

* This document illustrates proposed zoning changes in the context of the existing, in-effect zoning law text. Red text shows proposed additions; strikethrough shows proposed deletions. This is a draft document. The proposed local law, which is the actual and accurate version of the proposed changes for which a public hearing was held on 3/18/19, has been posted on the town's website.

ARTICLE I
(Reserved)

§ 147-1. ~~(Reserved)~~ Purposes.

This law is intended to implement the recommendations and fulfill the goals and objectives of the Town of Liberty Comprehensive Plan, as amended. Specific purposes of this law include those contained in § 263 of the Town Law and the following:

- A. Preserving and enhancing the town's open spaces, scenic character, aesthetics and general living environment by providing for the proper relationships between man, building and open space in all site planning.
- B. Designing appropriate districts in the town for various land uses at densities which will conserve and enhance the value of property while meeting the community development needs of the town.
- C. Providing for a variety of housing units, in compatible residential environments, to address the full range of needs in terms of incomes, ages and family sizes.
- D. Encouraging compatible mixes of permitted uses within specified zoning districts.
- E. Establishing reasonable standards of development to which uses, buildings or structures shall conform so as to provide for the health, safety and general welfare of residents and reduce future costs to the community.
- F. Promoting orderly development to maintain the stability of residential, business and agricultural areas and improve the overall economic base of the Town.

147-4. Definitions.

AGRI-BUSINESS — Business activities utilizing 50% or more of product grown and/or produced on the property, **including but not limited to:** 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.

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, U-pick operations, and pumpkin patches.

BUNGALOW COLONY — a residential use in which the ownership of the development is held in common by means of a condominium, cooperative, Property Owners Association or similar type agreement, or by a single owner acting as landlord. See "dwelling, multiple."

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

EATING AND DINING DRINKING 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.~~ An establishment where food and drink are prepared, served, consumed and sold primarily within the principal building or its outdoor terrace or patio area. The term “restaurant” shall not include “Restaurants, Fast Food” as defined herein. A bar or tavern that also serves food shall be considered an Eating and Drinking Place.”

FARM EQUIPMENT SALES AND SERVICE OPERATIONS - A use primarily engaged in the sale and rental of farm tools and implements such as feed, grain, tack, animal care products, farm and garden supplies and machinery, excluding large vehicles such as farm tractors or combines.

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. 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).

NYS BUILDING CODE – The New York State Uniform Fire Prevention and Building Code.

SHOOTING RANGE, INDOOR, PRIVATE OR COMMERCIAL – The use of a structure for archery and/or the discharge of firearms for the purposes of target practice or temporary competitions.

SHOOTING RANGE, OUTDOOR, PRIVATE OR COMMERCIAL – The use of land for archery for the purposes of target practice or temporary competitions. Excluded from this use shall be general legal hunting and unstructured and nonrecurring discharging of firearms on private property.

VEHICLE AND EQUIPMENT SALES AND SERVICE — 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, including but not limited to; boats or trailers; farm tractors or combines; 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.

ARTICLE III

Establishment of Zoning Districts and Zoning Map

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

AC Agricultural/Conservation

This district is intended to encourage preservation of agricultural land and open space. Minimize residential development through protection of sensitive natural areas, viable farmlands and water resources. Ensuring these resources protect the rural character of the town and are used in ways which adapt to those limitations and do not threaten the health and safety of adjacent neighbors.

RD Rural Development

The purpose of this district is to provide a transition area between the AC and R-1 districts while complementing the agricultural lands and open space as well as providing low density single-family dwellings that maintain the rural character of the town.

RD-2 Rural Development 2

The purpose of this district is to provide for the establishment of new camps or additions to existing camps in a manner that is compatible with neighboring land uses and with the orderly development of land uses in the town. regulations of this district shall apply in addition to those of the underlying district(s).

R-1 Low-Density Residential

The purpose of the R-1 residential district is to provide areas adjacent to the village with neighborhoods of single-family and two-family dwellings of low to moderate density.

R-2 High-Density Residential

The purpose of this district is to provide areas adjacent to the village for higher density neighborhoods of single-family, two-family and multifamily dwellings.

DCC Downtown Commercial Core

This district is intended to provide for the development of a traditional historic hamlet, urban cores and community centers, with both commercial and residential uses within this area.

Service Commercial SC

This district is intended to provide areas within the Town for the development of commercial businesses and enterprises that serve the service needs of Liberty residents as well as the traveling public.

IC Industrial Commercial

This district is intended to provide areas within the Town for the development of job-producing business and industrial uses where such enterprises can be assured that their activities will not be in conflict with residential uses. Development of this zone should reflect the rural quality of the Town and should follow design guidelines to ensure buildings are compatible.

PUD Planned Unit Development

This is a "floating district" intended to provide landowners who wish to develop functionally integrated communities or complexes with the flexibility to do so provided sufficient open space will be preserved and the development is designed with safeguards to protect the public health, safety, and welfare.

FP Floodplain

This is an "overlay" district defined by and subject to the requirements of the Town of Liberty Floodplain Law.

RH Resort Hotel

This district is intended to provide areas within the Town for the normal development and expansion of resort hotel facilities along with related recreational enterprises, which facilities are typically characterized by a variety of building types, activities and densities of a substantially

different nature from the surrounding area, including a mixture of recreational, commercial and residential uses.

Wellhead Protection Overlay District

A. Purpose. The purpose of the Wellhead Protection Overlay District is to minimize the potential for harmful or unwanted contaminants to enter the local water supply at wellheads within the town from nearby activities.

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 Any use not listed in the Schedule of District Regulations is prohibited.

§147-8(A) Wellhead Protection Overlay District

A. Purpose. The purpose of the Wellhead Protection Overlay District is to minimize the potential for harmful or unwanted contaminants to enter the local water supply at wellheads within the town from nearby activities.

B. Applicability. The Wellhead Protection Overlay District shall act as an overlay to other existing zoning districts shown on the official zoning map. Any uses permitted in the underlying zoning districts shall be permitted within the Wellhead Protection Overlay District areas, except where the overlay prohibits such uses or activities, or imposes greater restrictions. The overlay shall only apply to those areas of a property which are within the zone shown on the zoning map, and does not apply to the entire property.

C. District Boundary Interpretation. The Wellhead Protection Overlay District is defined as a zone which extends 400 feet outward in all directions from the property line of the parcel containing each protected wellhead.

D. Site Plan Review. Site plan review shall be required for all new and modified uses within the Wellhead Protection Overlay District. The requirements of this section shall supplement and be in addition to the requirements of §147-27 Site Plan Review.

(1) The following information shall be provided on any site plan for a use or activity proposed within the overlay:

- (a) The location of the proposed use or activity in relation to the overlay boundary;
- (b) The size and location of any existing impervious surfaces, and new proposed impervious surfaces, which would collect stormwater runoff. Any impervious surfaces which are outside the boundary of the overlay, but extend into it, shall be included.
- (c) The existing, and proposed new, topographic grading contours of the site.

(2) In addition to other site plan review criteria, the Planning Board shall make a determination and recommendations regarding the following:

- (a) The extent to which the proposed site construction or activity may increase the potential for groundwater contamination within the overlay boundaries;
- (b) The adequacy of the proposed site plan design to prevent or mitigate potential groundwater contamination within the overlay boundary.
- (c) Recommended site plan changes to address the concerns of items (a) and (b) above, as well as to remind and educate the property owner about the sensitive nature of this land and their responsibility to help protect it for all residents in the Town of Liberty.

E. Minimum Lot Size. The minimum lot size for residential parcels within the Wellhead Protection Overlay District which are served by on-site septic systems shall be the same as permitted in the underlying zoning, except may not be less than 3 acres.

F. Restricted Activities.

(1) Storage, stockpiling or disposal of hazardous chemicals, fuels or waste including but not limited to petroleum, fertilizers, manure, sewage, gasoline, coal, de-icing compounds, road salt and similar materials.

G. Restricted Uses. The following uses are not permitted within the overlay, even if they would normally be permitted within the underlying zoning:

(1) Automobile service stations

(2) Auto body shops

(3) Cemeteries

(4) Industrial or manufacturing facility which is subject to the NYSDEC State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges or the USEPA National Pollution Discharge Elimination System (NPDES) stormwater permit program.

(5) Junkyard or salvage operation

(6) Dry cleaning or laundry establishment

(7) Golf courses

(8) Maintenance and repair shops for motor vehicles, internal combustion or electric motors, household appliances, electrical equipment/devices.

(9) Mining or extraction

(10) Concentrated animal feeding operation (CAFO) or intensive use poultry and swine operations

(11) Any use or activity which, at the discretion of the Town of Liberty Planning Board, is considered to have a reasonable potential to contaminate the soil and groundwater within the overlay.

H. Conflict. In case of a conflict between these requirements and any other regulations, the more restrictive regulations shall apply.

§ 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.

B. Permit requirements. Accessory buildings of less than 100 square feet in size shall not require ~~building~~ 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 ~~building~~ 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

§ 147-18. 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:

§ 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.

- A. 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.~~

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- (4) Nonresidential employees. Nonresidential employees shall not exceed three persons.

ARTICLE VII

Moderate- to High-Density Residential and Associated Development

§ 147-21. Cluster developments.

- B. Permitted number of units. ~~A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. In determining the density allowed on the site, the following areas shall not be included in the calculation: Total tract area less:~~
- 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. ~~Offsite sewer/ wastewater or onsite shared community wastewater facilities are not permitted with cluster developments. 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.~~

§ 147-22. Multiple dwellings.

A. Procedure.

- (1) Multiple dwelling projects shall be special uses subject to the provisions of this chapter. ~~If a multiple dwelling project involves a subdivision, and shall also be considered major subdivisions subject to the jurisdictions of~~ the Town of Liberty Subdivision Regulations shall also apply, ~~This "major subdivision" classification shall apply to all subdivision of property in connection with the development,~~ regardless of whether or not the ~~subdivision is 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 ~~that involve subdivisions,~~ 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, **as applicable.**

- (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 ~~C. of this section-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.

- (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 **and the Special Use Permit requirements in Article VIII, as applicable.**

- (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.

B. Density

(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.~~

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 reviewed as special use permits in accordance with Article VIII 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.

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, ~~such as open space and parkland. 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.

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

**Percentage of PUD Preserved as Open Space or
Community Recreation**

**Density Multiplier
(multiplied by
underlying district
density)**

~~Less than 15% to 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.~~ A minimum of 15% open space or parkland, or a combination thereof, must be provided. Alternatively, if it is determined due to site constraints that the required open space or parkland cannot be provided within the proposed development site; and if the Planning Board has made a finding that a proper case exists for requiring that a park or parks or open space be suitably located for playgrounds or other recreational or open space purposes within the town, the Planning Board may require a sum of money in lieu thereof, in an amount to be established by the Town Board. Proceeds will be deposited into a recreation fund for community park and recreation facility improvements.

F. Development standards and guidelines.

- (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) ~~if the PUD contains residential lots or units~~, or other form of ownership (such as municipal) prior to ~~the sale of any lots or dwelling units in final approval~~ of 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.

G. Procedure. The following provides further detail for each step in the PUD process outlined above:

- (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. ~~Prior to directing the application to the Town Board, the Planning Board, if it is lead agency under the~~

SEQR review, shall determine completeness of the application for SEQR purposes. Pursuant to NYCRR Part 617.3 (c) an application is not complete until a negative declaration has been issued; or until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy. If the Town Board is lead agency it shall determine completeness for SEQR purposes.

- (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~~ its consideration 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~~ in this section;
- (8) Site plan and subdivision approval. Following Town Board enactment of the proposed PUD District, the applicant shall prepare a final site ~~plan~~ ~~in accordance with Article VIII of this zoning law and, if applicable, a subdivision plat~~ 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.

§ 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. ~~The Code Enforcement Officer who~~ shall consider the degree to which the use is nonconforming with the regulations of the district where it is located.

§ 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 applicant ~~to~~ to the Planning Board ~~or the Zoning Board of Appeals~~ should the permit application involve a special use ~~permit or site plan review approval. require a variance.~~ After the ~~building permit has been issued by the Code Enforcement Officer and~~ received by the applicant, ~~he~~ the applicant may proceed to undertake the action permitted in the ~~building~~ 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
- 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.~~ A special use permit, site plan review approval, or a variance may also be required prior to the application for a building permit. The following classes of ~~of~~ 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 ~~in accordance with Article XI.~~
 - (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 permit.
- (7) Home occupations (permitted ~~anywhere as accessory uses in certain districts~~ and 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 **building** permits shall be **made using official town application forms and 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.

F. Action on permit applications.

- (6) Renewal of permit. In any instance when a permit is approved by the Planning Board **or the 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.

- (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 **permit procedure requirements in Article VIII** of this chapter.

ARTICLE XI

Appeals, Variances, and Zoning Board of Appeals

§ 147-40. Zoning Board of Appeals.

- A. Establishment. Pursuant to **the provisions §267.** of the Town Law, a Zoning Board of Appeals is hereby established in the Town of Liberty.
- D. General grant of power. The Board shall perform all the duties and have all the powers prescribed by **§§ 267., 267-a., and 267-b. the State of New York of NYS Town Law** 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, constitute the necessary quorum for purposes of conducting any business. Except for a rehearing, 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 §267-b. of NYS Town Law, specifically: ~~and shall have the following specific powers:~~

- A. ~~Variation.~~ The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by Code Enforcement Officer and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

~~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.

~~Use Variances~~

~~A use variance means the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the zoning regulations. The ZBA shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, after public notice and hearing and in accordance with the requirements of law and this Law, to grant use variances as defined herein.~~

- 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.

~~C. Area Variances~~

~~An area variance means the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. The ZBA shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, after public notice and hearing and in accordance with the requirements of law and this chapter, to grant area variances as defined herein.~~

Notwithstanding any provision of law to the contrary, where a proposed site plan or subdivision plat contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance without the necessity of a decision or determination of the CEO.

§ 147-42. Procedure.

A. General procedures.

(2) An appeal must be made within 30 days of the action of the ~~administrative official appealed~~ Code Enforcement Officer. The applicant must file a signed notice of appeal with the ~~administrative official from whom the appeal is taken~~ Code Enforcement Officer 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.

B. Hearing Appeals. The jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of NYS Town Law. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

~~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. Use Variances

(1) Required Findings. No such Use Variance shall be granted by the ZBA without a showing by the applicant that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located,

(a) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(b) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(c) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) that the alleged hardship has not been self-created.

D. Area Variances

(1) In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the board shall consider each of the following factors:

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

(b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an Area Variance;

(c) whether the requested Area Variance is substantial;

(d) whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(e) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Zoning Appeals, but which consideration shall not necessarily preclude the granting of the Area Variance.

E. Minimum Variance. The ZBA, in the granting of use and area variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

F. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

~~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.~~

E. 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 applicant who is taking the appeal ~~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 ~~Agency Board~~.

- (1) Prior to taking action on any matter which would cause any change in the regulations or use or 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 ~~Agency Board~~.
- (2) If within 30 days after receipt of a full statement of such referred matter, the County Planning Agency ~~Board recommends~~ disapproval ~~the proposal~~ or modification thereof, the ~~Board~~ Zoning Board of Appeals shall not act contrary to such ~~recommendation disapproval or~~ 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 Agency at a public meeting hearing on the matter under review: prior to the Zoning Board of Appeals deciding on the matter.~~
- (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, ~~provided the Zoning Board of Appeals decides on the matter within 62 days after the close of the public hearing, 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~~ 62 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 approvals. 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.~~
Any order or decision by the Zoning Board of Appeals for a use that requires a building permit or a certificate of occupancy shall expire within 90 days if the applicable permit is not obtained. The Zoning Board of Appeals may extend this time an additional 90 days.
- (6) Filing of decisions. Decisions of the Board shall be ~~immediately~~ filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant. ~~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~~ Agency when referral to the County Planning ~~Board~~ Agency 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~~ Code Enforcement Officer 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.

Schedule of District Regulations (Appendix)

A new schedule with respect to the “WP – Wellhead Protection Overlay District” established by this local law is hereby added to the Schedule of District Regulations, and sequentially shall appear immediately following the existing RH – Hotel Area District, as follows:

| District Name and Intent | Principal Permitted Uses | Special Uses | Accessory Uses | Development Standards |
|---|---|-------------------------------|--|--|
| “WP -Wellhead Protection Overlay District” The purpose of the | Uses permitted in the underlying zoning | Special Uses permitted in the | Accessory Uses permitted in the underlying | Those development standards permitted in the underlying zoning |

| | | | | |
|--|---|--|--|---|
| Wellhead Protection Overlay District is to minimize the potential for harmful or unwanted contaminants to enter the local water supply at wellheads within the town from nearby activities. The regulations of this district shall apply in addition to those of the underlying district(s). | district(s), except where the overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A) | underlying zoning districts(s), except where the overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A) | zoning district(s), except where the overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A) | district(s), except as otherwise specified in §147-8(A) Lot size and dimensional requirements: same as underlying district(s) and in accordance with §147-8(A) |
|--|---|--|--|---|

Zoning Map Amendment (parcels to comprise the Wellhead Protection Overlay District).

Swan Lake Overlay Parcels

- 44.-1-28.15
- 44.-1-28.53
- 44.-1-39.15
- 44.-1-66
- 44.-1-70.1
- 44.-1-70.2
- 44.-1-2.1
- 44.-1-2.2
- 44.-1-28.11
- 44.-1-28.12
- 44.-1-28.13
- 44.-1-28.4
- 44.-1-28.51
- 44.-1-28.54
- 44.-1-28.56
- 44.-1-28.6
- 44.-1-35
- 44.-1-36.1
- 44.-1-37
- 44.-1-38
- 44.-1-39.18
- 44.-1-39.2
- 44.-1-4
- 44.-1-40.1

44.-1-40.2
44.-1-40.3
44.-1-40.4
44.-1-5

WSS Overlay Parcels

32.-5-3.2
32.-5-2
32.-5-3.1
39.-1-12
39.-1-13
39.-1-1.1
39.-1-14
32.-5-1