

## **Chapter 77, ZONING**

---

### **ARTICLE I, Title and Purpose**

---

#### **§ 77-1. Title.**

This Chapter shall be known and may be cited as the "Zoning Law of the Town of Kent, New York."

#### **§ 77-2. Declaration of purpose.**

- A) This Chapter 77 of the Town of Kent Town Code is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York and the Town Law of the State of New York, and in conformance with the 2008 Kent Comprehensive Plan duly adopted by the Town Board. As stated herein, specific sections of Article 16 of the Town Law have been superseded by this Local Law pursuant to the authority of Section 10 of the Municipal Home Rule Law.
- B) This Chapter is adopted to protect and promote the health, safety, comfort, convenience, economy, aesthetics and general welfare and for the following additional purposes:
  - 1) To guide the future development of the Town in accordance with the Kent Comprehensive Plan so that the Town may realize its potential as a place to live and to work, with the most beneficial and convenient relationships among the residential and commercial districts of the Town and with due consideration to:
    - a) The character of the district and its peculiar suitability for particular uses.
    - b) Existing conditions and trends in population, economic activity, land use and building development.
    - c) Conserving the value of buildings and neighborhoods by encouraging the most appropriate use of land throughout the Town.
  - 2) To prevent the pollution of streams, ponds and all other water resources, to prevent floods and to encourage the wise use and sound management of natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.
  - 3) To protect the character and the social and economic stability of all parts of the Town and to enhance the appearance of the Town as a whole by ensuring that all development shall be orderly and beneficial to the Town, by eliminating inappropriate and poor quality design in the exterior appearance of structures and by controlling the erection and maintenance of signs throughout the Town.
  - 4) To protect residential areas and to provide privacy for families by the preservation of such areas from, among others, the visual intrusion of nonresidential uses and, wherever reasonable, by the elimination of nonconforming uses which exert a deleterious influence on their surroundings.
  - 5) To facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.
  - 6) To encourage flexibility in the design of land developments so as to promote the most appropriate use of lands, to facilitate the adequate and economical provision of streets and utilities and to preserve, to the extent feasible, the natural qualities and functions of open lands.

- 7) To make provision for access to sunlight and the accommodation of solar energy systems and equipment and other alternative energy systems.
- 8) To assure adequate sites for residence, industry and commerce.
- 9) To facilitate the efficient and adequate provision of public facilities and services.
- 10) To gradually eliminate nonconforming uses and, where this is not possible, enhance the compatibility of such uses with adjoining uses.

---

## **ARTICLE II, Districts and Map**

---

### **§ 77-3. Enumeration of districts.**

A. The Town of Kent is hereby divided into the classes of districts listed below:

- |   |      |
|---|------|
| 1) One-Family Residence District            | R-80 |
| 2) One-Family Residence District            | R-40 |
| 3) One-Family Residence District            | R-10 |
| 4) Planned Residential Development District | PRD  |
| 5) Commercial District                      | C    |
| 6) Industrial/Office/Commercial District    | IOC  |

B. In addition to the above districts, the following overlay districts are hereby created. Any overlay maps adopted or modified under this Chapter shall be adopted or modified by zoning amendment pursuant to the procedures specified in the Home Rule Law. The overlay districts impose requirements that supplement those in the underlying districts listed in this Chapter above and do not supersede the provisions of those districts, except insofar as the overlay districts may impose more restrictive requirements. The overlay districts are as follows:

- |                                   |     |
|-----------------------------------|-----|
| 1) Towner's Road Overlay District | TRO |
|-----------------------------------|-----|

### **§ 77-4. Zoning Map.**

The boundaries of said districts are hereby established as shown on the Zoning Map, Town of Kent, dated November 24, 2008 which accompanies and which, with all explanatory matter thereon, is hereby adopted and made a part of this Chapter. Said Zoning Map shall be the final authority as to the current zoning classification of any land within the boundaries of the Town of Kent.

### **§ 77-5. Interpretation of district boundaries.**

A. In determining the boundaries of districts shown on the Zoning Map, the following rules shall apply:

- 1) Where district boundaries are indicated as approximately following the center lines of streets, highways, waterways or other mapped rights-of-way or such lines extended, such center lines shall be construed to be such boundaries.
- 2) Where such boundaries are indicated as approximately following the property lines of private parcels or of parks or other publicly owned lands, such lines shall be construed to be such boundaries.
- 3) In all cases where a district boundary divides a lot in one ownership and more than 50% of the area of such lot lies in the less restricted district, the regulations prescribed by this Chapter for the less restricted district may be extended by the Board of Appeals to such

portion of the more restricted portion of said lot which lies within 50 feet of such district boundary. For purposes of this section, the more restricted district shall be deemed to be that district which is subject to regulations that prohibit the use intended to be made of said lot or that require higher standards with respect to density, coverage, yards, screening, landscaping, parking, loading and similar requirements.

- 4) In all cases where a district boundary line is located not farther than 25 feet away from a lot line of record, such boundary line shall be construed to coincide with such lot line.
- 5) In all other cases, where dimensions are not shown on the map, the location of boundaries shown on the map shall be determined by the Building Inspector by application of a scale thereto.
- 6) Where natural or man-made features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered in this section, the district boundaries shall be interpreted by the Board of Appeals.

**§ 77-6. Effect of establishment of districts.**

- A) No building shall be erected, moved, altered, rebuilt or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose or in any manner except in conformity with all regulations, requirements and restrictions specified in this Chapter for the district in which such building or land is located.
- B) No yard or open space required in connection with any building or use shall be considered as providing a required open space for any other building on the same or any other lot.
- C) No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the lot on which such building stands comply with all requirements prescribed by this Chapter for the district in which said lot is located. No building permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this Chapter.
- D) No driveway shall provide access to a lot located in another district, which lot is used for any use prohibited in the district in which such driveway is located. No street or road, whether private or public, which exclusively serves or supports a lot located in another district, which lot is used for any use prohibited in the district in which the street or road is located, shall be used to provide access to said lot.
- E) Nothing contained in this Chapter shall prevent the construction of a building or other structure which is made nonconforming by this Chapter or subsequent amendments thereto for which a building permit has been lawfully issued, provided that either:
  - 1) Construction of the foundation shall have been completed prior to the effective date of this local law by virtue of which such building became nonconforming, and construction thereafter is diligently prosecuted; or
  - 2) The Board of Appeals makes a finding that substantial expenditures have been made or substantial financial obligations incurred in the development of plans for such nonconforming building or structure prior to the effective date of this Chapter, provided that in such a case, construction shall commence within 12 months following such effective date and shall be diligently prosecuted thereafter.
- F) Lots. After the effective date of this Chapter no lot in any district shall be built upon unless it is a buildable lot pursuant to §77-34.3 of this Chapter. Additionally:
  - 1) Any lot created after the effective date of this Chapter shall have the minimum buildable area as defined in this Chapter and shall be a buildable lot as defined herein.

- 2) All lots proposed for subdivision shall be configured to allow for the later addition of a deck and/or a porch without the need for a variance. The Planning Board is expressly authorized to require the reconfiguration of proposed lots and proposed boundary lines in order to give effect to this provision.
- G) Uses. Following the effective date of this Chapter any use not identified or listed as an allowed use in the district on which a proposed or existing building(s) or lot(s) is located, shall be deemed to be a prohibited use. No building or lot shall be used for any purpose or in any manner except in conformity the regulations, requirements and/or restrictions specified in this Chapter for the district in which such building or lot is located.
- H) Town Board reservation of authority. Where a conflict arises as to the jurisdiction of the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Department and/or the Zoning Enforcement Office in regard to enforcement of this Chapter, the Town Board shall make a determination as to the appropriate agency in any given case.

---

### **ARTICLE III, R-80 Residential District**

---

#### **§ 77-7. Purpose and Permitted Uses.**

District Purpose. This district is intended to conserve the more rural land areas within the Town by promoting a balance of open space and low-density, single-family residential uses consistent with natural resource constraints, the conservation of open space areas, and other compatible land use opportunities. In an R-80 Residential District, no building or premises shall be used and no building shall hereafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

- A) Principal permitted uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) One-family dwellings, not to exceed one dwelling on a single lot.
  - 2) (\*) Public parks, playgrounds and recreational areas; firehouses, police stations and other public buildings and uses.
  - 3) (\*) Cemeteries for the interment of human remains, no crematorium.
  - 4) (\*) Regularly organized elementary or high schools having a curriculum approved by the Board of Regents of the State of New York, and subject to the following:
    - (a) The minimum lot size shall be five acres.
    - (b) No building, parking or loading area, or part thereof, shall be located within 100 feet of any street line nor within 50 feet of any property line.
  - 5) (\*) Places of religious worship, including part-time religious schools, provided that no building or part thereof and no parking or loading area shall be located within 75 feet of any street line nor within 50 feet of any property line; and parish houses, parsonages and rectories which shall comply with the requirements set forth herein for one-family dwellings.
  - 6) (\*) Nursery schools, family day-care home, or day-care centers subject to §77-44.5 of this Chapter..
  - 7) (\*) Public utility structures and rights-of-way, but excluding utility offices, garages, storage yards, and communication facilities.
  - 8) Agricultural uses as defined in New York State Agriculture & Markets Law, provided that no building in which farm animals are kept and no storage of manure shall be located nearer than 100 feet to any street line or property line, and provided further that the keeping of

horses and livestock shall be permitted only on lots having an area of two acres plus one acre for each such animal in excess of one. In addition, no greenhouse heating plant shall be located nearer than 50 feet to any street line or property line. One farm stand exclusively for the sale of agricultural products grown on the premises is permitted.

- B) Permitted accessory uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
- 1) (\*) Off-street parking and loading in accordance with the provisions of Article XI of this Chapter.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
  - 3) Home occupations in accordance with the provisions of §77-41 of this Chapter.
  - 4) Artist studio, subject to special use permit approval by the Zoning Board of Appeals pursuant to §77-44.6 of this Chapter.
  - 5) Private swimming pools and tennis and deck tennis facilities in accordance with the provisions of §77-42 of this Chapter.
  - 6) (\*) Signs in accordance with the provisions of Article X of this Chapter.
  - 7) Satellite antennas which receive and/or transmit, are less than one meter in maximum diameter, and which do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.
  - 8) Other customary accessory uses and buildings, provided that such uses shall not include any activity conducted as a business.
- C) Special uses permitted subject to the approval by the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
- 1) (\*) Golf courses and country clubs, exclusive of clubs whose activities include the maintenance, storage or takeoff or landing of aircraft, subject to the following requirements:
    - (a) The minimum lot area shall be 50 acres.
    - (b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
  - 2) (\*) Private membership clubs, operated by nonprofit membership corporations, exclusively for members and their guests, including ice-skating, swimming, tennis, squash or other similar clubs, subject to the following requirements:
    - (a) The minimum lot area shall be five acres.
    - (b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
  - 3) (\*) Institutions of higher learning, including colleges and universities, seminaries, convents, technical schools and the like, including accompanying service and administrative buildings and recreation facilities, subject to the following requirements:
    - a) The minimum lot area shall be 100 acres.
    - b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
  - 4) (\*) Hospitals authorized by the Department of Health of the State of New York, excluding hospitals with facilities for correctional purposes, subject to the following requirements:

- a) The minimum lot area shall be five (5) acres.
  - b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
- 5) (\*) Eleemosynary institutions (other than correctional institutions, drug rehabilitation centers or institutions for the insane), but excluding administrative headquarters or branch office buildings thereof, subject to the following requirements:
  - a) The minimum lot area shall be five acres.
  - b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
- 6) (\*) Commercial recreation uses, day camps, vacation campgrounds, seasonal camps, and horseback riding establishments, including stables, maintenance and service buildings and other accessory structures and uses incidental to the outdoor recreation area, subject to the following requirements:
  - a) The minimum lot size shall be five acres.
  - b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
- 7) (\*) Communication facilities subject to the following requirements:
  - a) The minimum lot area for a communication facility involving a communication tower shall be based upon the compliance with the required minimum yard areas as set forth below, but in no case shall the minimum lot area be less than two acres.
  - b) The maximum height of any communication tower shall not exceed 100 feet.
  - c) No other principal use shall be permitted on a lot containing a communication tower.
  - d) For the purposes of calculating maximum lot coverage, coverage by a communication tower shall include the outer rectangular area drawn about the perimeter of the tower's base and any anchoring (such as guy wires).
  - e) For a communication tower with a height of 80 feet or less, no part thereof shall be located within a distance equal to the height of the communication tower, plus the minimum yard area requirements set forth below, of any street or lot line.
  - f) For a communication tower with a height in excess of 80 feet, no part thereof shall be located with a distance equal to twice the height of the communication tower of any street or lot line.
  - g) All permitted accessory structures, buildings, and ground equipment associated with a communication tower shall be completely enclosed and shall conform with the minimum yard requirements set forth below.
  - h) All communication facilities shall be subject to the additional supplementary use requirements and standards set forth in Article XII, §77-44.1 of this Chapter.
- D) Special uses permitted subject to the approval by the Zoning Board of Appeals.
  - 1) Accessory apartment subject to §77-70 of this Chapter.

**§ 77-8. Lot and bulk requirements.**

- A) Minimum lot area.
  - 1) The minimum lot area shall be 80,000 square feet subject to the supplementary minimum lot area regulations of §77-34.2 of this Chapter, unless otherwise specified.

- B) Minimum lot width. The minimum lot width shall not be less than 250 feet
- C) The minimum highway frontage shall be not less than 250 feet as measured along a single unbroken linear length at the street line.
- D) Maximum lot coverage. The area covered by all buildings shall not exceed 10% of the total lot area, unless otherwise specified.
- E) The maximum impervious surface coverage shall not exceed 30% of the total lot area.
- F) Minimum yards. Yards shall have the following minimum setbacks:
  - 1) Front yard: 40 feet.
  - 2) Each side yard: 20 feet.
  - 3) Rear yard: 50 feet.
- G) Maximum height. No building shall be erected to a height in excess of 2 1/2 stories or 30 feet.
- H) Each lot shall be a Buildable Lot as set forth in §77-34.3.

**§ 77-9. R-80 District design standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the R-80 District. The Planning Board may use its discretion to waive or modify these standards.
  - 1) Non-residential uses proposed for previously undeveloped property abutting property zoned for residential use shall include a twenty (20) foot landscaped buffer setback from adjoining properties. The landscape buffer shall be in addition to any other setback requirement for the district, and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscape buffer setbacks for re-development projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.
  - 2) Utilities shall, unless infeasible, be placed underground.
  - 3) All streets and driveways shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.
  - 4) Except as set forth hereinafter, no fence or garden wall in any required yard or between the front building line and the required front yard shall exceed a height of six feet.
  - 5) Sidewalks shall be provided along any existing or proposed public street. The sidewalks shall be separated from the street by a tree lawn at least 4 feet wide. New streets shall, unless waived by the Planning Board, incorporate sidewalks into the design, and shall, where practicable, link with existing and future potential sidewalks and pedestrian pathways.
  - 6) The use of through-roads within new subdivisions is required unless the Planning Board determines that a through-road is infeasible or that a cul-de-sac road would better protect the public health and safety. The right-of-way of any through-road shall extend to the boundary line of the parent parcel in a location approved by the Planning Board.
  - 7) To the extent practicable existing tree rows and hedgerows, stone walls, and similar features shall be retained in the development of any new use or the expansion of any existing use.
  - 8) Site disturbance and phasing shall be designed to minimize tree clearing and changes to existing topography.

- 9) The use of a “boulevard” entrance for new streets and driveways is encouraged. Such boulevard entrance shall be improved with landscaping, fencing, stone walls or other suitable aesthetic improvements as approved by the Planning Board.
- 10) New buildings in proximity to historic structures and historic districts listed on the National or State Register of Historic Places shall be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.
- 11) Off-street parking lots and loading areas shall be screened from adjacent properties by landscaping or fencing.

#### **§ 77-10. Permitted encroachments.**

- A) The following encroachments upon required yard areas are permitted:
  - 1) Stairs, cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
  - 2) One-story open porches and terraces not exceeding three feet in height, projecting not more than six feet only into a front or rear yard.
  - 3) One-story enclosed vestibule not greater than 10 feet wide and five feet deep, projecting only into a front yard.
- B) In any case where the Board of Appeals, by variance, has permitted the reduction of a required yard, none of the foregoing encroachments shall be permitted into such diminished yard.

---

### **ARTICLE IV, R-40 Residential District**

---

#### **§ 77-11. Purpose and Permitted Uses.**

District Purpose. This district is intended to conserve natural and open space adjacent to the more densely developed residential neighborhoods within the Town by promoting a balance of open space and moderate-density, single-family residential uses consistent with the availability of support infrastructure and natural resource constraints. Conservation of natural land and its integration within a system of contiguous open space is a primary objective. In an R-40 Residential District, no building or premises shall be used and no building shall hereafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

- A) Principal permitted uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) One-family dwellings, not to exceed one dwelling on a single lot.
  - 2) (\*) Public parks, playgrounds and recreational areas; firehouses, police stations and other public buildings and uses.
  - 3) (\*) Cemeteries for the interment of human remains, no crematorium.
  - 4) (\*) Regularly organized elementary or high schools having a curriculum approved by the Board of Regents of the State of New York, and subject to the following:
    - (a) The minimum lot size shall be five acres.
    - (b) No building, or parking or loading area, or part thereof shall be located within 100 feet of any street line nor within 50 feet of any property line.
  - 5) (\*) Places of religious worship, including part-time religious schools, provided that no building or part thereof and no parking or loading area shall be located within 75 feet of any street line nor within 50 feet of any property line; and parish houses, parsonages and

rectories which shall comply with the requirements set forth herein for one-family dwellings.

- 6) (\*) Nursery schools, family day-care home, or day-care centers subject to §77-44.5 of this Chapter. .
  - 7) (\*) Public utility structures and rights-of-way, but excluding utility offices, garages, storage yards, and communication facilities.
  - 8) Agricultural uses as defined in New York State Agriculture & Markets Law, provided that no building in which farm animals are kept and no storage of manure shall be located nearer than 100 feet to any street line or property line, and provided further that the keeping of horses and livestock shall be permitted only on lots having an area of two acres plus one acre for each such animal in excess of one. In addition, no greenhouse heating plant shall be located nearer than 50 feet to any street line or property line. One farm stand exclusively for the sale of agricultural products grown on the premises is permitted.
- B) Permitted accessory uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval.
- 1) (\*) Off-street parking and loading in accordance with the provisions of Article XI of this Chapter.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
  - 3) Home occupations in accordance with the provisions of §77-41 of this Chapter.
  - 4) Artist studio, subject to special use permit approval by the Zoning Board of Appeals pursuant to §77-44.6 of this Chapter.
  - 5) Private swimming pools and tennis and deck tennis facilities in accordance with the provisions of §77-42 of this Chapter.
  - 6) (\*) Signs in accordance with the provisions of Article X of this Chapter.
  - 7) Satellite antennas which receive and/or transmit, are less than one meter in maximum diameter, and which do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.
  - 8) Other customary accessory uses and buildings, provided that such uses shall not include any activity conducted as a business.
- C) Special uses permitted subject to the approval by the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
- 1) (\*) Golf courses and country clubs, exclusive of clubs whose activities include the maintenance, storage or takeoff or landing of aircraft, subject to the following requirements:
    - (a) The minimum lot area shall be 50 acres.
    - (b) No building, or parking or loading space, or part thereof, shall be located within 150 feet of any street or lot line.
  - 2) (\*) Private membership clubs, operated by nonprofit membership corporations, exclusively for members and their guests, including ice-skating, swimming, tennis, squash or other similar clubs, subject to the following requirements:
    - (a) The minimum lot area shall be five acres.
    - (b) No building, or parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.

- 3) (\*) Institutions of higher learning, including colleges and universities, seminaries, convents, technical schools and the like, including accompanying services and administration buildings and recreation facilities, subject to the following requirements:
  - (a) The minimum lot area shall be 50 acres.
  - (b) No building, or parking or loading space, or part thereof, shall be located within 150 feet of any street or lot line.
- 4) (\*) Hospitals authorized by the Department of Health of the State of New York, excluding hospitals with facilities for correctional purposes, subject to the following:
  - (a) The minimum lot area shall be five acres.
  - (b) No building, or parking or loading space, or part thereof, shall be located within 150 feet of any street or lot line.
- 5) (\*) Eleemosynary institutions (other than correctional institutions, drug rehabilitation centers or institutions for the insane), but excluding administrative headquarters or branch office buildings thereof, subject to the following requirements:
  - (a) The minimum lot area shall be five acres.
  - (b) No building, or parking or loading space, or part thereof, shall be located within 150 feet of any street or lot line.
- 6) (\*) Commercial recreation uses, day camps, vacation campgrounds, seasonal camps, and horseback riding establishments, including stables, maintenance and service buildings and other accessory structures and uses incidental to the recreation area, subject to the following:
  - a) The minimum lot size shall be five acres.
  - b) No building, parking or loading area, or part thereof, shall be located within 150 feet of any street or lot line.
- D) Special uses permitted subject to the approval by the Zoning Board of Appeals.
  - 1) Accessory apartment subject to §77-70 of this Chapter.

**§ 77-12. Lot and bulk requirements.**

- A) Minimum lot area. The minimum lot area shall not be less than 40,000 square feet subject to the supplementary minimum lot area regulations of §77-34.2 of this Chapter, unless otherwise specified.
- B) Minimum lot width. The minimum lot width shall not be less than 150 feet.
- C) The minimum highway frontage shall not be less than 100 feet as measured along a single unbroken linear length at the street line.
- D) Maximum lot coverage. The area covered by all buildings shall not exceed 20% of the total lot area, unless otherwise specified.
- E) The maximum impervious surface coverage shall not exceed 30% of the total lot area.
- F) Minimum yards. Yards shall have the following minimum setbacks:
  - 1) Front yard: 40 feet.
  - 2) Each side yard: 20 feet.
  - 3) Rear yard: 50 feet.
- G) Maximum height. No building shall be erected to a height in excess of 2 1/2 stories or 30 feet.

H) Each lot shall be a Buildable Lot as set forth in §77-34.3.

**§ 77-13. R-40 District design standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the R-40 District. The Planning Board may use its discretion to waive or modify these standards.
- 1) Non-residential uses proposed for previously undeveloped property abutting property developed for residential use shall include a ten (10) foot landscaped buffer setback from adjoining properties. The landscape buffer shall be in addition to any other setback requirement for the district, and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscape buffer setbacks for re-development projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.
  - 2) Utilities shall, unless infeasible, be placed underground.
  - 3) All streets and driveways shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.
  - 4) Except as set forth hereinafter, no fence or garden wall in any required yard or between the front building line and the required front yard shall exceed a height of six feet.
  - 5) Sidewalks shall be provided along any existing or proposed public street. The sidewalks shall be separated from the street by a tree lawn at least 4 feet wide. New streets shall, unless waived by the Planning Board, incorporate sidewalks into the design, and shall, where practicable, link with existing and future potential sidewalks and pedestrian pathways.
  - 6) The use of through-roads within new subdivisions is required unless the Planning Board determines that a through-road is infeasible or that a cul-de-sac road would better protect the public health and safety. The right-of-way of any through road shall extend to the boundary line of the parent parcel in a location approved by the Planning Board.
  - 7) To the extent practicable existing tree rows and hedgerows, stone walls, and similar features shall be retained in the development of any new use or the expansion of any existing use.
  - 8) Site disturbance and phasing shall be designed to minimize tree clearing and changes to existing topography.
  - 9) The use of a "boulevard" entrance for new streets and driveways is encouraged. Such boulevard entrance shall be improved with landscaping, fencing, stone walls or other suitable aesthetic improvements as approved by the Planning Board.
  - 10) New buildings on lots in proximity to historic structures and historic districts shall be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.
  - 11) Off-street parking lots and loading areas shall be screened from adjacent properties by landscaping or fencing.

**§ 77-14. Permitted encroachments.**

- A) The following encroachments upon required yard areas are permitted:
- 1) Stairs, cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
  - 2) One-story open porches and terraces not exceeding three feet in height, projecting not more

than six feet only into a front or rear yard.

- 3) One-story enclosed vestibule not greater than 10 feet wide and five feet deep, projecting only into a front yard.
- B) In any case where the Board of Appeals, by variance, has permitted the reduction of a required yard, none of the foregoing encroachments shall be permitted into such diminished yard.

---

## **ARTICLE V, R-10 Residential District**

---

### **§ 77-15. Purpose and Permitted Uses.**

District Purpose. This district recognizes and is intended to preserve the principally single-family residential development pattern within the Town's established neighborhoods by promoting continuing opportunity for single-family residential and smaller-scale institutional and community facility uses within these neighborhoods consistent with their established character. In an R-10 Residential District, no building or premises shall be used and no building shall hereafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

- A) Principal permitted uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
- 1) One-family dwellings, not to exceed one dwelling on a single lot.
  - 2) (\*) Public parks, playgrounds and recreational areas; firehouses, police stations and other public buildings and uses.
  - 3) (\*) Regularly organized elementary or high schools having a curriculum approved by the Board of Regents of the State of New York, and subject to the following:
    - (a) The minimum lot size shall be five acres.
    - (b) No building, or parking or loading area, or part thereof, shall be located within 100 feet of any street line nor within 50 feet of any property line.
  - 4) (\*) Places of religious worship, including part-time religious schools, provided that the minimum lot size shall be one acre, and that no building or part thereof and no parking or loading area shall be located within 50 feet of any street or lot line; and parish houses, parsonages and rectories which shall comply with the requirements set forth herein for one-family dwellings.
  - 5) (\*) Public utility structures and rights-of-way, but excluding utility offices, garages, storage yards, and communication facilities.
- B) Permitted accessory uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval.
- 1) (\*) Off-street parking and loading in accordance with the provisions of Article XI of this Chapter.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
  - 3) Home occupations in accordance with the provisions of §77-41 of this Chapter.
  - 4) Private swimming pools and tennis and deck tennis facilities in accordance with the provisions of §77-42 of this Chapter.
  - 5) (\*) Signs in accordance with the provisions of Article X of this Chapter.
  - 6) Satellite antennas which receive and/or transmit, are less than one meter in maximum

diameter, and which do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.

- 7) Other customary accessory uses and buildings, provided that such uses shall not include any activity conducted as a business.
- C) Special uses permitted subject to the approval by the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Private membership clubs, operated by nonprofit membership corporations, exclusively for members and their guests, including ice-skating, swimming, tennis, squash or other similar clubs, subject to the following requirements:
    - (a) The minimum lot area shall be one acre.
    - (b) No building, or parking or loading area, or part thereof, shall be located within 50 feet of any street or lot line.
  - 2) (\*) Outdoor commercial recreation areas, such as seasonal camps and horseback riding establishments, including stables, maintenance and service buildings and other accessory structures incidental to the recreation area, but excluding tourist cabins, subject to the following:
    - (a) The minimum lot size shall be one acre.
    - (b) No building, or parking or loading areas, or part thereof, shall be located within 50 feet of any street or lot line.

#### **§ 77-16. Lot and bulk requirements.**

- A) Minimum lot area. The minimum lot area shall not be less than 10,000 square feet subject to the supplementary minimum lot area regulations of §77-34.2 of this Chapter, unless otherwise specified.
- B) Minimum lot width. The minimum lot width shall not be less than 100 feet.
- C) The minimum highway frontage shall be not less than 50 feet as measured along a single unbroken linear length at the street line.
- D) Minimum lot coverage. The area covered by all buildings shall not exceed 35% of the total lot area.
- E) The maximum impervious surface coverage shall not exceed thirty-five (35%) percent of the total lot area.
- F) Minimum yards. Yards shall have the following minimum setbacks:
  - 1) Front yard: 15 feet.
  - 2) Each side yard: eight feet.
  - 3) Rear yard: 20 feet.
- G) Maximum height shall not exceed 2 1/2 stories or 30 feet.
- H) Each lot shall be a Buildable Lot as set forth in §77-34.3.

#### **§ 77-17. R-10 District design standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the R-40 District. The Planning Board may use its

discretion to waive or modify these standards.

- 1) Except as set forth hereinafter, no fence or garden wall in any required yard or between the front building line and the required front yard shall exceed a height of six feet.

#### **§ 77-18. Permitted encroachments.**

- A) The following encroachments upon required yard areas are permitted:
  - 1) Stairs, cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
  - 2) One-story open porches and terraces not exceeding three feet in height, projecting not more than six feet only into a front or rear yard.
  - 3) One-story enclosed vestibule not greater than 10 feet wide and five feet deep, projecting only into a front yard.
- B) In any case where the Board of Appeals, by variance, has permitted the reduction of a required yard, none of the foregoing encroachments shall be permitted into such diminished yard.

---

### **ARTICLE VI, PRD Planned Residential Development District**

---

#### **§ 77-19. Permitted Uses.**

In a PRD Planned Residential Development District, no building or premises shall be used and no building shall hereinafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

- A) Principal uses permitted by right.
  - 1) Any use permitted by right in the R-40 Residential District, subject to all conditions and controls set forth for such use therein.
- B) Permitted accessory uses.
  - 1) Any accessory use permitted in the R-40 Residential District, subject to all conditions and controls set forth for such use therein.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
- C) Special uses permitted upon approval of the Planning Board in accordance with the provisions of Article XVII of this Chapter.
  - 1) Any special use permitted in §77-11C(1) through (6) in the R-40 Residential District, subject to all conditions and controls set forth for such uses therein.
  - 2) Planned residential developments, subject to the following requirements.

#### **§ 77-20. Planned residential development requirements.**

- A) Statement of intent and objectives.
  - 1) It is the intent of this Planned Residential Development (PRD) Article to provide performance criteria in the context of flexible use and design regulations so that self-contained residential neighborhoods of varying scales may be developed, incorporating a variety of residential types and containing both individual building sites and common property which are planned and developed as a unit.
  - 2) In adopting this article, the Town Board of the Town of Kent declares that it is its intent to encourage innovations in residential development so that the growing demands for

housing at all economic levels may be met by greater variety in type, design and siting of dwellings and to encourage the maximum reasonable conservation and the most efficient possible use of land. The Town Board further declares that these objectives cannot be achieved as well through the use of traditional bulk and use zoning and subdivision regulations, the application of which to substantial tracts of land may preclude the Town from taking full advantage of the most advanced techniques of land development.

- 3) Among the objectives which are sought to be achieved through use of the PRD technique are the following:
  - (a) An increase in choices of housing types, including but not limited to one-family detached, Townhouses and garden apartments, for individual ownership, including cooperative and condominium dwelling, and rental available to Town residents at various economic levels.
  - (b) More usable open space and recreation areas.
  - (c) Preservation of trees and outstanding natural topographic and ecological features and prevention of soil erosion.
  - (d) A shorter network of utilities and streets to lower housing and public maintenance costs.
  - (e) A more desirable environment than would be possible through the strict application of other sections of this Chapter.
  - (f) A development pattern in harmony with the planning objectives of the Town.
- B) Standards and general requirements for planned residential developments.
  - 1) Minimum standards.
    - a) The minimum area required to qualify for a planned residential development shall be 50 contiguous acres of land.
    - b) The PRD site shall have access to a major road with state or county jurisdiction or any other major road which, in the opinion of the Planning Board, is sufficiently free of sharp curves or steep slopes and has an adequate capacity to provide safe access and egress for the PRD development.
- C) Permitted principal uses.
  - 1) Dwelling units of all types: detached, semidetached, attached, clustered or any combination thereof.
  - 2) Public areas and recreational facilities as part of the PRD development.
- D) Permitted accessory uses.
  - 1) Accessory uses permitted in the R-10 Residential District as specified in §77-15B of this Chapter.
  - 2) Other accessory uses specifically related to the PRD development, including but not limited to maintenance buildings, recreation buildings and clubhouses.
- E) Residential density and standards.
  - 1) The gross density over the entire PRD site shall not exceed three dwelling units per acre, exclusive of environmentally sensitive lands as defined in §77-72.
  - 2) No structure in the PRD development shall exceed 2 1/2 stories or 30 feet in height.
  - 3) Except as provided hereinafter, landscaped open spaces, recreation areas or open areas left substantially in their natural state shall be provided at a ratio of not less than 500

square feet of open space for every bedroom included in the PRD. This minimum open space shall consist entirely of land that is not environmentally sensitive as defined in §77-72.

- 4) A buffer area shall be provided along all street and lot lines of the PRD, with a minimum depth, measured inward from the property line, of at least 50 feet. Said buffer area shall be suitably landscaped with grass and shrubs, trees or other ground cover or such screening as the Planning Board may prescribe. No parking, loading or building shall be permitted in this area.
- 5) Off-street parking shall be provided in accordance with the provisions of Article XI of this Chapter.
- 6) The average number of bedrooms per multifamily dwelling unit in the PRD shall not exceed two. For purposes of this section, all studio or efficiency apartments shall be counted as providing one bedroom each.
- 7) Common property. Common property in a PRD is a parcel or parcels or land, together with all improvements thereon, the use and enjoyment of which are shared by the owner and occupants of the individual building sites. Where common property exists, the ownership of such property can be either public or private. Where such property is not dedicated to the public, the owner shall provide for and establish an organization for the continued ownership and maintenance thereof. Such organization shall not be dissolved nor shall it dispose of any common property by sale or otherwise without first offering to dedicate the same to the Town.
- 8) Exceptions. The revisions to §77-20(B)(1) and (3) established by Local Law No. 16 of 1992 shall not apply to any property for which final subdivision approval has been granted by the Planning Board and a final subdivision plat has been duly filed with the office of the County Clerk at the time Local Law No. 16 of 1992 was adopted nor to site plans which have received approval from the Planning Board and which have also received a valid building permit at the time Local Law No. 16 of 1992 was adopted.

F) Land development requirements.

- 1) Wherever possible, natural features, such as streams, rock outcrops, topsoil, trees and shrubs, shall be preserved and incorporated in the landscaping of the PRD development.
- 2) Where adequate surface drainage is not possible by grading alone, a supplementary drainage system approved by the Town of Kent shall be required.
- 3) To improve the quality of the environment and to reduce inconvenience during bad weather, all electrical and telephone equipment shall be installed underground.
- 4) Except as set forth hereinafter, lot sizes, dimensions and building locations thereon may be freely disposed of, and buildings may be arranged in conformity with the overall density standards set forth herein. No minimum lot size or frontage or maximum lot coverage standards are specified herein, except that in one-family developments, in either conventional tract or cluster layout, no lot shall have an area of less than 20,000 square feet. In reviewing any application for a PRD, the Planning Board shall be guided by standards set elsewhere in this Chapter for comparable uses and by common good planning practice, to the end that the resulting development shall be compatible with the surroundings and to assure the stability of the uses proposed to be developed on the site.
- 5) The right-of-way and pavement widths for internal roads shall be determined in accordance with sound planning and engineering standards to be adequate and sufficient in size, location and design to accommodate the maximum expected traffic and parking needs and to provide free access to all parts of the development for firefighting equipment and police or emergency vehicles. The pavement of said roads shall be not less

than 24 feet wide.

- 6) The developer shall provide all necessary water and sewer facilities, storm drainage, highway access, paved service streets, parking and loading facilities and off-street lighting, making reasonable provision for utility service connections with adjoining properties in other ownerships.

G) Application procedure and approval process.

- 1) The procedure for special use approval as set forth in §77-59 shall apply, except that the following additional information shall also be provided.
- 2) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements, the developer shall submit a master plan of this proposal to said Board. The master plan shall be drawn to scale, though it need not be to the precision of a finished engineering drawing or site plan. Said plan shall include appropriate written information and maps to clearly indicate the following:
  - a) The disposition of various land uses and the areas covered by each, in acres.
  - b) The outline of the interior road system and all existing and proposed rights-of-way and easements, whether public or private.
  - c) Delineation of the various residential areas, indicating the number of dwelling units and bedrooms, for each housing type (one-family detached and semidetached, townhouses and garden apartments), plus a calculation of the density, in dwelling units per acre, for each residential area.
  - d) The interior common open space system and a statement as to how said system is to be preserved as such throughout the life of any portion of the PRD and how it is to be owned and maintained.
  - e) An illustrative site plan, indicating the relationship between the proposed road system, parking lots, buildings and open spaces.
  - f) The proposed water, storm and sanitary sewer systems and how they are proposed to be connected to any systems in adjoining areas.
  - g) Environmental characteristics of the PRD, including topography, areas of slope in excess of 20%, soils, rock outcrops, streams, swamps, lakes, ponds and other wetlands, and all proposed alterations of such environmental characteristics.
  - h) Estimates of the school-age population and the possible allocation of school children to the existing and any proposed schools.
  - i) Estimates of the peak hour traffic generation derived from the proposed development and its relation to peak hour traffic on surrounding roads and intersections, including methods developed for alleviating any traffic problems.
  - j) If the development is to be staged, a clear indication of how the staging is to proceed.
  - k) Evidence in the applicant's own behalf to demonstrate his competence to carry out the plan.

---

## ARTICLE VII, Commercial District

---

### **§ 77-21. Purpose and Permitted Uses.**

District Purpose. The purpose of this district is to provide convenient retail, business, and commercial facilities of sufficient variety to supply daily requirements of adjacent residential areas. The regulations are designed to limit the size of business and commercial facilities to a scale that is in keeping with the character of nearby residential districts. In a C Commercial District, no building or premises shall be used and no building shall hereafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

A) Principal permitted uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.

- 1) (\*) Animal hospitals, kennels and veterinarians' offices no crematoria.
- 2) (\*) Bakery, retail, no drive-in or drive-thru.
- 3) (\*) Business and professional offices, financial services, and banks including drive-in banks.
- 4) (\*) Business, vocational and training schools.
- 5) (\*) Convalescent or nursing homes.
- 6) (\*) Convenience store, no gasoline sales, no drive-in or drive-thru.
- 7) (\*) Delicatessen, no drive-in or drive-thru.
- 8) (\*) Funeral homes.
- 9) (\*) Health and Fitness Clubs.
- 10) (\*) Hotels and motels.
- 11) (\*) Indoor theaters.
- 12) (\*) Laundromat,
- 13) (\*) Membership clubs and lodges.
- 14) (\*) Museums, art galleries, libraries, and community centers.
- 15) (\*) Nursery for the retail sale and accessory storage and display of garden materials, plants and supplies, including nursery operations, provided that the outdoor storage or display of plant materials does not obstruct the flow of pedestrian or vehicular traffic and does not occur in any required yard or parking area.
- 16) (\*) Places of religious worship, including rectories, parsonages, parish houses and the like.
- 17) (\*) Public parks, playgrounds and similar recreational uses.
- 18) (\*) Public utility structures and rights-of-way, but excluding communication facilities.
- 19) (\*) Restaurants, no drive-in or drive-thru
- 20) (\*) Retail business, service business, no drive-in or drive-thru.
- 21) (\*) Shopping centers designed and managed as a unit.
- 22) (\*) Supermarket, grocery.

- 23) (\*) Telephone exchanges, excluding communication facilities.
- 24) (\*) Nursery schools, family day-care home, or day-care centers subject to §77-44.5 of this Chapter.
- B) Permitted accessory uses. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Off-street parking and loading in accordance with the provisions of Article XI of this Chapter.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
  - 3) (\*) Signs in accordance with the provisions of Article X of this Chapter.
  - 4) Satellite antennas which receive and/or transmit, are less than two meters in maximum diameter, and which do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.
  - 5) (\*) A residential unit located above a non-residential use.
  - 6) (\*) Other customary accessory uses and buildings.
- C) Special uses permitted upon approval of the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Adaptive reuse of existing residential structure for professional, medical, or general office use.
  - 2) (\*) Bakery, retail, with drive-in or drive-thru.
  - 3) (\*) Commercial recreation facility.
  - 4) (\*) Convenience store, no gasoline sales, with drive-in or drive-thru.
  - 5) (\*) Contractor business office, no contractor yard.
  - 6) (\*) Car wash.
  - 7) (\*) Communication facilities subject to the following requirements:
    - a) The communication facility may be located on a lot occupied by a principal use provided that the lot area is no less than the minimum lot area set forth below.
    - b) The maximum height of any communication tower shall not exceed 150 feet.
    - c) No other principal use shall be permitted on a lot containing a communication tower.
    - d) For the purposes of calculating maximum lot coverage, coverage by a communication tower shall include the outer rectangular area drawn about the perimeter of the tower's base and any anchoring (such as guy wires).
    - e) For a communication tower with a height of 80 feet or less, no part thereof shall be located within a distance equal to the height of the communication tower, plus the minimum yard area requirements set forth below, of any street or lot line.
    - f) For a communication tower with a height in excess of 80 feet, no part thereof shall be located with a distance equal to twice the height of the communication tower of any street or lot line.
    - g) All communication facilities shall be subject to the additional supplementary use requirements and standards set forth in Article XII, § 77-44.1 of this Chapter.

- 8) (\*) Day care center,
- 9) (\*) Delicatessen, with drive-in or drive-thru.
- 10) (\*) Motor vehicle repair shop, motor vehicle service station, with or without convenience store, with or without car wash and commercial garages, subject to the following requirements:
  - a) No building permit shall be issued for any such establishment within a distance of 500 feet of any school, public or private, religious institution, hospital, library, park, nursing home, extended care facility or any similar institution or other place of public assembly designed for occupancy by more than 50 persons, said distance to be measured in a straight line along or across a street between the nearest points of each of the lots or premises, regardless of the district where either premises is located.
  - b) No inoperative or partially dismantled automobile shall be stored on the premises for more than 90 days. All such vehicles shall be screened from view.
  - c) Entrance and exit driveways shall have an unrestricted width of not less than 12 feet nor more than 20 feet, shall be located not nearer than 10 feet to any lot line and shall be so laid out as to avoid the necessity of any vehicle backing into any public right-of-way.
  - d) Vehicle lifts or pits, dismantled automobiles, all parts or supplies, goods, equipment, materials, refuse, garbage or debris shall be located within a building enclosed on all sides.
  - e) All service or repair of motor vehicles shall be conducted in a building enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
  - f) Gasoline or flammable oils in bulk shall be stored fully underground not nearer than three feet to any street line or 10 feet to any other lot line, and the top of the tank shall be not less than two feet below the surface of the ground.
  - g) Gasoline pumps or lubricating or other devices shall be located not nearer than 20 feet from any street or other lot line.
  - h) Signage shall conform to the provisions of §77-37. In addition, the following signs shall also be permitted:
    - (i) Signs advertising, for each grade, the quality of gasoline, sales price and taxes with an area not exceeding 12 inches wide by 12 inches in height posted so as to be clearly visible to motor vehicle drivers shall be permitted on each pump.
    - (ii) Each pump shall also be marked with the brand name and quality of gasoline, with such sign not exceeding 24 inches square. In the case of self-service gasoline pumps, not more than one sign with an area of not more than 10 square feet shall be permitted on each side of each pump island for instructional purposes and identification of self-service.
  - i) If a carwash is involved, the following restrictions shall apply:
    - (i) Lot size for automobile washing facilities shall be a minimum of two acres, and such lot shall have street frontage of at least 200 feet.
    - (ii) All washing and machine-drying operations shall be conducted within a structure.

- (iii) No washing, vacuuming, steam-cleaning, waxing, polishing nor machine-drying operation, nor building within which such operations are conducted, shall be permitted within 100 feet of a residential building located in a residence district.
  - (iv) All entrance and exit lanes and parking areas shall be surfaced with an asphaltic or portland cement pavement so as to provide a durable and dustless surface and shall be so graded and drained as to dispose of all drainage water therein in a manner that does not adversely impact adjacent properties, uses and abutting roadways.
  - (v) Exit drives for new facilities shall be designed to avoid the accumulation of water on the surface normally traversed by exiting vehicles. The exit drive shall have a minimum length of 150 feet located past the wash facility structure and incorporate speed bumps designed to shake the vehicle sufficiently to remove as much wash water as possible prior to the vehicle's exiting the site.
- 11) (\*) Motor vehicle sales, rental and service, with or without accessory repair facilities, subject to the following requirements;
  - a) Sale of used vehicles or boats shall be conducted only as accessory to the sale of new vehicles or boats.
  - b) Entrance and exit driveways shall have an unrestricted width of not less than 12 feet and shall be so laid out as to avoid the necessity of any vehicle backing out into any public right-of-way.
  - c) Vehicle lifts or pits, dismantled vehicles and all parts and supplies shall be located within a building enclosed on all sides.
  - d) All services or repair of motor vehicles shall be conducted in a building enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
  - e) Gasoline or flammable oils in bulk shall be stored fully underground, not nearer than three feet to any street line or 10 feet to any other lot line.
  - f) No commercial sale of gasoline shall be permitted, nor shall any pump be located in a front or side yard.
  - g) No inoperative or partially dismantled automobile shall be stored on the premises for more than 90 days. All such vehicles shall be screened from view.
- 12) (\*) Commercial recreation facilities including uses accessory and incidental to commercial recreation, such as locker rooms, eating and drinking facilities and retail sale of goods associated with the primary activity, on lots with an area of not less than three acres.
- 13) (\*) Wholesale, warehousing and indoor storage establishments but excluding trucking terminals and the storage of coal, coke and fuel oil.
- 14) (\*) Residential uses above retail stores, personal service establishments, and restaurants.
- 15) (\*) Retail business, service business, with drive-in or drive-thru.
- 16) (\*) Restaurants, with drive-in or drive-thru.
- 17) (\*) Taverns, Bars, no drive-in or drive-thru.

**§ 77-22. Lot and bulk requirements.**

- A) Minimum lot area. The minimum lot area shall not be less than 15,000 square feet, unless otherwise specified.
- B) Minimum lot width. The minimum lot width shall not be less than 100 feet.
- C) The minimum highway frontage shall not be less than 100 feet as measured along a single unbroken linear length at the street line.
- D) Maximum lot coverage. The maximum area covered by all principal and accessory buildings shall not exceed 50% of the total lot area, unless otherwise specified.
- E) The maximum impervious surface coverage shall not exceed 75% of the total lot area.
- F) Minimum yards. Yards shall have the following minimum setbacks:
  - 1) Front yard: 30 feet.
  - 2) Each side yard: 10 feet.
  - 3) Rear yard: 30 feet.
- G) Minimum distance for accessory building or uses, including off-street parking and loading, to any property line shall not be less than 30 feet.
- H) Maximum height shall be 2 1/2 stories or 30 feet.
- I) Each lot shall be a Buildable Lot as set forth in §77-34.3.

**§ 77-23. Commercial District designs standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the Commercial District. The Planning Board may use its discretion to waive or modify these standards.
  - 1) Screening and landscaping. A hedge, fence or wall of a design and material subject to approval by the Planning Board, with a height of not less than six and, except in the case of planting screens of not more than eight feet, adequate to screen, to the extent practicable, at all seasons of the year the operations conducted on the lot from any abutting residence district. In addition:
    - a) The side yard and rear yard setbacks shall be landscaped to a depth of not less than 15 feet along their length except openings required for driveways, utilities and pedestrians as determined by the Planning Board.
    - b) The front yard setback shall be landscaped to a depth of not less than 10 feet along its length except openings required for driveways, utilities and pedestrians as determined by the Planning Board.
    - c) Buildings, parking areas, and loading areas associated with non-residential uses, shall be required to meet the following additional setbacks:
      - (i) If the property proposed for development adjoins a residential property located in a residential district all site improvements, with the exception of a driveway, shall be set back an additional fifteen (15) feet from the minimum yard setback.
      - (ii) The additional setback is intended to provide a visual and noise buffer between residential and non-residential uses. The additional setback, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings, or fencing, at a height so as to provide, as much as practicable, a visual screen of the non-residential improvements from residential uses. The species type, location and planted height of such landscaping shall be

subject to the approval of the Planning Board.

- 2) There shall be no parking or loading areas placed or located within any front, side, or rear setback.
- 3) Utilities shall be placed underground.
- 4) All exterior trash storage containers shall be screened so that they are not visible from off the property. Each trash enclosure shall be constructed of masonry walls and with a steel gate painted to be compatible with the color of the masonry walls and building it is to serve.
- 5) Sidewalks shall be provided along any existing or proposed public street. The sidewalks shall be separated from the street by a tree lawn at least 4 feet wide. New streets shall, unless waived by the Planning Board, incorporate sidewalks into the design, and shall, where practicable, link with existing and future potential sidewalks and pedestrian pathways.
- 6) New or in-fill construction should be designed so as to be compatible with the general character of buildings on the street frontage. The setback, height, bulk, gable and pitch of roofs, use of porches, shutters and other exterior design elements should result in an overall design that complements the existing character of the streetscape.
- 7) Existing tree rows and hedgerows, stonewalls, and similar features shall, to the extent practicable, be retained in the development of any new use or the expansion of any existing use.
- 8) Additions to existing buildings shall use materials and details complimentary to those incorporated in the parent structure.
- 9) The construction of any blank, windowless facade facing a street shall be avoided.
- 10) The utilization of ribbon or continuous strip glazing in any building facade shall be avoided.
- 11) Pitched roofs shall be used on buildings in lieu of flat roofs to the extent feasible. If pitched roofs are not feasible or practical in a given situation, then, at a minimum, a pitched roof architectural feature shall be required as a detail element, i.e., entry way or tower element to break the horizontal façade. Buildings located adjacent to residential districts shall incorporate the use of pitched roofs for the entire structure.
- 12) All roof-mounted equipment shall be screened entirely from view utilizing screens of a height equal to the height of the equipment.
- 13) Any large building façade and the sides visible from a street shall incorporate changes in plane and architectural features that give the appearance of several common-wall buildings.
- 14) Major modifications to the existing landscape such as extensive grading, clear-cutting of trees, or other similar activities shall be avoided to the extent possible.
- 15) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.
- 16) The use of a “boulevard” entrance for new streets and driveways is encouraged. Such boulevard entrance shall be improved with landscaping, fencing, stone walls or other suitable aesthetic improvements as approved by the Planning Board. Lots in excess of two acres should provide a secondary access for emergency purposes.
- 17) Parking and loading areas shall be located at the rear of the principal building. The Planning Board may permit parking spaces to be located to the side of the principal building where the Board has determined that site conditions do not permit parking to be located at the rear of the building.

- 18) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.
- 19) New buildings in proximity to historic structures and historic districts listed on the National or State Register of Historic Places shall be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.
- 20) The total number of required parking spaces shall be broken up into smaller "blocks" of parking, with no more than ten (10) parking spaces per parking block. Parking blocks shall be separated from each other by a landscaped island no less than 5 feet wide.
- 21) Service alleys for deliveries and utility access shall be established along rear property lines wherever practical.
- 22) Where permitted, drive-thru facilities shall be located at the rear of principal structures and landscaping shall be used to reduce the visibility of such facilities.
- 23) Pedestrian safety and internal vehicular circulation must be considered in the design of any drive-thru facilities.
- 24) Cross-easements between lots shall be used to provide shared access to parking whenever possible.
- 25) Off-street parking lots and loading areas, accessory use structures or storage other than sheds shall be screened from public walkways and streets utilizing landscaping and/or fencing as determined by the Planning Board.

---

## **ARTICLE VIII, Industrial-Office-Commercial District**

---

### **§ 77-24. Purpose and Permitted Uses.**

District Purpose. This district is designed to provide areas for medium to large scale commercial establishments that are capable of functioning independent of intensive pedestrian traffic and proximity to other firms. These uses typically require direct vehicular access to and visibility from a major arterial highway and collector road. In an IOC District, no building or premises shall be used and no building shall hereinafter be erected, altered or added to unless otherwise provided in this Chapter, except for one or more of the following uses:

- A) Principal permitted uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Animal hospital, clinic, veterinary office, no kennel or boarding facilities, no crematorium.
  - 2) (\*) Art gallery, community center.
  - 3) (\*) Bakery, retail, wholesale, no drive-in or drive-thru.
  - 4) (\*) Bank or financial services.
  - 5) (\*) Bowling alleys.
  - 6) (\*) Club, health and fitness.
  - 7) (\*) Commercial recreation facility.
  - 8) (\*) Conference facility.
  - 9) (\*) Country clubs.

- 10) (\*) Delicatessen, no drive-in or drive-thru.
- 11) (\*) Eleemosynary institutions (other than correctional institutions, drug rehabilitation centers or institutions for the insane), but excluding administrative headquarters or branch office buildings thereof, subject to the following requirements:
  - a) The minimum lot area shall be five acres.
  - b) No building or part thereof or any parking or loading area shall be located within 150 feet of any street or lot line.
- 12) (\*) Fraternal clubs, membership clubs, recreational clubs.
- 13) (\*) Funeral homes, no crematorium.
- 14) (\*) Golf courses.
- 15) (\*) Hospitals authorized by the Department of Health of the State of New York, excluding hospitals with facilities for correctional purposes, subject to the following requirements:
  - a) The minimum lot area shall be five acres.
  - b) No building or part thereof and no parking or loading area shall be located within 150 feet of any street or lot line.
- 16) (\*) Hotel, motel, inns.
- 17) (\*) Kennel, provided:
  - a) The minimum lot area is three (3) acres.
  - b) No dog kennel, runway or exercise pen shall be located within one hundred fifty (150) feet of any lot line.
- 18) (\*) Laundry, laundromat, dry cleaner.
- 19) (\*) Indoor theater.
- 20) (\*) Industrial and manufacturing uses.
- 21) (\*) Industrial park.
- 22) (\*) Motor vehicles sales, rental and service, with or without accessory repair facilities, subject to the following requirements:
  - a) Entrance and exit driveways shall have an unrestricted width of not less than 12 feet and shall be so laid out as to avoid the necessity of any vehicle backing out into any public right-of-way.
  - b) Vehicle lifts or pits, dismantled vehicles and all parts and supplies shall be located within a building enclosed on all sides.
  - c) All services or repair of motor vehicles shall be conducted in a building enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
  - d) Gasoline or flammable oils in bulk shall be stored fully underground, not nearer than three feet to any street line or 10 feet to any other lot line.
  - e) No commercial sale of gasoline shall be permitted, nor shall any pump be located in a front or side yard.
  - f) No inoperative or partially dismantled automobile shall be stored on the premises for more than 90 days. All such vehicles shall be screened from view.

- 23) (\*) Museums.
- 24) (\*) Nurseries, greenhouses and vegetable stands.
- 25) (\*) Nursery schools, family day-care home, or day-care centers subject to §77-34.5 of this Chapter.
- 26) (\*) Office for business, professional and medical use.
- 27) (\*) Office park.
- 28) (\*) Outdoor recreation, including miniature golf courses, archery ranges, driving ranges and skating rinks.
- 29) (\*) Personal service business, no drive-thru.
- 30) (\*) Places of religious worship.
- 31) (\*) Public utility structures.
- 32) (\*) Restaurant, no drive-thru.
- 33) (\*) Retail business, no drive-thru.
- 34) (\*) Service business, no drive-thru.
- 35) (\*) Shopping center.
- 36) (\*) Supermarket, grocery store.
- 37) (\*) Swimming pool and pool accessory sales.
- 38) (\*) Veterinary office, clinic, no crematorium.
- 39) (\*) Warehouse, storage and distribution facility.
- 40) (\*) Wholesale, indoor storage and warehousing establishments, but excluding trucking terminals and the storage of coal, coke and fuel oil.
- B) Permitted accessory uses. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Off-street parking and loading in accordance with the provisions of Article XI of this Chapter.
  - 2) (\*) Streets, roads, driveways, utilities, and infrastructure subject to §77-6(D).
  - 3) (\*) Accessory signs in accordance with the provisions of Article X of this Chapter.
  - 4) Satellite antennas which receive and/or transmit, are less than two meters in maximum diameter, and which do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.
  - 5) (\*) Other customary accessory uses.
- C) Special uses permitted subject to the approval by the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) (\*) Adaptive reuse of existing residential structure for non-residential office use.
  - 2) (\*) Adult business use subject to §77-44.2 of this Chapter.
  - 3) (\*) Communication facilities subject to the following requirements:
    - a) The communication facility may be located on a lot occupied by a principal use

provided that the lot area is no less than the minimum lot area set forth below.

- b) The maximum height of any communication tower shall not exceed 150 feet.
  - c) For the purposes of calculating maximum lot coverage, coverage by a communication tower shall include the outer rectangular area drawn about the perimeter of the tower's base and any anchoring (such as guy wires), and any support foundation for the tower and ground mounted equipment.
  - d) For a communication tower with a height of 80 feet or less, no part thereof shall be located within a distance equal to the height of the communication tower, plus the minimum yard area requirements set forth below, of any street or lot line.
  - e) For a communication tower with a height in excess of 80 feet, no part thereof shall be located with a distance equal to twice the height of the communication tower of any street or lot line.
  - f) All communication facilities shall be subject to the additional supplementary use requirements and standards set forth in §77-44.1 of this Chapter.
- 4) (\*) Contractor business office with or without accessory contractor yard.
- 5) (\*) Motor vehicle repair shop, motor vehicle service station, with or without convenience store, with or without car wash and commercial garage subject to the following requirements:
- a) Exterior storage or display of materials and materials offered for sale is prohibited.
  - b) No building permit shall be issued for any such establishment within a distance of 500 feet of any school, public or private, religious institution, hospital, library, park, nursing home, extended care facility, alternate care housing, or any similar institution or other place of public assembly designed for occupancy by more than 50 persons, said distance to be measured in a straight line along or across a street between the nearest points of each of the lots or premises, regardless of the district where either premises is located.
  - c) Entrance and exit driveways shall have an unrestricted width of not less than 12 feet nor more than 20 feet, shall be located not nearer than 10 feet to any lot line and shall be so laid out as to avoid the necessity of any vehicle backing into any public right-of-way.
  - d) Vehicle lifts or pits, dismantled automobiles, all parts or supplies, goods, equipment, materials, refuse, garbage or debris shall be located within a building enclosed on all sides.
  - e) No inoperative or partially dismantled automobile shall be stored on the premises for more than 90 days. All such vehicles shall be screened from view.
  - f) All service or repair of motor vehicles shall be conducted in a building enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
  - g) Gasoline or oils in bulk, including waste oil, shall be stored fully underground not nearer than three feet to any street line or 10 feet to any other lot line, and the top of the tank shall be not less than two feet below the surface of the ground.
  - h) Gasoline pumps, lubrication equipment and other devices shall be located not nearer than 20 feet from any street or other lot line.
  - i) Signage shall conform to the provisions of §77-37, In addition, the following signs shall also be permitted:

- (i) Signs advertising for each grade of gasoline, the sales price and taxes with an area not exceeding 12 inches wide by 12 inches in height posted so as to be clearly visible to motor vehicle drivers shall be permitted on each pump.
  - (ii) Each pump may also be marked with the brand name and quality of gasoline, with such sign not exceeding 24 inches square. In the case of self-service gasoline pumps not more than one sign with an area of not more than 10 square feet shall be permitted on each side of each pump island for instructional purposes and identification of self-service.
- j) If a carwash is involved, the following restrictions shall apply:
  - (i) Lot size shall be a minimum of two acres, and such lot shall have street frontage of at least 200 feet.
  - (ii) All washing and machine-drying operations shall be conducted within a structure.
  - (iii) No washing, vacuuming, steam-cleaning, waxing, polishing nor machine-drying operation, nor building within which such operations are conducted, shall be permitted within 100 feet of a residential building located in a residence district.
  - (iv) All entrance and exit lanes and parking areas shall be surfaced with an asphaltic or Portland cement pavement so as to provide a durable and dustless surface and shall be so graded and drained as to dispose of all drainage water therein in a manner that does not adversely impact adjacent properties, uses and abutting roadways.
  - (v) Exit drives for new facilities shall be designed to avoid the accumulation of water on the surface normally traversed by exiting vehicles. The exit drive shall have a minimum length of 150 feet located past the wash facility structure and incorporate speed bumps designed to shake the vehicle sufficiently to remove as much wash water as possible prior to the vehicle's exiting the site.
- 6) (\*) Personal service business, with drive-thru
- 7) (\*) Restaurant, with drive-thru.
- 8) (\*) Retail business, with drive-thru.
- 9) (\*) Service business with drive-thru.
- 10) (\*) Truck terminal.

**§77-25. IOC District lot and bulk requirements.**

- A) The minimum lot area shall not be less than 60,000 square feet.
- B) The minimum lot width, measured at the street line, shall not be less than 200 feet.
- C) The minimum highway frontage shall not be less than 200 feet as measured along a single unbroken linear length at the street line.
- D) The maximum building coverage shall not exceed 50% of the total lot area.
- E) The maximum impervious surface coverage shall not exceed 75% of the total lot area.
- F) Minimum yards. Yards shall have the following minimum setbacks.
  - 1) Front yard: 40 feet.

- 2) Each side yard: 20 feet.
- 3) Rear yard: 40 feet.
- G) Minimum distance from accessory building or uses, including off-street parking and loading, to any property line shall not be less than 25 feet.
- H) Maximum building height is three stories or 40 feet.
- I) Each lot shall be a Buildable Lot as set forth in §77-34.3.

**§ 77-26. IOC District design standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the IOC District. The Planning Board may use its discretion to waive or modify these standards.
  - 1) If the property proposed for development adjoins property located in a residential district all site improvements shall be set back an additional fifteen (15) feet from the minimum yard setback. The additional setback is intended to provide a visual and noise buffer between residential and non-residential uses. The additional setback, as well as the minimum yard setback area, shall, as determined by the Planning Board, be planted with a mixture of evergreen and deciduous plantings and/or fencing, at a height so as to provide as much as practicable a visual screen of the non-residential improvements from residential uses. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.
  - 2) On a lot no single retail use shall occupy ground floor space in excess of 25,000 square feet.
  - 3) Utilities shall be placed underground unless infeasible.
  - 4) All exterior trash storage containers shall be screened so that they are not visible from off the property. Each trash enclosure shall be constructed of masonry walls with a steel gate painted to be compatible with the color of the masonry walls and building it is to serve.
  - 5) Sidewalks shall be provided along any public street. The sidewalks shall be separated from the street by a tree lawn at least 4 feet wide.
  - 6) New or in-fill construction should be designed so as to be compatible with the general character of buildings on the street frontage. The setback, height, bulk, gable and pitch of roofs, use of porches, shutters and other exterior design elements should result in an overall design that complements the existing character of the streetscape.
  - 7) The development of public parks, commons, or small pedestrian plazas with amenities such as benches and landscaping is encouraged and may be required by the Planning Board.
  - 8) Where practicable, existing tree rows and hedgerows, stonewalls, and similar features should be retained in the development of any new use or the expansion of any existing use.
  - 9) Additions to existing buildings shall use materials and details complementary to those incorporated in the parent structure.
  - 10) The construction of any blank, windowless façade facing a street is prohibited.
  - 11) The utilization of ribbon or continuous strip glazing in any building façade shall be avoided.

- 12) Pitched roofs shall be used on buildings in lieu of flat roofs to the extent feasible. If pitched roofs are not feasible or practical in a given situation, then, at a minimum, a pitched roof architectural feature shall be required as a detail element, i.e., entry way or tower element to break the horizontal façade.
- 13) All roof-mounted equipment shall be screened, to the extent practicable, from view utilizing screens of a height equal to the height of the equipment.
- 14) Any large building façade and the sides visible from a street shall incorporate changes in plane and architectural features that give the appearance of several common-wall buildings.
- 15) Major modifications to the existing landscape such as extensive grading, clear-cutting of trees, or other similar activities shall be avoided to the extent possible.
- 16) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.
- 17) The use of a "boulevard" entrance for streets and driveways is encouraged. Such boulevard entrance shall be improved with landscaping, fencing, stone walls or other suitable aesthetic improvements as approved by the Planning Board. Lots in excess of two acres should provide a secondary access for emergency purposes.
- 18) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.
- 19) New buildings in proximity to historic structures and historic districts shall be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.
- 20) The total number of required parking spaces shall be broken up into smaller "blocks" of parking, with no more than fifteen (15) parking spaces per parking block. Parking blocks shall be separated from each other by a landscaped island no less than 5 feet wide.
- 21) Service alleys for deliveries and utility access shall be established along rear property lines.
- 22) Where permitted, drive-thru facilities shall be located at the rear of principal structures and landscaping shall be used to reduce the visibility of such facilities.
- 23) Pedestrian safety and internal vehicular circulation must be considered in the design of any drive-thru facilities.
- 24) Cross-easements shall be used to provide shared access to parking whenever possible.
- 25) Off-street parking lots and loading areas, accessory use structures or storage other than sheds shall be screened from public walkways and streets utilizing landscaping and/or fencing as determined by the Planning Board.

---

## **ARTICLE VIII.A, Towner's Road Overlay District**

---

### **§ 77-26.A. Purpose and Permitted Uses.**

**District Purpose. The regulations of the Towners Road Overlay District apply to those properties in the Towners Road area as shown on the Zoning Map. This Overlay District allows for business and mixed business and residential uses at a scale appropriate to the predominant high density residential use of the Towner's Road area. The business uses allowed within this District are**

**intended to primarily serve the residents of the Towner's Road area. This Overlay District imposes additional requirements to those in the underlying R-10 District for the affected properties, and is intended to supplement and not to supersede the provisions of the R-10 District except insofar as the overlay district may impose more restrictive requirements on the specific uses allowed subject to this Article VIIIA. Within the Towner's Road Overlay District, no building or premises shall be used and no building shall hereafter be erected, altered or added except in conformity with the following additional requirements:**

- A) Principal permitted uses. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) Any principal permitted use allowed in the R-10 Residential District, subject to Planning Board approval as indicated in §77-15.
- B) Permitted accessory uses. (\*) indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) Any permitted accessory use allowed in the R-10 Residential District.
  - 2) Signs in accordance with the R-10 Residential District regulations.
- C) Special uses permitted subject to the approval by the Planning Board in accordance with the provisions of §77-59 of this Chapter. (\*) Indicates a use that is also subject to Planning Board Site Plan Approval pursuant to §77-60 of this Chapter.
  - 1) Any conditional use allowed in the R-10 Residential District.
  - 2) Delicatessen, no drive-in or drive-thru.
  - 3) Retail business, no drive-in or drive-thru. On a lot no single retail use shall occupy ground floor space in excess of 3,000 square feet.
  - 4) Restaurants, no drive-in or drive-thru. On a lot no single restaurant use shall occupy ground floor space in excess of 2,000 square feet.
  - 5) Service business, no drive-in or drive-thru. On a lot no single service business use shall occupy ground floor space in excess of 1,500 square feet.
  - 6) Contractor office, no contractor yard, as set forth in § 77-65.

**§ 77-26.B. Towners Road Overlay District lot and bulk requirements.**

- A) The minimum lot, bulk, height, and maximum impervious lot coverage and impervious surface coverage shall be the same as set forth for the R-10 District.
- B) Off-street parking and loading shall be provided in accordance with Article XI of this Chapter.

**§ 77-26.C. Towners Road Overlay District permitted encroachments.**

- A) The permitted encroachments shall be the same as set forth for the R-10 District except as otherwise modified by this section.

**§ 77-26.D. Towners Road Overlay District design standards.**

- A) Design standards. The following standards shall be applied during the site plan and subdivision review of any development project in the IOC District. The Planning Board may use its discretion to waive or modify these standards.
  - 1) The Planning Board shall use its discretion to establish appropriate landscape buffer setbacks for adaptive reuse, rehabilitation, and re-development projects, and projects on

previously disturbed land areas. The Planning Board is hereby expressly authorized to require such additional front, side and rear yard setbacks as may be required to ensure that the non-residential use does not interfere with the quiet enjoyment of adjoining residential properties. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

- 2) Utilities shall, unless infeasible, be placed underground.

---

## **ARTICLE IX, Supplementary Lot and Bulk Regulations**

---

### **§ 77-27. Corner lots.**

- A) Obstruction to vision at street intersections. At all street intersections, no obstructions to vision exceeding 30 inches in height above curb level shall be erected or maintained on any lot within the triangle formed by the street lines of such lot and a line drawn between points along such street lines 30 feet distant from their point of intersection.
- B) Yards. On a corner lot, one yard other than the front yard shall be deemed to be a rear yard, and the other or others, side yards. The designation of a front yard shall be made by the Building Inspector, which designation shall include consideration of the location of the main access into the principal structure in relation to the adjoining streets.

### **§ 77-28. Through lots.**

- A. On a through lot, front yard setbacks are required along all street lines.

### **§ 77-29. Lot frontage, flag lots and driveways.**

- A) Unless otherwise specified, no lot shall have a frontage on a public street or private road, measured along the street line, of less than 50 feet, except that where the street line of a lot is a curve with a radius of 100 feet or less, the minimum required frontage shall be 25 feet.
- B) All driveways shall meet the construction standards set forth in §A81-18D of the Subdivision Regulations.
- C) Lots which meet the definition of "flag lot" as defined in §77-65 of this Code shall meet the following additional standards:
  - 1) Only that portion of the lot having adequate width to meet the minimum lot width requirements and allow for provision of meeting the minimum yard and setback requirements of the district shall be counted as part of the minimum lot area.
  - 2) The "flagpole" shall maintain a minimum width of not less than 50 feet from the street line to a point not less than 50 feet from the minimum lot width.
  - 3) The driveway access constructed along the flagpole shall meet the construction standards of §A81-18 of the Town Subdivision Regulations. Access to the flag lot shall be by way of the flagpole, or panhandle, portion of that lot or parcel, as recorded.
  - 4) The flagpole shall be parallel to the closest existing lot line.
  - 5) The flagpole shall not cross a flowing or intermittent stream, ravine, or similar topographic feature without provision of an adequate structure to carry traffic.
  - 6) In no event shall a flag lot be used to access a private road.
  - 7) The flagpole shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel never to be resubdivided or conveyed

separately from the parcel to which it provides access.

- 8) Two adjoining flag lot parcels are prohibited. Where one flag lot parcel is preexisting the adjoining lot or parcel shall not be divided into a flag lot shape.
- 9) A flag lot parcel shall not be approved which would create a flagpole that would be generally parallel to a public street, unless the flagpole is separated from the public street by distance of not less than 200 feet.
- 10) For subdivision applications for approval of four or more lots, flag lots as defined herein shall not comprise more than 25% of the total number of lots in the proposed subdivision.

#### **§ 77-30. Courts.**

The minimum dimension of an inner court shall not be less than twice the average height of all surrounding walls. However, in no case shall an inner court have a dimension of less than 20 feet. The height of walls surrounding an inner court shall be measured from finished grade at the base thereof to the top of such wall, except that, in the case of roofs with a slope exceeding five inches vertical to 12 inches horizontal, the height shall be measured to the mean point between the top of said wall and the highest point of the roof. The minimum dimension of an outer court shall be 20 feet, and its depth shall not exceed its width.

#### **§ 77-31. Height of accessory buildings.**

No accessory building shall exceed a height of 20 feet.

#### **§ 77-32. Exceptions to height requirements.**

The height limitations set forth in this Chapter shall not apply to chimneys, church spires, elevators or other mechanical equipment, standpipes or water towers, and cable radio or television antennas.. However, no structure in excess of 20 feet above the maximum height for the district in which the structure is located shall be erected without the specific approval of the Planning Board, which shall give due regard to the effects of such structure upon the public health or safety and compatibility with surrounding land uses and buildings.

#### **§ 77-33. Reserved.**

#### **§ 77-34. Temporary structures.**

No structure of a temporary character or one not completely finished and enclosed, other than a tool shed or other similar temporary structure used in connection with the construction of a permanent structure, shall be permitted on a Commercial District or an IOC District property.

##### **§ 77-34.1. Refuse and storage containers and receptacles.**

- A) Refuse and storage containers and receptacles located on non-residential premises, and those located on multi-family residential premises in which a receptacle is used in common by the inhabitants of two or more dwellings, but excluding garbage cans on single residential premises, shall be located and screened so as to not be visible from adjoining or nearby properties and public roads. No refuse container or receptacle shall be placed or located within fifty (50) feet of any residence located in a residential district. All refuse containers and receptacles, and locations for the deposit of refuse or the storage of materials, shall be screened from view and designed so as to be fireproof and/or fire retardant, and to prevent access by rodents, dogs, cats, and vermin. All such containers and receptacles shall remain closed at all times, and shall be designed to prevent the release of refuse, paper and any other material.

**§ 77-34.2. Supplementary minimum lot area regulations.**

- A) Notwithstanding any contrary provision in this Chapter each lot proposed for residential use and each lot approved by the Planning Board as part of a residential subdivision plan, shall have the minimum lot area as set forth in the regulations for the district in which such lot is located along with any additional minimum lot area as set forth in Table 1 of this section.
- B) The calculation of minimum lot area for a lot shall be prepared by a New York State Licensed Professional Engineer, Land Surveyor, Architect, or Landscape Architect who shall prepare a plot plan depicting the minimum lot area with the proposed improvements, and who shall certify that the minimum lot area for each lot(s) or proposed lot(s) pursuant to the district regulations and Table 1 of this section have been met. The certification shall also state that the professional responsible for its preparation verified the location and extent of the hydrologic soil groups on the lot(s) to be created based on a personal inspection of the on-site soils.

Table 1  
Supplementary Minimum Lot Area Regulations  
(For Residential Use Lots With Individual Sewage Disposal Systems with or without Individual Water Supplies)

Dominant <sup>1</sup> Soil (As a percentage of the on-site soil of a lot or proposed lot)				
	If 0% or greater but <25%	If 25% or greater but <50%	If >50% or greater	
Hydrologic Soils Group2 (HSG)	HSG A			
	R-80	80,000 s.f.	80,000 s.f.	80,000 s.f.
	R-40	40,000 s.f.	40,000 s.f.	40,000 s.f.
	R-10	10,000 s.f.	10,000 s.f.	10,000 s.f.
	HSG A/D			
	R-80	80,000 s.f.	80,000 s.f.	80,000 s.f.
	R-40	40,000 s.f.	40,000 s.f.	40,000 s.f.
	R-10	10,000 s.f.	10,000 s.f.	10,000 s.f.
	HSG B			
	R-80	80,000 s.f.	80,000 s.f.	80,000 s.f.
	R-40	40,000 s.f.	40,000 s.f.	40,000 s.f.
	R-10	10,000 s.f.	10,000 s.f.	10,000 s.f.
	HSG C			
	R-80	3 acres	3.5 acres	3.5 acres
	R-40	3 acres	3.5 acres	3.5 acres
	R-10	3 acres	3.5 acres	3.5 acres
	HSG C/D			
	R-80	3 acres	3.5 acres	3.5 acres
	R-40	3 acres	3.5 acres	3.5 acres
	R-10	3 acres	3.5 acres	3.5 acres
	HSG D			
	R-80	5.4 acres	6.2 acres	6.2 acres
	R-40	5.4 acres	6.2 acres	6.2 acres
	R-10	5.4 acres	6.2 acres	6.2 acres

- 1) "Dominant" shall mean the soil group that comprises the greatest area or percentage of the soils within a lot or proposed lot.
- 2) For any lot in which the dominant soil does not have an assigned letter classification hydrologic group as shown in Article XXIII of this Chapter, the minimum lot area for the district in which the parcel or lot is located shall apply.

- 3) "Soils Group Classification" shall mean the hydrologic group as set forth in Article XXIII of this Chapter as derived from "Soils Survey of Putnam and Westchester Counties, New York" (September 1994) prepared by the USGA Soil Conservation Service.

**§ 77-34.3. Buildable lot.**

- A) Each lot shall be a Buildable Lot as defined herein. A Buildable Lot is a lot having a buildable area capable of accommodating proposed principal and accessory improvements, and including, where required, an on-site water supply facility and sewage treatment system that meets the standards of the Putnam County Department of Health. A buildable lot shall also adjoin and have access to an improved street, or shall adjoin and have access to an unimproved street that will be improved as part of the development plan for the lot.

---

**ARTICLE X, Supplementary Sign Regulations**

---

**§ 77-35. General requirements.**

The following sign regulations shall apply to all districts:

- A) Purpose. The purpose of this section is to promote and protect the public health, welfare and safety by regulating existing and proposed on-premises signs and signs of all types within the Town of Kent. This section is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of the town. It is further intended to reduce distractions and obstructions that may adversely affect traffic safety, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more visual open space and maintain the generally high level of the community's appearance and attractiveness. This section is intended to promote attractive signs that clearly present the visual message in a manner that is compatible with their surroundings and to ensure that signs aid orientation and adequately identify uses and activities to the public. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to be compatible with their surroundings.
- B) General regulations.
- 1) No person, firm or corporation shall hereafter erect, re-erect, construct or structurally alter a sign or sign structure without first receiving the approval of the Town Planning Board and obtaining a permit issued by the Building Inspector.
  - 2) Every application for a sign permit shall be accompanied by plans to scale showing the dimensions and area of the sign; the location of the sign on the building, structure or lot upon which the sign is to be attached or erected; the colors, materials, lettering, artwork and other attributes of the sign; the proposed method of illumination, if any; and statements indicating compliance with applicable building construction standards.
  - 3) No sign shall be erected which, in the opinion of the Building Inspector, may cause hazardous or unsafe conditions. If such signs exist, they shall be removed upon direction of the Building Inspector following written notification to the owner by U.S. certified mail. Failure to remove a sign(s) after notice by the Building Inspector shall result in enforcement of these provisions and an Order to Remove such sign in accordance with this Chapter
  - 4) No sign, other than an official traffic sign, shall be erected within the right-of-way of any public street or highway.

- 5) Unless otherwise provided for in this section, no sign shall have more than two (2) sides. The calculation of maximum allowable square footage of a two-sided sign shall be the size of the smallest face of one side, unless otherwise specified.
  - 6) All illuminated signs shall bear the Underwriters Laboratories, Inc., seal or be inspected and certified by a Putnam County authorized electrical inspection company.
  - 7) All freestanding signs shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square foot of surface area.
  - 8) All signs, including wall signs and projecting signs, shall be securely anchored and shall not swing or move in any manner.
  - 9) All signs shall be constructed of durable materials and shall be maintained in a good condition. The use of cardboard, paper, canvas or similar impermanent material is prohibited.
  - 10) Except for the Commercial District and IOC District no sign shall project over public sidewalk areas.
  - 11) Where permitted projecting signs shall have no more than two (2) faces. The exterior edge of a projecting sign shall extend not more than five (5) feet from the building face or one-third (1/3) the width of the sidewalk over which it is suspended, whichever is less. No part of a projecting sign shall extend into a vehicular traffic area. A projecting sign suspended over a sidewalk or pedestrian traffic area shall have a clearance of not less than seven feet six inches (7'6"). No sign shall project from an awning.
  - 12) On multi-story buildings, projecting signs shall be attached to the building above first story windows and below second story windowsills. On one-story buildings, projecting signs shall be attached above first story windows and below the roofline. The size and location of a projecting sign shall complement neighboring signs.
  - 13) No wall sign shall be higher than the height of the wall to which it is attached.
  - 14) Illumination of any sign shall not produce a direct glare beyond the limits of the boundary of the lot on which it is located. Ground mounted spotlights used to illuminate a sign shall be fully shielded.
  - 15) All wiring to a freestanding sign shall be underground and/or concealed within the sign structure.
  - 16) Any sign that is destroyed or has deteriorated such that it is damaged beyond repair, as determined by the Building Inspector, shall be promptly removed.
- C) Non-conforming Signs. Wall and freestanding signs in existence on the date of enactment of this Chapter that do not conform to the dimensions or placement described in this section may continue to be used as legal non-conforming signs. A legal non-conforming sign shall not be enlarged, or altered, and if it is removed from its location for other than routine cleaning, maintenance or repainting, it shall be made to conform to this Chapter. Any increase in size or change in the design, style, location, materials, shape, height or location of a nonconforming sign shall not be permitted. Any nonconforming sign that is damaged or destroyed, for a loss of 50% or more of its value, as determined by the Building Inspector, by fire or other casualty shall not be restored, reconstructed or replaced except by a sign that conforms to this requirements of this Chapter.
- D) Prohibitions.
- 1) No off-premises signs shall be allowed other than as permitted for agricultural premises and as stated in the exempt signs provisions of this section.
  - 2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving

lights except to show time, date and/or temperature.

- 3) No sign shall contain any moving parts.
- 4) No sign shall be erected which, in the opinion of the Zoning Administrator, may cause hazardous or unsafe conditions. If such signs exist, they shall be removed upon direction of the Zoning Administrator following notification to the owner. Failure to remove a sign(s) after notice by the Zoning Administrator shall result in enforcement of these provisions and the order in accordance with this Chapter.
- 5) No sign shall be mounted on the roof of any building or structure.
- 6) Portable signs are prohibited except as provided herein.

E) Exempt Signs.

- 1) The following signs are exempt from this Chapter.
  - a) Decorative banners, flags, posters, placards and streamers on residential premises.
  - b) Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations, not exceeding six (6) square feet.
  - c) Flags and insignia of any government.
  - d) Notification signs on communication facilities required by law.
  - e) On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zone, entrances and exits not exceeding four (4) square feet per face and six (6) feet in height. Business names and personal names shall be allowed for directional purposes only.
  - f) Number and name plates identifying residences mounted on the house, building, apartment or mailbox, not exceeding two (2) square foot in area.
  - g) Lawn signs identifying residences, not exceeding one (1) square foot. Such signs are to be non-illuminated except by a light that is an integral part of a lamppost if used as a support.
  - h) Private owner merchandise sale signs for garage sales and auctions located on the premises, not exceeding four (4) square feet.
  - i) On premises "No Trespassing" or "Private Property" or similar signs.
  - j) Temporary non-illuminated "For Sale," "Open House", "For Rent", "For Lease", "Opening Soon", "Coming Soon" real estate signs and signs of a similar nature concerning the sale, rental, and general availability of vacant or improved real property, provided such signs do not exceed four (4) square feet per side in a residential district, and sixteen (16) square feet per side in a non-residential district. Such signs shall be removed immediately upon the sale, rental, lease, or termination of the open house event regarding the premises so advertised, or not later than fourteen (14) days of the date of the opening of the premises. Failure to promptly remove said signs in accordance with this section may result in the removal by the Code Enforcement Officer or Building Inspector.
  - k) Temporary, non-illuminated window signs and posters not exceeding ten (10) percent of the total window surface of a building.
  - l) Temporary informational and directional signs for non-commercial events, meetings,

conventions and other assemblies displayed not more than one week prior to the event. Such signs shall be removed upon the termination of the event. Failure to promptly remove said signs in accordance with this section may result in the removal by the Code Enforcement Officer or Building Inspector.

- m) One (1) sign, not exceeding four (4) square feet in a residential district or sixteen (16) square feet in a non-residential district, listing the architect, engineer, contractor and/or owner on premises where construction, renovation or repair is in progress. Said sign shall be removed upon completion of construction, renovation or repair as determined by the Building Inspector or Code Enforcement Officer.
  - n) Political posters, non-commercial, and similar signs as long as they are not placed within the right of way of any street or highway.
- F) Substitution Clause. Any sign authorized pursuant to this Chapter may contain a noncommercial message in lieu of other copy.

**§ 77-36. Signs in residential districts.**

- A) Signs in the R-80, R-40, R-10 and PRD districts:
- 1) Signs shall be designed in accordance with an overall comprehensive signage plan in which the size, materials, and color of signage shall be appropriate to the dimension and architectural appearance of the building to which it is affixed, or in the case of freestanding signs with which it is associated.
  - 2) On all non-residential premises, one (1) wall sign and one freestanding sign are permitted. The maximum size of any wall sign shall not exceed six (6) square feet. Freestanding signs shall not exceed eight (8) square feet per side and shall not exceed six (6) feet in height above the finished grade. Freestanding signs shall be set back not less than ten (10) feet from any highway right-of-way or thirty-five (35) feet from any highway centerline, whichever is greater. The use of exposed "I" beams or steel beams to support a freestanding sign is prohibited.

**§ 77-37. Signs in non-residential districts.**

- A) Signs in the Commercial and IOC districts:
- 1) Signs shall be designed in accordance with an overall comprehensive signage plan in which the size, materials, and color of signage shall be appropriate to the dimensions and architectural appearance of the building to which it is affixed. For single use and multiple tenants signage shall be presented as a unified plan that is integrated into the overall building design, color, scale, massing, and shall also be integrated with the site landscaping. All signage shall be subject to Planning Board review and approval.
  - 2) One wall sign is permitted per tenant. The maximum size of wall signs and projecting signs, where permitted, shall not exceed one (1) square foot for every two linear feet of the front building facade along the front yard. For a building on a corner lot only the linear footage of the building facade along one front yard shall be used in this calculation. In addition, one (1) freestanding sign not exceeding twenty (20) square feet in area per side and not greater than eight (8) feet in height above the finished grade is permitted. Freestanding signs shall be set back not less than ten (10) feet from the highway right-of-way or thirty-five (35) feet from the highway centerline, whichever is greater. The base of any such freestanding sign shall be mounted within a landscaped monument of stone, brick or other natural material as approved by the Planning Board. The use of exposed "I" beams or steel beams to support a freestanding sign is prohibited.
  - 3) One freestanding "sandwich" style sign per tenant of no more than five square feet per side is

permitted provided it is placed so as to not block or impede pedestrian or motor vehicle traffic. All such signs shall be subject to Planning Board review and approval.

- 4) One drive-thru menu board per tenant is permitted, provided such sign does not exceed twenty (20) square feet in sign area. All such signs shall be subject to Planning Board review and approval.
- 5) Signs in shopping centers and shopping malls:
  - a) Notwithstanding any other provision of this section, a shopping center is permitted one (1) freestanding sign. Such freestanding sign shall not exceed sixty-four (64) square feet in area per side and shall not exceed fifteen (15) feet in height above finished grade. Freestanding sign(s) shall be set back not less than fifteen (15) feet from the highway right-of-way or forty (40) feet from the highway centerline, whichever is greater. In no event shall a freestanding sign be placed within fifteen (15) feet of any property line. The base of any such freestanding sign shall be mounted within a landscaped monument of stone, brick or other natural material as approved by the Planning Board. The use of exposed "T" beams or steel beams to support a freestanding sign is prohibited.
  - b) Each tenant is permitted one (1) wall sign. Such wall sign shall not exceed ten (10) percent of the area of the exterior facade of the portion of the building leased by the tenant or twenty (20) square feet, whichever is less.

---

## **ARTICLE XI, Supplementary Parking and Loading Regulations**

---

### **§ 77-38. Off-street parking.**

Off-street parking spaces, open or enclosed, shall be subject to the following requirements:

- A) Parking requirements. Accessory off-street parking spaces, open or enclosed, shall be provided for any use as specified herein, and all spaces proposed to be provided and the number thereof shall be identified clearly on the site plan. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these parking regulations. Reasonable and appropriate off-street parking requirements for structures and uses which do not fall within the categories listed herein shall be determined by the Planning Board upon consideration of all factors entering into the parking needs of each such use.
- B) Areas computed as parking spaces. Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than a street or a driveway. However, a driveway within a required front yard for a one- or two-family dwelling may count as one parking space.
- C) Size of spaces. Except as provided hereinafter, each parking space shall be a minimum of nine feet wide by 20 feet deep and shall be served by an aisle not less than 22 feet wide. Where parking is arranged back to back, each parking space may share a common backup space. Entrance and exit lanes shall not be computed as parking space, except for driveways for one- and two-family dwellings, as set forth in Subsection B above.

D) Prohibited parking.

- 1) Except where specifically permitted, parking in the required front yard shall be prohibited.
  - 2) Not more than one commercial vehicle, excluding construction equipment, may be parked on any lot in a residential district, provided that no such vehicle shall have more than four wheels, and provided further that no part of such parked vehicle shall project nearer to the street line than a line parallel thereto drawn through the point where the principal building is nearest to the street.
  - 3) In any residential district, unlicensed vehicles may be parked for a period of not to exceed 60 days, provided that no part of such parked vehicles shall project nearer to the street line than a line parallel thereto drawn through the point where the principal building is nearest to the street.
  - 4) In any district no vehicles, trailers, portable signs, or any device capable of being or designed to be towed by a vehicle shall be parked on a lawn or landscaped area in a front or side yard, unless specifically approved by the Planning Board.
- E) Access. Unobstructed access to all parking areas shall be provided to and from a street. Such access shall consist of at least one ten-foot wide lane for parking areas with less than 20 spaces, and at least two ten-foot wide lanes for parking areas with 20 spaces or more. No entrance or exit for any off-street parking area with a capacity of more than four spaces shall be located within 50 feet of any street intersection, nor exceed a grade in excess of 6% within 25 feet of any street line, nor 10% of any other point.
- F) Drainage and surfacing. All parking areas shall be properly drained, and all such areas, except for parking spaces accessory to a one- or two-family dwelling, shall be provided with a dustless surface. The maximum slope of a parking area shall not exceed 5%.
- G) Combined spaces. When any lot contains two or more uses having different parking requirements, the parking requirements for each use shall apply to the full extent. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when the other use or uses is or are not in operation, the Planning Board may reduce the total parking requirement to an amount which, in its judgment, will prevent frequent parking on the street by persons working on or visiting the premises.
- H) Enclosed facilities. Required parking areas may be constructed within or under any portion of a principal building.
- I) Location and ownership. Required accessory parking spaces, open or enclosed, shall be provided upon the same lot as the use to which they are accessory, or elsewhere if in a C Commercial or IOC District, provided that in such instances no required spaces shall be located farther than 200 feet walking distance of such lot. In no event shall such parking spaces be located in any residence district unless either the use to which the spaces are accessory is permitted in such residence districts or upon approval by the Planning Board. Such spaces shall be in the same ownership as the use to which they are accessory and shall be subject to deed restrictions, approved by the Planning Board, binding the owner and his heirs and assigns to maintain the required number of spaces available either throughout the existence of the use to which they are accessory or until such spaces are provided elsewhere, in a location and manner acceptable to the Planning Board.
- J) Waiver of required spaces. Upon determination by the Planning Board that the required number of parking spaces would be greatly in excess of the immediate needs expected to be generated by a particular use on a particular lot, the Board may waive the requirement that such spaces be paved to the extent that it may deem the number required to exceed the

actual need therefore, provided that:

- 1) At any future date the Planning Board may require the paving of all or a portion of the spaces subject to such waiver, in the event that it finds that the parking of cars connected with or visiting the particular use on the lot at any time takes place on the street consistently and in appreciable numbers.
  - 2) The portion of the required parking area that is not paved shall meet all other requirements and shall be planted and permanently maintained with a hardy grass cover.
- K) Not more than one garage or parking space on a single-family lot may be rented to a person not residing on the same lot.
- L) There is no limitation on the number of agricultural vehicles permitted accessory to farm use.
- M) The storage of not more than one camping trailer and not more than one boat is permitted, provided that no such trailer or boat is stored within a required front yard setback.
- N) Minimum parking requirements.
- 1) Residential uses.

Use	Minimum (spaces)	Parking
One-family; two-family residences	2 per dwelling unit	
Multifamily dwelling	1 for each studio or efficiency apartment, 1.5 for each one-bedroom apartment, 2.0 for each two-bedroom or larger apartment, plus an additional 10% of the total required spaces for visitor parking	

- 2) Non-residential, commercial, industrial, and office uses. The Planning Board shall determine parking requirements for all non-residential, commercial, industrial, and office uses utilizing the chart below as a guideline. The Planning Board's determination of the minimum required number of parking spaces for any use shall include all spaces required by state law to serve handicapped persons. In addition, the Planning Board shall consider the peak parking demand for any use or combination of uses which shall also include consideration for snow storage areas. For any public assembly or restaurant use where a maximum occupancy figure is posted by the Building Inspector or the Fire Inspector one space shall be provided for every four persons up to the posted maximum occupancy.

Use	Minimum Parking (spaces)
Professional office in a residence	3 per office or 2 for each professional maintaining office hours for consultation, whichever is greater, in addition to that required for the residential use
Home occupation	As determined by the Planning Board
Office building, other than medical or dental offices	1 for each 300 square feet of gross floor area
Medical or dental offices	for each 200 square feet of gross floor area
Theater	1 for each 3 seats or 1 for each 100 square feet of gross floor area, whichever is greater
Bank or post office	10 or 1 for each 100 square feet of gross floor area or 3 for each teller, whichever is greater

Hotel or motel	1.25 per rental unit
Retail sales and personal service establishment	1 for each 200 square feet of gross floor area
Motor vehicle sales	10 or 1 for each 200 square feet of sales area, whichever is greater
Gas stations or commercial garages	1 for each 100 square feet of gross floor area
Restaurants and drinking establishments	1 for each 4 seats or 1 for each 100 square feet of gross floor area, whichever is greater
Quick-service establishments	1 for each 50 square feet of gross floor area
Bowling alleys	5 per lane
Indoor or outdoor tennis	5 per court
Other commercial recreation	Determined by the Planning Board
Dry cleaning or hand laundry	1 for each 100 square feet of gross floor area
Nursery or sale of agricultural products	Determined by the Planning Board
Funeral home	1 for each 3 seats provided therein or 1 for each 60 square feet of space available for public use, whichever is greater

- 3) All other uses not mentioned or variations of above uses shall be as determined by the Planning Board.

#### **§ 77-39. Off-street loading.**

The Planning Board shall establish the required off-street loading berths for any use. Off-street loading berths, open or enclosed, are permitted as accessory to any use, except one- or two-family dwellings, subject to the following provisions:

- A) Loading requirements. Accessory off-street loading berths shall be provided as specified in Subsection F. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these loading requirements. Reasonable and appropriate off-street loading requirements for structures and uses which do not fall within the categories listed herein shall be determined by the Planning Board upon consideration of all factors entering into the loading needs of each such use.
- B) Size of spaces. Each required loading berth shall be at least 12 feet wide, 33 feet long and 14 feet high.
- C) Location and access. Unobstructed access, at least 10 feet wide, to and from a street shall be provided. Such access may be combined with access to a parking lot. All permitted or required loading berths shall be on the same lot as the use to which they are accessory, except as provided in Subsection D. No entrance or exit for any loading area shall be located within 50 feet of any street intersection. No off-street loading berth shall be located in any front yard.
- D) Joint facilities. Permitted or required loading berths, open or enclosed, may be provided in spaces designed to serve jointly two or more adjacent establishments, provided that the number of required berths in such joint facilities shall not be less than the aggregate of all such requirements.
- E) Lots divided by district boundaries. Loading berths on lots located partly in one district and partly in another district may be located without regard to district lines, provided that no such berths shall be located in any residential district unless either the use to which they are accessory is permitted in such district or upon approval by the Planning Board.

---

## **ARTICLE XII, Supplementary Use Regulations**

---

### **§ 77-40. Prohibited uses in all districts.**

Any other provisions of this Chapter notwithstanding, and except as provided hereinafter, the following uses shall be prohibited in all districts.

- A) Any use which is noxious, offensive or objectionable by reason of the emission of smoke, dust, gas, odor or other form of air pollution; or by reason of the deposit, discharge or dispersal of liquid or solid wastes, in any form, in a manner or amount so as to cause permanent damage to the soil or any stream or to adversely affect the surrounding area; or by reason of the creation of noise, vibration, electromagnetic or other disturbance perceptible beyond the boundaries of the lot on which it is situated; or by reason of illumination by artificial light or light reflection beyond the limits of the lot on or from which such light or light reflection emanates; or which involves any dangerous fire, explosive, radioactive or other hazard, or which can cause injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants; and any other process or use which is unwholesome and noisome and may be dangerous or prejudicial to health, safety or the general welfare.
- B) Lighting facilities of any kind with light sources visible beyond the lot lines.
- C) Junkyards, auto wrecking yards or dumps, except a dump established as an official Town dump by the Town Board.
- D) Mobile home parks.
- E) Manufacture or storage of ammunition, explosives or fireworks.
- F) Satellite dish antenna greater than one meter in maximum diameter in a residential district or greater than two meters in maximum diameter in a nonresidential district.

### **§ 77-41. Home occupations.**

Home occupations, where permitted, shall be accessory to the principal use of a residential structure, and shall be subject to the following regulations:

- A) A home occupation shall be incidental and secondary to the use of the lot for residential purposes. It shall be conducted in a manner which gives no outward appearance that a business is being conducted within the principal dwelling or within the accessory structure, does not infringe on the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units, and does not alter the character of the district within which the use is located; and
- B) There shall be no alteration or physical change to the exterior of the principal dwelling or the accessory structure to accommodate the home occupation;
- C) The home occupation shall be conducted within the principal dwelling or within an accessory structure located on the same lot with the principal dwelling solely by persons utilizing the principal dwelling as their domicile; and
- D) There shall be no sign or other advertisement as to the existence of the home occupation use; and
- E) There shall be no more than one home occupation use conducted on the premises; and
- F) There shall be no exterior storage of materials, equipment, vehicles or other supplies used in conjunction with the home occupation.
- G) Prohibited home occupations include animal hospitals, kennels, barbershops, beauty parlors, clinics, hospitals, dancing schools, mortuaries, nursery schools, clubs, auto repair shops, restaurants, tourist homes, rooming or boarding houses and uses similar to those listed above.

#### **§ 77-42. Swimming pools.**

Except as provided hereinafter, no below-grade swimming pool and no aboveground swimming pool having a capacity of over 5,000 gallons shall be located, constructed or maintained on any lot in a residential use except in conformity with the requirements of Chapter 27 of the Code of the Town of Kent, the New York State Uniform Fire Prevention and Building Code, and State Energy Conservation Construction Code. Except as provided hereinafter, no below-grade swimming pool and no aboveground swimming pool having a capacity of over 5,000 gallons shall be located, constructed or maintained on any lot in a residential use except in conformity with the following requirements:

- A) Such pool shall not be located nearer to the street line than the principal building nor nearer than 15 feet to any property line.
- B) Every gate or other opening in the fence enclosing such pool shall be self-enclosed and self-locking and shall be securely locked at all times when said pool is not in use.
- C) No loudspeaker or amplifying device shall be permitted which can be heard beyond the lot lines of the lot on which said pool is located.
- D) No lighting or spotlighting shall be permitted which will project light rays beyond the lot lines of the lot on which said pool is located.
- E) Adjacent to every side and rear lot line nearest to the pool, there shall be a protective planting strip not less than six feet wide, consisting of suitable plant material capable of attaining a height of not less than six feet. Such screen shall be maintained at such height for the life of the pool. This requirement may be waived upon application by the Planning Board wherever such Board finds that natural conditions render such screen unnecessary.
- F) An aboveground swimming pool having a capacity of 5,000 gallons or less shall not require a permit.

#### **§ 77-43. Accessory recreational uses.**

- A) When accessory to a single-family residence, said recreation use shall be located no closer to any property line than is permitted for accessory structures in said district.
- B) No lighting or spotlighting shall be permitted which will project light rays beyond the lot lines on the lot on which said use is located.
- C) A fence or suitable planting strip shall be provided to screen the facility from the view of adjacent properties.
- D) No loudspeaker or amplifying device shall be permitted which can be heard beyond the lot lines of the lot on which the facility is located.

#### **§ 77-44. Recreational vehicles, trailers and boats.**

The storage or parking of recreational vehicles, including, without limitation, motorhomes, travel trailers, tent campers, camping trailers or similar such devices, whether self-propelled or not, or trailers and boats is hereby prohibited on vacant lots in all residential districts and regulated on occupied lots in accordance with the following requirements:

- A) One recreational vehicle may be stored, but not used for any purpose on an occupied lot in any residential district, provided that such recreational vehicle is not stored within any required yard nor between the street line and the principal building except within an approved driveway.
- B) Where a building permit has been issued for the construction or alteration of a building, the Building Inspector may issue a temporary permit for one or more construction trailers for a period not to exceed one year. The number of trailers shall be limited to that which the Building

Inspector shall deem to be necessary in each case. Said temporary permit may be extended for additional successive periods of six months each if the Building Inspector finds that construction has been diligently pursued and that justifiable circumstances require such extension. Said trailer may be occupied during the term of the temporary permit and shall be situated upon the lot for which the building permit has been issued.

- C) Not more than one boat with a length in excess of 22 feet per dwelling unit may be stored on any lot in any residence district, provided that such boat shall not be stored within any side yard nor nearer to any street line than the nearest point of construction of the principal building except within an approved driveway.

#### **§ 77-44.1. Communication facilities.**

- A) Purpose and intent. The purpose and intent of these supplementary use requirements and standards is as follows:

- 1) To regulate the development of communication facilities in the Town of Kent consistent with the general purposes as stated in this Chapter and to provide a procedural basis for action within a reasonable period of time on requests for authorization to place, construct, operate, or modify communication facilities within the Town of Kent.
- 2) To establish clear standards and requirements for the siting of communication facilities, buildings and structures, equipment, antenna, or communication towers, including monopoles.
- 3) To promote the health, safety, and general welfare of the residents of the Town of Kent, through the establishment of minimum standards to reduce the adverse visual effect of communication facilities, including but not limited to transmission towers and antennas, through the use of advanced technology, careful design and siting, stealth technologies, and effective all-season screening and buffering.
- 4) To protect residential areas and land uses, and property values from potential adverse impacts of communication towers and antennas.
- 5) To encourage the location of communication facilities and communication towers in areas suitably screened, buffered, and adequately separated from residential uses.
- 6) To prevent unnecessary, excessive, or redundant communication facilities or communication towers erected in the community.
- 7) To encourage the joint use of new and existing communication towers and sites as a primary option rather than construction of additional single-use communication towers.
- 8) To require users of communication towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is shown to be minimal.
- 9) To require users of communication towers and antennas to configure them in a way that minimizes adverse visual, aesthetic, and community character intrusion impacts caused by the installation and view of communication towers and antennas, through careful design, siting, landscape screening and buffering, sufficient setbacks to reduce visual impacts to adjacent properties, and innovative camouflaging techniques such as alternative tower structures and stealth technologies, thereby protecting the physical appearance of the community and preserving its scenic and natural beauty.
- 10) To enhance the ability of the providers of communication services to provide such services to the community quickly, effectively, and efficiently by facilitating the siting of communication facilities.
- 11) To assure the integrity and financial soundness of any communication facility firm seeking to

build a communication facility in the Town of Kent.

- 12) To consider the public health and safety of communication facilities and towers.
- 13) To avoid potential damage to adjacent properties from communication tower failure through careful engineering and appropriate siting of communication towers.

B) Regulatory compliance.

- 1) No communication facility shall be located, constructed or maintained on any lot, structure or land area, except in conformity with this Chapter.
- 2) All communication facilities, equipment and devices shall be securely mounted to withstand the wind loads for the place of installation in accordance with the New York State Uniform Fire Prevention and Building Code.
- 3) All communication facilities shall be constructed and maintained in conformance with all building; electrical, fire-prevention and other applicable codes adopted by the Town of Kent.
- 4) All communication facilities shall be in conformance with the rules and regulations of any governmental entity having jurisdiction over such communication facilities and uses, antenna and/or supporting structures and towers, including, without limitation, the FCC and FAA.
- 5) These regulations are intended to be consistent with the Telecommunications Act of 1996 in that they do not prohibit or have the effect of prohibiting the provisions of telecommunications; are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and do not regulate telecommunications on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.
- 6) All communication facilities shall be shown to be necessary to provide coverage to an area within the Town of Kent which currently is proven to include inadequate coverage and that any related communication tower or antenna is proposed at the minimum height and aesthetic intrusion possible to provide that necessary coverage. The applicant seeking to locate a communication facility in the Town of Kent shall demonstrate the need for new or additional antennas or communication towers.
- 7) All communication facilities must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate communication towers and antennas. If such standards and regulations are revised or amended, then the owners of the communication facility governed by this Chapter shall bring such communication facility into compliance with such revised or amended standards and regulations within the time period required by such revision or amendment. Failure to bring the communication facility into compliance with such revised or amended standards and regulations in the time period specified shall constitute grounds for the removal of the communication tower or antenna at the owner's expense.

C) Special use findings. The Planning Board shall issue the following findings before granting a permit for a special use permit pertaining to any communication facility:

- 1) That the applicant is not already providing adequate coverage to the Town of Kent.
- 2) That the applicant is not able to use existing communication facilities or alternative technology, either with or without the use of repeaters if appropriate for the technology in question to provide adequate coverage to the Town of Kent.
- 3) That the owner/applicant has agreed to rent or lease available space for collocation purposes where technically and economically feasible, without discrimination to other communication

service providers.

- 4) That the proposed communication facility will not have an undue adverse impact on the community, environment, historic resources, scenic resources and views, property values, and natural or man-made resources.
  - 5) That the proposal shall comply with applicable FCC regulations regarding emissions of electromagnetic radiation.
- D) Special use supplementary application requirements. The following shall be submitted in addition to all other application requirements set forth in §77-59 and §77-60 of this Chapter:
- 1) A full environmental assessment form (EAF), including a visual EAF addendum, shall be provided. Following review of the EAF and visual EAF addendum, a visual impact analysis may be required by the Planning Board to further assess the potential visual and aesthetic impacts incurred by implementation of the proposed action. The methodology and scope of study for any visual analysis shall be approved by the Planning Board; shall address potential impacts on nearby viewsheds, ridgelines, scenic features, historic sites and structures, and community compatibility issues with nearby land uses; and may be required to include the following:
    - a) Photographic simulation or photographic montage, with and without foliage.
    - b) A documented demonstration utilizing a crane to simulate the planned communication tower height (balloons may be utilized if placement of crane is shown to be prohibitive due to existing site constraints). The crane demonstration (or balloons) shall simulate the actual planned height; be demonstrated for a minimum viewing period of eight hours; and include sufficient written notification a minimum of 14 days prior to said demonstration to neighboring property owners located within 500 feet of the site by certified mail. In addition, a sign measuring three feet by four feet shall be posted at a visibly prominent road frontage location on the subject site to notify the general public of the planned demonstration. Said sign shall be installed and maintained on the subject property a minimum of 14 days prior to said demonstration and shall be removed immediately following the day of the demonstration. Wording on the sign shall be reviewed and approved by the Planning Board.
    - c) The consideration of alternative designs and stealth technologies which camouflage support structures and antennas may be requested as part of the visual assessment, such as but not limited to simulated farm silos, monopole with internal antennas, installation of antennas on existing structures at appropriate locations, the use of whips (individual antennas) as opposed to bulky equipment configurations, connection to a fiber optic network if available, or other designs that may provide for the mitigation of visual impacts.
  - 2) A service coverage map and report shall be provided. The service coverage map shall show and describe all existing and proposed areas of service coverage relating to the proposed communication facility. The service coverage map shall locate all existing sites in the Town and in bordering communities which contain communication towers or related facilities. A detailed report shall accompany the service coverage map and shall indicate why the proposed communication tower, equipment and facility is necessary. The report shall identify locations within the proposed project site service coverage area which are not, and could not be, served by either existing facilities, by collocation, or by other development alternatives, including utilization of alternative technology, an alternative tower structure, or stealth techniques. All technical information shall be summarized in layman terms.
  - 3) A long-range communications facilities plan shall be provided, evidencing that the proposed location of the communication facility and supporting buildings and equipment have been

planned to result in the fewest number of communication tower locations within the Town of Kent. The plan shall indicate how the applicant intends to provide service throughout the Town, and how the applicant plans to coordinate with all other providers of communication services in the Town of Kent. The plan shall address the applicant's planned and possible location of additional communication tower sites, additional antennas, related service area coverage, and alternative long-range plan scenarios that illustrate the potential effects of multiple communication towers and communication tower height, community intrusion impacts, and visual and aesthetic impacts.

- 4) Documentation, sufficient to demonstrate that the proposed communication tower height and bulk is the minimum height and bulk necessary to provide licensed communication services to locations within the Town of Kent which the applicant is not able to serve with existing facilities in the project site area, shall be provided, including evidence that visual, aesthetic and community character intrusion impacts are minimal and have been further minimized through mitigation measures to the greatest extent practicable. Documentation regarding height and bulk should address any variations in height and bulk necessary to accommodate collocation of additional antennas and related equipment and facilities. All technical information shall be summarized in layman terms.
- 5) A written description of the existing site setting and how the elements of the proposed communication facility, communication tower and antenna will be blended into that setting shall be provided. The design of buildings and related structures shall use materials, colors, textures, screening and landscaping which blend them into the existing natural setting and character of surrounding buildings and structures. Communication equipment of collocated service providers shall be sheltered in a single structure or structure designed and constructed to appear as a single integrated structure.
- 6) A written commitment valid for the duration of the existence of any communication tower, to rent or lease available space for collocation on the communication tower where technically and economically feasible, without discrimination to other personal wireless service providers shall be provided.
- 7) A structural engineering safety and compliance report and certification, prepared by a New York State licensed professional engineer specializing in structural engineering, shall be provided. The report shall certify the structural integrity of the proposed communication tower, antenna and related equipment and facilities. The report shall demonstrate the compliance of all structures with all applicable standards and requirements and shall describe the capacity of that structure, including wind load and the number and type of antennas it can accommodate. Illustrations shall be utilized to support the contents of the report. In the case of antennas being mounted on an existing tower or structure, the equivalent of the above-required information shall be provided about the existing tower or structure. All technical information shall be summarized in layman terms.
- 8) An emissions safety and compliance report, and certification, prepared by an RF engineer qualified expert specializing in electrical engineering with expertise in radio and telecommunications regulations, technology, and facilities, shall be provided. All technical information shall be summarized in layman terms. The report shall certify the safety of all emissions of the proposed facility and shall include documentation to address the following:
  - a) Evidence of FCC license/permit to grantee/applicant, including information regarding all related permitting standards and specifications, including information regarding all related permitting standards and specifications.
  - b) The location, size, height, construction, and operating specifications of all proposed and existing communication facilities, including:
    - (i) The quantity, type (make, model and manufacturer), and design of any

antenna proposed and the basis for the calculations of capacity.

- (ii) The frequency, modulation, and class of service of all communications equipment.
- (iii) Transmission and maximum effective radiated power of any antenna.
- (iv) Direction of maximum lobes and associated radiation of any antenna.
- (v) A description of the proposed antenna and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color and lighting.
- (vi) A map depicting and listing all existing sites in the Town and bordering communities containing transmitting antenna used by the operator, owner or applicant.

c) Certification of compliance with the following:

- (i) All current, applicable FCC regulations and standards, including that NIER levels are within threshold levels adopted by the FCC or any subsequent superseding emission standard adopted by the FCC, based on the maximum equipment output.
- (ii) National Electrical Safety Code (NESC).
- (iii) National Electrical Code (NEC).
- (iv) All current standards of all federal agencies with authority to regulate communication towers and antennas.
- (v) All pertinent Town of Kent and New York State Uniform Fire Prevention and Building Codes.
- (vi) Any proposed antenna will not cause interference with existing communication devices.
- (vii) An industry approved propagation model using applicable contour biases.
- (viii) If collocation is not proposed, certification that collocation is not feasible as set forth in §77-44.1E of this Chapter.

E) In addition to all other applicable site plan requirements specified in this Chapter, all applications shall include the following:

- 1) A scaled site plan, including elevations and construction details, showing existing and proposed communication facilities, buildings and structures, prepared, stamped, and signed by a New York State licensed professional engineer. Survey plans shall also be stamped and signed by a New York State licensed professional land surveyor. Plans shall be shown on sheets sized no larger than 36 inches by 48 inches.
- 2) Height, width, depth, location, and configuration of communication towers and any supporting guy wires or other supporting or anchoring devices.
- 3) Material types, colors, and lighting.
- 4) Number and type of antennae, including receiving and/or transmitting equipment.
- 5) Legal description of the subject property and that of any leased or easement portion.
- 6) Information about collocated or future communication facilities, equipment, buildings and structures, or other related facilities, including the relationship of the height of the communication tower to the feasibility of collocation of additional communication facilities.

- 7) A minimum of two cross-section elevations shall be provided to show any proposed communication tower, drawn at right angles to each other and showing the ground profile to at least 100 feet beyond the limit of clearing, including any guy wires and antenna mounting devices.
  - 8) Details of any proposed communication tower foundation, including cross sections and construction details showing all ground attachments, specifications for anchor bolts, and other anchoring hardware.
  - 9) Detail of proposed exterior finish of all buildings and structures.
  - 10) Illustration of the relative height of any proposed communication tower to the tops of surrounding trees as they presently exist, and the height to which they are expected to grow in approximately 10 years' time.
  - 11) Illustration of the modular structure of any proposed communication tower, indicating the heights of sections which could be removed or added in the future to adapt to changing communication technology conditions or demands.
  - 12) A description of available space on any communication tower, providing illustrations and examples of the type and number of communication facilities which could be mounted on the structure.
  - 13) Floor plans, elevations, and cross sections at a scale of 1/4 inch equals one foot, showing all buildings and structures intended for the housing of communications equipment, including illustrative elevation views indicating the exterior appearance and materials of the roof, facades, and doors of any accessory buildings, structures, or equipment.
  - 14) The location and configuration of all existing and proposed site access driveways, including the construction details indicating the length, width, grading, drainage, and driveway profile and proposed surface material, shall be described and mapped. Any fence or gate related to the site access driveway shall be shown, including provision for police, fire, or emergency vehicle access to the site and communication facilities.
  - 15) A detailed landscape plan shall be provided showing existing and proposed vegetation, including areas to remain undisturbed; specimen trees of six inches in diameter at breast height (six inches dbh) or larger; the height of the surrounding tree line; vegetation to be removed; walls and fences; the location, quantity, type (scientific and common name), installation size, and root conditions of proposed plantings; and installation details of all proposed plantings. The landscape plan shall illustrate how existing and proposed plantings, fences, and walls will provide required screening and buffering.
- F) Collocation. The collocation and sharing of existing or proposed communication facilities, including communication towers for mounting of antennas or related equipment is encouraged and shall be preferred to the construction of new communication facilities and communication towers. When an applicant proposes collocation of proposed antennas and communication facilities on an existing communication tower, building or structure, the applicant must demonstrate and certify that the existing communication tower, building or structure will be properly adapted to the placement of additional antennas. The applicant shall identify the capacity of the communication tower, building or structure to accommodate additional antennas and shall address necessary screening and buffering, landscaping, and additional safety measures necessitated by collocation. Any communication facility which is not collocated shall present and certify evidence as to why collocation is not possible, including evidence such as follows:
- 1) That no feasible host sites or existing communication facilities, communication towers, and buildings or structures are located within the geographic area which meet the applicant's engineering system and service requirements.

- 2) That existing communication facilities, communication towers, and buildings or structures are not of sufficient height to meet the applicant's engineering system and service requirements.
  - 3) That existing communication facilities, communication towers, and buildings or structures do not have sufficient structural strength and cannot be retrofitted to support the applicant's proposed communication facility equipment or antenna.
  - 4) That there is an inability to use existing sites in a technologically feasible manner consistent with the applicant's engineering system and service requirements.
  - 5) That the applicant's proposed antenna would cause electromagnetic interference with any antenna on existing communication towers, buildings or structures, or the antenna or antennas on the existing communication towers, buildings or structures would cause interference with the applicant's antenna, and that feasible modifications to either existing or proposed facilities would not permit collocation.
  - 6) That the fees, costs, or contractual provisions required by the owner in order to share an existing communication tower, building or structure, or to adapt existing communication towers, building or structures for purposes of collocation and sharing, are unreasonable. Costs exceeding new tower development are not presumed to be unreasonable.
  - 7) That the applicant has demonstrated that there are other limiting factors that render existing communication towers, buildings or structures unsuitable.
  - 8) That the applicant has demonstrated that alternative technology or communication facilities which do not require the use of towers are unsuitable. Costs of such alternative technology or communication facilities which exceed new tower or antenna development shall not be presumed to render the alternative technology or communication facilities unsuitable.
- G) Site location. All antennas shall be mounted on the roof of a principal building, water tower, or in the rear yard, unless reception is proven to be inhibited or where visibility would be increased, and shall comply with the following, in descending order:
- 1) Unless wall-mounted on an existing roof-mounted mechanical enclosure or similar appurtenance, any antenna mounted on a roof or water tower shall be located to the rear of the roof or water tank center line so that visibility of the installation is limited to the greatest extent practicable when viewed from the front yard. In no case shall the height of the antenna exceed the height of the roof or top of the water tower at the point of installation by more than seven feet in a residential district or 15 feet in a nonresidential district.
  - 2) An antenna located in the rear yard shall be mounted on a secure supporting structure and shall not exceed 12 feet in total height in a residential district and 20 feet in height in a nonresidential district, unless the support structure abuts the principal building in which case the total height shall not exceed the height of the roof at the point of installation by more than seven feet in a residential district and 15 feet in a nonresidential district.
  - 3) If a roof or rear yard installation is proven to inhibit reception, a sidewall mounted installation on a principal building may be permitted, provided the antenna is set back a minimum of 15 feet from the required front yard and the height of the antenna does not exceed the height of the roof line at the point of installation by more than seven feet in a residential district or 15 feet in a nonresidential district. A front-wall mounted installation or sidewall mounted installation within 15 feet of the required front yard may be permitted provided the height of the antenna does not exceed the height of the roof and the antenna does not project any more than two feet into the front yard area.

- 4) If the above installations are proven to inhibit reception and/or transmission, a communication tower may be considered, subject to the special use supplementary design standards set forth in §77-44.1H of this Chapter. A new communication tower shall not be permitted unless the applicant can demonstrate to the reasonable satisfaction of the Planning Board that no existing tower, structure, or alternative technology, that does not require the use of a tower, can accommodate the applicant's proposed antenna.

H) Special use supplementary design standards.

- 1) Height and service coverage. Any proposal for a communication tower shall prove that the height is the minimum necessary for adequate reception and transmission to meet the applicant's new service coverage needs.
- 2) Alternative visual appearance and design. Alternative tower structures or stealth technologies shall be utilized where possible and shall be preferred to typical tower installations.
- 3) Provision for additional antennas. The Planning Board may require that a communication tower be designed structurally, electrically, and in all respects, to accommodate both the applicant's antenna and comparable antennas for at least two additional users or service providers. All such communication towers must be designed to allow for future rearrangement of the antennas located upon the tower and to accept antennas mounted at varying heights.
- 4) Screening and buffering. All communication facilities shall be suitably screened and buffered to reduce visual impacts on adjacent and surrounding properties, as follows:
  - a) All communication towers shall be located and designed to have the least possible visual and aesthetic impact on the environment and surrounding community area.
  - b) The minimum yard areas shall be landscaped to provide effective all-season screening and buffering which is shown to reduce visual, aesthetic and community character intrusion impacts on adjacent properties, the surrounding neighborhood, and on distant viewsheds and scenic areas.
  - c) The area surrounding the installation, other than the area necessary to maintain a clear line of site to the signal source, shall be landscaped and maintained with trees, shrubs, and ground cover to maximize screening and visual buffering. An existing natural vegetative buffer which meets or exceeds the above requirements may be substituted or enhanced for said requirements. Areas indicated as mitigative screening and buffering shall either be under the control of the communication tower owner or operator, or shall be shown to be reasonably expected to be maintained in its current condition during the term or presence of the communication tower.
  - d) Screening and buffering utilizing trees of a minimum height of 15 feet at planting and at a density that will, over time, reduce visual impacts resulting from the installation of said facility shall be provided.
  - e) The outside of security fencing shall be screened with evergreen shrubs, trees or climbing evergreen material on the fencing.
  - f) Accessory buildings, structures or equipment shelters or cabinets associated with the communication facility shall be designed and constructed in a consistent character and style as surrounding buildings and structures.
  - g) The base of any communication tower and any accessory structure shall be effectively screened using primarily vegetative screening, including a continuous evergreen screen planted in a natural setting and consisting of native plant species. Existing vegetation shall be preserved to the maximum extent practicable. Additional

plantings shall be required, as necessary, to screen and buffer all structures from nearby properties or important viewsheds or scenic areas. All landscaping shall be properly maintained to ensure continued screening and buffering.

- h) Areas deemed screening and buffering of communication facilities shall not be altered to reduce that screening and buffering without the prior approval of the Planning Board.
- 5) Security and safety fencing. Security and safety fencing shall be located around all communication towers, equipment and related facilities to restrict unauthorized access. Access to all structures shall be through a locked gate or principal building. Use of razor or barbed wire shall not be permitted. Fencing shall be designed to minimize visual and aesthetic impacts and shall be equipped with appropriate anticlimbing devices. Failure to maintain said security and safety fencing in an appropriate manner shall be grounds for immediate revocation of all permits and certificates of use by the Building Inspector.
  - a) All communication towers, antenna towers or monopoles, and other supporting structures shall be made inaccessible to nonauthorized persons, particularly children, and shall be constructed or shielded in such a manner that they cannot be climbed.
  - b) All transmitter controls that could cause the transmitter to deviate from its authorized operating parameters shall be designed and installed in such a manner that they are readily accessible only to persons authorized by the licensee to operate or service them.
  - c) All transmitters used with in-building radiation systems shall be designed in such a manner that, in the event an unauthorized person does gain access, that person cannot cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other stations.
  - d) All transmitters (other than hand-carried or pack-carried mobile transmitters) and control points shall be equipped with a visual means of indicating when the control circuitry has been put in a condition that should cause the transmitter to radiate.
  - e) All transmitters shall be designed in such a manner that they can be turned off independently of any remote control circuits.
- I) Coloring and marking. Unless otherwise required by the FAA or FCC, all communication facilities, including antenna and communication towers, shall be colored, camouflaged utilizing stealth techniques and/or shall be shielded to blend with the surrounding area. The painting or marking of such facilities shall have a finish or coloring which will minimize visual and aesthetic impacts. Towers and all appendages shall generally have a galvanized finish and shall be painted gray or blue gray, or some other finish or color that is shown to be visually unobtrusive.
- J) Signals and lights. No communication tower, antenna tower or monopole shall include any signals, lights or illumination unless required by the FAA or other applicable authority. The applicant shall provide evidence mandating any requirement for lighting. If lighting is required, said lighting shall be shown to cause the least disturbance to surrounding properties and views. Any lighting necessary for accessory structures or buildings shall be minimized and shall be properly shielded to prevent light emission and glare onto adjacent properties.
- K) Signage. No signs, including advertising signs, shall be permitted on any communication facility, antenna, communication tower, or other accessory building or structure, except as follows:
  - 1) Signs specifically required by a federal, state or local agency.

- 2) Each site shall include a two-square-foot sign containing the name of the owner and operator of any communication device present, including a twenty-four-hour emergency telephone number. In addition, any door having access to a roof-mounted antenna and all entrances to the fenced enclosure shall be similarly signed.

L) Operational certification.

- 1) Within 45 days of initial operation or modification of a communication facility, the owner or operator shall submit to the Building Inspector a written certification by an RF engineer qualified expert that the operating facility is in compliance with the application submitted, any conditions imposed, and all other provisions of this Chapter, in order to continue operations past the forty-five-day period.
- 2) The Town of Kent may confirm and periodically reconfirm compliance as necessary to insure that the provisions of this Chapter, including NIER level thresholds, are in compliance.
- 3) If any approved communication facility is found not to be in compliance, said communication facility shall immediately cease operation.
- 4) A yearly inspection on emissions and structural soundness shall be submitted in writing to the Building Inspector.
- 5) The Planning Board may specify a maximum special use permit approval term, not to exceed 10 years for expiration of said special use permit, to provide an opportunity for periodic review of a communication facility. In this case, the operator of an approved termed communication facility special use permit shall apply for renewal of the termed special use permit a minimum of 90 days prior to the expiration of said termed special use permit. The periodic review shall address any changes in the design and technology of the communication tower or antennas, or changes in the operators' services or coverage area that may result in the need for modification of the tower structure, antennas, collocation accommodations or related structures, or site improvements and mitigation measures.
- 6) If it is found that an alteration of the existing communication tower, antenna or facilities is necessary, review and approval of said application for renewal shall be conducted in accordance with the special use application requirements set forth in §77-44.1D and E of this Chapter.
- 7) Alternatively, if it is found that no alteration of the existing communication tower, antenna or facilities is required, then the Planning Board may grant a renewal of the special use permit approvals; in this latter case, a public hearing may be waived.
- 8) Any special use permit approved in accordance with the provisions herein may be revoked by the Planning Board after a public hearing. The Planning Board shall provide written notification to the owner of the communication facility, at least 10 days prior to such public hearing, so that they may have an opportunity to be heard. If at such public hearing it shall be shown by substantial evidence that the communication facility constitutes a nuisance or a safety hazard, or that the conditions of the special use permit approval have been materially violated, the Planning Board may revoke said special use permit.

M) Interference.

- 1) No permit shall be issued for any transmitting antenna which interferes with the reception or transmission of any preexisting FCC approved communication device or antenna, which complies with the prevailing FCC standards and requirements.
- 2) If interference results from the operation of any newly approved transmitting antenna,

the owner or operator of that most recently installed antenna shall immediately eliminate the interference or cease operation of the facility.

- 3) Failure to correct or eliminate the interference shall be subject to the immediate revocation of any and all operating permits, including any special use permit, as issued by the Town of Kent.

N) Alterations.

- 1) Alteration of an existing communication facility, including any antenna, which results in a change of site conditions or facility locations, or an increase in the size, number of antenna, width, height, or electromagnetic emission of the antenna, shall be subject to the same procedure, rules and regulations applicable to an original application.

O) Registration.

- 1) The Town of Kent Building Department shall maintain a list of the names and addresses of all operators and the type and maximum emissions of all communication facilities and all other antenna granted a special use permit.
- 2) If the name or address of the owner or operator of any communication facility or communication tower is changed, the Building Department shall be notified in writing by the operator of the change within 30 days of said change.
- 3) An irrevocable commitment from the owner of the communication facility to defend, indemnify, and hold the Town of Kent, its boards, officials, employees and agents, free and harmless from judgements or costs, including reasonable attorneys fees, arising directly or indirectly from the construction, use or operation of the tower, antenna and associated facilities shall be provided.
- 4) All communication facilities shall be insured by the owner of such facilities against damage to persons or property. The owner of a communication facility shall provide a certificate of insurance to the Town Clerk on an annual basis in which the Town of Kent shall be an additional named insured.

P) Removal.

- 1) Any antenna, communication facility, or communication tower, including any supporting structure and related appurtenances, or part thereof, that is not used for a period of six months in any twelve-month period shall be considered abandoned and shall be removed by, and at the expense of, the owner of the property or the operator of said facility. Any such facility may be classified as an unsafe building subject to the requirements of Chapter 27 of the Code of the Town of Kent.
- 2) An extension of an additional six months may be granted by the Building Inspector upon submittal of a written request for said extension, including proof as determined reasonable by the Building Inspector that the owner is actively engaged in the marketing of the property or facility for sale or lease.

Q) Exemptions. The following devices and sources of nonionizing electromagnetic radiation are exempt from the above provisions and shall be permitted in all residential and nonresidential zones:

- 1) Machines and equipment designed and marketed as consumer products, such as walkie-talkies, remote control toys, and cellular telephones.
- 2) Handheld, mobile, marine and portable radio communication transmitters and/or receivers.
- 3) Two-way radio utilized for temporary or emergency service communications.

- 4) Two-way radio utilized for governmental service communications.
  - 5) Maintenance or repair of a conforming or legal nonconforming antenna, provided that such action is in compliance with this Chapter.
  - 6) Backup wireless transmitters connected to an alarm monitoring service that transmits to a remote monitoring center in the event of an emergency when the telephone lines are inoperable.
  - 7) Communication facilities, towers and antenna owned and operated by the Town of Kent, in the service of the Town, including Town of Kent Police, Highway Department, Parks and Recreation, Fire Departments, EMT and Ambulance services, which are installed and in service at the time of the adoption of these regulations.
- R) Existing installations.
- 1) The current operator of any communication facility, antenna, or communication tower, existing at the time that these regulations take effect, shall be permitted to remain in operation provided the operator submits proof within six months of the enactment of these supplementary requirements and standards, that a valid building permit was issued for the facility and that the facility complies with the prevailing emission standards as set forth by the FCC, as certified by a professional engineer with the qualifications set forth in §77-44.1D and E of this Chapter.
  - 2) Any legal nonconforming communication facility or communication tower shall be permitted to remain until such time as said use and facility is altered.
  - 3) Any facility for which emission and security compliance documentation is not received shall cease operation within six months of the enactment of these supplementary requirements and standards and shall be immediately removed thereafter.

#### **§ 77-44.2. Adult business use.**

##### **A) Purposes and considerations.**

- 1) Statement of purpose. In the execution of these provisions the Town of Kent recognizes that adult business uses, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods and other sensitive land uses, including, but not limited to, schools and churches. The objectionable characteristics of these uses are further heightened by their concentration within an area thereby having deleterious effects on adjacent areas. It has been acknowledged by communities across the nation that local government has a special concern in regulating the operation of such businesses under their jurisdiction to ensure that their objectionable characteristics will not contribute to the degradation of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable secondary effects arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the town, to deter the spread of blight and to protect minors from objectionable characteristics of these adult business uses by restricting their proximity to places of worship, schools, nursery schools, day-care centers, educational institutions, parks, historic and scenic resources, civic and cultural facilities and residential areas.
- 2) It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Kent. The intent of this section is to provide appropriate places for adult business use without compromising the character of the neighborhood.

- 3) These purposes will be achieved through lighting being reflected away from abutting roadways and adjoining properties. Limiting these facilities to large parcels of property will maintain the visual and aesthetic environment as well as provide adequate distances to protect neighbors from noise, lights, etc.
  - 4) These special regulations are itemized in this section to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting their accessibility to minors.
- B) Adult business uses, as defined in this Chapter, are to be restricted and regulated as to their locations in the following manner, in addition to any other requirements of this Chapter, and the special requirements itemized in this section are to accomplish the primary purposes necessary to ensure that any objectionable characteristics of these uses will not have a deleterious effect on adjacent areas and to restrict their accessibility to minors.
- 1) No adult business use shall be located within one-thousand feet of any lot or parcel in a residential district.
  - 2) No adult business use shall be located within a one-quarter mile of another such use.
  - 3) No adult business use shall be located within one-thousand feet of any library, school, church or other place of religious worship, park, playground, playing field.
  - 4) Lighting shall meet the requirements of § 77-44.3, and signage shall meet the requirements of § 77-35 of this Chapter.
  - 5) The hours of operation shall only be between the hours of 10:00 a.m. to 11:00 p.m.
  - 6) The minimum lot size for an adult business use shall not be less than three (3) acres.
  - 7) Front, side and rear yard setbacks shall be not less than 100 feet with the front, side, and rear yard setbacks landscaped, as determined by the Planning Board, to provide screening of the adult business use from neighboring properties.
  - 8) Not more than one (1) adult business uses shall be located in the same building or upon the same lot or parcel of land.
  - 9) No amplifiers or loudspeakers of any type shall be installed outside of the building.
  - 10) All such uses shall be subject to a special use permit and site plan approval.

### **§ 77-44.3. Lighting.**

#### **A) General regulations.**

- 1) No artificial lighting shall shine directly into any residential structure located on another lot or be so established that it shall shine directly upon any residential property or shall shine directly on or into any room or rooms, porches or patios of any residential property, nor shall any artificial lighting be maintained or operated from any structure or land in such a manner as to be a nuisance or an annoyance to neighboring residential properties or as to interfere with the physical comfort of the occupants of residential properties.
- 2) Flashing sources of illumination are prohibited.
- 3) Lighting that moves or has moving parts is prohibited.
- 4) Strip lighting outlining commercial structures and used to attract attention to the non-residential use, and strings of light bulbs used in any connection with a non-residential use premises is prohibited unless fully shielded.
- 5) Vegetation screens should not be employed to serve as the primary means for controlling glare. Rather, glare control shall be achieved through the use of such means as cutoff

fixtures, shields and baffles, and appropriate application of fixture mounting height, wattage, aiming angle and fixture placement.

- 6) Exterior lighting shall enhance the building design and the adjoining landscape. Lighting standards and building fixtures shall be of a design and size compatible with the building and adjacent areas, as determined by the Planning Board.
- 7) Security Lighting should use the lowest possible illumination to effectively allow surveillance.
- 8) Under canopy lighting for such uses as motor vehicle repair shops and motor vehicle service stations shall be recessed so that the lens cover is fully recessed, or flush, with the bottom surface (ceiling) of the canopy or shielded by the fixture or the edge of the canopy so that light is restrained to 85 degrees or less from vertical.
- 9) Luminaries used for playing fields and outdoor recreational uses shall be exempt from the height restriction and all other provisions of this Article, provided such lighting is used only while the field is in use.
- 10) Fixtures and lighting systems used for safety and security shall be in good working order and shall be maintained in a manner that serves the original design intent of the system.

B) General standards.

- 1) Where practical, exterior lighting installations should include timers, dimmers, sensors, or photocell controllers that turn the lights off during daylight hours or hours when lighting is not needed, to reduce overall energy consumption and eliminate unneeded lighting.
- 2) Exterior lighting installations should be designed to avoid harsh contrasts in lighting levels.
- 3) Vegetation and landscaping shall be maintained in a manner that does not obstruct security lighting.
- 4) Site lighting shall minimize light spill into the dark night sky.

C) Exterior lighting plan review.

- 1) An application for site plan approval shall include an exterior lighting plan depicting the number, location, mounting height, and type of proposed lighting fixtures and level of illumination on the site and at the property lines. The exterior lighting plan shall include at least the following:
  - a) Manufacturer specification sheets, cut-sheets or other manufacturer provided information indicating the specifications for all proposed lighting fixtures.
  - b) The proposed location, mounting height, and aiming point of all exterior lighting fixtures.
  - c) If building elevations are proposed for illumination, drawings shall be provided for all relevant building elevations showing the fixtures, the portions of the elevations to be illuminated, the luminance levels of the elevations, and the aiming point for any remote light fixture.
  - d) Computer generated photometric grid showing foot-candle readings every ten (10) feet within the property or site, and ten (10) feet beyond the property lines. Iso-foot-candle contour line style plans are also acceptable.
- 2) Additional information may be requested following the initial lighting plan review,

D) R-80, R-40, R-10, Towner's Road Overlay District, and PRD district lighting.

- 1) Within a residential district all new parking lot lighting and site lighting for developments, other than for single family dwellings, shall be comply with the following:

- a) Illumination at the property line shall not exceed 0.1 foot candles.
- b) Luminaries shall be full cut-off type.
- c) Outdoor light fixtures equipped with floodlights are prohibited.
- d) Wall pack outdoor light fixtures located on a front or side façade of a building or structure shall be full cutoff.
- e) Lights that may produce glare so as to cause illumination beyond the boundaries of the property on which it is located are prohibited.
- f) Freestanding lights shall be appropriate to the design of the structures and shall not exceed fifteen (15) feet in height. Wall mounted light fixtures shall not be mounted higher than twelve (12) feet above the ground level immediately below the location of the light fixture. Both freestanding and wall mounted fixtures shall be fitted with movable shields to allow for the re-direction of light to avoid glare and the splaying of light to off-site locations.

E) Commercial District and IOC District lighting.

- 1) Within the Commercial District and the IOC District all parking lot lighting and site lighting shall comply with the following:
  - a) Illumination at the property line shall not exceed 0.2 foot candles.
  - b) Luminaries shall be full cut-off, or semi cut-off as determined by the Planning Board.
  - c) Freestanding lights shall be appropriate to the design of the structures and shall not exceed twenty (20) feet in height. Wall mounted light fixtures shall not be mounted higher than fifteen (15) feet above the ground level immediately below the location of the light fixture. Both freestanding and wall mounted fixtures shall be fitted with movable shields to allow for the re-direction of light to avoid glare and the splaying of light to off-site locations.
  - d) Wall pack outdoor light fixtures oriented toward an adjacent residential property or a residential district shall be full cutoff.
  - e) Non-cutoff outdoor light fixtures shall be limited to walkways, outdoor seating areas or other areas approved for such fixtures as part of a development plan.
  - f) For exterior lighting installations and fixtures within fifty (50) feet of a residential property or a residential district freestanding lighting fixtures shall be no higher than fifteen (15) feet above grade and shall be full cut-off.
  - g) All outdoor light fixtures on single use site, shopping center, integrated center, business park or industrial park, including those on free-standing light poles and those attached to buildings, security lights, and architectural lights, shall be of consistent or compatible style, pole height, mounting height, color, intensity, design and materials with other outdoor light fixtures within the lot, single use site, integrated center, business park or industrial park.

F) Exempt lighting.

- 1) The following shall be exempt from the provisions of this Section, provided that such luminaire, except for those set forth in Paragraphs (a) and (b) below, do not cause glare:
  - a) Lighting fixtures and standards required by the Federal Communications Commission, Federal Aviation Administration, Federal and State Occupational Safety and Health Administrations, or other federal, state or county agencies, to include street lights within the public right-of-way.

- b) Outdoor lighting required by utility companies, law enforcement, fire and rescue, the New York Department of Transportation or other emergency response agencies to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares.
  - c) Temporary lighting used for a special event held by, and on behalf of a municipal organization or agency, or a not-for profit organization provided such lighting is located on the lot on which the event is held. This exemption shall not extend to individuals, organizations, corporations or promoters using lands or facilities owned by a municipality or not-for-profit organization.
  - d) Motion detector security lights which are normally off, and which when occasionally activated upon motion being detected are on for less than four (4) minutes.
  - e) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps or output less than 100 lumens each) used for holiday decorations.
  - f) Outdoor lighting used in connection with these categories shall only be illuminated while the activity takes place and during high traffic periods before and after the event.
- G) Enforcement. To assure that site lighting does not adversely affect neighboring properties, the Building Inspector shall have the authority to require changes to the on-site lighting fixtures to minimize and eliminate glare and the splaying of light across property lines, and to ensure continuous compliance with this section. Such changes may include, but are not limited to, requiring the installation of lower wattage bulbs, the addition of shields to deflect light, and changes to the angle of the fixtures or shields. Failure to implement the changes as directed by the Building Inspector shall be a violation of this section, any permit or approval granted under this section.

**§ 77-44.4. Reserved.**

**§ 77-44.5. Nursery schools, family day-care home, and day-care centers.**

- A. Where permitted pursuant to this Chapter the establishment of a nursery school, family day-care home and a day-care center shall be subject to the following requirements:
- 1) The lot shall have its own means of ingress and egress, other than an emergency exit, which is not shared with any other use; and
  - 2) Any such facility shall provide an appropriately enclosed outdoor play area; and
  - 3) Any such facility shall not be located nearer than 50 feet to any street or property line.
  - 4) Where the facility is required to be licensed by the State of New York, or any other governmental agency, said license shall be kept current and a copy of the current license shall be provided to the Town upon request.

**§ 77-44.6. Artist studios.**

- A. Establishment of an artist studio shall be subject to issuance of a special use permit by the Zoning Board of Appeals. In addition, artist studios shall be subject to the following additional requirements:
- 1) The facility shall be accessory to the principal use of the lot.
  - 2) The facility may be permitted within an accessory structure or within the principal structure; and

- 3) If located on a residential lot the owner shall maintain the lot as his or her principal domicile; and
- 4) If located within an accessory structure said structure shall not be located within any required yard setback.
- 5) Where the facility is required to be licensed by the State of New York, or any other governmental agency, said license shall be kept current and a copy of the current license shall be provided to the Town upon request.
- 6) The Zoning Board of Appeals may condition the issuance of the special use permit on the permit being renewable for a term to be established by the Board.

**§ 77-44.7. Standard Methodology for Wildlife and Plant Biodiversity Assessments.**

- A) Purpose. The Town of Kent is home to a remarkable diversity of plant and animal species. Yet today the town faces the prospect of losing much of its rich biological heritage to development and sprawl which is fostered, in part, by a lack of formal information needed to make land-use decisions. The town has determined that it is necessary to standardize the way in which studies of plant and animal species and their habitat are conducted as part of the environmental impact review of residential and non-residential development projects. By standardizing the way in which biodiversity assessments are conducted the town will be able to develop baseline, site-specific biological information across the diverse land types of the town that will enhance the town's ability to make informed planning decisions and maintain biodiversity as growth proceeds. Development (including residential, commercial, industrial, and infrastructure improvements) affects wildlife and plant species in many ways. For example, direct loss of natural habitat may entirely eliminate some species, while significantly reducing the population size of others. Fragmentation of remaining habitat often leads to isolation of remnant plant and animal populations, thereby reducing dispersal capabilities and increased edge effects such as increased predation and parasitism, and decreased breeding success. Site-specific designs such as curbing and catch-basins can have dramatic effects on the survival and movement patterns of amphibians and reptiles. Land development that disturbs soils, removes vegetation, and alters natural drainage patterns can adversely affect both native plant and wildlife species. Adequate plant life is required for the survival of all animals as habitat, food, and shelter for birds, mammals, reptiles, amphibians, and insects.
- B) Applicability. A biodiversity study in accordance with the standards set forth herein, shall be required for development applications involving property located within 300 feet of the bank of lakes, ponds, rivers, streams, and perennial watercourses; and/or property located within 800 feet of the edge of vernal pools and town jurisdictional wetlands. Nothing herein shall be construed as preventing or prohibiting the preparation of a biodiversity study at the discretion of the Town Board, the Planning Board, or the Zoning Board of Appeals for any application that may come before any of said boards.
- C) When required by this Chapter, a Biodiversity Study shall be conducted for the entire range of species that are known to respond to development. Species shall include those listed as Federal and State endangered, threatened, and special concern plant and animal species. At a minimum, surveys shall be conducted for amphibians, reptiles, birds, fish, mammals, plants and fungi. The presence of focal species indicates habitat quality. The presence of habitat specialists (e.g. wood frogs, spotted salamanders, box turtles, wood turtles, oven birds, Canada warblers) may indicate high-quality habitat(s) where development-related impacts should be avoided, minimized, or mitigated. The presence of certain "subsidized" species (e.g. those that are often affiliated with landscape disturbances), coupled with the absence of more specialized taxa, indicates previously disturbed habitats that may be more suitable for development.
- D) Methodology. Biodiversity assessments shall be conducted and interpreted by biologists trained

in the concepts of conservation biology and landscape ecology, and who have demonstrated a competence in surveying target species within Putnam County.

- 1) Initial surveys must consist of a complete habitat assessment to develop a comprehensive list of possible endangered, threatened, special concern, and focal species that may utilize the site during all or a portion of their life-cycle. The life cycle habitat requirements of the potential species on the site must be developed with appropriate references sited. Information from the NYS Natural Heritage Program must also be obtained prior to species surveys. Field surveys of the species listed as potentially found or using the site must be conducted during appropriate seasons and in the appropriate habitats in accordance with their life-cycles of the species. Surveys must follow standard protocols to ensure that detectability is maximized and results are reliable. For example, bird surveys must occur during the spring breeding season (mid-May through early July) in the early morning hours (within ½ hour of dawn through 9:30 a.m.) under relatively fair weather conditions. The results of such breeding bird surveys reveal the suitability of on-site habitat: surveys which are conducted at other times or in poor weather are much less informative. Reptile and amphibian surveys must be conducted between March and October, with concentrations in March-April, May-June, mid-summer, and September. Survey techniques include night searches, minnow/turtle traps, turning of cover, objects, and larval dip-netting and identification. For all taxa in question, surveys must be conducted within all habitats on site (e.g. grasslands, vernal pools, forested uplands, wetlands), regardless of where the proposed construction activities would take place. Many species utilize a complex of habitats within the course of their life-cycles; therefore developments may attempt to avoid disturbance of breeding habitat, but destroy foraging, roosting, or wintering habitat. Attention should be given to timing and seasonal constraints such as breeding, migration and germination. The landscape ecology of the site must also be detailed regarding the effect of development on the undisturbed range requirements of the identified species.
- 2) A final report shall be submitted to the reviewing agency (typically the Lead Agency) containing a description of current on-site habitats for wildlife and vegetation, the value and condition of those habitats for wildlife, and a discussion of the potential impacts of the proposed development on wildlife and vegetation resources. Data collection methods shall be detailed in the report. Wildlife and vegetation occurrence data must be location-specific; lists of probable species occurrence alone are not acceptable. The final report shall include identification of critical habitat areas that are proposed to be permanently or temporarily removed or altered due to site construction. Critical habitat areas are those areas that are found within the construction areas that are required for the life-cycle of identified specie(s) and cannot be found elsewhere on the site or that would be cut off from the remaining site due to the construction. A design of the improvements shall be prepared and presented to the reviewing agency that avoids impacts to all critical habitat areas. Alternatives shall be recommended where the proposed alterations to critical habitats place wildlife and vegetation resources in jeopardy. The report shall also discuss site context (e.g. proximity and connectivity to other habitats), and shall relate the importance of on-site habitat relative to other habitats within the town. The report shall contain detailed maps compatible with the town's existing baseline mapping, and shall also include, when directed by the reviewing agency, digital mapping in a GIS database format so that the survey information may be incorporated into a town-wide wildlife habitat data base.

---

## **ARTICLE XIII, Reserved**

---

### **§ 77-45. Reserved.**

### **§ 77-46. Reserved.**

---

## ARTICLE XIV, Non-conforming Uses and Non-complying Buildings

---

### **§ 77-47. Non-conforming buildings and uses.**

The following provisions shall apply to all buildings and uses legally existing on the effective date of this Chapter which do not conform to the requirements set forth in this Chapter and to all buildings and uses that become nonconforming by reason of any subsequent amendment to this Chapter:

- A) Except as provided hereinafter, nonconforming use of buildings or open land and, regardless of change of title, possession or occupancy or right thereof, any nonconforming buildings may be continued indefinitely, but:
  - 1) Shall not be enlarged, altered, extended, reconstructed or restored, except as provided elsewhere in this article, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this Chapter, nor shall any external evidence of such use be increased by any means whatsoever.
  - 2) Shall not be moved to another location where such use would be nonconforming.
  - 3) Shall not be changed to another nonconforming use without approval by the Planning Board, and then only to a use which, in the opinion of said Board is of the same or of a more restricted nature.
  - 4) Shall not be reestablished if such use has been discontinued for any reason for a period of six months or periods aggregating six months during any twelve-month period, except that seasonal uses that remain in operation for two months during each year may continue unless they are discontinued over a full twelve-month period. Intent to resume a nonconforming use shall not confer the right to do so.
  - 5) Shall not be reestablished if such use has been destroyed, or changed to or replaced by a conforming use.
- B) Upon a finding by the Planning Board that a proposed remodeling of a nonconforming building, including the improvement of its exterior appearance and of its grounds, would result in enhancing the compatibility of such building with its surroundings, said Board may authorize the issuance of the necessary permits. For purposes of this section, the term "remodeling" may include enlargement of the building to an extent not exceeding 25% of its area on the effective date of this Chapter, provided that the Board shall find that such expansion will not diminish the compatibility of said building with the existing or potential use of immediately adjacent properties.
- C) Merger of lots. Any substandard plot of land owned by or acquired under any circumstances by an adjoining landowner shall, for the purposes of this Code, be considered as having merged into one plot, and the plots so merged shall be considered as one plot in its entirety.

### **§ 77-48. Non-complying buildings.**

- A) A noncomplying principal building shall not be reestablished in its noncomplying location nor restored in other than a complying location after such building shall have been damaged, which damage shall exceed 75% of its bulk or square footage, unless such restoration is completed within one year from the date of such destruction. A noncomplying accessory building shall not be reestablished in its noncomplying location nor restored in other than a complying location after damage for any reason exceeding 75% of its bulk or square footage.
- B) Nothing in this article shall be deemed to prevent normal maintenance and repair of, in or to a noncomplying building.

**§ 77-49. Repairs and maintenance.**

Notwithstanding any of the foregoing regulations, nothing in this article shall be deemed to prevent normal maintenance and repair of any building or the carrying out upon the issuance of a building permit of major structural alterations or demolitions necessary in the interest of public safety.

---

**ARTICLE XV, Administration and Enforcement**

---

**§ 77-50. Building Inspector; duties.**

The Building Inspector appointed pursuant to Chapter 27 of the Code of the Town of Kent shall administer and enforce the provisions of this Chapter. Such Building Inspector is charged with the duty of making inspections, examining plans and specifications and taking the necessary action with reference thereto for the administration and enforcement of this Chapter.

**§ 77-51. Land use and building permits.**

- A) No land shall be used or occupied and no building or structure shall be erected or altered unless a land use or building permit for the same shall have been procured from the Building Inspector pursuant to the provisions of Chapter 27 of the Code of the Town of Kent.
- B) No building permit shall be issued for:
  - 1) The construction or alteration of any building upon a lot without access to a street or highway except upon application to and approval by the Board of Appeals, as set forth in §280-a of the Town Law.
  - 2) Any building that is subject to site plan approval by the Planning Board, except in conformity with the requirements of said Board.
  - 3) Any building that is to be used for any special use in any district where such use is subject to approval by the Planning Board unless and until such approval has been duly granted by said Board.
  - 4) Any building that is permitted subject to a variance granted by the Board of Appeals except in accordance with all conditions which may have been prescribed by said Board.
- C) If such application shows that the proposed use of the premises will be in conformity with the provisions of this Chapter, the Building Code of the Town of Kent, and any and all orders which may have been made by the Board of Appeals or the Planning Board in respect to the premises, the Building Inspector shall issue a land use or building permit authorizing the proposed construction in accordance with the conditions set forth in the application, upon payment of such fee as the Town Board may establish from time to time.
- D) A land use or building permit shall only be valid for one year, but may be extended in the discretion of the Building Inspector for two periods of six months each upon payment of such additional fee for each extension of time as the Town Board may establish.

**§ 77-52. Foundation survey.**

After completion of the foundation walls of a building or structure, the owner shall have a survey made by a licensed land surveyor, showing the true location of the foundation walls with respect to the lot lines of the lot, and a copy of such survey shall be filed with the Building Inspector before the continuation of construction.

**§ 77-53. Certificates of occupancy and compliance.**

- A) The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Building Inspector pursuant to the provisions of Chapter 27 of the Code of the Town of Kent:
  - 1) Occupancy and use of a building erected, reconstructed, restored, expanded, altered or moved, or any change in use of any existing building.
  - 2) Any change in use of vacant land.
  - 3) Any change in use of a nonconforming use.
- B) No certificate of occupancy shall be issued for any use of a building or of land that requires a special use permit or a variance by the Board of Appeals or a special use permit or site plan approval by the Planning Board unless and until such variance, special use or site plan approval has been duly granted. Every certificate of occupancy for which a variance, special use permit or site plan approval has been granted shall contain a detailed statement of any condition to which the same is subject.
- C) Upon written request by the owner and upon payment of the required fee, the Building Inspector shall, after inspection, issue a certificate of compliance for any building or use thereof, or for the use of any land, existing at the time of the adoption of this chapter, certifying such use and whether or not said use and the building conform to the provisions of this chapter.
- D) Application for a certificate of occupancy for a new building or for an existing building which has been altered shall be made on forms furnished by the Building Inspector, after erection of such building or part thereof has been completed in conformity with the provisions of this Chapter and all other applicable regulations. Such certificate shall be issued within 10 days after receipt of the properly completed application, but only provided that the application states that all requirements of all other applicable codes or ordinances in effect are complied with.
- E) If the proposed use is in conformity with the provisions of this Chapter and of all other applicable codes and ordinances, a certificate of occupancy for the use of vacant land or for a change of use of a nonconforming use shall be issued by the Building Inspector within 10 days after receipt of a properly completed application. If a certificate of occupancy is denied, the Building Inspector shall state the reasons in writing to the applicant.
- F) The Building Inspector, with the approval of the Town Board, may issue a temporary certificate of occupancy for a period of not more than four months pending completion of work required by this Chapter and/or the Building Code of the Town of Kent.
- G) Upon written request by the owner and upon payment of the required fee, the Building Inspector shall, after inspection, issue a certificate of compliance for any building or use thereof, or for the use of any land, existing at the time of the adoption of this Chapter, certifying such use and whether or not said use and the building conform to the provisions of this Chapter.
- H) Every application for a certificate of occupancy, a temporary certificate of occupancy or certificate of compliance shall be accompanied by the required fee. The amount of such fee shall be as determined from time to time by the Town Board.
- I) A record of all certificates of occupancy and certificates of compliance shall be kept in the office of the Building Inspector, and copies shall be furnished, on request, to any agency of the Town or to any persons having a proprietary or tenancy interest in the building or land affected.
- J) Inspection; survey plan.
  - 1) An inspection of the premises shall be made by the Town Planning Board Engineer to assure conformance with the special use or site plan. A fee of \$150 shall be paid to the Planning Board by the applicant for each inspection by the Town Planning Board Engineer.
  - 2) An as-built survey plan shall be filed with and approved by the Planning Board before any

certificate of occupancy may be issued for any special use or site plan.

**§ 77-54. Appeals from decision of Building Inspector.**

- A) In case the Building Inspector shall refuse to issue a building permit, a certificate of occupancy or a certificate of compliance on the grounds of violation of the provisions of this Chapter an appeal from such decision may be made to the Board of Appeals. Any such appeal shall be made no later than sixty (60) days of the date of the Building Inspector's denial.

**§ 77-54.1. Application fees; review fees.**

- A) Any application for approval of a site plan, special use permit, variance or other development activity authorized by this Chapter shall be accompanied by fee(s) in an amount set by the Town Board for such application. Additional, engineering, legal and consulting review fees as set forth in Chapter 55 of the Town Code may also apply.

---

**ARTICLE XVI, Board of Appeals**

---

**§ 77-55. Appointment and organization.**

- A) Pursuant to the Town Law of the State of New York, there shall be a Board of Appeals appointed in accordance with the provisions thereof. The Board of Appeals shall consist of five members. The members of the Board of Appeals existing on the date of adoption of this Chapter shall continue in office to the expiration of their term.
- B) The Board may employ a Secretary or Clerk who is not a member of the Board, at a salary to be fixed by the Town Board.

**§ 77-56. Meetings; quorum.**

- A) Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Meetings shall be at sufficiently frequent intervals, at the discretion of the Board, for the efficient conduct of its business, provided that no matter pending before the Board shall be held longer than 60 days without its being formally considered. All meetings shall be open to the public. A quorum shall consist of three members.

**§ 77-57. Powers and duties.**

The Board of Appeals shall have all the powers and duties prescribed by law and by this Chapter, as set forth below, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law.

- A) Interpretations, requirements, decisions and determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this Chapter, and to that end shall have all the powers of the administrative official from whose order, requirement or decision the appeal is taken.
- B) Use variances.
  - 1) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this Chapter shall have the power to grant use variances authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this Chapter.

- 2) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
  - (a) That the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
  - (b) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; d
  - (c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (d) The alleged hardship has not been self-created.
- 3) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C) Area variances.

- 1) The Board of Appeals shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of this Chapter, to grant area variances from the area or dimensional requirements of this Chapter.
- 2) In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:
  - a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
  - b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
  - c) Whether the requested area variance is substantial.
  - d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
  - e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.
- 3) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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

E) In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this Chapter, it shall be the duty of said Board to attach such conditions and

safeguards as may be required in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this Chapter.

F) Time limit.

- 1) All use variances and area variances granted by the Board of Appeals shall be and become null, void and of no further force and effect unless:
  - a) In the case of a use variance the use so granted shall actually have commenced upon the premises within six months after filing of the decision of the Board with the Town Clerk; or
  - b) In the case of an area variance the erection and construction of the principal building or structure for which the area variance shall have been granted by the Board of Appeals shall actually have been commenced within 12 months of the date of filing of the decision with the Town Clerk.
- 2) Excavation for or construction of a building foundation shall not be deemed to be commencement of the erection or construction of such building or structure within the meaning of this section.

G) Time of Appeal. An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of this Chapter by filing with such administrative officer and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall immediately transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board of Appeals prior to the date set for hearing on such appeal.

**§ 77-58. Procedure.**

The powers and duties of the Board of Appeals shall be exercised in accordance with the following procedure:

A) Public hearing; notice required.

- 1) The Board of Appeals shall not decide any appeal for a variance or interpretation of this Chapter without first holding a public hearing, notice of which hearing, including the substance of the appeal or application, shall be given by publication in the official newspaper of the Town at least five days before the date of such hearing. In addition to such published notice, the applicant shall cause notification to be:
  - a) Mailed by certified mail, return receipt requested, to owners of neighboring property within 100 feet of the subject premises, if the subject premises is within an R-10 district;
  - b) Mailed by certified mail, return receipt requested, to owners of neighboring property within 500 feet of the subject premises, if the subject premises is within an R-40 or R-80 district; or
  - c) Mailed by certified mail, return receipt requested, to owners of neighboring property within 100 feet of the subject premises, if the subject premises is within a PRD, a Commercial, or IOC district.
- 2) Such notices shall be mailed at least seven days before the hearing. Additional mailings may be required by the Board to be made, as the Board may deem advisable.
- 3) The names and addresses of said neighboring property owners shall be taken as they appear on the last completed tax roll of the Town. Proof of mailing shall be provided to the Zoning

Board at the time of the hearing. In the alternative, an acknowledgment of receipt of such notice signed by the neighboring property owners shall constitute compliance with the above.

- B) The failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Board of Appeals in connection with the granting of any appeal or variance, provided that due notice shall have been published and that there shall have been substantial compliance with the remaining provisions of this section.
- C) In any matter which relates to a property which lies within 500 feet of the boundary of another municipality, the Secretary of the Board of Appeals shall transmit to the Municipal Clerk of such other municipality a copy of the official notice of the public hearing on such matter not later than one day after publication thereof. Such other municipality shall have the right to appear and to be heard at such public hearing.
- D) All appeals and applications made to the Board of Appeals shall be in writing and shall be accompanied by the required fee. The amount of such fee shall be set by the Town Board.
- E) Each appeal or application shall fully set forth the circumstances of the case, shall refer to the specific provision of this Chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.
- F) Time of Decision. The Zoning Board of Appeals shall make a decision within 62 days after the final hearing. The concurring vote of the majority of all members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any official charged with the administration of this Chapter or to decide in favor of an applicant in any matter upon which it is required to pass under this Chapter.
- G) Referrals to the Planning Board. In connection with any appeal or application submitted to the Zoning Board of Appeals, said Board may transmit to the Planning Board a copy of said appeal or application for an advisory opinion. Upon such request the Planning Board shall submit a report of such advisory opinion within thirty (30) days of the receipt of the referral.
- H) County Referral. Prior to action on an application for an area variance, a use variance, or a special use permit under this section a copy of said application shall be forwarded to the Putnam County Planning Department for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:
  - 1) The boundary of any city, village, or town; or
  - 2) The boundary of any existing or proposed county or state park or other recreation area; or
  - 3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
  - 4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
  - 5) The existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
  - 6) The boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.
- I) Referral to Neighboring Municipalities. Pursuant to General Municipal Law GML §239-nn, for a use variance, area variance, or a special use permit application involving property located within five hundred (500) feet of an adjacent municipality notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than ten (10) days prior to the date of said hearing.

- J) Notice to park commission. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties and to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal.
- K) Agricultural data statement. An application for an area variance, a use variance, or a special use permit must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
- L) Every decision of the Board of Appeals shall be recorded in accordance with standard forms adopted by the Board, shall fully set forth the circumstances of the case, shall contain a full record of the findings on which the decision is based. Every decision of said Board shall be filed with the Town Clerk within five days of the date of decision.
- M) The Board shall keep minutes of its proceedings showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact. The records of the Board's examinations and official actions shall be a public record.
- N) All provisions of this Chapter relating to the Board of Appeals shall be strictly construed. Said Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this Chapter and in compliance with all limitations contained therein.
- O) Default Denial. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement officer within the time allowed by subsection F herein, the appeal shall be deemed as denied. The Board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to a rehearing process.

---

## **ARTICLE XVII, Special Use and Site Plan Requirements**

---

### **§ 77-59. Special use permits.<sup>1</sup>**

- A) On application and after public notice and hearing, the Planning Board may authorize the issuance of a special use permit for any of the special uses for which this Chapter requires such permit in the district in which such use is proposed to be located. In approving any such use the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular and may prescribe such appropriate conditions and safeguards as may be required in order that the result of its action shall, to the maximum extent possible, further the expressed intent of this Chapter and the accomplishment of the following objectives in particular:
  - 1) That all proposed structures, equipment or material shall be readily accessible for fire and police protection.
  - 2) That the proposed use shall be of such location, size and character that, in general, it will be

---

1. The term "special use permit" shall also refer to any "conditional use permit" issued by the Planning Board or the Board of Appeals. The change in terms is intended to bring the usage into line with the term as used in the Town Law and is not intended to change or alter any rights under any valid conditional use permit that may have been issued.

in harmony with the appropriate and orderly development of the district in which it is proposed to be situated, will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties, will be free of nuisance characteristics and will not overcrowd the land either as proposed or as it may reasonably be expected to expand.

- 3) That, in addition to the above, in the case of any use located in or directly adjacent to a residence district:
  - a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, the residence district or conflict with the normal traffic of the neighborhood.
  - b) The location, height and architectural features of buildings; the location, nature, design and height of walls, fences and signs; and the nature and extent of landscaping on the site shall be such that the use will harmonize with its surroundings and will not hinder or discourage the appropriate development and use of adjacent land and buildings.
  - c) The Planning Board or the Zoning Board of Appeals, as the case may be, may place reasonable limits on the hours of operation of any special use where said board determines that the operation or conduct of the use may impair or impede the quiet enjoyment of adjacent and nearby residential uses during the evening and nighttime hours.
- 4) That, in addition to the above, where the proposed use is near a church, school, theater, recreational area or any other place of public assembly, the operation thereof will not present any undue hazards to the users of said facilities.
- B) Each application for a special use shall be accompanied by a proposed site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives and parking areas, and all streets within 200 feet of the lot.
- C) Any use for which a special use permit is granted shall be deemed to be a conforming use in the district in which such use is located, provided that such permit shall affect only the lot or portion thereof for which such permit shall have been granted.
- D) All special use permits shall become null and void unless the holder thereof shall obtain within one year following the effective date for the resolution granting the same a certificate of occupancy or an extension of time, upon presentation of evidence sufficient for a determination by the Planning Board that extenuating circumstances warrant such extension.
- E) County Referral. Prior to action on an application for a special use permit under this section a copy of said application shall be forwarded to the Putnam County Planning Department for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:
  - 1) The boundary of any city, village, or town; or
  - 2) The boundary of any existing or proposed county or state park or other recreation area; or
  - 3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
  - 4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or

- 5) The existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
  - 6) The boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.
- F) Referral to Neighboring Municipalities. Pursuant to General Municipal Law GML §239-nn, for a special use permit application involving property located within five hundred (500) feet of an adjacent municipality notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than ten (10) days prior to the date of said hearing.
- G) Notice to park commission. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties and to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property for which an application for special use permit approval has been submitted.
- H) Agricultural data statement. An application for a special use permit must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
- I) Time of Decision. The Zoning Board of Appeals shall make a decision within 62 days after the close of the public hearing.

**§ 77-60. Approval of site plans.**

- A) Purpose. The Town of Kent values the rural mixed-use character of the Town, and wishes to encourage residential and nonresidential growth involving supporting adaptive reuse of existing structures and development of new structures designs and land uses that preserve the historic, scenic, and environmental character of the Town of Kent. To that end, the following regulations are intended to direct the development of land to accomplish this purpose.
- B) Consistency requirement. Before approving any use that is subject to special use permit or site plan review, the Planning Board must make a written finding that the proposed use, site layout, site design and architectural appearance will enhance and be protective of the aesthetic, historic and environmental features of the Town. In preparing a plan for development of land the applicant shall give attention to the goals, objectives and the stated land use policies for the Town in the specific area in which the development is proposed. The Planning Board shall determine whether the site use, site design and architecture proposed by an applicant comply with the land use and environmental protection policies and objectives of the Town of Kent Master Plan.
- C) Applicability. Site plan approval by the Planning Board, in accordance with this section, is required for the following uses and activities:
- 1) All uses and uses accessory thereto which require site plan approval as set forth in this Chapter.
  - 2) All special use activities.
  - 3) Any change of use involving a conforming use to another conforming use.
  - 4) Any change of use involving a non-conforming use to another non-conforming use.

- 5) A change to an approved site plan or an approved subdivision plat where site plan approval was required.
  - 6) Activities for which a use variance has been granted by the Zoning Board of Appeals.
  - 7) New construction, extension, alteration, addition or change of use of land or structure.
  - 8) Extension, alteration or additions to a nonconforming building.
- D) Exemptions. The following activities are exempt from Site Plan Approval:
- 1) Construction, extension or alteration of a single-family dwelling and accessory structures thereto on a lot legally in existence as of the date of this Chapter, or on a lot approved by the Planning Board for single-family residential use pursuant to the Chapter A81.
  - 2) The seasonal planting, cultivation and harvesting of field crops, fruits, vegetables, and horticultural specialties, including nursery stock, ornamental shrubs, and ornamental trees and flowers, whether as part of an existing or a new or expanded agricultural operation, and not involving the construction or alteration of any structure.
  - 3) Construction or alteration of the interior of a building or structure;
  - 4) Routine property maintenance activities, including repainting, repair, and in-kind replacement.
- E) Where site plan approval is required by this Chapter, no building permit or certificate of occupancy shall be issued by the Building Inspector until such plan has been approved by the Planning Board as provided herein. No premises shall be occupied or used and no certificate of occupancy shall be issued until all of the requirements of this Chapter, and any condition of Planning Board approval, have been complied with.
- F) Applications. An application for site plan approval shall be submitted to the Planning Board on forms provided by the Board for such purpose. The application shall be submitted to the Planning Board by 12:00 noon at least 21 days prior to the date set for the regular meeting of the Board, and shall be made prior to the application for a building permit. The application shall be complete and in a form acceptable to the Planning Board and shall be accompanied by a detailed site plan. The site plan shall use as a base map an accurate boundary and topographic survey of the property depicting all existing improvements and grades prepared by a New York State licensed land surveyor. The plan shall depict all proposed improvements and shall be prepared by a professional engineer, a landscape architect, or an architect licensed by the State of New York and shall include the following information:
- 1) A location map, at a convenient scale, showing the applicant's entire property and all boundaries, easements and streets within 500 feet thereof.
  - 2) The location, size, use and architectural design of all existing buildings and structures.
  - 3) The location of all property lines and structures within 200 feet of the property boundary, with topography extended 50 feet outward from the site property boundary and 200 feet outward along existing roads.
  - 4) Any proposed division of buildings into units of separate occupancy.
  - 5) Existing topography and proposed grade elevations at a contour interval of not more than two feet, unless waived by the Planning Board, soil types, wetlands and watercourses, one-hundred-year floodplains, bedrock outcrops, slopes in excess of 10%, and the location of trees with a diameter of eight inches dbh and greater.
  - 6) The location and capacity or number of all existing and proposed roads, driveways, parking and loading areas, including access and egress drives.
  - 7) The location of outdoor storage areas.

- 8) The location of fire access roads and fire protection features.
  - 9) The location, description and design of all existing and proposed site improvements, including pavement, walkways, curbing, drains, culverts, retaining walls, fences, parks, open spaces, and recreation areas.
  - 10) The location, design and description of water supply and sewage disposal facilities.
  - 11) The location, design and description of stormwater management facilities, including proposed grading plan.
  - 12) The location, height, size and design of all signs.
  - 13) The location, height, and species of landscape plantings on a landscape plan.
  - 14) The location and design of lighting and communication facilities.
  - 15) The location, type and design of all waste and refuse storage and handling facilities.
  - 16) The character and location of all power distribution and transmission lines.
  - 17) The location and description of all subsurface site improvements and facilities.
  - 18) The extent and amount of cut and fill for all disturbed areas, including before-and-after profiles of typical development areas, parking lots, driveways and roads.
  - 19) Adequate provisions for the handling of stormwater runoff, including retention/detention, piping or channeling to existing or proposed drainage systems during and after construction.
  - 20) Phasing of development, if any.
  - 21) A signature block for Planning Board endorsement of approval.
  - 22) The name and address of the owner of the property proposed for development along with the signature of said owner.
  - 23) The name and address of the applicant, if different, along with the signature of said applicant.
  - 24) At the request of the Planning Board, any other pertinent information as may be deemed necessary to determine and provide for the proper enforcement of this Chapter.
- G) Information waiver. The Planning Board may grant a waiver from the information requirements contained herein where it finds that such information is not relevant to, or is not otherwise required, to conduct the review of the application.
- H) Site plan design criteria. The criteria in subsections J through U of this section, inclusive, are intended to provide a framework for development within which the site designer is free to exercise creativity, invention, and innovation while recognizing the historic scenic and visual qualities inherent to the Town of Kent. The Planning Board, in its sole discretion, shall determine the applicability of the criteria to each application for site plan and special use permit approval, and may waive or modify the application of the criteria to each application on a case-by-case basis. In addition, the Planning Board shall use its discretion to reconcile any conflicts between the site plan design criteria of this section and any specific district design standards. Unless waived or modified by the Planning Board the following criteria shall be in addition to any other area and bulk requirement of this Local Law.
- I) Relationship of structures and buildings to site.
- 1) In the site plan design, consideration shall be given to the use of traditional building forms and layouts which are evidence of the distinctive historic development of the area and, in particular, of any specially designated or recognized scenic and historic districts within the vicinity of the proposed development. The importance of local historic, architectural,

environmental and other features of significance to the property and of nearby properties shall be recognized as an integral element in the review process.

- 2) The site shall be planned to accomplish a desirable transition with the streetscape to provide for adequate planting, safe pedestrian movement, and safe ingress and egress, and parking for vehicles.
- 3) Site planning in which setbacks and yards are in excess of minimum area and bulk requirements is encouraged to provide a variation in relationship between buildings.
- 4) Parking shall, wherever feasible, be located to the rear or sides of buildings so as not to interfere with the front landscape treatment.
- 5) Without restricting the permissible limits of the applicable zoning district, the height and scale of each building shall be compatible with its site and the existing, or anticipated, adjoining buildings. The Planning Board shall determine the visual compatibility of a proposed use or site plan change, including concerns for the proportion of the front facade, proportion and arrangement of windows and other openings within the facade (i.e., fenestration), roof shape and the rhythm and spacing of structures along the street front or roadway, including consideration of setbacks and the treatment of yards.
- 6) The Planning Board shall encourage the use of a combination of common materials, landscaping, buffers, screens and visual interruptions to create attractive transitions between buildings of different architectural styles.
- 7) Newly installed and renovated utility services, and service revisions necessitated by exterior alterations, shall be underground unless otherwise allowed by the Planning Board.

J) Relationship of nonresidential uses to residential uses and districts.

- 1) Site plans proposed for nonresidential uses adjacent to a residential district or a residential property shall be reviewed with regard to the impact of the development on that district. The Planning Board is hereby expressly authorized to require such additional front, side and rear yard setbacks as may be required to ensure that the nonresidential use does not interfere with the quiet enjoyment of neighboring residential lands.
- 2) The Planning Board shall ensure that the design of each parking area provides adequate room for snow storage.

K) Landscape, buffering and site treatment.

- 1) Where possible, natural or existing topographic features and patterns that contribute to the beauty and character of a site or neighborhood shall be preserved.
- 2) Grades of walks, parking spaces, terraces, and other paved areas shall provide an inviting appearance and shall be of such width, as determined by the Planning Board, to easily accommodate pedestrian movement.
- 3) Landscape treatment shall be provided to enhance architectural features, strengthen vistas and visual corridors and provide shade.
- 4) Unity of design shall be achieved by repetition of certain plant varieties and other materials and by coordination with adjacent developments.
- 5) Plant material shall be selected for interest in its structure, texture and color and in consideration of its ultimate growth pattern. Vegetation indigenous to the area and others that will be harmonious to the design and exhibit a good appearance shall be used.
- 6) In locations where plants will be susceptible to injury by pedestrian or motor traffic, appropriate curbs, tree guards, or other devices shall be installed and maintained. The Planning Board may require the use of markers to delineate curbing and other sensitive

features to alert snow plow operators of the existence of such features and curbing.

- 7) Screening of service yards, commercial vehicles, commercial trailers, passenger vehicles, parking areas, refuse containers, and other places that tend to be unsightly, shall be accomplished by use of walls, fencing, planting, or combinations of these with all such enclosures being compatible in material, texture, and color with the principle building or buildings on the site.
- 8) Landscaping shall be designed and maintained so as not to create hazardous conditions.
- 9) Landscaping shall be maintained to preserve its original integrity and intended purpose during the life of the proposed use or project.

L) Stormwater management.

- 1) Provide for compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges.
- 2) Provide for compliance with Chapter 43, "Illicit Discharges to Storm Sewers, and Chapter 66, Steep Slope Protection and Stormwater Management of the Town of Kent Code.
- 3) Provide for compliance with the New York City Department of Environmental Protection regulations for stormwater discharges.

M) Building design.

- 1) Proposed building design shall recognize compatible building forms indigenous to the community and the neighborhood in which the project is located. In particular, building design shall consider the historic character of the Town of Kent. Adaptive reuse of existing structures is strongly encouraged.
- 2) Materials proposed for new structures and the rehabilitation/redesign of existing structures shall have good architectural character and shall be selected for harmony with traditional building materials. Except when wholly impractical, natural materials shall be used.
- 3) Building components such as windows, rooflines, doors, eaves, and parapets shall have well designed proportions and relationships to one another and be compatible with the historic character of the Town of Kent and the neighborhood setting of the proposed project.
- 4) Mechanical equipment such as air conditioners, satellite dishes, or other utility hardware located on roofs, the ground, or buildings shall be screened from public view with materials harmonious with the building, specified as to color so as to blend with their surroundings, or located so as not to be visible from any public way or lands.

N) Parking and loading.

- 1) Parking shall not be located within a front, side or rear yard setback.
- 2) Parking areas, access aisles, and parking spaces facing or adjacent to property located in a residential district shall be set back an additional 15 feet from the minimum yard setback to provide a visual and noise buffer to such residentially zoned property. The 15 foot buffer shall be planted with a mixture of evergreen and deciduous plantings at a planted height so as to completely screen the parking area from neighboring properties and streets. In the case of practical difficulty, or where the Planning Board determines that the additional 15 foot buffer strip is unnecessary due to site conditions, the Board may reduce the depth of the buffer provided that the Board finds that such reduction will be at least as protective of property located in the residential district as the full-depth buffer. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.
- 3) Parking areas and traffic ways shall be enhanced with landscaped islands, containing trees

and tree groupings. The interior (i.e. non-perimeter) areas of a proposed parking area shall be appropriately landscaped, and for parking lots containing twenty (20) or more parking spaces such landscaping shall comprise not less than fifteen (15%) percent of the land area of the proposed parking facility.

- 4) The Planning Board may allow parking spaces within a yard setback line if it finds that such parking will not detract from the aesthetic character of the area and is otherwise consistent with the purposes of this section.
- 5) Notwithstanding the requirements for off-street loading spaces as specified in Article XI of this Chapter, the Planning Board may require additional space(s) for delivery vehicle loading, may require larger dimensions for each loading space, may require additional setback from adjacent buildings and structures, and may require larger dimensions and means of access for vehicles to such loading spaces than may be stated elsewhere in this Chapter.

O) Material and equipment storage and waste containers.

- 1) Material and equipment other than as shown on an approved site plan shall be stored so as to not be visible from adjoining or nearby properties and public roads. Storage of materials shall be within wholly enclosed structures approved for such use, or shall be screened from view by fencing or landscaping, or a combination of fencing and landscaping, as determined by the Planning Board. Accessory outdoor storage of materials shall set back not less than fifteen (15) feet from any lot line, not more than 10 feet in height and suitably screened by a solid fence or other suitable means of at least six feet in height. Accessory outdoor storage shall be prohibited between the principal building and any street line.
- 2) Adequate facilities for disposal of refuse shall be provided. All refuse disposal units, or locations for deposit of refuse, shall be screened from view and designed so as to be fireproof and/or fire retardant, and to prevent access by rodents, dogs and vermin such as cats. All such enclosures shall remain closed at all times, and shall be designed to prevent blowing of paper and refuse.

P) Ecological considerations.

- 1) The proposal shall result in minimal degradation of unique or irreplaceable land types and in minimal adverse impact upon areas of environmental concern.
- 2) The proposal shall conform with the existing geological and topographic features, to the end that the most appropriate use of land is encouraged.

Q) Drainage. The proposed development shall be so designed as to provide for proper surface water management through a system of controlled drainage that preserves existing drainage patterns and protects other properties and the environment. All drainage plans shall be reviewed and approved by the Planning Board Engineer.

R) Traffic.

- 1) All entrance and exit driveways shall be located with due consideration for traffic flow, so as to afford maximum safety to traffic on public streets and shall meet all current design standards of the appropriate state, county or Town authority unless specifically waived or modified by that authority.
- 2) On-site circulation shall be designed for ease of use and to connect safely with adjoining properties where appropriate.

S) Pedestrian circulation. Pedestrian circulation shall be separated from motor vehicle circulation. Appropriate walkways shall be provided on the site and its approaches as determined by the Planning Board.

- T) Architectural review. In addition to the requirements of this section and the Town Subdivision Regulations, during review of any site plan the Planning Board may, at its discretion, consult with one or more persons or firms having experience in building architecture and design matters as to the appropriate design of building exterior facades, fenestrations, roof lines, lighting, massing, color and materials. In reviewing the architectural appearance of proposed buildings and landscaping the Planning Board shall evaluate the compatibility of the proposed development with that found elsewhere in the vicinity of the project. The Board may, at its discretion, consult with one or more persons or firms having experience in landscape architecture and landscape planting as to the appropriate design of lawns and open spaces around proposed buildings and uses, and the appropriate species, size and number of plants to be installed. The architectural review authority of the Planning Board shall not be limited by the provisions of this section but shall extend to the full authority to conduct such reviews as may be conferred on the reviewing agency by the Town Law, the State Environmental Quality Review Act, and this Chapter, as amended. The reasonable cost of any architectural review shall be borne by the applicant.

**§ 77-61. Approval procedure.**

The Planning Board shall follow the following procedure in reviewing and approving site plans:

A) Public hearing and action.

- 1) When officially received. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only after payment of an application fee in an amount set by the Town Board, and any review fee that may be required by the Planning Board.
- 2) Upon receipt of a site plan application, the Planning Board shall, at a regular meeting of the Board, determine whether to convene a public hearing on the application. Where the Board has determined that a public hearing will be held it shall, within 62 days of receipt of a complete application, set a date for a public hearing. The Planning Board shall notify or cause to be notified, by certified mail, the following persons:
  - a) For projects located in the R-10 Residential District, the Commercial District, and the IOC District, all landowners within 100 feet of the boundary of the subject property.
  - b) For projects located in the R-40, the R-80, and the PRD Residential Districts all landowners within 500 feet of the boundary of the subject property.
  - c) The Planning Board shall, not less than five (5) days prior to the date of the public hearing, cause notice of the public hearing to be published in a newspaper(s) of general circulation in the Town.
  - d) The notice shall include the name of the project, the location of the project site, and the date, place, time and subject of the public hearing at which the site plan will be reviewed. Such notice shall not be required for adjourned dates. The records of the Assessor of the Town of Kent shall be deemed conclusive as to ownership, and the notice shall be deemed complete when deposited in a properly addressed postpaid envelope in the United States Mail not less than 10 days prior to the time of the public hearing.
  - e) The Planning Board may also provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one (1) or more signs on the premises that is the subject of the application notifying interested persons that an application for a site plan approval is under consideration by the Board.
- 3) Preliminary site plan application procedure. Each application for site plan approval shall be

considered preliminary. The Planning Board shall process the application and review the site plan in a manner and procedure similar to its authorized processing and review of subdivisions except the Board may waive a public hearing on the preliminary site plan application. The Planning Board's findings regarding a preliminary application shall expire six months from the date of approval if no application for final approval is submitted within such period, except where such time limit is extended by mutual consent of the applicant and the Planning Board.

- 4) Final site plan application procedure. Application for final approval shall follow the same procedures as outlined in this section and the Planning Board may waive other procedural matters and requirements it deems unnecessary at this stage. The Planning Board may waive a public hearing on the final site plan application.
- 5) County Referral. Prior to action on an application for site plan approval under this section a copy of said application shall be forwarded to the Putnam County Division of Planning for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:
  - a) The boundary of any city, village, or town; or
  - b) The boundary of any existing or proposed county or state park or other recreation area; or
  - c) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
  - d) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
  - e) The existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
  - f) The boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.
- 6) Referral to Neighboring Municipalities. Pursuant to General Municipal Law §239-nn, for a site plan permit review under this section involving property located within five hundred (500) feet of an adjacent municipality notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than ten (10) days prior to the date of said hearing.
- 7) Notice to park commission. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties and to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property for which an application for special use permit approval has been submitted.
- 8) Agricultural data statement. An application for site plan approval must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
- 9) Time of Decision. Within sixty-two (62) days of close of the public hearing, or within sixty-two (62) days of receipt of a complete application for which the Board has determined that a public hearing will not be held, the Planning Board shall approve, approve with

modifications, or disapprove the site plan application. A copy of the Planning Board's decision shall be filed in the Office of the Town Clerk within five (5) days of the date of such decision, and a copy shall be mailed to the applicant. In acting to approve, with or without modifications, a site plan application, the Planning Board may attach such conditions and safeguards as it deems necessary to ensure compliance with these regulations. .

- 10) Within 60 days of the date of final site plan approval, the applicant shall present to the Planning Board a corrected final site plan in reproducible form, including any modifications required by the Planning Board as a condition of approval. Upon verification by the Planning Board that the plan complies with the requirements of the approval the plan shall be endorsed by the Planning Board Chairperson and properly filed with the Planning Board and the Building Inspector. The site owner or applicant shall not commence any site preparation, including but not limited to tree removal, removal of soil, grading, stockpiling of soil or other construction material, until the final site plan has been endorsed by the Planning Board Chairman.
- B) Findings. In rendering its decision concerning any site plan application, the Planning Board shall consider the nature, arrangement and appearance of all proposed structures, improvements and uses of the lot, including their potential impact on adjacent properties, architectural features and land uses such that:
- 1) They will have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods.
  - 2) They will have no material adverse effect upon the desirability of such neighborhoods for the uses contemplated by this Chapter.
  - 3) They will be properly related to the uses, goals and policies for land development as expressed in the Town Comprehensive Plan.
  - 4) Pedestrian and vehicular access, traffic circulation and the general layout of the site are properly planned with regard to the safety of vehicles and pedestrians using the site, as well as those on neighboring properties and streets.
  - 5) New structures will be sited to take advantage of solar access insofar as practical, including the orientation of proposed buildings with respect to sun angles, the shading and windscreen potential of existing and proposed vegetation on and off the site, and the impact of solar access to adjacent uses and properties.
  - 6) The site plan shall reflect an awareness of and sensitivity to the views, terrain, soils, plant life and other unique qualities of the site and shall, to the extent practical, preserve and enlarge upon these assets for recreation, scenic or conservation purposes.
  - 7) The proposed use, buildings and other structures, including outdoor storage areas, recreational areas, site development, landscaping and off-street parking and loading, shall conform to the requirements of this Chapter, the Town Subdivision Regulations and all other Town laws.
- C) Time limit. The site plan approval shall be void if construction is not started within one year of the date of Planning Board approval, and completed within two years of the date of such approval. Prior to its expiration, the site plan approval may be renewed by written request of the applicant for up to two additional ninety-day periods.
- D) Performance bond or surety and inspection fee. The applicant may be required to post a performance bond or surety in an amount sufficient to assure that all streets or other public improvements shown on the site plan are suitably graded and paved, and that street signs, sidewalks, street lighting, curbs, gutters, street trees, water mains, sanitary sewers, fire alarm signal devices, including associated ducts, pipes, cable and connecting facilities, are installed in accordance with applicable standards, specifications, and procedures acceptable to the Town.

Prior to commencement of work and as a condition of a building permit the applicant shall pay an inspection fee in the amount of 4% of the performance bond or surety.

- E) Site Plan Amendments. The Planning Board shall review any amendment to a previously approved site plan by following the procedures specified in this section and may grant waivers from the information and procedures specified herein where the Board has determined that the proposed amendment does not warrant a full site plan review or a public hearing. In addition, an amendment of a site plan that was approved as part of an application for special use permit approval shall be reviewed by following the procedures specified in this section without the necessity of following the procedures in §77-60 where the use for which the special use permit was granted has not and will not change as a result of the site plan amendment.
- F) Inspections. The Building Inspector shall be responsible for inspecting required improvements during construction to ensure their satisfactory completion and, upon such completion, shall furnish the Planning Board with a statement to that effect. If the Building Inspector determines that any of the required improvements have not been constructed in accordance with the approved plan, the applicant shall be responsible for correcting and properly completing said improvements. Failure of the Building Inspector to carry out inspections of required improvements during construction shall not in any way relieve the applicant or the bonding company of their responsibilities related to the proper construction of such improvements.
- G) Any person aggrieved by any decision of the Planning Board may apply to the Supreme Court for review pursuant to §274-a of the Town Law.
- H) Enforcement of approved site plans. The applicant, the landowner, and the contractor are all responsible for the successful implementation and completion of an approved site plan, including, but not limited to:
  - 1) Installation and maintenance of erosion control measures and/or a SWPPP as depicted on the approved plan;
  - 2) Protection and preservation of non-disturbance areas, whether temporary or permanent, as depicted on the approved plan;
  - 3) Reclamation of disturbed areas as depicted on the approved plan;
  - 4) Installation and completion of site improvements in the location(s) and in the manner as depicted on the approved site plan unless approved as a “field change” amendment by the Building Inspector, the Planning Board Engineer, the Town Engineer, or the Planning Board as the case may be;
  - 5) Implementation and completion of environmental mitigation measures as required under any Negative Declaration or Findings Statement adopted for the project pursuant to Article 8 of the Environmental Quality Review Act (SEQRA), whether such mitigation measures are depicted on the approved site plan or not;
  - 6) Implementation and completion of any other permits and approvals issued by any other agency.
- I) Responsible parties. The applicant, the landowner, and the contractor shall be jointly and severally liable for all costs incurred, including environmental restoration costs, resulting from noncompliance with the approved site plan. Approval of the site plan and commencement of any work related to the approved plan shall constitute express permission by the applicant and the landowner for the Building Inspector and/or her designee(s), or other authorized Town officials, to enter the property for the purposes of inspection for compliance with the approved site plan, whether or not any other permits have been applied for or issued for the project. The approval of the site plan and the commencement of work related to the approved plan is an express waiver of any objection to authorized Town official(s) entering the property for the purpose of conducting an inspection.

- J) Nuisance. Any deviation from the approved site plan, unless prior approved by the Building Inspector as a “field change” amendment pursuant to section H.4 above, shall be deemed a public nuisance and may be restrained by an order to stop work, and/or injunction, and/or direct action by the Building Inspector and/or her designee(s), or other authorized Town officials, to abate the condition, and/or in any other manner provided by law. The Building Inspector may issue a “stop-work” order for the entire construction and site work/disturbance project, or any specified portion thereof, if the Building Inspector determines that any of the following conditions exist:
- 1) The erosion control measures and/or a SWPPP as depicted on the approved plan are not, or have not, been implemented or are not being properly maintained;
  - 2) Non-disturbance and protected buffer areas as depicted on the approved plan are not, or have not, been adequately protected and preserved;
  - 3) Disturbed areas are not, or have not, been reclaimed as depicted on the approved plan;
  - 4) Site improvements are not, or have not, been installed in the location(s) and in the manner as depicted on the approved site plan and no approval for a “field change” amendment has been issued;
  - 5) Environmental mitigation measures required for the project pursuant to approvals under Article 8 of the State Environmental Quality Review Act (SEQRA) are not, or have not, been implemented;
  - 6) Other required permits and approvals from any other agency have not been issued or obtained by the applicant, the landowner, or the contractor.
- K) As-built plans. At the completion of construction, and prior to issuance of a Certificate of Occupancy, the owner/applicant shall provide to the Planning Board and the Building Inspector a certification prepared by a professional engineer licensed by the State of New York that all site work has been carried out and completed in substantial compliance with the approved Site Plan for the project. Additionally, the applicant shall provide to the Planning Board and the Building Inspector an “as built” survey of the completed development.
- L) Site maintenance. The premises for which a site plan has been approved shall, at all times, be maintained in accordance with the approved site plan. Failure to keep the premises in a condition that is consistent with the approved site plan may result in a revocation of the Certificate of Occupancy for the premises. During construction and after the completion of construction the project may periodically be inspected for conformance to the approved site plan, including maintenance of the landscaping and plantings required as part of the site plan approval. If there is non-conformance to the approved site plan, or if any of the conditions of site plan approval are not fulfilled, no Certificate of Occupancy shall be issued. Where a development project reverts to non-conformance with the approved site plan after issuance of the Certificate of Occupancy or Certificate of Compliance, the non-conformance shall be deemed a violation of this Chapter.

---

## **ARTICLE XVIII, Amendments**

---

### **§ 77-62. Amendments.**

- A) This Chapter, or any part thereof, may be amended, supplemented or repealed, from time to time, by the Town Board, pursuant to statute, on its own motion or upon recommendation by the Planning Board. Every proposed amendment shall be referred by the Town Board to the Planning Board for a report, which shall be rendered within 45 days of such referral. Failure by the Planning Board to render such report within the time specified shall be considered to be tantamount to a recommendation for approval. Nothing herein shall be construed to prevent the

Town Board from acting on a proposed amendment prior to receipt of the Planning Board's recommendation as specified in this subsection provided, however, that the proposed amendment shall be adopted by a super-majority vote (majority plus one (1)) of the full Town Board membership.

**§ 77-63. Planning Board report.**

In preparing a report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below:

- A) Concerning a proposed amendment to or change in the text of this Chapter:
  - 1) Whether such change is consistent with the aims and principles embodied in this Chapter as to the particular districts concerned.
  - 2) Which areas, land uses, buildings and establishments in the Town will be directly affected by such change and in what way they will be affected.
  - 3) The indirect implications of such change in its effect on other regulations.
- B) Concerning a proposed amendment involving a change in the Zoning Map:
  - 1) Whether the uses permitted by the proposed change would be appropriate in the affected area.
  - 2) Whether adequate school and other public facilities and services, including roads, exist or can be reasonably expected to be created, to serve the needs of any additional dwellings or other uses likely to be constructed as a result of such change.
  - 3) Whether the proposed change is in accord with any existing or proposed plans.
- C) Each petition for a zoning amendment shall be accompanied by such fee as may be established from time to time by the Town Board. No fee shall be required for petitions filed in favor of or against any application. Each petition shall be signed and shall cite the existing text and/or zoning district. A proposed change in district boundaries shall also be accompanied by a map, accurately drawn to an appropriate scale, showing the land area included in the proposed change, the streets in the immediate vicinity and the land or lands immediately adjacent to and extending within 500 feet of all boundaries of said property with the names of the owner or owners thereof.
- D) Should any proposed amendment consist of or include any change in the boundaries of any district within a distance of 500 feet of the boundary of any Town or any change in the regulations prescribed for such district, the Town Clerk shall transmit to the Clerk of the municipality affected a copy of the official notice of the public hearing not later than 10 days prior to the date of the hearing. A copy of such notice of any proposed change affecting property within 500 feet of the boundary of any state park or parkway shall be given to the regional State Park Commission having jurisdiction not later than 10 days prior to such hearing.
- E) In 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 change or of that area immediately adjacent extending 100 feet therefrom or of that area directly opposite thereto and extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least 3/4 of the members of the Town Board.
- F) In addition to the notice as required by law, the Town Board shall cause a notice of any proposed amendment to be mailed to every association of residents which shall have registered its name and address for this purpose with the Town Clerk.
- G) The Town Board shall give due notice and shall hold a public hearing on every duly filed petition for amendment of the Zoning Ordinance or Map.

---

## ARTICLE XIX, Definitions and Word Usage

---

### **§ 77-64. Word usage.**

- A) Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings.
- B) Words used in the present tense include the future tense.
- C) Words used in the singular include the plural, and words used in the plural include the singular.
- D) The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- E) The word "lot" shall include the word "plot" or "parcel" or "tract".
- F) The word "shall" is always mandatory and not merely directory.
- G) The words "Zoning Map," shall mean the "Zoning Map of the Town of Kent, New York."
- H) Unless the context requires a different interpretation, any word denoting gender includes the female and the male.
- I) The term "Town Board" shall mean the Town Board of the Town of Kent, New York.
- J) The term "Planning Board" shall mean the Planning Board of the Town of Kent, New York.
- K) The terms "Zoning Board of Appeals", Board of Appeals, and "Zoning Board" shall mean the Zoning Board of Appeals of the Town of Kent, New York.
- L) The term "Building Inspector" shall mean the Building Inspector of the Town of Kent, New York.
- M) The term "Code Enforcement Officer" shall mean the Code Enforcement Officer of the Town of Kent, New York.
- N) The term "Town Code" shall mean the Town Code of the Town of Kent.

### **§ 77-65. Definitions.**

Unless otherwise expressly stated, the following terms shall, for the purposes of this Chapter, have the meanings herein indicated:

**ACCESSORY STRUCTURE** -- A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure

**ACCESSORY USE** -- See "use, accessory" definition below.

**ADAPTIVE REUSE** - Contemporary use of an existing building or structure, in accordance with the allowable uses under this Chapter, for a use other than that for which it was originally designed, intended or occupied, e.g., use of a former dwelling as an office. This shall include the expansion of the existing building or structure by not more than twenty-five (25%) of the existing gross floor area. An expansion of an existing building or structure by more than 25% shall be deemed to be a "Redevelopment".

**AGRICULTURE, AGRICULTURAL USE** - The employment of land, including for the primary purpose of obtaining a profit in money, for raising, harvesting, and selling crops, or feeding, including but not limited to, grazing, breeding, managing, selling or producing livestock, poultry, fur-bearing animals or honeybees, or by dairying and the sale of dairy products, by any other horticulture, floriculture or viticulture, aquaculture, hydroponics, Silva-culture, animal husbandry, or by a combination thereof. It also includes the employment of land, including for the primary purpose of obtaining a profit, for stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows, including other on-farm niche marketing

promotions.

**AGRICULTURAL DISTRICT** – Shall mean a district established pursuant to Article 25-AA of the Agriculture and Markets Law.

**ALTERNATE CARE HOUSING** – A residential facility which includes but is not limited to family care homes for the elderly (55 years of age or older), private property homes for the elderly (55 years of age or older), proprietary homes for the elderly (55 years of age or older), proprietary residences for the elderly (55 years of age or older), nursing homes, domiciliary care facilities and like facilities.

**ALTERATION** - A change to, modification of, or addition to the parts of a structure or man-made improvement other than normal maintenance or repairs, or the moving of a building from one location to another.

**ALTERNATIVE TOWER STRUCTURE** -- Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also "stealth technologies").

**ANTENNA** -- A device that converts radio frequency electrical energy to radiated electromagnetic energy and vice versa for television, radio, data, imagery, telephone or other forms of telecommunications, including receiving and transmitting antenna, and satellite dish antenna.

**ANTENNA, RECEIVING** -- An antenna, other than a satellite dish antenna, used exclusively to receive radio, television programming, or any other electromagnetic signal.

**ANTENNA, SATELLITE DISH** -- An antenna with a reflective surface used to receive and/or transmit radio or electromagnetic waves from and/or to an orbiting satellite.

**ANTENNA TOWER** -- See "communication tower."

**ANTENNA, TRANSMITTING** -- An antenna used to transmit and/or transmit and receive radio or electromagnetic waves.

**APARTMENT, ACCESSORY** -- A second dwelling unit added to an existing single-family detached dwelling for use as a complete, independent living facility with provision within the accessory dwelling unit for cooking, eating, sanitation, and sleeping. Such a dwelling shall be clearly accessory and incidental to the principal dwelling.

**ARTIST STUDIO** – A structure used as a work place by an artist, artisan, or craftsperson, including persons engaged in the application of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, and writing.

**AUDITORIUM or ASSEMBLY HALL** -- Any premises used for spectator presentations, such as concerts, theatrical performances, lectures and similar cultural events, containing seats permanently affixed to the floor.

**AUTO WRECKING YARD** -- A lot where motor vehicles are disassembled, dismantled, junked or wrecked or where inoperative motor vehicles or used parts of motor vehicles are stored.

**BAKERY, RETAIL** -- An establishment which sells baked goods directly to the public on premises. Goods may or may not be baked on premises.

**BAKERY, WHOLESALE** -- An establishment which produces and sells baked goods primarily to other establishments, produced primarily for sale off the premises and only incidentally directly to the public on the premises.

**BANK** -- The height of the mean high water level along a stream or water course.

**BANK or FINANCIAL SERVICE** – An entity that accepts deposits and makes loans, and includes monetary services such as the redemption of travelers checks or money orders, wire transfers, check cashing, and currency exchange.

**BASEMENT** -- The portion of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average finished grade of the ground adjoining the building.

**BAR, TAVERN** -- An establishment licensed under the laws of New York State primarily for the sale and consumption on premises of alcoholic or nonalcoholic beverages and which may provide live entertainment. Food may also be served, but it is secondary and incidental to the business. A grill, nightclub, cabaret, saloon, pub, public house, beer garden or similar establishment shall be considered to be a "bar" or a "tavern".

**BED-AND-BREAKFAST** -- An owner occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than ten (10) transient lodgers, and containing at least three (3) but not more than five (5) bedrooms for such lodgers, and where rooms are rented to guests for a maximum stay of two weeks, and where meals are only to be provided to guests. A Bed & Breakfast does not qualify as a Home Occupation use.

**BEDROOM** -- Any room which might, in the judgment of the Planning Board, the Building Inspector or the Code Enforcement Officer, be used or be altered by minor modifications to be used as a sleeping room. All dwelling units shall be rated as having at least one "bedroom" (example: studio apartment).

**BILLBOARD** -- Any sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed or only incidentally upon such lot.

**BOARDING, LODGING OR ROOMING HOUSE** -- A building in which at least three but not more than six rooms are offered for rent for compensation, whether or not table board is furnished to lodgers, and in which no transients are accommodated and no public restaurant is maintained.

**BOULEVARD** - A collector street that includes a landscaped median along its length.

**BOULEVARD ENTRANCE** - A collector street that includes a landscape median at its intersection with another street.

**BUILDING** -- Any structure having a roof supported by columns, poles or walls, used and intended to be used for the shelter of persons, animals or property and used for residential and non-residential purposes. **BUILDING, ACCESSORY** -- A detached subordinate building on a lot, the use of which is customarily incidental to that of the main or principal building. An example would be on a premises in use for single family occupancy a garage, shed or similar non-habitable structure used for the storage of automobiles, tools, personal effects, etc., but not including the storage of tools, machinery or other items used in a business or trade not related to the single family use of the property, and not including additional separate living quarters or accommodations such as an apartment.

**BUILDABLE AREA** -- The space remaining on a lot after subtracting the constrained land area and the areas required for an approvable on-site water supply facility and sewage treatment system, and after the minimum yard, area and bulk requirements of this Chapter or allowed under a variance granted by the Zoning Board of Appeals have been met. The buildable area shall be contiguous and unbroken, shall have a shape consisting of not less than four sides in which any one side shall have a length of not less than fifty (50') feet.

**BUILDABLE YIELD** -- The number of potential building lots or the maximum unit density for a proposed subdivision after deduction of constrained land areas and public improvements on the parent parcel, and the minimum yard, area and bulk requirements for each proposed lot have been met.

**BUILDING, DETACHED** -- A building surrounded by open space on the same lot.

**BUILDING, FRONT LINE OF** -- The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not

include steps.

**BUILDING, MAIN or PRINCIPAL** -- A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING, NONCONFORMING** -- A building, structure or other improvement that does not conform to the area, yard or bulk regulations of this Chapter.

**BUILDING INSPECTOR** -- The Building Inspector of the Town of Kent appointed pursuant to Chapter 27 of the Code of the Town of Kent.

**BUSINESS USE, ADULT** -- Any use or business that:

- A) Is any use of land, structure or location which, by the provisions of the Penal Law, is required to restrict the access thereto by minors; or
- B) Is an establishment, location, building or structure which features topless dancers, nude dancers or strippers, male or female; or
- C) Is a location, building or structure used for presenting, lending or selling motion picture films, videocassettes, cable television or any other such visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis of matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein:

1) SPECIFIED SEXUAL ACTIVITIES

- a) Human genitals in a state of sexual stimulation or arousal; or
- b) Simulated and actual acts of human masturbation, sexual intercourse or sodomy; or
- c) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

2) SPECIFIED ANATOMICAL AREAS

- a) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; or
  - b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- D) Is the use of land, structures or location for an adult entertainment business as defined herein:

1) ADULT ENTERTAINMENT BUSINESS -- including adult bookstores, adult video stores, adult theaters, adult cabarets, adult physical contact establishment, and nude modeling studios, shall be defined as follows:

- a) **ADULT BOOKSTORE** -- An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein.
- b) **ADULT VIDEO STORE** -- An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein.
- c) **ADULT THEATER** -- An establishment which regularly features live performances, films, motion pictures, videocassettes, DVD's, slides or similar photographic reproductions characterized by an emphasis on the depiction or description of

“specified sexual activities” or “specified anatomical areas” as defined herein. An adult theater shall also include drive-in theaters and establishments where such materials or performances are viewed from one or more individual enclosures or booths.

- d) ADULT CABARET -- An establishment which features live entertainment including topless dancers, exotic dancers, strippers, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity.
- e) ADULT PHYSICAL CONTACT ESTABLISHMENT -- Any establishment which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as physical therapists or physical therapist assistants and electrolysis, martial arts, judo and dance studios are not to be considered adult physical contact establishments.

BUFFER AREA, BUFFER ZONE – Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another use or property so as to visually shield or block noise, light, or other nuisances.

CAMP, DAY -- Any land, including any building thereon, used for any assembly of persons for what is commonly known as "day camp" purposes, and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

CAMP, SEASONAL -- Premises used or intended to be used primarily for outdoor recreational purposes, including buildings, shelters and seasonal lodgings.

CAMPGROUND, VACATION -- two or more cabins and/or space for two or more tents, travel or camping trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise.

CAR WASH -- A building, the use of which is devoted to the washing of and cleaning of the interior and exterior of trucks and automobiles, including but not limited to one of the following types:

- A) CONVEYOR TYPE -- A car wash facility where automobiles progress through the washing process pulled by a conveyor or by some other means than their own power.
- B) DRIVE-THROUGH TYPE -- A car wash facility where automobiles are driven through the washing process under their own power.
- C) SELF-SERVICE TYPE -- A car wash facility where automobiles are washed by the driver of the automobile using machinery provided by the management of the facility.

CELLAR -- The portion of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average finished grade of the ground adjoining the building.

CEMETERY -- Land used for the burial of the dead and dedicated for cemetery purposes, including crematories, columbariums, and mausoleums when operated in conjunction with and within the boundary of such cemetery.

CLINIC -- An ambulatory health care facility where patients are admitted for examination, diagnosis and treatment on an outpatient basis by one or more physicians, dentists or other medical personnel, and where patients are not lodged overnight.

CLUB, FRATERNAL; LODGE -- See "club, membership."

CLUB, HEALTH AND FITNESS -- A commercial establishment open to the public for a fee that

provides services and facilities for physical fitness training, which includes but is not limited to swimming, handball and racket sports. Spas, clubs and other similar facilities featuring exercise or other active physical conditioning shall also be considered a "health and fitness club." Such uses may include as accessory uses restaurants and the sale of equipment used in the activities provided.

**CLUB, MEMBERSHIP, FRATERNAL** -- An association of persons forming a membership corporation, registered under the Corporation Law of the State of New York as a nonprofit organization, with bona fide dues paying members. The corporation services and caters exclusively to its members and guests, and its premises and buildings shall be devoted to recreational, athletic, social, fraternal, civic or cultural purposes conducted on a nonprofit basis catering exclusively to members and their guests and which is not an adjunct to, or operated by, or in connection with or as a public tavern, cafe or other like public place.

**CLUB, RECREATIONAL** -- An association of persons forming a membership corporation registered under the Corporation Law of the State of New York as a nonprofit organization with bona fide dues paying members. The corporation owns, hires or leases land and/or buildings or a portion thereof for the primary and principal use of operating and conducting a generally recognized sport offering instruction, or recreational activity which include activities permitted in a health and fitness club and golf, tennis, basketball courts, bridge club (non-membership) instruction, miniature golf courses, electronic golf courses, golf driving ranges, pitch-n-putt golf, gymnastics instruction, handball courts, judo instruction, karate instruction, lifeguard instruction, scuba and skin-diving instruction, sports instruction, squash courts, swimming pools, volleyball courts, yoga instruction, swimming, skiing, bowling, archery range instruction, firearm training and use, soccer, baseball instruction and racquetball courts. Such uses may include as accessory uses restaurants and the sale of equipment used in the activities provided. Billiard parlors and billiard halls are specifically excluded.

**CLUSTER SUBDIVISION** -- A residential subdivision where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space condition in perpetuity. Cluster development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

**COLLOCATION** -- The mounting of multiple communication facilities used by the same provider, or by two or more service providers, on the same property and/or antenna support structure or antenna tower.

**COMMERCIAL RECREATION** -- Private and public outdoor and/or indoor recreational facilities such as golf courses, playgrounds, swimming pools, ice rinks, fishing and hunting preserves, water park, tennis courts, driving ranges, basketball courts, handball and racquets courts, baseball and softball fields, football fields, polo fields, tracks, and riding rinks. May also include uses accessory and incidental to commercial recreation, such as locker rooms, eating and drinking facilities, and retail sale of goods associated with the primary activity.

**COMPLETE APPLICATION** - An application that includes the following:

- A) An application form together with all information concerning a proposed project in the format as specified by the applicable provisions of this Chapter;
- B) All application fees required by this Chapter and the professional review fee deposit, if any, required by the reviewing agency;
- C) An EAF or DEIS assessing the potential environmental impacts of the proposed project;
- D) A determination by the reviewing agency, or by the lead agency in the event of coordinated review, that the proposed project is not likely to have a significant impact on the environment (Negative Declaration), or the filing of a notice of completion of a Draft Environmental Impact Statement in accordance with the provisions of SEQRA.

**COMMERCIAL VEHICLE** – A vehicle registered as a commercial vehicle by the State of New York, or a vehicle of more than one-ton capacity used for the transportation of persons or goods primarily for gain, or a vehicle of any capacity carrying a permanently affixed sign exceeding one square foot in area or lettering of a commercial nature.

**COMMUNICATION FACILITY** -- Any facility including one or more of the following: an antenna or communication tower with or without associated buildings, structures and equipment, and/or receiving and/or transmitting antenna, but excluding satellite dish antenna less than one meter in maximum diameter in a residential district or less than two meters in maximum diameter in a nonresidential district that do not produce or contribute to the production of emission levels exceeding the emission standards adopted, from time to time, by the FCC, based on the maximum equipment output.

**COMMUNICATION TOWER** -- A tower supported by guy wires or a freestanding lattice-type antenna support structure or monopole structure greater than 12 feet in height in a residential district and greater than 25 feet in height in a nonresidential district. All communication towers shall be considered a building for the purposes of this Chapter.

**CONDITIONAL USE** -- See Special Use. **CONDOMINIUM DWELLING** -- An individually owned dwelling unit the owner of which has an interest in the common areas and facilities which serve a group of residences.

**CONFERENCE CENTER** – A facility used for conferences and seminars with sleeping accommodations, food preparation and eating, recreation, entertainment, resource facilities, meeting rooms, fitness and health centers, and retail stores and services.

**CONSTRAINED LAND** – Land containing one or more of the following: Local, state and federal protected freshwater wetlands; 100 year flood plains or flood hazard areas; steep slopes of twenty-five (25%) percent and greater.

**CONTRACTOR** – A person or firm engaged in a trade as a business for the purpose of providing electrical, plumbing, excavation, and general residential or commercial construction.

**CONTRACTOR OFFICE** – A structure used by a person or firm engaged in a trade as a business for the purpose of providing electrical, plumbing, excavation, and general residential or commercial construction services performed at off-site locations.

**CONTRACTOR YARD** – A use accessory to a Contractor Office use and located on the same lot or parcel, in which equipment and other materials and facilities customarily required in a contractor's trade are stored and maintained, but excluding the storage of materials or equipment for on-site or off-site sale.

**CONVENIENCE STORE, MINI-MART** – A retail business containing no more than 2,500 square feet of gross floor area that is designed and stocked primarily to sell food, beverages and household supplies to customers who purchase only a relatively few items. Such establishments may include the retail sale of gasoline, diesel, oil and other automotive fluids without the repair or servicing of motor vehicles.

**CONVERSION** -- A change in use or occupancy, or a change to the exterior of a principal structure.

**COURT, INNER** -- An open space enclosed on all sides by exterior walls of a building or such walls and lot lines.

**COURT, OUTER** -- An open space enclosed on three sides by exterior walls of a building and opening onto another open space that is permanently defined as such.

**COURT, OUTER, DEPTH OF** -- The average horizontal dimension measured from the unenclosed side of the court to the farthest wall thereof.

**COURT, OUTER, WIDTH OF** -- The least horizontal dimension of the court measured substantially

parallel to its opening.

**DAY-CARE CENTER, NURSERY SCHOOL, FAMILY DAY-CARE** -- A facility for the care of three or more children away from their own homes for more than three hours but less than 24 hours a single day.

**DECK** -- An exterior floor surface, unroofed, extending outward from a structure as an integral part thereof, intended to accommodate multipurpose outdoor activities.

**DELICATESSEN** -- A retail use selling foods already prepared or requiring little preparation for serving such as cooked meats, cheese, relishes and the like, and having no more than twelve (12) seats for customers to consume food or beverages on-site.

**DENSITY UNIT** -- refers to the number of dwelling units allowed after deducting constrained lands from the total acreage of the lot or lots sought to be developed.

**DEVELOPABLE ACREAGE** -- The amount of land area left for development after subtracting the constrained land area from the total area of the project parcel.

**DISTURBANCE** -- All land preparation activities involving the movement, placement, removal, transfer or shifting of soil and/or vegetation, including but not limited to, clearing, draining, filling, grading, re-grading or the building of structures or the placement of improvements on land including the construction of individual sidewalks, paths, roads or driveways.

**DRIVE-IN, DRIVE-THRU** -- An establishment which, by design, physical facilities, service or by packaging procedures, encourages and permits customers to receive services and obtain goods while remaining in their motor vehicles.

**DRIVEWAY** -- Any area reserved on any lot, site or parcel of land for the purpose of providing vehicular access from an access road, private road, or state, county or town highway to principal and accessory structures located on said lot, site or parcel.

**DUMP** -- A lot or part thereof used primarily for disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose, of garbage, offal, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

**DWELLING** -- A building designed or used as the living quarters for one or more families. The terms "dwelling," "one-family dwelling," "two-family dwelling" or "dwelling group" shall not be deemed to include motel, boardinghouse, tourist home or guest house.

**DWELLING, SINGLE-FAMILY** -- A detached building containing one dwelling unit designed for or occupied exclusively by one family. **DWELLING, TWO-FAMILY** -- A building containing two dwelling units designed for or occupied exclusively by not more than two families living independently of each other.

**DWELLING, MULTI-FAMILY** -- A building or portion thereof containing three or more dwelling units.

**DWELLING UNIT** -- A building or entirely self-contained portion thereof containing complete housekeeping facilities, including not more than one kitchen, for occupancy by only one family, including any domestic servants living and employed on the premises, having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other "dwelling unit." A boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home or structure shall not be deemed to constitute a "dwelling unit."

**EDUCATIONAL INSTITUTION** -- A non-public or private school, college, university, vocational school, or academy.

**ELEEMOSYNARY** -- Charitable.

EXCAVATION -- Any activity which removes or disturbs surface or subsurface conditions of land, lakes, ponds or watercourses.

EXCHANGE, TELEPHONE -- A building erected or used exclusively as a central station where telephone lines meet and where connections are made between them and where no trucks or materials are stored.

FAA -- The Federal Aviation Administration.

FAÇADE – The exterior wall or walls of a building which identify the front of a building, and which faces a street or public way.

FAMILY – As used herein shall mean:

- A) Any number of persons occupying a single nonprofit dwelling unit, related by blood, marriage or legal adoption, living and cooking together as a single housekeeping unit.
- B) Any number of persons occupying a single nonprofit dwelling unit, not exceeding six adults living and cooking together as a single housekeeping unit where all are not related by blood, marriage or legal adoption.
- C) Notwithstanding the provisions of this definition, a group of unrelated persons numbering more than six shall be considered a "family" upon a determination by the Zoning Board of Appeals that the group is the functional equivalent of a family pursuant to the standards enumerated in subsection D below.
- D) In determining whether a group of more than six unrelated persons constitutes a "family" for the purpose of occupying a dwelling unit, as provided herein, the Zoning Board of Appeals shall utilize the standards enumerated herein in making said determination. Before making a determination under this subsection the Zoning Board of Appeals shall hold a public hearing, after public notice in accordance with §77-58(A) &(B) of this Chapter. In making a determination the Zoning Board of Appeals shall find that:
  - 1) The group is one which, in theory, size, appearance and structure, resembles a traditional family unit.
  - 2) The group is one which will live and cook together as a single housekeeping unit.
  - 3) The group is of a permanent nature and is neither a framework for transient or seasonal living nor merely an association or relationship which is transient or seasonal in nature. Nothing herein shall preclude the seasonal use of a dwelling unit by a group which otherwise meets the standards of this subsection at its permanent residence.
  - 4) Any determination under this subsection shall be limited to the status of a particular group as a "family" and shall not be interpreted as authorizing any other use, occupancy or activity. In making any such determination, the Board of Appeals may impose such conditions and safeguards as the Board of Appeals shall deem necessary or advisable in order to maintain the stability and character of the neighborhood and protect the public health, safety and welfare.
- E) Persons occupying group quarters such as a dormitory, fraternity or sorority house or a seminary shall not be considered a "family."

FARM -- A property where general farming, truck gardening, nurseries, greenhouses and similar projects and activities are carried on for gain or profit and where animals are maintained. "Farms" also may include land under cultivation on which no building exists. (See also agriculture.)

FARMSTAND -- A structure used for the display and sale of farm products grown on the property on which the farm stand is located.

FARM MARKET -- A facility used for the seasonal retail selling of vegetables, produce, flowers,

orchard products, and similar non-animal agricultural products, where the vendors are individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale.

FCC -- The Federal Communications Commission.

FILL – Any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, and shall include the conditions resulting therefrom.

FLOOR AREA, BUILDING -- The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use, but including the areas devoted to roofed porches and roofed terraces. All dimensions shall be measured between the exterior faces of walls.

FLOOR AREA, GROSS (GFA) -- The sum of the gross horizontal areas of the several floors of a building or group of buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, but excluding any floors or portions thereof contained on terraces or balconies projecting beyond the exterior face of the building or occupied permanently by mechanical equipment, by off-street parking or loading and, in any cellar and basement, only by storage and by building maintenance and operation activities.

FUNERAL HOME -- A dwelling or other structure used and occupied by a professional licensed mortician for burial preparation and funeral services.

GARAGE, COMMERCIAL -- A building, or part thereof, used for the storage, care or minor repair of motor vehicles as a business, including sale of new or used automobile accessories and supplies, or where automobiles are kept for hire. It shall not include the painting of motor vehicles by any means.

GARAGE, COMMERCIAL STORAGE – A principal or accessory building or structure used for the storage of commercial motorized vehicles and equipment, including commercially registered passenger vehicles, where such vehicles and equipment are used by the owner for commercial and business purposes.

GARAGE, PRIVATE -- An accessory building or part of a main or principal building used only for the storage of motor vehicles as an accessory use.

HEIGHT OF STRUCTURE -- The vertical distance measured from the average finished grade at all foundation corners of the building or structure, or at not less than 10 equidistant points in the case of a circular structure, to a point midway between the highest and lowest points of the roof, excluding the chimney or any superstructure above the roof such as stair or elevator bulkheads, water towers, etc. Building height with regard to a communication tower shall mean the distance measured from the average finished grade around the base pad of the support structure to the highest point on the tower, including the base pad and any projecting antenna.

HIGHWAY FRONTAGE – That portion of any lot which bounds a street, as measured along the property line which is coincidental with such street right-of-way or centerline, or on a corner lot in which case frontage is along both streets.

HOME OCCUPATION -- An accessory non-residential occupation or business activity operated for financial gain from a single family residential dwelling unit by one or more family members residing within that dwelling unit, and where such use is clearly secondary and subordinate to the existing principal residential use. A home occupation shall not include the following uses: animal hospital; veterinarian or physician office; kennel; barbershop; beauty parlor; bed and breakfast; clinic; hospital; dance school; mortician; mortuary; nursery school; clubs; auto and general repair shop; retail business; service business; personal service business; restaurant; tourist home; rooming or boarding houses. HOSPITAL -- A building containing beds for four or more patients that is used for the diagnosis, treatment or care of human ailments, but excluding nursing homes.

HOSPITAL, ANIMAL -- Any building or structure devoted to the diagnosis and treatment of

animals and providing accommodations therefor. An "animal hospital" includes every type of similar establishment designated an animal clinic, a veterinary clinic, etc.

**HOTEL** -- A building or any part thereof which contains sleeping accommodations for transient occupancy by the public for compensation, has a common exterior entrance or entrances, and which contains one or more dining rooms.

**IMPERVIOUS SURFACE COVERAGE** -- That percentage of the lot covered by impervious surfaces including buildings, pavement, concrete and metal surfaces.

**INDUSTRIAL PARK** -- A type of planned industrial environment for a variety of industrial and related activities in which special emphasis and attention are given to aesthetics and community compatibility. Subdivided and developed according to an enforceable Master Plan that includes detailed provisions for streets and all necessary utilities, the park provides serviced sites for a community of industrial and industry-oriented uses. Adequate control of the land, buildings and industrial operations is provided through zoning, private restrictions incorporated as legal requirements in deeds of sale or leases and the provision of continuing management, all for the purpose of assuring attractive and efficient uses within the park and the harmonious integration of the industrial area into the community in which it is located.

**INDUSTRIAL USE** -- A use that includes limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities such as: beverage bottling, distribution and warehousing; contractors offices and storage buildings; including general contractors, plumbers, electricians, heating, ventilating, air conditioning contractors, masons, painters, refrigeration contractors, roofing contractors, and other such construction occupations; distribution centers; ice production, storage, sales and distribution; laboratories for research, testing and experimental purposes; machine shops; manufacture of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacture of precision instruments and equipment such as watches, electronics equipment, photographic equipment, optical goods and similar products; manufacturing of articles or merchandise from previously prepared or natural materials such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; printing and publishing; foundries, truck terminals, delivery services, moving and storage facilities, and truck maintenance. This shall not include any uses involving the use of chemicals, processes or materials that might constitute a potential explosive or environmental hazard; slaughter plants, packing houses, animal by-products rendering, and other such animal processing activities; automobile salvage and reclamation yards and facilities; processing or production of oil, natural gas, geothermal resources or other hydrocarbons.

**JUNKYARD** -- An area of land, with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building, such as waste paper, rags or scrap material or used building materials, house furnishings, machinery or parts thereof, with or without dismantling, processing, salvage, sale or other use or disposition of the same. One cubic yard or more of refuse located on a property for more than 30 days shall also be deemed to be a "junkyard." A deposit, collection or storage on a lot of two or more motor vehicles no longer in condition for legal use on the public highways, or parts thereof, for one week or more in a residential district or for three weeks or more in a nonresidential district shall constitute a "junkyard."

**KENNEL** -- A structure used for the harboring of more than three dogs that are more than six months old or more than 12 dogs that are under six months of age where a fee is paid for the boarding and care of the dogs. Any dog owner whose dog(s) bear(s) more than one litter of puppies that are of registered pedigree and offered for sale, shall, for the purposes of this Chapter, be considered as maintaining a "dog kennel" and must adhere to all regulations governing the same.

**KITCHEN** -- A portion of a building designed or used primarily for cooking purposes.

**LAUNDROMAT** -- An establishment with self-operating clothes washing and drying machines for public use.

**LAUNDRY** -- An establishment where clothes laundry work is done for the public either on the premises or accepted for transfer to another site for laundering.

**LIVESTOCK** -- Any domesticated animal intentionally reared in an agricultural setting for subsistence or for profit.

**LODGE** -- A clubhouse or club room of the local unit of a nationally recognized fraternal or social order.

**LOT** -- Unless specifically authorized in this Chapter, a parcel of land not divided by streets, devoted to a particular use or occupied or to be occupied by a building and its accessory buildings, together with such open spaces as are required under the provisions of this Chapter and having its principal frontage on a street or on such other means of access as may be deemed in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for a building or buildings on such land.

**LOT, CORNER** -- A lot at the junction of and abutting on two or more intersecting streets, where the interior angle of intersection does not exceed 135°. A lot abutting a curved street shall be deemed to be a "corner lot" if the tangents to the curve at the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than 135°.

**LOT, COVERAGE** -- That percentage of the lot covered by the footprint of the principal and accessory building area.

**LOT, DEPTH** -- The general average of the distances from the street line of the lot to its opposite rear line, measured in the general direction of the side lines of the lot.

**LOT, FLAG** -- A lot which has insufficient frontage on a public street to comply with the minimum lot frontage requirements of §77-29 of this Code, but is shaped in such a manner that the portion of the lot closest to the street can only be used for access purposes and not as a yard or buildable area, and whose width some distance back from the right-of-way is sufficient to provide proper space to meet the yard and setback requirements.

**LOT LINE** -- Any line dividing one lot from another.

**LOT LINE, REAR** -- The lot line generally opposite the street line. If the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the "rear lot line" shall be deemed to be a line parallel to the street line not less than 10 feet long lying farthest from the street line.

**LOT, THROUGH** -- A lot having street frontage both in front and to the rear.

**LOT WIDTH** -- The width of a lot measured along a line drawn parallel to the street line through the point of existing or proposed construction nearest to such street line.

**LUMINAIRE** -- A complete lighting unit, consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power. When used, includes ballasts and photocells. Commonly referred to as a "fixture".

**LUMINAIRE, FULL CUT-OFF** -- A luminaire that does not emit light at or above a horizontal plane running through the lowest point on the luminaire.

**LUMINAIRE, NON CUT-OFF** -- A luminaire that emits light above the horizontal plane running through the lowest point on the luminaire.

**LUMINAIRE, SEMI CUT-OFF** -- A luminaire that does not allow light to escape above a sixty-five (65) degree angle measured from a vertical line from the center of the lamp extended to the ground.

**MANUFACTURING** -- Any process whereby the nature, size or shape of articles or raw materials is changed or where articles are assembled.

**MANUFACTURED HOME** -- A dwelling unit manufactured in one or more sections, designed for long-term occupancy, containing sleeping accommodations, a flush toilet, a tub or shower, bath and

kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems, and designed to be transported after fabrication on its own permanent chassis and/or wheels to the site where it is to be occupied as a complete dwelling. A recreational vehicle is not included in this definition.

**MIXED USE** – Use of a lot, land, buildings, or structures for a variety of residential and/or non-residential purposes in a complementary and integrated design.

**MIXED USE BUILDING OR LOT** – Lot(s), parcel(s), building(s), or structure(s) in which a variety of residential and/or non-residential uses are located within a complementary and integrated design.

**MOBILE HOME PARK** -- Any lot, parcel or tract of land upon which two or more mobile homes or house trailers are located or parked for long-term occupancy.

**MONOPOLE** -- See "communication tower."

**MOTEL** -- A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses.

**MOTOR VEHICLE REPAIR SHOP** -- A building or portion of a building arranged, intended, or designed for making repairs to motor vehicles, their mechanical systems and their body structure, including painting, but excluding the sale of petroleum products and the sale of motor vehicles.

**MOTOR VEHICLE SALES** -- A building and/or area arranged, intended or designed to be used for the rental, lease, sale and/or resale of motor vehicles, new or used.

**MOTOR VEHICLE SERVICE STATION** -- Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle minor accessories, and which may or may not include facilities for lubricating or otherwise servicing motor vehicles, but not including the painting thereof by any means. A canopy over the fuel dispensing stations shall be considered to be part of the principal structure. May include a convenience store and a car wash.

**NIER** -- Non-Ionizing Electromagnetic Radiation.

**NON-COMMERCIAL SIGN** - A sign containing copy that does not promote a business, commodity, service, or entertainment.

**NONCONFORMING USE** - See Use, Nonconforming.

**NURSERY** -- A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

**NURSING OR CONVALESCENT HOME** -- A facility operated for the purpose of providing therein long-term lodging, board and nursing care to sick, invalid, infirm, disabled or convalescent persons for compensation.

**OFFICE PARK** – A lot or related lots designed as a master planned area for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, ware or merchandise in limited quantities for use incidental to office uses or samples purposes. This may include such uses as: office building for business and professional services, including lawyer, physician, dentist, architect, engineer, musician, teacher or other professional person, including real estate and insurance offices, banking and other financial services and similar purposes in connection with such use; clinics for outpatient care, as well as outpatient medical services including, but not limited to, imaging and physical therapy; restaurant or cafeteria for supplying meals only to

employees and guests for the principal use; and newsstand, post office, branch banking facilities and similar conveniences serving primarily employees and guests of the principal use, provided that there shall be no external evidence of such use; radio and television stations, but not including transmitting facilities or antennae.

**OFFICE, BUSINESS** -- A place or establishment used for the organizational or administrative aspects of a trade or used in the conduct of a business and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of salesmen, sales representatives, insurance brokers, real estate brokers and persons with similar occupations.

**OFFICE, PROFESSIONAL** -- An office devoted to a professional service occupation, in which knowledge in some department of science or learning is applied to the affairs of others, either advising or guiding them, or otherwise serving their interest or welfare through the practice of a profession founded on such knowledge.

**OPEN SPACE** -- Land left in a natural state for conservation and agricultural purposes or land landscaped for scenic purposes, devoted to active or passive recreation, or devoted to the preservation of distinctive architectural, historic, geologic or botanic sites. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure. Open space may be included as a portion of one or more large lots, or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

**OPEN SPACE, USABLE** -- An unenclosed portion of the ground of a lot which is not devoted to driveways, access roads, parking spaces; which is free of structures that would interfere with the functionality of the open space and the intended use of the property; which is no less than eight feet in width at any point; which is available and accessible to all occupants of the building or buildings on said lot, or on a separate dedicated lot as part of a common development scheme, for purposes of active or passive outdoor use.

**OVERLAY DISTRICT** -- A zoning district, with supplementary regulations, which is superimposed upon existing use districts.

**OWNER** -- The owner of record of a lot, tract or parcel.

**PARENT PARCEL** -- A parcel of land legally in existence on the effective date of this Chapter.

**PARKING SPACE** -- The space required for each motor vehicle intended to be parked in an off-street parking area.

**PERSONAL SERVICE BUSINESS** -- An establishment primarily engaged in providing services involving the care of a person or a person's apparel, including but not limited, to laundries, barber and beauty shops, and dry-cleaning shops, but not including an Adult Business use, a Motor Vehicle Accessory Sales and Service use, a Motor Vehicle Body Shop use, a Motor Vehicle Sales and Service use, a Motor Vehicle Service Facility use, Motor Vehicle Repair Facility, or a Tattoo Parlor.

**PORCH** -- A roofed, screened or unscreened, unfinished, unheated, seasonal use, veranda, stoop, deck, access ramp, steps or the like providing or having access to a principal structure.

**PORTABLE SIGN** -- A sign, whether on its own trailer, wheels or otherwise, designed to be movable and not permanently affixed to the ground, a building, structure or another sign. Included are signs displayed on a parked or moving vehicle or trailer or other vehicle where the primary purpose of the vehicle is to promote a product, service business, or other activity. This definition includes a vehicle hanging or displaying a banner sign whose primary purpose is for advertising. This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business.

**PRINCIPAL BUILDING** -- A building in which is conducted the main or principal use of the lot on which said building is located.

**PROCESSING** -- Any mechanical manipulation of material including crushing, screening, blending, washing, and any procedure which changes the size of the particles or the particle size distribution

or gradation from in-situ characteristics. Processing also includes any mechanical and/or thermal combining or blending of materials from one or more sources in order to manufacture a product with certain specification requirements. Processing shall not mean simply excavating and loading earth material directly into a transport vehicle.

PROPERTY -- Any lot or parcel of land.

PUBLIC UTILITY -- Any person, firm, corporation or governmental agency, duly authorized to furnish to the public, under governmental regulation, electricity, gas, water, sewage treatment, steam or communication service. This definition shall not bestow any special status or standing not already provided by state or federal law.

RECREATIONAL VEHICLE -- A transportation structure, self-propelled or capable of being towed by a passenger car, station wagon or small pickup truck, of such size and weight as not to require any special highway movement permits and primarily designed or constructed to provide temporary, movable living quarters for recreational, camping or travel use or to carry such equipment, but not for profit or commercial use. Included as "recreational vehicles" are the following:

- A. Trailer coaches and fifth-wheel trailers constructed with integral wheels to make them mobile and intended to be towed by passenger cars, station wagons and/or light pickup or panel trucks and similar motor vehicles, but not including truck tractors of any type.
- B. A camping trailer, the walls of which are constructed out of either canvas or similar cloth or some form of rigid material such as fiberglass or plastic or metal, which walls are collapsed while the recreational vehicle is being towed and are raised or unfolded when the vehicle becomes temporary living quarters and is not being moved.
- C. Pickup (slide-in) campers and truck caps designed to be mounted temporarily or permanently in the beds of light trucks, with the trucks having either single or double rear wheels and with or without an assisting, extra tag axle and wheels mounted either on the camper chassis or the truck chassis behind the truck's rear wheels.
- D. Chassis mounts, motor homes and mini-motor homes constructed integrally with a truck or motor-van chassis and incapable of being separated therefrom. The truck or motor-van chassis may have single or double rear wheels.
- E. Converted and chopped vans created by altering or changing an existing auto van to make it into a recreational vehicle meeting the requirements of Subsection A of this definition.
- F. A boat or snowmobile trailer, i.e., a vehicle on which a boat or snowmobile may be transported and which is towable by a passenger car, station wagon, pickup truck or mobile "recreational vehicle" as above defined.

REDEVELOPMENT, REDEVELOPMENT PROJECT -- The removal and replacement of more than sixty-five (65%) percent of the gross floor area of an existing building or structure for a different use than that of the prior occupancy of said building or structure. This term shall include the use of land from which previous improvements have been removed, and shall include an adaptive reuse of an existing building or structure where said building or structure is expanded by more than 25% of the existing gross floor area.

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

RESIDENTIAL CARE FACILITY - A residence for infirm children, adolescents or adults who require personal care, supervision and services, where compensation and/or reimbursement of costs is paid to an operator pursuant to state and/or federal standards, licensing requirements, or

programs funding such services.

**RESORT, SKI** -- A recreational facility whose principal recreational activity is skiing, both downhill and cross-country, including facilities for tows, lifts, T-bars, toboggan runs, sledding areas, ice skating, curling and other related outdoor, cold-weather activities. Accessory facilities may include a swimming pool, tennis courts, clubhouse and maintenance building and snowmaking equipment.

**RESORT, YEAR-ROUND** -- A recreational facility whose principal recreational activities are outdoor, warm- and cold-weather activities. These include, but are not necessarily limited to, golf, horseback riding, skiing, swimming, tennis and boating, and may have facilities for the housing, feeding and entertainment of guests.

**RETAIL USE, RETAIL BUSINESS, STORE OR SHOP** – Traditional establishments, such as florists, lumber and hardware stores, pharmacies, grocery stores, convenience stores, stationery stores, book stores, video-rental stores, clothing stores, department stores, shoe stores, antique stores, etc., that sell goods or merchandise to the general public for personal or household consumption, but not including an Adult Business Use.

**RESTAURANT OR CAFE** -- An establishment whose principal business is the preparation and retail sale of food and beverages in a ready-to-consume state to customers and whose design or principal method of operation includes one or both of the following characteristics:

- A) Customers are served their foods and beverages, which may or may not include a bar, by a restaurant employee at the same table or counter at which said items are consumed.
- B) Customers receive their foods and beverages, which may or may not include a bar, from a restaurant employee at a walk-up counter or kiosk and which may be consumed within the restaurant building or taken off-site for consumption.
- C) A cafeteria-type operation where foods and beverages generally are consumed within the restaurant building.

**SCHOOL, NURSERY, DAY CARE CENTER, FAMILY DAY CARE HOME** -- A facility providing for the care, supervision, education, and protection of children whether or not said facility is licensed by the State of New York.

**SERVICE BUSINESS** -- An establishment primarily engaged in rendering services to businesses or individuals on a fee or contract basis, such as advertising and mailing, building maintenance, beauty shop, spa, personal services unemployment service, office equipment rental and leasing, commercial research, development and testing, and photo finishing.

**SETBACK** – The minimum horizontal distance from a property line to any structure, roadway, parking area, accessory building or other such improvement on a lot, except driveways.

**SHOPPING CENTER, SHOPPING MALL** -- A group of commercial establishments planned, constructed or managed as a single entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and landscaping and signage in accordance with an approved plan.

**SIGN** -- A use of land, structure or material for the purpose of conveying information that is prominently displayed for public view, and that consists of letters or symbols formed, inscribed or mounted on wood, metal, masonry or any other material. The term “sign” shall be limited to those signs that are visible to the public from a street, walkway or neighboring property that are displayed in-doors or out-doors.

**SIGN AREA** -- An area including all faces of a sign, measured as follows:

- A. Where such sign is on a plate or framed or outlined, all of the area of such plate or the area of such frame or outline shall be included.
- B. When such sign consists only of letters, designs or figures engraved, painted, projected or in any

manner affixed on a wall, the total area of such sign shall be deemed the smallest rectangle within which all of the matter of which such sign consists may be encompassed.

**SIGN, FREESTANDING** -- A sign which is suspended from or attached to and supported by one or more columns, uprights or braces imbedded in the ground and in which neither the sign nor supports thereof are attached to or dependent on any building for support or bracing.

**SITE PLAN** -- A rendering, drawing, or sketch prepared in accordance with the specifications of the this Chapter, and which shows the arrangement, layout and design of a proposed use of a single parcel of land as shown on said plan.

**SPECIAL USE** - A land use which is deemed permissible within a given zoning district or districts, but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district. The special use shall, therefore, be subject to approval by the Planning Board in accordance with conditions set forth for such use, as well as other applicable provisions of this Chapter. Both general and specific conditions have been established for special uses to ensure that such use is in harmony with this Chapter and Town of Kent Comprehensive Plan and will not adversely affect the neighborhood if the requirements are met.

**STABLE, BARN** -- An accessory building or portion of a main building in which animals, and equipment are kept, whether for private use or for hire, remuneration or sale.

**STEALTH TECHNOLOGIES** -- The utilization of camouflage techniques designed to conceal the presence of antennas or towers by which a communication facility is designed and constructed to blend in with surrounding natural and architectural features (see also "alternative tower structure").

**STORAGE** -- The holding or safe-keeping of goods in a warehouse or other depository to await the happening of some future event or contingency which will call for the removal of the goods.

**STORAGE, BULK** -- The accumulation of wholesale quantities of raw or finished materials (solids, liquids and gases) preparatory to use in a manufacturing process or to retail sales, a permanent reserve being maintained. Junk and scrap materials do not qualify for inclusion in this category.

**STORY** -- That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or, if there is no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.

**STORY ABOVE GRADE** -- Any story having its finished floor surface entirely above grade, except that a basement shall be considered a story above grade where the finished surface of the floor above the basement is; a) more than six feet above grade plane; or b) more than six feet above the finished ground level for more than 50 percent of the total building perimeter; or c) more than twelve feet above the finished ground level at any point.

**STORY, HALF** -- Any space partially within the roof framing, where the clear height of not more than 65% of such space between the top of the floor beams and the structural ceiling level is seven feet or more.

**STREET** -- A street improved to the satisfaction of the appropriate Town authority, which "street" is one of the following: an existing Town, county or state highway or street; a "street" shown on an approved subdivision final plat; a "street" shown on the Official Map of the Town.

**STREET LINE** -- The dividing line between a lot and a street.

**STRUCTURAL ALTERATION** -- Any change in the supporting members of a building, such as beams, columns or girders.

**STRUCTURE** -- Anything constructed or erected, the use of which requires location on, in or under the ground or attached to something having location on the ground. (See also definition of "building.")

**SUPERMARKET, GROCERY** -- A retail store selling a complete assortment of food and food preparation materials, household items and other retail items. "Supermarkets" may contain pharmacies, delicatessens, meat and fish markets, bakeries and snack bars.

**SWIMMING POOL** -- A manufactured in-ground or aboveground outdoor water pool which is not operated for gain and which is intended to be used for swimming or bathing by any family or persons residing on the premises and their guests.

**TATOO PARLOR** -- An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

**TELECOMMUNICATIONS** -- The transmission of radio communications, between or among points specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received.

**THEATER, INDOOR** -- A building or part of a building devoted to the showing of moving pictures or theatrical productions on a paid-admission basis.

**THEATER, OUTDOOR DRIVE-IN** -- An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical products, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

**TOWNHOUSE** -- One of several units in a building, which unit is designed for and occupied exclusively as a home or residence for not more than one family living independently of any other family, is served by separate utilities, is separated from other units by a party wall or walls and is erected on a lot intended to be held in the form of a condominium or in single and separate ownership from any adjoining units.

**TRANSPORTATION TERMINAL** -- Any premises used for the garaging or parking of public transportation vehicles and the loading and unloading of passengers.

**TRUCK TERMINAL** -- The use of land for trucking operations where there are dock facilities, either partially or wholly enclosed, for the purpose of transferring goods for assembly or disassembly or loading onto tractor trailers for transport to other locations. Warehouses and similar facilities for the deposit, storage and safe-keeping of goods shall not be deemed to be truck terminals.

**USABLE OPEN SPACE** -- Any unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, the minimum dimension of which is 40 feet, and which is available and accessible to all occupants of the building or buildings on the lot for the purposes of active or passive outdoor recreation.

**USE** -- The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

**USE, ACCESSORY** -- A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building. An example would be on a premises in use for single family occupancy a home occupation use that is subordinate to the single family use and provides no outward appearance that a business use also exists within the single family premises, and on a premises in use for business occupancy a drive-thru facility that is functionally dependent on the business. Except for uses accessory to a dwelling unit, any use which is accessory to a special permit use shall also be a special permit use. Any use which is accessory to a permitted use shall also be a permitted use.

USE, NONCONFORMING -- Any use of a building, other structure or tract of land which does not conform to the use regulations for that district in which such use is located, either at the effective date of this Chapter or as a result of subsequent amendments thereto.

USE, PRINCIPAL -- The main or primary use of the lot. Except for designated mixed uses and multiple retail uses within a shopping center only one principal use is permitted per lot, all other uses, unless otherwise specifically allowed pursuant to this Chapter, being excluded.

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

YARD -- That portion of the open area of a lot extending open and unobstructed by man-made improvements from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, FRONT -- A space on the same lot with a main building, extending the full width of the lot and situated between the street line and the closest point on the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be measured between the closet point on the front line of the building and the street line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

YARD, REAR -- A space on the same lot with a main building, extending the full width of the lot and situated between the rear lot line and the closest point on the rear line of the building projected to the side lines of the lot. The depth of the "rear yard" shall be measured between the rear lot line or the centerline of the alley, if there be an alley, and the closest point on the rear line of the building.

YARD, SIDE -- A space on the same lot with a main building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. If no front yard is required, the front boundary of the side yard shall be the front line of the lot, and if no rear is required, the rear boundary of the side yard shall be the rear line of the lot.

---

## **ARTICLE XX, Penalties; Interpretation, Violations**

---

### **§ 77-66. Inspections; service of order to remedy condition.**

- A) The Building Inspector is empowered to cause any building, structure, place or premises to be inspected and examined and to order, in writing, the remedying of any condition found to exist therein or thereat in violation of any provision of this Chapter. Such order may be served by personal service or by registered mail to the last known address of the person or persons, as hereinafter defined, violating the provisions of this Chapter, or, if neither of these methods can be effected and only if neither can be effected, a copy of the notice may be posted on the property.
- B) No building permit or certificate of occupancy shall be issued for any use for a property where there is an existing violation of this Chapter. Further, upon written report or receipt of an order to cease and desist from the Building Inspector or the Code Enforcement Officer for a violation of this Chapter, the Planning Board or the Zoning Board of Appeals, as the case may be, shall not review, hold public meetings or public hearings, and shall take no action regarding an application for subdivision, special use permit approval, site plan approval, area variance approval, use variance approval, or interpretation until notified by the Building Inspector or the Code Enforcement Officer that such violation has been cured or ceased by the applicant. However, the Planning Board or the Zoning Board of Appeals, as the case may be, may, upon written recommendation of the Building Inspector or the Code Enforcement Officer, review and

act on an application involving property for which there is a violation where such application is a plan to cure the violation and bring the property or use of the property into compliance with this Chapter.

**§ 77-67. Penalties for offenses.**

- A) The owner, tenant, manager, or general agent of a building or premises where a violation of any provision of this Chapter has been committed or shall exist, or the lessee, occupant or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee, occupant or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part in or assists in any such violation or who maintains any building or premises or any part thereof in which any violation shall exist, shall be guilty of a violation, punishable by a minimum fine of \$250 which will be imposed for any violation of this Chapter or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation, and any person who, having been served with an order as hereinafter set forth to remove any such violation, shall fail to comply with said order within 15 days after such service shall be subject to the penalties hereinabove set forth.

**§ 77-68. Additional remedies.**

- A) Nothing in this article shall be construed as depriving the Town or the Town Board of any other available remedy.

**§ 77-69. Interpretation.**

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

---

**ARTICLE XXI, Accessory apartments**

---

**§ 77-70. Accessory apartments.**

- A) It is the intention of this section to permit the creation, subject to the standards listed below, of owner-occupied accessory apartments in the Town for the purposes of maintaining a supply of small rental owner-occupied housing units designed to meet the needs of persons, both young and old, of moderate income and to permit the efficient use of the Town's housing stock by providing economic support for owners of larger structures and incentives for maintenance of these structures. To achieve these goals and to promote the other objectives of the Zoning Ordinance to serve the health and welfare of the Town's people, the regulations below have been created.
- B) The Zoning Board of Appeals may grant a special use permit to create an owner-occupied

accessory apartment within an existing single-family dwelling, but not in an accessory structure, provided that:

- 1) The residence structure in which the accessory apartment is to be located shall be owner-occupied at all times and shall have been owned by the applicant a minimum of four years prior to the date of any application made hereunder. Such residence shall have been constructed at least eight years prior to such application, and no additions shall have been made within four years thereof.
  - 2) Accessory apartments shall be self-contained, with separate cooking, sanitary and sleeping facilities.
  - 3) There shall be no more than one accessory apartment per lot.
  - 4) The lot shall comply with the lot area, yard and coverage requirements for the zoning district in which it is located.
  - 5) A separate entrance shall be provided for the accessory apartment. No exterior changes shall be made to the dwelling which, in the opinion of the Zoning Board of Appeals, will alter the single-family character of the dwelling.
  - 6) Off-street parking spaces suitable for year-round use shall be provided on the lot for all vehicles. No new driveway access to the street shall be permitted. The Zoning Board of Appeals may require the installation of screening and/or planting to buffer parking areas from the street or from adjoining residences.
  - 7) The accessory apartment shall contain at least 400 square feet and not more than 800 square feet of gross floor area but shall not exceed 25% of the total floor area of the principal residence structure unless, in the opinion of the Zoning Board of Appeals, a greater or lesser amount of floor area is warranted by the specific circumstances of the particular building. The number of bedrooms shall be determined by septic capacity but in no event shall exceed two bedrooms in the accessory apartment.
  - 8) In lieu of the requirements of Article XVII, §77-60 and §77-61, of this Chapter requiring the submission of a site plan, an applicant under this section shall furnish sufficient data to indicate existing building and lot conditions to enable the Zoning Board of Appeals and Building Inspector to review the application and the Building Inspector to inspect the premises. This information may include an informal, dimensional floor plan of the proposed accessory apartment as required by the Zoning Board of Appeals. No site plan fee is required. An application or renewal fee, as the case may be, shall be paid as established by resolution of the Town Board.
  - 9) The approval of the Putnam County Department of Health must be obtained for water supply and sewage disposal systems prior to the approval of the special use permit.
  - 10) The Building Inspector and the Fire Inspector shall inspect the proposed accessory apartment and report, in writing, any deficiencies to the Zoning Board of Appeals prior to the granting of the special use permit. Any such deficiencies shall be ceased, cured or corrected prior to any action on the special use permit.
- C) The Zoning Board of Appeals may impose any further conditions upon the issuance of a special use permit under this Chapter that will promote and protect the safety, health and welfare of the population of the Town of Kent. The duration of the permit shall be limited to five years and may be renewed by application to the Zoning Board of Appeals. Upon such application, the Zoning Board of Appeals shall not unreasonably withhold or refuse renewal. Prior to the renewal of the permit, however, the Building Inspector shall inspect the building and determine that all of the criteria set forth above and those conditions imposed upon the original special use permit have been complied with by the applicant.

---

## **ARTICLE XXII, Environmentally Sensitive Lands**

---

### **§ 77-71. Purpose.**

The way in which presently undeveloped acreage in Kent is developed is of critical importance to the public interest. It is hereby declared to be the purpose of this article to maintain and protect environmentally sensitive lands in order to ensure the public health, safety and general welfare for both present and future residents of the Town of Kent. Further, it is a purpose of this legislation to create, with a minimum of administrative procedures, new zoning lots which can be developed with little or no disturbance of environmentally sensitive lands.

### **§ 77-72. Definitions.**

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

**ENVIRONMENTALLY SENSITIVE LANDS** -- Wetlands (as defined in Chapter 39A), areas of special flood hazard (as defined in §39-4) and steep slopes (ground areas having a topographical gradient greater than 15%).

### **§ 77-73. Development regulations.**

#### **A) Residential lots.**

- 1) Each residential lot created by subdivision shall have, at minimum, a ten-thousand-square-foot rectangle with a minimum dimension in all directions of 75 feet per side and a minimum depth to bedrock of four feet that does not contain any environmentally sensitive lands, nor lay beneath any existing or proposed structure or residence. The septic field and septic field expansion area shall be located and constructed within this rectangle.
- 2) Whenever the preparation of a conventional subdivision plan is required so as to establish a unit lot count (e.g., planned residential development and cluster subdivision under provisions of §278 of the Town Law), such plan shall be prepared in accordance with the above requirements.

#### **B) Commercial and IOC lots. Each lot located in the Commercial or the IOC district created by subdivision shall have, at minimum, a rectangle in square feet as specified below, with a minimum dimension in all directions of 100 feet per side, and must not contain any environmentally sensitive lands.**

- 1) Commercial lots: 15,000 square feet.
- 2) IOC lots: 20,000 square feet.

#### **C) Delineation of rectangle.**

- 1) The map submitted to the Planning Board for subdivision approval shall describe the proposed rectangle by two-foot contours and shall be certified by a surveyor licensed by the State of New York to include no topographical gradient greater than 15%.
- 2) For purposes of inspecting depth to bedrock, the applicant shall install within each proposed rectangle two four-inch perforated PVC pipes, no less than 60 feet apart. Said pipes shall be inserted at least four feet into the ground and shall be free of rock and debris. Additionally, an engineer licensed by the State of New York shall certify to the Planning Board that the rectangle has a minimum soil depth of four feet to bedrock.

#### **D) Exceptions.**

- 1) The provisions of §77-73 shall not apply to any property for which final subdivision approval has been granted by the Planning Board and a final subdivision plat has been duly filed with

the office of the County Clerk prior to the effective date of this Chapter.

---

**ARTICLE XXIII, Soil Hydrology**

---

**§ 77-74. Table 2 Soil Groups.**

Hydrologic Class	Soil Symbol	Soil Type
A/D	Ce	Carlisle muck
B	ChB	Charlton loam, 2 to 8 percent slopes
B	ChC	Charlton loam, 8 to 15 percent slopes
B	ChD	Charlton loam, 15 to 25 percent slopes
B	ChE	Charlton loam, 25 to 35 percent slopes
B	CIB	Charlton loam, 2 to 8 percent slopes, very stony
B	CIC	Charlton loam, 8 to 15 percent slopes, very stony
B	CID	Charlton loam, 15 to 25 percent slopes, very stony
B	CIE	Charlton loam, 25 to 35 percent slopes, very stony
B	CIF	Charlton loam, 35 to 45 percent slopes, very stony
B	CrC	Charlton-Chatfield complex, rolling, very rocky
B	CsD	Chatfield-Charlton complex, hilly, very rocky
B	CtC	Chatfield-Hollis-Rock outcrop complex, rolling
B	CuD	Chatfield-Hollis-Rock outcrop complex, hilly
D	Ff	Fluvaquents-Udifluvents complex, frequently flooded
C	Fr	Fredon silt loam
A	HnB	Hinckley gravelly loamy sand, 3 to 8 percent slopes
A	HnC	Hinckley gravelly loamy sand, 8 to 15 percent slopes
C/D	HnD	Hinckley gravelly loamy sand, 15 to 25 percent slopes
D	HrF	Hollis-Rock outcrop complex, very steep
D	Ip	Ipswich mucky peat
A	KnB	Knickerbocker fine sandy loam, 2 to 8 percent slopes
A	KnC	Knickerbocker fine sandy loam, 8 to 15 percent slopes
C	LcA	Leicester loam, 0 to 3 percent slopes, stony
C	LcB	Leicester loam, 3 to 8 percent slopes, stony
C	LeB	Leicester loam, 2 to 8 percent slopes, very stony
A/D	Pa	Palms muck
A/D	Pc	Palms and Carlisle soils, ponded
C	PnB	Paxton fine sandy loam, 2 to 8 percent slopes
C	PnC	Paxton fine sandy loam, 8 to 15 percent slopes
C	PnD	Paxton fine sandy loam, 15 to 25 percent slopes
C	PoB	Paxton fine sandy loam, 2 to 8 percent slopes, very stony
C	PoC	Paxton fine sandy loam, 8 to 15 percent slopes, very stony
C	PoD	Paxton fine sandy loam, 15 to 25 percent slopes, very stony
-----	Pt	Pits, gravel
-----	Pv	Pits, quarry
B	Pw	Pompton silt loam, loamy substratum
C	Ra	Raynham silt loam
C	RdA	Ridgebury loam, 0 to 3 percent slopes

C	RdB	Ridgebury loam, 3 to 8 percent slopes
C	RgB	Ridgebury loam, 2 to 8 percent slopes, very stony
B	RhA	Riverhead loam, 0 to 3 percent slopes
B	RhB	Riverhead loam, 3 to 8 percent slopes
B	RhC	Riverhead loam, 8 to 15 percent slopes
B	RhD	Riverhead loam, 15 to 25 percent slopes
B	RhE	Riverhead loam, 25 to 50 percent slopes
C	SbB	Stockbridge silt loam, 2 to 8 percent slopes
C	SbC	Stockbridge silt loam, 8 to 15 percent slopes
C	SbD	Stockbridge silt loam, 15 to 25 percent slopes
C	SgC	Stockbridge-Rock outcrop complex, rolling
D	Sh	Sun loam
D	Sm	Sun loam, extremely stony
B	SuA	Sutton loam, 0 to 3 percent slopes
B	SuB	Sutton loam, 3 to 8 percent slopes
-----	Ub	Udorthents, smoothed
-----	Uc	Udorthents, wet substratum
B	UdB	Unadilla silt loam, 2 to 6 percent slopes
-----	Uf	Urban land
B	UhB	Urban land-Charlton complex, 2 to 8 percent slopes
B	UhC	Urban land-Charlton complex, 8 to 15 percent slopes
B	UhD	Urban land-Charlton complex, 15 to 25 percent slopes
B	UIC	Urban land-Charlton-Chatfield complex, rolling, very rocky
D	UID	Urban land-Charlton-Chatfield complex, hilly, very rocky
D	UmC	Urban land-Chatfield-Rock outcrop complex, rolling
-----	UpB	Urban land-Paxton complex, 2 to 8 percent slopes
-----	UpC	Urban land-Paxton complex, 8 to 15 percent slopes
-----	UpD	Urban land-Paxton complex, 15 to 25 percent slopes
-----	UrB	Urban land-Ridgebury complex, 1 to 8 percent slopes
-----	UvB	Urban land-Riverhead complex, 2 to 8 percent slopes
-----	UvC	Urban land-Riverhead complex, 8 to 15 percent slopes
-----	UwB	Urban land-Woodbridge complex, 2 to 8 percent slopes
C	WdA	Woodbridge loam, 0 to 3 percent slopes
C	WdB	Woodbridge loam, 3 to 8 percent slopes
C	WdC	Woodbridge loam, 8 to 15 percent slopes