in a PUD District comes with a commitment to include features beneficial to the entire community, features not normally required of traditional developments. Achieving such objectives requires in-depth scrutiny by both the Town Board and Town Planning Board during the development of the PUD proposal. Therefore, more information is required about the project than would be required if development were being pursued under conventional zoning. The discretion of the Town Board regarding density of use, or even as to whether to approve or deny a PUD application, shall be absolute. This is consistent with the Town Board's inherent power to rezone.
- B. Type of PUD. Applicants applying for PUD shall apply under one of the two following alternatives:
 - (1) Large-scale PUD (LSPUD).
 - (a) Minimum size: 200 contiguous acres.
 - (b) Maximum size: no maximum size.
 - (c) Requires phasing plan. All phases shall be illustrated in a phasing development map and numbered in the expected order of development.
 - (d) Rezoning granted under the large-scale PUD process has a twenty-three-year duration. The Town Board may revoke undeveloped sections of a LSPUD after 23 years. Periodic reviews shall be completed as provided herein.
 - (2) Small-scale PUD (SSPUD).
 - (a) Minimum size: 30 contiguous acres.
 - (b) Maximum size: 199.9 contiguous acres.

- (c) Rezoning granted under the small-scale PUD process has a thirteen-year duration. The Town Board may revoke undeveloped sections of a SSPUD after 13 years.

C. Authorized uses within PUD.

- (1) No use shall be established, and no development shall be permitted in the PUD District, unless specifically approved pursuant to the procedures and standards set forth in this section. The specific uses to be allowed in the PUD shall be approved by the Planning Board. The general categories of allowable uses that may be permitted in any PUD are as follows:
 - (a) Commercial (including retail products and services, excluding wholesale).
 - (b) Offices (business or professional, excluding large-scale medical clinics).
 - (c) Single-family dwellings.
 - (d) Multifamily dwellings (including apartments and townhouses).
 - (e) Age-restricted, assisted living and skilled care facilities.
 - (f) Public and/or private recreational facilities (outdoor or indoor). [Amended 12-16-2013 by L.L. No. 5-2013]
 - (g) Destination resorts. [Added 12-16-2013 by L.L. No. 5-2013⁵]
 - (h) Mixed uses (including any combination of above uses).
- (2) The proposed PUD shall have an appropriate ratio of mixed uses that are sustainable for its location, Town needs and market considerations. The actual ratio of mixed uses shall be specified by the applicant as part of the PUD application and approved by the Planning Board and Town Board as part of the approval process.

D. Development density, open space and common recreation facilities.

- (1) The density of a proposed PUD development shall be set forth initially by the applicant as part of the PUD plan and application process and determined by the Planning Board and Town Board as part of the final approval process. Maximum density shall be based upon the degree to which the planned unit development preserves significant natural features and open space (i.e., wetlands, waterways and steep slopes) and provides recreational amenities (i.e., active and passive recreational facilities, including nature trails, bicycle paths, sitting areas, parks and playgrounds). Based on gross acreage, without offset for environmental limitations, the following specifies the maximum allowed increased density over underlying zoning:

5. Editor's Note: This local law also provided for the redesignation of former Subsection C(1)(g) as Subsection C(1)(h).

| Percentage of PUD Preserved as Open Space or Community Recreation | Density Multiplier |
|--|---------------------------|
| Less than 25% | 1.10 |
| 25% to 39% | 1.25 |
| 40% to 49% | 1.35 |
| 50% + | 1.50 |

- (2) Alternatively, the Town Board also may agree to accept a contribution of \$2,500 for each additional housing unit proposed over that permitted by the underlying zoning. This monetary contribution is a substitute for the provision of a portion of the required open space or community recreation on-site, provided that no less than 25% of the PUD is devoted to on-site open space or community recreation. Proceeds will be deposited into a recreation fund for community park and recreation facility improvements.
 - (3) Creative integration of open space and recreational amenities into the PUD design is required. Connections to surrounding parks and open space through a coordinated trail system shall be made to the maximum extent practicable. Open space shall be usable for recreation purposes or provide visual, aesthetic, or environmental amenities, and may not be occupied by streets, drives, dependent parking areas or structures other than recreational dependent structures.
- E. Age-restricted housing density bonus. A density bonus for age-restricted housing has been established to offer a land-use-based option to facilitate the economic feasibility of age-restricted housing development. The bonus provides the developer a density bonus of 5% above that which is provided for open space and of community recreation and is held specific to the parcel(s) for which the age-restricted housing is being proposed.
- F. Development standards and guidelines.
- (1) Unified control. No application for a PUD shall be accepted or approved unless all of the property included in the application is under unified ownership and/or control by the applicant, or if the applicant has a legally binding contract with the property owner to transfer ownership upon approval of the PUD.
 - (2) Preservation of natural features. Significant natural features of any PUD shall be preserved whenever possible for purposes of buffering new development, preserving the character of neighborhoods, protecting critical environmental resources and providing for stormwater management.
 - (3) Preservation of historic resources. Whenever a proposed site for a PUD has existing historic buildings, structures or sites of significance located thereon, such resources shall be preserved and incorporated into the design.
 - (4) Integrated architectural design. The PUD plan of development shall integrate the

design of buildings, structures, landscaping, infrastructure facilities and common areas into cohesive units of development.

- (5) Pedestrian system. The PUD shall provide for an internal system of pedestrian circulation using sidewalks and trails, with connections to adjoining properties or systems where feasible.
- (6) Streets. The PUD shall provide for a vehicular circulation plan that can safely accommodate current traffic volumes, as well as those generated by the PUD. Access points shall be designed to provide for smooth flow, controlled turning movements and vehicular traffic safety.
- (7) Off-street parking and loading. The proposed development shall comply with the off-street parking and loading standards set forth herein, unless it is demonstrated that a deviation from those standards is warranted, and is specifically approved during the PUD approval process.
- (8) Utilities. Underground on-site utilities are required, including telephone, electric, cable, water distribution mains and sewer collection reaches.
- (9) Lighting. All lighting shall include full cut-off fixtures and be arranged so as to prevent direct glare or hazardous interference to adjoining streets, properties, or the night sky.
- (10) Ownership and maintenance. Subject to Town Board approval, the open space resulting from PUD design shall be permanently protected through a conservation easement and generally titled to a homeowners' association (HOA), or other form of ownership (such as municipal) prior to the sale of any lots or dwelling units in the PUD. If an HOA option is selected, then membership shall be mandatory for each property owner within the subdivision, and successive owners, with voting of one vote per lot or units and the developer's control of common amenities, therefore, assign to the individual lot/unit owners on sale of the majority of the lots or units. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the HOA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly-held amenities. Each property owner must be required to pay their proportionate share of the HOA's costs and the HOA must be able to file liens on the lot/unit owner's property if levied assessments are not paid. The HOA must have the ability to adjust the assessment to meet changing needs.
- (11) Development phasing. The development of a PUD may be proposed and approved in phases. A phasing plan shall be submitted to the Planning Board as part of the large-scale PUD application documents. The Planning Board shall have the authority to approve, with or without modifications and/or conditions, or deny the phasing plan based on the following standards:
 - (a) Each phase, when completed, must be able to fully function on its own, or in conjunction with prior phases, without dependence on subsequent phases.
 - (b) The infrastructure, as installed, shall be sufficient to accommodate each planned

phase of development.

- (c) Each phase shall have an appropriate ratio of the various uses proposed for the development.
- (12) Construction schedule. The applicant shall propose, and the Planning Board shall review and approve, a construction schedule for the development of an approved PUD. Generally, commencement of development of the large-scale PUD, or the first phase if a phased large-scale PUD approved, shall commence within three years of the date that the final site plan of the PUD is approved. However, it is recognized that depending on the scale and complexity of the development, consideration may be made with respect to the reasonable time necessary for the applicant to obtain construction financing, insurance and bonds, executing construction contracts, and other such aspects involved in a development project. Thus, the Planning Board may modify the time-period allowed for commencement of construction depending on the circumstances of each PUD.
- G. Procedure. The following provides further detail for each step in the PUD process outlined above:
- (1) Preapplication conference. Prior to the official submission of the application for a Planned Unit Development District, the landowner, or the landowner's agent, may meet with the Planning Board to discuss the proposed scope and nature of the contemplated development. While this is not required, it is strongly encouraged.
 - (2) Sketch plan process. An application for a PUD approval starts with the submission and review of a sketch plan as set forth below. The applicant shall meet with the Town Board to discuss the proposed project and to reach an understanding on basic requirements prior to detailed design investment. If the Town Board determines the proposal does not merit further review because it does not meet the objectives of this chapter, then no further action on the application shall be taken. The Town Board may require the applicant to meet with staff or consultants to facilitate the submission of a complete and suitable application. Sketch plan submissions shall include the following:
 - (a) A conceptual plan showing the parcel or parcels to be included in the PUD.
 - (b) The location of the various uses and their areas.
 - (c) Approximate location of significant natural and man-made features of land, such as waterways, wetlands, streets, easements and buildings.
 - (d) Proposed layout of structures, roads, utilities and other features.
 - (e) Current owners of parcel(s) to be included in PUD.
 - (f) A written narrative or statement of what is proposed and the merits of such proposal. Said statement to be of sufficient detail and scope to provide a well-developed concept of the PUD and must include, at a minimum, the following:
 - [1] Total number of acres proposed for the PUD.

- [2] Type of uses proposed and ratio of mixed uses.
 - [3] Number of residential and commercial units.
 - [4] Preliminary density calculations (dwelling units per acre).
 - [5] An explanation of how the developer's particular mix of land uses meets existing community needs and goals.
 - [6] A summary of the operation and ownership arrangements during development and post-development phases.
 - [7] A summary of the infrastructure needed and/or available with respect to transportation, roads, water, and sewer, electric and telecommunications.
 - [8] A general description of the provisions of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.
 - [9] Recreational facilities and/or amenities that will be included in the PUD plan.
 - [10] General description of architectural, planning, and environmental design standards to be proposed as part of the PUD plan.
- (3) Sketch plan conference. The Town Board shall schedule a joint Town Board/Planning Board conference with the applicant within 45 days of the sketch plan submission. The applicant shall make a presentation at this joint Town Board/Planning Board conference describing the PUD proposal. The intent is to provide both the Town Board and the Planning Board with sufficient information on the proposal for each Board to decide whether the proposal has merit as a PUD and whether to allow the applicant to proceed to the next stage of review.
- (4) Planning Board action on sketch plan. The Town Board shall provide their opinion to the Planning Board, in writing, within 45 days. The Planning Board shall have 62 days from the date of the conference in which to make the preliminary determination as to whether the applicant may move on to next stage of the application process and submit a formal request for a PUD. The Planning Board may provide the applicant with direction regarding the content, design, allowed uses, ratio of mixed uses, project size and scope that the Board deems appropriate for the formal application stage. Although said preliminary determination will not commit the Town Board to any specific course of action on the PUD to be requested, the sketch plan process is intended to advise the applicant as to what may be generally acceptable, or not acceptable to the Board so that the applicant has an understanding of what is expected in the next stage of review. Such preliminary determination should establish issues that must be addressed in PUD design, define acceptable uses, specify the supporting documentation required for submission, and specification of all involved agencies. If it is determined the sketch plan proposal does not have merit for further review as a PUD, the applicant may submit a revised proposal for another sketch plan conference but may not submit a formal PUD application.

- (5) Preliminary plan submission. The applicant shall submit 10 copies of the preliminary plan and application to the Planning Board at least four weeks prior to the meeting of the Board at which the application is to be heard. Each preliminary plan shall be drawn by a professional engineer and/or land surveyor licensed to practice in the State of New York and shall bear the signature, seal, license number and telephone number of the said professional engineer and/or land surveyor; provided, however, that all engineering data shall be signed and sealed by a professional engineer and all surveying data shall be signed and sealed by a professional land surveyor. Each submission shall include a preliminary plan drawn at a scale of not less than one inch equals 100 feet and the following additional information:
- (a) Certification that the applicant is the owner of the land or an authorized agent, or that the owner has given consent under an option agreement.
 - (b) Certificate from the Town Tax Collector that all taxes and assessment have been paid to date.
 - (c) A key map showing the entire tract and its relation to the surrounding areas.
 - (d) Title block including the name of development, applicant contact information, identity of a landowner, written and graphic scales and the dates of preparation and revisions.
 - (e) North arrow.
 - (f) Approval signature block for Planning Board and Town Board.
 - (g) Land area to the nearest tenth of an acre and computation of disturbed area.
 - (h) The names and lot and block numbers of all property owners within 200 feet of the extreme limits of the tract as shown on the most recent tax roll.
 - (i) Existing section, block and lot numbers of the lots to be subdivided or developed.
 - (j) Zoning district affecting the tract and within 200 feet thereof, including district names and requirements, and a comparison to the application.
 - (k) Land use plan specifying residential land areas and indicating the acreage, density and the type of dwelling units proposed; nonresidential land areas indicating the acreage, square footage, and specific type of uses proposed; conceptual footprints of all proposed buildings with typical dimensions; approximate and maximum height of all proposed buildings; locations of parking areas and the estimated number of parking spaces; and general calculations of impervious surface coverings.
 - (l) Housing plan indicating the number and type of housing units, as well as the form of ownership and any deed restrictions, as necessary, to be provided.
 - (m) Open space and recreation plan indicating the general location of land areas to be devoted to open space, conservation, and recreational purposes, including a general description of the improvements proposed to be made thereon and a

plan for the operation and maintenance of said land areas.

- (n) Environmental inventory including a general description of the waterways, wetlands, wildlife habitat, upland vegetation, soils, topography, geology, surface hydrology, climate and cultural resources of the site, existing man-made structures or features and the probable impact of the development on the environmental resources of the site, both during construction and thereafter.
 - (o) Traffic circulation plan showing the general location and types of transportation facilities, indicating all existing and proposed collector and local streets, and all proposed improvements to existing roads. The traffic circulation plan shall include daily and peak hour traffic volume projections, an assessment of the traffic impacts of the proposed development on the highway network and estimated levels of services before and after development, with or without traffic improvements.
 - (p) Pedestrian circulation plan showing the general location and types of facilities for pedestrian access throughout the PUD, including both sidewalks and trails.
 - (q) Utility plan indicating the general location of existing and proposed sewer and water lines, pump stations, water supply wells, sewage treatment plants and proposed methods for handling solid waste disposal. Additionally, tract connections to electric, gas, cable, and telephone facilities shall be generally indicated and a plan for the operations and maintenance of the proposed utilities shall be submitted.
 - (r) Stormwater management plan indicating the proposed method of controlling surface water runoff, including design calculations for drainage improvements and proposed soil erosion and sediment control measures, both during construction and thereafter.
 - (s) Community facilities plan indicating the scope and type of supporting community facilities to be provided.
 - (t) Proposed phasing plan indicating areas to be developed in each phase and the priority of each. The eventual development of each phase should be related to the land use plan, the traffic circulation plan, the stormwater management plan and the utility plan to ensure the phasing plan is workable. It should also demonstrate a reasonable balance of the different components of the PUD exists at each phase of the project.
 - (u) SEQR, Part I of the New York State Environmental Assessment Form (Long Form), or a draft environmental impact statement.
 - (v) Draft PUD District amendment to the Town of Liberty Zoning Law to accommodate the proposed PUD project.
- (6) Action by the Town of Liberty on the preliminary plan. The Planning Board shall review the application for the preliminary plan for the purpose of determining, within 62 days of its submission, whether said application is complete.

- (a) If said application is found to contain all of the information required, the Planning Board shall certify said application is complete and direct the application to the Town of Liberty Town Board with recommendations to approve, disapprove or conditionally approve the proposed PUD District.
 - (b) If said application is found to lack some of the information required above, the Planning Board shall cause the applicant to be notified, in writing, that said application is incomplete, specifying the deficiencies in the application. Should the Planning Board conclude the missing information is not applicable to the subject application and/or are not necessary to make an informed decision on the application, it may waive such requirements as a prerequisite for completeness only, and certify the application is complete, notwithstanding the missing items.
 - (c) If waivers of checklist items have been specifically requested by the applicant in the application, the Planning Board shall act on the request for waivers within 62 days of application submission or requested extension from the applicant. If the waivers are granted, the application is complete as long as all other requirements for submission have been satisfied. If the waivers are denied, the application is incomplete until missing information is submitted. An applicant who has been notified that is application is incomplete may request waiver of one or more of the submission requirements. Said request shall be the subject of a resubmitted application and will be treated as a new submission.
 - (d) Should the Planning Board fail to act within 62 days of the date of the submission of the application, said application shall be deemed complete.
 - (e) The Planning Board may subsequently require correction of any information found to be in error, may require submission of additional information not specified in this chapter, and/or may direct that revisions be made in the application documents. The modifications shall be considered as reasonably necessary in order for the Planning Board to make an informed decision as to whether the requirements of approval of the application have been met. This is provided that the application shall not be deemed incomplete for lack of any additional information or revisions. Promptly after certification of completeness, the application documents shall be distributed by the Planning Board to the Town Board for approval of PUD district formation.
- (7) Amendment of zoning law to create PUD District.
- (a) The Town Board shall, in its discretion, in accordance with the requirements of the New York State Town Law, amend its Zoning Law to create the proposed PUD District, provided that it has first issued a finding of the following facts and conclusions:
 - [1] That departures by the proposed development from zoning regulations, otherwise applicable to the subject property, conform to the zoning provisions outlined above;
 - [2] That the proposals for maintenance and conservation of the common space

are reliable, and the amount, location and purpose of the common open space are adequate;

[3] That provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual gratification and are adequate;

[4] That the proposed PUD will not have an unreasonably adverse impact upon the area in which it is proposed to be established; and

[5] In the case of a proposed PUD, which contemplated construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

(b) Should the Town Board fail to make such findings and hold a public hearing on the proposed PUD District within 62 days of application submission to the Town Board, the application for PUD District creation shall presumed to be denied and no further action shall be taken.

(8) Site plan and subdivision approval. Following Town Board enactment of the proposed PUD District, the applicant shall prepare a final site/subdivision plan including all of the information required under § 130-13 of Chapter 130, Subdivision of land, of the Code of the Town of Liberty, and submit it to the Planning Board for final review and approval. The submission shall include a final timetable, with specific dates for completion of different aspects of the projects to be used as a guide for the Code Enforcement Officer to administer periodic review. When more than 12 months have elapsed between the creation of the PUD and the date of the submission of the site plan and where the Planning Board finds conditions affecting the plan have changed significantly in the interim, the Planning Board may recommend to the Town Board the PUD District designation be rescinded. The Planning Board may disapprove a site/subdivision plan if it varies substantially from the preliminary project plan upon which the creation of the PUD District was based. [Amended 11-6-2006 by L.L. No. 10-2006]

H. Periodic review.

(1) The Town Code Enforcement Officer shall review the progress of the project and compare it to the timetable approved by the Planning Board as part of the site approval process according to the following timetable:

(a) Large-scale PUD (LSPUD): every four years.

(b) Small-scale PUD (SSPUD): every two years.

(2) If the Code Enforcement Officer finds the project has met the development timetable, a letter shall be sent to the Planning Board stating such. If the Code Enforcement Officer finds the project has not met the development timetable, then he must notify the Planning Board, in writing, within 30 days. Upon receiving the notification from

the Code Enforcement Officer, the Planning Board must schedule, within 62 days, a hearing to review the timetable and project progress with the developer. The Planning Board may:

- (a) Do nothing and require another review in one year;
 - (b) Find compelling reasons why the project has fallen behind schedule and vote to approve a revised site/subdivision plan with an amended timetable; or
 - (c) Find the project is behind schedule because conditions have sufficiently changed since the creation of the PUD and recommend the Town Board revoke or modify the PUD classification. The recommendation must be made in writing and describe, in detail, the reasons for such a recommendation.
- (3) Upon receiving notification from the Planning Board about a PUD project that has fallen behind schedule, the Town Board may amend the Zoning Law to revoke or extend the PUD District, as provided by Town Law.
- I. Performance guarantee, inspection fees, maintenance bond. The developer shall provide for all performance guarantees, inspection fees and maintenance bonds as described in § 130-13 of Chapter 130, Subdivision of Land, of the Code of the Town of Liberty. [Amended 11-6-2006 by L.L. No. 10-2006]

§ 147-24. Mobile homes.

No mobile home or mobile home park shall be erected or established except in conformity with Chapter 100, Mobile Homes and Mobile Home Parks, of this Code, and all permitting procedures connected with such uses shall be as provided therein.

§ 147-25. Bungalow colonies.

Bungalow colonies, where the ownership of the development is held in common by means of a condominium, cooperative, POA or similar type agreement, or by a single owner acting as landlord; shall be subject to the following requirements:

- A. Procedure. Bungalow colonies shall be processed in the same manner as multiple dwelling projects (see § 147-22) with the exception that the Code Enforcement Officer shall, in the instance of a development which has received preliminary or final approval, be authorized to issue separate building permits for each building provided the buildings conform with such plans and do not exceed permitted density. Also, the Code Enforcement Officer shall have authority to grant or deny, without Planning Board review, individual building permits within existing bungalow colonies existing on the date of this chapter's enactment, provided any new structures or improvements will meet the requirements of this section and do not exceed permitted density.
- B. Density. Density within bungalow colonies, measured in equivalent dwelling units on the basis of estimated average sewage flows at full occupancy, shall not exceed the number of dwelling units per acre permitted within the district if the parcel on which the units are constructed were to be developed for single-family use, or six dwelling units per acre, whichever is less dense, calculating density in the manner provided for in § 177-22B

(pertaining to multiple dwellings).

- C. Open space, nonresidential uses and utilities. Bungalow colonies shall meet the standards applicable to multiple dwelling developments.
- D. Design criteria. The following design criteria shall apply to bungalow colonies:
 - (1) Dwellings shall be limited to single- and two-family types.
 - (2) No part of any structure shall be located within 25 feet of the edge of pavement of any road to or through the development.
 - (3) Roads shall comply with minor street requirements as specified in the Town of Liberty Subdivision Regulations.
 - (4) No bungalow colony shall be served by more than one entrance and one exit from any public highway, although the Planning Board may waive this requirement in the interest of safety. All entrance and exit drive locations shall be approved by the Town Highway Superintendent.
 - (5) One and one-quarter parking spaces shall be provided for each dwelling unit which spaces shall be located no further than 500 feet from the unit they are intended to serve.
 - (6) Each bungalow colony shall be provided with access from an improved pedestrian right-of-way or access road within the development. No unit shall have direct access to a public highway, however. Also, no unit served by a pedestrian right-of-way shall be located further than 300 feet from an access road.
 - (7) All structures shall be separated at least 20 feet from each other and setback a minimum of 75 feet from the perimeter boundaries of the development. A planting strip may be required where the property line is not wooded.
 - (8) All sewer and water facility plans shall be acceptable to the Town of Liberty Public Works Director and evidence thereof supplied with the application for approval of the use. State approval and evidence thereof shall also be required where applicable.

ARTICLE VIII

Special Uses and Site Plan Review

§ 147-26. Authority.

- A. The Town of Liberty Planning Board is, pursuant to § 274(a) of the Town Law, authorized to approve, disapprove or approve with modification the establishment (by special permit) of certain uses which shall, throughout this chapter, be identified as special uses.
- B. Site plan review by the Planning Board is also required for all special uses and such other uses as specified in the Supplementary Regulations. The Planning Board, in approving the establishment of special uses and/or site plans, shall first determine compliance with the standards and criteria set forth below and elsewhere within this chapter. No building permit will be issued for any structure covered by this article until an approved site plan or approved amendment of any such plan has been secured by the applicant and presented to

the Code Enforcement Officer. No certificate of occupancy will be issued for any structure or use of land covered by this article unless the structure is completed or the land developed or used in accordance with an approved site plan or approved amendment of any such plan.

§ 147-27. Standards and criteria.

Uses specified as special uses under Article IV, District Regulations, of this chapter shall be permitted only after review and approval by the Town of Liberty Planning Board pursuant to the express standards and criteria set forth below:

- A. The proposed use shall be in harmony with purposes, goals, objectives and standards of the Town of Liberty Comprehensive Plan, this chapter and all other regulations of the Town of Liberty.
- B. The proposed use in the proposed locations shall not result in either a detrimental overconcentration of a particular use within the Town or within the immediate area. The location chosen shall not be one which is better suited or likely to be needed for uses which are permitted as a matter of right in the District. The Board shall, in making its decision, also evaluate the degree to which the proposed location may be particularly suitable or unsuitable for the proposed use in light of other potential sites in the immediate area including those which might exist in adjacent communities.
- C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or right-of-way, or other matters affecting the public health, safety and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the Comprehensive Plan, this chapter, or any other plan, program, map or ordinance of the Town of Liberty or other government agencies having jurisdiction to guide growth and development.
- D. The proposed use shall not impose an undue burden on any of the improvements, facilities, utilities and services of the Town, whether such services are provided by the Town or some other agency. The applicant shall be wholly responsible for providing such improvements, facilities, utilities or services as may be required to adequately serve the proposed use when the same are not available or adequate to service the proposed use in the proposed location. As part of the application and as a condition to approval of the proposed special use permit the applicant shall be responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this and other regulations of the Town of Liberty. The permit approval shall be so conditioned.
- E. No application for issuance of a special use permit shall be approved unless the Planning Board shall find that, in addition to complying with each of the standards enumerated above, any of the applicable standards of the chapter shall be met. In instances where the standards contained herein do not adequately protect the general health, safety and welfare of parties affected, the Board shall be obligated to impose such conditions in issuance of a permit. Conditions which might be imposed shall include, but not be limited to, provisions for additional parking, traffic control, submission of landscaping plans, setbacks, special

measures addressing sales period activities and other measures which can be effectuated to remove any potential adverse influence the use may have on adjoining uses. In reviewing a site plan and determining what conditions, if any, shall be attached for approval, the Planning Board shall consider:

- (1) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - (2) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 - (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (4) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 - (5) Adequacy of stormwater and drainage facilities (stormwater leaving any site shall not exceed pre-development levels and facilities shall be designed to accommodate a ten-year storm).
 - (6) Adequacy of water supply and sewage disposal facilities.
 - (7) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
 - (8) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - (9) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- F. The burden of proof shall remain with the applicant to show compliance with all standards and the burden shall never shift to the Town.

§ 147-28. Procedure.

- A. Sketch plan. A sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan; and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concern and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:
- (1) A statement and rough sketch showing the locations and dimensions of principal and accessory structures, proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
 - (2) A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, properties, easements and other pertinent features; and

- (3) A topographic or contour map of appropriate scale (one inch equals 200 feet or less) and detail to show site topography with contour intervals of no less than 20 feet each.

B. Application for site plan approval. An application for site plan approval shall be made in writing to the Chairman of the Planning Board and shall be accompanied by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference.

(1) Site plan checklist:

- (a) Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
- (b) North arrow, graphic scale and date;
- (c) Boundaries of the property plotted to scale;
- (d) Existing watercourses;
- (e) Grading and drainage plan, showing existing and proposed contours;
- (f) Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- (g) Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- (h) Provision for pedestrian access;
- (i) Location of outdoor storage, if any;
- (j) Location, design and construction materials for all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- (k) Description of the method of sewage disposal and location, design and construction materials of such facilities;
- (l) Description of method of securing public water and location, design and construction materials of such facilities;
- (m) Location of fire and other emergency zones, including the location of fire hydrants;
- (n) Location, design and construction of materials of all energy distribution facilities, including electrical, gas and solar energy;
- (o) Location, size, design and type of construction of all proposed signs;
- (p) Location and proposed development of all buffer areas, including existing vegetative cover;
- (q) Location and design of outdoor lighting facilities;
- (r) Identification of the location and amount of building area proposed for retail

sales or similar commercial activity;

- (s) General landscaping plan and planting schedule;
 - (t) An estimated project construction schedule;
 - (u) Record of application for and approval status of all necessary permits from state and county officials;
 - (v) Identification of any state or county permits required for the project's execution plus documentation sufficient to enable compliance with the State Environmental Quality Review (SEQR) Regulations; and
 - (w) Other elements integral to the proposed development as considered necessary by the Planning Board.
- (2) The site plan map shall be prepared by a licensed surveyor, professional engineer, architect, landscape architect, planner or other professional with competency in site design.

C. Planning Board action of site plan. Within 45 days of the receipt of an application for site plan approval, the Planning Board shall conduct a public hearing on the proposal (with public notice as provided by § 274-a of the New York State Town Law), render a decision, file said decision with the Town Clerk, and mail such decision to the applicant with a copy to the Code Enforcement Officer. The time within which a decision must be rendered may be extended by mutual consent of the applicant and Planning Board.

- (1) Upon approval of the 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 a copy to the applicant and Code Enforcement Officer, and file same with the Town Clerk.
- (2) Upon disapproval of a site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a building permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. Such disapproval shall be filed with the Town Clerk.

D. Miscellaneous.

- (1) Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant.
- (2) 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 Town Board after consultations with the Planning Board, Code Enforcement Officer, Town Attorney and other appropriate parties.
- (3) Inspection of improvements. The Code Enforcement Officer shall be responsible for

the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.

- E. The Town of Liberty Planning Board shall, pursuant to § 274-a, Subdivision 5, of the Town Law, have the right to waive, when reasonable, any of the requirements of § 147-28 of this Article VIII. This waiver authority may be exercised upon the affirmative vote of a super majority of members of the Planning Board (majority vote plus one vote) in the event that any such requirements are found not to be essential for the public health, safety or general welfare or are found to be inappropriate to a particular site plan. Any such waiver shall be subject to the following conditions: [Added 11-19-2012 by L.L. No. 3-2012]
- (1) No waiver shall result in allowing a use not permitted within the applicable zoning district.
 - (2) Waivers shall be limited to those situations where an addition not exceeding the lesser of 750 square feet in size or 25% of the floor area of an existing structure or of existing structures is proposed on a parcel previously granted site plan approval by the Planning Board.
 - (3) Waivers shall be limited to those situations where the full application of the requirements contained in the above-referenced sections would generate unnecessary data and create unnecessary costs with regard to deciding the matter.
 - (4) An applicant for site plan approval who desires to seek a waiver of certain of the above-referenced requirements pertaining to such applications may submit a sketch plan of the proposed project to the Planning Board in lieu of a complete site plan. The Planning Board shall review the sketch plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such a sketch plan as adequate when, in its judgment, the information submitted is sufficient to make a determination of compliance with the development standards in Articles VI and VII of this chapter.
 - (5) Nothing herein shall authorize the Planning Board to waive state environmental quality review requirements.
 - (6) The Planning Board must set forth in its record of proceedings the precise grounds upon which it has determined to exercise its waiver authority hereunder, which shall include a clear statement of what requirements of § 147-28 of this chapter have been waived and the reason for the waiver of each and every such requirement.

ARTICLE IX

Nonconforming Uses and Structures

§ 147-29. Purpose.

It is the purpose of this section to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of nonconforming uses and/or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such alteration, continuation or extension would itself lead to

neighborhood or district deterioration. It is further the purpose of this section to prescribe those standards which are to be applied by the Town in determining the reasonableness of a proposal to alter, continue or extend a nonconforming use. The following are regulations which shall apply to the alteration, continuation or extension of nonconforming uses.

§ 147-30. Definition. [Amended 9-3-2013 by L.L. No. 3-2013]

A nonconforming use or building shall be a building, structure or use legally existing at the effective date of this chapter, or any amendment thereto, or a building, structure or use planned and under construction in compliance with existing laws prior to the effective date of this chapter or any amendment thereto, and which does not conform with the use regulations of the district in which located. A building, structure or use allowed by variance in a district where it is nonconforming with any regulations of this chapter shall also be considered a nonconforming use.

§ 147-31. Normal maintenance and repair activities.

Normal maintenance and repair, such as painting, replacing a roof, etc., is allowed, as are minor additions, alterations and interior renovations that do not structurally alter the building or area or result in increased use of the building or area or a different nature of use than that existing at the present time, or otherwise create more incompatibility with the surrounding permitted uses.

§ 147-32. Changes and additions.

All changes and additions to nonconforming uses or proposals for reconstruction or reestablishment of such uses, excepting those identified in § 147-31 above, shall be considered special uses subject to the specific procedures and review criteria contained in Article VIII of this chapter, and permits for alterations, changes in use or additions of one sort or another shall be granted only after a determination by the Planning Board that the following conditions have been, or will be, satisfied.

- A. Storage of materials. There shall be no increase in the amount of materials, supplies and/or products that are stored outside a nonconforming facility, as on a lot in a nonconforming use, excepting those types of uses outlined in Subsection B.
- B. Screening. Where the nonconforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a sawmill, farm machinery sales operation or similar operation), the use may only be expanded if a solid fence of wood, woven metal and/or evergreen screen, not less than six feet in height, is present on all sides of the immediate area in use. Stored material shall not exceed the height of the screening material and nine feet at the maximum.
- C. Yards and setbacks. No addition, change or expansion of a nonconforming use shall create further nonconformity by violation of yard, setback and height regulations of the district in which it is located excepting that where a structure or use is already nonconforming by virtue of a rear or side yard less than required size, such yard may be reduced to 1/2 the normal requirement to permit expansion.
- D. Stormwater. There shall be no increase in the amount of stormwater runoff for the site over

what was existing as of the date of the enactment of this chapter. The U.S.D.A. Soil Conservation Service may be relied on to recommend appropriate measures to control stormwater runoff which may be attached as conditions of approval by the Town.

- E. Parking and traffic. In no case will a change, addition or expansion of a nonconforming use be allowed which would result in the diversion of traffic, or relocation of a driveway on the site to any point nearer a residential property, or result in violation of any of the parking and unloading requirements of this chapter. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this chapter, the Town may require vegetative screening of the parking area from nearby residential areas. Nothing herein shall prohibit the Town from requiring or approving additional parking where such action would reduce or eliminate an existing or potential parking problem.
- F. Extension onto other properties of record in the same ownership. The use may only be expanded or extended onto a new property of record if that property is immediately abutting to the existing location, the properties were both under the same ownership as of the effective date of this chapter, the owner has clearly exhausted the alternatives available for expansion on the existing property, and the use is not one which has been altogether prohibited as a new use under this chapter.
- G. Prohibited expansions. Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is a use judged by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this chapter, the requested expansion or extension shall be denied. The Board shall consider past operating performance in making its decision.

§ 147-33. Reconstruction.

If any nonconforming structure use is damaged or destroyed as a result of a casualty, it may, pursuant to special use procedures, be restored or reconstructed within 12 months of the date of the occurrence, with extensions at the discretion of the Planning Board who shall consider the degree to which the use is nonconforming with the regulations of the district where it is located.

§ 147-34. Abandonment and reestablishment.

- A. A nonconforming use which has been abandoned may, pursuant to special use procedures, be reestablished within a period of 12 months from the date when the Code Enforcement Officer shall have determined and so notified the owner of the property in question that abandonment had occurred. Thereafter, the use shall not be reestablished and any future use shall be in conformity with the provisions of this chapter.
- B. A nonconforming use shall be considered abandoned when, among other circumstances:
 - (1) The intent of the owner to discontinue the use is apparent by the posting of signs, boarding of windows, or failure to pay taxes or assessments due or similar actions or lack thereof;
 - (2) The equipment and furnishings used in furtherance of the nonconforming use have been removed from the premises;

- (3) The nonconforming use has been replaced by a conforming use or changed to another use under permit by the Planning Board; or
 - (4) The building is not occupied for a period of one year.
- C. The Code Enforcement Officer, on determining these circumstances exist, shall, by certified mail, so notify the owner of record, informing the owner the use is considered abandoned and may not be reestablished once a period of 12 additional months has expired. If an owner cannot be reached through the mail, the Code Enforcement Officer shall publish the notice once in a newspaper of general circulation in the Town and the owner shall be presumed to have been notified.

§ 147-35. Single-family dwellings.

A single-family dwelling may be erected on any existing lot of record, providing that no side yard is reduced to less than 50% of the requirement for the district in which it is located and that a sewage permit can be properly issued.

§ 147-36. Certificate of nonconformance.

The Code Enforcement Officer shall issue, upon request, a certificate of nonconformance to any owner of a nonconforming structure or use who so requests.

ARTICLE X
Administration and Enforcement

§ 147-37. Code Enforcement Officer. [Amended 7-14-1997 by L.L. No. 4-1997]

It shall be the duty of a Code Enforcement Officer, to be appointed by the Town Board, to enforce the provisions of this chapter. The Code Enforcement Officer shall examine all applications for permits, issue permits for construction and uses which are in accordance with the requirements of this chapter, record and file all applications for permits with accompanying plans and documents and make such reports as the Town Board may require. Permits for construction and uses which are special uses shall be issued only upon written order of the Planning Board. Permits for construction and uses which require a variance to requirements of this chapter shall be issued only upon written order of the Zoning Board of Appeals.

§ 147-38. Permit procedures.

- A. General procedures. All persons desiring to undertake any new construction, structural alteration (including demolition) or changes in the use of a building or lot shall apply to the Code Enforcement Officer for a building permit and/or certificate of occupancy by filling out the appropriate application form and by submitting the required fee. The Code Enforcement Officer will then either issue or refuse the permit or refer the application to the Planning Board or the Zoning Board of Appeals should the permit application involve a special use or require a variance. After the permit has been received by the applicant, he may proceed to undertake the action permitted in the permit and, upon completion of such action, shall apply to the Code Enforcement Officer for issuance of a certificate of occupancy. If the Code Enforcement Officer finds that the action of the applicant has been

taken in accordance with the permit, he will then issue a certificate of occupancy allowing the premises to be occupied.

- B. Required permits. A building permit or certificate of occupancy shall be required prior to the erection, addition, demolition or alteration of any building or portion thereof; prior to the use or change of use of a building or land; and prior to the change or extension of a nonconforming use. It shall be unlawful for any person to commence work for the erection or alteration of any building or for a change in land use until a permit has been duly issued therefor. The following classes or permits may be issued:
- (1) Permitted use. A permit for a principal permitted use or an accessory use requiring a permit may be issued by the Code Enforcement Officer on his own authority.
 - (2) Special use. A permit for a special use may be issued by the Code Enforcement Officer after review and approval by the Planning Board.
 - (3) Variance. A permit for a use or structure which requires a variance may be issued by the Code Enforcement Officer only upon order of the Zoning Board of Appeals.
 - (4) Temporary use. A temporary permit may be authorized by the Town Board and issued by the Code Enforcement Officer for a nonconforming structure or use which the Town Board deems necessary to promote the proper development of the community, provided that such a nonconforming structure or use shall be completely renewed upon expiration of the permit for a specified period not exceeding three years. Temporary permits for purposes of demolishing a structure may be issued by the Code Enforcement Officer and shall be for a period not to exceed 60 days.
- C. Activities not requiring permits. Certain uses or activities shall not require permits although they shall meet any standards which may be applicable to those uses. These include the following:
- (1) Patios.
 - (2) Any porch or deck not over six feet in height above the grade level and lacking a roof, provided such porch or deck does not extend closer than 10 feet to any lot line or within any required front yard.
 - (3) Above ground swimming pools, provided such swimming pool does not extend closer than 10 feet to any lot line or within any required front yard.
 - (4) Signs less than 10 square feet in size. (See also § 147-14C.)
 - (5) Portable structures or buildings less than 100 square feet in size. (See also § 147-14C.)
 - (6) All nonstructural accessory use, including gardens, small animal projects, etc.
 - (7) Home occupations (permitted anywhere subject to the requirements of § 147-20B). Permits shall, however, be required for home occupations if a structure addition or new structure is planned. Also home occupations employing more than three persons, other than immediate family members, shall be permitted as special uses in the RD or AC District.

D. Application for permits.

- (1) All applications for permits shall be accompanied by a plot plan in duplicate, drawn to show the actual shape and dimensions of the lot to be built upon, the exact size and location of any buildings existing on the lot, the lines within which the proposed building or structure shall be erected or altered, the existing and intended use of each building or part of a building, the number of families or dwelling units the building is designed to accommodate and such information as may be necessary to determine compliance with this chapter and all other pertinent Town regulations and State regulations including the New York State Environmental Quality Review Act (SEQR). All applications with accompanying plans and documents shall become a public record after a permit is issued or denied.
- (2) Applications for uses which also necessitate approvals under Chapter 130, Subdivision of Land, of the Code of the Town of Liberty shall be processed in the manner provided therein for plan approval and contain all information or data normally required for a submission under those regulations. A building permit shall not be issued until the proposed use has been granted a preliminary approval under Chapter 130, Subdivision of Land. Also, no building permits shall be issued for any individual structures or uses within any subdivision or land development requiring subdivision approval until final approval has been granted under said regulations.
- (3) All water supply and sewage disposal systems shall conform with the New York State Department of Health regulations and no building permit (or certificate of occupancy) shall be issued unless such application is accompanied by a certification by a professional engineer (or licensed land surveyor permitted to prepare sewage system designs) that said lot has adequate percolation for the proposed construction and all sewage disposal systems are designed in accordance with the specifications of New York State as well as the Town of Liberty and shall be installed under his/her direction. (See Chapter 121 of the Code of the Town of Liberty.) No residential dwelling unit shall be served by a privy and all systems shall fully comply with the sewer district regulations of the Town of Liberty as contained in this Code.

E. Fees.

- (1) The Town Board shall by resolution establish and periodically update a uniform schedule of fees, charges and expenses, as well as a collection procedure for building permits, special use permits, variances and other matter pertaining to this chapter.⁶
- (2) Said schedule of fees shall be posted in the office of the Code Enforcement Officer and/or the Town Clerk.
- (3) Permits, special uses and variances shall be issued only after fees have been paid in full, and the Zoning Board of Appeals shall take no action on appeals until preliminary charges have been paid in full.

F. Action on permit applications.

⁶. Editor's Note: A fee schedule is included in Ch. A152, Fees.

- (1) Issuance of permit.
 - (a) It shall be the duty of the Code Enforcement Officer to issue a building permit, provided that he is satisfied that the structure, building, any signs, parking areas of premises and the proposed use thereof conform with all the requirements of this chapter and that all other reviews and actions, if any are called for in this chapter, have been complied with and all necessary approvals secured thereof.
 - (b) All building permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operation is displayed as required by this chapter, nor shall be perform building operations of any kind after notification of the revocation of said building permit.
- (2) Denial of permit. When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit.
- (3) Inspection by the Code Enforcement Officer. It shall be the duty of the Code Enforcement Officer, or his duly appointed representative, to make the following minimum number of inspections on property for which a permit has been issued:
 - (a) At the beginning of construction. A record shall be made indicating the time and date of the inspection and the finding of the Code Enforcement Officer in regard to conformance of the construction with plans submitted with the application from the building. If the actual construction does not conform to the application, a written notice of the violation shall be issued by the Code Enforcement Officer, and such violation shall be discontinued. Upon proper correction of the violation and receipt of written notice from the Code Enforcement Officer, construction shall proceed.
 - (b) At the completion of construction. A record shall be made indicating the time and date of the inspection; the findings of the Code Enforcement Officer in regard to the issuance of certificate of occupancy. Nothing herein shall, however, preclude the Code Enforcement Officer from making such additional inspections as are deemed necessary to establish conformance with this or other Town Regulations.
- (4) Expiration of permit. A building permit shall expire after one year if the applicant fails to implement his application as filed with the Code Enforcement Officer.
- (5) Revocation of permits. If it shall appear at any time to the Code Enforcement Officer that the application or accompanying plot plan is in any material respect false or misleading or that work is being done upon the premises differing materially from that called for in the application filed with him under existing laws or ordinances, he may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the said enforcement officer. After the building permit has been revoked, the Code Enforcement Officer

may, at his discretion, before issuing a new building permit, require the applicant to file an indemnity bond in the favor of the Town of Liberty with sufficient surety, conditioned for compliance with this chapter and all building laws and ordinances then in force, and in a sum sufficient to cover the cost of removing the building if it does not so comply.

- (6) Renewal of permit. In any instance when a permit is approved by the Planning Board, Town Board or Zoning Board of Appeals, any of those may require their approval be periodically renewed. Such renewal shall be granted following due public notice and hearing, and may be withheld only upon determination by the Code Enforcement Officer to the effect that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been, or are no longer being, complied with. In such cases a period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.

G. Certificate of occupancy.

- (1) A certificate of occupancy shall be a statement issued by the Code Enforcement Officer setting forth either that a building, structure or parcel of land complies with the provisions of this chapter; or that a building or structure lawfully may be employed for specified uses under the provisions of this chapter, or both.
- (2) No vacant land shall be occupied or used, and no structure or part of a structure hereafter erected, structurally altered or changed in use, shall be occupied or used until a certificate of occupancy shall have been regularly issued therefore by the Code Enforcement Officer.
- (3) A certificate of occupancy, either for the whole or part of a new building or for the alteration of an existing building shall be applied for coincident with the application for a building permit and shall be issued within 30 days after the erection or alteration of such building or part shall have been completed in conformity with the provisions of this chapter, provided the Code Enforcement Officer has been timely notified of the completion of construction.
- (4) A certificate of occupancy for the use of occupancy of vacant land or for a change in the use of land, or for a change in the use of an existing building, shall be applied for and issued before any such land shall be occupied or used or such land or building changed in use, and such certificate of occupancy shall be issued within 30 days after application has been made, provided such proposed use is in conformity with the provisions of this chapter.
- (5) A certificate of occupancy for changing or extending a nonconforming use, existing at the time of the passage of this chapter or of an amendment thereto, shall be applied for and issued before any such nonconforming use shall be changed or extended. Such certificate of occupancy shall be issued pursuant to the special use procedure of this chapter.
- (6) A record of all certificates of occupancy shall be kept on file in the office of the Code Enforcement Officer and a copy shall be furnished, on request, to any person having a proprietary or tenancy interest in the building or land affected.

§ 147-39. Violations.

- A. General provisions. It shall be unlawful to erect, construct, reconstruct, alter and maintain or use any building or structure or to use any land in violation of any provision of this chapter or amendments thereto. Failure to comply with any provisions of this chapter; or failure to secure a permit, or certificate of occupancy, when required, previous to the erection, construction, extension, or addition to a building shall be a violation of this chapter. When written notice of a violation of any of the provisions of this chapter has been served by the Code Enforcement Officer on the owner, occupant and/or contractor, such violation shall be discontinued immediately.
- B. Complaints. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. [Amended 7-14-1997 by L.L. No. 4-1997]
- C. Penalties. Any person, partnership or corporation who or which shall do so shall, upon conviction thereof, be sentenced to pay a fine of not more than \$50 to the Town of Liberty together with judgment of imprisonment not exceeding six months if the fine is not paid. Each week that a violation is continued shall constitute a separate offense. All fines collected for the violation of this chapter shall be paid over to the Town of Liberty. [Amended 7-14-1997 by L.L. No. 4-1997]
- D. Procedure for abatement of violation. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter or of any ordinance or regulation made under authority or inferred hereby, the Town Board or, with its approval, the Code Enforcement Officer or other property official, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate such violation, or to prevent the occupancy of said building, structure or land, or prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XI

Appeals, Variances, and Zoning Board of Appeals

§ 147-40. Zoning Board of Appeals.

- A. Establishment. Pursuant to the provisions of the Town Law, a Zoning Board of Appeals is hereby established in the Town of Liberty.
- B. Appointment. The Board shall consist of five members to be appointed by the Town Board. The terms of the initial appointees shall be for one, two, three, four and five years from and after the date of appointment. Their successors, including such additional members as may be appointed by the Town Board, shall be appointed for the term of five years after the expiration of the terms of their predecessors in office.
- C. Appointment to fill vacancies. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms became vacant. Such appointment to fill vacancies shall be made in the same manner as the original appointment. The Town

Board may continue to legally operate while vacancies are waiting to be filled, provided there are enough members to constitute a quorum.

- D. 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.
- E. Votes 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 three of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of this enforcement officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this chapter or to effect any variation of this chapter.

§ 147-41. Power 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 chapter where such strict application would result in particular difficulties or necessary 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 chapter. It shall also hear and decide all matters referred to it or upon which it is required to pass under the provisions of this chapter.
- C. Interpretation. The Board shall, upon request from or appeal of a decision by the Code Enforcement Officer or any administrative body of the Town of Liberty, including the Town Board, decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

§ 147-42. Procedure.

- A. General procedures. The Board shall act in strict accordance with the procedure specified by the Town Law and by this chapter. 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 chapter 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.
 - (1) Any property owner, tenant or representative thereof may, in appealing on administrative decision of the Town of Liberty with respect to this chapter, 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 then, 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.

- (2) 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 chapter. Use variances involve a use of land not allowed in a District under the terms of this chapter. Each of the following findings of fact shall be made by the Board of Appeals prior to granting such variances:

- (a) Area variance. The strict application of the literal terms of this chapter 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 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.
- [2] The applicant has proved the variance, if granted, will not change the permitted density for the parcel.
- [3] The applicant has proved the variance, if granted, would not change the character of the district or be a substantial detriment to adjoining properties.
- [4] The applicant has proved the variance is not requested for reasons of mere inconvenience, aesthetic tastes or more profitable use.
- [5] The applicant has proved the variance would be consistent with the spirit of this chapter and the Town of Liberty Comprehensive Plan.
- [6] 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 chapter shall be deemed self-created.

- (b) Use variance.

- [1] The strict application of the literal terms of this chapter 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 a 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 chapter and the Town of Liberty Comprehensive Plan. 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.
- [2] 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 rulings unrelated to zoning.
 - [3] The burden of proof with a use variance, nonetheless, shall be wholly with the applicant.

C. Requirements applicable to other appeals.

- (1) The Town Board, Code Enforcement Officer or Planning Board of the Town of Liberty may request the Zoning Board of Appeals decide any question involving the interpretation of any provision of this chapter and shall refer such other matters to the Board as it is required to decide by the provisions of this chapter. 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 90 days of the Secretary's receipt of same.
- (2) Any property owner, tenant, representative thereof or other person aggrieved by an administrative act of the Town of Liberty with respect to this chapter (believes such decision to be in error) may appeal to the Zoning Board of Appeals. An administrative act shall include any order, requirements, decision or determination made by the Code Enforcement Officer, the Town Board or the Planning Board. 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 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 who 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 complete before an appeal is considered filed. Six 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 60 days of the filing of the appeal or application.
- (2) Notice of hearing. Zoning appeals. The Board shall give notice of the hearing at least five days prior to the date thereof by publication in the official Town paper.
- (3) General rules. Any party may appear in person or by agent or by attorney.
 - (a) Irrelevant or unduly repetitious evidence of cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be 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.
 - (b) All evidence, including records and documents in the possession 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.

- (1) Prior to taking action on any matter which would cause any change in the regulations or use of land of buildings on a real property as specified in § 239-m of the General Municipal Law, the Board shall make referrals to the County Planning Board.
- (2) If within 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.
- (3) If the County fails to report within such period of 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.
- (4) The Board may also refer matters to the Town of Liberty Planning Board for review and recommendation and defer any decision thereon for a period of not more than 30 days pending a report from the Planning Board.
- (5) The requirements of this subsection and § 239-m of the Town Law shall also apply to action of the Planning Board and Town Board in administering this Zoning Law.

F. Decisions.

- (1) Time of decisions. Decisions by the Board shall be made not later than 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 or requirement of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.
- (3) Basis for decisions. The Board, in reaching said decision, shall be guided by standards specified herein as well as the community goals and policies as specified in Comprehensive Plan.
- (4) Content of findings. 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 90 days from the date of the decision; however, the Board may extend this time and additional 90 days.

- (6) Filing of decisions. 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.

G. Miscellaneous.

- (1) The Zoning Board of Appeals is hereby authorized to adopt rules and regulations for the conduct of its business consistent with this chapter and state statutes.
- (2) 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 provision of this chapter 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:
 - (a) The name and legal permanent address of the applicant or appellant and telephone number if available.
 - (b) The name and address of the owner of the district lot to be affected by such proposed change or appeal.
 - (c) 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.
 - (d) A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
 - (e) A reasonable 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, material 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.
- (3) 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.

- (4) 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, 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.
- (5) Any person aggrieved by a decision of the ZBA 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 30 Days after the filing of a decision in the office of the Town Clerk.
- (6) 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 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, property and general welfare and that a reconsideration is justified.

ARTICLE XII General Provisions

§ 147-43. Amendment procedure.

This chapter of any part thereof may be amended, supplemented or repealed from time to time by the Town Board consistent with the provisions of the New York State enabling statutes.

§ 147-44. Interpretation.

- A. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except where specifically provided to the contrary, it is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any rules, regulation or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to the use of buildings, structures, shelter or premises, nor is it intended by this chapter to interfere with or abrogate or annul any easement, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of a building or premises or requires larger open spaces than are imposed or required by any other statute, ordinance, rule, regulation or permit or by any easement or agreement, the provisions of this chapter shall control.
- B. In the event of conflict in the terminology of any section or part thereof of this chapter, the more restrictive provisions shall control.

§ 147-45. Effective date.

This chapter shall be effective August 1, 1987.