

# TOWN OF ARIETTA

LAND USE CODE  
SEPTEMBER 2015



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## FORWARD

The Town of Arietta was among the first Adirondack communities to develop a Town Plan and Land-Use Code back in 1976. After a trial period of several years, this plan was submitted to and approved by the APA in 1982, and has since been amended.

WHY HAVE AN APPROVED TOWN PLAN? After the APA act was signed in 1971, local officials decided that planning, zoning and code enforcement issues should be decided within the community. That means you have a Zoning Board of Appeals (ZBA) and a Planning Board comprised of your neighbors. They must abide by the same laws and regulations as the APA, but typically the process is faster and with a greater understanding of your needs.

WHO DO I CONTACT? All inquiries regarding zoning, codes, variances, class A or B projects, subdivisions or building permits should be directed to the Land Use Officer or also known as the Code Enforcement Officer (CEO). This person is involved in ALL decisions, so you should begin there. Remember that an interpretation from any member of the Zoning, Planning, or Town Boards is not necessarily an opinion of the respective board, which is what counts. You should get the right interpretation from your Land Use Officer.

## TABLE OF CONTENTS

<b>ARTICLE 1: INTRODUCTORY PROVISIONS</b> .....	<b>5</b>
<b>1.010 Short Title</b> .....	<b>5</b>
<b>1.020 General Object and Legal Context</b> .....	<b>5</b>
<b>1.030 Specific Purposes</b> .....	<b>5</b>
<b>1.040 Area of Jurisdiction</b> .....	<b>6</b>
<b>1.050 Application of Regulations</b> .....	<b>6</b>
<b>1.060 Governing Provisions</b> .....	<b>6</b>
<b>1.070 Severability</b> .....	<b>6</b>
<b>1.080 Effective Date</b> .....	<b>6</b>
<b>ARTICLE 2: CONSTRUCTION OF LANGUAGE &amp; DEFINITIONS</b> .....	<b>7</b>
<b>2.010 Construction of Language</b> .....	<b>7</b>
<b>2.020 Definitions</b> .....	<b>7</b>
<b>ARTICLE 3: DISTRICT REGULATIONS ON USE &amp; INTENSITY</b> .....	<b>22</b>
<b>3.010 Establishment of Districts, Zoning Map</b> .....	<b>22</b>
<b>3.020 Interpretation of District Boundaries</b> .....	<b>22</b>
<b>3.030 Establishment of Use Designations</b> .....	<b>22</b>
<b>3.040 Establishment of Intensity Designations</b> .....	<b>24</b>
<b>3.050 Intensity Designation: Minimum Lot Size, Split Lot</b> .....	<b>24</b>
<b>3.060 Use Designation/Intensity Chart</b> .....	<b>24</b>
<b>ARTICLE 4: SPECIFIC USE DESIGNATION CONTROLS</b> .....	<b>26</b>
<b>4.010 Regulations for SR 1, SR 2, MR 1, MR 2, TAC &amp; STR</b> .....	<b>26</b>
<b>4.020 MOBILE HOME PARKS (MHP)</b> .....	<b>27</b>
4.021 Components.....	27
4.022 Mobile Home Sites .....	27
4.023 Mobile Home Additions.....	27
4.024 Parking .....	28

4.025	Open Space .....	28
4.026	Access and Circulation .....	28
4.027	Utilities and Service Facilities .....	28
4.028	Landscaping and Screening .....	28
4.029	MHP Existing Mobile Home Park .....	28
<b>4.030</b>	<b>CAMPGROUND (CGD) .....</b>	<b>29</b>
4.031	Components.....	29
4.032	Camping Sites.....	30
4.033	Open Space .....	30
4.034	Utilities and Service Facilities .....	30
4.035	Access and Circulation Plan .....	30
4.036	Landscaping and Screening .....	30
4.037	Length of Occupancy .....	31
<b>4.040</b>	<b>EXTRACTION INDUSTRY (EXT) .....</b>	<b>31</b>
4.041	Setback and Screening .....	31
4.042	Pollution .....	31
4.043	Extraction Uses (Sand, Gravel and/or Mineral) .....	31
<b>4.050</b>	<b>RESOURCE MANAGEMENT (RSM).....</b>	<b>31</b>
4.051	Cutting Practices .....	31
4.052	Roads .....	31
<b>4.060</b>	<b>MANUFACTURING (MFG).....</b>	<b>31</b>
4.061	Setback and Screening .....	31
<b>4.070</b>	<b>HEAVY EQUIPMENT FACILITY (EQP).....</b>	<b>32</b>
4.071	Setback and Screening .....	32
<b>4.080</b>	<b>MARINA (MAR) .....</b>	<b>32</b>
4.081	Setback and Screening .....	32
4.082	Shoreline Restrictions .....	32
<b>ARTICLE 5: SHORELINE REGULATIONS .....</b>		<b>33</b>
<b>5.010</b>	<b>Purpose.....</b>	<b>33</b>
<b>5.020</b>	<b>Shore Frontage.....</b>	<b>33</b>
5.021	Standard Residential Lots.....	33
5.022	Clustered Residential Development .....	33
5.023	Common Shoreline.....	33
5.024	Double Counting of Shore Frontage .....	33
5.025	Non-Residential Shoreline Uses .....	34
<b>5.030</b>	<b>Shoreline Structure Setback.....</b>	<b>34</b>
<b>5.040</b>	<b>Shoreline On-Site Disposal System Setback .....</b>	<b>34</b>
<b>5.050</b>	<b>Removal of Vegetation .....</b>	<b>34</b>
<b>ARTICLE 6: SIGNS .....</b>		<b>35</b>
<b>6.010</b>	<b>Purpose &amp; Application .....</b>	<b>35</b>
<b>6.020</b>	<b>General Standards &amp; Regulations .....</b>	<b>35</b>
<b>6.030</b>	<b>Sign Standards for Multiple Use Sites.....</b>	<b>37</b>
<b>6.040</b>	<b>Residential, Home Occupations &amp; Other Non-Business Uses .....</b>	<b>37</b>
<b>6.050</b>	<b>Non-Complying Signs .....</b>	<b>Error! Bookmark not defined.</b>
<b>6.060</b>	<b>Abandoned, Illegal or Unsafe Signs .....</b>	<b>37</b>
<b>ARTICLE 7: SANITATION .....</b>		<b>38</b>
<b>7.010</b>	<b>General.....</b>	<b>38</b>
<b>7.020</b>	<b>Approval of Plans.....</b>	<b>38</b>
<b>7.040</b>	<b>Periodic Inspection .....</b>	<b>38</b>
<b>ARTICLE 8: SITE PLAN REVIEW &amp; APPROVAL .....</b>		<b>40</b>
<b>8.010</b>	<b>Site Plan General Provisions .....</b>	<b>40</b>
<b>8.020</b>	<b>Site Plan Standards.....</b>	<b>40</b>
<b>8.030</b>	<b>Application for Site Plan Approval .....</b>	<b>41</b>
<b>8.040</b>	<b>Site Plan Procedures &amp; Findings.....</b>	<b>42</b>
<b>8.050</b>	<b>Approval .....</b>	<b>43</b>

<b>ARTICLE 9: SPECIAL USE PERMIT REVIEW &amp; APPROVAL .....</b>	<b>44</b>
9.010 Special Use Permit General Provisions.....	44
9.020 Special Use Permit Approval Requirements .....	44
9.030 Application for Special Use Permit.....	45
9.040 Special Use Procedures & Findings.....	45
9.050 Approval .....	46
<b>ARTICLE 10: SUBDIVISION.....</b>	<b>47</b>
10.010 Permits for Subdivision.....	47
10.020 Subdivision, Minimum Lot Size and Intensity Designation .....	47
10.030 Subdivision of Shoreline Land.....	47
10.040 Site Plan for Subdivisions.....	47
10.050 Protection of Common Open Space.....	48
10.060 Large Scale Residential Development & Clustered Residential Development .....	48
10.061 Open Space .....	48
10.062 Protection of Useful Common Open Space.....	48
10.063 Setbacks.....	49
10.064 Site Plan .....	49
10.065 Minimum Lot Size.....	49
10.066 General Store.....	49
10.067 Access.....	49
10.068 Other Requirements Unaffected .....	49
10.070 Exemptions .....	49
<b>ARTICLE 11: NONCONFORMITY .....</b>	<b>50</b>
11.010 Nonconforming Uses, Structures, & Property .....	50
<b>ARTICLE 12: SUPPLEMENTAL USE REGULATIONS.....</b>	<b>52</b>
12.010 Bed and Breakfast Establishment .....	52
12.020 Clearing and Grading .....	52
12.030 Clustered Residential Development .....	52
12.040 Home Occupation.....	53
12.050 Livestock Raising.....	53
12.060 Motor Vehicle Service and/or Repair Shop .....	55
12.070 Recreational Vehicles not in Recreational Vehicle Parks .....	55
12.080 Roadside Stands .....	55
12.090 Sexually Oriented Business Establishment .....	55
12.100 Stairs & Landings to Shoreline.....	55
12.110 Telecommunication Towers & Facilities .....	56
12.120 Tourist Accommodation.....	56
<b>ARTICLE 13: REGIONAL PROJECTS .....</b>	<b>58</b>
13.010 General.....	58
13.020 Review of Regional Project.....	58
13.030 Required Findings for Class B Regional Project Approval .....	58
13.040 Application for Class B Regional Project Approval .....	59
13.050 Hearing and Decision for Class B Regional Projects .....	60
13.060 Review of Class A Regional Projects (Adirondack Park Agency).....	60
13.070 Planning Board Role in Class A Regional Project Review .....	60
13.080 Permits for Regional Projects.....	61
<b>ARTICLE 14: VARIANCES &amp; APPEALS .....</b>	<b>62</b>
14.010 General.....	62
14.020 Required Findings for Variances .....	62
14.021 Area Variance .....	62
14.022 Use Variances.....	62
14.023 Adirondack Park Agency Variances.....	63
14.024 Grant of Variance with Conditions.....	63

<b>14.030</b>	<b>Variance Procedures &amp; Approval Process</b> .....	<b>63</b>
<b>14.040</b>	<b>Appeal Process</b> .....	<b>64</b>
	14.041 Notice of Appeals .....	64
	14.042 Appeals Hearing & Decision .....	64
<b>14.050</b>	<b>Relief from Decisions</b> .....	<b>65</b>
<b>ARTICLE 15: ADMINISTRATION</b> .....		<b>66</b>
<b>15.010</b>	<b>Land Use Officer</b> .....	<b>66</b>
<b>15.020</b>	<b>Planning Board</b> .....	<b>66</b>
	15.021 Planning Board Members .....	66
	15.022 Powers & Duties of Planning Board .....	66
	15.023 Meetings of the Planning Board .....	67
<b>15.030</b>	<b>Zoning Board of Appeals</b> .....	<b>67</b>
	15.031 Zoning Board of Appeals Members .....	67
	15.032 Powers & Duties of the Zoning Board of Appeals .....	67
	15.033 Meetings of the Zoning Board of Appeals .....	67
<b>15.050</b>	<b>Permit Process</b> .....	<b>68</b>
	15.051 General .....	68
	15.052 Application Procedure .....	68
	15.053 Issuance of Permit .....	68
	15.054 Revocation .....	69
	15.055 Lapse and Renewal .....	69
<b>15.060</b>	<b>Site Inspection</b> .....	<b>69</b>
<b>15.070</b>	<b>Certificate of Occupancy</b> .....	<b>69</b>
	15.071 General .....	69
	15.072 Issuance of Certificate of Occupancy .....	69
<b>15.080</b>	<b>Records</b> .....	<b>70</b>
<b>15.090</b>	<b>Conflict of Interest</b> .....	<b>70</b>
<b>15.100</b>	<b>Notice of Public Hearing</b> .....	<b>70</b>
<b>15.110</b>	<b>Fees</b> .....	<b>70</b>
<b>15.110</b>	<b>State Environmental Quality Review Act (SEQRA)</b> .....	<b>70</b>
<b>ARTICLE 16: AMENDMENT</b> .....		<b>71</b>
<b>16.010</b>	<b>Initiation</b> .....	<b>71</b>
<b>16.020</b>	<b>Referrals and Public Hearing</b> .....	<b>71</b>
<b>16.030</b>	<b>Decision</b> .....	<b>72</b>
<b>16.040</b>	<b>Protest</b> .....	<b>72</b>
<b>16.050</b>	<b>Right to Complete Project Inconsistent with Amendment</b> .....	<b>72</b>
<b>16.060</b>	<b>Conflict of Interest</b> .....	<b>72</b>
<b>ARTICLE 17: ENFORCEMENT</b> .....		<b>73</b>
<b>17.010</b>	<b>Land Use Officer</b> .....	<b>73</b>
<b>17.020</b>	<b>Violations &amp; Complaints</b> .....	<b>73</b>
<b>17.030</b>	<b>Fines &amp; Penalties</b> .....	<b>73</b>
<b>17.040</b>	<b>Alternative or Additional Actions &amp; Remedies</b> .....	<b>74</b>
<b>17.050</b>	<b>Administrative Actions; Stop-work Orders</b> .....	<b>74</b>
<b>17.060</b>	<b>Suspension of Administrative Review</b> .....	<b>74</b>
<b>17.070</b>	<b>Revocation of Permit</b> .....	<b>75</b>
<b>17.080</b>	<b>Misrepresentation</b> .....	<b>75</b>
<b>ARTICLE 18: SPECIAL DISTRICTS</b> .....		<b>76</b>
<b>18.010</b>	<b>Special Town Center Development District (SD 1)</b> .....	<b>76</b>
	18.011 Town Center General Regulations .....	76
	18.012 Town Center Specific Standards .....	76
<b>18.020</b>	<b>Special Scenic Open Space Preservation District (SD 2)</b> .....	<b>76</b>
<b>18.030</b>	<b>National Flood Insurance Program Areas</b> .....	<b>77</b>
<b>18.040</b>	<b>Overlay District – Scenic Highway District (SHD)</b> .....	<b>77</b>

## ARTICLE 1: INTRODUCTORY PROVISIONS

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### 1.010 Short Title

This ordinance shall be known as the Land Use Ordinance of the Town of Arietta and is also referred to as the "ordinance". The Town of Arietta is hereinafter referred to as the "Town."

### 1.020 General Object and Legal Context

- A. The general object of this ordinance is to establish comprehensive controls for the use and development of land within the Town of Arietta, in order to promote and protect public health, safety and the general welfare.
- B. This ordinance is adopted pursuant to Article 16 of the Town Law. The regulations herein adopted are made in accordance with a comprehensive plan, are designed to serve the purposes set forth in Section 263 of the Town Law and are made with reasonable consideration to the character of each district into which the Town is divided and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town. In addition, this ordinance is adopted pursuant to the Adirondack Park Agency Act and, consistent with the purposes of said act, in order to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park, within which the Town is located.

### 1.030 Specific Purposes

In addition to the general object and the purposes enumerated in Section 1.020, this ordinance is adopted for the following related and more specific purposes:

- A. To preserve the essential character of the Town while providing for new development.
- B. To serve as a component of an approved local land use program under the Adirondack Park Agency Act.
- C. To recognize the limitations upon development posed by natural conditions such as soils, slopes, and hydrology and to limit development to the capability of natural systems to absorb it without adverse environmental impact.
- D. To enable the sound economic growth of the Town through a commitment both to development and to a preservation of the Adirondack character and natural amenity of the Town, on which development of the Town importantly depends.
- E. To preserve the visual attractiveness of the Town through the protection of attractive open spaces and scenic vistas, the screening of objectionable views and the control of signs.
- F. To minimize water pollution.
- G. To concentrate commercial and community facility development within the Town in one location in the interests of sound locational planning and in order to avoid the visual disruption of scattered or strip development along traditionally forest-lined highways of the Town.
- H. To promote and enhance property values throughout the Town.
- I. To provide for the orderly, sanitary and visually satisfactory maintenance and development of mobile home parks within the Town.
- J. To promote sound and economical residential development and to minimize the visual impact thereof through encouraging the clustering of development and the preservation of open space.
- K. To preserve and enhance the unique Adirondack character of the Town by encouraging the preservation of historic buildings and, with respect to new construction, visual compatibility with the natural surroundings.

**1.040 Area of Jurisdiction**

This ordinance regulates the use of land throughout the Town of Arietta.

**1.050 Application of Regulations**

After the effective date of this ordinance, in all the districts into which the Town is divided, no project shall be undertaken, and no use shall be maintained, except in accordance with all the applicable provisions of this ordinance.

**1.060 Governing Provisions**

Where the regulations imposed by any provision of this ordinance are less restrictive than regulations imposed by any other applicable provision of this ordinance, the more restrictive provision shall govern.

**1.070 Severability**

The provisions of this ordinance are severable. If a court of competent jurisdiction finds any provision of this ordinance to be invalid, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of this ordinance shall continue to be fully and separately effective. If a court of competent jurisdiction finds the application of any provision of this ordinance to any project or use to be invalid, then, to the extent consistent with the decision, the effect of such decision shall be limited to the project or use immediately involved, and the application of any such provision to other projects or uses shall not be affected.

**1.080 Effective Date**

This ordinance shall take effect 10 days after its publication pursuant to Section 264 of the Town Law, except that it shall take effect against any landowner upon personal service upon him of a certified copy hereof in accordance with such section.

## ARTICLE 2: CONSTRUCTION OF LANGUAGE & DEFINITIONS

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### 2.010 Construction of Language

The following rules of construction apply to the text of this ordinance:

- A. The particular shall control the general.
- B. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- D. A "building" or "structure" includes any part thereof.
- E. The word "used," when employed in the phrases "used to," "used for" or "used as" includes the following words when employed in similar phrases: "designed," "intended," "maintained," "occupied".
- F. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either or," the conjunction shall be interpreted as follows:
  - (1) "And" indicates that all the connected items, conditions, provisions, or events shall apply.
  - (2) "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
  - (3) "Either... or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in any combination.
- G. The word "includes" shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- H. Uses or terms not specifically defined by the Town of Arietta in this ordinance shall follow any definition established by the Adirondack Park Agency, and any such use will require an interpretation from the Zoning Board of Appeals.

### 2.020 Definitions

When used in this ordinance, the following words shall have the following meanings:

**ACCESSORY STRUCTURE:** Any structure or a portion of the principal building and customarily incidental and subordinate to a principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling or any moveable structure in excess of 100 square feet that is located within a required setback. Accessory structures shall not include a kitchen facility.

**ACCESSORY USE:** Means any use of a structure, lot, or portion thereof that is customarily incidental and subordinate to and does not change the character of a principal land use or development, including, in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structures.

**ADIRONDACK PARK:** Land lying within the area described in subdivision one of Section 9.0101 of the Environmental Conservation Law, including any amendment thereto.

**ADIRONDACK PARK AGENCY (APA):** The Adirondack Park Agency created by Section 803 of the Adirondack Park Agency Act.



ADIRONDACK PARK AGENCY ACT: Article 27 of the Executive Law, Section 800 et. seq.

AIRPORT: A facility for the landing, takeoff, shelter, supply, and repair of aircraft used for transporting passengers and/or cargo.

BED & BREAKFAST (B&B): An owner occupied single-family dwelling with one or more rooms for overnight accommodation to transient paying guests, which may be characterized by common dining facilities and leisure facilities available for use by the lodgers; and that satisfies the standards of Section 12.010 of this ordinance. Similar establishments that do not qualify under Section 12.010 shall be deemed to be a tourist accommodation.

BOATHOUSE: A covered accessory structure with direct access to a navigable body of water which (1) is used only for the storage of boats and associated equipment; (2) does not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind; (3) does not contain kitchen facilities of any kind; (4) does not contain a heating system of any kind; (5) does not contain beds or sleeping quarters of any kind; (6) does not exceed a single story in that the roof rafters rest on the top plate of the first floor wall, and all rigid roof surfaces have a minimum pitch of four on twelve, or, alternatively, one flat roof covers the entire structure; and (7) has a footprint of 1,200 square feet or less measured at the exterior walls (or in the absence of exterior walls, at the perimeter of the roof), and a height of fifteen feet or less. For the purpose of this definition, the height of a boathouse shall be measured from the surface of the floor serving the boat berths to the highest point of the structure.

BUILDING: A permanent, fixed structure intended for the shelter, housing, or enclosure of persons, animals or other property.

CAMPGROUND:

- A. Any area designed and used for transient occupancy by camping in tents, camp trailers, travel trailers, campers, motor homes or a similar facility designed for temporary shelter, without structural additions to or removal of wheels from vehicles admitted; such areas are often equipped with water, toilets, cooking grills, camp store, sale of ancillary items such as ice, ice cream, wood, etc.
- B. For purposes of this definition, camp trailers, travel trailers, campers, motor homes or a similar facility designed for temporary shelter shall not be permitted any structural additions, or removal of wheels from vehicles, or the ability to furnish all-weather water supply or sewage disposal connections at individual sites.

CAMPING SITES: A place within a campground for tents, Recreational Vehicles (RVs) or other temporary shelters, and may be equipped with electricity.

CLASS A REGIONAL PROJECT: See regional project, Class A.

CLASS B REGIONAL PROJECT: See regional project, Class B.

CLEAR CUTTING: The cutting of all or substantially all trees over six (6) inches in diameter at breast height over any ten-year cutting cycle.

CLUSTERED RESIDENTIAL DEVELOPMENT: A subdivision project including the creation of two or more lots where each lot accommodates residential structures, provided that as a whole, the ratio of dwelling units complies with the intensity designation provided in Section 5.022. A clustered residential development may consist of

residential structures whereby structures are clustered closer together than otherwise would be permitted by the minimum lot size, road frontage, building setback, ~~shoreline setback~~, and other dimensional requirements of this ordinance as specified herein if each structure were to be located on a separate parcel of land. A mobile home park shall not be considered to be a clustered residential development.

**COMMERCIAL USE:** A use principally involving the sale or rental or distribution of goods, services, or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee or the rental of personal property or real property. The rental of a residence principally for commercial purposes is a commercial use. The term shall not include a junkyard or dismantling facility. The following are specific types of Commercial uses:

**GENERAL STORE:** See Store, General.

**HEAVY EQUIPMENT FACILITY:** A facility for the repair, maintenance, and storage of heavy equipment or trucks, including the storage of material, except refuse, hauled or distributed by such trucks.

**KENNEL, COMMERCIAL:** Land or building in which four (4) or more dogs, and which are more than six (6) months old, are housed, groomed, bred, boarded, trained for a fee, and are kept for sale.

**LUMBERYARD OR BUILDING SALES YARD:** An area and/or structures used for the storage, distribution, and sale of building and construction materials, excluding camp firewood storage and sales.

**MOTOR VEHICLE SERVICE and/or REPAIR SHOP:** A building or site, or portion thereof, used for making repairs to motor vehicles such as automobiles, trucks, snowmobiles, all-terrain vehicles, or lawn tractors and garden equipment. This definition includes auto body shops.

**OUTDOOR STORAGE AND SALES:** Storage and/or sales of any materials, merchandise, stock, supplies, machines and the like that are not kept within a structure, regardless of how long such materials are kept on the premises. Outdoor storage shall not include junkyards or dismantling facilities.

**PERSONAL SERVICE ESTABLISHMENT:** Includes barber, hairdresser, beauty parlor, shoe repair, photographic studio, licensed massage parlor, and businesses involving the care of a person or his or her apparel.

**RECREATIONAL or ENTERTAINMENT FACILITY, COMMERCIAL:** Any land or building that is used primarily to provide recreation or entertainment to the public for private gain.

**RESTAURANT:** An establishment at which food is served to patrons on the premises, which may include the sale of alcoholic beverages provided that the sale of such beverages is clearly secondary and accessory to the serving of food.

**RETAIL GASOLINE SALES:** Any establishment that sells gasoline to the public, including but not limited to motor vehicle service stations and general stores.

**RETAIL SERVICE ESTABLISHMENT:** Establishments providing services, as opposed to products, to the general public, including but not limited to electrical or computer repair shops, dry cleaners, Laundromats, and personal service establishments. This definition does not include motor vehicle service or repair.

**SEXUALLY ORIENTED BUSINESS:** A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcade; adult bookstore or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters; nude model studios and sexual encounter centers. Sexually oriented businesses, adult uses, and/or entertainment establishments customarily exclude minors by reason of age.

**STORE, GENERAL:** A retail facility carrying food and convenience merchandise and may include the following accessory activities: boat rentals, gasoline sales, and/or food service.

**TAVERN:** An establishment used primarily for the serving of alcoholic beverages to the general public where food service may be an accessory activity.

COMMUNITY FACILITY: Any of the following, including grounds and accessory structures necessary for their use, but not including any open space recreation use as defined herein. These are “Public or Semi-public Buildings” as defined by the APA Act:

- A. Places of worship, cemetery, parish houses, convents, rectories, parsonages, and similar accessory buildings.
- B. Nursery schools, elementary schools, high schools, colleges or universities.
- C. Municipal offices, community centers, post offices, public libraries and museums.
- D. Not-for-profit fire, ambulance, police, and public safety buildings.
- E. Hospitals and health care centers.
- F. Public or Not-for-profit membership club or corporation established for cultural, social, or recreational purposes.
- G. Public or Not-for-profit recreational facilities, athletic fields, parks and/or beach used for swimming, tennis, platform tennis, hockey, ice-skating, and other indoor or outdoor recreational activities.

COUNTY: Hamilton County.

DISPOSAL: The discharge, deposit, injection, dumping, spilling, leaking, incineration or placement in any land or water so that material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

DISTRICT: An area, governed by these regulations, which appears on the Zoning Map of the Town of Arietta.

DISTRICT, SPECIAL: See Special District.

DWELLING UNIT: A building or entirely self-contained portion thereof containing complete housekeeping and living facilities, with cooking facilities, for only one family.

DOCK: Means a floating or fixed structure that:

- A. Extends horizontally (parallel with the water surface) into or over a lake, pond or navigable river or stream from only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse;
- B. Is no more than eight feet in width, or, in the case of interconnected structures, intended to accommodate multiple watercraft or other authorized use, each element of which is no more than eight feet in width; and
- C. Is built or used for the purposes of securing and/or loading or unloading water craft and/or for swimming or water recreation.
- D. A permanent supporting structure located within the applicable shoreline setback area which is used to suspend a dock above water level for storage by means of a hoist or other mechanical device is limited to not more than 100 square feet, measured in the aggregate if more than one such supporting structure is used. A dock must remain parallel with the water when suspended for storage, unless the size of the total structure does not exceed 100 square feet. Mechanisms necessary to hoist or suspend the dock must be temporary and must be removed during the boating season.

FAMILY: Shall be defined as:

- A. One of the following:
  - (1) One, two or three persons occupying a dwelling unit; or

- (2) Four or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.
- B. It shall be presumptive evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage, or legal adoption do not constitute the functional equivalent of a traditional family.
- C. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:
- (1) The group is one which in theory, size, appearance, structure, and function resembles a traditional family unit;
  - (2) The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;
  - (3) The group shares expenses for food, rent, or ownership costs, utilities and other household expenses;
  - (4) The group is permanent and stable. Evidence of such permanency and stability may include:
    - (a) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
    - (b) Members of the household have the same address for purposes of voter's registration, driver's license, motor vehicle registration, and filing of taxes;
    - (c) Members of the household are employed in the area;
    - (d) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
    - (e) There is common ownership of furniture and appliances among the members of the household; and
    - (f) The group is not transient or temporary in nature;
  - (5) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

**FLOOR AREA:** Measured from the exterior walls of a structure, including the sum total of all floor areas, and including all attached covered porches and covered decks, and all other attached components with a roof or cover. The area shall also include any finished attic or basement. For the purpose of this definition, a finished basement or attic is one which contains walls, flooring, and ceiling suitable for use as a bedroom, living room, playroom or office area, or if a non-residential use, suitable for storage, work area, or office.

**FORESTRY USE:** Any management, including logging, of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of (a) wood roads, skidways, landings, fences and forest drainage systems and (b) any barn, shed, garage, research, educational or administrative building or cabin or other structure directly related to and customarily associated with forestry uses. Forestry Use Structures are a Class B project in Resource Management.

**GAME PRESERVE OR PRIVATE PARK:** A land area used for the protection of wildlife, usually because of its unique natural character, which provides habitat, food, or shelter for wildlife.

**GUEST COTTAGE:** Not more than one residential structure which is associated with a single-family dwelling and which:

- A. Is used only intermittently;
- B. Is used only by guests of the resident(s) of the single-family dwelling;
- C. Is not for rent or hire separately from the single-family dwelling;

- D. Contains one-half or less of the enclosed floor space of the associated single-family dwelling or 1,250 square feet, whichever is less; and
- E. Otherwise meets the definition of accessory structure.

HEIGHT, BUILDING: See Structure Height.

HIGHWAY, PUBLIC: See public highway.

HOME OCCUPATION: An accessory use carried out for gain customarily conducted entirely within a dwelling or its accessory buildings by the resident owners thereof, which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than that permitted in Section 12.040 of these regulations.

HUNTING AND FISHING CAMP: A primitive cabin, camp, lean-to, or tent platform with a maximum floor area not to exceed 500 sq. ft. (inclusive of porches and loft areas) designed for occasional and limited occupancy for hunting, fishing, hiking, or similar purposes that:

- A. Is a one-story structure but may include a sleeping loft;
- B. Is built on posts or piers and does not have a permanent foundation;
- C. Is served by a sanitary pit privy or chemical toilet and does not have a conventional, on-site wastewater treatment system;
- D. Does not have pressurized or indoor plumbing (this prohibition does not preclude a kitchen sink with appropriate grey water leach pit); and
- E. Is not connected to any public utilities (such as electric, phone, cable, water, or sewer systems).
- F. The structure shall be appropriately screened from state and local highways. This classification is exempt from the concrete vault provisions for privies. Mobile homes and travel trailers are not to be included in this definition.

JUNK VEHICLE: Any motor vehicle exposed to public view, whether automobile, bus, truck, tractor, motorcycle, motor bicycle, snowmobile, trailer, or any other contraption originally intended for travel or tow on the public highways, exclusive of farm vehicles, which is abandoned, stored, left, or located by its owner or any other person on public or private premises in the Town of Arietta, and which:

- A. Is not registered by the State of New York for operation on public highways and/or does not have a valid New York State inspection sticker; or is not in a condition to meet the requirements for valid New York State vehicle inspection; or
- B. Is being held or used for the purpose of resale of used parts therefrom for the purpose of reclaiming for use some or all of the materials therein or for the purpose of disposing of the same.

JUNKYARD or DISMANTLING FACILITY: Any open lot or area containing two or more junk vehicles (as previously defined) or for dismantling, storage or sale as parts, scrap, or salvage of used or wrecked motor vehicles, machinery, scrap metals, waste papers, rags, used or salvaged building materials or other discarded materials. Junkyards and dismantling facilities are prohibited in the Town of Arietta.

LAND USE AREA: Those areas delineated on the official Adirondack Park Land Use and Development Plan Map adopted under Article 27 of the Executive Law of the State of New York and designated thereon.

**LAND USE OFFICER:** The Land Use Officer of the Town, or Code Enforcement Officer, appointed by the Town Board and principally charged with the administration and enforcement of this ordinance, having the powers and duties set out in this ordinance and others as may be provided by the Town Board.

**LIVESTOCK RAISING:** Any single or multiple, contiguous, or non-contiguous parcel or parcels used for agricultural operations or upon which agricultural practices are being utilized or upon which agricultural farm operations or agricultural practices may be established or utilized in the future for the raising of livestock and/or livestock products, including but not limited to cattle, sheep, hogs, goats, horses, poultry, farmed deer, fur bearing animals, milk, eggs and furs as established by the Hamilton County Right to Farm Law. This is an "Agricultural Use" as defined by the APA Act.

**LOT LINES:** Any property lines bounding a parcel of land.

- A. **LOT LINE, FRONT:** The lot line separating the lot from the street; for a corner lot, each lot line fronting the street shall be considered a front lot line for the purposes of establishing the appropriate setback requirement for that lot.
- B. **LOT LINE, REAR:** The lot line opposite and most distant from the front lot line; for all lakefront property the rear lot line shall be considered the property line closest to the shoreline.
- C. **LOT LINE, SIDE:** Any lot line other than a front or rear lot line.

**MANUFACTURING:** A use consisting of the fabricating, processing, production, or assembly of goods or materials including any on-site waste disposal associated with such use; provided that no such use shall have a significant adverse environmental effect. This is an "Industrial Use" as defined by the APA Act.

**MANUFACTURING, SMALL SCALE:** Manufacturing occupying not more than 800 square feet of floor area. This is an "Industrial Use" as defined by the APA Act.

**MARINA:** Any facility providing boat docks or moorings for a fee or other consideration and often offering supply, storage, repair, and other services.

**MEAN HIGH WATER MARK:** The average annual high water level elevation on the shoreline of a lake, pond, river, stream, creek, or other body of water as determined by the Adirondack Park Agency (APA Rules and Regulations §571.3). The mean high water mark of Piseco Lake is established at 1,662.65 feet above mean sea level. This surveyed elevation will serve as the mean high water mark for Piseco Lake.

**MINERAL EXTRACTION:** Any extraction, other than specimens or samples, from the land of stone, coal, salt, ore, talc, granite, petroleum products or other materials, except for commercial sand, gravel or topsoil extraction; including the construction, alteration and maintenance of mine roads, mine tailing piles or dumps and mine drainage; such use shall be a Class A Regional Project throughout the Town of Arietta.

**MINERAL EXTRACTION STRUCTURE:** Any mine hoist; ore reduction, concentrating, sintering, or similar facilities and equipment; administrative buildings; garages; or other main building or structure associated with mineral extraction.

**MOBILE HOME:** A dwelling unit built to U.S. Department of Housing and Urban Development (HUD) Manufactured Home Construction and Safety Standards designed for one family, which has the following characteristics:

- A. Manufactured as a movable or portable dwelling unit for year-round occupancy and for installation on a masonry or concrete foundation or a mobile home stand, or piers, with or without a basement or cellar.
- B. Designed to be transported on its own chassis and wheels and connected to utilities after placement on a stand, foundation, or piers.
- C. May contain parts that can be folded, collapsed, or telescoped when being towed and expanded later to provide additional living space.
- D. May be constructed in two or more separately towable components that are designed to be joined into one integral unit capable of being again separated into the components for repeated towing, such as a doublewide mobile home.
- E. A modular home, as defined herein, is not considered a mobile home.

**MOBILE HOME PARK or COURT:** An area of land, under single ownership, or as a resident owned cooperative, or tenants in common, used to provide sites, generally on a year round basis, for two or more mobile homes used as dwellings, whether occupied as permanent residences or as vacation homes. An area conforming to the definition of, and complying with the regulations governing, a campground shall not be deemed to be a mobile home park.

**MOBILE HOME STAND:** The portion of the mobile home lot to be occupied by the mobile home.

**MODULAR HOME:** A dwelling unit constructed off-site consisting of more than one segment designed to be permanently anchored to a foundation, to become a fixed part of the real estate, and which meets all of the standards of the New York State Building Code. A single modular housing unit is considered to be a single family dwelling for purposes of this ordinance.

**MULTIFAMILY RESIDENCE:** A building, including an apartment house, town house, condominium or conversion of a single family residence, used for residence in separate living quarters with separate cooking facilities by two or more families. This is a "Multi-family Dwelling" as defined by the APA Act.

**NONCONFORMING STRUCTURE:** Any structure which is actually, substantially, and legally in existence within a given zoning district on the effective date of this ordinance or any amendment thereto which is not in conformance with the regulations for the district in which it is located.

**NONCONFORMING USE:** A use, lawful when established, whether of a building or other structure or of a tract of land, which is not included among the uses indicated by a use designation applying to the district in which the use is located, or which is not otherwise permitted under this ordinance. A nonconforming use must have been established prior to the effective date of an amendment hereto, which rendered such use nonconforming.

**OPEN SPACE:** An area characterized by natural scenic beauty or existing openness used for recreation or resource protection. It may include wooded areas, meadows, agricultural lands and active and passive recreation areas. Open space shall not include buildings, driveways, parking lots or other surfaces designed or intended for motor vehicular travel.

**OPEN SPACE RECREATION USE:** Any recreation use particularly oriented to and utilizing the outdoor character of an area, including a snowmobile trail, trail bike, jeep or all-terrain vehicle trail; a cross-country ski trail; hiking or backpacking trail; a bicycle trail; horse trail; a playground, picnic area, public park, public beach or similar use.

**PERSON:** Any individual, corporation, partnership, association, trustee or any other legal entity, but shall not include the State or any State agency.

**PLANNING BOARD:** The Planning Board, appointed pursuant to Section 271 of Town Law, designated to perform such powers and duties in conformance with the Town Law, the Adirondack Park Agency Act, this ordinance, and as may be further directed by the Town Board.

**PRINCIPAL BUILDING:** Anyone of the following:

- A. A single family dwelling constitutes one principal building;
- B. A tourist cabin or similar structure for rent or hire involving three hundred (300) square feet or more of floor space constitutes one principal building. A tourist cabin or similar structure involving less than three hundred (300) square feet of floor space constitutes one-tenth (1/10) of a principal building;
- C. A mobile home constitutes one principal building;
- D. Each dwelling unit of a multiple family dwelling constitutes one principal building;
- E. Each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall constitutes one-tenth (1/10) principal building;
- F. Each accommodation unit of a tourist home or similar structure constitutes one-tenth (1/10) of a principal building;
- G. Each commercial use structure and each industrial use structure, not involving the retail sale or rental or distribution of goods, services or commodities, in excess of three hundred (300) square feet of floor area constitutes one principal building;
- H. Each 11,000 square feet or portion thereof of floor area of commercial use structure and each industrial use structure involving the retail sale or rental or distribution of goods, services or commodities constitutes one principal building;
- I. All agricultural use structures and single family dwelling or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building;
- J. Any other structure which exceeds twelve hundred fifty (1,250) square feet of floor space constitutes one principal building;
- K. A structure containing a commercial use which is also used as a single family dwelling constitutes one principal building.

**PRINCIPAL USE:** The determination of a 'principal use' shall be made upon a finding of all of the surrounding facts in each case.

**PROJECT:** The construction, enlargement or change of use of any structure; the installation on a lot of a single mobile home; undertaking or expansion of a subdivision by size or the number of lots; the commencement or expansion of any land use or development, not including the cutting of timber, except clear cutting; the establishment of a well; any extraction industry; the alteration and/or filling of a wetland; the dumping or discharging on any land or in any water body or water course of any soil, waste, sewage, effluent, or any garbage; the undertaking of a Class A or Class B regional project. The term shall not apply to any structure as to which foundations have been completed prior to the effective date of this ordinance or to a subdivision other than a mobile home park as to which a plat was filed and State Department of Health approval obtained prior to the effective date of this ordinance.



**PUBLIC HIGHWAY:** An improved (graded, graveled, or paved) highway, street, or road maintained by the State, County, or Town.

**PUBLIC UTILITY USE:** Includes any facility constructed, erected, or operated by a municipal agency or public utility, including but not limited to: telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities; electrical, telephone, gas or water transmission or distribution cables; lines, wires, conduit, pipes or other equipment including dams, buildings, towers, and other structures or facilities associated with major public utilities. Telecommunication facilities and towers and “wind power generating facilities, large” as defined in this article are not included in this definition.

**RECREATIONAL VEHICLE:** A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle. Recreational vehicles are deemed to include, but are not limited to: camping trailers, fifth wheel trailers, motor homes, travel trailer as defined herein, and truck campers. See also travel trailer.

**RECREATIONAL VEHICLE PARK:** Property with designated areas for two (2) or more recreational vehicles or tents or other structures for over-night occupancy, primarily for, but not exclusively for, recreational or vacation purposes. This is a type of “Campground” as defined by the APA Act.

**REGIONAL PROJECT:** Shall include both Class A and Class B Regional Projects, as defined in Section 810 of the Adirondack Park Agency Act and in the Rules and Regulations of the Adirondack Park Agency.

**REGIONAL PROJECT, CLASS A:** Projects that require a permit from the Adirondack Park Agency as defined in Section 810 of the Adirondack Park Agency Act and in the Rules and Regulations of the Adirondack Park Agency or any project undertaken by the Town of Arietta or Hamilton County.

**REGIONAL PROJECT, CLASS B:** Projects that require a permit from the Town of Arietta as a result of an approved Land Use Code and are defined in Section 810 of the Adirondack Park Agency Act and in the Rules and Regulations of the Adirondack Park Agency.

**RESIDENCE, SINGLE FAMILY:** See Single family residence.

**RESIDENCE, MULTIFAMILY:** See Multifamily residence.

**RESOURCE MANAGEMENT:** This District is intended to manage the Town’s natural resources such as land, water, soil, plants and animals, with a particular focus on protecting the quality of life for both present and future generations and allowing future opportunities for economic development.

**ROAD BED:** The trafficked or trafficable portion of a road, street, or highway, bounded on either side by the outer edge of the shoulder or guardrail, whichever extends furthest. Where there is no shoulder or guardrail, there shall be deemed to be a shoulder extending four feet from the outer edge of the pavement or unpaved traffic lanes.

**ROADSIDE STAND:** Buildings, structures, or vehicles totaling less than one-hundred (100) square feet in ground area for the sale of agricultural products and camp firewood. This definition does not include operations primarily for the sale of crafts or non-agricultural items.

**SAND and GRAVEL EXTRACTION, COMMERCIAL:** Any extraction from the land of more than fifty (50) cubic yards in any two (2) year period of sand, gravel or topsoil: (1) for the purpose of sale or use by persons other than the owner of the land; or (2) for the purpose of use by any municipality.

**SAND and GRAVEL EXTRACTION, PRIVATE:** Any extraction from the land of sand, gravel or topsoil for the purpose of use, but not sale, by the owner of the land or any extraction for the purpose of sale of less than fifty (50) cubic yards in any two (2) year period.

**SANITARY LANDFILL:** A sanitary landfill meeting the requirements of the State Department of Health.

**SAWMILL:** Mill for processing timber into boards and lumber, as a commercial operation. For purposes of this ordinance the term sawmill does not include portable devices used on a temporary basis for cutting timber harvested on the property where the portable device is temporarily located.

**SENIOR CITIZEN HOUSING DEVELOPMENT:** A residential development that may contain attached dwelling units where at least one of the following conditions is true: (a) the federal Department of Housing and Urban Development (HUD) has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program; (b) it is occupied solely by persons who are 62 years of age or older; or (c) it houses at least one person who is 55 years of age or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older. This is a type of "Multiple Family Dwelling" as defined by the APA Act.

**SETBACK:** Means the horizontal distance between a principal or accessory structure and any front, side or rear lot line, measured perpendicular to such lot lines at the point where the building is closest to such lot lines. The minimum yard requirements shall be the minimum required setbacks.

**SETBACK, FRONT:** The required minimum distance between a principal or accessory structure, including any additions thereto, and the front lot line of the property measured perpendicular to such lot lines at the point where the building is closest to such lot lines; the front setback for lakefront property shall be considered the distance closest to the public road not from the lake.

**SETBACK, REAR:** The required minimum distance between a principal or accessory structure, including any additions thereto, and the rear lot line of the property measured perpendicular to such lot lines at the point where the building is closest to such lot lines; the rear setback for lakefront property shall be considered the distance closest to the lake not the public road.

**SETBACK, SHORELINE:** The shortest distance, measured horizontally, between any point of a structure, including attached structures, and the shoreline at the mean high water mark.

**SETBACK, SIDE:** The required minimum distance between a principal or accessory structure, including any additions thereto, and any side lot line of the property measured perpendicular to such lot lines at the point where the building is closest to such lot lines.

**SHORE FRONTAGE:** Continuous land along a shoreline, having a length measured by straight line distances following the general contour of the shoreline.

**SHORELINE:** The line at which land adjoins the waters of lakes, ponds, rivers and streams within the Adirondack Park at the mean high water mark determined in accordance with APA Rules and Regulations §571.3. The mean high water mark of Piseco Lake is established at 1,662.65 feet above mean sea level. This surveyed elevation will serve as the mean high water mark for Piseco Lake.

**SHORELINE LOT:** A lot including or wholly or partially bounded by shoreline.

**SIGN:** Any sign, billboard, advertising structure or inscribed surface, pattern of artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any business, commercial, industrial, tourist or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name text, device, signal, ornament, logotype, or advertising matter is made visible. The meaning of "sign" shall also include any sign currently in disuse but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

The meaning of "sign" shall not include any sign erected by the federal, state, county or local government or any department or agency thereof, any poster placed temporarily to advertise a civic event or an event sponsored by a house of worship, school, library, museum, social club, or society, or any patriotic flag or banner not used for commercial advertisement purposes. The meaning of "sign" shall also not include any sign having a sign area no greater than 3 square feet that is used simply to mark property boundaries, give directions regarding roads or trails, exclude hunting, fishing, or other activities, warn of any hazard or condition, if for a residence, denote the name and address of the occupants of the premises on which the sign is located, or advertise the availability of the premises or some portion thereof for sale or lease.

**SIGN, FREESTANDING or POLE:** A sign which stands without support of any building or other structure whose primary purpose is other than to support the sign.

**SIGN AREA:** The total area of all faces or surfaces of a sign anywhere upon which writing or any illustrative, emblematic, or other artistic or expressive matter appears, or, in cases where writing or illustrative, emblematic, or other artistic or expressive matter is not set against any face or surface, the total area within a single continuous rectangular perimeter enclosing the extreme limits of such writing or illustrative, emblematic, or other artistic or expressive matter. The sign area of a sign having more than one face or surface on which writing or illustrative, emblematic or other artistic or expressive matter appears shall be the total area of all such faces or surfaces; but if a sign consists of two such faces or surfaces placed back-to-back, the sign area of the side having the greater sign area shall constitute the total sign area. The sign area of a group of connected or related signs shall be the sum of the sign areas belonging to it.

**SINGLE FAMILY RESIDENCE:** A detached building, not including a mobile home, used as the living quarters for one family. The term shall include a seasonal cottage. The term 'single family residence' shall not include any residential structure used principally for commercial rental purposes. This is a "Single Family Dwelling" as defined by the APA Act.

**SMALL SCALE MANUFACTURING:** See manufacturing, small scale.

**SPECIAL DISTRICT:** An area, governed by these regulations, which appears on the Zoning Map of the Town of Arietta and/or which may have additional requirements.

**SPECIAL USE PERMIT:** Is a use, because of public convenience and necessity and its effects upon the neighborhood, which shall be permitted only upon the approval of the Zoning Board of Appeals after due notice, a public hearing, and a finding that it will not be detrimental to the general land use plan or to adjacent surrounding property. Also required is Site Plan Approval by the Arietta Planning Board.

**SQUARE FEET OF FLOOR SPACE:** The square feet of floor space of a building shall be the area in square feet measured from the exterior walls of a structure, including the sum total of all floor areas, and including all attached covered porches and covered decks, and all other attached components with a roof or cover. The area shall also include any finished attic or basement. For the purposes of this definition, a finished basement or attic is one which contains walls, flooring, and ceiling suitable for use as a bedroom, living room, playroom or office area, or if a non-residential use, suitable for storage, work area, or office. Square footage of a structure other than a building shall be the exterior area of the structure, measured in either the elevation (face) or plan (top) view, whichever is larger.

**STATE:** The State of New York.

**STRUCTURE:** Means any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, decks, sheds, single family dwellings, mobile homes, signs, tanks, fences and poles, solar panels, wind turbines, and any fixtures, additions and alterations thereto.

**STRUCTURE HEIGHT:** The vertical distance measured from the highest point of the structure to the lowest point of existing or finished grade, whichever is lower.

**SUBDIVISION:** Any division of land into two (2) or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or any other substantial site work preparatory or incidental to any such division). The term specifically shall include the development or expansion of a mobile home park, campground or a tourist accommodation or a multifamily residence project involving two or more principal buildings. The term shall not include the lease or license of land for hunting and fishing or other open space recreation.

**TELECOMMUNICATION FACILITY:** Any or all of the physical elements of the central cell facility that contain all the receivers, transmitters, and other apparatus needed for cellular operation (also known as base transceiver station or BTS). This is a "Major Public Utility" as defined by the APA Act.

**TELECOMMUNICATION TOWER:** A structure on which one or more antenna will be located, that is intended for transmitting and/or receiving radio, television, telephone, wireless or microwave communications for an FCC licensed carrier, but excluding a structure used exclusively for fire, police, and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications. All telecommunications towers and equipment shall comply with the Adirondack Park Agency regulations.

**TEMPORARY STRUCTURE:** Means any structure that:

- A. Is not permanent by nature (tents, portable carports, recreational vehicles, etc.),
- B. Is not in place for more than eight consecutive months nor more than eight months in any twelve month period,
- C. Is of a neutral or natural color to minimize visual impact to the surrounding area,
- D. Does not involve any excavation, grading, piping or foundation construction as part of its placement and
- E. Complies with setback requirements.

**TOURIST ACCOMMODATION:** Shall include any hotel, motel, resort, dwelling, or part thereof including attached and detached units or similar structures for rent or lease to the general public for commercial purposes, excepting a Bed and Breakfast establishment that meets the criteria established in Section 12.010, and may include a restaurant for the general public. Tourist accommodations shall meet the criteria set forth in Section 12.120.

**TRAVEL TRAILER:** A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle, and which is no longer than thirty-two (32) feet. See also recreational vehicle.

**USE:**

- A. Any purpose for which a building or other structure or tract of land may be designed, arranged, intended, maintained or occupied or
- B. Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land, or
- C. The improvements, including buildings or other structures, associated with a use.

**USE DESIGNATION:** This is a summary term or an abbreviation referring to a use or group of uses which is either permitted or permitted by Special Use Permit in the identified Districts within the Town of Arietta. Sections 3.030 and 3.060 identify all uses allowed by permit or by Special Use Permit for each use designation. The term use designation is not to be interpreted to mean a zoning district.

**WETLAND:** Any land, which is subject to continual or periodic inundation by water and commonly referred to as a bog, swamp, or marsh.

**WASTE DISPOSAL AREA:** Any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than an on-site disposal area directly associated with an industrial use.

**WIND POWER GENERATING FACILITIES, LARGE:** A wind conversion facility consisting of one or more wind turbines, towers, and associated control or conversion electronic which has a rated capacity of more than 100 kW, and where electrical power is transferred to a transmission system for distribution to customers rather than for use on the site are prohibited in the Town of Arietta. This is a "Major Public Utility" as defined by the APA Act.

**WIND POWER GENERATING FACILITIES, RESIDENTIAL:** A wind conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce on-site consumption of utility power. All wind power generating facilities shall comply with the Adirondack Park Agency regulations.

**ZONING BOARD OF APPEALS:** The Zoning Board of Appeals (ZBA) of the Town, appointed by the Town Board pursuant to Section 267 of the Town Law, having such powers and duties as are set out in the Town Law, in this ordinance and as lawfully may be further provided by the Town Board.

**ZONING LOT:** A parcel of land considered or treated as a single unit and corresponds with either a deeded lot of record or a land survey for purposes of computing the area of the zoning lot.

## **ARTICLE 3: DISTRICT REGULATIONS ON USE & INTENSITY**

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### **3.010 Establishment of Districts, Zoning Map**

- A. The Town is hereby divided into numbered districts identified and bounded as shown on the maps collectively entitled "Zoning Map of the Town of Arietta," and hereinafter collectively referred to as the "Zoning Map." The Zoning Map is hereby incorporated into the provisions of this ordinance and, with all amendments thereto, shall be as much a part of this ordinance as if fully set forth and described herein. The Zoning Map shall be kept on file in the office of the Town Clerk and current accurate copies thereof, bearing the date of the most recent amendment, shall be kept in the office of the Land Use Officer.
- B. Amendments to the Zoning Map, together with the effective date thereof, shall be permanently inscribed on, or affixed to, the Zoning Map by the Town Clerk promptly upon adoption. Should the Zoning Map become damaged, destroyed, lost, or difficult to interpret because of the changes and additions, the Town Board may by resolution restate the Zoning Map as amended on the date of such resolution, which restated Zoning Map shall thereafter constitute the Zoning Map. The restated Zoning Map shall bear a statement which explains that it supersedes the prior Zoning Map and gives the dates of adoption of both the prior Zoning Map and the restated Zoning Map. The available records of the adoption and amendment of the prior Zoning Map shall be preserved.

### **3.020 Interpretation of District Boundaries**

- A. Where the location of the Boundaries of a district is unclear, the following rules shall apply:
  - (1) Where the indicated district boundaries approximately follow the center lines of streets or highways, street lines, or highway right-of-way lines, then such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
  - (2) Where the indicated district boundaries approximately follow lot lines, then such lot lines shall be construed to be said boundaries.
  - (3) Where the indicated boundary of a district approximately follows a stream, said boundary line shall be deemed to be the center line of such stream.
  - (4) Where the indicated district boundaries approximately follow shorelines, then such boundary shall be construed as following shorelines; and in the event of change in the shoreline such boundary shall be construed as moving with the actual shoreline.
  - (5) In unsubdivided land where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the Zoning Map, shall be determined by the use of the scale appearing thereon.

### **3.030 Establishment of Use Designations**

Use designations are hereby established as set out below. Each use designation is a summary term or abbreviation referring to a use or group of uses which is permitted or is allowable by Special Use Permit in districts within the Town. Beside each use designation below appears the use or uses to which the designation refers. The use or uses referred to by each use designation are subject to specific controls set out in Article 4 and Article 12.

The uses designated with a "P" are "Permitted" in accordance with Article 8 "Site Plan Review & Approval" and those designated with an "SP" require a "Special Use Permit" in accordance with Article 9 "Special Use Permit Review & Approval."





**3.040 Establishment of Intensity Designations**

Intensity designations and the intensities of development to which they refer are hereby established as set out below. Each intensity designation is a number referring to a given intensity of development expressed in acres per dwelling unit which attaches to permitted uses or uses allowable by Special Use Permit in districts within the Town.

<u>Intensity</u>	<u>Intensity In Acres/Principal Building</u>
1	42.0
2	8.0
3	3.0
4	1.3
5	0.5

**3.050 Intensity Designation: Minimum Lot Size, Split Lot**

An intensity designation refers to a mandatory average gross lot size over the whole or a portion of a project. That mandatory average is the minimum gross lot size only when all the lots in a project are to comprise the whole of a project and be of equal size, or when the project involves but one lot. However, where a vacant lot on record on June 1, 1974 is smaller than the mandatory average, then a permitted use, or, upon permit, a use allowable by Special Use Permit involving not more than one principal building may nonetheless be developed on such lot, subject to compliance with all other applicable requirements. In a case where a project lies in two or more districts with differing intensity designations, each portion of the project shall be treated separately for intensity purposes.

**3.060 Use Designation/Intensity Chart**

The chart below sets out the use designations and, where appropriate, the associated intensity (Section 3.040) for the use designation in each of the districts within the Town. The use designation and its applicable intensity designation are separated by a slash (/). The intensity designation only applies to the use designation before the slash. Uses allowed only by Special Use Permit within a use designation are identified in Section 3.030. In the case of some districts, all uses allowed within the use designation shall be only allowable by Special Use Permit and the notation (SP) follows the applicable use/intensity designation.

**District Use Designation/Intensity Designation**

1	SR 2/4; MR 2/5(SP); TAC/4	36	RSM(SP)	68	RSM	101	RSM
2	SR 2/5; MR 2/5; TAC/4	37	AIR	69	SR 1/1; CGD(SP); RSM;	102	SR 1/3; RSM
3	RSM	38	SR 2/5; MHP/5; EXT		SHD; WP	103	SR 1/4; RSM
4	SR 2/4; MR 2/5(SP)	39	SR 2/4; STR	70	SR 1/2; CGD(SP); RSM;	104	RSM
5	SR 2/4; MR 2/5(SP); TAC/4	40	SR 2/4		SHD; WP	105	SR 1/3; MR 1/3(SP); CGD;
6	SR 2/4; MR 2/5(SP)	41	SR 2/4	71	SR 1/2; CGD(SP); RSM;		RSM
7	RSM	42	SR 2/4		SHD; WP	106	RSM
8	SD 1(SP); MR 2/5(SP)	43	RSM	72	SR 1/4	107	SR 1/3; MR 1/4(SP); CGD;
9	SD 1(SP)	44	SR 2/5; EXT	73	SR 1/3; RSM		RSM
10	SD 1(SP); MR 2/5(SP)	45	SR 2/5; TAC/4	74	SR 1/3; RSM	108	RSM
11	SD 1(SP)	46	SR 2/5	75	SR 1/2; RSM	109	SR 1/1; RSM
12	SD 1(SP); MR 2/5(SP)	47	SR 2/2; RSM	76	RSM	110	SR 1/1; RSM
13	SD 1(SP); MR 2/4(SP); TAC/4(SP)	48	RSM	77	SR 1/3; MR 1/4(SP); RSM	111	SR 2/2; SR 1/2; TAC/2; RSM;
		49	SR 1/4; CGD	78	SR 1/3		WP
14	SR 2/3; MR 2/5(SP); RSM	50	SR 1/4; MR 1/4; TAC/4; CGD	79	SR 2/3	112	SR2/4; SR1/4; MR1/4(SP);
15	SR 1/4; MAR	51	CGD	80	SR 1/4; MR 1/4		TAC/4; WP
16	RSM	52	SR 1/4	81	SR 1/1; RSM	113	SR 1/1; RSM; WP
17	SR 1/4	53	SR 1/4	82	SR 1/3; MR 1/4(SP); RSM	114	SR 1/1; RSM; WP
18	RSM	53A	SR 1/4 STR	83	SR 1/3; MHP/3; RSM	115	SR 1/1; RSM; WP
19	SR 2/5	54	SR 1/1 RSM	84	SR 1/4; MR 1/4; MHP/4	116	SR 2/2; SR 1/2; TAC/2; RSM;
20	RSM	54A	SR 1/4; CGD; TAC/4	85	SR 1/3; MHP; RSM		WP
21	SR 1/4	54B	SR 1/2; RSM	86	CEM	117	SR 2/4; SR 1/4; MR 1/4(SP);
22	SR 1/4; MR 1/4; TAC/4	55	SR 1/4	87	SR 1/4; MR 1/4		WP; TAC/4; EXT
23	SR 2/5	56	STR; TAC/4(SP); MHP/4(SP);	88	SR 1/3; RSM; SD 2	118	SR 2/2; SR 1/2; TAC/2; RSM;
24	SR 2/5		MAR	89	SR 2/3		WP
25	SR 1/4; MR 1/4; TAC/4	57	RSM	90	SR 1/4	118A	SR 2/2; SR 1/2; MR 2/2;
26	SR 2/5; SD 2	58	SR 1/3; EXT; RSM	91	RSM		MR 1/2; TAC/2; RSM; WP
27	SR 1/4; MR 1/4; TAC/4; MHP/4	59	SR 1/3	92	SR 2/3; RSM	119	RSM; WP
28	SR 1/5; MR 1/4(SP)	60	SR 1/4; MR 1/4(SP);	93	SR 1/4; MR 1/4; TAC/4	120	RSM; WP
29	SR 2/4; MR 2/5(SP)		TAC/4(SP); MHP/4; CGD(SP)	94	SR 1/4; MR 1/4; TAC/4; SD 2	121	SR 1/2; RSM; WP
30	SR 2/4; MR 2/5(SP)	61	RSM	95	SR 1/4	122	SR 2/4; SR 1/4; TAC/4;
31	RSM	62	SR 1/4; TAC/3(SP); RSM	96	SR 1/4; MR 1/4; MHP/4		MHP/4(SP); WP
32	SR 2/4	63	RSM	97	SR 1/4; STR	123	MFG; RSM
33	RSM	64	SR 1/4; MR 1/4	98	SR 1/4	124	SR 2/4; SR 1/4; TAC/4
34	EXT	65	SR 1/4; MR 1/4	99	SR 1/4	125	RSM
35	SR 1/4	66	SR 1/4; MR 1/4(SP)	100	SR1/2; MR1/4(SP); TAC/4(SP);	126	RSM (Raquette Lake area)
35A	SR 2/5	67	SR 1/3; MR 1/3(SP)		RSM	127	SR1/3 (Piseco Lake Islands)

**ARTICLE 4: SPECIFIC USE DESIGNATION CONTROLS**

**4.010 Regulations for SR 1, SR 2, MR 1, MR 2, TAC & STR**

- A. The following additional regulations shall govern Single Family Residence (SR 1), Single Family Residence (SR 2), Multi-Family Residence 1 (MR 1), Multi-Family Residence 2 (MR 2), Tourist Accommodation (TAC) & General Store (STR):

	Use Designation				
	SR 1	SR 2	MR 1	MR 2	TAC
<b>Minimum Lot Size</b>	55,000 sq ft	20,000 sq ft	NA	NA	NA
<b>Setback from Lot Line</b>	15 ft				25 ft
<b>Separation Between Principal Buildings</b>	30 ft				
<b>Setback from Road</b>	A building shall at a minimum be set back 75 feet from near edge of the pavement of a state highway and 50 feet from near edge of the pavement of a public highway other than a state highway, provided that no building shall be within a public highway right of way.				
<b>Façade</b>	Each building shall be encouraged to have a facade painted in white, or painted or stained in a shade of brown, gray, green, dark barn red or a subdued natural shade or covered with native or cultured stone. Unpainted aluminum roofing shall be discouraged.				
<b>Screening</b>	Each building visible from a public highway shall be encouraged to be attractively landscaped in relation to such highway or substantially screened from such highway. Such landscaping or screening shall be by preservation of natural cover or planting of native species of vegetation.				
<b>Parking</b>	2 off-street spaces per dwelling unit	2 off-street spaces per dwelling unit	1.5 off-street spaces per dwelling unit and such parking to be located on not more than two sides of a building	1.5 off-street spaces per dwelling unit	1 off-street space per dwelling unit
<b>Access</b>	Each building shall have access to a public highway sufficient to comply with Section 280-a of the NYS Town Law.				
<b>Floor Area - Ground Floor</b>	Each principal building shall have a minimum ground floor area of 350 square feet.				
<b>Height</b>	No building shall be of a height above natural grade greater than 40 feet, excluding cupolas, chimneys or other projections above the roof line.				

- B. Single Family Residence (SR 2). In addition, the following regulations shall apply to mobile homes in the SR 2 use designation:
  - (1) Mobile Home. A mobile home shall be mounted either on a permanent masonry-wall foundation or on permanent piers, in which case the mobile home shall be fully and attractively skirted. On each lot on which a mobile home is installed there shall be one or more accessory buildings adequate to store the miscellaneous equipment and belongings of the family living in the mobile home. A mobile home visible from a public highway shall be attractively landscaped in relation to such highway and shall be substantially screened from such highway during all seasons of the year. Such landscaping and screening shall be by preservation of natural cover or by planting of native species of vegetation.
- C. Multi-Family Residence 1 (MR 1). In addition, the MR 1 use designation shall comply with the following open space requirement:
  - (1) Open Space. Each project shall have not less than 30% of the site in common open space of such a character as to be attractive and useful for active or passive recreation or as to provide a significant visual amenity. Such space shall not be used for parking or other service uses.
- D. Tourist Accommodation (TAC) and General Store (STR). The minimum parking spaces for any non-residential principal use shall be determined by the Planning Board based upon best practices.

#### **4.020 MOBILE HOME PARKS (MHP)**

##### **4.021 Components**

- A. A mobile home park shall consist of and be divided into:
  - (1) Designated mobile home sites,
  - (2) Common service areas, including streets, common parking spaces and service buildings and facilities and
  - (3) Common open space, including usable common open space.
- B. Intensity. The overall intensity of a mobile home park shall not exceed the requirements of section 3.06 for the district in which it is located. Roadways shall be excluded from all acreage calculations used to determine the number of mobile home sites as well as required open space.

##### **4.022 Mobile Home Sites**

- A. Each mobile home within a mobile home park shall be installed on a mobile home site suitable for one mobile home. Each mobile home site shall have a total area of not less than 5,000 square feet, with a minimum dimension of fifty (50) feet, shall be arranged such that no mobile home shall be closer than:
  - (1) 25 feet in any direction from another mobile home
  - (2) 75 feet from the near edge of the pavement of a public highway or 100 feet from any shoreline,
  - (3) 20 feet from the centerline of any street within the mobile home park, and
  - (4) 15 feet from any lot line.
- B. In computing such distances, only the livable portion of the mobile home (the trailer proper, together with any porches or decks) shall be counted. The hitching apparatus shall not be counted.
- C. Nonconforming existing mobile homes or trailers in a mobile home park must comply with Article 11 "Nonconformity."
- D. Mobile Home Stand. Each mobile home site shall have an improved mobile home stand of sufficient size to fit the dimensions of the anticipated mobile homes and their appurtenant structures or appendages. The stand shall be constructed of an appropriate material, which is durable and adequate for the stable support of the maximum anticipated loads. The stand shall be suitably graded to permit rapid surface drainage.

##### **4.023 Mobile Home Additions**

The square footage of any addition shall not exceed the square footage of the mobile home to which it is attached. The total area of the mobile home and all additions shall not exceed 1,000 square feet, unless located on a designated site of no less than 10,000 square feet. Additions shall not exceed 240 square feet for an enclosed room and 240 square feet of roofed porch. A roofed porch shall not be screened or enclosed. Any such addition

shall not include a bathroom, kitchen, or bedroom. All roofed additions shall be freestanding from the mobile home so that the mobile home can be easily moved. No additions shall exceed one story in height.

**4.024 Parking**

A mobile home park shall include designated off-street parking at the rate of one parking space per mobile home site located on such site and not less than one-half space per site located in common parking areas convenient to the served sites. Each parking space shall have a minimum dimension of 9 x 18 feet or 10 x 20 feet.

**4.025 Open Space**

A mobile home park shall include usable common open space in an amount not less than 2,000 square feet per mobile home site. Such usable common open space may be in one or more locations, but the number of locations shall not exceed one for each five mobile home sites. All usable common open space shall be accessible from all mobile home sites and shall be of such a character as to be attractive and useful for active or passive recreation. Not more than 20% of such open space shall be within 100 feet of a public highway. Streets or common parking area within a mobile home park shall not be counted as usable common open space.

**4.026 Access and Circulation**

- A. Each mobile home park shall have graveled or paved access from a public highway.
- B. Where a mobile home park has more than 20 mobile homes, two points of entry and exit shall be provided where possible, but in no instance shall the number of entry and exit points exceed 4. Such entrances and exits shall be designed and strategically located for the safe and convenient movement into and out of the park and to minimize obstruction of traffic flow on the adjacent public highway. All entrances and exits shall be at right angles to the adjacent public highway. All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with mobile homes attached.
- C. Each mobile home park shall have graveled or paved streets to provide for the convenient access to all mobile home sites and other important facilities within the park. The street system shall be so designed to permit safe and convenient vehicular circulation within the park. Streets shall be adapted to the topography and shall have suitable alignments and gradient for traffic safety. All streets shall intersect at right angles. All streets shall have the following minimum widths:
  - (1) One-way traffic movement - 10 feet
  - (2) Two-way traffic movement - 16 feet
- D. A driveway shall be provided for each mobile home site.

**4.027 Utilities and Service Facilities**

- A. The following utilities and service facilities shall be provided in each mobile home park, which shall be in accordance with all applicable requirements of the Town, County, and the State Departments of Health and Environmental Conservation:
  - (1) Each mobile home site shall be provided with water.
  - (2) Each mobile home site shall be provided with a sewer, which shall receive all liquid waste from the mobile home on the site. The sewer shall be connected to a sewage disposal system meeting the standards of Article 7 hereof.

**4.028 Landscaping and Screening**

- A. Field grass or native ground cover shall be provided or retained on those areas not used for the placement of mobile homes and other buildings, walkways, roads, and parking areas.
- B. Landscaping, by preservation of existing ground cover or by planting of native species of vegetation shall be provided to ameliorate or screen objectionable views of and within the park during all seasons of the year. Facilities within the park which shall be screened include laundry facilities, parking and garbage storage and collection areas. In addition, the park itself shall be substantially screened with native vegetation during all seasons of the year from any public highway or body of water or water course regularly trafficked by the public or adjacent property zoned for residential purposes.

**4.029 MHP Existing Mobile Home Park**

- A. Certificate of Occupancy. Six (6) months following the effective date of this ordinance, no mobile home park in existence shall be operated except pursuant to a certificate of occupancy or temporary certificate of occupancy

issued by the Land Use Officer. The operator of a mobile home park who desires to continue operation shall file with the Land Use Officer an application for a certificate of occupancy.

- B. Application for Certificate of Occupancy. Such application shall use forms provided by the Land Use Officer and shall be filed in duplicate. An application shall include maps and shall contain such information as is required by the Planning Board to make the findings provided for in this section. Specifically, the application shall provide the following information:
- (1) The name and address of the applicant.
  - (2) The location and description of the mobile home park, including information on the character of the site, including elevation and slope, soils, vegetation, water table and the character and approximate dimensions and location of all improvements to and installations on the park site, including vacant and occupied mobile home sites, which shall be identified by number, and roads, usable open space, parking and other facilities.
  - (3) A detailed description of the sanitary sewage treatment system employed, including size, character and condition of facilities, date of installation, and a statement of any action taken or advice given by Town, County, State health officials with respect to such system.
  - (4) A detailed description of the water supply system employed.
- C. Planning Board Review.
- (1) Schedule for Compliance, Certificate of Occupancy. The application shall be reviewed by the Planning Board, in consultation with the Land Use Officer. If under a proper application, the Planning Board finds that the mobile home park is in compliance with all the applicable provisions of this ordinance, including section 4.060 and Article 7 (relating to sanitation) and all other applicable Town laws and regulations, then the Land Use Officer shall issue a Certificate of Occupancy.
  - (2) If the Planning Board finds that the mobile home park is not so in compliance, then the applicant must propose to the Planning Board a program for the achievement of such compliance within a reasonable period after the effective date of this ordinance. Such program shall include a set of plans for the mobile home park when in compliance specifying a phased schedule of the steps to be taken for the achievement of compliance and the date by which each of such steps shall be taken. Such schedule shall set out a general course leading to full compliance within a reasonable period of time (not more than 96 months) after the effective date of this ordinance.
  - (3) If the Planning Board finds that the proposed program meets the requirements of this subsection, then the Land Use Officer shall issue to the applicant a one year temporary Certificate of Occupancy. Such temporary Certificate of Occupancy shall, upon application, be renewed annually for a one year period, provided that, each year the Planning Board finds that the applicant is meeting the schedule for compliance. No temporary Certificate of Occupancy for a mobile home park shall be effective after the expiration of the period specified in the original application for temporary Certificate of Occupancy. A temporary Certificate of Occupancy is not transferable. When upon application, the Planning Board shall find that a mobile home park is in compliance with all the applicable provisions of this ordinance and all other applicable town laws and regulations, the Land Use Officer shall issue a Certificate of Occupancy.
  - (4) When, upon application, the Planning Board shall find that a mobile home park is not in compliance with all the applicable provisions of this ordinance and/or other applicable Town laws and regulations, the Land Use Officer shall issue a Certificate of Occupancy only after a finding of specific unnecessary hardship to the applicant to be determined by the Planning Board as provided in Section 13.020 of this ordinance.
  - (5) The intention herein being to ultimately have all mobile home parks in compliance with this law, however, the intent is also not to penalize unnecessarily the existing owners.

#### **4.030 CAMPGROUND (CGD)**

##### **4.031 Components**

- A. A campground shall consist of and be divided into:
- (1) Designated camping sites,
  - (2) Common service areas, and
  - (3) Common open space, including usable common open space.

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- B. Density. The overall density of a campground shall not exceed one camping site per 5,000 sq. ft. of gross area of the campground. Roadways shall be excluded from all square foot calculations used to determine the number of camp sites as well as the required open space.

**4.032 Camping Sites**

- A. Each camping site shall have total area of not less than 2,500 square feet with a minimum dimension of thirty-five (35) feet. No camping site shall accommodate more than one self-propelled four-wheeled vehicle. No camping site shall be located closer than 100 feet from the near edge of the road bed of a public highway or from any shoreline or closer than fifteen (15) feet from any lot line.
- B. Each camping site shall have a level, well-drained cleared area which will provide for the practical placement on and removal from the site a standard size passenger automobile and travel trailer or tent.

**4.033 Open Space**

A campground shall include usable common open space in an amount not less than 1,000 square feet per camping site. Such usable common open space may be in one or more locations, but the number of locations shall not exceed one for each ten (10) camping sites. All usable common open space shall be accessible from all camping sites and shall be of such a character as to be attractive and useful for active or passive recreation. No more than 40% of such open space shall be within 100 feet of the near edge of the road bed of a public highway. Streets within the campground shall not be counted as usable open space.

**4.034 Utilities and Service Facilities**

- A. A campground shall be provided with cold water taps at the rate of not less than one (1) tap per ten (10) camping sites, each tap located conveniently to the served sites. The waste from such taps shall be emptied into an appropriate disposal system, such as a dry well.
- B. Toilet facilities for males and females shall be provided not nearer than fifty (50) feet or further than 200 feet from any camping site.
- C. Waste from all buildings and campsites shall be discharged into a sewage disposal system meeting the standards of Article 7 hereof.

**4.035 Access and Circulation Plan**

- A. Each campground shall have graveled or paved access to a public highway.
- B. Where a campground has more than thirty (30) camping sites, two (2) points of entry and exit shall be provided, but in no instance shall the number of entry and exit points exceed four (4). Such entrances and exits shall be designed and strategically located for the safe and convenient movement into and out of the campground, and to minimize interference with the free movement or traffic on the adjacent public highway. All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with travel trailers attached.
- C. Each campground shall have graveled or paved streets to provide for the convenient access to all camping sites and other facilities within the campground. The street system shall be so designed to permit safe and convenient vehicular circulation within the campground. Streets shall be adapted to the topography and shall have suitable alignment and gradient for traffic safety. All streets shall intersect at right angles. All streets shall have the following minimum widths:
  - (1) One-way traffic movement -10 feet
  - (2) Two-way traffic movement -16 feet

**4.036 Landscaping and Screening**

- A. Field grass or other native ground cover shall be provided or retained on those areas not used for camping sites and other buildings, walkways, roads and parking areas.
- B. Landscaping, by preservation of existing vegetation or by planting of native species of vegetation shall be provided to ameliorate or screen objectionable views of and within the campground at all seasons of the year. Views which shall be screened include sanitary facilities and garbage storage and collection areas. In addition, the campground itself shall be substantially screened with native vegetation at all seasons of the year from any public or highway or water body or water course regularly trafficked by the public or adjacent property zoned for residential purposes.

#### **4.037 Length of Occupancy**

No person, travel trailer, camper, motor home or other similar vehicle or equipment shall occupy a site or a succession of sites within a campground for a period or periods aggregating more than 240 days within any calendar year.

#### **4.040 EXTRACTION INDUSTRY (EXT)**

##### **4.041 Setback and Screening**

- A. No extraction industry use, including excavation and stockpiling but excluding any means of access thereto, shall be conducted closer than fifty (50) feet from any property line, nor closer than 100 feet from any public highway or water body or water course regularly trafficked by the public.
- B. Any excavation or stockpiling shall be substantially screened from adjacent property used for residential purposes, any public highway or any water body or water course regularly trafficked by the public by preservation of existing natural cover or planting of native species of vegetation.

##### **4.042 Pollution**

- A. No extraction industry use shall pollute or otherwise disrupt any natural water body or water course.
- B. No excavation or stockpile shall be within 150 feet of any natural body or water course.

##### **4.043 Extraction Uses (Sand, Gravel and/or Mineral)**

- A. Any sand, gravel, and/or mineral extraction use shall also comply with any applicable New York State Environmental Conservation (NYSDEC) regulations and/or the Adirondack Park Agency Regulations (APA), as well as the following:
  - (1) Slope Stabilization. Refer to DEC Reclamation Plan (MLRL) NYS Mined Land Reclamation Law effective April 1, 1975 and as amended. Exemption for less than 1,000 yards for commercial operations, provided, however, that any extraction from the land of more than fifty (50) cubic yards in any two-year period of sand, gravel or topsoil: (1) for the purpose of sale or use by persons other than the owner of the land; or (2) for the purpose of use by any municipality shall be a regional project, subject to review by the Town or the Adirondack Park Agency.
  - (2) Restoration. Refer to DEC Reclamation Plan (MLRL). Exemption for less than 1,000 yards for commercial operations, provided, however, that any extraction from the land of more than fifty (50) cubic yards in any two-year period of sand, gravel or topsoil: (1) for the purpose of sale or use by persons other than the owner of the land; or (2) for the purpose of use by any municipality shall be a regional project, subject to review by the Town or the Adirondack Park Agency.

#### **4.050 RESOURCE MANAGEMENT (RSM)**

##### **4.051 Cutting Practices**

- A. Within 100 feet of any public highway, not more than 50% of the greatest number of trees in excess of six (6) inches in diameter at breast height existing during the ten (10) year period beginning with the effective date of this ordinance, and succeeding ten (10) year periods, shall be removed during any such period.
- B. Provided further, however, within 100 feet of any shoreline, not more than 30% of the greatest number of trees in excess of six inches in diameter at breast height existing during the ten (10) year period beginning with the effective date of this ordinance, and succeeding ten (10) year periods, shall be removed during any such period.

##### **4.052 Roads**

There shall be no construction of roads with slopes greater than 35%.

#### **4.060 MANUFACTURING (MFG)**

##### **4.061 Setback and Screening**

- A. Unless otherwise noted herein, no building or other structure or stockpile shall be closer than thirty (30) feet from any lot line or one hundred (100) feet from the near edge of the pavement of any public highway, provided that no building shall be within the right of way of a public highway.



- B. All buildings or other structures and stockpiles shall be substantially screened from any public highway by preservation of existing cover or planting of native species of vegetation.

#### **4.070 HEAVY EQUIPMENT FACILITY (EQP)**

##### **4.071 Setback and Screening**

- A. No building or other structure or stockpile shall be closer than thirty (30) feet from any lot line or 100 feet from the near edge of the pavement of any public highway, provided that no building shall be within the right of way of a public highway. Stockpile shall include any equipment storage, goods for sale, or other resources associated with the facility.
- B. All buildings or other structures, stockpiles shall be substantially screened from any public highway by preservation of existing cover or planting of native species of vegetation.

#### **4.080 MARINA (MAR)**

##### **4.081 Setback and Screening**

- A. No principal building or stockpile shall be closer than twenty-five (25) feet from any lot line. Stockpile shall include any equipment storage, goods for sale, or other resources associated with the facility.
- B. A building shall at a minimum be set back 75 feet from near edge of the pavement of a state highway and 50 feet from near edge of the pavement of a public highway other than a state highway, provided that no building shall be within a public highway right of way.
- C. All stockpiles shall be substantially screened from any public highway and or from any waterbody by preservation of existing cover or planting of native species of vegetation.

##### **4.082 Shoreline Restrictions**

- A. Docks. Shall be in conformance with Section 15-0503 of the Environmental Conservation Law.
- B. Gasoline Fueling. No gasoline pumps, hoses, and/or dispensers shall be located on a dock or raft or otherwise above a water body.
- C. Mooring. No mooring for a boat or aircraft shall be located so that boats or aircraft extend beyond 25 feet of the perpendicular projection of a property line from a shoreline.

## ARTICLE 5: SHORELINE REGULATIONS

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### 5.010 Purpose

In order to provide adequate protection of the quality of the lakes, ponds, rivers, and streams of the Town and the visual quality of their shorelines, the following regulations apply in all districts.

### 5.020 Shore Frontage

#### 5.021 Standard Residential Lots

Where the following intensity designations apply, the minimum shore frontage of a shoreline lot accommodating one principal building shall be the following:

<u>Intensity Designation</u>	<u>Minimum Shore Frontage</u>
1	200 feet
2	150 feet
3	125 feet
4	100 feet
5	100 feet

#### 5.022 Clustered Residential Development

- A. In the case of a project including two or more shoreline lots where each lot accommodates one single family residence, the Planning Board may authorize such lots, or a portion of such lots, to have less shore frontage than that required in Subsection 5.021, provided that for the shoreline development as a whole, the ratio of shore frontage to principal buildings complies with that specified below for each intensity designation.

<u>Intensity Designation</u>	<u>Principal Buildings per Mile of Shore Frontage</u>
1	26
2	36
3	42
4	53
5	106

- B. As a condition of permitting such clustering of shoreline development, the Planning Board must find that the applicant will insure, through restrictive covenant or declaration or other appropriate means, that the undeveloped portions of shoreline, with the land upland of such shoreline to a depth of 150 feet, will be retained unimproved and in its natural state.

#### 5.023 Common Shoreline

- A. In the case of a project, including a mobile home park or private campground, where residential lots, sites or units are afforded deeded or contractual access to shoreline, the following minimum amounts of shore frontage are required in the following cases:
- (1) Where fewer than five (5) residential lots, sites or units are involved, fifty (50) feet.
  - (2) Where five (5) or more but not more than twenty (20) residential lots, sites or units are involved, 100 feet.
  - (3) Where more than twenty (20) but not more than 100 residential lots, sites or units are involved, 100 feet plus three feet for each such lot, site or unit in excess of twenty (20).
  - (4) Where more than 100 but not more than 150 residential lots, sites or units are involved, 340 feet plus two (2) feet for each such lot, site or unit in excess of 100.
  - (5) Where more than 150 residential lots, sites or units are involved, 440 feet plus one (1) foot for each such lot, site or unit in excess of 150.

#### 5.024 Double Counting of Shore Frontage

In the case of a project including both (a) shoreline lots accommodating single family residences and (b) residential lots, sites or units having deeded or contractual access to shoreline, no shore frontage counted to satisfy the requirements of Subsections 5.021 or 5.022 shall also be counted to satisfy the requirements of Subsection 5.023.

### **5.025 Non-Residential Shoreline Uses**

In the case of any non-residential use involving shoreline, there shall be a minimum of 50 feet of underdeveloped shoreline between each edge of the non-residential use and the property line on the corresponding side.

### **5.030 Shoreline Structure Setback**

A minimum setback of one hundred (100) feet from the shoreline is required for all structures in excess of one hundred (100) square feet except docks. One accessory structure one hundred (100) square feet or less and within one hundred (100) feet of the shoreline is allowable per lot.

- A. The shoreline building setback restrictions apply to all principal buildings and to all accessory structures exceeding 100 square feet in size, including garages, sheds, porches, decks, barns, gazebos, guest cottages, tennis courts and permanent swimming pools, but not including boathouses or docks.
- B. Porches, decks and other structures attached to single family dwellings or to other structures subject to the building setback restrictions shall be considered part of the structure for purposes of applying the setback restriction.
- C. Decks or patios which are not attached to another structure, are subject to the structure setback restrictions if they exceed one hundred (100) square feet, unless flush with natural ground level without raised elements such as railings or walls.

### **5.040 Shoreline On-Site Disposal System Setback**

All components of the on-site disposal system shall be setback one hundred (100) feet from the shoreline, with the exception of related septic tanks.

### **5.050 Removal of Vegetation**

- A. Removal of vegetation shall comply with the adopted Adirondack Park Agency regulations.
- B. This section shall not be deemed to prohibit the removal of diseased vegetation or of rotten or damaged trees or of vegetation that presents a safety or health hazard.

## ARTICLE 6: SIGNS

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### 6.010 Purpose & Application

A. The purpose of these standards is to provide a coordinated, uniform, and consistent approach of signs proposed to be erected or maintained on site, taking into consideration the natural, scenic, aesthetic, and open space resources in the Town. Signs are accessory uses, which may be erected and maintained in accordance with these regulations.

B. For the purpose of this Article, the following definitions shall apply:

“Erect” means to build, construct, alter, enlarge, relocate, attach, hang, place, affix, or maintain any sign, and includes the painting of wall signs.

“Luminous sign” means an incandescent or other sign which gives forth its own light, or any transparent or translucent sign through which artificial light is emitted, including, without limitation, any neon sign, fluorescent sign, LED sign, or advertising light display.

“Level of natural ground” means the level of ground prior to any grading or fill done primarily for the purpose of erecting any sign or raising the level of a sign’s allowable height.

### 6.020 General Standards & Regulations

A. Number of signs and duration.

- (1) Not more than two (2) signs may be erected or maintained advertising or otherwise relating to a single business or activity except for directional signs that do not exceed two square feet in sign area and are limited to such texts as “Office,” “Entrance,” “Exit,” “Parking,” and “No Parking.”
- (2) There shall be no more than one (1) pole or free-standing sign on any parcel of land, provided that when two or more businesses are located on a single parcel of land, a structurally and graphically integral free standing sign relating to more than one enterprise shall be deemed to be a single sign.
- (3) Location or address signage required for 911 emergencies shall be exempt from the allowed total number of permitted signs.
- (4) Temporary Signs. Not more than one temporary sign shall be permitted per property, including temporary signs such as banners, portable signs, promotional signs, real estate signs, campaign and other signs of a similar nature shall be permitted on the premises.

B. Design and location of signs.

- (1) Moving Element. No sign shall embody a mechanically powered moving element. No sign or part thereof shall contain or consist of any banner, pennant, ribbon, streamer, spinner or other similar moving, fluttering, or revolving device. Such devices, as well as strings of lights, shall not be used for advertising or attracting attention whether or not they are part of any sign. No sign or part thereof may rotate or move back and forth.
- (2) No sign shall be placed upon or be supported by any water body or any tree, rock, or other natural object rather than the ground.
- (3) No sign shall be erected or maintained upon the roof of any building or structure.
- (4) No motor vehicle on which is placed or painted any sign intending to advertise the premises shall be parked or stationed, on such premises in a manner primarily intended to display the sign.
- (5) No sign shall project more than 3 feet from the wall of any building, nor shall any sign project from the roof of any building or into any public way.
- (6) No sign shall be erected or maintained within the right-of-way, nor within 10 feet of the road bed of any public street or highway; nor shall any sign exceeding 20 square feet in the sign area be erected or maintained within 20 feet of the road bed of any public street or highway. Provided, however, that these minimum setback distances shall not apply to signs erected upon any building entirely housing the business or activity with which the signs are principally associated. For the purposes of this provision, the road bed shall mean the trafficable portion of the road, street, or highway, bounded on either side by the outer edge of the shoulder or guardrail, whichever extends farthest. Where there is no shoulder or guardrail, there shall be deemed to be a shoulder extending four feet from the outer edge of the pavement or unpaved traffic lanes.

- (7) Location. No sign shall be erected or maintained at a location other than on the same parcel of land where the enterprise advertised is located, nor at a distance greater than 200 feet from the business or activity with which it is principally associated or the principal access point thereto from a public highway. For the purposes of this provision, the location of a business or activity shall include all of the principal private access road connecting the actual place of that business or activity with a public street or highway.

C. Size, height and components of signs.

- (1) No sign shall be erected or maintained having a sign area greater than 20 square feet. No luminous sign shall be erected or maintained having a sign area greater than 15 square feet.
- (2) If two signs are erected or maintained with respect to a given activity, the total sign area of the two signs shall not exceed 35 square feet.
- (3) No pole sign erected or maintained upon the premises shall have a sign area greater than 15 square feet.
- (4) No sign shall exceed 15 feet in overall height, measured from the highest level of natural ground immediately beneath the sign to the highest point of the sign or the supporting structure thereof.
- (5) Signs shall be made of stone, brick, and/or wood, shall be simple in design and color scheme, and shall contain a minimal number of component parts.
- (6) Good Repair. All signs shall be constructed of durable materials and maintained at all times in good repair.

D. Illumination.

- (1) No sign shall be illuminated by or contain a flashing, intermittent, rotating or moving light or lights. All luminous signs, indirectly illuminated signs, and lighting devices shall employ only lights emitting light of constant intensity.
- (2) No sign shall be illuminated during hours other than those during which the enterprise to which it relates is open for business.
- (3) No marina shall maintain an illuminated sign on a dock or raft or otherwise over a water body or water course.
- (4) No luminous sign, indirectly illuminated sign, or lighting device shall be placed or directed so as to cause glaring or non-diffuse beams of light to be cast upon any public street, highway, sidewalk, or adjacent premises, or otherwise to cause glare or reflection that may constitute a traffic hazard or nuisance. No sign shall in its construction employ any mirror or mirror-like surface, nor any day-glowing or other fluorescent paint or pigment.
- (5) No sign shall contain any neon, LED, or similar lighting.

E. Sign Permit.

- (1) Commercial properties and home occupation uses shall be required to have a sign permit from the Land Use Officer or as part of Site Plan Approval from the Planning Board, for all new signs, relocation of signs, and/or modifications to existing signs, and shall include the following information to the Land Use Officer or the Planning Board:
  - (a) Dimensions of the Proposed or Modified Sign. The size of the proposed sign (area, height, width, thickness), illumination, and material from which it is to be constructed.
  - (b) Detailed Drawing of the Proposed or Modified Sign. A detailed drawing showing the description of the construction details of the Sign and showing the lettering and/or pictorial matter, colors used in the sign, position of lighting or other extraneous devices, and support structures.
  - (c) Site plan of Proposed or Modified Sign. A site plan showing the location of the sign in relation to the building and all property lines and streets shall be provided.
- (2) Residential and all other non-commercial signs shall be exempt for a Sign Permit.
- (3) Any Sign Permit application that does not satisfy these regulations, or that will make an existing lawful non-conforming sign more non-conforming, will be denied.
- (4) A sign constructed pursuant to an approved sign permit remains lawful unless there is a change in its location, design, illumination, size, dimensions, or colors, or if there is a material change in sign face content, that is made without a new sign permit.

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**6.030 Sign Standards for Multiple Use Sites**

- A. Notwithstanding the standard governing the number of signs permitted to be erected or maintained on any parcel of real property set forth in Section 6.020 hereof the following standards shall apply to signs when more than one principal activity is proposed to be conducted on a separate and discrete basis upon the parcel of real property associated with the project, such as in the case of a shopping center or other multiple commercial use facility.
  - (1) A single free-standing sign not in excess of 30 square feet in sign area or more than 20 feet in height may be erected identifying the center or facility as a whole but not contain advertising matter.
  - (2) One individual wall sign not in excess of 20 square feet in sign area may be erected for each separate principal activity such as a shop or store.
  - (3) An overall sign design plan for any such center or facility shall be required, which shall include the sign design plan or plans for each principal activity therein, and shall reflect a reasonable uniformity of design, lettering, lighting, and material.

**6.040 Residential, Home Occupations & Other Non-Business Uses**

- A. In the case of residential uses, home occupations and other non-business oriented uses, the sign standards of this Article shall apply, except that only one sign may be erected or maintained upon a parcel of real property, the sign area may not exceed 6 square feet, and the overall height from the ground to the top of the sign may not exceed 4 feet.
- B. Illumination. No sign shall be internally illuminated and no sign shall be externally illuminated, where the source of illumination serves only or chiefly to illuminate the sign.

**6.050 Abandoned, Illegal or Unsafe Signs**

- A. A sign shall be determined abandoned if any such enterprise, for a period of one year, conducts no business or does not offer a product or service.
- B. The Land Use Officer, upon determining that any such sign is abandoned or illegal, shall require the sign to be removed by the owner of the premises upon which the sign is located.
- C. The Land Use Officer shall give written notice to the last owner of record of the real property where the sign is located and the permit holder, if any, at the permit holder's last known address of record, who shall, unless good cause is shown, remove the sign within 30 days from the date of the written notice. If no action is taken by the owner or permit holder within said time period, the Land Use Officer may cause the sign to be removed, without liability to the Town or its agents.
- D. Offending signs removed by the Land Use Officer will be stored for a maximum of thirty (30) days.
- E. Unsafe signs. The Land Use Officer may cause any sign that is unsafe or insecure or is a source of immediate peril to persons or property to be removed, repaired, or made to conform immediately and without notice.
- F. At the sole discretion of the Town, the reasonable and necessary costs incurred for removal and/or storage of any offending or unsafe sign shall be charged against the real property from which the sign was removed, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-assessed taxes, to be applied in reimbursing the fund from which the costs of sign removal were paid. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known addresses of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing

## **ARTICLE 7: SANITATION**

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### **7.010 General**

No person shall discharge any matter into the waters of the Town and no person shall discharge any sewage or polluted waters into the lands or waters of the Town except in accordance with the provisions of this article.

### **7.020 Approval of Plans**

- A. No permit shall be issued by the Land Use Officer for any project until he/she has approved plans for a sewage disposal system designed by a licensed professional and, if required, approved by New York State Department of Health confirming that the sewage disposal system is adequate for the project.
- B. The applicant for the permit shall file with the Land Use Officer such data concerning the site and such plans and specifications for the disposal system as the Land Use Officer shall require.

### **7.030 Sewage Disposal System Standard**

The type, capacities, location, and layout of a sewage disposal system shall comply with all the guidelines of the State Department of Health and State Department of Environmental Conservation and the Town of Arietta. In addition, an approved individual sewage disposal system shall meet the following criteria:

- A. No part of any leaching field or seepage pit shall be within 100 feet of the mean high water mark of any water body or water course.
- B. The bottom of all the field trenches and seepage pits or water course must be at least two feet above the seasonal high groundwater or bedrock.
- C. No construction of a tile field system on a slope exceeding 15% without approval by the Land Use Officer.
- D. Drainage fields or seepage pits may not be placed in fill areas where fill would be placed on exposed bedrock or a wetland.
  - (1) The edge of any such fill will extend at least as far as dimensions specified below.
  - (2) No such fill shall be located in natural drainage courses or swales. Fill used should meet the following specifications:
    - (a) Percolation rates in the fill after compaction or settlement shall be at least 5 minutes and shall not exceed 30 minutes per inch.
    - (b) Fill should be compacted or allowed to settle for 6 months.
    - (c) Percolation tests shall be taken after compaction of fill, after 6 months settling time or at the source of the fill.
- E. There shall be a minimum distance of 50 feet from the edge of a tile field or pit to the top of any slope greater than 3:1.

### **7.040 Periodic Inspection**

The New York State Department of Health and/or the Land Use Officer shall have the right to make periodic inspections of the operation of sewage disposal systems, including the right to make such tests as deemed appropriate to protect the health and safety of the environment and surrounding properties. Where, based upon such test, the New York State Department of Health or the Land Use Officer determines that a sewage treatment system is inadequate, the New York State Department of Health or the Land Use Officer may make orders as are necessary and proper to protect health, including an order that the deficiency be cured within fifteen (15) days or that use of the system cease. A violation of such order shall be a violation of this ordinance.





## ARTICLE 8: SITE PLAN REVIEW & APPROVAL

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### 8.010 Site Plan General Provisions

- A. Applicability. All uses designated by the letter "P" in Article 3 herein shall require Site Plan Review and Approval from the Planning Board, with the exception of single-family residences, multifamily residences, and residential accessory uses.
- B. Purpose. The purpose of Site Plan Review and Approval is to insure that the design, layout, and operation of an allowed use within a district:
  - (1) Minimizes adverse impacts upon neighboring properties, the natural and man-made environment, roadways, and the community in general,
  - (2) Is in keeping with the character of the area in which it is located, and
  - (3) Is consistent with the goals and objectives of the Town of Arietta Comprehensive Plan.
- C. Planning Board Authority. The Planning Board is hereby authorized to review and approve site plans. The Planning Board shall approve no site plan unless it finds that the standards stated in this article are satisfied, and that adverse impacts are mitigated to the extent practicable.
- D. Public Hearing. A public hearing is optional, at the discretion of the Planning Board, for uses requiring site plan review and approval.

### 8.020 Site Plan Standards

- A. The following standards shall be applied to all uses requiring a Site Plan Approval:
  - (1) Impact Upon Surrounding Properties. Land use and development shall be planned and undertaken so as to avoid adverse impacts on adjoining and nearby land uses, especially residential uses, and shall not adversely affect the character of the neighborhood. The proposed use shall not create a significant adverse impact upon nearby properties by reason of traffic, noise, fumes, odors, vibration, flashing lights, litter, surface water or groundwater contamination, air pollution, drainage, visual impact, excessive night time lighting, creation of a safety hazard, risk of fire or explosion, or any other cause. The location, nature, and height of buildings, walls, and fences shall not discourage the appropriate development and use of adjacent land and buildings, nor significantly impair their value.
  - (2) Emergency Vehicle Access. All proposed buildings, structures, equipment, and materials shall be readily accessible for fire and police protection.
  - (3) Buffers, Screening. Any non-residential use in the SR-1 District and the SR-2 District shall be substantially screened from view of pre-existing residential properties at all seasons of the year by vegetation or by fencing of a design and type approved by the Planning Board. In addition, the Planning Board may determine such buffering and screening is appropriate in other districts if such proposed use is determined to have an adverse visual impact upon neighboring properties or the community. For purposes of this part, a pre-existing residential property shall mean any lot of record that contains a residential structure at the time a complete application for the proposed use is received by the Planning Board.
  - (4) Landscaping. Any proposed use involving the construction of a new building or addition or any parking area shall require the submission of a landscaping plan as part of the application. The landscaping plan shall show the location, type, and size of species to be planted or to be retained on the site. The Planning Board may require that such plan be prepared by a professional architect, engineer, landscaper, or planner. This requirement may be waived by the Planning Board in the case of uncomplicated projects.
  - (5) Drainage and Erosion Control. Adequate provision shall be made for drainage of the site, and to insure that stormwater runoff does not create an adverse impact upon nearby lands or waterways. Appropriate erosion control measures shall be taken to prevent the pollution of waterways by silt and sediment. All NYS Department of Environmental Conservation rules and regulations pertaining to erosion and runoff control shall be satisfied.

- (6) Water Quality Protection. Adequate provision shall be made to insure that any leak, spill, or other discharge of petroleum based products or other chemical potentially harmful to surface water or groundwater supplies are contained and are prevented from being introduced into such water. Approval may require that potentially harmful materials be stored on an impervious pavement, enclosed by an imperious dike high enough to contain the volume or liquid kept in the storage area, and/or be separated from any shoreline, watercourse, or stormwater runoff channel by adequate setback.
- (7) Lighting. Exterior lighting shall be directed down and away from adjoining residential properties and public roads, and shall not constitute a traffic hazard. Lighting shall be shielded from shining into the nighttime sky so as to prevent light pollution. High intensity lighting shall be minimized. The Applicant shall provide a lighting plan showing the location and design of outdoor lighting facilities. The lighting plan requirement may be waived by the Planning Board in the case of uncomplicated projects.
- (8) Water Supply. Adequate provisions shall be made for water supply and shall comply with all applicable local and state regulations.
- (9) Sewage Disposal. On-site disposal systems shall comply with all applicable state and local regulations.

### 8.030 Application for Site Plan Approval

One or more property owners may initiate a request for Site Plan Approval by filing 3 copies of an application with the Land Use Officer using forms supplied by him which shall include information sufficient for the Planning Board to make its findings. Each application shall include:

- A. A vicinity map at a scale of 1 inch = 2,000 feet that shows the relationship of the project to the surrounding area. Such map may be superimposed on a NYS Department of Transportation planimetric quadrangle map of the area that shows land contours as well as other features.
- B. Six copies of a site plan map, drawn to an approved scale, prepared by a professional architect, landscape architect, engineer, or surveyor. The map shall include as applicable:
  - (1) Title of drawing, including name and address of the applicant, the landowner(if different), and the person responsible for preparation of such drawing.
  - (2) North arrow, scale, and date.
  - (3) Boundaries of the property plotted to scale and a map showing all properties within a radius of 500 feet of the exterior boundaries thereof.
  - (4) Land contours at appropriate intervals.
  - (5) Existing watercourses, bodies of water, drainage patterns, and shoreline.
  - (6) Proposed grading and drainage plan and/or stormwater management plan.
  - (7) Location, design, type of construction, proposed use and exterior dimensions of all proposed buildings.
  - (8) Location, proposed use and height of all building, structures, and site improvements, including culverts, drains, retaining walls, and fences.
  - (9) Location, design, and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
  - (10) Location of outdoor storage, if any.
  - (11) Provision for handicapped access in accordance with applicable local and state regulations.
  - (12) Description of the method of sewage disposal and location of the facilities.
  - (13) Identification of water sources; if well locate.
  - (14) Location, size and design and construction materials of all proposed signs.
  - (15) Location and characteristics of all buffer areas, including existing vegetative cover.
  - (16) Lighting Plan.
  - (17) Landscaping Plan.
  - (18) Other information as required by the Planning Board.
- C. Accompanying data, to include the following as applicable:

- (1) Application form and fee.
  - (2) Name and address of applicant and any professional advisors.
  - (3) Property deed and authorization of owner if applicant is not the owner of the property.
  - (4) Estimated project construction schedule.
  - (5) Identification of any permits required from other governmental bodies.
  - (6) Environmental Assessment Form.
  - (7) A Jurisdictional Inquiry Form (JIF).
  - (8) Any additional endorsements, certifications, or approvals required by the Planning Board and/or the Zoning Board of Appeals.
  - (9) Other information as the Planning Board may reasonably require to assess the proposed project.
- D. The Planning Board may waive one or more submission requirements required in 8.030 Section B or C in the case of projects of an uncomplicated nature.

#### **8.040 Site Plan Procedures & Findings**

Applications for Site Plan Approval shall be processed in the following steps:

- A. Application. Within 10 days of receipt of any application, the Land Use Officer shall notify the applicant of any additional information required to make the application final and complete. If no notice is given under this section, the application shall be final and complete as filed.
- B. Referral to Planning Board and/or Adirondack Park Agency. The Land Use Officer shall refer any application for Site Plan Approval that is also a Class A Regional Project pursuant to APA regulations to the Adirondack Park Agency for its review, and shall also provide a copy of said application to the Planning Board. The Land Use Officer shall refer all other applications for Site Plan Approval to the Planning Board for its review and action.
- C. Review. The Planning Board shall undertake a review of an application at the first scheduled meeting after the application is submitted. At the review, the Planning Board shall determine:
  - (1) Whether the application is complete.
  - (2) Whether the project is a Class B regional project as defined by the Adirondack Park Agency Act. If the application is deemed to be incomplete, then the applicant shall be notified in writing of what additional information is required.
  - (3) The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:
    - (a) Location, arrangement, size, design, and general site compatibility of buildings, lighting and signs.
    - (b) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls.
    - (c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
    - (d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
    - (e) Adequacy of stormwater and drainage facilities.
    - (f) Adequacy of water supply and sewage disposal facilities.
    - (g) 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.
    - (h) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
    - (i) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

- D. SEQRA. Pursuant to the New York State Environmental Quality Review Act (SEQRA) the Planning Board in its review of an application shall:
- (1) Determine that no further action is necessary to fulfill the requirements of said act, or
  - (2) Require that the applicant submit an Environmental Assessment Form (EAF) for its review. Upon review of the EAF the Planning Board shall issue either a negative declaration, a conditioned negative declaring, or a positive declaration. If a positive declaration is issued, the Planning Board shall require that an Environmental Impact Statement be prepared pursuant to SEQRA.
- E. Notice to APA. (Only required for Class B Regional Projects) Not later than 10 days following receipt of a complete application for a Class B Regional Project, the Adirondack Park Agency shall be notified and furnished with any information that the Agency deems necessary.
- F. Hearing.
- (1) A public hearing is optional for Site Plan applications. If a hearing is determined appropriate by the Planning Board, such hearing shall be conducted within sixty-two (62) days of receipt of a complete application. Notice of the hearing shall be given to the applicant at least ten (10) days before the hearing, and shall be printed in a newspaper of general circulations in the Town at least ten (10) days prior to the hearing. In the case of Class B Regional Projects, a copy of the public notice of the hearing shall be mailed to the Adirondack Park Agency at least fourteen (14) days prior to such hearing.
  - (2) The applicant shall notify, all property owners, and provide proof of mailing, within 500 feet of the project site's property boundary of the date, time, place, and subject of the public hearing at which the Site Plan will be reviewed. Proof of such mailing shall be submitted to the Planning Board prior to the public hearing.
- G. Decision. The Planning Board shall render its decision to approve, approve with conditions, or deny the application within sixty-two (62) days after the hearing, unless an extension is mutually agreed upon.
- H. Record of Decision. Within five (5) business days after such decision is rendered it shall be filed in the Office of the Town Clerk, and a copy shall be mailed to the applicant. All records of decision shall be in writing, and shall contain findings of fact that support the decision. The record shall contain any conditions or modifications required by the Zoning Board of Appeals, and if the Site Plan is disapproved the reasons of disapproval shall be stated. If a Class B Regional Project is involved, the record shall state that the project fulfills the requirements for Class B Regional Project approval as specified in Article 13 herein.
- I. Procedure for Variances. Should an application require both a variance and Site Plan Approval the Planning Board shall have the authority to approve the site plan and the Zoning Board of Appeals shall have the authority to grant the variance. The applicant must meet all conditions required in both approvals.

#### **8.050 Approval**

- A. A Site Plan Approval shall serve as authorization to the Land Use Officer to issue a permit subject to the terms and conditions of such approval. Such permit, and any certificate of occupancy issued with respect to the project, shall be conditional upon the continued effectiveness of the approval.
- B. 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, the Land Use Officer, and any other appropriate parties.
- C. Inspection of Improvements. The Land Use Officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.
- D. Lapse. All site improvements and/or conditions associated with a Site Plan Approval shall be completed and in effect within two (2) years from approval or shall be deemed invalid and not eligible for a certificate of occupancy without a new Site Plan Approval.

## **ARTICLE 9: SPECIAL USE PERMIT REVIEW & APPROVAL**

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### **9.010 Special Use Permit General Provisions**

- A. Applicability. All uses designated by the notation "SP" in Article 3 shall require a Special Use Permit from the Zoning Board of Appeals and a Site Plan Approval from the Planning Board.
- B. Purpose. The purpose of this article is to allow a variety of uses of land provided that such uses do not adversely affect neighboring properties, the natural environment, or the character of the area in which they are located, and provided that such land uses are consistent with the goals and policies stated in the "Town of Arietta Comprehensive Plan." While a particular use may be generally suitable within a Zoning District as indicated herein, it is recognized that each physical site and each specific land use is unique, and that a particular use may not be compatible in a specific location.
- C. Authority. The Zoning Board of Appeals is hereby authorized to issue Special Use Permits for Special Uses:
  - (1) No Special Use Permit shall be issued unless the Zoning Board of Appeals finds that the standards stated in this article are satisfied.
  - (2) A use allowable by Special Use Permit may be developed, undertaken, enlarged, or altered only upon a Special Use Permit granted by the Zoning Board of Appeals in accordance with the standards and procedures set forth in this article, except where such use is a regional project, in which case regional project review under Article 13 hereof shall supersede the procedures of this article.
  - (3) A Special Use Permit shall be denied if a significant adverse impact is found to exist that cannot be adequately mitigated so as to render the impact non-significant.
- D. Public Hearing. A public hearing is required for uses requiring a Special Use Permit.

### **9.020 Special Use Permit Approval Requirements**

- A. Special Use Permit Conditions. In order to approve a Special Use Permit, the Zoning Board of Appeals shall find that the following conditions are satisfied:
  - (1) In permitting the development, undertaking, enlargement or modification of a use allowable by Special Use Permit, the Zoning Board of Appeals may impose, in addition to those standards and requirements expressly specified by this ordinance any additional conditions which the Zoning Board of Appeals considers necessary to protect the health, safety and welfare of the Town and its present and future citizens and the best interests of the surrounding property, the neighborhood, or the Town as a whole. In approving a Special Use Permit application, the Zoning Board of Appeals shall have the authority to impose such conditions and restrictions on the design, layout, and operation of a proposed land use and development that it deems reasonable to fulfill the purposes of this ordinance, including but not limited to:
    - (a) Requiring landscaping or vegetative screening, and/or the retention of existing vegetation, to minimize adverse visual impact.
    - (b) Increasing building setback(s) or other dimensional requirements.
    - (c) Limiting the size or height of buildings, structures, parking areas or facilities.
    - (d) Specifying the location and design of vehicle access points, entrances, exits, and off-street parking spaces.
    - (e) Requiring that materials be stored indoors or certain activities be conducted indoors.
    - (f) Limiting hours of operation to reduce noise impacts on neighboring properties.
    - (g) Requiring stormwater retention ponds or other drainage and pollution control devices.
    - (h) Requiring clustering of structures and uses in order to minimize the burden on public services, and/or to preserve open space character or open spaces of special significance or importance to the community.
    - (i) Requiring more stringent shoreline restrictions for particular projects.

- (j) Requiring the posting of performance bonds and furnishing of guarantees to insure the completion of the project in accordance with the terms and conditions applicable thereto.
- B. Class B Regional Projects. Such projects shall also be subject to any applicable standards and conditions associated with Article 13 of this Ordinance.

#### **9.030 Application for Special Use Permit**

- A. One or more property owners may initiate a request for a Special Use Permit by filing three (3) copies of an application with the Land Use Officer using forms supplied by him which shall include information sufficient for the Zoning Board of Appeals to make its findings. Each application shall meet the requirements of Article 8 for Site Plan Review and Approval and shall include any other information as required by the Zoning Board of Appeals or the Planning Board.
- B. The Zoning Board of Appeals may waive one or more submission requirements in the case of projects of an uncomplicated nature.

#### **9.040 Special Use Procedures & Findings**

- A. Application. Within 10 days of receipt of any application, the Land Use Officer shall notify the applicant of any additional information required to make the application final and complete. If no notice is given under this section, the application shall be final and complete as filed.
- B. Referral to Zoning Board of Appeals or Adirondack Park Agency. The Land Use Officer shall refer any application for Special Use Permit that is also a Class A Regional Project pursuant to APA regulations to the Adirondack Park Agency for its review, and shall also provide a copy of said application to the Zoning Board of Appeals. The Land Use Officer shall refer all other applications for Special Use Permit to the Zoning Board of Appeals for its review and action.
- C. Preliminary Review. The Zoning Board of Appeals shall undertake a preliminary review of an application within thirty (30) days from when the complete application is submitted. At the review, the Zoning Board of Appeals shall determine:
  - (1) Whether the application is complete;
  - (2) What further action will be necessary to fulfill the requirements of SEQRA; and
  - (3) Whether the project is a Class B regional project as defined by the Adirondack Park Agency Act. If the application is deemed to be incomplete, then the applicant shall be notified in writing of what additional information is required.
- D. Town Planning Board Referral. The Zoning Board of Appeals shall promptly file a copy of the complete application with the Town Planning Board. The Town Planning Board shall be given the opportunity to file its comments or recommendations on the application in writing to the Zoning Board of Appeals prior to any hearing thereof and the opportunity to present the same at the hearing.
- E. SEQRA. Pursuant to the New York State Environmental Quality Review Act (SEQRA) the Zoning Board of Appeals in its initial review of an application shall:
  - (1) Determine that no further action is necessary to fulfill the requirements of said act, or
  - (2) Require that the applicant submit an Environmental Assessment Form (EAF) for its review. Upon review of the EAF, the Zoning Board of Appeals shall issue either a negative declaration, a conditioned negative declaring, or a positive declaration. If a positive declaration is issued, the Zoning Board of Appeals shall require that an Environmental Impact Statement be prepared pursuant to SEQRA.
- F. Notice to APA. (Only required for Class B Regional Projects) Not later than 10 days following receipt of a complete application for a Class B Regional Project, the Adirondack Park Agency shall be notified and furnished with any information that the Agency deems necessary.
- G. Hearing.
  - (1) A public hearing is mandatory for Special Use Permit applications and for Class B Regional Projects. Such hearing shall be conducted within sixty-two (62) days of receipt of a complete application. Notice of the hearing shall be given to the applicant at least ten (10) days before the hearing, and shall be printed in a newspaper of general circulations in the town at least ten (10) days prior to the hearing. In the case of Class B Regional Projects, a copy of the public notice of the hearing shall be mailed to the Adirondack Park Agency at least fourteen (14) days prior to such hearing.

- (2) The applicant shall notify all property owners, and provide proof of mailing, within 500 feet of the project site's property boundary of the date, time, place, and subject of the public hearing at which the Special Use Permit will be reviewed. Proof of such mailing shall be submitted to the Zoning Board of Appeals prior to the public hearing.
- H. Findings. In order to grant a special use permit the Zoning Board of Appeals shall find:
- (1) That the proposed use will be in compliance with all the applicable provisions of this ordinance and all other applicable Town laws and regulations.
  - (2) That the request is in harmony with the general purpose and intent of this ordinance specifically taking into account the location, character, and size of the proposed use and the character of the district in which such use is proposed, the foreseeable environmental impact of such use, the nature and intensity of the activities to be involved in or conducted in connection with the proposed use, and the nature and rate of any increase in the burden on supporting public services and facilities which will follow the approval of the proposed use.
  - (3) That the establishment, maintenance or operation of the use applied for will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town. In considering the above findings, the Zoning Board of Appeals shall employ the list of areas of impact set out in this Article and in Section 13.030.
- I. Decision. The Zoning Board of Appeals shall render its decision to approve, approve with conditions, or deny the application within sixty-two (62) days after the hearing, unless an extension is mutually agreed upon. The Zoning Board of Appeals may limit the duration that the Special Use Permit use is valid as part of its decision.
- J. Record of Decision. Within five (5) business days after such decision is rendered it shall be filed in the Office of the Town Clerk, and a copy shall be mailed to the applicant. All records of decision shall be in writing, and shall contain findings of fact that support the decision. The record shall contain any conditions or modifications required by the Zoning Board of Appeals, and if the Special Use Permit is disapproved the reasons of disapproval shall be stated. If a Class B Regional Project is involved, the record shall state that the project fulfills the requirements for Class B Regional Project approval as specified in Article 13 herein.

#### **9.050 Approval**

- A. A Special Use Permit from the Zoning Board of Appeals, in conjunction with a Site Plan Approval from the Planning Board, shall serve as authorization to the Land Use Officer to issue a permit subject to the terms and conditions of such approval. Such permit, and any certificate of occupancy issued with respect to the project, shall be conditional upon the continued effectiveness of the approval.
- B. Lapse.
- (1) All site improvements and/or conditions associated with a Special Use Permit shall be completed and in effect within 2 years from approval or shall be deemed invalid and not eligible for a certificate of occupancy without a new Special Use Permit approval.
  - (2) The Special Use Permit shall be void if the use shall cease for more than 12 months for any reason. The Zoning Board of Appeals may renew the approval for a period not exceeding 12 months, provided that it finds that the facts upon which the approval was granted have not substantially changed.

## ARTICLE 10: SUBDIVISION

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### 10.010 Permits for Subdivision

- A. Any project which is or includes a subdivision shall be referred by the Land Use Officer to the Planning Board which, by resolution of the Town Board adopted pursuant to Section 276 of the Town Law, is authorized and empowered to approve plats showing lots, blocks or sites, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the Office of the County Clerk and to conditionally approve preliminary plats within the Town.
- B. The Planning Board shall review subdivisions in accordance with the standards of this ordinance and the standards and procedures set out in subdivision regulations adopted by the Planning Board and approved by the Town Board.
- C. The Land Use Officer shall not issue a permit with respect to a project which is, or includes a subdivision until approval of the Planning Board as to such subdivision has been granted, and shall not issue a Certificate of Occupancy as to such a project until any and all work required to be done by the applicant in connection with said subdivision has been completed or satisfactorily guaranteed and any and all other conditions of such subdivision approval have been satisfied.
- D. A Jurisdictional Determination from the APA shall be submitted with all subdivision and boundary adjustment applications.

### 10.020 Subdivision, Minimum Lot Size and Intensity Designation

- A. All subdivision shall be in accordance with the intensity designations established in Article 3. Where the intensity designations apply, no subdivision shall be undertaken except where there is contiguous land free for subdivision in an amount equal to the acreage/dwelling unit set out opposite the applicable intensity designation in Section 3.040 for each dwelling unit contemplated.
- B. Land free for subdivision is the total parcel of land less any land associated with existing principal buildings on the land.
  - (1) Land associated with existing principal buildings shall be, in the case of an existing single family residence, the minimum size specified in Article 4 for SR1 or SR2, as the case may be.
  - (2) In the case of tourist accommodations or multifamily residences, the land associated with an existing principal building shall be the number of dwelling units included times the acreage/dwelling unit set out opposite the applicable intensity designation in Section 3.040.
  - (3) In calculating land free for subdivision, no land which lies within the road bed of a public highway shall be counted.
- C. The sale of a landowner's entire ownership on one side of a public road, railroad or right of way owned in fee, or other intervening ownership will not be considered a subdivision provided such intervening ownership existed prior to August 1, 1973 and provided further that said sale is not part of a larger jurisdictional project presently being proposed by said landowner. For the purpose of counting the number of lots to determine the Planning Boards jurisdiction, the following shall be counted:
  - (1) Any lot to be retained by the developer, and
  - (2) Any lots in the same use area which are part of one project and which would otherwise be adjoining, but are located on opposite sides of a public road or right of way owned in fee shall be counted.

### 10.030 Subdivision of Shoreline Land

Regulations requiring specified amounts of shore frontage in the subdivision of shoreline land appear in Section 5.020.

### 10.040 Site Plan for Subdivisions

- A. As a condition of approving a subdivision, the Planning Board shall find:



- (1) That the site plan is sensitive and responsive to and minimally disruptive of the natural conditions of the site;
- (2) That the site plan provides for and locates well-planned streets directly serving each lot, parcel or site; such streets to be developed at the time of the undertaking of the subdivision; and
- (3) The site plan shall be such as to minimize visual impact of the project from a public highway.

#### **10.050 Protection of Common Open Space**

Where land within a subdivision is designated as common open space, the Planning Board shall find, as a condition of approval, that such common open space shall be appropriately managed by a property owners' association or other appropriate entity and for the life of the project shall be protected from any improvement inconsistent with its common open space character. The Planning Board shall require that the project sponsor undertake the formation of the management entity where such entity is required, and that in appropriate cases the project sponsor submit a restrictive declaration for filing with the land records covenanting non-development of the common open space.

#### **10.060 Large Scale Residential Development & Clustered Residential Development**

- A. In the case of a subdivision which includes up to seven (7) lots intended to accommodate single family residence use, or up to three (3) or more multifamily residences, or a combination of the above totaling not more than five (5) or more buildings, the following provisions in Section 10.061 shall apply at the option of the developer.
- B. In the case of a subdivision which includes eight (8) or more lots intended to accommodate single family residence use or would include four (4) or more multifamily residences or a combination of the above totaling six (6) or more buildings the following provisions in Section 10.061 shall apply mandatorily.
- C. In the case of a clustered residential development, the following provisions in Section 10.061 shall apply mandatorily.

##### **10.061 Open Space**

Not less than 30% of the total project area shall be useful common open space meeting the standards of this subsection, provided that in no event shall useful common open space be required to exceed four (4) acres per dwelling unit. In computing total project area, lakes, ponds, rivers, and streams within the project shall be counted. The common open space shall be of three types:

- A. Centrally located major open space serving the entire project, or, in the event the project is divided into segments exceeding seventy-five (75) units, serving each such segment. Such space shall constitute not less than 40% or more than 70% of the total useful common open space of the project or allocated to such segment, and shall be predominantly left in its natural state and accessible from all dwelling units served. Not more than 80% of such centrally located major open space shall be a water body or water course.
- B. Satellite open space areas serving groupings of dwellings. Such areas shall in the aggregate constitute not less than 20% nor more than 40% of the total useful common open space of the project segment, and each such area shall be useful and attractive for active and passive recreation and readily accessible from the group of dwellings served.
- C. Linear open space connectors, attractively designed and landscaped, linking the various residential and amenity elements of the project.

##### **10.062 Protection of Useful Common Open Space**

Such useful common open space shall, at all times, be accessible to all residents of the project, appropriately improved for common use, and protected against any development inconsistent with its common open space character. As a condition of its approval of a large scale residential development, the Planning Board shall require that the project sponsor submit a restrictive declaration for filing in the land records or other suitable guarantee insuring compliance with the above.

**10.063 Setbacks**

No building shall be closer than 100 feet from the near edge of the road bed of a State Highway, nor closer than 75 feet from the near edge of the road bed of a public highway other than a State Highway, provided that no building shall be within the right of way of a public highway; and no building shall be closer than 100 feet from the perimeter of the development.

**10.064 Site Plan**

The project shall be designed and constructed in a manner sensitive to the topography and other natural resource considerations. Existing native vegetation shall be retained to the maximum extent feasible. A detailed landscaping plan shall be required with the sponsor's application. Parking shall be to the extent feasible concentrated in common areas.

**10.065 Minimum Lot Size**

- A. A lot accommodating each single family residence use in a Clustered Residential Subdivision shall at a minimum be a zoning lot of 12,500 square feet.
- B. Clustered Residential Subdivisions including two (2) or more shoreline lots shall also comply with the minimum shore frontage requirements of Section 5.022 of these regulations.

**10.066 General Store**

Upon a finding of need and design compatibility, the Planning Board may permit a general store to be located on a suitable site within a large scale residential development.

**10.067 Access**

All lots, parcels, and sites shall have access by graveled or paved streets to a public highway.

**10.068 Other Requirements Unaffected**

Except as modified in this section, all requirements of this ordinance shall be applicable to large scale residential developments.

**10.070 Exemptions**

Any subdivision, other than a mobile home park, mapped, filed, and approved by NYS Department of Health prior to the effective date of this ordinance is exempt from these provisions, but should comply where possible. Whenever the requirements of these regulations are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive or that imposing the higher standard shall govern.

## ARTICLE 11: NONCONFORMITY

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### 11.010 Nonconforming Uses, Structures, & Property

- A. Any lawful non-conforming use, structure, or property existing on the effective date of this ordinance or any amendments thereto may be continued, subject to the following requirements:
- (1) Enlargement, alterations and/or repairs of buildings and structures.
    - (a) Buildings and structures which contain a non-conforming use shall not be enlarged or extended unless the use therein is changed to a conforming use. A structure containing a non-conforming use may be repaired, maintained, or converted, provided that no such activity shall create new non-conformity or increase the degree of existing non-conformity. This shall not be construed to permit any unsafe use, or to affect any lawful regulation or prohibition of an unsafe use.
    - (b) A structure containing a permitted use, but which does not conform to the requirements regarding height, width of lot, size of lot, setback and/or any other lot or yard requirement for the district in which it is located, may be enlarged or altered provided that any additions are constructed within the applicable setback and yard requirements.
    - (c) Buildings and structures which do not comply with the minimum setbacks specified in these regulations shall not be permitted to expand their non-conformity in any direction, including height, without the issuance of a variance by the Zoning Board of Appeals.
    - (d) Any non-conforming building or structure or portion thereof declared unsafe by proper authority may be restored to a safe condition. Nothing in these regulations shall prevent maintenance, or the strengthening or restoring to a safe condition.
  - (2) Property or lots.
    - (a) The lot or tax parcel on which there is a non-conforming use or non-conforming structure shall not be reduced in size.
    - (b) A non-conforming lot shall not be reduced in size to further increase its non-conformity.
    - (c) A non-conforming structure and/or non-conforming use shall not be moved in whole or in part to another portion of the lot or to another lot where such structure or use would be non-conforming.
  - (3) Shoreline setback and cutting. In no case shall any increase or expansion of any building or structure, or any shoreline cutting, increase non-conformance, in any direction including height, with the minimum setbacks from shorelines and shoreline cutting restrictions without obtaining an area variance. Expansion of an existing non-conforming structure not meeting the shoreline setback requirements of 100 feet must also comply with the following standards:
    - (a) Expansion of structure cannot increase the present setback non-conformance.
    - (b) Expansion does not increase the height of the existing structure.
    - (c) Setback will be no less than 25 feet from sideline and finished structure will not exceed 50% of lot width.
    - (d) There must be enough area to upgrade and accommodate septic system expansion as may be required by the NYS Department of Health.
    - (e) Structures built originally with a variance can only expand further with a variance.
  - (4) Restoration.
    - (a) Any non-conforming use and/or structure which is damaged, to an extent not exceeding 75% of its floor area, by fire, flood, wind, hurricane, tornado, or other acts beyond the control of man may be repaired or rebuilt according to its original use, footprint, bulk and area, provided such rebuilding or repair be accomplished within three (3) years after such damage occurs.
    - (b) If an existing non-conforming use or structure is damaged or destroyed by fire, flood, wind, hurricane, tornado, or other acts beyond the control of man to an extent exceeding 75% of its floor area, the existing non-conforming use and/or structure may be repaired or rebuilt according

to its original footprint, bulk, and area at the time of the casualty; provided that the nonconformance is the minimum reasonably necessary under the circumstances and construction is begun within 12 months of the casualty.

- (c) Failure to commence reconstruction or repair within one (1) year constitutes abandonment of the non-conforming use and any non-conforming structure unable to conform to these zoning regulations shall require a variance from the Zoning Board of Appeals.
  - (d) An as-built survey by a licensed professional of all on-site improvements shall be required by the Land Use Officer to verify existing conditions prior to any restoration of a non-conforming structure.
- (5) Discontinuance. Whenever a non-conforming use has been discontinued for a period of one year the use shall not thereafter be re-established except in conformity with this ordinance.
- (6) Changes. A non-conforming use may be changed to a conforming use. A non-conforming use may not be changed to another non-conforming use. Once changed to a conforming use, no building, structure or land so changed shall be permitted to revert to a non-conforming use without the issuance of a variance.
- (7) Ownership. Any non-conforming use sold to another party may be continued, provided that such use is re-established within one year of the sale.
- (8) Replacement.
- (a) Any structure purposefully removed or destroyed for reasons of replacement must be brought into total compliance with this ordinance.
  - (b) In addition, if the use in question (i) constitutes a Class B Regional Project, (ii) is other than a single family dwelling and (iii) has been discontinued for a period exceeding five years (or under circumstances indicating a complete abandonment), then a Class B Regional Permit is also required from the Town prior to recommencement of the use.
  - (c) An as-built survey by a licensed professional of all on-site improvements shall be required by the Land Use Officer to verify existing conditions prior to any replacement of a non-conforming structure.

## ARTICLE 12: SUPPLEMENTAL USE REGULATIONS

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### 12.010 Bed and Breakfast Establishment

- A. The Bed and Breakfast establishment shall be conducted within a single-family dwelling as permitted within the designated districts identified in Section 3.030 and shall be the principal residence of the operator and at least one bedroom shall be reserved for the owner's exclusive personal use. Any establishment that is not owner occupied shall be considered a Tourist Accommodation under this ordinance.
- B. A Special Use Permit shall be required for all Bed and Breakfast establishments except in the TAC use designation where it shall be permitted by Site Plan Approval. All Bed and Breakfast establishments shall be compatible with its immediate neighborhood and meet the following regulations:
  - (1) A Bed and Breakfast establishment may offer meals but such meals may only be offered to registered lodgers. A public dining room and/or bar is prohibited.
  - (2) A Bed and Breakfast establishment may provide facilities and services that shall be offered solely to registered lodgers and not to the general public.
  - (3) There shall be at least one off-street parking space per guest room and at no time are any vehicles permitted to park along public roads or highways.
  - (4) Signage shall be limited to one sign which may not exceed 6 square feet, and the overall height of the sign may not exceed 4 feet, and shall otherwise comply with the sign regulations contained herein.
  - (5) Utilities & Fire Protection.
    - (a) Water and sewage disposal shall meet all applicable requirements of the Town, County and the State Departments of Health and Environmental Conservation, and
    - (b) Water supply, fire protection measures, and the sewage disposal system shall be adequate for the maximum occupancy of the proposed facility.

### 12.020 Clearing and Grading

In all districts, with the exception of the RSM District, the following clearing and grading regulations shall apply:

- A. Clearing and grading shall be limited to that which is necessary to construct any principal building or accessory structures, to construct safe roads, provide needed roadside and embankment drainage, construct stable cuts and fills and provide for utility installation.
- B. Within 100 feet of any public highway, not more than 50% of the greatest number of trees in excess of 6 inches in diameter at breast height existing during the 10 year period beginning with the effective date of this ordinance, and succeeding 10 year periods, shall be removed during any such period.
- C. Within 35 feet of any shore, not more than 30% of trees in excess of 6 inches in diameter at 4.5 feet above the ground may be cut over a 10 year period.
- D. Within 6 feet of any shore, not more than 30% of shoreline may be cleared of vegetation on any one lot.
- E. Clear cutting a site shall be prohibited.

### 12.030 Clustered Residential Development

- A. A development consisting of three (3) or more dwelling units and two (2) or more residential structures, whereby allowing the structures to be clustered closer together than otherwise would be permitted by the minimum lot size, road frontage, building setback, and/or other dimensional requirements of this ordinance. A residential cluster development may consist of single-family residence, condominiums, townhouses, multifamily residence, or a senior citizen housing development. A mobile home park shall not be considered to be a residential cluster development. The following requirements shall be satisfied for clustered residential developments:
  - (1) Maximum density for the property included in the clustered residential development shall not exceed the use intensity designation as specified herein.

- (2) All lots and/or structures shall front on and have access to an internal road or drive constructed to serve the cluster development, or upon a road or drive constructed to serve a previously approved clustered residential development. No individual lot or dwelling unit shall have direct access upon an existing public road not constructed to serve an approved clustered residential development.
- (3) A clustered residential development shall have minimum frontage of fifty (50) feet upon an existing public road.
- (4) Clustered Residential Developments involving shoreline shall be in accordance with Section 5.022 of this ordinance.
- (5) Open space shall be provided in accordance with Section 10.060 of this ordinance.
- (6) Provision, whether by deed restriction, covenant, or other legal arrangement, shall be made to ensure that the undeveloped portion of the parcel remain as permanent open space or recreation area:
  - (a) Designated open space areas may be owned privately by individuals. Adequate provision shall be made by covenant, deed restriction or other legal means to insure that future owners are aware of the development restrictions upon such areas.
  - (b) Open space or recreation areas may be owned in common by individuals within the subdivision. In such case, covenants or other legal arrangements shall specify ownership of the cluster open space, method of maintenance, responsibility for maintenance, maintenance taxes and insurance, compulsory membership and compulsory assessment provisions, and any other specifications deemed necessary by the Planning Board.
  - (c) Open space or recreation areas may be deeded to the Town upon approval by the Town Board.
- (7) In their approval of site plans for clustered residential development the Planning Board shall maintain accurate records and maps showing the location of permanent open spaces. No further development upon the designated open spaces shall be permitted.

#### **12.040 Home Occupation**

- A. A home occupation must be conducted within a dwelling unit that is a bona fide residence of the principal practitioner, or within an accessory building on the residential property such as a garage with a valid Site Plan Approval from the Planning Board.
- B. No more than thirty-five (35) percent of the total floor area of the dwelling unit and its accessory buildings shall be used for the conduct of a home occupation.
- C. Not more than one person other than a resident(s) of the dwelling unit shall be employed as part of the home occupation.
- D. In no way shall the appearance of the structure be altered or the operation within the dwelling unit be conducted in a manner which would cause the residence to differ from its residential character either by use of colors, materials, construction, lighting, or the emission of sounds, noises, or vibrations.
- E. No use shall create noise, dust, vibration, odor, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- F. Any materials stored outdoors on the property for use in such business must be stored under conditions and in a location approved by the Planning Board.
- G. There shall be sufficient off-street parking spaces provided such that at no time are vehicles parked along public roads or highways.
- H. Signage shall be limited to one sign which may not exceed 6 square feet, and the overall height of the sign may not exceed 4 feet from the ground, and shall otherwise comply with the sign regulations contained herein.
- I. A home occupation shall not include a garage or body shop, commercial stable or kennel, restaurant, tourist home, animal hospital, convalescent home, mortuary or marina.

#### **12.050 Livestock Raising**

- A. Purpose. Any single or multiple, contiguous, or non-contiguous parcel or parcels used for agricultural operations or upon which agricultural practices are being utilized or upon which agricultural farm operations or agricultural practices may be established or utilized in the future for the raising of livestock and/or livestock

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products, including but not limited to cattle, sheep, hogs, goats, horses, poultry, farmed deer, fur bearing animals, milk, eggs and furs as established by the Hamilton County Right to Farm Law.

B. Such activities shall comply with all applicable local, state, and federal health, air and water pollution regulations.

C. Standards for Livestock and/or Poultry Keeping:

(1) Confinement: An appropriate shelter shall be provided for the keeping of Livestock and/or Poultry, as well as an appropriate fly and rodent proof container or structure for manure and bedding waste storage shall be provided and maintained so as to prevent run-off to adjacent lots or to watercourses.

(2) Setback: Setback distances between any shelter housing Livestock and/or Poultry shall be a minimum of: seventy-five (75) feet from any well located on applicant property and abutting properties, seventy-five (75) feet from any street line, or behind rear Building Line if applicable, forty (40) feet from any property line, and, one hundred (100) feet from any principal structure upon property other than the applicant's. Setback distances for yard area shall be a minimum of twenty (20) feet from property lines. The Planning Board may require greater setback distances as it deems appropriate in insuring public welfare.

(3) Health:

(a) The living quarters of the Livestock and/or Poultry and the handling and disposal of solid and liquid wastes shall not create a public health hazard or have an adverse effect of the environmental quality of the surrounding area and the community in general as determined by the Planning Board.

(b) No condition shall be created that will adversely affect the performance of sewage disposal systems or water supplies located on the property or adjacent properties.

(c) No persistent, offensive odors shall be detected off the premises.

(d) The use shall conform to all applicable local, state, and federal health regulations.

(4) Keeping Area. The Planning Board shall use the following keeping area requirements as a guide in reviewing applications. Final determination of keeping area size will be made by the Planning Board to insure that the activity will not create a public nuisance or health hazard. Keeping areas for any animal will be evaluated for compliance with best animal management practices. Other types of livestock or poultry animals shall be considered by the Planning Board.

(a) Livestock. Goats, Sheep, Llamas, Alpaca, or Farmed Deer:

[1] Minimum shelter space of twenty (20) square feet per animal.

[2] Minimum yard space of three hundred (300) square feet per animal.

[3] If pastured, five (5) animals per acre.

(b) Livestock. Horses and Cattle:

[1] Minimum shelter space: ten (10) feet by ten (10) feet box stall per animal.

[2] One (1) full size horse or cow per acre with supplemental hay and feed.

(c) Livestock. Swine or Hogs:

[1] Minimum shelter space of twenty (20) square feet per pig consisting of a roof and solid man-made floor (not earth).

[2] Minimum yard space of one hundred (100) square feet per pig.

[3] No keeping area permitted in wetland or alluvial soils.

(d) Poultry. Chickens, Turkeys, Ducks, Geese, Guinea Hens:

[1] Floor area of six (6) square feet per bird.

[2] From one-half (0.5) to one (1) acre, a limit of 4 birds.

[3] From greater than one (1) acre to two (2) acres, a limit of eight (8) birds.

[4] All poultry shall be penned and not allowed to run at large off of the owner's property.

[5] Roosters shall be allowed on lots in excess of five (5) acres.

- D. Maximum Limits: The maximum number of animals permitted is five (5) in the Livestock category and twenty-five (25) in the Poultry category unless otherwise approved by the Zoning Board of Appeals.

**12.060 Motor Vehicle Service and/or Repair Shop**

- A. All vehicles awaiting service, pick-up by customers, or otherwise stored overnight on the lot shall be parked within a vehicle parking area approved by the Planning Board.
- B. All junk wastes such as discarded parts or portions of vehicles shall be stored in an enclosed structure or fenced area so as to not be visible from adjacent properties.
- C. No pumps, lubricating and other dispensing devices, and other accessory services, shall extend within 50 feet of any property line, 50 feet of any street right-of-way line, 20 feet of any building on the lot, or 100 feet from any shoreline.
- D. The Planning Board may require a green space buffer, vegetative screening, and/or solid or picket fencing in order to reduce visual impact upon surrounding properties.

**12.070 Recreational Vehicles not in Recreational Vehicle Parks**

- A. Property owners may permit a recreational vehicle to be used by guests onsite for a maximum of fourteen (14) consecutive days provided such recreational vehicle may not be used again by the same guest(s) for a period of seven (7) consecutive days thereafter.
- B. Construction purposes. A recreational vehicle may be used for the duration of the construction period of the primary residential structure provided that:
  - (1) The property owner has an approved Building Permit from the Land Use Officer, and
  - (2) The recreational vehicle will cease to be used as a residence upon receiving a Certificate of Occupancy by the Land Use Officer.
- C. Storage. A recreational vehicle may only be stored on a property owned by said recreational vehicle's owner provided that:
  - (1) There is an existing dwelling unit on the lot, and;
  - (2) Such vehicle is stored either in an enclosed garage, or out-of-doors no closer to the property line than as specified by the minimum setback requirements of the district.
- D. No permanent structural addition, such as a porch, shall be added onto any recreational vehicle.

**12.080 Roadside Stands**

Roadside stands shall be located at least ten (10) feet from any public highway right-of-way. Entry, exit, and parking shall not constitute a traffic hazard.

**12.090 Sexually Oriented Business Establishment**

- A. No sexually oriented business establishment shall be located within 500 feet of the property line.
- B. Any sexually oriented business shall be set back at least 500 feet from any highway right-of-way.
- C. The sexually oriented use shall be conducted entirely within an enclosed building.
- D. No signs or displays viewable from the exterior of the building shall display any sexual images.
- E. No outside displays or advertising other than an approved sign shall be allowed.
- F. The serving of alcoholic beverages shall be prohibited.

**12.100 Stairs & Landings to Shoreline**

- A. Stairways are the preferred alternative to major topographic alterations for achieving access up and down steep slopes to shore areas. Stairways and landings are structures subject to the shoreline requirements of this ordinance. Stairways must meet the following design requirements in addition to any New York State Building Code requirements:



- (1) Stairways must not exceed 3 feet in width on residential lots or 8 feet in width on commercial or public properties.
- (2) Landings for stairways on residential lots must not exceed 32 square feet in area. Landings for stairways on commercial or public properties must not exceed 80 square feet in area.
- (3) Canopies or roofs shall not be allowed on stairways or landings.
- (4) Stairways and landings may be either constructed above the ground on posts or pilings, or placed on the ground, provided they are designed and built in a manner that ensures control of soil erosion.
- (5) Stairways and landings must be located in the most visually inconspicuous portions of the lot, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.
- (6) Handicapped accessibility. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of this section of the ordinance are complied with in addition to the requirements of New York State Building Code.
- (7) A permit is required from the Land Use Officer for stairways that provide access to shore areas.

#### **12.110 Telecommunication Towers & Facilities**

- A. Purpose and Objectives. To provide for the location of wireless telecommunication facilities, antennas and towers while protecting the character of the Town of Arietta, the Adirondack Park, and minimizing the adverse visual and operational effects through careful design, siting and screening.
- B. Telecommunication towers, facilities, and/or antennas shall be permitted in accordance with the rules and regulations of the Adirondack Park Agency.
- C. Any proposed telecommunication tower, facility, and/or antenna shall also be referred to the Planning Board, which shall be given the opportunity at, or prior to, any such hearing to submit its report, recommendation, and/or conditions to the Adirondack Park Agency on the proposed application.

#### **12.120 Tourist Accommodation**

- A. Shall include any hotel, motel, resort, dwelling unit, or part thereof including attached and detached units or similar structures for rent or lease to the general public for commercial purposes, excepting a Bed and Breakfast establishment that meets the criteria established in Section 12.010, and may include a restaurant for the general public.
- B. Calculating Maximum Allowable Number of Units.
  - (1) Tourist accommodation shall be calculated based on the acreage/dwelling unit as determined by the intensity designation in Section 3.040.
  - (2) Each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall constitutes one-tenth (1/10) principal building;
  - (3) Each accommodation unit of a tourist home or similar structure constitutes one-tenth (1/10) of a principal building; and
  - (4) Each tourist cabin involving less than 300 square feet of floor space, each unit shall be considered to be one-tenth (1/10) of a principal building.
- C. Minimum Shoreline Frontage. Where a tourist accommodation has access to a shoreline the following shoreline frontages shall be required per room or unit, unless the minimum shoreline lot width specified for the district is greater, in which case the greater lot width shall be required:
  - (1) 100 feet for one to 10 accommodation units;
  - (2) For each additional unit up to 20 units, 8 additional feet;
  - (3) For each additional unit up to 40 units, 5 additional feet; and
  - (4) For each additional unit thereafter, 3 additional feet.
- D. A tourist accommodation may include a restaurant that may be open to the general public.
- E. There shall be sufficient off-street parking spaces for each available guest unit and at no time are any vehicles permitted to park along public roads or highways.
- F. Utilities & Fire Protection.

- (1) Water and sewage disposal shall meet all applicable requirements of the Town, County and the State Departments of Health and Environmental Conservation, and
- (2) Water supply, fire protection measures, and the sewage disposal system shall be adequate for the maximum occupancy of the proposed facility.

**12.130 Wind Power Generating Facility (Residential)**

- A. One small-scale wind turbine or one wind monitoring mast shall be permitted per property and must meet the following criteria:
  - (1) The wind turbine blade diameter shall not exceed 25 feet.
  - (2) The top of the turbine rotor sweep area or the wind monitoring mast shall not be more than 125 feet above ground level as measured at the tower base.
  - (3) The wind turbine/tower or wind monitoring mast shall be at least 150 feet from any property boundary.
  - (4) The tower system shall be designed and located in such a manner to minimize adverse visual impacts from significant public viewing areas.
  - (5) The proposed tower system shall have no exterior lighting and no television, radio, or other communications antennas on it.
  - (6) Any power transmission lines from the tower to any building shall be located underground to the maximum extent practicable.
- B. Scaled project site plans and structure elevations (showing all structure components) shall be provided.
- C. Wind Power Generating facilities are anticipated to be a Class A project subject to the Adirondack Park Agency review and approval. Such projects shall also be coordinated with the Town Planning Board.

## ARTICLE 13: REGIONAL PROJECTS

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### 13.010 General

A. This article provides for the review of Class B regional projects by the Planning Board, and sets out the criteria for review of Class A regional projects by the Adirondack Park Agency.

(B) Proposed land use and development projects may require approvals from other government entities. It is the applicant's responsibility to check with Hamilton County, New York State agencies and Federal Agencies, to obtain all necessary approvals prior to beginning the project. The Town of Arietta and the Adirondack Park Agency strongly suggest requesting a jurisdiction determination from the APA prior undertaking any new land use and development to determine if a permit is required from the APA. An APA jurisdiction determination is advised for any new subdivision.

### 13.020 Review of Regional Project

A. The Planning Board is hereby authorized to approve, approve subject to conditions, or disapprove each Class B regional project proposed to be located within the Town in accordance with the provisions of this article.

B. If a Class B regional project is also a Class A regional project, the project will be deemed to be a Class A regional project in its entirety, and subject to the review authority of the Adirondack Park Agency and not the Planning Board.

C. The Land Use Officer shall not issue a permit with respect to a Class B regional project unless it has been approved by the Planning Board, and shall not issue a permit with respect to a Class A regional project unless it has been approved by the Adirondack Park Agency.

### 13.030 Required Findings for Class B Regional Project Approval

A. In order to approve a Class B regional project, the Planning Board shall find:

- (1) The project will comply with all provisions of this ordinance and all other applicable Town laws and regulations.
- (2) The project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Adirondack Park or upon the ability of the public to provide supporting facilities and services made necessary by the regional project taking into account the commercial, industrial, residential, recreational, or other benefits which might be derived from the regional project. In making this determination, the Planning Board shall consider and make separate findings concerning the degree of impact, which the regional project will have upon those of the following development considerations, which are pertinent to the proposed regional project:

(a) Natural Resources:

[1] Water

- [a] Existing water quality.
- [b] Natural sedimentation or siltation
- [c] Eutrophication
- [d] Existing drainage and runoff patterns
- [e] Existing flow characteristics
- [f] Existing water table and rates of aquifer recharge

[2] Land

- [a] Existing topography.
- [b] Erosion and slippage
- [c] Flood plain and flood hazard.
- [d] Mineral resources.
- [e] Viable agricultural soils.
- [f] Forest resources.
- [g] Open space resources

- [h] Vegetative cover
- [i] The quality and availability of land for outdoor recreational purposes.
- [3] Air Quality
- [4] Noise Levels
- [5] Critical Resource Areas.
  - [a] Rivers and corridors of rivers designated to be studied as wild, scenic, or recreational in accordance with the Environmental Conservation Law
  - [b] Rare plant communities.
  - [c] Habitats of rare and endangered species and key wildlife habitats.
  - [d] Alpine and sub-alpine life zones
  - [e] Wetlands
  - [f] Elevations of 2,500 feet or more.
  - [g] Unique features, including gorges, waterfalls, and geological formations
- [6] Fish and Wildlife
- [7] Aesthetics
  - [a] Scenic vistas
  - [b] Views from public highways or water bodies and water courses trafficked by the public
- (b) Historic site considerations and/or structures
- (c) Site development considerations
  - [1] Natural site factors
    - [a] Geology
    - [b] Slopes
    - [c] Soil characteristics
    - [d] Depth to ground water and other hydrological factors
  - [2] Other site factors
    - [a] Adjoining and nearby land uses
    - [b] Adequacy of site facilities
- (d) Governmental Considerations
  - [1] Governmental service and finance factors
    - [a] Ability of government to provide facilities and services
    - [b] Municipal school or special district taxes or special district user charges.
- (e) Governmental review considerations
  - [1] Governmental control factors and/or conformance with other governmental controls

**13.040 Application for Class B Regional Project Approval**

- A. Application for project approval shall be made to the Land Use Officer, who shall review the application for completeness, and, if he/she finds it complete, shall refer it to the Planning Board.
- B. All applications shall be made on forms prescribed by the Planning Board and furnished by the Land Use Officer, and shall include such information as may be reasonably necessary to make the determinations set out in Section 13.030.
- C. The Planning Board may require different information for different types of projects, but with each type of project the same information shall be required of every applicant.
- D. The information required may include any or all of the following: a detailed description of the natural features of the project site, a detailed plan of the project and its components, including all proposed roads and accesses, water supply and sewage disposal systems, and their relationship to natural features, an analysis with supporting data of the impact of the project on the environment both during construction and thereafter, an

analysis with supporting data of the ability of the public to provide supporting services and facilities which can reasonably be anticipated to be required following the approval of the project, an analysis with supporting data of any benefits that might derive from the project, any plans the applicant may have for future development related to the project and information describing the applicant, his or its financial capacity to complete the project as planned, and any professional advisors or consultants engaged in respect of the project.

#### **13.050 Hearing and Decision for Class B Regional Projects**

- A. Not later than 10 days after receipt of a final and complete application, the Planning Board shall give notice of a public hearing to be held on the application, not less than fifteen (15) days nor more than sixty (60) days after the notice. A copy of said notice of hearing, together with a description of the application, shall be sent by the Planning Board to the Adirondack Park Agency simultaneously with the Board's giving of notice under this section.
- B. The Adirondack Park Agency shall be a full party in interest, with standing to participate and appeal as a party, in any and all proceedings under this article, and to enforce any decision given therein, all as provided in Section 808(2) of the Adirondack Park Agency Act.
- C. Within 15 days of the final adjournment of a hearing called and held under Section 13.050, the Planning Board shall approve, approve subject to conditions, or disapprove the proposed regional project. The Planning Board may impose such requirements and conditions to its approval of the project as are allowable within the proper exercise of the police power, including the requirement of the restriction of land against further development, whether by deed restriction, restrictive covenant or other similar appropriate means, to insure that intensity regulations shall be respected, and the imposition of reasonable conditions, including the posting of a surety bond, to insure that the project will be adequately supported by services and improvements made necessary by the project and to insure that the project will be completed in accordance with the terms of the application, of any prior permit, and any substantive conditions of the regional project approval. The decision shall be in writing, and shall contain the findings required in Section 13.030, and the factual basis for each finding. The Planning Board shall forward to the project sponsor and to the Adirondack Park Agency, and provide proof of mailing, a copy of its decision on the project.

#### **13.060 Review of Class A Regional Projects (Adirondack Park Agency)**

- A. The Adirondack Park Agency has jurisdiction to review and approve, approve subject to conditions or disapprove Class A regional projects proposed to be located within the Town pursuant to and in accordance with Section 809(9) of the Adirondack Park Agency Act and will exercise such jurisdiction in accordance with such act, the applicable Agency rules and regulations and the criteria hereinafter set forth.
- B. The Adirondack Park Agency will not approve a Class A regional project unless it first determines after seeking consultation with the Planning Board and upon consideration of any advisory recommendations of the Planning Board relative to the project, that the project would comply with the Town local land use program. The Agency will accept and adopt as its own findings any recommendations made by the Planning Board as to compliance with the dimensional and other technical requirements of the local land use program, unless such recommendations are inconsistent with the express terms of the Town local land use program.
- C. In making the determination required by Section 809(9) of the Adirondack Park Agency Act as to the impact of a proposed Class A regional project upon the resources of the Adirondack Park including the ability of all levels of government to provide supporting facilities and services made necessary by the project, the Agency shall consider those factors pertinent to the project contained in the development considerations set forth in Section 805 of the Adirondack Park Agency Act, and in so doing, shall be guided by the development objectives established by the Agency.

#### **13.070 Planning Board Role in Class A Regional Project Review**

- A. The Planning Board is hereby designated and appointed as the Town Body which shall consult with the Adirondack Park Agency with regard to Agency review of Class A regional projects. The Planning Board Chair shall represent the Planning Board unless the Planning Board designates another Town official by resolution.
- B. Within thirty (30) days following receipt by the Planning Board from the Adirondack Park Agency of notice of application completion with regard to a Class A regional project, the Planning Board or its designee shall provide the Agency with any advisory recommendations as to whether the project would comply with the Town local land use program.

**13.080 Permits for Regional Projects**

- A. Approval of a Class B or Class A regional project by the Planning Board or the Adirondack Park Agency as appropriate, shall serve as authorization for the Land Use Officer to issue a permit subject to the terms and conditions of such approval, except that an approval granted on the basis of any material misrepresentations of fact made by, or on behalf of, a project sponsor shall be void.
- B. Where a regional project is approved, the Land Use Officer shall grant a permit to the project sponsor not later than 15 days from the date of approval, provided that all other applicable requirements are met.
- C. Where a regional project is approved subject to conditions, the Land Use Officer shall grant a permit only upon the satisfactory fulfillment of such conditions, or upon the giving of satisfactory assurances, by performance bond or otherwise, that the conditions will be fulfilled.

## ARTICLE 14: VARIANCES & APPEALS

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### 14.010 General

- A. Where practical difficulties or unnecessary hardships inconsistent with the general purposes and objectives of this ordinance would result from the strict application of certain provisions hereof, the Zoning Board of Appeals may vary the application of this ordinance in accord with the standards and procedures of this article.
- B. A property owner or his agent may initiate a request for a variance by filing with the Land Use Officer, on forms supplied by him, 3 complete sets of an application. The application shall contain all information considered by the Zoning Board of Appeals as necessary to make its findings under Section 14.030, including a legal description of the property, a map showing the property and all properties within a radius of 500 feet of the exterior boundaries thereof, plans and elevations necessary to show the proposed variance, and other drawings or information needed by the Board for an understanding of the proposed use and its relationship to surrounding properties. The Land Use Officer shall forward one copy of the complete application to the Planning Board.
- C. Each application shall also be accompanied with a short or full environmental assessment form as is required by SEQRA, Article 8 of the Environmental Conservation Law (ECL), and Title 6, Part 617 of the New York Codes, Rules and Regulations (NYCRR).

### 14.020 Required Findings for Variances

#### 14.021 Area Variance

- A. Area variances may be granted where the dimensional or physical requirements of this ordinance cannot be reasonably met, including but not limited to minimum highway frontage, minimum building setbacks, maximum height of buildings, and maximum size or height of signs.
- B. In making its determination the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as balanced against the detriment to the health, safety, and welfare of the neighborhood or community. In making such determination the board shall consider:
  - (1) Whether an undesirable change in the character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance.
  - (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
  - (3) Whether the requested variance is substantial.
  - (4) Whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood.
  - (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- C. The Zoning Board of Appeals must grant the minimum area variance that it deems necessary and adequate for the applicant to make reasonable use of the property, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.

#### 14.022 Use Variances

- A. A variance to allow within a district a use other than a permitted use or a use allowable by Special Use Permit may be granted where the Zoning Board of Appeals explicitly makes all of the following findings:
  - (1) That the strict application of the use provisions of this ordinance would result in a specified unnecessary hardship to the applicant
    - (a) Which arises because of exceptional or extraordinary circumstances applying to the property and not applying generally to other properties in the same district and
    - (b) Which results from lot size or shape legally existing prior to the date of this ordinance, or topography, or other circumstances over which the applicant has had no control,
  - (2) That the property in question cannot yield a reasonable return if used for any permitted use or use allowable by Special Use Permit applicable to the district in which the property is located,

- (3) That the variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same district or similarly classified districts possess without such a variance, and,
- (4) That the variance would not materially be detrimental to the purposes of this ordinance, or to property in the district in which the property is located, or otherwise conflict with the purpose of the district or the objectives of the Comprehensive Plan of the Town, and that the variance requested is the minimum variance which would alleviate the specific unnecessary hardship found by the Zoning Board of Appeals to affect the applicant.

B. The Zoning Board of Appeals must grant the minimum use variance that it deems necessary and adequate for the applicant to make reasonable use of the property, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.

#### **14.023 Adirondack Park Agency Variances.**

A. The following variances shall be subject to Adirondack Park Agency review pursuant to Section 808(3) of the "Adirondack Park Agency Act" when outside a Hamlet area:

- (1) Variances from local shoreline restrictions;
- (2) Variances from the local controls governing intensity of development, such as minimum lot areas;
- (3) Variances from use restrictions which would allow a use other than those on the classification of compatible use lists in the Adirondack Park Agency Act for the official map land use area in which it would be located; and
- (4) Any other variances which involve the provisions of the land use and development plan except variances for front, side or rear yards not involving shoreline.

B. The Zoning Administrator shall provide written notice to the APA of any application for a variance subject to APA review (referred to in subdivision (A) of this section) within fifteen (15) days of receipt or within such period as may be agreed upon. The agency may request additional pertinent information.

C. In reviewing applications for variances which are subject to Agency review, the Zoning Board of Appeals shall consider the criteria in Sections 808.3 and 806.3 of the Adirondack Park Agency Act and 9 NYCRR Part 576 (Standards for the Review of Variances Pursuant to the Adirondack Park Agency Act), in addition to the criteria for variance approval set forth above.

#### **14.024 Grant of Variance with Conditions**

In granting any variance the Zoning Board of Appeals shall have authority to impose such reasonable conditions as are related to the use of the property for the purpose of avoiding or minimizing any adverse impact the exercise of such variance may have on the neighborhood, community, or environment.

#### **14.030 Variance Procedures & Approval Process**

A. Upon receipt of a complete application the Zoning Board of Appeals shall take the following actions:

- (1) Upon receipt of an application, the Zoning Board of Appeals shall refer one copy to the Town Planning Board.
- (2) Within 15 days of receipt of a final and complete application for a variance, the Zoning Board of Appeals shall give notice of a public hearing to be held on the application not fewer than fifteen (15) days or more than sixty (60) days after the notice.
- (3) A copy of said notice of hearing, together with a description of the application shall be sent by the Zoning Board of Appeals to the Planning Board simultaneously with the giving of notice under this section.
- (4) The applicant shall notify, by proof of mailing, all property owners within 500 feet of the project site's property boundary of the date, time, place, and subject of the public hearing at which the variance will be reviewed. Proof of such mailing shall be submitted to the Zoning Board of Appeals prior to the public hearing.
- (5) Where required by provision of the Executive Law Article 27 notice of said public hearing, together with a description of the application shall be sent to the Adirondack Park Agency simultaneously with the giving of notice under this section. The Adirondack Park Agency shall be a full party in interest, with standing to participate as a party, in any and all proceedings under this article and to enforce any



- decision given therein, and to reverse the grant of a variance, as provided in Section 808.3 of the Adirondack Park Agency Act.
- (6) Conduct a public hearing on the matter as scheduled.
  - (7) Within sixty-two (62) days of the close of the public hearing, the Zoning Board of Appeals shall render a decision to grant, grant with conditions, or deny the variance applied for. Said time period may be extended by mutual consent of the applicant and the Board.
- B. The decision of the Zoning Board of Appeals shall be in writing and shall address each of the findings in Section 14.020, and the factual basis for each finding from the record of the hearing, which shall support the decision.
  - C. Upon rendering a decision to grant a variance of this ordinance, the Zoning Board of Appeals shall notify the Town Planning Board and the Adirondack Park Agency, by proof of mailing, of such decision. The Agency shall be provided a full record of the decision, including at a minimum, a copy of the current recorded deed, the parcel's tax map number, all maps, diagrams and pictures, written statements, minutes of the Zoning Board of Appeals meeting and a copy of the Zoning Board of Appeals decision, including any conditions. Said decision of the Zoning Board of Appeals shall not be final until 30 days after the Agency receives a full record of the decision. If, within such thirty (30) day period, the Agency determines that such variance (a) involves the provisions of the approved local land use and development plan including any shoreline restriction, and (b) was not based upon the appropriate statutory basis for the granting of variances, the Agency may reverse the local determination to grant the variance.
  - D. The coming into effect of a variance shall serve as authorization for the Land Use Officer to issue a permit, provided that the project complies with all the provisions of this ordinance and all other applicable regulations.

#### 14.040 Appeal Process

##### 14.041 Notice of Appeals

- A. A notice of appeal shall be in writing on forms prescribed by the Zoning Board of Appeals. Every appeal shall refer to the specific provision of this ordinance in question, shall specify the ruling appealed from, and shall exactly set forth the interpretation that is claimed and reasons in support thereof, in addition to the following information:
  - (1) The name and address of the applicant.
  - (2) The name and address of the owner of the land which was the subject of the ruling from which the appeal is made.
  - (3) A brief description and location of the subject land, together with a statement of the present use of the land and the improvements thereon. In addition, there shall be attached a plot plan of the subject lot, indicating the location and size of the lot and size of improvements presently thereon and those in question.
  - (4) A statement of the present zoning regulations governing the subject land.
  - (5) A full statement of proposed project or other matter in connection with which the ruling appealed from arose.
- B. Promptly upon receipt of a notice of appeal, the Land Use Officer shall 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. It shall be competent for the Land Use Officer to recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he/she believes substantial justice requires the same but where he/she has not himself sufficient authority to grant the relief sought.

##### 14.042 Appeals Hearing & Decision

- A. Within fifteen (15) days after receipt of a sufficient notice of appeal, the Zoning Board of Appeals shall give notice of a hearing to be held on the appeal not fewer than fifteen (15) days nor more than sixty (60) days after the notice.
- B. Upon the hearing, any party may appear in person or be represented by an agent or attorney. The Zoning Board of Appeals shall decide each appeal within sixty-two (62) days of the close of the public hearing. Said time period may be extended by mutual consent of the applicant and the Board. The Zoning Board of Appeals' decision shall be immediately filed in its office and be a public record. In the exercise of its functions upon such appeals, the Zoning Board of Appeals may, in conformity with the provisions of the ordinance, reverse or affirm, wholly or partly, or modify the ruling in question.

**14.050 Relief from Decisions**

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York. The specific provisions of Article 78 shall govern such proceeding, except that the action must be initiated as therein provided within 120 days after the filing of the decision of the Zoning Board of Appeals in the office of the Town Clerk.

## **ARTICLE 15: ADMINISTRATION**

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### **15.010 Land Use Officer**

- A. The duty of administering and enforcing the provisions of this ordinance is hereby conferred upon the Land Use Officer, who shall be appointed by the Town Board. Such duties shall include:
- (1) Administer the Land Use Ordinance. The Land Use Officer shall review all applications for zoning permits and, if the requirements for such permit are met, he/she shall issue a permit. If the applicant's plans do not meet the Zoning requirements, he/she shall deny the permit. The Land Use Officer may not use discretionary judgment. He/she must enforce the "letter of the law."
  - (2) Referral to the Zoning Board of Appeals. An applicant after being denied a zoning permit; or any aggrieved person, or any officer, department or board of the Town, may appeal the Land Use Officer's findings to the Zoning Board of Appeals for an interpretation or variance. Should an appeal be requested the Land Use Officer shall notify the Zoning Board of Appeals of the request and forward all necessary supporting information.
    - (a) Any appeal from a decision of the Land Use Officer pursuant to this ordinance shall be made within sixty (60) days after the Land Use Officer files said decision.
    - (b) An appeal shall stay all proceedings in furtherance of the ruling appealed from, unless the Land Use Officer certifies for the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, such 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 by a court of competent jurisdiction on application, on notice to the Land Use Officer and on due cause shown.
  - (3) Referrals. The Land Use Officer shall forward applications to the appropriate reviewing Board as follows:
    - (a) Site Plan Approval to the Planning Board along with all supporting information.
    - (b) Special Use Permit to the Zoning Board of Appeals along with all supporting information.
  - (4) Site Zoning Violations. For any plans, construction, building, use, or premise found in violation of this ordinance, including any violation of any approved Site Plan or Special Use Permit, the Land Use Officer shall order the responsible party, in writing, to remedy the conditions. The Land Use Officer shall have the authority to secure from the Town Justice a stop order to restrain the continuance of the violation.
  - (5) Report to Town Board. The Land Use Officer shall provide reports as requested to the Town Board describing and enumerating actions taken and permits issued. The Land Use Officer shall provide a copy of such report to the Planning Board and Zoning Board.
  - (6) Public Record. Within 5 business days the Land Use Officer shall file all permit actions, including all correspondence with regard to violations, with the Town Clerk.

### **15.020 Planning Board**

#### **15.021 Planning Board Members**

- A. The Town Board may select a chairperson of the Planning Board, or on failure to do so, the Planning Board shall elect a chairperson from its own members.
- B. The Planning Board may adopt rules or bylaws for its operation.
- C. The Town Board may provide an appropriation to the Planning Board to cover necessary expenses including the means for the Planning Board to maintain a written record of its meetings and public hearings.
- D. The existing Planning Board, as currently constituted as of the date of this ordinance, shall continue.

#### **15.022 Powers & Duties of Planning Board**

- A. The Planning Board shall have the following powers and duties with respect to this ordinance:
- (1) Review and approval of Site Plans, subdivisions, and other boundary line adjustments in accordance with the standards and procedures set forth herein.
  - (2) Submittal of an advisory opinion to the Town Board for any proposed amendment to this ordinance.

- (3) Submittal of an advisory opinion to the Zoning Board of Appeals for any Special Use Permit application.
- (4) On the request of the Town Board, or on its own initiative, submittal of an advisory opinion to the Town Board in any matter relating to planning and zoning.
- (5) The Planning Board shall adhere to any State mandated training requirements.
- (6) Any other powers and duties as specified elsewhere in this ordinance.

**15.023 Meetings of the Planning Board**

- A. Meetings shall be held at such meeting times as the Planning Board may determine, or at the call of the chairperson.
- B. The presence of a majority of its full membership shall constitute a quorum for the conduct of business before the Planning Board. A concurring vote of a majority of its full membership shall be necessary to act on any application for Site Plan Approval.
- C. A member of the Planning Board having a conflict of interest shall abstain from any discussion or voting on that matter.
- D. The Planning Board may request and obtain any advice or opinions on the law relating to any matter before the Planning Board from its own attorney, and may request its own attorney to attend its meetings.
- E. The Planning Board may require the Land Use Officer to attend its meetings to present any facts relating to any matter before the Board.
- F. All meetings of the Planning Board shall be open to the public.
- G. The Planning Board shall keep minutes of all of its meetings. The Town Board shall provide a secretary for the Planning Board.
- H. Every decision or determination of the Planning Board shall be in writing, and shall be filed in the office of the Town Clerk.

**15.030 Zoning Board of Appeals**

**15.031 Zoning Board of Appeals Members**

- A. The Town Board shall appoint a chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Zoning Board of Appeals may designate a member to serve as acting chairperson.
- B. The Zoning Board of Appeals may adopt rules or bylaws for its operation.
- C. The Town Board may provide an appropriation to the Board of Appeals to cover necessary expenses including the means for the Board to maintain a written record of its meetings and public hearings.
- D. The existing Board of Appeals, as currently constituted as of the date of this ordinance, shall continue.

**15.032 Powers & Duties of the Zoning Board of Appeals**

- A. The Zoning Board of Appeals shall have the following powers and duties with respect to this ordinance:
  - (1) Review and decide on requests for variances to this ordinance.
  - (2) Review and approval of Special Use Permits in accordance with the standards and procedures set forth herein.
  - (3) Hear and render an interpretation on a decision made by the Land Use Officer. The interpretation power cannot lawfully be exercised unless an appeal has been taken from the Land Use Officer's decision claiming that the decision of the Land Use Officer was incorrect.
  - (4) The Zoning Board of Appeals shall adhere to any State mandated training requirements.
  - (5) Upon appeal from a decision by the Land Use Officer, decide any question involving interpretation of any provision of this ordinance, or the location of any district boundary line on the Zoning district map.

**15.033 Meetings of the Zoning Board of Appeals**

- A. The Zoning Board of Appeals shall hold meetings at the call of the chairperson, or at the request of a majority of its full membership.
- B. The presence of a majority of its full membership shall constitute a quorum for the conduct of business before the Zoning Board of Appeals. A concurring vote of a majority of its full membership shall be necessary to act on any application for variance or appeal.

- C. A member of the Zoning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- D. The Zoning Board of Appeals may request and obtain any advice or opinions on the law relating to any matter before the Zoning Board of Appeals from its own attorney, and may request its own attorney to attend its meetings.
- E. The Zoning Board of Appeals may require the Land Use Officer to attend its meetings to present any facts relating to any matter before the Board.
- F. All meetings of the Zoning Board of Appeals shall be open to the public.
- G. The Zoning Board of Appeals shall keep minutes of all of its meetings. The Town Board shall provide a secretary for the Zoning of Appeals.
- H. The Zoning Board of Appeals shall make factual record of all its proceedings.
- I. Every decision or determination of the Zoning Board of Appeals shall be in writing, and shall be filed in the office of the Town Clerk.

## 15.050 Permit Process

### 15.051 General

No person shall undertake a project within any district within the Town except pursuant with all requirements of this ordinance and all other applicable Town laws and regulations.

### 15.052 Application Procedure

- A. A person desiring to undertake a project which requires a permit shall file with the Land Use Officer an application for a permit, together with the appropriate fee, payable to the Town Clerk, Town of Arietta. The application shall be submitted on forms provided for such purpose by the Land Use Officer, and shall be accompanied by 3 copies of a plot plan showing the actual dimensions of the land to be built on or otherwise used, the size and location of all buildings, or other structures or other uses to be built or undertaken and such other information as may be necessary in the evaluation of the application and the administration of this ordinance.
- B. Within 15 working days following the receipt of the application, the Land Use Officer shall acknowledge the receipt of the application and shall either notify the applicant that the application is complete or specify any additional information required. When any additional information required is received, the Land Use Officer shall acknowledge in writing the completed application.
  - (1) The proposed project complies with the requirements of this ordinance and all other applicable Town laws and regulations and requires no special approvals, and accordingly a permit will be issued, or
  - (2) The proposed project is inconsistent with one or more specified requirements of this ordinance or other applicable Town Law or regulation, and a permit is denied. This ruling may be appealed to the Zoning Board of Appeals or a variance may be sought from the Zoning Board of Appeals, or
  - (3) The proposed project requires one or more specified special approvals before a permit can be granted. The proposed project may, for example, be for a use allowable in the district by Special Use Permit, requiring approval of a Special Use Permit by the Zoning Board of Appeals; or the project may be a Class A or Class B regional project, requiring regional project approval by the Planning Board or the Adirondack Park Agency; or the project may constitute a subdivision, requiring approval by the Planning Board. The Land Use Officer will advise the applicant of the requirements for the special approvals needed, and, to the extent compatible with his other responsibilities, will provide information, advice and assistance in the preparation of the required application. When the required special approvals have been obtained and all other requirements of this ordinance are met, the Land Use Officer will issue a permit.

### 15.053 Issuance of Permit

- A. It shall be the duty of the Land Use Officer to issue a permit, provided he/she is satisfied that the project conforms with all requirements of this ordinance, including where applicable, the requirements of regional project review, and all other applicable Town laws and regulations.
- B. All 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. In conjunction with the

issuance of a permit one copy of the approved plans, bearing the notation "Approved," the signature of the Land Use Officer and the date, shall be returned to the applicant.

- C. No person shall perform any construction or otherwise undertake a project of any kind unless a permit covering such project is displayed as required above, nor shall any person perform such activities after notification of the revocation of a permit.

#### **15.054 Revocation**

- A. If it shall appear, at any time, to the Land Use Officer that an application or accompanying plans are in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the permit, he/she may forthwith revoke the permit and it shall then be the duty of the person holding the same to surrender it and all copies thereof to the Land Use Officer.
- B. Where a permit has been revoked, the Land Use Officer may, at his discretion, before issuing a new permit, require the applicant to file a bond in the favor of the Town securing compliance with this ordinance, other Town Laws and regulations and the Adirondack Park Agency Act and in a sum sufficient to cover the cost of removing the use if it does not so comply.

#### **15.055 Lapse and Renewal**

A permit shall lapse two (2) years following the date it was granted. The Land Use Officer may renew a permit during its effectiveness for a period terminating not later than one year from the date it would lapse, provided that he/she finds that the facts upon which the permit was granted have not substantially changed.

#### **15.060 Site Inspection**

A person's filing of an application for a permit, for a Special Use Permit approval or for a variance shall be deemed a granting of approval by such person to the Land Use Officer and to members or designates of the bodies with authority to grant the required special approvals or a variance, including the Adirondack Park Agency, to conduct such examinations, tests and other inspections of the site in question as such persons deem necessary and appropriate for the purposes of this ordinance.

#### **15.070 Certificate of Occupancy**

##### **15.071 General**

- A. No building hereafter erected shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the Land Use Officer.
- B. No building hereafter enlarged, extended or altered or upon which work has been performed which required the issuance of a building permit shall be occupied or used unless a certificate of occupancy has been issued by the Land Use Officer.
- C. No change shall be made in the use or type of occupancy of an existing building or portions thereof unless a certificate of occupancy authorizing such change shall have been issued by the Land Use Officer.

##### **15.072 Issuance of Certificate of Occupancy**

- A. Inspection prior to issuance of certificate.
  - (1) Before the issuance of a certificate of occupancy, an as-built survey by a licensed professional of all on-site improvements shall be required by the Land Use Officer to verify conditions and compliance with the approved land survey or approved Site Plan.
  - (2) The Land Use Officer shall examine or cause to be examined all building and structure sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy; and he/she may conduct such inspections as he/she deems appropriate from time to time during and upon completion of the work for which a building permit has been issued. There shall be maintained by the Town a record of all such inspections and examinations, together with a record of findings in violation of the law.
- B. Issuance of certificate of occupancy.
  - (1) When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable provisions of this ordinance and other Town laws, the NYS Building codes and regulations, and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit, the Land Use Officer shall issue a certificate of occupancy within 10

days. If it is found that the proposed work has not been properly completed, the Land Use Officer shall refuse to issue a certificate of occupancy and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.

- (2) The certificate of occupancy shall certify that the work has been completed and that the proposed use and occupancy are in conformity with the provisions of the applicable building laws, ordinances and regulations and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.
- C. A certificate of occupancy issued in error or on the basis of incorrect information may be suspended or revoked by the Land Use Officer if the relevant deficiencies are not corrected within a specified period of time.

#### **15.080 Records**

The original or a certified copy of all decisions, approvals, rulings, permits, and certificates of occupancy of any board under this ordinance, or of the Land Use Officer shall be promptly furnished by the Land Use Officer to the Town Clerk and retained by him as a permanent public record.

#### **15.090 Conflict of Interest**

No member of the Zoning Board of Appeals or of the Planning Board shall participate in any decision of any such board in which he/she has a special pecuniary or other personal rather than public interest, whether arising out of the ownership of real property, business, or family interests or otherwise. Each member shall file with the Town Clerk and with such Board a statement of his real property holdings and other business or personal interests which might give rise to a conflict of interest. Such statements shall be available for public inspection at all reasonable times.

#### **15.100 Notice of Public Hearing**

Any notice of public hearing which is required to be given under any provision of this ordinance shall be given by publishing a notice in the Town's official newspaper, as designated by the Town Board, not less than 10 days prior to such hearing and, during the 10 days prior to such hearing, by conspicuous posting at the offices of the Land Use Officer and the Town Clerk.

#### **15.110 Fees**

The Town Board shall, by resolution, establish and amend a schedule of fees for the applications and permits required or contemplated by this ordinance; the current schedule shall be on file with the Land Use Officer and with the Town Clerk. Such fees shall be payable to the Town Clerk at the time of application or, as appropriate, at the time of issuance of a permit.

#### **15.110 State Environmental Quality Review Act (SEQRA)**

- A. All actions taken by the Planning Board or the Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act ("SEQRA") under Article 8 of the New York Environmental Conservation Law and its implementing regulations.
- B. Pursuant to SEQRA, the Planning Board or the Zoning Board of Appeals if determined to be the Lead Agency shall in its initial review of an application:
  - (1) Determine that no further action is necessary to fulfill the requirements of said act, or
  - (2) Require that the applicant submit an Environmental Assessment Form (EAF) for its review. Upon review of the EAF the Lead Agency shall issue either a negative declaration, a conditioned negative declaration, or a positive declaration. If a positive declaration is issued, the Board shall require that an Environmental Impact Statement be prepared pursuant to SEQRA
- C. Time periods set forth in this ordinance shall be modified to coordinate with SEQRA review as provided in New York State Town Law Section 276.

## ARTICLE 16: AMENDMENT

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### 16.010 Initiation

- A. The Town Board may, from time to time, upon initiation by:
- (1) Its own motion, or
  - (2) Application by one or more property owners, or
  - (3) Resolution of the Planning Board or Zoning Board of Appeals, amend this ordinance after referral to the Adirondack Park Agency and after public notice and hearing. A property owner or his agent may initiate an amendment to this ordinance by filing with the Town Board, using forms supplied by the Land Use Officer, 3 complete sets of an application. Such application shall be accompanied by a legal description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee.

### 16.020 Referrals and Public Hearing

- A. If the Town Board desires to proceed with the amendment, then upon direction by the Town Board, the Land Use Officer shall submit a copy of the proposed amendment to the Adirondack Park Agency for a determination whether the proposed amendment is subject to Agency approval under Section 807 of the Adirondack Park Agency Act. Upon receipt from the Adirondack Park Agency of an approval of the proposed amendment or of a determination by the Agency that the proposed amendment is not subject to Agency approval, the Town Board shall by resolution fix the time and place of a public hearing on the proposed amendment and
- B. Public Hearing. A public hearing shall be required for all zoning amendments and shall be in accordance with the following:
- (1) Public Notice. Notice of a public hearing shall be given in accordance with Section 15.100.
  - (2) Service of Written Notice. At least ten days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the Town upon each person or persons listed below:
    - (a) The property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto.
    - (b) The boundary of a city, village, or town; upon the clerk thereof.
    - (c) The boundary of a county; upon the clerk of the Board of Supervisors or other person performing like duties.
    - (d) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.
  - (3) Public hearing. The public, including those served notice pursuant to subdivision two of this section, shall have an opportunity to be heard at the public hearing.
  - (4) At least 10 days before public hearing, any proposed amendment shall be referred to the Planning Board, which shall be given the opportunity at, or prior to, such hearing to submit its report or recommendation to the Town Board on the proposed amendment. If the Planning Board disapproves the proposal or recommends modification thereof, the Town Board shall not act contrary to such disapproval or modification except by a vote of a majority plus one of all the members thereof.



#### **16.030 Decision**

- A. When considering zoning amendments, Town officials must follow review regulations as provided for in the State Environmental Quality Review Act (SEQRA).
- B. Within 62 days of the final adjournment of a public hearing called and held under this article, the Town Board shall grant or deny the application to amend this ordinance.
- C. The decision of the Town Board shall be in writing and shall contain the factual basis for the decision. A copy of the decision shall be promptly sent to the applicant and to the Adirondack Park Agency.

#### **16.040 Protest**

In the case of a protest against any proposed amendment, signed by the owners of 20% or more of the area of land included in such proposed changes or of that immediately adjacent extending 100 feet therefrom or, of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

#### **16.050 Right to Complete Project Inconsistent with Amendment**

Where a project for which a permit has been lawfully issued but which has not been awarded a certificate of occupancy would be rendered non-complying or non-conforming by an amendment to this ordinance, such project shall have the right to be completed and to be awarded a certificate of occupancy pursuant to the provisions of this ordinance in effect when the permit was issued only if, in the case of a project primarily involving a building, the foundation has been completed prior to the effective date of the amendment, and, in the case of a project not primarily involving a building, a substantial amount of construction has been completed prior to the effective date of the amendment.

#### **16.060 Conflict of Interest**

No member of the Town Board shall participate in any decision of the Town Board pertaining to any amendment of this ordinance in which he/she has a special pecuniary, family or other personal, rather than public interest, whether arising out of the ownership of real property, business interests or otherwise. Each member of the Town Board shall file with the Town Clerk and with the Town Board a statement of his real property holdings and other business or personal interests, which might give rise to a conflict of interest. Such statements shall be available for public inspection at all reasonable times.

## ARTICLE 17: ENFORCEMENT

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### 17.010 Land Use Officer

- A. This ordinance shall be enforced principally by the Land Use Officer whom is authorized to enter onto all premises, public or private, consistent with constitutional safeguards and any requisite warrant, in order to effectuate enforcement.
- B. Compliance Procedures. The Land Use Officer shall have authority to remedy any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Building Code or this ordinance. Compliance procedures for enforcing this ordinance shall include the following:
  - (1) Notice of Violation.
  - (2) Stop-work Order.
  - (3) Appearance Ticket. The Land Use Officer is authorized to issue appearance tickets for any violation of the Uniform Building Code or this ordinance.
  - (4) Criminal and/or Civil Penalty. In addition to those penalties prescribed by state law, any person who violates any provision of the Uniform Building Code or this ordinance, or any term or condition of any building permit, certificate of occupancy, stop-work order, or other notice or order issued by the Land Use Officer shall be liable to a criminal and/or civil penalty.

### 17.020 Violations & Complaints

- A. It shall be unlawful for any person to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building, structure or premises, or portion thereof, in violation of any provision of this ordinance, or to construct, alter or use and occupy any building, structure or premises in a manner not permitted by or inconsistent with a permit, approval or variance issued pursuant to this ordinance, or to fail to comply with a notice, directive or order of the Land Use Officer or agent thereof.
- B. Where a violation has occurred or exists, the potentially responsible persons shall include the owner of the real property involved or affected; any contractor, subcontractor, builder, construction superintendent, engineer, manager, or other person responsible for undertaking, managing or directing the illegal activity; and any agent of the foregoing.
- C. Whenever a violation of this ordinance occurs, any person may file a complaint, which may be anonymous, in regard thereto. Complaints shall be submitted in writing, by email, or by phone with the Land Use Officer, or may be observed directly by the Land Use Officer, who shall properly record all such complaints or potential violations and immediately investigate and report his findings thereon to the Town Board. The Land Use Officer shall have authority to serve upon any person owning, leasing, controlling, or managing any building, structure, or land in which a violation of this ordinance exists an order to cease or remove such violation.

### 17.030 Fines & Penalties

- A. Criminal Sanctions
  - (1) A violation of this law may be enforced by criminal sanctions as follows:
    - (a) First Offense: Conviction of a first offense shall be punishable by a fine not exceeding \$350 or six months imprisonment or both;
    - (b) Second Offense: Conviction of a second offense, both of which were committed within a period of five years, shall be punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and
    - (c) Third Offense: Conviction of a third or subsequent offense, all of which were committed within a period of five years, shall be punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both.
  - (2) Every such person shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.
  - (3) The Land Use Officer or agent may commence criminal proceedings in the justice court by issuing an appearance ticket to any alleged violator and/or by filing information and supporting deposition pursuant to the New York Criminal Procedure Law. In the alternative, the Land Use officer or agent or the Town

Board may request the District Attorney to prosecute the violation or to appoint the Town Attorney as a special district attorney for that purpose.

- (4) Such fines may be compromised or released as part of any disposition.

B. Civil Penalties.

- (1) As an alternative to criminal sanctions, the Town may institute proceedings for civil penalties in the amounts stated herein for each such violation:
  - (a) First Offense: Civil penalty not exceeding \$350;
  - (b) Second Offense: Civil penalty not less than \$350 or more than \$700; and
  - (c) Third Offense: Civil penalty not less than \$700 or more than \$1,000.
- (2) Each week's continued violation shall constitute a separate additional violation, for which separate and additional civil penalties may be imposed and recovered.
- (3) Such penalties may be compromised or released as part of any disposition.

**17.040 Alternative or Additional Actions & Remedies**

- A. In the case of any violation or threatened violation, the Town may institute any appropriate action or proceeding against the landowner and/or other responsible person(s) to prevent such unlawful action, to restrain, correct or abate such violation, and to compel compliance with the provisions of this ordinance and any permit, approval or variance issued pursuant to its provisions. The relief specified herein may be sought in addition to an action or proceeding for criminal sanctions or civil penalties.
- B. The Town Board may negotiate appropriate corrective, remediation, abatement, and restoration measures by entering into an enforceable settlement agreement or consent order with any violator and/or owner. Such agreements or orders may require the violator and/or owner to pay a monetary penalty which (i) covers exemplary or punitive damages and (ii) reimburses actual costs incurred by the Town in connection with its enforcement action such as attorneys' fees, disbursements and costs of emergency and other corrective and restoration measures.

**17.050 Administrative Actions; Stop-work Orders**

- A. The Land Use Officer has plenary authority and responsibility to take administrative action to enforce this ordinance and the New York State Building Code.
- B. Whenever the Land Use Officer has reasonable grounds to believe that unlawful development pursuant to this ordinance is being undertaken or continued he/she shall notify the owner of the property or any agent of the owner or any other responsible party and direct that all unlawful activity immediately cease and that all related building and construction be suspended until the stop-work order has been rescinded or superseded by a court order.
- C. Relief or release from any stop-work order may be obtained in the proper circumstance as follows:
  - (1) If all provisions hereof, together with all other reasonable conditions specified by the Land Use Officer or agent, are satisfied, and thereby by resolution of the Town Board upon the advice of the Land Use Officer or Planning Board (for site plan review, Special Use Permit, and regional projects), a rescission of the stop-work order may occur.
  - (2) Except in matters pertaining to violations of requirements imposed by site plan review or subdivision review, if a variance is granted by the Zoning Board of Appeals granting permission to maintain violations specified in a stop-work order and to continue such circumstances as thereafter allowable, the final administrative determination of the Land Use Officer or agent shall conform or rescind the stop-work order in accordance with the requirements of the Zoning Board of Appeals.

**17.060 Suspension of Administrative Review**

Review of any application pursuant to the provisions of this chapter may be suspended and the application deemed incomplete with written notice to the applicant if a stop-work order has been issued by the Land Use Officer or agent thereof, other written notice of an alleged violation has been delivered to the property owner or applicant, or a criminal or civil action has been commenced against the property owner, applicant or other

responsible person for alleged violations related to the development or activity or site for which the permit is sought or for any alleged violation of the provisions of this ordinance related to the site.

**17.070 Revocation of Permit**

Any permit, approval, certificate, or variance granted under the provisions of this ordinance which was based upon or granted in reliance upon the applicant's false or material misrepresentation in an application or the applicant's failure to make known a material fact or circumstance may be revoked by the Land Use Officer. A revocation action may be taken after written notice to the property owner or applicant/permittee and opportunity for a hearing.

**17.080 Misrepresentation**

Any permit or approval granted under this ordinance which is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstance known, by or on behalf of an applicant, shall be void.

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## **ARTICLE 18: SPECIAL DISTRICTS**

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### **18.010 Special Town Center Development District (SD 1)**

#### **18.011 Town Center General Regulations**

- A. The purpose of this special district (SD 1) is to promote the development of that area in the Town identified in the Comprehensive Plan for the Town and in the provisions of this ordinance as the center of commercial and community facility growth within the town in a coordinated manner using good site planning and building design. This area, which includes districts 8, 9, 10, 11, 12 and 13 centers on an important road junction and is presently the site of several commercial enterprises and numerous municipal facilities. It is hereinafter referred to as the Town Center. Without careful and precise planning for and zoning of the area, there exists the likelihood that the development of the Town Center will occur in an uncoordinated and unattractive fashion. If that occurs, an important opportunity in the shaping of the Town will have been lost.
- B. This section seeks to provide a reasonable period of time in which the Town may develop a coordinated plan for the regulation of growth within the Town Center. Accordingly, districts 8, 9, 10, 11, 12, and 13 are hereby collectively designated as the Special Town Center Development District, in which the following regulations shall apply. These regulations modify those otherwise in effect concerning such districts.
- C. Within the Special Town Center Development District (SD 1), no project shall be undertaken except pursuant to a Special Use Permit issued by the Zoning Board of Appeals.
- D. The Zoning Board of Appeals shall issue such Special Use Permit except when it finds
  - (1) That the proposed project will not implement or further a well conceived plan for the development of the entire district; or
  - (2) That the Town has undertaken or will undertake a study of such district calculated to produce a well conceived plan for its coordinated development. Where such findings are made, the Zoning Board of Appeals shall deny the Special Use Permit.

#### **18.012 Town Center Specific Standards**

- A. **Setback.** No building shall be closer than 25 feet to any lot line or closer than 75 feet to the near edge of the pavement of any public highway, provided that no building shall be within a public highway right of way.
- B. **Landscaping.** The periphery of any building visible from a public highway shall be attractively landscaped with native species of vegetation with respect to such highway.
- C. **Façade.** Each building shall be encouraged to have a facade painted in white or painted or stained in a shade of brown, gray, green, dark barn red or a subdued natural shade or covered with native stone. Unpainted, aluminum roofing is prohibited.
- D. **Roof.** Each building shall have a roof with a minimum pitch of 4:12.
- E. **Parking.** Graveled or paved off street parking shall be provided on each lot at the rate of one space for every 150 square feet of floor area of building developed on such lot.

### **18.020 Special Scenic Open Space Preservation District (SD 2)**

The purpose of this special district is to promote the preservation of designated open spaces of particular scenic value in the Town. Such spaces, being open fields along public highways, are of particular visual significance to the Town in that they vary the dominant forested character of the roadside in the Town. These open spaces are well suited to development, the occurrence of

which would be a significant loss to the visual amenity of the Town. In order to provide a reasonable opportunity for actions to insure the preservation of these open spaces to be taken, Districts 26, 88 and 94 are hereby designated as within the Special Scenic Open Space District (SD 2), in which the following regulations shall apply. These regulations modify those otherwise in effect concerning such districts.

- A. Within the Special Scenic Open Space Preservation District, no project shall be undertaken except pursuant to a Special Use Permit issued by the Zoning Board of Appeals.
- B. The Zoning Board of Appeals shall issue such permit except where it finds
  - (1) That the proposed project will significantly impair the visual amenity provided by the open space in question and
  - (2) That the Town or private person have undertaken or will undertake an effort to insure the preservation of such visual amenity and for which effort there is a reasonable chance of success. When such findings are made, the Board shall deny the Special Use Permit.

#### **18.030 National Flood Insurance Program Areas**

- A. No building permit will be issued for new construction or substantial improvements in a flood hazard area unless adequate measures are made to safeguard from flooding.
- B. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure. There must be used construction materials and utility equipment that are resistant to flood damage, and use construction methods and practices that will minimize flood damage.
- C. The Land Use Officer must review subdivision proposals and other proposed new developments to assure that all such proposals are consistent with the need to minimize flood damage. All public utilities and facilities, such as sewer, gas, electrical, and water systems must be located, elevated, and constructed to minimize or eliminate flood damage, and adequate drainage provided so as to reduce exposure to flood hazards; and
- D. Require new or replacement water supply systems and sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

#### **18.040 Overlay District – Scenic Highway District (SHD)**

The Town will allow limited development in zones 69, 70, and 71. Some of this development will come into view from NYS Route 8 and 10. To preserve the scenic nature of these roadways requires special consideration for the placement, screening, lighting, and appearance of any new structure. All new development should blend into the forest setting and not compete with the natural surroundings. These structures should be screened, so as to remain largely unseen on a summer day. Since a building will be more visible at night or in the winter, it is expected that an owner make every effort to include coniferous screening and control exterior lighting. Accordingly, special districts 69, 70 and 71 are hereby designated a Scenic Highway District (SHD), in which the following regulations shall apply. These regulations modify those otherwise in effect concerning such districts.

- A. Within the Scenic Highway District, no project shall be undertaken except pursuant to a Special Use Permit issued by the Zoning Board of Appeals.
- B. The Zoning Board of Appeals will issue such a permit except when it finds that the proposed project will not implement or further the following plan for coordinated development.
  - (1) That there shall be a minimum setback for all structures of 100 feet from the edge of pavement.
  - (2) That all structures should be of a color that does not contrast with the forest background and that no reflective surfaces, other than glass, shall be used in construction.
  - (3) That there should be no signs or symbols along the highway other than for mail delivery(see Article 6 Signs of this ordinance).
  - (4) On a summer day, not more than 25% of any side of a structure facing the highway should be viewed by passing traffic. On a winter day, not more than 50% of any side of a structure should be viewed by passing traffic.
  - (5) A screening plan must be approved before construction begins. If the screening proves inadequate or is not properly maintained, then the board may require additional screening with native vegetation.
  - (6) Exterior lighting should be shielded, downcast and kept to a minimum.
  - (7) A bend in the driveway is recommended and may be required should a structure be clearly visible from highway.

## **LINKS TO ONLINE INFORMATION AND RESOURCES**

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Adirondack Park Agency - Home

<http://apa.ny.gov/index.html>

APA Jurisdictional Inquiry Form

<http://www.apa.ny.gov/Forms/jiform.pdf>

Hamilton County Website

<http://www.hamiltoncounty.com>

Hamilton County Online Mapping System

<http://www.hamcomaps.net>

Hamilton County Real Property Information – Image Mate Online

<http://hamilton.sdgny.com/index.aspx>

Hamilton County Soil & Water Conservation District

<http://www.hcswcd.com>

NYS Dept. of Environmental Conservation

<http://www.dec.ny.gov>

NYS Department of State – Local Government Services

<http://www.dos.ny.gov/lg/publications.html#Planning>

- Guidelines for Applicants to the Zoning Board of Appeals

NYS Department of State – Office of Planning & Development

<http://www.dos.ny.gov/opd/index.html>

Town of Arietta

<http://www.townofarietta.com>

Town of Arietta Building Permit

<http://www.townofarietta.com/files/103369425.pdf>