

**TOWN OF MAMAKATING  
INTRODUCTORY LOCAL LAW  
TOWN OF MAMAKATING ZONING CODE**

BE IT ENACTED by the Town Board of the Town of Mamakating, Sullivan County, New York, as follows:

Section 1. Chapter 199 of the Code of the Town of Mamakating entitled "Zoning Code Amendments" is hereby amended in its entirety to read as follows:

**Chapter 199  
Zoning**

**Article I  
General Provisions**

**§ 199-1 Short title.**

This chapter shall be known and may be cited as the "Town of Mamakating Zoning Local Law."

**§ 199-2 Purpose.**

There is hereby established a comprehensive zoning local law for the Town of Mamakating, which plan is set forth in the text, map and schedule that constitute this chapter. Said zoning local law is adopted for the purposes set forth in Article 16 of the Town Law, which, in the interest of the protection and promotion of the public health, safety, convenience, comfort and general welfare, shall be deemed to specifically include the following, among others:

- A. The facilitation of the efficient and adequate provision of public facilities and services.
- B. The assurance of adequate and necessary sites for residence, commerce, recreation, open space and public and quasi-public uses.
- C. The provision of privacy for residents.
- D. The prevention and reduction of traffic congestion so as to promote efficient and safe circulation of vehicles and pedestrians.
- E. The maximum protection of residential areas from the intrusion of incompatible uses.
- F. The maximum protection and enhancement of the mixed-use, village-scale character of the hamlets and villages in the town.
- G. The encouragement of aesthetically attractive, environmentally responsible nonresidential and economic development activities especially in the area of eco- and agri-tourism that expand the local employment base and stabilize the town's ratable base.
- H. The provision of adequate light and air.
- I. The protection of historic buildings, sites and their environs.
- J. The gradual elimination of nonconforming uses.

- K. The enhancement of the appearance of the Town of Mamakating as a whole, and the protection of the rural character of the community.
- L. The protection and enhancement of the open, scenic character of U.S. Route 209 and Route 17 and the deterrence of strip development along the community's major local, county and state transportation corridors.
- M. The maximum practical preservation of natural and other significant environmental features, including Shawangunk Ridge, the Bashakill Preserve, water bodies, wetlands, steep slopes, hilltops, ridgelines, major stands of trees and other areas of geologic, ecological or scenic value.
- N. The encouragement of flexibility in the design and development of land in such a way as to promote the most appropriate use of lands, to facilitate the adequate and economic provision of streets and utilities, to preserve the natural and scenic qualities of open lands and to protect the environmental quality of the town.
- O. To continue to provide diverse housing opportunities for the Town's workforce, young families and seniors in a sustainable manner.

**§ 199-3 Enumeration of districts.**

The Town of Mamakating is hereby divided into the following districts:

**Residential Districts**

RVP	Ridge and Valley Protection Area
MG	Mountain Greenbelt
RA	Residential Agricultural
BR	Burlingham Residential
NR	Neighborhood Residential
LN	Lake Neighborhood Residential

**Mixed Use Districts**

HC	Hamlet Center
VA	Village Adjacent Area
PRO	Planned Resort-Office Development

**Nonresidential Districts**

AD	Airport Development
IC	Interchange Commercial
IEZ	Interchange Economic Zone Overlay
208EZ	Route 208 Economic Zone Overlay

**§ 199-4 Zoning Map.**

The location and boundaries of said districts are hereby established as shown on the Zoning Map of the Town of Mamakating, as revised, which is attached hereto and is hereby made a part of this chapter. Said map or maps and all notations, references and designations shown thereon shall be a part of this chapter as if the same were all fully described and set forth herein.

**§ 199-5 Interpretation of boundaries.**

- A. The zoning district boundary lines are intended generally to follow the center lines of rights-of-way, existing lot lines, the mean water level of rivers, streams and other waterways or Town boundary lines, or to follow a straight line connection of corners or endpoints of the above features or to follow

along a parallel path from such features at a set distance, all as shown on the official Zoning Map. Where a district boundary line does not clearly follow such features, its position shall be determined by the Building Inspector upon measurement of the official Zoning Map.

- B. In cases of uncertainty as to the true location of a district boundary line in a particular instance, the Building Inspector shall request the Zoning Board of Appeals to render its determination with respect thereto.
- C. In all cases where a district boundary divides a lot in one ownership, the lot is five acres or less and more than 50% of the area of such lot lies in the less restricted district, the regulations prescribed in this chapter for the less restricted district may apply to such portion of the more restricted portion of said lot upon the discretion of the property owner. For purposes of this subsection, the "more restricted district" shall be the district which is subject to regulations which prohibit the use intended to be made of the lot or which regulations are more restrictive with respect to lot area, development coverage, landscaping requirements, etc. For lots that are more than five acres in size, each portion of the lot shall conform to the applicable district in which it is located. A district boundary shall not be construed to subdivide a property.

#### **§ 199-6 Word usage and definitions.**

- A. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "structure" shall include the word "building"; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used"; and the word "shall" is mandatory and not optional. Words not specifically defined shall have their ordinary dictionary meanings.
- B. Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter:

#### **ACCESSORY APARTMENT (MOTHER/DAUGHTER RESIDENCE)**

A self-contained dwelling unit incorporated within an existing structure originally designed and intended for use by a single family. For purposes of this chapter, an accessory apartment shall be permitted only in a zoning district that permits a two-family dwelling and shall meet all the standards for a two-family dwelling unit contained herein.

#### **ACCESSORY USE OR STRUCTURE**

A use or structure subordinate to the principal use on the same lot and serving a purpose customarily incidental to the principal use of the lot.

#### **ADULT/SENIOR HOUSING**

Housing intended for individuals generally 55 years and older, which may include various levels of care, and may consist of a single or combination of uses such as independent adult housing, adult care facilities, enriched housing, assisted living, or nursing homes, including ancillary health, social and administrative services.

#### **AGRIBUSINESS**

A commercial, non-animal, agricultural operation with intensive operational characteristics, including but not limited to high water consumption or energy use; employment generating demand for on-site parking; or processes requiring extensive building coverage. Agribusiness may include uses requiring facilities for indoor growing, cooking, dehydrating, refining, packing, warehousing or other treatment of agricultural products. Said definition specifically excludes slaughterhouses, rendering plants or other agricultural operations involving animals. Site plan approval shall be required where the Building Inspector finds that the operational characteristics of an agricultural operation are consistent with the characteristics identified herein.

## **AGRICULTURAL FARM OPERATION – NON-LIVESTOCK**

The land and on-farm buildings, equipment, processing and handling facilities, and practices which contribute to a non-livestock commercial enterprise involving the cultivation and sale of field crops, fruits, vegetables, horticultural specialties, maple sap, Christmas trees or woody biomass,...

## **AGRICULTURAL FARM OPERATIONS – LIVESTOCK**

The land and on-farm buildings, equipment, processing and handling facilities, and practices which contribute to a commercial enterprise involving the raising and sale of livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, apiary products or aquacultural products, or other animals raised for their milk, eggs and furs.

## **AGRITOURISM**

Agriculture related tours, events and activities used to attract people and promote the sales of farm produce and agricultural production, sale, education and enjoyment of agricultural products grown and manufactured on-site or locally. Agritourism includes but is not limited to the following defined uses:

### **FARM MARKET**

A permanent structure accessory to a farm operation or horticultural specialty, operated on a seasonal or year-round basis, that allows for agricultural producers to retail their products and agriculture-related items directly to consumers and enhance income through value-added products, services and activities.

### **PUBLIC FARM MARKET**

A temporary event held indoors or outdoors, operated on a not-for profit basis in the public interest for the buying or sale of farm and food products.

### **FARM STAND**

A direct farm marketing operation, accessory to an agricultural operation or horticultural specialty, without a permanent structure and only offering outdoor shopping on the farm premises. Such an operation is seasonal in nature and features on-farm produce as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

### **FARM BREWERY, CIDERY, WINERY or DISTILLERY**

A brewery, cidery, winery or distillery licensed by New York State which is authorized to manufacture New York State labeled wine, beer, cider, mead, or spirits. A farm brewery, cidery, winery or distillery must sell products manufactured primarily from farm and food products, as defined in subdivision two of section two hundred eighty-two of the agriculture and markets law (defining “farm and food products”) Such use shall meet the special use permit requirements for Breweries, Cideries, Wineries and Distilleries in the Town of Mamakating.

### **FARM VACATION**

Temporary residency on the premises of a farm operation or horticultural specialty, as defined by Article 25-AA of NYS Agriculture and Markets Law and within the Town of Mamakating code, by paying, transient guests, for the purpose of observing or participating in the ongoing activities of an agricultural operation and learning about agricultural life.

## **AIRPORT OR HELIPORT**

Any area of land which is used or intended for use for the landing and taking off of aircraft, also any appurtenant areas which are used or intended for use, or other airport buildings and facilities.

**ANIMAL HOSPITAL OR VETERINARY CLINIC**

A facility for the medical care and treatment of animals, including shelters and like facilities, other than animal kennels.

**APARTMENT**

A type of multifamily dwelling unit that shares at least a ceiling or floor with another dwelling unit and may also share a wall or walls with another dwelling unit.

**BED-AND-BREAKFAST**

An owner-occupied dwelling designed, used and occupied as a single-family residence, managed by the property owner, where overnight lodging is provided to transient visitors in one to five guest bedrooms, up to a maximum of 10 guests, for compensation. This term does not include boardinghouses, motels, hotels, tourist courts, motor lodges, tourist cabins, or similar terms.

**BILLBOARD**

A sign which directs attention to a business, commodity, service or entertainment conducted, offered or sold elsewhere than on the premises where the sign is located.

**BOARDER**

Any person who rents a room within a dwelling.

**BOARDINGHOUSE**

A dwelling where paying guests are provided with meals and lodging for a fee. Boardinghouses are nonconforming uses in the unincorporated Town of Mamakating.

**BREWERY**

Any place or premises where beer is manufactured for sale; and all offices, granaries, mashrooms, cooling-rooms, vaults, yards, and storerooms connected therewith or where any part of the process of manufacture of beer is carried on. Such use may include tastings or operate a food or drinking establishment on site.

**BUFFER**

The ground area of a lot which shall be left in its natural state, or planted, as may be required by the Planning Board. Parking, loading, and storage are not allowed in a buffer area.

**BUILDING**

A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

**BUILDING HEIGHT**

The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, towers, tanks and similar projections.

**BUILDING, PRINCIPAL**

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

**BULK**

The size and shape of buildings, structures and nonbuilding uses; the physical relationship of the exterior walls or construction or their location to plot lines and other buildings or structures or other walls or construction of the same building or structure; and all open spaces required in connection with a building or structure. Bulk regulations include, but are not limited to, regulations dealing with lot area, lot area per dwelling unit, frontage, width, height, depth, required yards, usable open space and the length of buildings in a row.

**BUNGALOW COLONY (ALSO TOURIST CABINS AND COTTAGES)**

A type of seasonal resort complex consisting of a group of individual, usually one-story structures where indoor plumbing and kitchen facilities may be provided in each unit. Said facility may also have communal eating and recreational facilities. For purposes of this chapter, existing colonies shall be deemed nonconforming uses. New bungalow colonies are prohibited.

**CAMP, DAY**

A nonresidential facility providing daytime supervision and activities for children during the summer.

**CAMP, SUMMER**

One or more temporary or permanent shelters, buildings or structures, together with the lot or tract of land appertaining thereto, established or maintained as living quarters for temporary occupancy and not arranged or intended for such occupancy except during the period, or part of the period, from May 15 to October 15 in any year. Said facilities may provide recreational and/or other programs offered for the benefit of the occupants.

**CEMETERY**

Land used for the internment of human remains, including a burial park for earth internments, which may include a mausoleum for vault or crypt interments, operated for a not-for-profit organization.

**CLEAR-CUTTING**

A method of tree removal where all or substantially all trees two inches and over on a site are removed.

**CLUSTER DEVELOPMENT**

A subdivision plat or plats in which the bulk requirements of this chapter are modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands.

**COMMERCIAL RECREATION FACILITY**

An indoor or outdoor privately run business involving playing fields, courts, arenas, or halls designed to accommodate sports and recreational activities, such as, but not limited to, billiards, bowling, dance halls, driving ranges, batting cages, miniature golf, gymnasiums, health spas, skating rinks, indoor shooting ranges, and tennis courts.

**COMMUNITY FACILITIES, EMERGENCY**

A building or structure owned and operated by a public or governmental entity whose function includes responding to life- and property-threatening emergencies, such as fire, ambulance or police facilities.

## **COMMUNITY FACILITIES, NON-EMERGENCY**

A building or structure owned and operated by a public agency for the purpose of providing activities for administering or providing nonemergency services to the residents of the Town and its villages, including governmental offices, department of public works, libraries, and museums.

## **COMPOSTING FACILITY**

A solid waste management facility used to provide aerobic decomposition of solid organic constituents of solid waste to produce a stable, humus material for use or sale off-site.

## **CONFERENCE CENTER**

A building or buildings designed for classes, conferences, seminars, meetings, and similar activities and related accessory uses principally for conference center patrons, such as restaurants, drinking facilities, and recreation facilities. A conference center with overnight accommodations shall be deemed to be a resort.

## **CONTRACTOR STORAGE YARD**

A building or area of land where a person, firm or corporation engaged in the construction business or a related field stores building materials, equipment and supplies used exclusively in his or its business as a contractor.

## **COUNTRY INN**

An owner-occupied dwelling, managed by the property owner, where overnight lodging is provided to transient visitors in one or more guest units, for compensation. Country inns have common sitting and dining areas. A country inn may have a restaurant incorporated into the overall principal building which is open to the general public. Country inns may have limited accessory recreation facilities, e.g., a swimming pool or hiking trail. Country inns may also be used for social events or gatherings, e.g., weddings. This term does not include boardinghouses, hotels, tourist courts, motor lodges, tourist cabins, or similar terms.

## **DAY-CARE CENTER**

A facility licensed or authorized and regulated by the State of New York Department of Social Services or other state agency having jurisdiction where care is provided for three or more children away from their own homes for less than 24 hours per day in a facility which is operated for such purposes, for more than five hours per week.

## **DEVELOPMENT COVERAGE**

That percentage of the gross lot area covered by buildings, including accessory buildings, and paved and other installed impervious surfaces.

## **DEVELOPMENT RIGHTS**

Rights permitted to a lot, parcel or area of land under this chapter respecting permissible use and density of improvements executed thereon.

## **DISTILLERY**

Any place where liquor is manufactured for sale and includes all offices and storerooms connected with any part of the manufacture process. Such use may include tastings or operate a food or drinking establishment on site.

## **DISTRIBUTION FACILITY**

A facility involving the storage and shipment of goods in allotments. This use does not involve the manufacture or sale of goods from the premises.

## **DUDE RANCH**

A horse farm which also maintains lodging for overnight guests, who engage in camping, horseback riding and other recreational activities.

## **DWELLING**

Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, except a mobile home or trailer.

- (1) **DWELLING, SINGLE-FAMILY DETACHED** A detached building designated for or occupied exclusively by one family and containing not more than one dwelling unit.
- (2) **DWELLING, SINGLE-FAMILY ATTACHED** A building containing two or more dwelling units, none of which have common floors or ceilings between units, and which have one party or common wall. Single-family attached dwellings within a building containing two dwellings are commonly referred to as a "duplex." Single-family attached dwellings within a building containing three or more dwelling units are commonly referred to as "townhomes" where such units are located on individual fee-simple lots.
- (3) **DWELLING, TWO-FAMILY** A detached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.
- (4) **DWELLING, MULTIFAMILY** A building or portion thereof used or designed as a residence for three or more dwelling units, whether arranged as apartments or townhouses on a common lot.

## **EDUCATION, RESEARCH AND INTERPRETIVE CENTER**

A facility operated for a nonprofit organization whose primary purpose is to conduct studies or educate the general public.

## **EXTRACTIVE OPERATIONS**

Any mining, quarrying, excavation or removal of earth products prior to processing for the purpose of sale or other commercial purpose. Earth products include but are not limited to topsoil, sand, gravel, clay or stone. The removal of topsoil and land disturbances directly undertaken in connection with the construction of a building for which a building permit has been issued or the development of a site or subdivision in accordance with an approved plan are activities excluded from this definition. Existing DEC-permitted extractive operations are non-conforming uses in Mamakating. New extractive operations are prohibited.

## **FARM**

See "agricultural operations."

## **GASOLINE FILLING STATION**

Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline, oil or other fuel for the propulsion of motor vehicles as a principal use or accessory to a use also permitted in the district.

## **GOLF COURSE VILLA**



A style of single-family detached dwelling located adjacent to a golf course.

### **GROSS FLOOR AREA**

The sum of the gross horizontal areas of several floors of the building, excluding basement and attic floors used solely for accessory mechanical equipment. All horizontal dimensions shall be taken from the exterior faces of walls or other outer limits of roofed areas.

### **GUEST UNIT**

Any habitable premises customarily rented for occupancy, including one-, two- and three-bedroom units. A guest unit may be comprised of up to two additional lockout rooms giving the hotel owner/operator the maximum ability to rent to up to three separate or distinct rental groups; provided, however, that the additional lockout rooms shall not result in any additional increase in the total number of bedrooms.

### **HOME OCCUPATION**

Any use customarily conducted entirely within the principal residential structure and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the principal structure and does not change the character thereof. Home occupations include but are not limited to an art studio; dressmaking; music and dance instruction; or single offices of a clergyman, lawyer, physician, dentist, architect, engineer, computer consultant, or accountant.

### **HORTICULTURAL SPECIALTY**

The production of fruits, vegetables, flowers, ornamental trees and landscape plants but not staple crops or livestock. Horticultural specialty may include greenhouses and retail outlets.

### **HYDRAULIC FRACTURING**

A stimulation technique using the introduction of high-pressure volumes of water, liquid mixtures of chemicals and substances, or other gas, liquid, substances, or combination of thereof, into a subsurface carbon-bearing formation to create fractures to increase formation permeability or otherwise enhance the productivity of such formation.

### **IMPERVIOUS SURFACE**

Any ground surface that cannot effectively absorb or infiltrate rainfall.

### **INDUSTRIAL USE**

A use engaged in the basic processing and manufacturing materials or products predominantly from extracted or raw materials, or a use involving the manufacture, fabrication, processing, reduction, or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof. The term "industrial use" shall also include light industry. The term "industrial use" shall not include the exploration for or extraction of rock, stone, minerals, natural gas and/or petroleum or any other activity prohibited by Chapter 146 of this Code.

### **HOTEL**

A building or portion thereof containing rooms that are used, rented or hired out to be occupied for transient sleeping purposes for compensation, whether the compensation is paid directly or indirectly. No such rooms shall contain individual kitchen or cooking facilities.

**JUNKYARDS -**

Buildings, structures or premises where junk, waste, or discarded or salvaged materials are bought or sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards, house wrecking and structural steel materials and equipment, but not including the purchase or storage of used furniture and household equipment and used motor vehicle in operable condition.

**KENNEL**

A commercial use in which the principal activity is the temporary boarding and/or breeding of animals, primarily dogs and cats. The keeping of more than four dogs or cats indoors or outdoors shall constitute a kennel, for purposes of this chapter. For purposes of this chapter, an animal shelter shall be included within the definition of "kennel."

**LABORATORY AND RESEARCH FACILITIES**

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

**LIGHT INDUSTRY**

A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

**LIVESTOCK**

Includes but is not limited to cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas. Livestock are used for commercial purposes to produce milk products, eggs, furs or meat.

**LOT**

A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as required by this chapter, and having frontage on a public street.

**LOT AREA**

The computed area contained within the lot lines.

**LOT, CORNER**

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

**LOT DEPTH**

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

**LOT, FLAG**

A lot having the required lot frontage that does not have the minimum required lot width, measured across the front lot line or across a straight line measured at a point distant from the street line the

same distance as the required front yard, but having the required lot width measured at a point somewhere in the interior of the lot.

### **LOT FRONTAGE**

A distance measured along the front lot line.

### **LOT LINES**

The property lines bounding the lot.

- (1) **LOT LINE, FRONT** The line separating the lot from a street.
- (2) **LOT LINE, REAR** The lot line opposite and most distant from the front lot line.
- (3) **LOT LINE, SIDE** Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a "side street lot line."
- (4) **LOT LINE, STREET OR ALLEY** A lot line separating the lot from a street or alley.

### **LOT WIDTH**

A distance measured along a line drawn parallel to the front lot line at a distance equal to the minimum front yard requirement.

### **MARKET, FARMERS**

An enclosed facility involved primarily in the retail sale of farm-direct, unprocessed agricultural and horticultural products, including but not limited to fruits, vegetables, dairy products, and eggs. A farmers market may also include the sale of limited miscellaneous items, including baked goods and regional gifts and crafts.

### **MEMBERSHIP CLUB**

An association of persons for recreational, athletic, social, literary or similar activities, which association is not conducted for the purpose of pecuniary gain or profit and is organized pursuant to the provisions of the Not-for-Profit Corporation or the Benevolent Order Law of the State of New York and is not a part of, related to or associated with a profit-making venture and which is managed by officers or directors serving without pay and chosen directly by members who form such association.

### **MICRO-HOME**

A single-family detached dwelling of less than 500 square feet meeting the Residential Building Code of the State of New York for new construction and containing no more than one bedroom and one bathroom.

### **MOBILE HOME**

Any vehicle or similar portable structure having been constructed with wheels (whether or not such wheels have been removed) and so designed or constructed as to permit occupancy for dwelling or sleeping purposes.

### **MOBILE HOME PARK**

Any plot of ground upon which two or more mobile homes occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations.

**MOTEL**

An establishment that provides lodging to motorists in rooms that usually have direct access to an open parking area. Also referred to as a "motor lodge."

**MOTOR VEHICLE**

A motor vehicle as defined by §125 of the NYS Vehicle and Traffic Law.

**MOTOR VEHICLE RENTAL/LEASING ESTABLISHMENT**

Establishments engaged in the short-term rental or long-term leasing of passenger cars, vans or trucks without drivers.

**MOTOR VEHICLE REPAIR GARAGE**

A building used for the servicing and repair of motor vehicles, including bodywork. Such repair work shall be conducted wholly within a completely enclosed building.

**MOTOR VEHICLE SALES ESTABLISHMENT**

An establishment, including open area and showrooms enclosed within a building, used for the display or sale of new or used motor vehicles, provided that such establishment is a franchised dealer or a factory-owned dealership.

**NATURAL GAS**

Any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION**

Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS**

Any solid, semisolid, liquid, semiliquid or gaseous material used in the exploration or extraction of natural gas.

**NATURAL GAS AND/OR PETROLEUM EXTRACTION**

The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

**NATURAL GAS AND/OR EXPLORATION PETROLEUM PRODUCTION WASTES**

Any garbage, refuse, cuttings, sludge, flow-back fluids, produced waters or other discarded materials, including solid, liquid, semisolid, or contained gaseous material that results from or is associated with the exploration, drilling or extraction of natural gas and/or petroleum.

**NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES**

The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas or petroleum storage facility, or a natural gas or

petroleum gathering line, venting station or compressor associated with the exploration or extraction of natural gas or petroleum.

### **NATURAL GAS EXTRACTION WASTE**

- (1) Any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants;
- (2) Leachate from solid wastes associated with natural gas extraction activities;
- (3) Any waste that is generated as a result of or in association with the underground storage of natural gas;
- (4) Any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and/or
- (5) Any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

### **NONCONFORMING LOT**

Any lot lawfully on record on the effective date of this chapter or any amendment thereto which does not meet the minimum lot area and/or lot width or depth requirements of this chapter for the zoning district in which such lot is situated as a result of such enactment or amendment.

### **NONCONFORMING STRUCTURE**

Any structure which is lawfully in existence within a given zoning district on the effective date of this chapter or any amendment thereto but which is not in conformance with the dimensional regulations for that zoning district as a result of such enactment or amendment.

### **NONCONFORMING USE**

Any use which is lawfully in existence within a given zoning district on the effective date of this chapter or any amendment thereto which does not conform to the district use regulations as a result of such enactment or amendment.

### **NURSERY, HORTICULTURAL (OR COMMERCIAL GREENHOUSE)**

A facility involved in the cultivation of ornamental and horticultural products, including but not limited to flowers, trees, shrubs, and vines. Activities may also include the retail sale of said products outdoors or in an enclosed facility.

### **NURSING HOME OR CONVALESCENT HOME**

Any establishment where three or more persons suffering from or afflicted with or convalescing from any infirmity, disease or ailment are habitually housed for remuneration, other than municipal or incorporated hospitals and establishments licensed by the State Commissioner of Mental Hygiene and maternity homes licensed by the State Commissioner of Health.

### **OFFICE**

A building or portion of a building wherein services are performed involving predominantly administrative, professional or clerical operations.

## **OFFICE AND RESEARCH BUSINESS PARK**

A tract of land providing for more than one office and/or research building, designed, maintained and operated as a single unit and sharing certain facilities in common, such as driveways, parking areas, drainage, utilities, and landscaping.

## **OIL EXTRACTION WASTE**

- (1) Any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy - +metals, or other contaminants;
- (2) Leachate from solid wastes associated with oil extraction activities; and/or
- (3) Any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

## **PARK AND RIDE**

A parking lot, intended to serve as parking for persons utilizing public or private mass transit options including buses, rideshares, carpools. Such a facility may have an accessory structure providing ticketing, rest facilities, snack bar, and sundry retail, so long as such uses are subordinate to the principal use of the site for parking.

## **PATIO HOME**

A style of single-family detached dwelling typically designed with an extensive outside deck functioning as an extension of the interior space and an attached garage sometimes representing a major element of the front facade.

## **PET, HOUSEHOLD**

An animal that is customarily kept for company or enjoyment and one that may be properly and safely kept within a dwelling or a residential yard. Pets typically include, but are not be limited to, dogs, cats, rabbits, domesticated tropical birds, gerbils, hamsters, and guinea pigs. The raising and breeding of poultry and livestock, including horses, shall be regulated in accordance with § 199-17.

## **PETROLEUM**

Includes oil and crude oil.

## **PLANNED RESIDENTIAL DEVELOPMENT**

A structure or group of structures designed to be maintained and operated as a unit in single ownership or control by an individual, partnership, corporation or cooperative group, which has certain facilities in common, such as yards and open spaces, recreation areas, garages and parking areas.

## **PLANNED RESORT COMMUNITY**

An area of a minimum contiguous size, as specified by local law, to be planned, developed, operated and maintained as a single entity and containing one or more structures required to accommodate a mix of resort-related uses, which shall include a hotel or lodging structure, and may include a variety of dwelling types, hotels, condo-hotels, motels, lodging, bed-and-breakfasts, country inns, golf courses, edutainment centers, outdoor recreational facilities, wineries, aquariums, movie theaters, convention/conference centers, retail business customarily incidental to the primary use and incorporated into a hotel or lodging structure, riding stables, and associated accessory or support facilities.

**POULTRY**

Domestic fowl, which shall include but not be limited to chickens, turkeys, ducks, geese, pigeons, pheasants, and guinea hens.

**POULTRY RAISING, HIGH-DENSITY**

A farm, the major occupation of which is the raising of poultry, wherein there is one square foot or less of floor space per bird in those structures housing the poultry.

**POULTRY RAISING, LOW-DENSITY**

A farm, the major occupation of which is the raising of poultry, wherein there is more than one square foot of floor space per bird in those structures housing the poultry.

**PRINCIPAL USE**

The primary purpose or function that a lot serves or is intended to serve.

**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, cable television, and telephone, but shall not mean any person or entity that provides wireless telecommunication services to the public.

**RADIO TRANSMITTING STATION**

A facility for the transmitting of radio broadcasts, including electronic equipment and antennas or towers.

**RECEIVING DISTRICT**

One or more designated districts to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

**RECOVER**

Any act or process by which recyclables or reusables are separated from the solid waste stream.

**RECYCLABLE**

Solid waste that exhibits the potential to be used repeatedly.

**RECYCLABLE HANDLING AND RECOVERY FACILITY**

A solid waste processing facility, other than collection and transfer vehicles, at which nonputrescible recyclables are separated from the solid waste stream or at which previously separated nonputrescible recyclables are processed.

**RESORT**

A type of hotel that incorporates indoor and/or outdoor recreational amenities into the overall design and operation of the facility. A resort may also include conference rooms, dining rooms, and other areas for social gatherings.

## **RESTAURANT**

Any premises where food is commercially sold primarily for on-premises consumption to patrons seated at tables and served by a waiter or waitress. Bakeries, pizzerias, delicatessens and similar services shall be considered a restaurant if the food that is sold commercially is also available for any on-premises consumption, regardless of whether served by a waiter or waitress or whether available from a counter-type installation. Where there is no on-premises consumption, bakeries, pizzerias, and delicatessens shall be treated as retail sales establishments for purposes of this chapter.

## **RESTAURANT, FAST-FOOD**

Any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state, usually served at or from counters in paper, plastic, or other disposable containers, for consumption either within the restaurant building, elsewhere on the premises, for carry-out, or from a drive-in window, for consumption off the premises. "Fast-food restaurant" does not include bakeries or delicatessens.

## **ROD AND GUN CLUB**

A primarily vacant tract of land used by members of a membership club for hunting and fishing. A rod and gun club shall not be interpreted to permit range or clay shooting.

## **SEASONAL DWELLING**

A dwelling shall be deemed seasonal if the dwelling:

- (1) Is identified as a seasonal dwelling on the Assessor's records;
- (2) Does not have a well which produces the quantity and quality of water as required by New York State Building Code and New York State Health Department Administration Rules and Regulations, 10 NYSCRR, Part 5, Appendix 5-B, Standards for Water Wells; or
- (3) Does not have septic which complies with Appendix 75-A, Wastewater Treatment Standards, as promulgated by the NYSDOH.

## **SENDING DISTRICT**

One or more designated districts in which development rights are designated for use in one or more receiving districts.

## **SERVICE COMMERCIAL USE**

Any use which involves work done or duties performed for individuals, business and government establishments.

## **SETBACK**

The shortest horizontal separation distance from the property line or, in the case of shoreline property, from the mean high-water mark to the closest building line of the structure.

## **SHOPPING CENTER**

A building or group of buildings containing a variety of retail and service commercial facilities planned as a whole, occupying a single building lot, with joint use of parking and accessory facilities, and generally controlled by a single management organization.



**SIGN**

A name, identification, description, display or illustration or any other visual display which is affixed to or painted or represented directly or indirectly upon a building, structure or piece of land and which directs attention to an object, product, place, activity, person, institution, organization or business.

**SIGN, DIRECTIONAL**

A sign indicating the location and direction of premises other than those on which the sign is located.

**SIGN, FACADE**

A sign attached parallel to a wall, painted on the wall surface, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall and building, and which displays only one sign face.

**SIGN, FREESTANDING**

A sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent of any building or other structure.

**SIGN, MONUMENT**

A sign affixed to a wall anchored in the ground without the need of a pole for support. Monument signs are typically made from masonry materials such as brick or stone.

**SIGN, WINDOW**

A sign displayed, affixed or painted on or within any window, windowpane, show window or window screen and which is visible from the exterior of the window.

**SMALL-SCALE FARM**

The keeping or raising of livestock such as rabbits, sheep, pigs, goats, equines, cows or poultry for personal use and/or not a farm operation as regulated under §305-a of NYS Agriculture & Markets Law.

**SOLAR ACCESS**

Space open to the sun and clear of overhangs or shade so as to permit the use of a solar energy system to service a building or property.

**SPECIAL USE**

Authorization of a particular land use which is permitted in this chapter, subject to individual standards imposed herein to assure that the special use is in harmony with this chapter and will not adversely impact surrounding uses if said standards are met.

**STABLE, COMMERCIAL**

Any equestrian operation that provides commercial equine activities including but not limited to riding lessons, trail riding, training or boarding of horses for financial or other consideration.

**STRUCTURE**

Anything constructed, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground, including but not limited to buildings, fences, tanks, towers, swimming pools, and stationary and portable carports.

## **SWIMMING POOL, PRIVATE**

Any constructed body of water or structure containing water, and any accessory buildings or equipment pertaining thereto, used or intended to be used for swimming or bathing by any family or persons residing on the premises and their guests. It shall not be operated for gain and shall be located on a lot only as an accessory use to the dwelling or dwellings thereon, to a membership club or to a motel or hotel.

## **TOWN-ENDORSED SEWER SYSTEM OR WATER SYSTEM**

A central sewage collection system and treatment works or central water supply system acknowledged by the Town of Mamakating Town Board, upon advice of its Town Engineer, as a system and works that are designed and constructed to provide the level of sewage treatment and water quality required to safeguard the Town's residents and ecosystems and that have established adequate funding mechanisms and maintenance mechanisms to guarantee the continued operation and maintenance in perpetuity, all in accordance with applicable state, county and Town standards.

## **TRAILER**

A vehicle designed without motive power, to be drawn by another vehicle.

## **VACATION CAMPGROUND**

An area of land, owned entirely in single ownership, on which two or more cabins, tents, vacation trailers, motor homes, shelters, or any other accommodations normally suitable for temporary or seasonal living, camping or recreation purposes.

## **WAREHOUSE**

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

## **WINERY**

Any place or premises wherein wines are manufactured from any fruit or brandies distilled as the by-product of wine or other fruit or cordials are compounded. Such use may include tastings or operate a food or drinking establishment on site.

## **WIRELESS TELECOMMUNICATION SERVICES**

Services providing for the transmission of wireless communications utilizing frequencies authorized by the Federal Communications Commission for paging systems, enhanced specialized wireless telecommunication, personal communication services, and cellular telephone.

## **WIRELESS TELECOMMUNICATION SERVICES FACILITY**

Any freestanding facility, building, tower or structure used to provide wireless telecommunication services and which consists of, without limitation, antennas, equipment and storage and other accessory structures used to provide wireless telecommunication services.

## **YARD**

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

- (1) **YARD, FRONT** An open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward.

- (2) **YARD, REAR** An open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward.
- (3) **YARD, REQUIRED** That portion of any yard meeting the minimum dimensional requirements contained in Schedule I of this chapter.
- (4) **YARD, SIDE** An open space extending from the front yard to the rear yard between a principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

## Article II District Provisions

### § 199-7 **Restrictions and controls.**

- A. The restrictions and controls intended to regulate development in each district are set forth in the attached Schedule I which is supplemented by other sections of this chapter.
- B. This chapter shall not interfere with or abrogate or annul any easement, covenant or other agreement between parties; provided, however, that when this chapter imposes a greater restriction on the use of buildings or land or on the height of buildings or requires larger open spaces or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule or regulation, or by any easement, covenant or agreement, the provisions of this chapter shall control. Where the requirements of this chapter differ from the requirements of another statute, law, ordinance, rule or regulation, the more restrictive shall govern.
- C. Any land use not specifically listed for a zoning district shall be deemed to be a prohibited use for that zoning district.

### § 199-8 **Applicability of regulations.**

Except as hereinafter otherwise provided:

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

### § 199-8.1 **Prohibited uses.**

A. The following uses are specifically prohibited in the Town:

- (1) Natural gas exploration or extraction.
- (2) Petroleum exploration or extraction.

- (3) Use or disposal of natural gas extraction wastes.
  - (4) Use or disposal of oil extraction wastes.
  - (5) Mineral extraction not in existence as of the effective date of this chapter. Mineral extraction with a valid mining permit shall be an existing non-conforming use subject to the terms of the existing mining permit.
- B. Nothing in this section should be construed as implying that uses not specifically listed as a permitted use or special use in a zoning district are permitted in any way. Pursuant to § 199-7C of this Code, uses not specifically listed as a permitted use or special use in a zoning district shall be deemed to be a prohibited use in that zoning district.

**§ 199-8.2 Economic Zone Overlay Districts.**

- A. Purpose. In order to afford opportunities for large-scale economic development in areas of the Town with close access to the regional highway network, the Town Board has established two Economic Zone Overlay Districts. It is the purpose of the Interchange Economic Zone Overlay to provide opportunities for the location of commercial and industrial users in the vicinity of the Town's interchanges with Route 17 (future Interstate 86) that would generate significant vehicular or truck traffic. It is the purpose of the Route 208 Economic Zone Overlay, to provide opportunities for employers that may generate high volumes of commuter traffic but not truck traffic to locate within areas along Route 208 between Wurtsboro Airport and the Village of Wurtsboro. In all cases, it is the intent of these regulations to allow a wide range of uses appropriate to these areas while, providing appropriate mitigation of impacts to visual, ecological and groundwater resources.
- B. Overlay Districts. The requirements of this district will serve as an alternative to Schedule I of the underlying zoning district and provide additional requirements for certain special use permits authorized herein. The location of a parcel within an Economic Zone Overlay shall not be construed to limit the development of the parcel pursuant to Schedule I appropriate to the underlying zoning.
- C. Bulk Requirements. The following bulk requirements shall apply to development of lots within the Economic Zone Overlay Districts:
- a. Minimum Lot Area: 25 net acres after application of relevant deductions pursuant to §199-35.
  - b. Minimum Width: 300 feet
  - c. Minimum Depth: 400 feet
  - d. Minimum Front and Rear Yards: 100 feet
  - e. Minimum Side Yard: 100 feet (one) and 200 feet (total)
  - f. Maximum Development Coverage: 60%
  - g. Maximum Height: 2.5 stories and 30 feet
- D. Interchange Economic Zone additional special uses permitted. The following uses shall be permitted by special use permit in the Interchange Economic Zone, subject to the requirements of §199-25 and any related standards of §199-26:

- a. Truck stops/travel centers;
  - b. Research, experimental and testing laboratories;
  - c. Office and research business parks;
  - d. Hospitals and medical clinics;
  - e. Trucking terminals and distribution centers including limited retail sales accessory thereto;
  - f. Light industrial use including manufacturing, assembling, converting, packaging, altering, finishing, cleaning or other processing of materials involving only the use of oil, gas, electricity, or equivalent fuel, except for chemical manufacturing;
  - g. Wholesaling, storing and warehousing, including lumberyards, building contractor and building supply and farm supply yards;
- E. Route 208 Economic Zone additional special uses permitted. The following uses shall be permitted by special use permit in the Route 208 Economic Zone, subject to the requirements of §199-25 and any related standards of §199-26:
- a. Research, experimental and testing laboratories;
  - b. High-tech agriculture, such as hydroponic growing facilities and large-scale greenhouses;
  - c. Data centers;
  - d. Office and research business parks not involving the significant generation of truck traffic over public roads;
- F. Additional standards imposed. In addition to any other requirements, the following standards shall be imposed as special use permit conditions on any special use authorized within an Economic Zone Overlay District:
- a. The uses shall be located in a manner and designed to incorporate landscaping, elevations changes, and architectural colors and materials so as to not result in a significant adverse impact to significant public viewpoints including state and county roads, public parks, and public trails including the Long Path and D&H Canal towpath. In determining compliance with this criterion, the Planning Board may require the submission of cross-sections, visual simulations, viewshed analyses, balloon tests, and such other supporting information as necessary to conclude that significant adverse visual impacts will not occur. The Planning Board may retain qualified professionals to peer review any of the foregoing materials submitted by applicants in support of development applications.
  - b. The uses shall incorporate such stormwater management facilities as are necessary to mitigate any potential impact to ecological or groundwater impacts to receiving waters and aquifers. In determining compliance with this criterion, the Planning Board shall rely on the advice of the Planning Board Engineer. Where the Planning Board determines that sensitive groundwater or ecological resources may be impacted by the proposal, the Planning Board may retain qualified professionals including but not limited to hydrologists and hydrogeologists, to determine that impacts are not likely to occur.
- G. SEQR. A development application under the provisions of the Economic Zone Overlay provisions shall be considered a Type 1 action pursuant to 6 NYCRR 617 (SEQRA).

**Article III**  
**Supplementary Bulk Regulations**

**§ 199-8.2 Residential density based on utilities.**

- A. Purpose. The Town of Mamakating finds that: i) sewage collection systems, sewage treatment plants and central water systems constructed or funded by private developers tend to utilize the least expensive equipment and processes with prioritization to construction cost over end-user cost and longevity; ii) most sewage collection systems and treatment plants and central water systems have limited operational lifespans with significant end-of-life costs; iii) DEC is continuously refining permit standards, making older infrastructure obsolete; iv) the ability for small enclaves of residences to afford ongoing maintenance, compliance and end-of-life replacement/rehabilitation is extremely limited, often causing municipalities to eventually take over such private systems; v) the receiving waters of the Basha Kill and Wallkill River support a complex ecosystem of wetland and upland habitat; vi) small private package plants are rarely designed to meet the DEC's highest standards for tertiary treatment and have the potential to impact these ecosystems to a greater extent than lower-density development with subsurface disposal systems or larger municipal plants with tertiary treatment; vii) only a municipally owned plant subject to the acceptance by the Town of Mamakating can guarantee the ongoing effectiveness and cost-feasibility of central sewer and water systems, thereby safeguarding the health, safety and general welfare of the Town's natural resources, Town residents and downstream neighbors.
- B. Throughout this zoning law, the permissible density of year-round occupancy residential uses as established by minimum lot size or number of permissible units per acre for a given residential use varies based on the provision of central water and sewer service. It is acknowledged that such year-round residences depend on the availability of such services and there is little recourse for the Town to require residents to relocate or vacate individual residences in the event that such central utilities cease to operate adequately nor is there a mechanism by which the Town may effectively require a utility system owned by other entities to be repaired to adequate operational status in a timely manner to prevent harm to the Town's residents and natural resources.
- C. In any zoning district where a higher density is permitted if a central water system or sewer system is provided, such system must be a Town-endorsed sewer system or water system. The foregoing requirement shall supersede any conflicting or inconsistent provision in the Town Code.
- D. Other central water and sewer utilities, whether privately owned or publicly owned but not endorsed by the Town of Mamakating, may be used to provide service to residences so long as they meet all applicable state, county and Town standards. However, the permitted density for year-round-occupancy residences shall not be greater than that which would be permitted by the provision of individual well and subsurface waste disposal systems.

**§ 199-9 Lot regulations.**

- A. Lot frontage. The minimum lot frontage of any lot shall be measured along the street line as required for the district in which it is located. The minimum lot frontage shall be 50 feet on a Town road, 75 feet on a county road, and 100 feet on a state road. For lots fronting on culs-de-sac or on a street with a radius of curvature at the center line of 100 feet or less, or in other appropriate circumstances, the lot frontage may be reduced by the Planning Board at the time of subdivision plat or site plan approval to no less than one-half of the required lot width; provided, however, that it shall not be less than the requirements for town, county and state roads provided above. No portion of the lot width shall be less than the approved lot frontage. Any driveway access to a lot shall be provided from the front lot line.
- B. Corner lots. At all street intersections, no obstruction to vision (other than an existing building, post, column or tree) exceeding 30 inches in height above the established grade of the street at the property line which is a hazard to vehicular movement shall be erected or maintained on any lot

within the triangle formed by the street lot lines of such lot and a line drawn between points along such street lot lines 30 feet distant from their points of intersection (see attached sketch).

- C. Required area or space cannot be reduced. The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter, and, if already less than the minimum required by this chapter, said area or dimension may be continued and shall not be further reduced.
- D. Minimum lot size for all uses. Where unusual subsoil or geological conditions are found to exist at a particular location, the Planning Board may require lots proposed to be developed with individual wells and septic system and to provide larger lot sizes and widths than the specified minimum lot sizes and widths. In such cases, the Planning Board may require that the minimum lot area and lot width otherwise required be increased to the extent necessary to allow the proposed water and/or sewer facilities to operate effectively in order to protect the public health, safety and welfare. Detailed plans for such facilities shall be prepared by a professional engineer and submitted to the Town Engineer and approved by him before a building permit may be issued or a subdivision or site plan approved. The suitability of the proposed systems shall conform to the standards of New York State Department of Health.
- E. Through lot requirements. A through lot shall be considered as having two lot frontages, both of which shall be subject to the front yard requirements of this chapter. The location of accessory structures shall conform to the requirements contained in § **199-13**.
- F. Minimum lot size requirements for average density (cluster development) in the BR, NR, LN, HC, and VA Districts. These provisions shall apply to residential uses in these districts, which are not served by Town-endorsed central water or sewer systems.
  - (1) As part of an average-density subdivision, the minimum lot size in the BR, NR, LN, HC, and VA Districts may be reduced by the Planning Board as follows:
    - (a) The Planning Board may permit, subject to acceptable lot and road design, a reduction in the minimum lot area requirement to no less than that required to provide individual water and subsurface waste disposal systems to satisfy the following performance standards, but in no event to less than 40,000 square feet:
      - [1] Soil percolation and deep hole tests verify that sufficient and appropriate lands are available for a conventional subsurface sanitary sewage disposal system\* designed and constructed to serve a single-family residence and an additional area of not less than 50% of the area of the proposed conventional subsurface sanitary sewage disposal system, which area shall be available and appropriate for the expansion of said system, as shown by said tests, which additional area shall be reserved for the construction of additions to the system. The area proposed for the subsurface sanitary sewage disposal system, including the reserve area, shall not exceed 10% in grade. [\*NOTE: "Conventional subsurface sanitary sewage disposal system" shall be defined as in Paragraph 75-A.8 of Appendix 75-A of the New York State Codes, Rules and Regulations (10 NYCRR 75), last revised February 2010, or the most recent amendment.]
      - [2] Both the area for the conventional subsurface sanitary sewage disposal system and the additional reserved area shall be clearly delineated on any plat submitted to and approved by the Planning Board.
    - (b) Dwelling restriction. An average-density lot approved by the Planning Board with a reduced minimum lot size pursuant to the provisions of this Subsection **F** may not be used for any use other than one single-family dwelling and permitted accessory uses.

- (c) Subdivision statement. On all average-density subdivision plats showing lots with a reduced minimum lot size pursuant to the provisions of this Subsection **F**, the subdivider shall provide on the preliminary subdivision plat and final subdivision plat the following statement: "The minimum lot sizes in this subdivision are in conformance with the minimum lot sizes required in the (applicable zoning district) as approved and modified by the Planning Board, in writing, on (date)."
- G. Landlocked lots.
- (1) Purpose. The purpose of this Subsection **G** is to provide a means by which owners of property that is landlocked may obtain access to a public street in accordance with § 280-a of New York State Town Law. This policy shall apply to all areas of the Town of Mamakating. In order for an applicant to obtain a building permit to construct a structure on a landlocked lot, the applicant shall be required to demonstrate that adequate access may be obtained to said lot. Adequate access shall mean that sufficient right-of-way or easement width exists to construct a driveway to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles.
- (2) Procedures. The procedures for obtaining access shall be as follows:
- (a) Right-of-way determination. The Building Inspector shall forward any request for access to a landlocked property to the Town Board, which shall determine whether a public right-of-way in accordance with design standards for Town roads should be established. The Town Board shall consider the goals and objectives of the Comprehensive Plan and the future land uses of the area in determining whether public access should be provided. The Town Board shall provide a written determination to the Building Inspector. If a public right-of-way is established, the procedures outlined in Subsection **G(2)(d)** shall be followed. If the Town Board determines that a Town road shall not be established, then the applicant shall proceed to make application to the Building Inspector to establish an easement to gain access to the landlocked lot.
- (b) Submission requirement. Upon application to the Building Inspector, the applicant of a landlocked lot shall provide a copy of a title report and all deeds or agreements identifying the existence of an easement for access to said property. The applicant shall submit a survey illustrating the metes and bounds location of the easement. Where an easement exists, the Town Engineer shall establish the appropriate design of the access prior to the Building Inspector issuing a building permit. The design shall include consideration of the appropriate grade, surface, and layout of a driveway to be located in the easement subject to any requirements for driveways established in this chapter. A building permit may be issued for said property once safe and sufficient access has been demonstrated.
- (c) Unmapped easements. In certain instances, an easement may exist over a parcel of property to provide access to a landlocked lot which may not be mapped. In accordance with § 280-a of Town Law, a minimum frontage and driveway width of 15 feet shall be sufficient to provide access to a single-family detached or two-family dwelling. The minimum dimensions for adequate access for any other use shall be determined and approved by the Planning Board upon the recommendations of the Town Engineer.
- (d) Public right-of-way. In certain cases, the Town Board may desire to establish a public right-of-way. An owner of a landlocked property may also petition the Town Board for a right-of-way. The procedures for establishing a public right-of-way shall be as follows:
- [1] The Town Board shall appoint the Town Engineer as arbitrator.
- [2] The Town Engineer shall notify all affected landowners of the pending arbitration meeting by certified mail.



- [3] The Town Engineer shall designate, after the arbitration meeting, the placement of the right-of-way. The Town Engineer shall cause to be prepared a survey of the public right-of-way. A legal description of such shall be filed with the County Clerk.
- [4] The Town Engineer, with the advise of a real estate appraiser and in a form acceptable to the Town Attorney, shall determine adequate compensation for any lands so used. Title will not pass until all costs and compensation to the owner of the property crossed by the right-of-way are paid.
- H. Flag lots.
- (1) Purpose. The Planning Board has the discretion to approve residential flag lots within minor or major subdivisions where strict adherence to the zoning regulations would create unreasonable building lot configurations and the proposed flag lot would be the best use of the land.
  - (2) Planning Board review. The Town of Mamakating Planning Board shall have the discretion and authority to permit residential flag lots in a minor subdivision within all zoning districts which permit residential uses.
  - (3) Standards.
    - (a) The Planning Board shall determine whether the flag lot is the best use of the land.
    - (b) Flag lots shall be subject to subdivision review by the Planning Board and shall conform to all standards set by the Land Subdivision Regulations of the Town of Mamakating.
    - (c) Subsection **G** of this section shall not be applicable for flag lots.
    - (d) Exclusive of the flagpole, the flag lot shall meet all bulk requirements, except yard requirements, for the zoning district in which it is located. There shall be no yard requirements for flag lots.
    - (e) A minimum flagpole width of 25 feet shall be provided; however, the Planning Board may require that the minimum flagpole width be increased on a parcel that is 10 acres in size or larger where it finds that the lot has the potential to be further subdivided. The flagpole shall be a minimum of 200 feet in length.
    - (f) The grades shall not exceed 14% along drives in flag lots.
    - (g) A minimum buffer area of 25 feet in width shall be designated along all property lines of the flag lot. There shall be no construction within this designated buffer area except driveways.
    - (h) The minimum lot width of a flag lot shall be measured between the two side lot lines at a point beginning at a minimum of 25 feet beyond the required two-hundred-foot flagpole length.
    - (i) The minimum building setback line shall be no closer to the flagpole than 25 feet.
    - (j) Flag lots may require special drainage and surfacing for driveways.
    - (k) Flag lots may require additional monumentation along the flagpole.
    - (l) Flag lots may require driveway profiles.

**§ 199-10 Lot frontage.**

Where a building lot has frontage upon a street which, on the Traffic Plan or Official Map of the Town of Mamakating, is designated for right-of-way widening, the required front yard area shall be measured from such proposed future right-of-way line.

§ 199-11 **Height regulations.**

- A. General application. No building or structure shall have a greater number of stories or be higher than permitted in the district where such building or structure is located, except as noted elsewhere in this chapter.
- B. Permitted exceptions. Except for restrictions imposed by airport safety standards, height limitations stipulated elsewhere in this chapter shall not apply to temporary open amusement uses, church spires, belfries, cupolas, and monuments.
  - (1) Water towers, chimneys, smokestacks, flagpoles, radio and television towers, masts and aerials, and heating, ventilation, air-conditioning and other accessory utilities shall be exempted from height restrictions, provided said utilities do not exceed 20% of the gross floor area of the roof, and that height does not exceed 10% of the building's height.
    - (a) For accessory utilities atop buildings in the LIO, IO, and IC Districts, the same restrictions apply; however, the Planning Board, at its discretion, may approve an accessory utility height in excess of 10% of the building's height, provided the following:
      - [1] The Planning Board shall require a visual simulation of the height and its effect on the surrounds in accordance with §**199-26X(11)(c)** of this chapter; and
      - [2] The building on which said utility is situated is set back from every lot line a distance at least equal to the height.
    - (b) Under no circumstances shall the height of said utilities exceed 80 feet from the ground level.
  - (2) Parapet walls are also excluded from height restrictions, except that no parapet wall may extend more than four feet above the limiting height of the building. Farm buildings and structures on farms, e.g., silos, are also excluded, provided that these buildings are set back from every lot line a distance at least equal to their height.

§ 199-12 **Yard regulations.**

- A. Side yard of corner lot. On a corner lot, each yard fronting on a street shall be deemed a front yard. At the owner's discretion, one yard other than the front yard shall be deemed to be a rear yard. The remaining yard(s) shall be deemed to be a side yard. The minimum district yard requirements for each shall be complied with. The location of accessory structures shall conform to the requirements contained in § **199-13**.
- B. Additional yards required when nonresidential districts abut residential districts. All uses permitted in nonresidential districts which abut, at the lot line or on the same street, a residential district shall provide yards, where they abut, of at least the minimum yard requirements in such residential districts.
- C. Side yard width may be varied. Where the side wall of a building is not parallel with the side lot line or is broken or otherwise irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than 1/2 the otherwise required minimum width.
- D. Front yard exception. When an unimproved lot is situated between two improved lots, each having a principal building within 25 feet of any side lot line of such unimproved lot, the front yard may be reduced to the greatest depth of the front yard of the two adjoining improved lots but shall be not less than 10 feet.
- E. Provision of yard or other open space. No yard or other open space provided about any buildings for the purpose of complying with the provisions of this chapter shall be considered as providing a yard

or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.

**§ 199-13 Accessory structures.**

- A. No accessory building permitted by this chapter shall be placed in any required side or required front yard except as specified hereinafter in this article.
- B. The aggregate ground area covered by any accessory buildings in any rear yards shall not exceed 20% of the rear yard area.
- C. Accessory structures which are not attached to a principal structure may be erected in accordance with the following restrictions:
  - (1) No accessory structure is located closer than 10 feet to the side and rear lot lines except for storage sheds not requiring a building permit.
  - (2) No accessory structure is located closer to the street than the street wall of the principal structure, except in the case of farm buildings.
  - (3) No accessory structure is located closer to a principal structure than 10 feet.
- D. When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal buildings.
- E. All existing structures that are relocated are to abide by the regulations of this chapter.
- F. Private swimming pools accessory to a residential dwelling. Swimming pools, whether permanent or portable, shall be regulated as follows, except that these regulations shall not apply to portable swimming pools when they are not more than three feet in height nor more than 15 feet in length:
  - (1) Private swimming pools shall be erected on the same lot as the principal building.
  - (2) Private swimming pools may be erected only in the rear yard of such structure and shall be located not less than 20 feet from a rear lot line and not less than 10 feet from any side lot line and from any principal building or accessory structure attached thereto.
  - (3) Private swimming pools shall be enclosed in accordance with the New York State Uniform Fire Prevention and Building Code.
- G. Accessory private boathouses, docks and cribs. Boathouses are not to exceed one story in height nor to exceed 15% of the available lake frontage and shall be not nearer to any side property line than is permitted in the district. Private docks or cribs shall not extend more than 20 feet into the lake, shall be not wider than 10% of the available lake frontage and shall be not nearer to any side property line than is permitted in the district.
- H. Trailer bodies and shipping containers. The use of trailer bodies and/or shipping containers for storage is prohibited in the Town of Mamakating.
- I. Accessory mechanical equipment, utility hardware and waste storage areas. Mechanical equipment or other utility hardware on roofs shall be harmonious with the building or it shall be located and/or screened so as not to be visible from any public ways. All refuse and waste storage areas shall be screened from adjoining properties and public ways by appropriate fences, walls or landscaping. Front-end-loaded refuse containers shall also be required to be screened by vegetation or structural means or by locating said container in an area not readily visible from a public way. No front-end-loaded refuse container shall be located in a required front yard.

Article IV  
**Supplementary Use Regulations**

§ 199-15 **Home occupations.**

- A. Customary home occupations are deemed to be accessory uses to a single-family detached dwelling subject to the requirements contained herein. A home occupation shall not require full site development plan submission. However, an applicant shall be required to submit a lot survey indicating the location of the home and the area of the home to be used for purposes of the home occupation. A home occupation shall require a permit from the Building Inspector or special use permit approval from the Planning Board.
- B. The Building Inspector may issue a permit for operation of a home occupation without Planning Board review and approval, provided the applicant may demonstrate the following:
- (1) The minimum lot size shall be 1/2 acre.
  - (2) Such occupation is incidental to the residential use of the premises and is carried on in the principal building and solely by the owner-occupant.
  - (3) Such occupation is carried on in an area not exceeding 25% of the gross floor area of the principal building.
  - (4) At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.
  - (5) The existing capacity of the residence's water supply and sewage disposal systems to handle any additional demand generated by the home occupation shall be determined to be adequate for the particular use.
  - (6) A studio where dancing or music instruction is offered is permitted, provided only one pupil at any one time is instructed. Concerts or recitals are prohibited.
  - (7) Equipment capable of causing interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.
  - (8) There shall be no home deliveries of materials or supplies associated with the home occupation.
  - (9) There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.
- C. The Building Inspector, upon a determination that the home occupation shall exceed any of the thresholds contained in § **199-15B** above, shall deny an application for a home occupation, and the applicant shall be required to obtain a special use permit from the Planning Board. The following standards shall apply:
- (1) The minimum lot size shall be 1/2 acre.
  - (2) Such occupation is incidental to the residential use of the premises and is carried on in the principal building by a resident therein with not more than two nonresident assistants.

- (3) Such occupation is carried on in an area not exceeding 25% of the gross floor area of the principal building.
- (4) At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.
- (5) The capacity of the residence's water supply and sewage disposal systems to handle any additional demand generated by the home occupation shall be determined to be adequate for the particular use.
- (6) A studio where dancing or music instruction is offered is permitted, provided only up to a maximum of four pupils at any one time are instructed. Concerts or recitals are prohibited.
- (7) Equipment capable of causing interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.
- (8) The Planning Board may restrict the number of deliveries of materials or supplies associated with the home occupation.
- (9) There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.
- (10) The Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood.

**§ 199-16 Commercial vehicles and recreational vehicles.**

- A. Commercial vehicles. This section shall not apply to farm equipment or vehicles operated in conjunction with agricultural operations nor to vehicles intended for the transport of livestock or poultry associated with agricultural operations. The on-site parking of commercial vehicles shall be permitted only as an accessory use to a single-family detached structure, subject to the following:
- (1) One commercial vehicle not exceeding 25 feet in length may be parked on a residential lot. The minimum lot size shall be one acre. No commercial vehicle shall be stored within the front yard of the lot, nor shall any vehicle be parked within 25 feet of any lot line or within a required yard, whichever is greater.
  - (2) One commercial vehicle not exceeding 25 feet in length may be parked within a private garage on a residential lot. The minimum lot size shall be 1/2 acre.
  - (3) The commercial vehicle shall be registered to the owner who shall be the occupant of the dwelling.
  - (4) The on-site parking of more than two commercial vehicles shall constitute a contractor yard and shall not be allowed except as otherwise may be permitted in this chapter.
  - (5) Heavy construction equipment, i.e., bulldozers, loaders, cranes, etc., shall not be parked or stored on any residential lot, except as part of any construction occurring on site. The storage of heavy construction equipment shall be deemed a contractor yard and shall not be allowed except as otherwise permitted in this chapter.
  - (6) Tractor trailers, garbage trucks, dump trucks and similar vehicles shall not be parked or stored on any residential lot within the Town of Mamakating.

- B. Storage of recreational vehicles. The on-site parking of recreational vehicles shall be permitted only as an accessory use to a single-family detached structure. The outdoor storage of one recreation vehicle or boat is permitted for every 20,000 square feet of lot area, provided that such trailer or boat is unoccupied and not stored within any required yard.

**§ 199-17 Livestock density criteria applicable to small-scale farming and agricultural farm operations located outside of agricultural districts.**

- A. Purpose. The Town of Mamakating is a rural community with existing areas of agricultural operations. The Town has determined that the raising and breeding of livestock for personal use is acceptable in the town, provided these activities are appropriately regulated to control the density of animals for purposes of protecting adjoining residents as well as the animals themselves. Therefore, the following density provisions shall apply to the raising of all livestock or poultry, as defined in this chapter.
- B. Exemption. Any farm operation within an agricultural district shall not be subject to these regulations, so long as the operations are:
- (1) Conducted in a manner which is not negligent or reckless;
  - (2) Conducted in conformity with generally accepted and sound agricultural practices;
  - (3) Conducted in conformity with all state and federal laws and regulations;
  - (4) Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person; and
- C. Special Permit Required. Any person raising and breeding livestock meeting the requirements of this section shall be considered a conforming use. Any person raising and breeding livestock in a manner not in conformity with these regulations shall require a special use permit from the Planning Board. The applicant shall demonstrate the following:
- (1) That the proposed animal density will not have a detrimental effect on the residence or adjoining neighborhood by creating deleterious odors, noise, or other health nuisances.
  - (2) That the proposed animal density will not result in any injury or harm to the animals themselves.
  - (3) That the animals are properly housed and contained on site.
- C. For livestock, one animal unit is equivalent to a 1,000 lb non-lactating cow. The animal density listed below is based upon the calculation of one animal unit per acre:

	<b>Animal</b>	<b>Number per Acre</b>
	Sheep, Goats	5 adults/ acre
	Alpacas, Llamas	3 adults/ acre
	Pigs	3 adults/acre 2 sows with litter/acre
	Cattle	1 adult/acre
	Horses	1 adult/ acre
	Miniature horse	4 adults/ acre
	Poultry	no more than 10 birds per ½ acre
	Individual Adult Rabbits	3-5 lbs: 1.5 sq ft 6-8 lbs: 3 sq ft 9-11 lbs: 5 sq ft
	Female Rabbit with Litter	3-5 lbs: 4 sq ft 6-8 lbs: 5 sq ft 9-11 lbs: 6 sq ft 12 or more lbs: 7.5 sq ft

D. The following shall also apply:

- (1) The raising of more than 20 fowl shall require a special use permit in accordance with the provisions for poultry farms contained in Article V of this chapter.
- (2) One horse may be raised and/or boarded on any lot with a minimum two acres without constituting a small-scale farm. A stable and/or enclosures housing the horse shall be set back 25 feet from any lot line.

E. The minimum lot size for a small-scale farm shall be two acres.

F. Any structures appurtenant to a small-scale farm that house animals shall be located a minimum distance of 50 feet from any property line. Where a lot used for the breeding or raising of livestock or poultry adjoins a lot in residential use, livestock shall be housed or fenced to control animals from wandering onto the adjoining lot.

G. Dude ranches and the stabling of horses shall be subject to these density provisions.

**§ 199-18 Planned resort community.**

- A. Intent. A planned resort community (PRC) is a mixed-use development planned as a single unit permitted by right in the Planned Resort Office (PRO) Zoning District. The PRC is intended to provide economic development within the community by creating a tourist destination on a large tract of land, compatible with the natural surroundings of the development's environs. These PRC regulations allow a range of residential, nonresidential, recreational and open space uses in accordance with performance criteria. A PRC is to be designed and organized so as to permit the site to function without necessarily requiring the supportive services of adjacent neighborhoods. This section encourages creativity and innovations in resort design and the protection of ecologically sensitive land.
- B. Objectives. In order to carry out the intent of this section, a planned resort community shall achieve the following objectives. It shall:
  - (1) Promote economic development and encourage planned resort development in a manner that protects the rural character of the Town of Mamakating.

- (2) Provide a mix of resort-related uses, including the residential, nonresidential, recreational and open space uses outlined in Schedule II, in accordance with these regulations and with the site plan regulations contained in this chapter.
  - (3) Provide accessory facilities normally associated with resort-related uses and as outlined in the accompanying PRC Use Table within the site where appropriate, subject to these regulations and this chapter.
  - (4) Protect and enhance the economic vitality of the Village of Wurtsboro, the Village of Bloomingburg, and the hamlets in the Town of Mamakating by ensuring that the proposed uses in the planned resort community are compatible with, and not necessarily in direct competition with, the uses permitted in the villages and hamlets.
  - (5) To the maximum extent practicable, preserve water bodies, wetlands, steep slopes, hilltops, ridgelines, major stands of trees, outstanding natural topography, significant geological features, and other areas of scenic and ecological value.
  - (6) Prevent soil erosion and minimize flood hazards.
  - (7) Permit the innovative and staged development of land which allows for an orderly transition of land from vacant to occupied use.
  - (8) Allow the development of an appropriate mix of uses in a manner that protects the town's fiscal base at all stages of the PRC's buildout.
- C. Approvals required. Whenever any planned resort community is proposed, and before any permits for the use of land or erection of a building or structure in such development shall be granted, the developer or his authorized agent shall apply for and obtain site plan approval from the Town Planning Board.
- D. Uses allowed in a PRC. All uses listed in Schedule II are permitted uses within a PRC.
- E. General design standards for planned resort community. The PRC shall meet the following general design standards:
- (1) Location of planned resort community within the PRO District. A PRC is allowed in the PRO District subject to the bulk requirements for the individual uses as set forth in Schedule II.
  - (2) Minimum area. The minimum area necessary to qualify for a PRC shall be 400 contiguous acres of land. For purposes of these provisions, property in the same ownership but separated only by a road or utility easement shall be deemed to be contiguous; however, property separated by other lands not in the same ownership shall be deemed to be noncontiguous. As a result of the large minimum lot requirement for a PRC, and the special requirements contained herein, § **199-35**, Environmental constraints, of this chapter shall not apply.
  - (3) Maximum density.
    - (a) Year-round occupancy: dwelling units. The maximum density for a PRC shall be no greater than the maximum density permitted for single-family detached dwellings in the PRO District. The PRC is a use primarily intended to accommodate nonresidential resort-type facilities that promote economic development. To meet this objective, no more than 35% of the net acreage after deduction of environmental constraints pursuant to § **199-35** shall be used to calculate the residential density for dwelling units suited for year-round occupancy. The applicant shall first calculate the total number of year-round dwelling units. The remaining acreage may be used to calculate the maximum number of guest units for the PRC. The Planning Board may further restrict the year-round occupancy



density to ensure that all year-round occupancy dwelling units that are to be served jointly with the resort by private water or private wastewater treatment systems have adequate lot area to allow for lawful and fully compliant installation of individual well and septic systems, including consideration of soils, slopes, all applicable standards, and the requirements of construction and access.

- (b) Transient occupancy: guest units. After the net acreage used to calculate year-round occupancy dwelling units is subtracted from the net acreage of the PRC parcel, the maximum number of guest units shall be established from the net acreage of the PRC parcel after deduction of environmental constraints pursuant to § 199-35, and using the following sliding scale:

#### **Guest Unit Density**

First 1 to 300 acres	5 guest units/acre
Each acre over first 300 acres	6 guest units/acre

- (c) A guest unit is a lodging unit, motel unit, condo-hotel unit, bungalow unit, villa unit or similar tourist accommodation unit designed and maintained for transient occupancy only. The Planning Board shall have the authority to impose conditions to ensure that guest units maintain their transient nature, including conditions on the design of the guest units, e.g., limitations on use of kitchens and kitchenettes, washers and dryers, limitations on the duration of visitor stays, maintenance of visitor guest books, the filing of covenants and restrictions, and similar conditions.
- (4) Maximum development coverage. Maximum development coverage shall not exceed 25% of the entire site.
- (5) Ownership. The tract of land proposed for a PRC development may have one or more owners, and every application shall require the written consent of all individuals, firms, associations, syndicates, partnerships, or corporations with proprietary interest in the affected land, authorizing the applicant to act on behalf of the owner or owners in connection with all matters pertaining to the PRC application. In the case of multiple ownership, a plan once approved shall be binding on all owners, their successors and assigns.
- (6) Utilities. A planned resort community shall be served by central water and central wastewater treatment systems. Central water systems shall be constructed in accordance with standards and specifications as required by the New York State Department of Health and other applicable agencies, and central wastewater treatment systems shall be constructed in accordance with standards and specifications as required by the New York State Department of Environmental Conservation and other applicable agencies or standards and specifications promulgated by the Town of Mamakating. In developing utilities to service the proposed PRC, the applicant shall consider the infrastructure needs of adjoining neighborhoods and shall explore methods to develop a Town-endorsed system that accommodates the needs of adjoining neighborhoods. The applicant shall comply with the Town of Mamakating procedures and standards for establishment or extension of a Town water and/or wastewater treatment district should the proposed project require establishment or extension of a Town district. Gray water systems and water-saving devices shall be used to the maximum extent to limit water consumption. In the event that a Town-endorsed water and Town-endorsed sewer system are not provided, year-round occupancy units that will or may be owned separately from the ownership of the overall resort must be located on individual separate lots of adequate lot size and arrangement to accommodate the lawful and fully compliant installation of individual well and septic systems in the event that operation of any shared private utilities of the resort cease to properly operate. The sizing and arrangement of such individual lots shall consider soils, slopes, all applicable standards, and the requirements of construction and access.

- F. Specific design standards. Unless otherwise waived by the Town Planning Board, the application shall demonstrate compliance with the following design standards:
- (1) Residential uses. A variety of residential dwelling types are permitted by right within a PRC. These include, but are not limited to, single-family detached and attached dwellings and multiple residences.
  - (2) Lodging facilities, hotels and motels. All lodging facilities, hotels and motels within a PRC shall meet the design standards contained in § 199-26T(3) through (7). Said facilities shall be designed and operated for transient occupancy only.
  - (3) Dude ranches. The site plan shall illustrate the general location of all horse trails. To the extent practicable, clear-cutting, or removal of mature trees, shall be discouraged in the design of trails. The site plan shall indicate the proposed width of horse trails to be established. The location of stables, the storage of manure, and other components of the facility shall meet all applicable state agricultural and health standards.
  - (4) Golf courses.
    - (a) Turf management and water quality assurances. As part of an application for site plan approval, the applicant shall submit a turf management plan and an integrated pest management plan specific to the operation and maintenance of the proposed golf course. The plans shall be prepared in accordance with any guidelines established by the New York State Department of Environmental Conservation and shall take into account guidelines promulgated by the United States Golf Association. These plans will include best management practices to prevent or minimize adverse impacts of chemical applications on the groundwater and surface water resources associated with the golf course. In assuring compliance with the same, the Planning Board may require the establishment of a monitoring program to protect the water quality of groundwater and water resources, the cost to be born by the applicant.
    - (5) Existing natural features, such as streams, rock outcrops, topsoil, trees and shrubs shall be preserved and incorporated in the landscaping of the development to the maximum extent practicable. Buffers along water bodies and/or wetland areas shall conform to standards set forth by the New York State Department of Environmental Conservation (DEC) and the Army Corps of Engineers. As a general guideline, multiple stream crossings should be avoided and stream corridors should remain forested to protect water quality and avoid soil erosion.
    - (a) Buildings and structures shall be set back, and no disturbance shall be permitted, within a minimum distance of 50 feet from the banks of any stream regulated by the New York State DEC unless the applicant has obtained a stream disturbance permit from New York State DEC. Along streams that are not regulated by New York State DEC, buildings and structures shall be set back, and no disturbances shall be permitted, within a minimum distance of 25 feet from the stream's bank. Stream buffers shall be included as practicable in the overall PRC design to protect the quality of surface water runoff which ultimately discharges to the Bashakill natural area and recharges the town's groundwater upon which the Town and village residents rely for water supply.
    - (b) Where the Planning Board finds, based on the conclusions of the ecological survey and in consultation with New York State DEC, that a proposed development may have an impact on a rare, threatened or endangered species, or a species of special concern, the Planning Board may require additional undisturbed buffers or may require relocation or reduction in development density or intensity to mitigate potential impacts.
  - (6) Maximum development height. The maximum height for buildings and structures within the stated location shall be as follows:

- (a) Six stories not to exceed 60 feet for resort conference centers, lodging facilities, condo-hotels, hotels and motels.
  - (b) For all other uses, the maximum building height shall be as per the requirements contained in Schedule II.
- (7) Optional increase in development height. The Town Planning Board may approve an increase in maximum development height for resort conference centers, lodging facilities, condo-hotels, hotels and motels of up to 10 stories not to exceed 100 feet.
- (a) The Planning Board, in its deliberations, shall determine that said increase shall have the following benefits:
    - [1] The architecture of any proposed buildings that are permitted an increase in development height shall be of superior visual quality and its design compatible with the surrounding rural character of the community and its natural surroundings.
    - [2] The location and design of the structures shall minimize potential visual impacts to surrounding neighborhoods.
  - (b) The following information shall be submitted by the applicant to assist the Planning Board in its decisionmaking:
    - [1] A zone of visibility map shall be provided in order to determine locations from which the building may be seen.
    - [2] A computerized, three-dimensional visual simulation of the proposed structures and/or buildings which are expected to exceed 40 feet in height. Visual simulations and other appropriate graphics shall be provided illustrating views from key viewpoints within the Town and its villages, including but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Planning Board shall determine the appropriate key locations from which visual simulations prior to their preparation.
    - [3] An architectural rendering of each elevation of the structures and/or buildings which are projected to exceed the forty-foot height limit. The renderings and other support information shall demonstrate how the structures and/or buildings will be compatible with the surrounding character of the natural and built environment.
    - [4] A description and illustrative representation of the site disturbance and amount of clearing associated with the proposed development.
    - [5] Such other information as the Board shall request from time to time.
  - (c) Design. The Planning Board, in its decisionmaking, shall utilize the following general design principles:
    - [1] Windows. Ribbon glass is not permitted. Windows shall incorporate shutters, bracketed tops, entablatures or pediments, keystone or flat lintels, multi-paned glazing, and other decorative elements to provide visual interest and break up any monotony of the building facade.
    - [2] Building facade. The building facade shall incorporate varied materials to provide texture and visual interest. Decorative details which use wood, timbers, stone, brick, and similar natural materials shall be incorporated into the design to provide a rural, rustic character to the building.

- [3] Lighting. Exterior lighting above six stories shall be discouraged to limit impacts to the night sky. Windows shall include glazing which minimizes the window's illumination and impacts to the night sky.
- [4] Building massing. The building's mass shall be varied, and the Planning Board may require alternating heights, square or round towers, rooftop cupolas, oriels, chimneys, building wings, and setbacks and breaks in the plane of building walls to achieve variations in building massing.
- [5] Rooflines. In order to avoid a monotonous roofline, the roofline shall be varied using alternating roof pitches, a combination of side and front gables, dormers, decorative parapets, or other elaborations that achieve the same effect. Flat roofs are not permitted. Roofs shall use darker, earthtone colors to minimize visibility.
- [6] Building color. The Planning Board may require that the building be designed with darker, earthtone colors to limit the visibility of the structure.
- (8) The arrangement, character, extent, width, grade and location of all streets shall be considered in relation to existing and planned streets, topography, and public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by said street, whether private or public. Streets shall conform to Town of Mamakating street and road specifications. A pedestrian system shall be provided to link guest units to other on-site activities.
- (9) Internal road access. All uses shall have access to a public or private street except residences which need no frontage on a street but must have access thereto via a court, walkway or other area dedicated to public use or owned and maintained by a homeowners' association or other entity legally charged with maintenance of common areas.
- (10) Primary road access. Primary transportation access serving the site shall be on an improved public road with traffic capacity suitable to handle additional volumes created by the proposed development. The Planning Board may limit and restrict the location of access points where said access would require reliance on Town roads, particularly where those roads do not currently meet Town specifications. The Planning Board may restrict access points on Town roads where reasonable opportunities for access to the proposed site exist on state or county highways.
- (11) Emergency services. The applicant shall demonstrate to the satisfaction of the Planning Board that adequate emergency access is provided to the site. Police, fire, ambulance and other agencies that are required to service the proposed development shall be provided with a copy of the site plan application for their review and comment, and the Planning Board shall take said comments into consideration in its deliberations. The Planning Board, as a condition of approval, may require the applicant to supplement emergency service protection, including the provision of on-site facilities, provision of private security or other private emergency services, if it is demonstrated that existing services, facilities or equipment is inadequate to properly provide emergency protection.
- (12) Building area. The location and arrangement of all structures shall be in harmony with the intent of this district. The location and arrangement of structures shall not be detrimental to existing or prospective adjacent development or to the existing or prospective development of the town.
- (13) Boundary setbacks, buffer areas, screening and transitional uses. No building, parking area or road shall be permitted within 50 feet of any property line in order to minimize visual and noise impacts on adjoining parcels. A combination of fencing, natural, undisturbed areas and/or supplemental plantings shall be provided to create a transitional separation between surrounding existing and prospective uses and the proposed development. Buildings exceeding 50 feet in height shall be set back a minimum distance equal to the height of the structure.

- (14) Off-street parking and loading requirements. Off-street parking and loading facilities for any uses or structures in a PRC shall conform to the requirements listed in Schedule II. Parking areas shall be broken up to avoid the appearance of significant expanses of impervious surfaces and amply landscaped. Parking garages, if required, shall be integrated and directly attached to the principal resort building structure, and its facade shall be consistent with and integrated with the building facade for the resort hotel.
  - (15) Common property in the PRC. Common property in the PRC is a parcel or parcels of land, and privately owned road or roads, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. Arrangements satisfactory to the Town Board upon the review and recommendations of the Attorney for the Town must be made for the improvement, operation, and maintenance of such common property and facilities, including private streets, drives, parking and recreation areas.
  - (16) Utilities. Utilities shall be designed, installed and operated in accordance with industry standards and best management practices. Plans for utilities shall be reviewed by the Town Engineer, and installed and operated in accordance with required permits. To improve the visual quality of the environment and reduce disruption of service during inclement weather, utilities, including electric and cable, shall be installed underground.
  - (17) Stormwater management and erosion control plan. The applicant shall submit a stormwater management and erosion control plan and shall follow best management practices promulgated by the New York State Department of Environmental Conservation to adequately handle stormwater runoff and protect water quality. Stormwater management facilities, including detention or retention ponds, swales and other drainage features, shall be attractively landscaped. The project's stormwater management system shall allow zero net increase in the rate of stormwater runoff.
  - (18) Landscaping. All areas of the planned resort community shall be amply landscaped with a combination of decorative and native plant materials. A landscaping plan shall be submitted and approved as part of the PRC application.
  - (19) Lighting. On-site lighting shall be designed and installed in a manner that minimizes visual impacts to the night sky. A lighting plan depicting the level and intensity of illumination within the site and at the property boundary shall be submitted to the Planning Board with the application for site plan review. The level of illumination shall not exceed a minimum average horizontal level of .5 footcandle at the property boundary. Decorative lighting fixtures shall be incorporated into the overall design of the project; cobra-head light fixtures shall be discouraged.
  - (20) Signage. The applicant shall furnish a sign plan illustrating the location and design of on-site signs to be approved as part of the site plan. Signs shall be uniform and attractive in appearance.
  - (21) Additional site development standards. In addition to the standards set forth in this section, the applicant shall also comply with the appropriate design, site development plan and performance standards of this chapter and the Subdivision Regulations. However, where a conflict exists between the development standards contained in this section (i.e., § 199-18 et seq.) and any of the above, this section shall prevail.
- G. Application procedures. Site plan review and approval shall be conducted in accordance with the provisions contained in Article IX, Site Development Plan Review; provided, however, that a public hearing on the PRC application shall be required. The Planning Board shall cause the applicant to post notice on the subject property indicating the date, time, and location of the public hearing, and a brief description of the action being considered, at least 10 days prior the public hearing date. One notice shall be posted along each property line adjoining a road and shall be clearly visible from said road. Notices shall be affixed in a manner prescribed by the Planning Board. Said notice shall be removed following the close of the public hearing.

- H. Submission requirements. In addition to those elements normally required as part of a site plan or subdivision plan submission, the following additional information shall be submitted as part of the site plan application. Alternatively, these data may be submitted in conjunction with a draft environmental impact statement if one is prepared.
- (1) Traffic study, indicating the ability, in terms of capacity and geometry, of the internal and roadway network to accommodate traffic generated by the proposed development. The traffic study shall identify mitigation measures, if necessary, to minimize traffic impacts on Town roads and ensure adequate traffic flow through the community.
  - (2) Ecological survey, assessing the type and quality of ecological habitat on the project site and immediately adjoining properties, and a description of the flora and fauna determined through on-site field investigation. The applicant shall consult with the New York State DEC early in the application process to determine the likely presence of rare, threatened or endangered species as well as species of special concern, and the design of the PRC shall conform to any mitigations required to avoid impacts to said sensitive species. The ecological study shall take into consideration seasonal variations in determining the likely presence of species. To the maximum extent practicable, the design of the PRC shall maximize opportunities to provide a contiguous system of open space which may be linked to open space areas on adjoining parcels.
  - (3) Cultural resource survey, including a Stage 1A analysis, and, if necessary, subsequent stages of investigation, in accordance with methods and procedures promulgated by the New York State Office of Parks, Recreation and Historic Preservation.
  - (4) Market feasibility study, demonstrating the market demand for the proposed components of the PRC, and evidence to demonstrate the applicant's experience and financial capability to carry out the plan.
  - (5) Demographic analysis, identifying the number and type of housing and guest units to be constructed, the bedroom mix, and the anticipated year-round and seasonal population, including school children, to be generated, utilizing demographic multipliers derived from the market area which the proposed project will serve.
  - (6) Fiscal impact study and the assumptions upon which it is based to review the estimated municipal and school district costs, including capital and operating costs, and the services and ratables which might be anticipated for the development.
  - (7) A report demonstrating the effect of the introduction of a water supply system to service the PRC on off-site wells prepared by a hydrogeologist. The report will include data on existing and proposed on- and off-site well locations, well yield test and well pump data, well yield capacity, and aquifer recharge/water budget analysis. The potential impact on drawdown of surrounding wetland and water resources shall be documented.
  - (8) Stormwater pollution prevention plan. A stormwater pollution prevention plan consistent with the requirements of Chapter **160** and § **199-44** shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in § **199-44**. The approved site plan shall be consistent with the provisions of Chapter **160** and § **199-44**.
- I. SEQRA. An application for a PRC shall be deemed to constitute a Type I action, which may require the submission of a draft environmental impact statement (DEIS). The site plan application shall not be deemed complete until the Town Planning Board has either adopted a negative declaration under SEQRA or has accepted a DEIS as complete.
- J. Project phasing. If the project is to be phased, then a phasing plan shall be submitted and approved as part of the site plan application. The Planning Board, as a condition of site plan approval, may require that the project and ancillary improvements be phased in order to assure that the Town and

other community services may keep pace with the demands placed on these services as a result of the PRC development. The Planning Board may also approve a part or parts of the site plan in phases.

- K. Conditions. The Town Planning Board, at its discretion, may attach any reasonable conditions to site plan approval for a PRC as necessary to assure conformance of the PRC with the intent and objectives of these regulations and SEQRA.
- L. Site improvements. No certificate of occupancy shall be issued for construction of a planned resort community, or portion thereof, until the required improvements are installed in accordance with the approved site plan.

**§ 199-19 Supplemental use regulations for the RVP District.**

- A. Intent. Given the historic resort use of lands in proximity to New York State Route 17, areas of the RVP Zoning District are suited for limited mixed-use resort development. Use of these areas for limited mixed-use resort development will provide economic development activities consistent with the goals and objectives of the Town of Mamakating Comprehensive Master Plan for Conservation and Development.
- B. General design standards. The following standards are set forth to provide a balanced approach for continued use of a limited portion of the Shawangunk Ridge for a mix of resort-type uses while maintaining the visual integrity of this area of the town.
  - (1) Location. Development of mixed-use resorts shall only be permitted on properties within the RVP District which properties or portions thereof are located within 2,000 feet of an existing entrance and/or exit to New York State Route 17.
  - (2) Permitted uses. A limited mixed-use resort development consists of, at a minimum, a building or buildings used for guest overnight accommodations and recreational uses, including a golf course (subject to the design requirements contained in 199-26I), cross-country ski trails, horse and hiking trails, tennis and paddle ball courts, basketball courts, indoor or outdoor swimming pool and clubhouse. A limited mixed-use resort development may also include resort-related single-family detached structures or single-family attached (townhome) units subject to the design requirements contained in 199-26N(5)(a). The following uses are allowed accessory to the resort hotel, provided said uses are incorporated into the principal resort building: rooms for meetings and conferences, dining rooms, indoor fitness center, and administrative offices. Ancillary retail uses are permitted, provided they are limited to use by resort guests and the space for said uses is incorporated into the principal resort building. The Planning Board may limit the size and hours of operation of accessory uses to ensure conformity with the intent of these regulations.
  - (3) Ownership. The tract of land proposed for mixed-use resort development within the stated location may have one or more owners, and every application shall require the written consent of all individuals, firms, associations, syndicates, partnerships, or corporations with proprietary interest in the affected land, authorizing the applicant to act on behalf of the owner or owners in connection with all matters pertaining to the site plan application. In the case of multiple ownership, a plan once approved shall be binding on all owners, their successors and assigns.
  - (4) Utilities. Mixed-use resort projects located within the stated area shall be served by central water and central wastewater treatment systems discharging to the Shawangunk Kill watershed. Central water systems shall be constructed in accordance with standards and specifications as required by the New York State Department of Health, and central wastewater treatment systems shall be constructed in accordance with standards and specifications as required by the New York State Department of Environmental Conservation or standards and specifications promulgated by the Town of Mamakating, whichever are more protective of the environment. Where discharge to the Shawangunk Kill watershed is not possible and discharge to the Basher Kill watershed is proposed, the Planning Board shall require that the proposed quality of treatment is adequate to preclude

impacts to the ecology of the Basha Kill from nitrogen loading, pharmacological or chemical impacts even where State water quality standards are met. In developing utilities to service the proposed mixed-use resort, the applicant shall consider the infrastructure needs of adjoining neighborhoods and shall explore methods to develop a Town-endorsed system that accommodates the needs of adjoining neighborhoods. The applicant shall comply with the Town of Mamakating procedures for establishment or extension of a municipal water and/or wastewater treatment district should the proposed project require establishment or extension of a municipal district. Gray water systems and water-saving devices shall be used to the maximum extent to limit water consumption. In the event that a Town-endorsed water and Town-endorsed sewer system are not provided, year-round occupancy units that will or may be owned separately from the ownership of the overall resort must be located on individual separate lots of adequate lot size and arrangement to accommodate the lawful and fully compliant installation of individual well and septic systems in the event that shared private utilities of the resort cease to properly operate. The sizing and arrangement of such individual lots shall consider soils, slopes, all applicable standards, and the requirements of construction and access.

- (5) Minimum lot area. The minimum lot area for development of mixed-use resorts shall be 200 contiguous acres. For purposes of these provisions, property in the same ownership but separated only by a road or utility easement shall be deemed to be contiguous; however, property separated by other lands not in the same ownership shall be deemed to be noncontiguous. As a result of the large minimum lot area requirement stated above, and the special requirements contained herein, § **199-35**, Environmental constraints, of this chapter shall not apply in the limited purpose of meeting the minimum lot area, but shall apply in determining maximum density and for any other purpose.
- (6) Maximum density.
  - (a) Year-round occupancy: dwelling units. The maximum density for a mixed-use resort is one dwelling unit per 7.5 net acres after deduction of environmental constraints pursuant to § **199-35**. No more than 50% of the net acreage shall be used to calculate the density for dwelling units suited for year-round occupancy. The applicant shall first calculate the total number of year-round dwelling units. The remaining acreage may be used to calculate the maximum number of guest units for the mixed-use resort.
  - (b) Transient occupancy: guest units. After the acreage used to calculate year-round occupancy is subtracted from the total net acreage of the parcel, the maximum number of guest units shall be established. Guest units shall be permitted at a density of 1.50 guest units per net acre after deduction of environmental constraints pursuant to § **199-35**.
  - (c) A guest unit is a lodging unit, motel unit, condo-hotel unit, bungalow unit, villa unit or similar tourist accommodation unit, designed and maintained for transient occupancy only. The Planning Board shall have the authority to impose conditions to ensure that guest units maintain their transient nature, including conditions on the design of the guest units, e.g., limitations on use of kitchens and kitchenettes, washers and dryers, limitations on the duration of visitor stays, maintenance of visitor guest books, the filing of covenants and restrictions, and similar conditions.
- (7) Maximum development coverage. Maximum development coverage shall not exceed 25% of the entire site.
- (8) Maximum development height. The maximum height for building and structures within the stated location shall be as follows:
  - (a) Forty feet for resort conference centers, lodging facilities, condo-hotels, hotels and motels.
  - (b) Thirty feet for all other uses, including residential dwellings.



- (9) Optional increase in development height. The Town Planning Board may approve an increase in maximum development height for resort conference centers, lodging facilities, condo-hotels, hotels and motels of up to eight stories not to exceed 80 feet.
- (a) The Planning Board, in its deliberations, shall determine that said increase shall have the following benefits:
- [1] The architecture of any proposed buildings that are permitted an increase in development height shall be of superior visual quality and its design compatible with the surrounding rural and rustic character of the ridgeline and its environs.
  - [2] The resulting design reduces overall disturbance to the project site, especially in areas where sensitive ecological habitat has been documented.
  - [3] The buildings meet LEED Silver standards for energy efficiency or equivalent building energy efficiency scoring.
- (b) The following information shall be submitted by the applicant to assist the Planning Board in its decisionmaking:
- [1] A zone of visibility map shall be provided in order to determine locations from which the building may be seen.
  - [2] A computerized, three-dimensional visual simulation of the proposed structures and/or buildings which are expected to exceed 40 feet in height. Visual simulations and other appropriate graphics shall be provided illustrating views from key viewpoints within the Town and its villages, including but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Planning Board shall determine the appropriate key locations from which visual simulations prior to their preparation.
  - [3] An architectural rendering of each elevation of the structures and/or buildings which are projected to exceed the forty-foot height limit. The renderings and other support information shall demonstrate how the structures and/or buildings will be compatible with the surrounding character of the natural and built environment.
  - [4] A description and illustrative representation of the site disturbance and amount of clearing associated with the proposed development.
  - [5] Such other information as the Board shall request from time to time.
- (c) Design. The Planning Board, in its decisionmaking, shall utilize the following general design principles:
- [1] Windows. Ribbon glass is not permitted. Windows shall incorporate shutters, bracketed tops, entablatures or pediments, keystone or flat lintels, multi-paned glazing, and other decorative elements to provide visual interest and break up any monotony of the building facade.
  - [2] Building facade. The building facade shall incorporate varied materials to provide texture and visual interest. Decorative details which use wood, timbers, stone, brick, and similar natural materials shall be incorporated into the design to provide a rural, rustic character to the building.
  - [3] Lighting. Exterior lighting above four stories shall be discouraged to limit impacts to the night sky except as required by the Federal Aviation Administration. Windows shall include glazing which minimizes the window's illumination and impacts to the night sky. All on-site lighting shall be full-

cutoff fixtures approved by the International Dark Sky Association, or equivalent certifying organization.

- [4] Building massing. The building's mass shall be varied, and the Planning Board may require alternating heights, square or round towers, rooftop cupolas, oriels, chimneys, building wings, and setbacks and breaks in the plane of building walls to achieve variations in building massing.
- [5] Rooflines. In order to avoid a monotonous roofline, the roofline shall be varied using alternating roof pitches, a combination of side and front gables, dormers, decorative parapets, or other elaborations that achieve the same effect. Flat roofs are not permitted. Roofs shall use darker, earthtone colors to minimize visibility.
- [6] Building color. The Planning Board may require that the building be designed with darker, earthtone colors to limit the visibility of the structure.
- [7] Architecture. The Planning Board shall consider the building characteristics and features of Mohonk Mountain House as a model of rural or rustic character. Nothing herein, however, shall limit the Planning Board from approving other designs that similarly complement the rural and rustic character of the Town of Mamakating.
- (10) Existing natural features, such as streams, rock outcrops, topsoil, trees and shrubs shall be preserved and incorporated in the landscaping of the development to the maximum extent practicable. Buffers along water bodies and/or wetland areas shall conform to standards set forth by the New York State Department of Environmental Conservation (DEC) and the Army Corps of Engineers. As a general guideline, multiple stream crossings should be avoided and stream corridors should remain forested to protect water quality and avoid soil erosion.
  - (a) Buildings and structures shall be set back, and no disturbance shall be permitted, within a minimum distance of 50 feet from the banks of any stream regulated by the New York State DEC unless the applicant has obtained a stream disturbance permit from New York State DEC. Along streams that are not regulated by New York State DEC, buildings and structures shall be set back, and no disturbances shall be permitted, within a minimum distance of 25 feet from the stream's bank. Stream buffers shall be included as practicable in the overall PRC design to protect the quality of surface water runoff which ultimately discharges to the Bashakill natural area and recharges the town's groundwater upon which the Town and village residents rely for water supply.
  - (b) Where the Planning Board finds, based on the conclusions of the ecological survey and in consultation with New York State DEC, that a proposed development may have an impact on a rare, threatened or endangered species, or a species of special concern, the Planning Board may require additional undisturbed buffers or may require relocation or reduction in development density or intensity to mitigate potential impacts.
- (11) Emergency services. The applicant shall demonstrate to the satisfaction of the Planning Board that adequate emergency access is provided to the site. Police, fire, ambulance and other agencies that are required to service the proposed development shall be provided with a copy of the site plan application for their review and comment, and the Planning Board shall take said comments into consideration in its deliberations. The applicant may be required to supplement emergency service protection, including the provision of on-site facilities, if it is demonstrated that existing services, facilities or equipment are inadequate to properly provide emergency protection.
- (12) Building area. The location and arrangement of all structures shall be in harmony with the intent of this district. The location and arrangement of structures shall not be detrimental to existing or prospective adjacent development or to the existing or prospective development of the town.

- (13) Boundary setbacks, buffer areas, screening and transitional uses. No building, parking area or road shall be permitted within 50 feet of any property line in order minimize visual and noise impacts on adjoining parcels. A combination of fencing, natural, undisturbed areas and/or supplemental plantings shall be provided to create a transitional separation between surrounding existing and prospective uses and the proposed development.
- (14) Off-street parking and loading requirements. Off-street parking and loading facilities for any uses or structures shall conform to the requirements listed in Article VII, Parking Standards. Parking areas shall be broken up to avoid the appearance of significant expanses of impervious surfaces and amply landscaped. A parking garage, if required, shall be integrated and directly attached to the principal resort building structure, and its facade shall be consistent with and integrated with the building facade for the resort hotel.
- (15) Common property. Common property is a parcel or parcels of lands, and privately owned road or roads, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. Arrangements satisfactory to the Town Board upon the review and recommendations of the Attorney for the Town must be made for the improvement, operation, and maintenance of such common property and facilities, including private streets, drives, parking and recreation areas.
- (16) Utilities. Utilities shall be designed, installed and operated in accordance with industry standards and best management practices. Plans for utilities shall be reviewed by the Town Engineer, and installed and operated in accordance with required permits. To improve the visual quality of the environment and reduce disruption of service during inclement weather, utilities, including electric and cable, shall be installed underground.
- (17) Stormwater management and erosion control plan. The applicant shall submit a stormwater management and erosion control plan and shall follow best management practices promulgated by the New York State Department of Environmental Conservation to adequately handle stormwater runoff and protect water quality. Stormwater management facilities, including detention or retention ponds, swales and other drainage features, shall be attractively landscaped.
- (18) Landscaping. All areas of a limited mixed-use resort development shall be amply landscaped with a combination of decorative and native plant materials. A landscaping plan shall be submitted and approved as part of the site plan application.
- (19) Lighting. On-site lighting shall be designed and installed in a manner that minimizes visual impacts to the night sky. A lighting plan depicting the level and intensity of illumination within the site and at the property boundary shall be submitted to the Planning Board with the application for site plan review. The level of illumination shall not exceed a minimum average horizontal level of .5 footcandle at the property boundary. Decorative lighting fixtures shall be incorporated into the overall design of the project; cobra-head light fixtures shall be discouraged. All on-site lighting shall be full-cutoff fixtures approved by the International Dark Sky Association, or equivalent certifying organization.
- (20) Signage. The applicant shall furnish a sign plan illustrating the location and design of on-site signs to be approved as part of the site plan. Signs shall be uniform and attractive in appearance.
- (21) Additional site development standards. In addition to the standards set forth in this section, the applicant shall also comply with the appropriate design, site development plan and performance standards of this chapter and the Subdivision Regulations. However, where a conflict exists between the development standards contained in this section (i.e., § 199-19 et seq.) and any of the above, this section shall prevail.

- C. Application procedures. Site plan review and approval shall be conducted in accordance with the provisions contained in Article **IX**, Site Development Plan Review; provided, however, that a public hearing on the mixed-use resort application shall be required. The Planning Board shall cause the applicant to post notice on the subject property indicating the date, time, and location of the public hearing, and a brief description of the action being considered, at least 10 days prior the public hearing date. One notice shall be posted along each property line adjoining a road and shall be clearly visible from said road. Notices shall be affixed in a manner prescribed by the Planning Board. Said notice shall be removed following the close of the public hearing.
- D. Submission requirements. In addition to those elements normally required as part of a site plan or subdivision plan submission, the following additional information shall be submitted as part of the site plan application. Alternatively, these data may be submitted in conjunction with a draft environmental impact statement if one is prepared.
- (1) Traffic study, indicating the ability, in terms of capacity and geometry, of the internal and roadway network to accommodate traffic generated by the proposed development. The traffic study shall identify mitigation measures, if necessary, to minimize traffic impacts on Town roads and ensure adequate traffic flow through the community.
  - (2) Ecological survey, assessing the type and quality of ecological habitat on the project site and immediately adjoining properties, and a description of the flora and fauna determined through on-site field investigation. The applicant shall consult with the New York State DEC early in the application process to determine the likely presence of rare, threatened or endangered species as well as species of special concern, and the design of the resort shall conform to any mitigations required to avoid impacts to said sensitive species. The ecological study shall take into consideration seasonal variations in determining the likely presence of species. To the maximum extent practicable, the design of the resort development shall maximize opportunities to provide a contiguous system of open space which may be linked to open space areas on adjoining parcels.
  - (3) Cultural resource survey, including a Stage 1A investigation and, if necessary, subsequent stages of investigation in accordance with methods and procedures promulgated by the New York State Office of Parks, Recreation and Historic Preservation.
  - (4) Market feasibility study, demonstrating the market demand for the proposed components of the resort development, and evidence to demonstrate the applicant's experience and financial capability to carry out the plan.
  - (5) Demographic analysis, identifying the number and type of housing and guest units to be constructed, the bedroom mix, and the anticipated year-round and seasonal population, including school children, to be generated, utilizing demographic multipliers derived from the market area which the proposed project will serve.
  - (6) Fiscal impact study and the assumptions upon which it is based to review the estimated municipal and school district costs, including capital and operating costs, and the services and rates which might be anticipated for the development.
  - (7) A report demonstrating the effect of the introduction of a water supply system to service the resort on off-site wells prepared by a hydrogeologist. The report will include data on existing and proposed on- and off-site well locations, well yield test and well pump data, well yield capacity, and aquifer recharge/water budget analysis. The potential impact on drawdown of surrounding wetland and water resources shall be documented.
- E. SEQRA. An application shall be deemed to constitute a Type I action, which may require the submission of a draft environmental impact statement (DEIS). The site plan application shall not be

deemed complete until the Town Planning Board has either adopted a negative declaration under SEQR or has accepted a DEIS as complete.

- F. Project phasing. If the project is to be phased, then a phasing plan shall be submitted and approved as part of the site plan application. The Planning Board, as a condition of site plan approval, may require that the project and ancillary improvements be phased in order to assure that the Town and other community services may keep pace with the demands placed on these services as a result of the development. The Planning Board may also approve a part or parts of the site plan in phases.
- G. Conditions. The Town Planning Board, at its discretion, may attach any reasonable conditions as necessary to assure conformance with this section and SEQRA.
- H. Site improvements. No certificate of occupancy shall be issued for construction of a resort development, or portion thereof, until the required improvements are installed in accordance with the approved site plan.

**§ 199-20 Design guidelines for commercial and industrial districts.**

- A. Intent. The Town of Mamakating wishes to protect its unique character, which is a combination of spectacular natural features, early building traditions and its cultural heritage. Traditionally, commercial and industrial buildings were located in the Town's villages and hamlet centers. Over time, the unique features of the commercial buildings in the Town helped to define its character. These features can also provide direction for outlying commercial/industrial development, while it is understood that they will be adapted in different ways. The community wishes to respect the design traditions of its past within its commercial districts while supporting the unique identity of these areas. It also wants to allow for creativity in design. Within its AD Airport Development District, the community wishes to provide design guidelines that ensure that industrial and office developments are designed in a manner that respects the character of the community and does not detract from its natural environment. These design guidelines are the outgrowth of recommendations within the Town's Comprehensive Master Plan. They shall apply to all developments within the Town's VA Village Adjacent, HC Hamlet Center, and AD Airport Development Districts that are subject to § **199-45**, Site plan review and approval, and § **199-26**, Individual standards for special uses.
- B. Objectives. The Planning Board, in its decisionmaking, shall utilize the general design principals contained within the Design Guidelines for Commercial/Industrial Districts which are attached hereto as Schedule III.
- C. Design guidelines adopted. To encourage high-quality and aesthetically pleasing design of commercial and industrial properties within the Town's VA Village Adjacent, HC Hamlet Center, and AD Airport Development Districts, the Town of Mamakating hereby appends the document entitled "Design Guidelines," dated April 2006, to this chapter as Schedule III. This document shall provide general guidelines and principles appropriate to the site design of commercial and industrial properties as well as the architectural features of commercial and industrial buildings, along with visual examples of attractive and effective application of such design principles for use in the development of site plan applications, building elevation and as a basis for the Planning Board's review of such applications.

**§ 199-21 Solar energy systems.**

- A. Authority. This solar energy law systems zoning law is adopted pursuant to § 261-263 of the Town Law of the State of New York, which authorize the Town of Mamakating to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.
- B. Statement of purpose.

- (1) This section is adopted to advance and protect the public health, safety, and welfare of the Town of Mamakating, including:
  - (a) Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
  - (b) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and
  - (c) Increasing employment and business development in the region by furthering the installation of solar energy systems.
- C. Definitions.

#### **BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM**

A combination of photovoltaic building components integrated into any building envelope system, such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

#### **GROUND-MOUNTED SOLAR ENERGY SYSTEM**

A solar energy system that is anchored to the ground or attached to a pole or other mounting system.

#### **LARGE-SCALE SOLAR ENERGY SYSTEM**

A solar energy system that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption.

#### **QUALIFIED SOLAR INSTALLER**

A person who possesses skills and knowledge related to the construction and operation of solar energy systems, equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible solar installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purpose of this definition.

#### **ROOF-MOUNTED SOLAR ENERGY SYSTEM**

A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption.

#### **SITE**

The area within which or upon which a solar energy system is constructed, used or operated.

#### **SMALL-SCALE SOLAR ENERGY SYSTEM**

A solar energy system that is ground mounted and produces energy primarily for the purpose of producing electricity for onsite consumption.

#### **SOLAR ACCESS**

Space open to the sun and clear of overhangs or shade so as to permit the use of a solar energy system.

## **SOLAR ENERGY EQUIPMENT**

Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

## **SOLAR ENERGY SYSTEM**

Solar collectors, modules' controls, energy storage devices, and other materials, hardware and equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation, and distributed, including the solar access necessary for the system to operate as designed, and any areas of land that are disturbed or cleared for construction, use or operation, to provide or maintain the solar access, access drives and any accessory or appurtenant structures. For the purpose of this chapter a solar energy system does not include a solar energy system of four square feet or less in size.

## **SOLAR PANEL**

A device for the direct conversion of solar energy into electrical energy.

- D. Applicability. The requirements of this law shall apply to all solar energy systems installed or modified after its effective date, except this law shall not apply to building-integrated photovoltaic systems or to general maintenance and repair of solar energy systems.
- E. General permit, inspection and operation requirements.
- (1) Application for and issuance of a building permit shall be required prior to installation of a solar energy system.
  - (2) A solar energy system shall be designed and installed in accordance with all applicable laws, codes and regulations, including but not limited to the New York State Uniform Fire Prevention and Building Code and other state Code provisions.
  - (3) All solar energy system installations must be performed by a qualified solar installer.
  - (4) Prior to operation, electrical connections must be inspected by the Town building inspector and by a qualified electrical inspector acceptable to the Town. Any connection to the public utility grid must meet all applicable Town, state, federal and public utility laws, rules and regulations.
  - (5) All solar energy systems shall be maintained in good working order.
- F. Roof-mounted solar energy systems.
- (1) Roof-mounted solar energy systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to the roof of any lawfully permitted building or structure.
  - (2) Height. Roof-mounted solar energy systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
  - (3) A roof-mounted system may be mounted on any legal principal or accessory building or structure.
  - (4) Aesthetics. Roof-mounted solar energy system installations shall incorporate the following design requirements:

- (a) When feasible, as determined by the code enforcement officer, panels facing the front yard should be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
- (5) Roof-mounted solar energy systems that use the energy onsite or offsite shall be exempt from site plan review.
- (6) The applicant shall file a New York State Unified Solar Permit (USP) application and pay all fees to obtain a building permit.

G. Small-scale solar energy systems.

- (1) Small-scale solar energy systems are permitted as accessory structures in all zoning districts subject to the requirements set forth in Subsection **G(3)** below.
- (2) Small-scale solar energy systems must obtain site plan approval from the Planning Board, unless the code enforcement officer determines that the solar energy system will not be visible, due to year-round vegetation screening or topography, from a public or private road or from adjoining properties. If such determination is made, site plan approval is not required, and Subsection **G(3)(b)** below shall not apply, but issuance of a building permit is required. The applicant shall file a New York State USP application, if applicable.
- (3) The following requirements shall apply to all small-scale solar energy systems:
  - (a) Height and setbacks. Small-scale solar energy systems shall not exceed 12 feet in height and shall meet the setback requirements of the zoning district for accessory structures.
  - (b) A small-scale solar energy system shall not be placed in the front yard, or closer to the street line than the street wall of the principal structure, unless the applicant demonstrates to the satisfaction of the Planning Board that the proposed area is the only area where the solar energy system can reasonably function, and that appropriate screening from adjoining properties and from public and private roadways shall be provided. This Subsection shall not apply to a solar energy system permitted by the code enforcement officer pursuant to Subsection **G(2)** above.
  - (c) The solar energy system and related equipment shall be substantially screened from view from adjoining properties and from public and private roadways.
  - (d) Removal of unused solar energy system and equipment. The applicant and property owner must agree, in writing, to remove the solar energy system and all associated equipment and structures if the solar energy system ceases to be used for its intended purpose for 12 consecutive months. Removal of such unused system, equipment and structures shall be completed within three months thereafter. If the solar energy system is not completely removed within three months, the Town shall have the right and authority to enter upon the property and remove and dispose of the system. All costs of such removal, including, but not limited to, reasonable attorneys' fees, shall be charged to the property owner. If such costs are not paid, such charges shall be a lien upon the property and shall be assessed, levied and collected in the same manner as real property taxes.
  - (e) Lot coverage. The surface area covered by ground-mounted solar panels shall be included in total lot coverage for storm water management design purposes but not for development coverage purposes.

H. Large-scale solar energy systems.

- (1) Large-scale solar energy systems are permitted as a special permit use in all zoning districts, except the Ridge and Valley Protection (RVP) District, subject to special use permit and site plan approval by the Planning Board and subject to the following special use permit requirements and conditions.



- (2) A large-scale solar energy system shall not be permitted on a site unless at least 50% of the site has existing solar access for the proposed solar energy system prior to any land disturbance or tree clearing.
- (3) A large-scale solar energy system shall not be permitted on a site where 50% or more of the site contains any or all of the following sensitive areas:
  - (a) One-hundred-year flood hazard zones;
  - (b) Land within a federal or state-regulated wetland or wetland adjacent buffer area;
  - (c) Land containing slopes over fifteen-percent grade;
  - (d) Land containing significant or rare natural ecological communities as designated by the New York State Department of Environmental Conservation;
  - (e) Mature forested land, which is defined as a forested area where the canopy layer is comprised of at least 50% of trees having an average diameter at breast height of 15 inches or greater.
- (4) Special use permit requirements and conditions. In addition to all other site plan and special use permit requirements, the following requirements and conditions shall apply:
  - (a) The applicant shall submit a site map depicting any sensitive area listed in Subsection **H(3)** above; depicting ecological communities based on Edinger's Second Edition Ecological Communities of New York State; and showing and identifying all trees of eight-inch diameter or greater at breast height by species, condition of health and diameter at breast height.
  - (b) Large-scale solar energy systems shall not be constructed on any portion of a lot containing a sensitive area listed in Subsection **H(3)** above, except that where no practical alternative exists, the Planning Board may allow limited disturbance of such areas to provide vehicular or utility access or the installation of security fencing.
  - (c) Large-scale solar energy systems shall be sited to minimize disturbance of higher value ecological communities. For the purposes of defining ecological value, the Planning Board shall consider the quality of the community based on biodiversity and the absence or presence of invasive and non-native species. Established natural communities shall be given preference for preservation over areas of human disturbance or successional communities.
  - (d) No more than five acres of forested land, defined as a forested area where the canopy layer is comprised of at least 50% of trees having an average diameter at breast height of eight inches or greater, may be cleared in connection with the construction of a large-scale solar energy system.
  - (e) Ground cover under and between the rows of solar panels shall be low-maintenance, drought resistant, native, non-fertilizer-dependent flora.
  - (f) Roadways within the site shall not be constructed of impervious materials, and the site shall be designed to minimize the extent of roadway construction and soil compaction.
  - (g) Stormwater improvements shall be designed, constructed and maintained such that there is no net increase in the rate or volume stormwater runoff from the site.
  - (h) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.

- (i) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
- (j) Property operation and maintenance plan. Such plan shall describe continuing solar energy system repair and maintenance and property upkeep, such as mowing and trimming. The use of herbicides is prohibited.
- (k) The following dimensional requirements shall apply to large-scale solar energy systems:

<b>Dimension</b>	<b>Number of Feet</b>
Lot width	250
Front yard setback	100
Side yard setback (each)	75
Rear yard setback	75
Building height	35
Maximum height of solar collectors	12
Maximum height of fencing	7

- (l) The total area to be occupied by the solar energy system shall not exceed 20 acres.
- (m) All on-site power lines shall be installed underground unless the applicant demonstrates to the satisfaction of the Planning Board that another type of installation will not be visible to any neighbor or the public and such installation is no less protective of the environment.
- (n) All large-scale solar energy systems shall be enclosed by seven-foot-high perimeter fencing to prevent unauthorized access. There shall be a six-inch gap at the bottom of the fencing to allow small wildlife access to and from the site. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- (o) Appropriate screening shall be provided, as determined by the Planning Board in its sole direction, to screen the solar energy system and fencing from residential properties, public roads, private roads and private rights-of-way to the maximum extent practicable. The applicant shall provide a visual analysis to the Planning Board using line-of-sight profiles from public viewing locations determined by the Planning Board.
- (p) Buildings and structures associated with the solar energy system shall, to the maximum extent practicable, use materials, colors and textures that will blend the facility into the existing environment.
- (q) Solar panels and equipment shall be designed and sited so as to not reflect glare onto other properties, public roads or private roads or rights-of-way and shall not interfere with traffic or create a safety hazard.
- (r) Driveways servicing the site shall have safe sight distance and lawful and appropriate access for emergency vehicles and equipment. Access to the site shall be reviewed by the relevant emergency service provider(s).
- (s) The identification of the manufacturer and installer, and appropriate warning signs, shall be posted at the site, be clearly visible and weather-resistant.
- (t) The solar energy system and equipment shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar electric system. Materials

used for marking shall be weather-resistant. The markings shall be placed adjacent to the main service disconnect in a location clearly visible from where the power lever is located. If any of the standards in this subsection are more stringent than applicable provisions of the New York State Uniform Fire Prevention and Building Code (the State Code), these standards shall be deemed to be guidelines only, and the standards of the State Code shall apply.

- (u) The Planning Board may impose conditions on its approval of any special use permit under this section in order to enforce the standards referred to in this section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).
- (5) Decommissioning, removal and security.
  - (a) Decommissioning and removal plan. To ensure the proper removal of the solar energy system, a decommissioning plan shall be submitted as part of the application. Compliance with the approved decommissioning plan shall be a condition of a special permit authorized by the Planning Board. The decommissioning plan shall specify that after the solar energy system ceases operation for its intended purpose, the system shall be removed by the applicant, owner/operator of the system or property owner and by any subsequent owner/operator of the system or property owner. The plan shall demonstrate how the removal of the solar energy system and all related equipment and structures shall be conducted and how the remediation and restoration of soil and vegetation shall be conducted to return the property to substantially its condition prior to construction. The plan shall include a time line for execution. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimates shall take inflation into account. The decommissioning plan shall state the time period within which the solar energy system shall be removed and the property restored. Such time period shall be no greater than 90 days after the solar energy system has ceased to be used for its intended purpose for 12 consecutive months.
  - (b) Decommissioning and removal security; removal by Town.
    - [1] The applicant shall execute and file with the Town Clerk security in a form acceptable to the Town and in an amount sufficient to pay for the costs and expenses of removal and lawful disposal of the solar energy system and related equipment and structures and of remediation and restoration of the site. The amount is subject to approval by the Planning Board's professional engineer and the Planning Board. The security may be in the form of cash, letter of credit, another instrument acceptable to the Town's attorney and the Town Board, or a combination thereof. The security shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and lawfully disposed and site remediation and restoration is complete.
    - [2] The amount of the security shall be sufficient, during the first five years of operation, to cover the costs to remove and lawfully dispose of all equipment, structures and materials related to the solar energy system; costs to remediate and restore the site; and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process. Such amount shall be reevaluated every five years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.
    - [3] If a solar energy system is not removed from the property as required and within the ninety-day time frame set forth in Subsection **H(5)(a)** above, then the Town, its employees, contractors and agents shall have the right, and shall be permitted by the property owner and the owner of the solar energy system, to enter upon the property and remove and dispose the solar energy system and related equipment and structures and remediate and restore the site, all to the extent deemed necessary or desirable by the Town Board. The Town may utilize the proceeds of the security filed with the Town to pay for all such costs and related fees and expenses.
    - [4] If the amount of the security does not fully cover such costs, fees and expenses ("costs") or if the Town cannot recover adequate proceeds of the security without resorting to litigation, then the owner

and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered.

- [5] In addition to and not in lieu of any other remedies, all unpaid costs shall be assessed and levied against and constitute a lien on the real property until paid or otherwise satisfied and discharged and shall be collected in the same manner and at the same time as other Town real property taxes.
- [6] Equipment and parts maintenance. Any damaged or unused equipment and parts shall be removed from the premises within 30 calendar days or kept in a secured, designated storage area. Maintenance equipment, spare parts and petroleum products shall be kept in a secured, designated storage area.
- (6) Ownership changes. If the owner or operator of the solar energy system changes or the owner of the property changes, the special permit shall remain in effect, and all requirements of this § **199-21** and all conditions and requirements of the special permit shall be binding upon each succeeding owner and operator. However, a change in owner or operator shall not affect the decommissioning security, although a new owner may substitute other security in accordance with this section. A new owner or operator of the solar energy system shall immediately notify the Town Code Enforcement Officer of such change in ownership or operator.
- (7) Modifications. Any and all modifications, additions or deletions to the solar energy system, whether structural or not, shall be subject to prior site plan review and approval by the Planning Board, except routine repairs and maintenance shall not be subject to Planning Board review.

§ 199-22 (**Reserved**)

§ 199-23 (**Reserved**)

§ 199-24 (**Reserved**)

## Article V Special Use Permits

§ 199-25 **Special uses.**

- A. Approval of special use permits. The Town Board of the Town of Mamakating authorizes the Planning Board to review and grant special use permits as set forth herein.
- B. Applicability and standards. On application and after public notice and hearing, the Planning Board may authorize the issuance by the Building Inspector of permits for any of the special uses permitted in Schedule I in the district in which such use is proposed to be located. The Planning Board shall review an application's conformity with the individual standards for special use permits contained herein and shall also have the authority to impose such reasonable conditions and restrictions as are directly related to or incidental to the proposed special use permit. In approving any such use, the Planning Board shall further the expressed intent of this chapter and the accomplishment of the following objectives:
  - (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 in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
  - (3) That, in addition to the above, in the case of any use located in or directly adjacent to a residential 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 said residential district or conflict with the amount traffic of the neighborhood; and
- (b) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
- C. Waiver of requirements. The Town Board herein authorizes the Planning Board, when reasonable, to waive any of the individual standards for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver may be exercised in the event any such individual standards are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.
- D. Procedure. Applications for special use permits shall require site plan approval in accordance with the site plan regulations contained in this chapter, except that the Planning Board may waive site plan approval for a special use permit application that will involve no physical alteration or disturbance to a site. At a minimum, each application for a special use shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 200 feet of the lot. The Planning Board shall deem that a special use permit and site plan application are complete prior to the conduct of a public hearing on the application.
- E. Public hearing. The Planning Board shall conduct a public hearing within 62 days from the day a complete special use permit application is received. Public notice of said hearing shall be printed in a newspaper of general circulation in the Town at least five days prior to the date thereof. The Planning Board shall cause the applicant to post notice on the subject property indicating the date, time, and location of the public hearing, and a brief description of the action being considered, at least 10 days prior the public hearing date. One notice shall be posted along each property line adjoining a road and shall be clearly visible from said road. Notices shall be affixed in a manner prescribed by the Planning Board. Said notice shall be removed following the close of the public hearing.
- F. Notice to the applicant and the Sullivan County Planning Department. At least 10 days before the public hearing, the Planning Board shall mail notices thereof to the applicant and to the Sullivan County Planning Department, as required by § 239-m of the General Municipal Law, which shall be accompanied by a full statement of the matter under consideration, as defined therein.
- G. Decision. The Planning Board shall decide upon the application within 62 days after the public hearing is closed. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
- H. Filing. The decision of the Planning Board on the application shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy mailed thereof to the applicant.
- I. Existing violations. No special use permit shall be issued for property where the Building Inspector has found a violation of this chapter, and where such violation has not been corrected, unless the granting of such special use permit and site plan approval will result in the correction of said violation.
- J. Area variance. Where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an

area variance without the necessity of a decision or determination of an administrative official charged with enforcement of the zoning regulations.

- K. Deemed to be conforming. Any use for which a special use permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted. The expansion of any special use shall require reapproval of the special use permit by the Planning Board. For purposes of this subsection, expansion shall be interpreted to mean an increase in the area allocated to the special use, an increase in development coverage, or an increase in the intensity of use, e.g., an increase in traffic or need for on-site parking.
- L. Expiration of special use permits. A special use permit shall be deemed to have expired if said use ceases operation for a time period equal to or greater than 12 consecutive months for any reason or if construction, in accordance with the conditions of the special use permit, is not completed within 18 months from the date of issuance. In addition, the special use permit shall be deemed to have expired if all improvements are not maintained and all conditions and standards complied with throughout the duration of the special use permit.
- M. Inspections. In connection with the issuance of a special use permit, the Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this chapter and any conditions of the special use permit.
- N. Renewal. As a condition of approval, the Planning Board may require that special use permits be renewed periodically. Thirty days prior to the expiration of a special use permit, the applicant shall apply to the Building Inspector for renewal of the special use permit. The Building Inspector shall inspect the premises to verify that the conditions of the permit have been met. Upon a finding that there are no violations and no complaints have been lodged against the applicant, the special use permit shall be renewed by the Building Inspector for a time period equal to the original special use permit approval. However, where the Building Inspector finds that the applicant is in noncompliance with the special use permit, or that complaints have been lodged against the applicant, then such renewal shall require Planning Board approval and may be granted only following due public notice and hearing. Renewal may be withheld upon a determination by the Planning Board that such conditions as may have been prescribed by the Planning Board in conjunction with the issuance of the original permit have not been or are being no longer complied with. In such cases, a period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.
- O. Fees. Application for a special use permit shall be accompanied by a fee to be established in the fee schedule duly adopted by the Mamakating Town Board.
- P. Stormwater pollution prevention plan. A stormwater pollution prevention plan consistent with the requirements of Chapter **160** and § **199-44** shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in § **199-44**. The approved site plan shall be consistent with the provisions of Chapter **160** and § **199-44**.

#### § 199-26 **Individual standards for special uses.**

The following individual standards are hereby established for special use permits:

##### **A. Amusement, outdoor recreation facilities, subject to the following:**

- (1) Such uses shall include but not be limited to swimming pools, tennis courts, ice-skating rinks, ski runs and ski trails. However, the outdoor commercial use of motorized vehicles, e.g., snowmobile, ATV or motocross tracks, shall not be permitted.
- (2) No building or structure shall be located within 100 feet of any property line.

- (3) Unenclosed recreational facilities shall be located not less than 150 feet from any property line, except where greater distances are otherwise required herein, and shall be effectively screened from adjoining dwelling uses.
- (4) Illuminated signs and other lights shall be directed away or shielded from adjoining properties.
- (5) No public address system is permitted except where such system will not be audible at any property line.

**B. Membership clubs, rod and gun clubs, outdoor commercial shooting ranges, lodges and fraternal organizations catering exclusively to members and their guests, subject to the following:**

- (1) All buildings shall be a minimum of 50 feet from any property line.
- (2) The sum of all areas covered by principal and accessory buildings shall not exceed 20% of the lot area.
- (3) Any such uses shall occupy a lot with a minimum area of at least two acres; provided, however, that rod and gun clubs and outdoor commercial shooting ranges shall have a minimum lot area of 100 acres.
- (4) Within the structure there may be included retail sales for members and guests only.
- (5) The Planning Board shall review said applications to ensure adequate sewage disposal systems and parking facilities are provided.
- (6) As a condition of a special use permit for a rod and gun club or commercial shooting range, the Planning Board may establish hours of operation and maximum number of persons permitted on the lot and may require appropriate demarcation and/or fencing of the perimeter of the property to ensure that members do not trespass or compromise the safety of residents on adjoining properties.
- (7) Commercial outdoor shooting ranges shall be prohibited from using live animals in their activities.

**C. Gasoline filling station and auto-related repair, subject to the following:**

- (1) The minimum lot size for such service stations shall be 40,000 square feet, and the minimum street frontage shall be 200 feet. The required front yard shall be appropriately landscaped.
- (2) Entrance and exit driveways shall have an unrestricted width of not less than 20 feet nor more than 25 feet, shall be located not nearer than 15 feet from any property line or 50 feet from a street corner and shall be so laid out as to avoid the necessity of any vehicle leaving the property to back out across any public right-of-way or portion thereof.
- (3) Vehicle lifts or pits and all new and used parts or supplies shall be located within a building enclosed on all sides. Inoperable, unregistered or junk vehicles shall be stored in an area entirely surrounded by a fence and landscaping, if necessary, to adequately secure and effectively shield such use.
- (4) All service or repair of motor vehicles, other than such minor servicing as change of tires or sale of gasoline or oil, shall be conducted in a building fully enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
- (5) The storage of gasoline or flammable oils in bulk shall meet all state and/or federal regulations and shall be located fully underground and not nearer than 50 feet to any property line other than the street line.

- (6) No gasoline pumps shall be located nearer than 25 feet to any street line.
- (7) No building permit for a motor vehicle service station shall be issued within a distance of 200 feet of any school, church, hospital or place of public assembly designed for simultaneous use and occupancy by more than 50 persons, said distance to be measured in a straight line between the nearest points of each of the lots or premises, regardless of the district where either premises is located.
- (8) Gasoline filling stations shall not be permitted over high permeability soils in aquifer recharge areas, unless incorporating double-walled fuel storage tanks with leak detection, and which shall provide proof of tank lining inspection and leak detection operation by an accredited UST inspector every two years as an on-going condition of special permit compliance. In the event that the internal tank fails, the filling station will be required to remediate the tank within 90 days or as otherwise required by State, County or Federal Law, whichever is most restrictive.

**D. Bed-and-breakfast, subject to the following:**

- (1) **Applicability.** A bed-and-breakfast is permitted as an accessory use to a single-family residence in certain residential districts and nonresidential districts. A single-family residence must be in existence at the date of adoption of these regulations to become eligible to be a bed-and-breakfast home. Except as otherwise specified herein, the single-family residence shall be required to meet the bulk requirements for single-family residences within the applicable zoning district. For a residence located in a nonresidential zoning district, the bulk requirements for a single-family residence within the NR-1 Zoning District shall apply.
- (2) **Application submission.** In addition to the general requirements for special use permit approval, the applicant shall also submit:
  - (a) A sketch showing the floor plan of the home and the location of proposed guest rooms.
  - (b) A site plan delineating the location of the residence on the tax parcel, minimum setback distances, proposed parking areas, proposed screening, and any other information applicable.
  - (c) If a sign is proposed, a sign plan, including type and location of illumination, if proposed.
  - (d) A letter from the Building Inspector and/or Fire Inspector stating that there are no violations in existence at the time of application.
  - (e) A certification that the owner resides and will continue to reside within the residence while the special use permit is in effect. A change in owner occupancy shall require renewal of the special use permit.
  - (f) Proof of insurance to operate a bed-and-breakfast.
- (3) **Requirements and conditions of operation.**
  - (a) The bed-and-breakfast shall be the primary residence of the owner.
  - (b) The number of paying guests accommodated per night shall not exceed 10 guests, and no guest shall stay for a period exceeding 15 days. The bed-and-breakfast shall maintain a guest registry identifying the arrival and departure dates of guests.
  - (c) A maximum of two adult guests and accompanying minor children shall be allowed to occupy each guest bedroom, subject to fire safety standards.



- (d) There shall be no more than five bedrooms occupied by paying guests. Said rooms shall not be equipped with a kitchenette or other cooking devices.
- (e) As a minimum, one bathroom shall be provided for each two guest rooms. In addition, a separate bathroom shall be maintained for the owners of the single-family residence.
- (f) Each guest bedroom shall be equipped with a smoke detector alarm installed and maintained in a functional condition on or near the ceiling.
- (g) A bed-and-breakfast is permitted one sign, not to exceed two square feet, identifying the name of the facility. Illumination may be permitted, subject to Planning Board approval. The Planning Board shall take into consideration the proximity of adjoining residences and potential nighttime disturbance. Said sign shall not be illuminated between 9:00 p.m. and sunrise.
- (h) No parking space shall be located within the front yard. Parking spaces shall be set back a minimum distance of 15 feet from any side or rear lot line. A minimum of two spaces shall be provided for the single-family dwelling, plus a minimum of one off-street parking space shall be provided for each guest bedroom. Each space shall measure not less than nine feet by 18 feet in size. New parking areas required to meet these requirements shall consist of gravel to limit the introduction of impervious surfaces. Decorative gravel may be required where parking is visible from adjoining residences.
- (i) The Planning Board shall consider the need for landscaping to screen views from adjoining residences.
- (j) The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations. Accessory buildings detached from the principal dwelling shall not be used for the purpose of a bed-and-breakfast.
- (k) There shall be no more than two employees in addition to the owner.
- (l) Each facility shall be operated and maintained so as to preserve the character and integrity of the surrounding residential neighborhood.
- (m) It shall be documented that adequate water supply and sewage treatment capacity exists to handle additional demands placed on the dwelling.
- (4) Approval. A special use permit to operate a bed-and-breakfast shall be valid for one year from the date of issuance, subject to continuing compliance with the conditions of the special use permit and subject to continuing compliance with the New York State Uniform Fire Prevention and Building Code.
- (5) Permit renewal. The applicant may renew the permit for additional two-year time periods, subject to approval by the Planning Board and any fees applicable to the review of special use permit applications. The Planning Board shall notify the Building Inspector, 15 days prior to the meeting at which the renewal is being considered, who shall provide a description, in writing, of any changes that have occurred in the floor or site plan since the time the special use permit was approved or last renewed and a list of violations or complaints, if applicable. The Planning Board shall take the Building Inspector's report into consideration when rendering a decision.
- (6) Enforcement. The Building Inspector shall be given access to the premises for the purpose of making inspections as deemed necessary from time to time to ensure compliance with these regulations and with the New York State Uniform Fire Prevention and Building Code. Such inspections shall be conducted in accordance with procedures set forth in this chapter. Any facility operated in violation

of this chapter shall have its permit suspended on a first violation and revoked for a second violation. No permit shall be reinstated until the owner fully complies with the provisions of this chapter.

- (7) Registry. The Town Clerk shall maintain a record of bed-and-breakfasts, including the name of the owner, the address, the maximum occupancy of the establishment, and the date of special use permit approval.

**E. Cage-type poultry raising, subject to the following:**

- (1) The minimum lot area for such use shall be 25 acres for the first 30,000 birds or fewer housed on the site, plus three acres for each 2,000 birds in excess of 30,000.
- (2) A poultry house shall be located not closer than 300 feet from a public road, and no ventilating apparatus shall discharge fronting a public road.
- (3) A poultry house wall containing ventilating apparatus shall be located not closer than 300 feet to any side or rear yard, and a poultry house wall without ventilating apparatus shall not be located closer than 200 feet to any side or rear yard.
- (4) Accessory structures, other than dwellings, shall be located not closer than 150 feet to any property line. The yard requirements for an accessory residence shall conform to the regulations of the appropriate zoning district.
- (5) The maximum building height for a poultry house shall be 30 feet.
- (6) Each poultry house site shall provide a minimum of three months' capacity for the storage of organic fertilizer material. The construction of such storage shall conform to the standards recommended by the Cornell University School of Agriculture for such use.
- (7) The removal of poultry manure from a poultry housing site or storage area shall be by a vehicle providing a sealed storage container.
- (8) No disposal of chicken manure shall be permitted within 1,000 feet of any lake, stream, pond or any other impoundment or natural watercourse located within the Town of Mamakating and then only after a drainage plan of the area to be spread has been submitted to the Board which will assure that no effluent resulting from the spreading of poultry manure will in any way find its way into the aforementioned watercourses or water bodies.
- (9) The applicant shall submit a plan for the spreading and transportation of manure which shall be reviewed and approved by the Planning Board as part of the special use permit for this operation. Prior to approval of the plan, the Planning Board shall consult with the New York State Department of Health to ensure that said activities are performed in accordance with applicable Health Department regulations.
- (10) No spreading of poultry manure shall be made within 2,500 feet of any occupied structure or area or create a nuisance by corruption of the atmosphere through the emission of vile, noxious or offensive odors that may impair the comfortable enjoyment of said structures or areas.
- (11) Good housekeeping of fowl and grounds shall be practiced at all times. As a condition of the special use permit, the Planning Board may establish a schedule for the periodic inspection of the fowl and grounds by the Building Inspector or his designated representative.

**F. Composting, subject to the following:**

- (1) No activity on the site shall be located closer than 200 feet to a residence or residential zoning district boundary.
- (2) A Part 360 permit shall be secured from the New York State Department of Environmental Conservation (DEC).
- (3) Composting facilities are subject to the following operational requirements, in addition to those contained in Section 360-1.14 of DEC regulations:
  - (a) Only yard waste may be accepted at this type of composting facility.
  - (b) Compost areas located on soils with a coefficient of permeability greater than  $4 \times 10^3$  centimeters per second (six inches per hour) may be required to install groundwater monitoring wells or other monitoring devices to protect groundwater and surface water as determined by the New York State DEC.
  - (c) Drainage must be controlled to prevent leachate runoff from the site. Surface water drainage must be diverted away from the compost site.
  - (d) The operation of the facility must follow acceptable methods of composting which result in the aerobic biochemical degradation of the organic material received.
  - (e) The facility site must be graded to minimize any ponding.
  - (f) The windrow construction and turning frequency must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame.
  - (g) The minimum horizontal separation distances set forth in Section 360-4.4(d) of Part 360 of the DEC regulations also apply to yard waste composting facilities, except the minimum horizontal separation distance to a residence or place of business must be 200 feet. This requirement does not apply to composting facilities located at existing publicly owned treatment works (POTW).
  - (h) The facility must not be operated or constructed on floodplains unless provisions have been made to prevent the encroachment of floodwaters upon the facility.
  - (i) Composting must not occur in areas where the seasonal high groundwater is less than 24 inches from the ground surface or where the bedrock lies less than 24 inches below the ground surface.
  - (j) The composting facility must be operated to control vectors and odors.
  - (k) Upon completion of the composting cycle, the compost must receive a final aeration to ensure stability before distribution.
  - (l) The facility must be located on a suitable base to ensure stability and accessibility.
  - (m) An annual report must be submitted to DEC's central office and appropriate regional office within 120 calendar days after the anniversary date of the facility's permit to operate. The report must include, at a minimum:
    - [1] The type and quantity, by weight or volume, of waste received at the facility;
    - [2] The turning frequency (if applicable) and the timing and amount of any water addition;
    - [3] The quantity, by weight or volume, of compost produced;

- [4] Any monitoring that occurred during the operation;
  - [5] The quantity and timing of any seed material used;
  - [6] The quantity, by weight or volume, of compost removed from the facility; and
  - [7] A description of the end-product distribution and disposal system.
- (4) Permit applications for yard waste composting. Application for a special permit and site plan review shall be made to the Planning Board. In addition to the requirements set forth in Section 360-1.9 of the DEC regulations pertaining to engineering report contents, the engineering report submitted as part of application for an initial permit for a composting facility to compost exclusively yard waste must include the following:
- (a) A vicinity map (minimum scale of one inch equals 2,000 feet) that delineates the area within one mile of the composting site boundaries, the zoning and land use, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made features relating to the project.
  - (b) A site plan map (minimum scale of one inch equals 200 feet with five-foot contour intervals) that delineates the following:
    - [1] The location of the proposed composting area and boundary locations, and location of the compost facility within the site boundaries;
    - [2] A description of the composting facility drainage characteristics identifying the direction of both site run-on and runoff ditches and swales, together with any runoff controls that now exist or will be implemented with facility construction;
    - [3] A delineation of the composting staging and storage area;
    - [4] The location of access roads and on-site roads;
    - [5] The location of property boundaries and the names and addresses of all contiguous landowners;
    - [6] The location of all water supply wells, buildings, residences, surface water bodies, and drainage swales within 1,000 feet of the site. Identification of all buildings owned by the applicant or operator must be included; and
    - [7] Existing and proposed elevation contours and direction of prevailing winds.
  - (c) A map indicating regulated wetlands and floodplains within 1,000 feet of the site, if applicable.
  - (d) A description of the ultimate use for the finished compost and method for removal from the site and a plan for the disposal of finished compost that cannot be used in the expected manner due to poor quality or change in market conditions.
  - (e) A description of the operation of the facility, including:
    - [1] Schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;
    - [2] Daily traffic flow to and from the facility, including the number of trips by private or public collection vehicles and quantity of solid waste contained in each vehicle;

- [3] Procedure for unloading trucks, including frequency, rate, and method;
  - [4] Special precautions or procedures for operation during wind, heavy rain, snow and freezing conditions;
  - [5] Equipment used, including any shredding, mixing, screening, and turning equipment;
  - [6] The method used to collect and control surface water runoff at the site;
  - [7] A description of any seed material in terms of its quantity, quality, and frequency of use;
  - [8] Composting time duration, time period from initiation of the composting process to completion, and distribution;
  - [9] For windrow systems, the windrow construction, including width, length, and height;
  - [10] Method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;
  - [11] Site access control method;
  - [12] Fire-fighting procedures, including availability of water for fire fighting and for moisture addition to the piles; and
  - [13] For in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams.
- (f) The specific ownership or leasing arrangement of the facility.
  - (g) Personnel required and their responsibilities.
  - (h) A description and an identification of the surface soil characteristics for the proposed site area and depth to seasonal high groundwater and bedrock.
  - (i) A description of the composition of the yard wastes involved, the anticipated quantity of each type of material, and how each will be handled at the site.
  - (j) A description of any monitoring that will occur involving the composting process of the site.
- (5) A contingency plan must be developed to outline the steps that will be taken if unapproved wastes are delivered to the composting facility and in the event of odors, groundwater contamination, and other undesirable conditions.

**G. Dude ranch, subject to the following:**

- (1) For purposes of this chapter, the maximum number of horses shall be established based on the livestock density criteria provided in § 199-17.
- (2) A maximum of one guest unit per two acres shall be permitted. Guest units shall be provided in a central lodge. Communal dining and kitchen facilities shall be provided; kitchenettes shall not be permitted in individual guest rooms. As part of the special use permit, the applicant shall be required to provide architectural renderings and elevations of the proposed facility.
- (3) There shall be presented with the application for this permit a certificate of the State Department of Health approving of the source and method of treatment of the proposed supply of potable water.

- (4) There shall be presented with the application for this permit two copies of a map or plan of the system of sewage and waste disposal, which said copies shall bear the endorsement and approval of the State Department of Health.
- (5) One monument sign shall be permitted, not to exceed 25 square feet in area. The monument sign shall be made from natural materials, e.g., wood or stone.
- (6) The site plan shall illustrate the general location of all horse trails. To the maximum extent practicable, clear-cutting, or removal of mature trees, shall be discouraged in the siting of trails.
- (7) A swimming pool, tennis court, and similar active recreation facilities are permitted as accessory structures.

**H. Pre-existing non-conforming extractive operations. New extractive operations are prohibited in the Town of Mamakating. Extractive operations lawfully in existence on January 1, 2020 are allowed to continue. Authorized expansion of such lawfully existing operations is subject to issuance of a special use permit and the following requirements:**

- (1) Extractive operations shall not be conducted closer than 200 feet to the adjacent property. A location map which shows land to be quarried or mined and the location of adjacent properties, roads and natural features shall be filed with the Planning Board. A plan for the restoration of the land, including anticipated future use of the restored land, the proposed final topography indicated by contour lines of no greater interval than five feet, steps which will be taken to conserve the topsoil and the location of future roads, drainage courses or other improvements contemplated shall be submitted to the Planning Board for approval.
- (2) Upon approval of the plan, the Planning Board shall issue a special use permit for a period of two years. Application for renewal of the permit shall be made to the Board. The Board shall extend the permit from year to year if it finds that restoration of the landscape is proceeding at a pace commensurate with the earth removal operations.
- (3) One copy of the approved excavation plan shall be returned to the applicant by the Town Clerk, together with the special permit, upon the payment of a fee to cover all engineering and other costs directly attributable to the approval and office and field checking of the proposed soil mining operations.
- (4) In the operation of any quarry, sand, topsoil or gravel pit, the following shall be observed:
  - (a) No excavation, blasting or stockpiling of materials shall be located within 300 feet of any public road or other property line.
  - (b) No power-activated sorting machinery shall be located within 600 feet of any public road or other property line, and all such machinery shall be equipped with satisfactory dust-elimination devices.
  - (c) All excavation slopes in excess of 50% shall be adequately fenced as determined by the Building Inspector.
  - (d) Extension of a nonconforming quarrying operation shall not be permitted.
  - (e) Major excavating, grading or filling as herein defined shall not be permitted except with the approval of the Planning Board.
- (5) The applicant shall be required to furnish a performance bond, in an amount determined by the Planning Board, to be sufficient to guarantee completion of the finished grading and drainage plan.

Such bond shall be released only upon certification by the Building Inspector that all requirements, including the finished grading and drainage, have been satisfied.

- (6) There shall be no operations of any kind on Sundays nor between the hours of 7:00 p.m. and 7:00 a.m. on any other day.
- (7) Mining and excavation activities legally operating prior to the effective date of this chapter may continue to operate for a period of two years. Within this time period, a permit shall be requested for continuation of operations. The Planning Board may impose such conditions, in granting such permit, in order to bring the activity within substantial compliance with the provisions of this section.
- (8) The applicant shall obtain a mining permit, as applicable, from the New York State Department of Environmental Conservation.
- (9) Preexisting nonconforming uses. Preexisting extractive operations made nonconforming by the adoption of this chapter shall be permitted to continue as a nonconforming use in accordance with the provisions of this chapter. The Planning Board may approve the introduction or expansion of accessory processing operations which do not result in an increase in the geographic area previously approved for disturbance, provided the approval shall result in the abandonment of an existing nonconforming extractive operation located elsewhere within the Town of Mamakating.

**I. Golf courses, subject to the following:**

- (1) Accessory uses. The following uses shall be permitted as accessory uses to a golf course: clubhouse (including dining rooms, common rooms, pro shop, social rooms, kitchen and locker rooms), snack bar/refreshment stand, residences for employees engaged in the maintenance and operation of the golf course facility, putting greens, practice range, cart paths, parking lot, maintenance facility/garage, cart storage facility, water supply impoundment, and hazards.
- (2) The proposed golf facility shall be integrated with any existing development and land uses adjacent to the site, including safe locations for golf holes (tees, holes and greens) and practice areas, as related to adjacent roads, development and other neighboring site improvements.
- (3) Where a golf course is adjacent to, contains, or is within floodplains, open water, waterway corridors, hiking trails, flyways and associated buffers, linkages and conservation areas, the applicant may be required to provide and maintain an adequately designed walking/trail easement within the property open to the public in furtherance of the town's goal of linking open spaces in the community. The pedestrian easement shall be located so it does not interfere with play and shall be appropriately isolated from the general operation of the golf course. During the site development plan approval process, consideration shall be given to providing access to any required walking/trail easements.
- (4) Assurances shall be provided by the applicant that the necessary infrastructure and utilities, including sanitary disposal system, potable water and irrigation water, are available from on-site municipal or private systems. The provision of infrastructure and utilities shall not have a detrimental effect on groundwater or surface water resources.
- (5) The golf course shall have two safe and adequate access and egress points from one or more public roads. One of the two accesses may be provided for emergency access only if, in the determination of the Planning Board, said arrangement provides adequate access. The two means of access and egress shall be connected internally and may be achieved by use of a stabilized surface sufficient to allow passage by emergency vehicles.

- (6) Adequate provisions shall be made for solid waste collection and storage. All solid waste storage shall be adequately screened and buffered.
- (7) All lighting shall be designed to be directed downward and to avoid glare and spillover on adjacent properties. The maximum height of lighting standards shall not exceed 20 feet.
- (8) One monument sign not exceeding 40 square feet shall be permitted at the entrance to the golf course. All other signs shall be directional signs and shall not exceed four square feet. All signs, including size, location, materials and design, shall be approved as part of site plan approval.
- (9) Amplifier systems shall be designed so as not to be heard beyond the property lines.
- (10) Parking requirements. The number of parking spaces shall be as few as necessary to serve the golf course and accessory uses. The number shall be determined by a parking needs study to be conducted by the applicant and filed at the same time as the application. For private courses, the minimum number of spaces shall be in accordance with § **199-30D**.
- (11) A minimum buffer of 35 feet, consisting of planted materials, trees, berms, fences or combinations of the above, shall be located between buildings, parking, recreation facilities and the exterior property line to shield and block buildings, parking and recreational uses from errant golf balls.
- (12) A minimum vegetative buffer in accordance with § **199-37** shall be maintained between the stream and any turf area which is to be chemically treated. The buffer area shall be of sufficient size and design to protect the stream from chemicals carried by stormwater runoff.
- (13) Special events. Special events, such as tournaments, shall be approved by the Planning Board. There shall be assurances that adequate provisions will be made by the golf course to handle the crowd generated by such an event and to satisfactorily mitigate off-site impacts, including traffic management, transportation services, parking, trash removal and waste disposal, security and safety and sanitary effluent treatment. The golf course may be required to post a performance guaranty for these purposes. All local permissions and permits now or hereafter required for special events shall be obtained prior to the event.
- (14) Clearance of woods. The course shall be designed, to the extent possible, to preserve existing woodlands and wooded corridors. Clearance of mature woods shall not exceed 50% of the total acreage of land within the tract.
- (15) Turf management and water quality assurances. As part of the application for site plan approval, the applicant shall submit a turf management plan and an integrated pest management plan specific to the operation and maintenance of the proposed golf course. These plans shall be prepared in accordance with any guidelines established by New York State Department of Environmental Conservation and shall also take into account guidelines promulgated by the United States Golf Association. These plans will include best management practices to prevent or minimize adverse impacts of chemical applications on the groundwater and surface water resources associated with the golf course.
- (16) Assurances shall be provided that any adverse impacts on groundwater or surface water quality resulting from the golf course will be mitigated by the owner. The applicant shall provide for the monitoring of water quality of the groundwater and surface water resources associated with the golf course. The monitoring program, including the timing and frequency of testing and the identification of chemical parameters to be tested, shall be established at the time the integrated turf management plan and integrated pesticide and pest management plan are approved as part of the special use permit application. The applicant may be required to install water quality monitoring devices to continually monitor water quality. The Planning Board and applicant shall mutually agree to an independent consultant who shall be responsible for carrying out the monitoring program, and the



cost of the monitoring shall be borne by the applicant. The results and findings of any water quality monitoring shall be submitted by the owner to the Town for information purposes.

**J. Hotels and motels, subject to the following:**

- (1) The applicant shall first seek preliminary site plan approval from the Planning Board prior to obtaining any certificates or approvals for any water or wastewater treatment systems that may be used to service a hotel or motel. Following preliminary plan approval, and as a condition of special use permit approval, the applicant shall present to the Board a certificate of the State Department of Health approving of the source and method of treatment of the proposed supply of potable water.
- (2) There shall be presented with the application for this permit two copies of a map or plan of the system of sewage and waste disposal, which said copies shall bear the endorsement and approval of the State Department of Health.
- (3) No structure in such use shall be within 50 feet of any property line or within 100 feet of any watercourse.
- (4) The total number of guest units to be accommodated in a hotel or motel where all units are contained in the same structure shall not exceed one for each 4,000 square feet of lot area.
- (5) Within the total area of the lot, each principal building shall have the equivalent of lot area and width, yards and open spaces as follows: each principal building shall have appurtenant and adjacent thereto a portion of the total area of the lot to give it front and rear yards each not less than 25 feet in depth and side yards each not less than 15 feet in width.
- (6) If swimming facilities are proposed to be provided, plans showing the extent and location of such facilities and the proposed source of water and method of treatment, if any, shall be submitted with the application for the above permit, and such plans shall bear the approval of the State Department of Health.
- (7) No certificate of occupancy shall be issued for any such use until the Building Inspector has made a personal examination and satisfied himself that all of the requirements herein set forth have been complied with. No such use shall be used or occupied until a certificate of occupancy has been issued.
- (8) Such uses in existence and being operated as such at the time of the passage of this chapter shall not be subject to the above requirements. A nonconforming resort use abandoned for a period greater than two years shall be deemed to be discontinued, and the premises may not thereafter be used as a resort except on approval of the Zoning Board of Appeals as hereinafter provided for (§ 199-26T).

**K. Kennels, subject to the following:**

- (1) In addition to the minimum lot size, a minimum of 500 square feet shall be provided for each animal boarded for purposes of maintaining adequate indoor and outdoor space dedicated for their care.
- (2) Exercise pens and runs shall not be located within 200 feet of any lot line.
- (3) All facilities shall be permanently screened from surrounding properties.
- (4) In issuing the special permit, the permit shall stipulate the maximum number and type of animals to be boarded, harbored or trained.

**L. Mobile home parks. Mobile home parks in accordance with Town ordinances and subject to the following: only eight mobile home parks will be permitted in the Town of Mamakating.**

**M. Outdoor storage; junkyards. Any permitted use or special use which involves the outdoor storage of materials deemed by the Planning Board to constitute noxious materials or the creation of a junkyard shall require special use permit approval by the Planning Board. Outdoor storage of noxious materials and junkyards, subject to the following: Such uses and the operation thereof shall be governed by the following provisions and any other conditions as may be required by the Planning Board to protect the public health, safety, comfort, convenience and general welfare and especially with regard to abutting properties and the occupants thereof:**

- (1) Flammable and explosive liquids. No highly flammable or explosive liquids, solids or gases shall be stored in bulk aboveground. Tanks or drums of fuel directly connecting with domestic heating devices or appliances located on the same premises as the tanks or drums of fuel are excluded from this provision.
- (2) Fencing and setbacks. All outdoor storage facilities shall be enclosed by a fence or wall adequate to conceal and protect such facilities and the contents thereof from adjacent property. Such walls and fences shall be distant not less than 30 feet from all property lines.
- (3) Deposit of wastes. No materials or wastes shall be deposited on any premises in such form or manner that they may be transferred off such premises by natural causes or forces.
- (4) Other hazardous materials. All materials or wastes which might cause fumes or dust or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed containers.

**N. Planned residential development (PRD).**

- (1) Town policy. Planned residential developments are designed to encourage residential development in the NR and HC Districts where appropriate as a means of strengthening and expanding these residential communities. This use is also permitted in the IC and PRO Districts.
- (2) Procedure. PRDs shall be subject to the approval of the Planning Board. Application for a PRD shall be made to the Planning Board for review. Within 60 days of receipt of the application, the Planning Board will notify the developer, in writing, of the date of preliminary hearing or, where warranted, may request further documentation from the developer. Upon submission of the additional documentation, a preliminary hearing will be held and the developer so notified.
- (3) Items submitted. An application for a planned residential development shall include all elements required of a preliminary subdivision plan.
- (4) Standards. Planned residential developments must:
  - (a) Contain a minimum of 50 dwelling units.
  - (b) Preserve a minimum 50% of the site in its natural undisturbed state, allowing limited use for passive recreational uses.
  - (c) For a PRD proposed as part of an IC District east of the Shawangunk Ridge, in keeping with the Comprehensive Plan recommendation for the Burlingham Road/Winterton Economic Development area, at least 35% of the lot area of a PRD shall be devoted to nonresidential uses that are permitted in the IC District and the lot area dedicated to the nonresidential uses shall not be used in calculating residential density.
  - (d) For all other PRDs, at the request of the applicant, and with the approval of the Planning Board, the planned residential development may include professional office and accessory retail and personal

service uses that are accessory to the PRD, except that such uses shall not occupy more than 15% of the lot area of the PRD in order to reinforce the residential character of the area. Any such lot area so dedicated to nonresidential use shall not be used for calculating residential density, although this shall not be construed to limit the location of dwelling units above nonresidential uses in traditional mixed-use form once the permitted density is established.

- (5) Planning Board review. The Planning Board in its deliberations shall consider the following:
  - (a) Residential building groups. The following design standards shall apply:
    - [1] Where individual wells and septic system are proposed, residential units may consist only of single-family detached dwellings.
    - [2] In any IC District east of the Shawangunk Ridge, in keeping with the Comprehensive Plan recommendation for maintaining the agricultural character of the Burlingham Road and Winterton areas, only single-family detached dwellings on lots of at least two acres shall be permitted, or on lots of at least one acre where residences are connected to a Town-endorsed sewer system and Town-endorsed water system.
    - [3] In all other areas where residences are connected to Town-endorsed water and Town-endorsed sewer systems, residential units may consist of a mix of single-family attached (townhomes), apartments, and small lot single-family detached residential dwellings. For apartments, the maximum number of dwellings in a structure shall be 12 units. For townhomes, the maximum number of dwellings in a structure shall be six units. The smallest lot size shall be 7,500 square feet for a small lot detached residential unit.
    - [4] Walls containing main window exposures or main entrances shall be so oriented as to ensure adequate light and air exposures.
    - [5] Such buildings shall be so arranged as to avoid undue exposure to concentrated loading or parking facilities and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
    - [6] A building exposing both windows and an entranceway shall be located no closer to another building than a distance equal to the height of the taller building of the two, but in no case less than 50 feet.
    - [7] A building wall exposing only windows or only an entranceway shall be located no closer to another building than a distance equal to the height of the taller building of the two, but in no case less than 40 feet.
    - [8] A building group may not be so arranged that any temporarily or permanently inhabited building is inaccessible to emergency vehicles.
    - [9] No building shall be located closer than 100 feet to a state highway.
    - [10] A PRD shall orient buildings and structures in a manner that retains the street fabric of the adjoining population center. Buildings shall be oriented to sidewalks, shade trees shall be provided in accordance with § 199-41, and formal landscaped front yards shall adjoin streets. Where the Planning Board deems appropriate, the PRD shall include decorative streetlighting.
  - (b) Land use, spacing and orientation of commercial groups. Spacing between buildings and orientation in commercial building groups shall be as follows:
    - [1] Commercial activities shall only be provided when, in the opinion of the Planning Board, existing commercial uses are too distant or inadequate to serve the convenience of shopping needs of the

residents of the planned residential development and where the provision of commercial or office facilities is consistent with the Comprehensive Plan.

- [2] Commercial activities shall be so located as to minimize traffic through residential streets.
- [3] Commercial activities shall be developed in harmony with adjoining residential uses.
- [4] Exterior walls of opposite buildings shall be located no closer than a distance equal to the height of the taller building.
- [5] A building group may not be so arranged that any permanently or temporarily occupied building is inaccessible to emergency vehicles.
- [6] Buildings shall be scaled to a village character, with no building exceeding 4,000 square feet. Buildings shall be arranged in village-like clusters, with buildings oriented to a street.

(c) Circulation.

- [1] There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.
- [2] There shall be an adequate amount, in a suitable location, of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.
- [3] Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

(d) Paving and drainage. There shall be adequate design of grades, paving, gutters, drainage and treatment of turf to handle stormwater and to prevent erosion and formation of dust.

(e) Signs and lighting. Signs and lighting devices shall be properly arranged with respect to traffic control devices and adjacent residential districts.

(6) Open space and recreation areas shall be provided as follows:

- (a) Up to 10% of the gross land area of the development shall be provided for active recreation facilities, which may include tennis courts, swimming pools, playgrounds, and other recreational facilities.
- (b) However, to preserve natural areas or vistas, the developer may choose to provide or the Planning Board may require additional open areas.

(7) Average lot area.

(a) The residential density for the development shall be calculated based on the total net acreage of the parcel after deduction of environmental constraints pursuant to § **199-35**; and deduction of the area of any existing streets or proposed internal streets, whether public or private; and deduction of lot area dedicated to commercial use, commercial sites or commercial accessory use, such as commercial accessory surface parking. The residential density shall not exceed the maximum residential density permitted for single-family detached dwellings in the same zoning district as the proposed PRD, except as follows:

- [1] For any IC District east of the Shawangunk Ridge, in keeping with the Comprehensive Plan recommendation for maintaining the agricultural character of the Burlingham Road and Winterton areas, one dwelling unit per 25 acres shall be the maximum residential density.

- [2] One dwelling unit per two net acres shall be the maximum residential density in any other IC District.
- [3] One dwelling unit per 10 net acres shall be the maximum residential density in the PRO District, except where Town-endorsed water system and Town-endorsed sewer systems are provided with the capacity to serve at least twice the number of homes as are proposed in the PRD, the maximum residential density may be increased to one dwelling unit per two net acres.
- [4] Three dwelling units per acre shall be the maximum residential density in an HC zone. Maximum residential density may be increased to 10 units per acre through voluntary transfer of density.

**O. Public utilities, subject to the following:**

- (1) Such uses shall include electric substations, transformers, switches, sewage treatment plants, water supply systems, and auxiliary apparatus serving a distribution area and water-pumping stations.
- (2) Such facility shall be so located as to draw a minimum of vehicular traffic to and through residential streets.
- (3) The location, design and operation of such facility shall not adversely affect the character of the surrounding residential area.
- (4) Adequate fences, barriers and other safety devices shall be provided and shall be landscaped.

**P. Radio transmission stations.**

- (1) Purpose. Radio transmitting stations are not listed as a permitted, accessory, or special use pursuant to the Town of Mamakating Zoning Ordinance prior to this amendment. Neither does a radio transmitting station fall within the definition of public utility. The town, however, feels that the Town of Mamakating Planning Board should have the discretion and authority to permit a radio transmitting station for a commercial radio station to exist in the Town of Mamakating and that a commercial radio station would serve the interest of the public and citizens of the town.
- (2) Special use. A radio transmitting station may be permitted in any district, subject to the following conditions:
  - (a) The Planning Board shall determine that the proposed use is compatible with the land use in the neighborhood and the character of the area.
  - (b) The Planning Board shall determine that the site is suitable for development as a radio transmitting station.
  - (c) The transmitting antenna or tower shall be located at a minimum elevation of 1,500 feet above mean sea level, United States Geological Survey datum.
  - (d) A site plan shall be approved by the Planning Board in accordance with Article **IX** of this chapter.
  - (e) The minimum site area shall be two acres.
  - (f) The applicant shall have approval from the Federal Communications Commission for construction of a transmitting station prior to receiving final approval from the Planning Board.
  - (g) A minimum buffer of 100 feet of screening vegetation shall be preserved or established on all sides of the property.

**Q. Recycling and recovery, subject to the following:**

- (1) No activity on the site shall be located closer than 200 feet to a residence or residential zoning district boundary.
- (2) A Part 360 permit shall be secured from the New York State DEC. The application shall be forwarded to the Planning Board for its review as part of the special use permit application.
- (3) No construction and demolition waste shall be permitted.
- (4) In addition to the requirements set forth in Section 360-1.8(h), DEC regulations, the owner or operator of a recyclables handling and recovery facility [other than those facilities described in Section 360-12.1(b) and (c), DEC regulations (returnable beverage container operations, manufacturing facilities, buy-back centers, waste tire retreaders and processing waste tires, and automobile dismantlers which are not permitted herein)] must operate in compliance with the operational requirements of this section.
  - (a) Receipt and handling of solid waste. The facility may receive only source-separated nonputrescible recyclables which may be further processed.
    - [1] External storage of paper and other recyclables whose marketability may be adversely affected by exposure to the sun or weather conditions is prohibited unless stored in covered containers or in a manner otherwise acceptable to the Department. Solid waste separated for recycling must be stored separately and maintained in a safe, sanitary and orderly manner to ensure that its marketability is not adversely affected. Solid waste which the facility does not intend to recover and which does not contain putrescible material may be stored for a period not to exceed two weeks unless otherwise acceptable to the Town and DEC. No person shall store solid waste or recyclables at the facility in such a manner that they become a nuisance or a sanitary or environmental problem.
    - [2] All indoor and outdoor storage, handling and tipping areas must include appropriate fire detection and protection equipment and be accessible by fire-fighting equipment.
    - [3] The site and facility must have adequate drainage, be drained and be free of standing water.
    - [4] All solid waste passing through the facility must ultimately be recycled or be disposed of at a solid waste management facility authorized by the DEC if in this state, or by the appropriate governmental agency or agencies if located in other states, territories, or nations.
    - [5] In addition to the above requirements, for facilities handling materials containing refrigerants, the refrigerants must be properly removed and managed prior to crushing or shredding of the materials.
    - [6] Incidental putrescibles or putrescible residues may be stored for a period not to exceed one week.
  - (b) Storage. Nonputrescible recyclables may be stored for up to 60 days. Recyclables may be stored for a longer period of time with DEC approval if the DEC determines:
    - [1] There is a demonstrated need to do so (such as a market agreement with terms of receipt based on greater than sixty-day intervals or volumes that may take longer than 60 days to acquire);
    - [2] There is sufficient Department-approved storage area;
    - [3] An inventory methodology, including a daily log system, is used to ensure that the recyclables do not remain on the facility site for longer than specified; and
    - [4] The inventory methodology is provided to and approved by the Department before storage begins.

- (c) Access. The owner or operator must restrict the presence of, and minimize the possibility for, any unauthorized entry onto the facility during regular business hours must be directed to report to the facility office by appropriate signs located at facility entrances and other locations in sufficient number to be seen from any approach to the facility. In the case of facilities allowing local residents to bring in materials, a designated area to do so must be provided in order to minimize potential accidents and unauthorized entry.
  - (d) Reporting and recordkeeping. In addition to the requirements of Sections 360-1.4(c) and 360-1.14(i) of the DEC regulations, the facility owner or operator must:
    - [1] Prepare and file an annual report, in accordance with Section 360-1.8(h)(8) of DEC regulations.
    - [2] Maintain daily records for facility monitoring. This monitoring information must include a daily log specifying the date, signature of the individual recording the information, the quantity and destination of recyclables sent from the facility for disposal. These records must account for all materials handled at the facility. If the facility is otherwise exempt under Subpart 360-11 of DEC regulations, the daily records for facility monitoring shall only include the quantity and destination of recyclables sent from the facility by major material category.
  - (5) Permit application and review procedures for recycling and recovery application for recycling and recovery facilities shall be the same as for composting (§ **199-26F**).
  - (6) Nothing herein shall be construed to permit a junkyard, which is deemed a prohibited use.
- R. Refuse disposal, subject to a New York State Department of Environmental Conservation permit and the following: No sanitary landfill sites shall be permitted within 200 feet of any stream or highway or within 200 feet of any lot line. All dumps or deposits shall be maintained in a safe, sanitary condition at all times. No open burning shall be allowed. One cubic yard or more of refuse not removed for four weeks shall be deemed to be a refuse dump. Nothing herein shall be construed to permit a junkyard, which is deemed a prohibited use.**
- S. Residential model homes and sales offices, subject to the following:**
- (1) Residential model homes and sales offices which do not conform to the lot requirements of a residential subdivision may be constructed and maintained in any area within 150 feet of the edge of the right-of-way of a state highway in an NR, HC, and VA Zone.
  - (2) No such model home or sales office shall be converted into any other use except as shall be otherwise permitted under this chapter and the Subdivision Regulations of the Town of Mamakating.
  - (3) No more than 24 1/2 acres of land shall be approved in the Town of Mamakating for this purpose.
- T. Resort hotels and country inns, subject to the following:**
- (1) Accessory uses at a country inn may include any of the following: conference rooms, dining rooms, banquet hall, indoor fitness center, administrative offices, cross-country skiing, hiking and horse trails, tennis courts, paddle ball courts, basketball courts, swimming pool, and clubhouse. The indoor area of country inns devoted to accessory uses shall not exceed 25% of the area devoted to guest rooms. A resort may include any accessory uses permitted for country inns in addition to conference centers and golf courses and indoor accessory uses shall be subordinate to the area devoted to guest rooms. For resorts, a minimum of 250 square feet of recreational space shall be provided per guest unit, except that golf courses shall be required to meet the individual requirements for that special use. Use of the recreational facilities by non-overnight guests (the general public) may be permitted upon a finding by the Planning Board that said use and traffic associated with the use shall not have a negative impact on adjoining uses.

- (2) The maximum number of transient guest units permitted shall be calculated by first deducting environmental constraints pursuant to § 199-35 and then applying the density factors below:

<b>Zoning District</b>	<b>Density</b>
RVP	1 unit per 2 acres
MG	1 unit per 2 acres
PRO	4 units per acre
IC	4 units per acre

A maximum of four principal buildings may be permitted for the housing of guest units. Kitchenettes shall not be permitted in individual guest units. An application for a resort hotel shall be subject to the requirements contained in § 199-19B(6)(c) of these zoning regulations.

- (3) An application shall be accompanied by architectural renderings and building elevations depicting the architecture and design of the facility. The design of said facility shall be such that the color, character, and scale of the structure(s) do not have a negative impact on its environment. Within the RVP District, applications for resort hotels and country inns shall be subject to § 199-19B(9)(b) and (c) of these regulations. The colors shall be subdued and earthtone to minimize visibility.
- (4) There shall be presented with the application for this permit a certificate of the State Department of Health approving of the source and method of treatment of the proposed supply of potable water.
- (5) There shall be presented with the application for this permit two copies of a map or plan of the system of sewage and waste disposal, which said copies shall bear the endorsement and approval of the State Department of Health.
- (6) Signage shall be subdued in color, and stone or wood shall be used in its construction. One monument sign, not to exceed 50 square feet, is permitted. Interior directional signs shall be approved as part of the special use permit.
- (7) The Planning Board may limit the location and time of exterior lighting in order to protect the night sky, particularly for adjoining residences.

**U. Schools and educational institutions and religious institutions, subject to the following:**

- (1) No building or part thereof or any parking or loading area shall be located within 100 feet of any street or lot line.
- (2) The sum of all areas covered by principal and accessory buildings shall not exceed 20% of the area of the lot. Minimum lot size shall be two acres, except as provided below.
- (3) The maximum height shall be 35 feet or 2 1/2 stories.
- (4) The entire lot, except for areas covered by buildings or parking or loading areas, shall be suitably landscaped and properly maintained.
- (5) Sufficient exterior illumination of the site shall be required to provide convenience and safety. All such illumination shall be shielded from the view of all surrounding streets and lots.
- (6) Any school permitted in this section shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder, or a nursery school licensed by the State Department of Education shall occupy a lot with an area of not less than five acres, plus one for each 100 pupils for which the building is designed.

**V. Senior (adult) housing, subject to the following:**



- (1) Purpose. The purpose of this special use permit is to provide a variety of alternative living environments in the town, including the design and development of multifaceted, relatively self-contained living environments for individuals and families age 55 and over. As part of any senior housing proposal, the following types of housing or adult care environments are allowed by special use:
  - (a) Nursing home.
  - (b) Residential health care.
  - (c) Adult multifamily dwelling units.
  - (d) Attached patio homes and/or attached townhomes.
- (2) Permitted accessory uses include administrative, social and recreational buildings, structures and areas. Recreational facilities may include, but are not limited to, swimming pools, tennis courts, open field areas, passive sitting areas, picnic facilities, walking trails, shuffleboard and bocci courts, off-street parking and private garage facilities, fences and walls, and utility and maintenance structures. A single-family dwelling unit to be utilized and occupied as a residence exclusively for the director of the facility, administrator or other head of operations whose presence on the site is essential for the effective operation of the facility.
- (3) The minimum tract size for each type of facility shall be 15 contiguous acres of land.
- (4) The residential density of the project shall be determined by first establishing the net acreage, after deduction of environmental constraints pursuant to § 199-35, which may be devoted to residential use.

	<b>% of Total Lot Area</b>	
	<b>Minimum</b>	<b>Maximum</b>
Nursing/residential health care, adult multifamily residential dwellings and/or adult patio homes and/or townhomes, accessory structures		55
Recreation	15	—
Open space	30	

- (5) The maximum densities in the following project components shall be established by multiplying the net acreage by the following densities:

Nursing/residential health care/assisted living	3 beds per acre; 24 beds per acre through transfer of development rights, with each three beds requiring one certificate of development rights.
Adult multifamily	1 unit per acre; 8 units per acre through transfer of development rights
Adult townhouse/patio homes	1 unit per acre; 8 units per acre through transfer of development rights

Example: An applicant proposes a nursing home facility on a parcel of 100 gross acres. After application of § 199-35, the net site acreage is 50 net acres. Fifty-five percent or 27.5 acres of the net acreage may be devoted to nursing/residential health care or dwelling units. Said net acreage can be

allotted for a mix of the allowable uses - use of 7.5 acres for nursing/residential health care at a maximum density of 3beds per acre would permit an 22-bed facility or 180 beds with the transfer of 53 development credits and allow the remaining acreage to be used for up to 20 multifamily units, townhouse/patio homes or a mix thereof, or up to 160 multi/family units, townhouse/patio homes or a mix thereof with the transfer of 140 development credits.

- (6) Maximum impervious coverage. The total amount of impervious coverage from building roofs, roads, parking areas, sidewalks, etc., shall not exceed 60% for the entire project.
- (7) A minimum of 30% of the total lot area shall be set aside as open space to remain in its natural undisturbed state. This area may include buffer areas as required in this section. An additional 15% of the site shall be devoted to active and passive recreational uses, such as recreation and social gathering areas, walkways, sitting areas, gardens and adjacent usable open space.
- (8) A minimum vegetative screen of 100 feet shall be provided along all property lines. Buffer areas may be included as part of the required setback areas. The buffer area so required shall be preserved in its natural state and supplemented with additional landscaping as necessary to achieve a full and substantial screening effect when viewed from adjoining properties.
- (9) A marketing plan shall be prepared by the applicant describing the plan, advertising, market selection, and implementation.
- (10) No one under 18 years of age shall be a permanent resident of the senior housing facility. Implementation of this requirement shall be through the rules and regulations of the project association or the governing organization.
- (11) The total number of parking spaces provided on site shall be in accordance with the following schedule:

<b>Use Type</b>	<b>Per Unit or Bed</b>	<b>1 space per gross sf bldg area</b>
Patio homes/unit	2	
Attached townhouses/unit	2	
Multiple adult dwelling unit	1	
Nursing home/bed	.5	
Residential health care units	.33	
Administrative/recreation/support uses		250 sf
Neighborhood community center		200 sf
Professional office center		200 sf

- (12) A minimum of one parking stall shall be provided in an attached parking garage for each townhouse and patio home of market value.
- (13) The design and layout of the site of the dwelling unit and all buildings shall be planned for the convenience of the senior citizens and in accordance with applicable codes and regulations.
- (14) Handicapped access to all buildings (except townhomes and patio homes) and all floors within said buildings shall be provided. Installation of ramps and elevators shall be in accordance with all applicable codes and regulations.

- (15) Each parking space shall be a minimum of nine feet by 18 feet with 4% of the overall parking requirement reserved for handicapped spaces. Spaces shall be provided in accordance with New York State regulations.
- (16) Each townhouse building shall have no more than six units per building. Each patio home shall be attached to no more than one other patio home.
- (17) Town-endorsed water and Town-endorsed sewer systems shall be required in order to develop at the densities listed above. If a Town-endorsed water or sewer system is not provided, the permissible density for adult multifamily and adult townhouse/patio homes used to calculate maximum density per Subsection N(5) shall be no greater than the permissible density for single-family detached dwellings in the district in which the senior (adult) housing is proposed.
- (18) Special use permit approval shall be conditioned upon receipt of all New York State Department of Health and any other state approvals.

**W. Summer and day camps, subject to the following:**

- (1) A building, tent, activity area or recreation facility shall not be less than 200 feet from any lot line and shall be effectively screened therefrom as required by the Planning Board. No two buildings intended for use as sleeping quarters shall be closer than 30 feet to each other, except tents, which shall be not less than 10 feet apart.
- (2) The minimum lot area shall be equal to the minimum lot size identified in Schedule I or not less than 10,000 square feet per cottage, tent or other principal building and no less than 3,000 square feet per person for whom there are accommodations on the premises, whichever is greater.
- (3) All outdoor lighting shall be arranged so as to eliminate the glare of lights toward nearby residential lots.
- (4) The sound level of all outdoor public address systems shall not exceed the intensity tolerable in a residential neighborhood.
- (5) Sanitary facilities shall be approved by the New York State Department of Health.

**X. Wireless telecommunication service (WTS) facilities and equipment.**

- (1) Purpose. The federal government adopted the Telecommunications Act of 1996 ("the Act") in order to remove regulatory barriers and encourage competition among all types of telecommunication providers. In doing so, the Act preempts all state and local laws that prohibit or have the effect of prohibiting a business from providing telecommunication services. However, it generally preserves local zoning authority over WTS facilities as long as the zoning requirements are nondiscriminatory, do not have the effect of prohibiting service, and are not based on health effects of radio frequency emissions. The intent of these special use permit requirements is to ensure that wireless telecommunication facilities are evaluated in the development review process to ensure that such facilities and equipment are designed in a manner so as to provide functional operation for the provider and protect the safety, aesthetics and character of the town.
- (2) Application. No WTS facility, except those approved prior to the effective date of this Subsection X, shall be used unless in conformity with these regulations. No WTS facility shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a WTS facility unless in conformity with these regulations.
- (3) Collocation. Applicants proposing to collocate on a previously approved WTS tower do not require a special permit, provided the height of the existing tower is not increased. An applicant shall be

subject to site plan review and approval in accordance with Article **IX** of this chapter. An amendment to the special use permit and site plan approval shall be required if the height of the WTS tower is increased.

- (4) These regulations shall apply to all property within the following zones: RVP, MG, LIO, IO, and PO. Telecommunication towers shall be excluded from all other zones. These uses are strongly discouraged within the RVP District. However, recognizing the topographic advantages to situating WTS facilities in this district, the following shall apply:
  - (a) Within the RVP District, WTS facilities shall be collocated on existing structures. Based upon a written report, if collocation on an existing structure is not feasible, said WTS facility shall not be permitted on the ridgeline but shall be located in a manner where the structure's bulk is visually mitigated from placement downhill of the ridge.
  - (b) Within the RVP and MG Districts, WTS facilities shall be situated on properties with road frontage on U.S. Route 17 and U.S. Route 209 to limit visual impact to the environs.
- (5) Applications for construction of new WTS facilities shall comply with the Code of Federal Regulations pertaining to objects affecting navigable airspace as delineated within the Federal Aviation Administration Regulations, Part 77. No application for construction of a new WTS facility will be approved if the proposed tower violates the criteria for obstructions to air navigation as established.
- (6) Shared use of existing structures. At all times, shared use of existing structures (for example, municipal water towers, multistory buildings, church steeples, farm silos, etc.), and existing or approved towers shall be preferred to the construction of new WTS facilities.
  - (a) An applicant proposing to share use of an existing structure shall be required to submit:
    - [1] A complete application for a special permit.
    - [2] Documentation of the intent from the owner of the existing facility to allow shared use.
    - [3] A site plan. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
    - [4] An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.
    - [5] A copy of the applicant's Federal Communications Commission license.
  - (b) If an applicant proposing to share use of an existing structure submits complete and satisfactory documentation in accordance with Subsection **X(6)(a)** above, and if modifications indicated according to Subsection **X(6)(a)** are deemed insignificant by the Board, and after the Board conducts a public hearing and complies with all SEQR provisions, the Board shall grant a special use permit without further review under this Subsection **X**. If the Board determines that any modifications indicated according to Subsection **X(6)(a)** are significant, it may require further review according to Subsection **X(11)** and **(12)** below.
- (7) New wireless telecommunication service facilities. The Board may consider a new WTS facility where the applicant demonstrates to the satisfaction of the Planning Board that shared use of existing structures and existing or approved towers is impractical. An applicant shall be required to present

an adequate report inventorying all existing structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new WTS facility. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing structure and existing or approved tower as well as documentation of the physical and technical reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

- (8) Shared usage of an existing tower site for placement of a new WTS facility. Where shared use of an existing structure or existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection **X(6)** above. Any proposals for a new WTS facility on an existing tower site shall also be subject to the requirements of Subsection **X(11)** and **(12)** below.
- (9) New WTS facility at a new location. The Planning Board may consider a new telecommunications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing structures, and existing or approved towers, is impractical and submits a report as described in Subsection **X(6)** and **(7)** above and when the Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with Subsection **(X)(8)**. Any proposal for a new WTS facility shall also be subject to the requirements of the following subsections.
- (10) New WTS facility: future shared use. The applicant shall design a proposed WTS facility to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new WTS facility, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunication providers in the future. This letter shall be reviewed by the Planning Board and the Town Attorney and filed with the Building Inspector prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new WTS facility owner and his/her successors in interest to:
  - (a) Respond within 60 days to a request for information from a potential shared-use applicant.
  - (b) Negotiate in good faith concerning future requests for shared use of the new WTS facility by other telecommunication providers.
  - (c) Allow shared use of the new WTS facility if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata share of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the WTS facility or equipment to accommodate a shared user without causing electromagnetic interference.
- (11) Site plan review; submission requirements.
  - (a) An applicant shall be required to submit a site plan in accordance with Article **IX** of this chapter. The site plan shall show all existing and proposed structures and improvements, including roads, buildings, tower(s), guy wire and anchors, antennas, parking and landscaping, and shall include grading plans for new facilities and roads.
  - (b) Supporting documentation. The applicant shall submit a complete long-form EAF, a visual EAF addendum, and documentation on the proposed intent and capacity of use as well as justification for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission license.

- (c) Visual impact assessment. The applicant shall undertake a visual impact assessment which may include the following:
- [1] A zone of visibility map shall be provided in order to determine locations where the tower may be seen.
  - [2] Computerized, three-dimensional visual simulation of the WTS facility and/or equipment and other appropriate graphics shall be provided illustrating views from key viewpoints inside the Town and its villages, including but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the appropriate key sites at a presubmission conference with the applicant.
  - [3] Assessment of alternative tower designs and color schemes, as described in Subsection **X(12)** below.
- (12) Design standards.
- (a) Lot size and setbacks. All proposed WTS facilities and accessory structures shall be located on a single parcel and shall be set back from abutting parcels and street lines a distance sufficient to substantially contain on site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties. The minimum bulk requirements shall be as stipulated in Schedule I and shall be increased to meet the requirements of the design standards contained herein.
  - (b) Lot sizes of parcels containing a WTS facility shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased, the entire area required shall be leased from a single parcel unless the Planning Board determines that this provision may be waived.
  - (c) WTS facilities shall comply with all existing setback requirements of the underlying zoning district or shall be located with a minimum setback from any property line equal to 1/2 the height of the tower, whichever is greater. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.
  - (d) New WTS facility design. Alternative designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new WTS facility shall comply with the following:
    - [1] Any new WTS facility shall be designed to accommodate future shared use by other telecommunication providers.
    - [2] Unless specifically required by other regulations, a WTS facility shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
    - [3] The maximum height of any new tower shall not exceed that which shall permit operation without interference of any kind or nature, in accordance with municipal, state and/or federal law and/or regulations. The Planning Board, at its discretion, may modify this requirement if the applicant can justify the need to exceed this height limitation.
    - [4] The Planning Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower. The cost of this review shall be borne by the applicant.
    - [5] Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.

- [6] No portion of any WTS facility or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners, and streamers.
  - [7] The Planning Board may require that the structure utilize stealth design where it makes a finding that the proposed structure would have an impact on the town's visual environment and that the use of stealth technology would limit said visual impact. Stealth design may include but not be limited to trees, silos, building steeples, etc. The design shall be appropriate to the visual environment.
  - (e) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent practicable. No cutting of trees exceeding four inches in diameter (measured at a height of four feet from the ground) shall take place prior to the approval of the special use permit.
  - (f) Screening. Deciduous or evergreen tree plantings may be required to screen portions of the WTS facility and accessory structures from nearby residential property as well as from public sites known to include important vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.
  - (g) Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than five feet beyond the edge of pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
  - (h) Parking. Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces based upon a recommendation from the applicant. No parking spaces shall be located in any required yard.
  - (i) Fencing. The WTS facility and any accessory structure shall be adequately enclosed by a fence, design of which shall be approved by the Board. Chain link fencing shall be unacceptable to screen facilities. Fencing material may consist of wood, masonry, landscaping, or other acceptable materials and be opaque. Fencing shall not exceed six feet in height. This requirement may be waived by the Board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.
  - (13) Removal. The applicant shall submit to the Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Building Inspector within 30 days of the discontinued use of the tower. This letter shall be reviewed by the Planning Board and Town Attorney and shall be filed with the Building Inspector prior to the issuance of a building permit. Obsolete or unused towers and accessory structures shall be removed from any site within three months of such notification. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and shall be punishable in accordance with Article XII. In the event the owner fails to remove the WTS facility, the Town may remove said structure and charge the cost of removal to the owner. For WTS facilities which utilize existing structures, said removal shall be accomplished in a manner that does not pose a threat to the integrity of the existing structure.
- Y. Pre-Existing Asphalt plants, new Asphalt Plants are prohibited. Asphalt plants already in existence on January 1, 2020 are allowed to continue. Authorized expansion of such lawfully existing plants is subject to issuance of a special use permit and the following requirements:**
- (1) No activity on the site except automobile parking shall be located closer than 500 feet to a residence or residential zoning district boundary.
  - (2) Structures shall be set back from the road a minimum distance of 200 feet.

- (3) The maximum height for any building used for human occupancy shall not exceed 40 feet. The height of any equipment used in the manufacture of asphalt shall not exceed 110 feet.
- (4) The facility shall be located on a suitable foundation to ensure stability and accessibility.
- (5) In addition to all required site plan submission requirements, the following information shall also be submitted:
  - (a) An analysis of prevailing winds.
  - (b) A schedule of operation to be approved by the Planning Board as a condition of the special use permit.
  - (c) A schedule of truck movements in and out of the facility.
  - (d) Performance criteria of all equipment, particularly in terms of noise and air emissions which must meet all New York State DEC standards.
  - (e) All required New York State DEC permits.
- (6) No asphalt plant may be closer than 1/2 mile to another such plant.

**Z. Vacation campgrounds.**

- (1) Vacation campgrounds are a special use consisting of a tract of land designed exclusively for overnight and short-duration vacation camping, providing facilities for tents, camp trailers, recreational vehicles, motor homes, recreation activities, administration, public health and safety.
- (2) Minimum frontage. Two hundred feet of road frontage on a state highway or county road shall be required.
- (3) The minimum spacing between campsite pads shall be 50 feet.
- (4) Water supply. The site shall be serviced by a municipal or private water supply system to be reviewed by the Town Engineer and the County or State Health Department, if applicable. An adequate supply of potable water shall be provided within 250 feet of all campsites. One water spigot with soakage pit or other disposal facilities shall be provided for each 10 campsites without individual water facilities.
- (5) Sewage disposal. The site shall be provided with a municipal or approved private sanitary sewage disposal system which shall meet all town, county and/or state regulations for said systems.
  - (a) Toilets. Only flush toilets shall be provided.
    - [1] Women: One toilet per five sites.
    - [2] Men: One toiler per 10 sites.
    - [3] A minimum of two toilets shall be provided for each sex.
  - (b) Lavatories. Lavatories or other hand washing facilities shall be provided at a ratio of one for each sex, for each 15 sites without water and sewer hookups.
  - (c) Showers. One shower for each 15 campsites shall be provided. Each shower must be served with hot and cold or tempered water. However, at a minimum, two showers must be provided for each sex.



- (6) Solid waste disposal. One receptacle shall be provided for each campsite.
- (7) Vehicular access. Each campground shall be provided with two means of access from county and state roads. Sight distance at the entrance and exit must be unobstructed for a distance of 300 feet in each direction. In the event that two separate means of access cannot be provided, due to a lack of adequate sight distance at the point of access or egress due to limited frontage, the Planning Board may approved an alternate design that will ensure adequate safety.
- (8) Streets. Each campground area shall provide a collector street with a minimum width of 18 feet for two-way traffic and 10 feet for one-way traffic. As a minimum, the street shall be constructed with a gravel base with adequate drainage and macadam surface based on the design recommendations of the Town Engineer.
- (9) Parking. A level space, 14 feet by 50 feet in size, shall be provided for each campsite, within which a strip 10 feet by 50 feet in size shall be constructed, as a minimum, with a gravel base and macadam surface. Forty-five-degree pull-through trailer and motor home parking spaces shall be constructed, with a gravel base and macadam surface.
- (10) Sufficient exterior illumination of the site shall be required to provide convenience and safety. All such illumination shall be shielded from the view of all surrounding properties and streets.
- (11) The entire site, except for areas covered by structures or service or parking areas, shall be suitably landscaped. All landscaping shall be approved by the Planning Board and properly maintained after planting.
- (12) All campground sites shall be screened from the view of adjacent properties and adjoining public streets by means of an opaque screen of plant materials or fencing. All screening shall be approved by the Planning Board, properly maintained after placement and located within the required front, rear, and side yards. No screening is required where a fifty-foot-wide natural vegetative buffer is retained along the property lines that provides adequate screening of the site.
- (13) All campground sites shall provide suitable recreation area or areas on the site, containing not less than 10% of the campground site, and may include a suitable improved, fenced, and equipped children's play area.
- (14) No permanent structures shall be permitted for use as living quarters, with the exception of the resident manager or property owner. The resident manager or a caretaker shall be on the premises on a regular basis, as determined by the Planning Board, to guard against vandalism during the off season.
- (15) Recreational facilities such as golf courses, tennis courts, swimming pools and camp recreational facilities shall be for campsite guests only. Requirements for said recreational uses shall be as set forth in other applicable sections of this chapter.
- (16) Fire protection. The property owner shall ensure that adequate fire protection equipment is on the premises at all times, as recommended by the Building Inspector.
- (17) Public phone. Each campground shall have at least one public phone.
- (18) Register. The owner or resident manager shall keep a register of all visitors to the facility. The register shall specifically contain the name of a contact person for each camping party, his home address, and a phone number where he may be reached at his home or regular place of employment.
- (19) Performance bond. A performance bond, in an amount and form acceptable to the Town Board, shall be provided to ensure the proper installation of any public improvements.

## **AA. Adult bookstores and adult-oriented businesses.**

- (1) Purpose; findings.
  - (a) Purpose. The primary purposes of this subsection are as follows:
    - [1] To preserve the character and quality of life of the Town's neighborhoods and businesses.
    - [2] To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas as: decreased property values; attraction of transients; parking and traffic problems; increased crime (including prostitution, rape and assaults in the vicinity of such businesses); loss of business for surrounding nonadult businesses; and deterioration of neighborhoods.
    - [3] To maintain property values.
    - [4] To prevent crime.
    - [5] To protect retail trade.
    - [6] To restrict minors' access to adult uses.
    - [7] To maintain the general welfare, safety and morals of the Town of Mamakating residents.
  - (b) The Town Board of the Town of Mamakating hereby finds that adult-oriented businesses have had a serious negative secondary impact on surrounding areas, including declines in property values, degradation of neighborhoods, increases in crime, and deterioration of community character. These impacts include exposure of children and teenagers to graphic sexual images, increased crime, diminishing property values, adverse effects upon the climate for other types of commercial activity, and negative influences upon community character. Sexually explicit business signs or displays visible from public streets are particularly offensive. The Town of Mamakating is presently in the process of undergoing a transformation. Various local groups have been working tirelessly to improve both the appearance and quality of life in the Town of Mamakating. The failure to properly regulate adult uses could undermine these efforts. There have been a substantial number of studies conducted throughout the United States. The Town of Mamakating has considered the findings of these studies and those incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M. tdba "Kandyland,"* 529 U.S. 277 (2000), and *Town of Islip v. Caviglia.* 73 N.Y.2d 544 (1989). The Town's intent on enacting this section is not to restrict speech protected by the First Amendment but rather to provide it in a way which is consistent with the demands of the United States Constitution, as expressed in the referenced cases. It is also, however, intended to address, in a practical way, the very real secondary effects of adult-oriented businesses on the peace, good order and safety of the Town residents. So as to limit these impacts, such uses shall be subject to the following standards.
- (2) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

### **ADULT MATERIALS**

Shall include, but is not limited to any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, DVD's, video cassettes, slides or other visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories which are distinguished or characterized by their emphasis on matter depicted, described or related to specified sexual acts or specified anatomical areas as defined herein, or an establishment with a segment or section exclusively devoted to the sale, lease, gift, trade, display of such materials.

## **ADULT-ORIENTED BUSINESS**

Use of a building, structure or property for a business that has adult materials in a section or segment devoted to such materials or as a substantial or significant portion of its stock-in-trade for the purposes of sale, rental, lease, trade, gift or display of such adult materials. For the purposes of this subsection, "adult-oriented businesses" shall also mean and include any nightclub, bar, tavern, restaurant, eating and drinking establishment, arcade, theater, video store, motel, hotel, or any other establishment that regularly features, for economic gain or other consideration, entertainment in any form which is characterized by nudity or the depiction or display of sexual activities or adult materials.

## **NUDITY**

The showing of the human male or female genitals, pubic areas, buttocks, or anus, any part of the nipple or any part of a female breast below a point immediately above the top of the areola with less than a fully opaque covering.

## **SPECIFIED ANATOMICAL AREAS**

(a) Less than completely or opaquely covered:

- [1] Human genitals;
- [2] Pubic region;
- [3] Buttock; or
- [4] Female breast below a point immediately above the top of the areola.

## **SPECIFIED SEXUAL ACTIVITIES**

- (a) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast.
- (b) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation or sodomy.
- (c) Acts of human masturbation, actual or simulated.
- (d) Excretory function as part of or in connection with any of the activities set forth in Subsection (a), (b) or (c) above.
- (e) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

## **SUBSTANTIAL OR SIGNIFICANT PORTION**

Includes a place with only a portion or section of its area set aside for the display, rental, sale of adult materials or an adult-oriented business defined above in this section, except that any place otherwise included in this section that can prove that not more than 10% of its square footage (of space of the interior which is open to the general public) is devoted to display of or sale of materials listed for the foregoing definitions shall be exempt from the provisions of this subsection so long as such material is kept out of the reach and visibility of minors.

- (3) Permit required. No adult-oriented business shall be commenced or continued without a special use permit being obtained from the Town of Mamakating pursuant to this chapter.
- (4) Zone in which permitted. An adult-oriented business shall be permitted only in the IO District of the Town of Mamakating.

- (5) Geographical limitations. No adult-oriented business shall be located within 1,000 feet of any residence, residential facility or institution, health facility, church, synagogue, mosque or other place of worship, school, public or semipublic park or recreational facility, any establishment which serves alcoholic beverages, or any other existing adult-oriented business.
- (6) Alcoholic beverages prohibited. Sale of alcoholic beverages at an adult-oriented business shall not be permitted unless the business is being operated as a bona fide restaurant or eating and drinking establishment.
- (7) Signs and displays. No exterior display, or interior display which is visible from outside the business, shall be made to identify or portray the type of activity which occurs at an adult-oriented business excepting for one approved freestanding sign not to exceed a surface area of 20 square feet for each side. Such sign shall be subject to all other limitations applicable to signs. It shall not incorporate any obscene material but shall be otherwise unlimited as to message.
- (8) Nonconforming buildings or lots. No nonconforming building or lot shall be used for an adult-oriented business. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting an adult-oriented business unless application to do so has been made pursuant to this section and Planning Board approval has been given.
- (9) Prohibited activities. The following activities shall not be permitted on the premises of any adult-oriented or other public place within the Town of Mamakating:
  - (a) Public appearance by a person knowingly or intentionally engaged in sexual intercourse, deviate sexual conduct or the fondling of the genitals of himself or another person, or the fondling of a female breast.
  - (b) The knowing and intentional public appearance of a person in a state of nudity.
  - (c) Use of sound amplification equipment. No loud speaker or other similar audio equipment used to describe or discuss specified anatomical areas or specified sexual activities shall be audible beyond the exterior of the structure in which it is located.

## **BB. Horticultural Specialty**

- (1) A horticultural specialty located in the RVP zoning district shall incorporate such design and operational controls so as not to result in erosion and loss of soils during planting, when soils are exposed;
- (2) A horticultural specialty located in the RVP zoning district shall not contain any structure taller than 30 feet.
- (3) A horticultural specialty shall retain natural wooded areas over at least 20% of its land area. Where located along a ridge, to the maximum extent practicable, such wooded areas shall include cross slope areas of adequate width so as to buffer significant clear views of the operation from lower elevations and help to contain stormwater runoff. Fruit orchards shall not be required to meet this requirement.
- (4) Any proposed greenhouses and accessory structures shall be designed to be screened from downslope viewers by natural treed buffers and screens to the maximum extent practicable.
- (5) No horticultural use within 1,000 feet of the Bashakill Wildlife Management Area or a tributary stream to the Bashakill Wildlife Management Area shall apply fertilizer or pesticides to outdoor areas, except as approved by the Planning Board upon the advice of a qualified wetlands ecologist that the practice will not result in impacts to ecological conditions within the Management Area.

## **CC. Educational, Research and Interpretive Centers**

- (1) An educational, research and interpretive center located in the Shawangunk Ridge view protection area shall be designed to blend into the natural environment and not be visible from significant public viewpoints. In meeting this requirement, the Planning Board may require cross-sections, viewshed analyses, balloon tests, and/or visual simulations to determine the visibility of proposed buildings and areas cleared of natural vegetation from State or County Highways, town parks, the D&H canal trail, town or County trails, the Long Path and other significant demarcated hiking trails.

## **DD. Office and Research Campus**

- (1) Offices and research campuses shall be designed to blend into the existing natural setting of the lot and incorporate wooded or open meadow into the landscape design. Buildings shall be designed not to exceed 20,000 square feet of floor area, except where waived by the Planning Board upon a finding that due to the type of research and or activities on-going within the building, that a larger building is required.
- (2) Offices and Research Campuses within the MG zoning district shall not be located on any lot that is more than 2,500 feet from US Route 209 or US Route 17 (future Interstate 86).

## **EE. Breweries, Wineries, Cideries, Distilleries**

- (1) The proposed use shall be licensed to produce and/or sell alcoholic beverages by the State of New York.
- (2) The following activities shall be permitted on the premises subject to any terms, conditions and restriction of the State license:
  - a. Sell at the premises product manufactured by the proprietor for consumption on or off the premises;
  - b. Conduct tastings at the premises of product manufactured by the proprietor and of similar products produced off-site by other proprietors;
  - c. Operate a restaurant, catering establishment, or other food and drinking establishment in or adjacent to the premises and sell at such place, at retail for consumption on the premises products manufactured by the proprietor or similar products produced off the premises;
  - d. Manufacture, bottle, and sell food condiments and products and other such crafts produced from product produced on-site or its component grains, cereals, grapes, stems, or leaves;
  - e. Store and sell gift items incidental to the sale of product produced on site. These items shall be limited to the following categories:
    - i. Nonalcoholic beverages;
    - ii. Food items for the purpose of complementing tastings, which shall mean a diversified selection of food that is ordinarily consumed without the use of tableware and can be conveniently consumed while standing or walking;
    - iii. Food items, which shall include locally produced farm products and any food or food product not specially prepared for immediate consumption upon the premises;

- iv. Supplies and accessories, including any items utilized for the storage, serving, or consumption of the product produced on premises or for decorative purposes;
  - v. Beer-making equipment and supplies; and
  - vi. Souvenir items, which shall include, but not be limited to, artwork, crafts, clothing, agricultural products, and any other articles which can be construed to propagate tourism within the region.
- f. Conduct tours of the premises.
- (3) No more than 75% of the total gross floor space of the establishment shall be used for the production of product including, but not limited to, brewing, distilling, fermenting, boiling and water treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks, conditioning tanks and serving tanks.
  - (4) All mechanical equipment visible from the street or an adjacent residential use shall be screened using architectural features consistent with the principal structure.
  - (5) Access and loading bays are discouraged from facing toward any street.
  - (6) Access and loading bays facing any street or adjacent residential use shall have the doors closed at all times, except during the movement of raw materials, other supplies and finished products into and out of the building.
  - (7) Service trucks for purpose of loading and unloading materials and equipment shall be restricted to between the hours of 8:00 a.m. and 8:00 p.m., Monday through Saturday, and between 11:00 a.m. and 7:00 p.m. on Sundays and national holidays.
  - (8) The proposed facility will provide a plan acceptable to the Planning Board for the disposal of any wastewater and solids produced on-site without significantly impacting groundwater resources. The Planning Board may retain qualified experts in determining compliance with these provisions.

**FF. Micro-Homes on Common Lot**

- (1) Up to four micro homes are permitted per 1 acre, with each additional home requiring 5,000 square feet.
- (2) Adequate subsurface disposal systems shall be provided to accommodate the disposal of 165 gallons per day per micro-home proposed, or the proposed microhomes shall be connected to Town-endorsed central water and sewer utilities. The Planning Board may permit additional units, where it finds upon advice of the Town Engineer, that the proposed home by way of size and layout is likely to generate less wastewater, but in no event shall subsurface facilities provide for less than 110 gallons per day per micro-home of treatment capacity.
- (3) Adequate off-street parking shall be provided at a rate of 1.5 parking spaces per micro-home.
- (4) Micro-homes on a common lot shall be held in common ownership, or in separate ownership with condominium ownership of common lands and facilities and with an approved homeowners association approved by the State of New York.

## **GG. Mixed-Use**

- (1) A mixed-use structure shall be comprised of one or more non-residential uses authorized in the district occupying a ground floor space, and up to one residential unit per 14,000 square feet of lot area on stories above the ground floor space.
- (2) Where town-endorsed central water and sewer utilities are provided, additional units may be provided through transfer of development rights, but in no event shall the lot area per residential unit be less than 4,350 square feet.
- (3) The mixed-use shall meet the most restrictive lot area requirements for the uses proposed for the ground-floor space.
- (4) Adequate subsurface disposal systems shall be provided to accommodate the disposal of wastewater from the proposed non-residential uses and residential units as determined by the Town Engineer, or the proposed mixed-use shall be connected to Town-endorsed central water and sewer utilities.
- (5) Each residential unit shall have no more than three bedrooms.
- (6) One off-street parking space shall be provided for each residential bedroom in addition to the parking requirements for ground floor uses.
- (7) Access to apartments, shall be through a separate exterior door from non-residential ground-floor uses.

## **HH. Truck Stops/Travel Centers**

- (1) A truck stop and travel center shall be laid out in a manner that provides substantial evergreen screening of parking areas from State and County Roads. Additionally, such uses shall be designed to take advantage of topography, and incorporate berms, and such other design features so as to reduce visibility to the maximum extent practicable from substantial viewpoints including the Long Path, the D&H Canal towpath, other publicly-accessible parks and open spaces.
- (2) Buildings shall be designed to incorporate materials and architectural features consistent with the parklike setting of the Town including among others exposed timber beams, stone, brick, peaked roofs, and features consistent with the character of the area.
- (3) The proposed truck stop shall include infrastructure for the treatment of stormwater runoff, to the satisfaction of the Town Engineer to prevent the runoff of automotive chemicals to receiving waters and aquifers.
- (4) In addition to fueling stations, accessory uses permitted at the Truck Stop may include: retail convenience stores, restaurants, gift shops, tourist information centers, sleeping accommodations, restrooms, relaxation rooms and showers. The operator shall provide appropriate security and monitoring facilities including cameras as are necessary to ensure the lawful use of all areas within the site.
- (5) A single tall advertising sign up to 80 feet in height shall be permitted advertising the truck stop to vehicles travelling along Route 17/future Interstate 86. Such advertising sign shall advertise only the brand of the primary operator and the exit number and no accessory uses at the Travel Center shall be permitted to advertise on the sign.

§ 199-27 (Reserved)

§ 199-28 (Reserved)

## Article VI

### Signs

#### § 199-29 Sign regulations.

- A. Purpose. The Town's ability to attract economic development activity is accomplished in part by the enforcement of regulations that maintain an attractive community and streetscape, of which signs are a contributing element. A multiplicity of signs clutters the overall appearance of the Town, detracts from its visual quality, and shall be discouraged.
- B. Permit required. Except for signs erected for the identification of the occupant of a single-family or two-family dwelling, no sign shall be erected or installed upon any structure or upon any land, nor shall existing signs be changed, until a sign permit has been obtained from the Building Inspector. No sign shall be erected for any development requiring site development plan or subdivision approval by the Planning Board without sign plan approval by the Planning Board.
- C. Exempted signs. No permit is required for the following classes of signs:
- (1) Signs required by duly constituted governmental bodies and their agencies, where such signs are established in the interest of the safety, convenience or welfare of the general public. The number and location of such signs shall be as directed by the governmental agency having jurisdiction.
  - (2) Traffic control signs required for traffic control purposes shown on an approved site plan or posted pursuant to the order of traffic control agencies and conforming to the Manual of Uniform Traffic Control Devices of the New York State Department of Transportation.
  - (3) Flags of the national, state, county or Town government and banners and emblems or name and meeting place signs of civic, philanthropic, educational or religious organizations or institutions.
  - (4) Signs and decals pertaining to the tenant's registration with, or membership in, a professional organization/affiliation or civic association.
  - (5) Temporary signs in any zoning district pertaining to and displayed during campaigns, drives, or events of civic, philanthropic, educational or religious institutions, provided such signs are erected not more than three weeks prior to the event and are removed not later than two weeks after the event.
  - (6) Memorial plaques, cornerstones, historical tablets and the like.
  - (7) Signs required to be maintained or posted by law or governmental order, rule or regulation, unless specifically prohibited, limited or restricted.
  - (8) Signs indicating the name or address of the occupant.
  - (9) A sign for a permitted home occupation, provided that it shall not be larger than four square feet in area. Only one such sign per dwelling unit shall be permitted.
  - (10) Sale or rental signs. Temporary, nonilluminated signs advertising the sale or rental of the premises upon which they are erected by the owner or broker or any person interested in the sale or rental of such premises may be erected or maintained, provided that the size of any such sign does not exceed six square feet and not more than two signs are placed upon any property unless such property fronts upon more than one street, in which event two more signs may be erected on each additional frontage.



- (11) Temporary construction signs, not exceeding 20 square feet in area, either affixed to the wall of the building to which they pertain or to a post, identifying the project under construction, participating designers, contractors or developers, etc. A construction sign shall not be erected until site or subdivision plan approval has been granted by the Planning Board. Said sign shall be permitted only during the construction period of the project and shall be removed immediately upon completion of the construction or improvement. Said sign shall conform in all respects to the provisions of these regulations.
  - (12) Signs calling attention to a change in the status of a business, which signs are customarily painted on a window or constructed of paper, cloth or other light material and attached to or located within six feet of the interior side of the window. Said sign shall not be displayed for more than 90 days. Banners and streamers advertising the opening of a new business may be permitted up to 30 days after the date on which the business commences operation and is open to the public, provided the applicant has first provided a cash deposit posted with the Town Clerk for purposes of covering the cost of removing the banners, streamers and temporary sign in the event the applicant fails to do the same within the designated time period. The cash deposit shall be refunded upon the applicant's compliance with these provisions within the time period specified above.
  - (13) Signs not visible outside of a building.
  - (14) Signs displayed in a window indicating the availability of a public telephone or notary public and/or the possession of any licenses normally required to conduct a given business.
  - (15) Holiday decorations displayed in season only.
  - (16) Temporary signs for tag or garage sales, provided such signs contain the name of the seller and date of the sale, are displayed only seven days prior to the sale, and are removed the day after the sale.
  - (17) "No trespassing" signs.
  - (18) Signs setting forth matters of public information and convenience (i.e., statements of personal opinion), including statements of protest, other than temporary signs referred to in § 199-29C(5).
  - (19) Political signs and political advertising, except as regulated in Chapter 44, Advertising, Political, of the Code of the Town of Mamakating.
  - (20) No excepted sign shall be placed at a location which endangers the public health, safety and welfare.
- D. Permitted signs, Except where signs are otherwise regulated in this chapter, the total sign area permitted for all nonresidential uses shall be determined as follows:
- (1) The total area of all signs shall not exceed 1 1/2 square feet for each horizontal linear foot of the front facade of the establishment. The area of each sign shall be computed as follows:
    - (a) For individual signs, the area of a sign shall be computed by delineating the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets the regulations of this chapter and is clearly incidental to the display itself. In the case of a facade or freestanding sign, the entire face shall be measured in computing the sign area.
    - (b) For multifaced signs, the sign area shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces

cannot be viewed from any one point at the same time, and, when such sign faces are part of the same sign structure, the sign area shall be computed by the measurement of one of the faces.

- (2) If an establishment fronts on a public parking lot, an additional sign area equal to 50% of the sign area that would be permitted for a facade sign shall be allowed provided that the additional sign area appears on that side of the building visible from the parking lot. The sign shall be a facade sign meeting all other dimensional requirements for said type of sign; provided, however, that no sign shall exceed a maximum dimension of 10 feet in length and two feet in height.
- (3) All signs shall comply with the accompanying Schedule of Sign Requirements. Except as may be specifically referred to herein, "establishment" may refer to a tenant in a multi-tenant building or an entire building if it is owned by or leasable to one tenant.

E. Prohibited signs. The use, erection or installation of the following sign types is prohibited:

- (1) Signs or billboards advertising items sold or produced elsewhere than on the lot where such sign is located are prohibited. Signs advertising services or resorts not located on the lot where such sign is located are prohibited, unless part of an overall Town-approved directory sign.
- (2) Signs on any roof or extending over any portion of the roof or parapet to which they are attached.
- (3) Flashing or intermittently illuminated signs. A sign which exhibits changing light or color effects, even though the intensity of light may be relatively constant, shall be deemed a flashing sign.
- (4) Signs where the source of illumination is visible, including neon-type electric signs, except as may be permitted for window signs as outlined in the Schedule of Sign Requirements.
- (5) Searchlights to attract attention to a sign or permitted use.
- (6) Strings of incandescent lights.
- (7) Flashing, moving or rotating signs.
- (8) Pennants, streamers, banners or other eye-catching devices.
- (9) Awning signs.
- (10) Portable signs, with or without wheels, easel-type, "A" frame or other; any sign not permanently affixed to a building or the ground.
- (11) Inflatable signs and tethered balloons.
- (12) Signs which compete for attention with or may be mistaken for a traffic signal.

F. Directory signs. As a matter of policy, the Town may permit directory signs as a method of identifying businesses in the Town. Said directory signs may be located in the vicinity of major access points into the Town. Directory signs shall be permitted upon approval by the Town Board, which shall approve the design and content. The lettering, color scheme, depiction and emblem of each identification sign contained on the directory shall be uniform. General directory signs shall be no larger than 100 square feet. The name of the establishment on a general directory sign shall be no higher than six inches.

G. General regulations. The following regulations shall apply to all permitted signs:

- (1) Signs must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated.
- (2) Illumination. In districts where illuminated signs are permitted, the source of illumination shall be shielded so that it is not visible beyond the boundaries of the lot on which it is located.
- (3) Design standards. The Planning Board may impose reasonable limits on the size of a sign, type and characteristics of illumination, number and location, taking into consideration the uses on the site and the reasonable requirement for communicating information to vehicular or pedestrian traffic. The Planning Board shall consider the following in granting sign approval:
  - (a) Signs must be clearly accessory to the use or uses on the lot on which they are located, and such signs and lighting must be shown to be essential to the principal use upon the lot.
  - (b) Signs should be a subordinate part of the streetscape.
  - (c) The size and content of the sign shall be the minimum essential for legibility and for the provision of information to patrons or invitees seeking the particular use being identified.
  - (d) The sign content shall not hawk or peddle and must clearly provide only information necessary to identify the use upon the lot.
  - (e) Garish colors and materials should be avoided. Signs which have dark background colors and light letters are preferred in order to minimize the apparent size of letters within the streetscape.
  - (f) All signs, together with their supporting braces, guys, anchors, etc., shall be kept in repair and in a proper state of preservation. The display surfaces of all signs shall be kept neatly painted or maintained at all times.
- H. Nonconforming signs. Any sign made nonconforming by these regulations may be permitted to continue; however, any change of use shall require the removal of the nonconforming sign and the erection of a sign that conforms to these regulations.
- I. Enforcement. The erection of a sign not conforming to an approved sign plan shall be deemed a violation of this chapter. No sign plan shall hereafter be approved or sign permit issued except pursuant to the requirements of this chapter. No permit shall be issued for any sign which does not conform to an approved sign plan or site development plan.
  - (1) The Building Inspector, by written notice, shall notify a property owner of a sign which has been erected in contravention of an approved sign plan and any conditions which have been attached thereto. Said notice shall be sent by certified mail to the owner of the sign.
  - (2) The sign owner shall take down or obtain sign plan approval immediately in accordance with the procedures contained in these regulations. If the owner of the nonconforming sign has not met the requirements of the notice, the Building Inspector shall be authorized to issue a violation against said owner.
- J. Removal of certain signs. Any sign, including structural supports or frame, now or hereafter existing, which no longer identifies a use on the subject premises, or which is not being maintained, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or structure upon which such sign is found within 10 days after written notification from the Building Inspector. Upon failure to comply with such notice within the time specified in such order, the Building Inspector shall issue a violation to said owner.

- K. Unsafe signs. Should a sign be or become insecure or in danger of falling or otherwise unsafe in the opinion of the Building Inspector, the owner thereof or person maintaining the same shall, upon receipt of written notice from the Building Inspector and in any case within five days thereafter, secure the same in a manner to be approved by the Building Inspector. If such order is not complied with, the Building Inspector is hereby authorized to cause removal of the unsafe sign, and any expense incident thereto shall be paid by the owner of the building, structure or premises on which such sign is located. When any sign is in such dangerous condition as to be immediately dangerous to the safety of the public, the Building Inspector is hereby authorized to take such action as in his opinion shall be necessary to protect the public or property. The cost of the removal shall be borne by the owner of the property on which such sign was erected and shall become a lien upon such property until paid.
  
- L. Adjustment of sign regulations. The Planning Board, when approving a sign as part of site or subdivision plan, may adjust the requirements for a particular sign where it finds that they may be impractical due to existing conditions such as the size or location of existing structures, existing vegetation, topographic conditions, and any benefits gained, such as the reduction of a nonconformity, provided that any such modification will not have the effect of nullifying the intent and purpose of this chapter or the Town Comprehensive Plan. In allowing any modification, the Planning Board shall attach such conditions as are, in its judgment, necessary to secure the objectives of the standards or requirements so modified. Any sign that requires a sign permit from the Building Inspector, which does not conform to these sign regulations, shall require a variance from the Zoning Board of Appeals.

## Article VII Parking Standards

### § 199-30 **Off-street parking and loading.**

- A. Off-street parking. In all districts, in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking spaces for vehicles in accordance with the requirements set forth herein.
  
- B. Size and access.
  - (1) Each off-street parking space shall have an area of not less than 200 square feet, exclusive of access drives or aisles, and shall be of usable shape and condition. Where the Planning Board deems it appropriate, it may approve perpendicular parking stalls less than 200 square feet, but no stall shall be smaller than nine feet by 18 feet. Except in the case of dwellings, no parking area provided hereunder shall be established for fewer than three spaces.
  - (2) There shall be adequate provisions for ingress and egress to all parking spaces. Access to off-street parking areas shall be limited to several well-defined locations, and in no case shall there be permitted unrestricted access along the length of the street or alley upon which the parking area abuts.
  
- C. Off-site facilities. All permitted and required accessory off-street parking spaces, open or enclosed, shall be located on the same lot as the use to which such spaces are accessory. Where the Planning Board makes a determination that safe and adequate parking may not be located on the same lot, it may approve off-site parking facilities, except that such spaces shall be provided within a radius of no greater distance than 250 feet from that lot as measured from property lines.
  
- D. Number of parking spaces required. The number of off-street parking spaces required shall be as set forth in Table 1 below.

**Table 1**

<b>Use</b>	<b>Required Parking Spaces</b>
One- or two-family dwelling	2 per dwelling unit
Multifamily dwelling	1 per studio unit; 1.5 per 1-bedroom unit; 2 per 2-bedroom unit and larger; plus an additional 10% of the total required spaces for visitor parking
Bank; post office	1 per 100 sf gfa or 3 per teller, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or less
Bowling alley	3 per lane
Churches and schools	1 per 3.5 seats in an auditorium or 1 per 17 classroom seats, whichever is greater
Conference center; educational, research or interpretative center	1 per 4 seats in major assembly hall or meeting area, plus 1 per 4 seats in classroom facilities
Country clubs; golf courses	1 per 3 members
Day-care center; nursery school	1 per staff member, plus 1 per 300 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Distribution facility	2 per each 3 employees on major employment shift
Dude ranch	1.25 per room or rental unit, in addition to required parking for the residential use
Gas station	1 per 100 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Health club or spa; indoor commercial recreational facility; indoor skating rink	1 per 200 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Hotels; motels	1.25 per room or rental unit
Home occupation; professional office	2 in addition to the required parking for the residential use
Kennel; animal hospital	1.25 per employee or 1 for each 200 sf gfa, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or less

**Table 1**

<b>Use</b>	<b>Required Parking Spaces</b>
Manufacturing, light industry	1 per 500 sf gfa
Membership club; lodge	1 per 5 members or 1 per 4 seats in the major assembly hall or meeting area or per 200 sf gfa, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or less
Office buildings, other medical and dental	1 per 300 sf gfa, plus an than additional 5 for buildings of 5,000 sf gfa or less
Medical and dental offices	1 per 200 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Motor vehicle sales	1 per 200 sf gfa of sales area
Movie theater; music hall; indoor entertainment	1 per 3 seats or 1 per 75 sf gfa, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or less
Museum; art gallery; library; artisan studio	1 per 300 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Nursery; greenhouse; sale of agricultural products	1 per 200 sf gfa
Residential model home; sales office	6 for the first sales building and model home, plus 3 per each additional sales building or model home
Resort; country inn	1.25 per room or rental unit, plus required parking for accessory recreational, conference center, etc.
Restaurant, tavern, bar or deli	1 per 3 seats, or 1 per 75 sf gfa, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or less
Retail sales; service, commercial	1 per 200 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Wholesale; storage; warehouse	1 per 1,000 sf gfa or 2 per each 3 employees on the largest shift, whichever is greater
Quick service or fast-food establishment	1 per 50 sf gfa
All other uses not specifically listed	As required by the Planning Board

**Table 1**

**Use** **Required Parking Spaces**

Note:

gfa: gross floor area

sf: square feet

- E. Off-street loading. In any district, in connection with every building or building group or part thereof hereafter erected and having a gross floor area of 10,000 square feet or more which is to be occupied by manufacturing or commercial uses or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same zone lot with such building, off-street loading berths in accordance with the requirement of Table 2 following.

**Table 2**

<b>Use</b>	<b>Floor Area (square feet)</b>	<b>Number of Loading Berths</b>
Schools	15,000 or more	1
Hotels and offices	From 10,000 or more	1
Retail, commercial whole- sale, manufacturing storage and miscellaneous	From 10,000 to 25,000	1
	From 25,001 to 40,000	2
	From 40,001 to 60,000	3
	From 60,001 to 100,000	4
	Each additional 50,000 or portion thereof	1 additional

- F. Joint facilities for parking or loading. Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved by the Planning Board, taking into consideration the following:
  - (1) Said total capacity of the common facility will meet the intent of these requirements by reason of variations in the probable time of maximum use by residents, visitors, patrons, and employees among such uses. However, reserved parking areas shall be provided, indicating the availability of land to fulfill the requirements for each individual use in the event these variations may change.
  - (2) As a condition of the approval of the joint use, the Zoning Board of Appeals shall require a legal instrument satisfactory to the Zoning Board of Appeals and the Town Attorney assuring the continued existence and use of said parking spaces in connection with the uses and structures that they serve. Such instrument shall also guarantee that, upon termination of the use, each individual participant will provide off-street parking and loading spaces for its own use in accordance with the requirements of this chapter. Such legal instrument shall be recorded in the office of the County Clerk of Sullivan County.

**§ 199-31 Deferment of full improvement of off-street parking.**

The intent of this section is to allow some flexibility in the timing of the provision of parking, where the Planning Board has determined that there is some uncertainty as to the parking demand for a particular use, and that the immediate provision of parking would require the significant alteration of natural

topography or disturbance to wooded sites. Where the Planning Board determines that the immediate use of any property may not require the full initial improvement of all off-street parking or loading facilities, the Planning Board may waive the initial improvement of not more than 50% of the required number of spaces, provided that the total number of parking spaces is shown on the approved plan. The area shall be reserved for future use. The Planning Board may require that said area be graded for parking in accordance with the approved plan. All such reserve lands, if graded, shall be landscaped in accordance with the approved landscaping plan until the reserved spaces may be required to be improved. Reserved spaces shall be improved within six months of the date of a written notice from the Planning Board that such spaces have been determined to be necessary. Appropriate written guaranties to the above shall be provided by the owner and approved by the Town Attorney. The Planning Board may require that a performance guaranty or other surety be posted to ensure the completion of said reserve parking, if so required.

**§ 199-32 Landscaping.**

The purpose of this section is to ensure that large expanses of paved surfaces are landscaped to provide visual relief. In addition to the provisions of § **199-41**, off-street parking areas accessory to multifamily dwellings and nonresidential uses shall be suitably landscaped. All off-street parking areas, including all paved areas for off-street parking, drives, aisles, standing zones and other vehicular use areas, shall have a minimum landscape area of 20% of the parking area. Landscaping shall be placed at parking entryways and at parking end islands and shall help to define vehicular access and pedestrian movement. Landscaping shall consist of a mix of grass, vegetative ground cover, shrubs, trees and other landscaping materials. Where necessary, landscaping shall be protected from vehicular encroachment by raised curbing.

**§ 199-33 Parking lot and driveway gradients.**

The maximum gradient of parking areas serving five or more vehicles shall not exceed 5%. The maximum gradient of driveways serving a single-family or two-family residence shall not exceed 14%. A driveway serving a use other than a single-family or a two-family residence shall have a platform with a gradient not exceeding 3% within 25 feet of the right-of-way line of the street on which the driveway provides access.

**§ 199-34 (Reserved)**

**Article VIII  
Environmental and District Controls**

**§ 199-35 Environmental constraints.**

This section shall apply to the calculation of minimum lot size, development coverage and residential density. For purposes of calculating development yield, the following areas shall be subtracted from the gross acreage of a parcel to establish the minimum lot area and maximum permissible development coverage, in the case of nonresidential projects requiring site plan approval, or development yield and permissible density in the case of residential subdivisions or site plans:

- A. Utility rights-of-way and designated streets. Fifty percent of any land within easements or rights-of-way for overhead utilities of 69 kilovolts or greater, or within a designated street line, shall not be counted as part of any minimum lot area requirement. No building, structure, yard or land proposed for prolonged habitual human occupancy shall be located within a utility easement; however, a road may traverse the easement.
- B. Land under water (applicable prior to development). One hundred percent of that portion of a lot subject to the following shall not be counted as part of any minimum lot area requirement: ponds; freshwater wetlands regulated by the Army Corps of Engineers; streams; and that portion of any freshwater wetland and any one-hundred-foot control area designated by the New York State



Department of Environmental Conservation. No construction shall be permitted within the limits of the freshwater wetland or stream without appropriate federal or state permits.

- C. Floodplains. Fifty percent of any land contained within the one-hundred-year floodplain as designated on Federal Emergency Management Agency maps shall not be counted as part of any minimum lot area requirement. No construction shall be permitted within the one-hundred-year floodplain.
- D. Steep slopes (applicable prior to development).
  - (1) Not more than 50% of the land area of that portion of each lot that is proposed to be disturbed may be counted as part of any lot area if subject to the following:
    - (a) For residentially zoned properties, slopes over 25%.
    - (b) For nonresidentially zoned properties, slopes over 15%.
  - (2) No construction shall be permitted on that portion of a lot with a slope in excess of 20% except for roads and driveways and supporting infrastructure as necessary to access flatter areas of the lot.
  - (3) No portion of the land area of that portion of a lot with a slope in excess of 50% may be counted as part of the minimum lot area of a parcel.
- E. Rock outcrops (applicable prior to development). Not more than 50% of the area of that portion of a lot that is proposed to be disturbed with rock outcrops in excess of 50 square feet may be counted as part of the lot area of a parcel.

**§ 199-36 MG District Average Density Provisions.**

- A. Purpose. The MG Zone encompasses areas that contain lands that are constrained due to shallow depth to bedrock, seasonally perched water table, and steep topography. For purposes of establishing residential development yield that is consistent with the environmental characteristics of the land, an applicant has the option of selecting two alternatives for calculating development yield, after which average density subdivision is required, except for subdivisions of less than four lots where each proposed lot has access to an existing public road.
- B. Density Calculation - Minimum lot size alternative. The applicant may choose to establish development yield for residential subdivisions utilizing the minimum lot size (10 acres) and bulk requirements for the MG District. The environmental constraints outlined in § **199-35** above shall first be subtracted from the gross acreage to establish net residential development yield. The applicant shall then map a conceptual standard subdivision that meets the minimum bulk requirements for single-family dwellings in the or MG Zone.
- C. Density Calculation - Soil designation alternative. An applicant may choose to establish the maximum residential development yield by utilizing the soil data contained in the Soil Survey of Sullivan County, New York. For purposes of calculating development yield for single-family detached residential subdivisions, § **199-35**, Environmental constraints, shall not apply. The letters listed below refer to the slope designations contained in the soil mapping units that are enumerated in the Soil Survey of Sullivan County, New York. The applicant shall calculate the number of acres contained within each slope category. The acreage of each slope category shall be multiplied by the appropriate residential density to determine the total number of units permissible. To establish the development yield for a particular site, the following density provisions shall apply:

Slope Designation	Maximum Density
A (0% to 3%)	1 unit/3 acres
B (3% to 8%)	1 unit/6 acres
C (8% to 15%)	1 unit/9 acres
D (15% to 25%)	1 unit/15 acres
E (25% to 35%)	1 unit/30 acres
F (35% to 50%)	1 unit/45 acres
Hydric soils	1 unit/15 acres

- D. After determining the residential density of the parcel, the applicant shall utilize the average density provisions (§ 199-38) to cluster residential units on soils with slope designations of A, B or C (0% to 15%) and on the portions of the lot closest to existing public roads. The minimum bulk requirements for the clustered residential lots shall be the same as for single-family detached residences in the Neighborhood Residential (NR) Zoning District (for residences with neither Town-endorsed sewer nor Town-endorsed water systems). The maximum residential yield and the final configuration and size of each building lot shall be established based on the applicant demonstrating that individual well and septic systems, adequate access, and other specifications of this chapter, the Town subdivision regulations, and all other applicable laws and regulations shall be met.
- E. Other uses in the MG Zones. All other uses allowed in the MG or RVP Zoning Districts shall be required to establish minimum lot area and development yield by applying the requirements contained in § 199-35, Environmental constraints to the lot area requirement listed in Schedule I.
- F. Restrictions to be added to subdivision plat. Any lot created by process of these provisions shall be considered to have the minimum lot area and maximum residential density permissible within the MG and RVP Zoning Districts. A note shall be added to the subdivision plat indicating that the lots created represent the maximum number of lots permitted in accordance with the MG regulations. The maximum number of lots permissible and the calculation of residential density yield shall also be included as a map note.
- G. Covenants and Easements required. A covenant shall be filed with the deed of any lot created by process of these provisions requiring that there be no further subdivision of the lot without the authorization of the Town Board, upon a finding that the resubdivision of the lot is not contrary to the policies of the Comprehensive Plan of the Town of Mamakating. Additionally, conservation easements in favor of the Town of Mamakating or a reputable land trust acceptable to the Town Board upon advice of its legal counsel shall be required over any open space land created by the average density subdivision.
- H. Small subdivisions exempt. Subdivisions of less than four total lots each having direct, individual access to a public road, and where no new road is proposed, may be subdivided subject to standard subdivision process, based upon the lot area and bulk requirements listed in Schedule I, after application of the requirements of §199-35, Environmental Constraints.

**§ 199-37 Stream buffers.**

- A. Purpose. Stream and riparian areas, the habitat bordering streams, are critical for water quality protection, erosion control, and as a living environment for many species of birds and wildlife. When properly designed, these areas can also serve as linear parks for hiking, nature viewing and other low-impact recreational activities. One of the most important methods of protecting stream quality is to limit disturbance within close proximity to a stream and its riparian area. For purposes of these regulations, the following shall apply:

- (1) No building, structure, keeping of livestock or impervious surfaces shall be situated, nor clear-cutting of natural vegetation be permitted, within 150 feet of a streambank of a stream with a water quality designation of A or B or any trout spawning (TS) or trout production (T) waters.
  - (2) No building, structure, keeping of livestock or impervious surfaces shall be situated, nor clear-cutting of natural vegetation be permitted, within 75 feet of a streambank of a stream with a water quality designation of C or D.
- B. Disturbance of the stream buffer shall require a disturbance permit from the Planning Board. In considering the need for said disturbance, the Planning Board shall consider:
- (1) Reasonable alternative locations for said structures or buildings.
  - (2) The necessity of any clear-cutting activities, e.g., no other location for a septic system or well.
- C. The Planning Board shall establish such conditions as may be necessary to minimize disturbance to the stream buffer, including a delineation of the area to be disturbed prior to work being conducted.

**§ 199-38 Average density (cluster development).**

- A. Approval of plats; conditions for changes in zoning provisions. The Mamakating Town Board, pursuant to § 278 of the Town Law, hereby empowers the Planning Board, simultaneously with the approval of a plat, to modify applicable provisions of this chapter, subject to the conditions hereinafter set forth and such other reasonable conditions as the Town Board may in its discretion add thereto. The purpose of this authorization is to enable and encourage flexibility of design and development of land in such a manner as 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.
- B. The conditions hereinabove referred to are as follows:
- (1) The Planning Board may require the submission of an application for the use of this procedure if, in its judgment, the application would benefit the Town and the public interest. If the owner makes written application for the use of this procedure, it may be followed at the discretion of the Planning Board subject to the purposes noted above.
  - (2) This procedure shall be applicable only to lands zoned for residential purposes, and its application shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements applicable to the district or districts in which such land is situated and conforming to all other applicable requirements; provided, however, that where the plat falls within two or more districts with differing density requirements, the Planning Board may approve in any one such district a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts. In determining development yield, the applicant shall adhere to the provisions of § **199-35** of this chapter.
  - (3) In the case of a residential plat or plats, the dwelling units may be single-family detached or single-family attached (townhouse) on individual lots, as determined by the Planning Board.
  - (4) In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space, or other municipal purposes directly related to the plat, then the Planning Board, as a condition of plat approval, may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. Any conditions relating to Town ownership of the lands shall be approved by the Town Board prior to the Planning Board granting final approval to the plat.

- (5) The proposed site plan or plat, including areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, and streets, driveways, and all other physical features as shown on said plan or otherwise described, accompanied by a statement setting forth the nature of such modifications, changes or supplementations of existing zoning provisions as are not shown on said site plan, shall be subject to review and public hearing by the Planning Board in the same manner as required for the approval of a subdivision plat and/or site plan.
- (6) On the filing of the plat in the office of the County Clerk, a copy shall be filed with the Town Clerk, who shall make appropriate notations and references thereto on the Town Zoning Map.
- (7) The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in this chapter.
- (8) The authorization herein shall apply to all lands within the Town of Mamakating.

**§ 199-39 Voluntary transfer of density.**

A. Purpose. The purpose of this section is to allow applicants, upon approval by the Town Board, to transfer the development rights permitted to a lot, parcel, or other area of land from a designated sending district to an area designated as a receiving district, in order to accomplish the following objectives:

- (1) To protect environmentally sensitive lands by transferring development rights from the sending district;
- (2) To protect scenic viewsheds by transferring development rights from the sending district; and
- (3) To transfer development rights to an area of the Town of Mamakating planned for growth and by allowing a density which may encourage the provision of Town-endorsed water and Town-endorsed sewage systems.
- (4) To establish growth boundaries around the Town's two established Villages and focus development in Village Adjacent, Hamlet and Neighborhood Residential areas to prevent a sprawling development pattern.

B. For purposes of this section, the sending districts and receiving districts shall be designated as follows:

- (1) Calculation of Density Transfer – Sending Districts. The density to be transferred shall be established by dividing the net lot area of the sending parcel after deduction of environmental constraints pursuant to § 199-35, by the minimum lot area per unit and multiplying that product by the following factors:
  - (a) 0.5 – Lands located within the MG zoning district, that do not meet the requirements of any other factors listed hereafter;
  - (b) 1.0 – Lands located within 200 feet of a Village Adjacent zoning district, that do not meet the requirements of any other factors listed hereafter;
  - (c) 1.0 – Lands containing at least 25% prime agricultural soils, that do not meet the requirements of any other factors listed hereafter;
  - (d) 2.0 - Lands containing at least 25% prime agricultural soils currently being farmed and having been farmed for at least ten consecutive years;

- (e) 2.0 – Lands within the RVP zoning district;
  - (f) 2.0 – Parcels containing significant natural communities as documented in the New York Natural Heritage Program’s Biodiversity Databases.
- (2) Receiving districts: Density may be transferred to the VA, IC, HC or NR zoning districts subject to the lot area and bulk requirements listed in Schedule I . Nothing herein shall be construed to allow residential density to exceed the capacity of the land to support individual water and individual subsurface wastewater disposal systems, except where Town-endorsed water and Town-endorsed sewer systems are provided.
- C. Consent of owners. The owner of the property in the sending district shall submit an affidavit consenting to the transfer of density onto the receiving parcel.
- D. Subdivision or site plan approved required. A site plan and/or subdivision plan shall be filed with the Planning Board concurrently with the request to the Town Board to permit the transfer. The subdivision or site plan shall conform to the requirements of the zoning, subdivision and/or site plan regulations. Where the Planning Board determines that the transfer will meet the goals and objectives of this section, it may waive the environmental constraints provisions as apply to the receiving parcel and allow development under any reduced lot area and bulk provisions subject to town-endorsed utility requirements as applicable.
- F. Conservation easement. The burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement as defined in Title 3 of Article 49 of the Environmental Conservation Law, which burden upon such land shall be enforceable by the Town of Mamakating in addition to a reputable land trust acceptable to the Town of Mamakating, which enforcement shall not necessarily imbue any responsibility for maintenance of on the part of the Town or land trust. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the Town of Mamakating to the transferee in a form suitable for recording in the Registry of Deeds in the County of Sullivan.
- G. Within one year after a development right has been transferred, the assessed valuation placed on the affected property for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property, and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.
- H. Development Rights Bank. The Town may establish through the transfer of development rights of Town-owned lands not designated as parkland, a supply of development credits pursuant to these provisions for direct sale to interested purchasers. The Town may purchase land for the purpose of creating development credits or accept lands through donation or bequeathment for such purpose. The price for sale of these credits shall be established based on the per credit acquisition cost (including any administrative costs) or 75% of the land cost for a single-family building lot in the receiving district, whichever is greater. The proceeds from sale of such credit shall be deposited into a special separate municipal account to be applied against expenditures necessitated by the municipal development rights program, including cost of additional future acquisitions of development rights.

**§ 199-40 Nonresidential use screening.**

Any use which is in, abuts, is adjacent to or is less than 50 feet from any residential district, and which is not conducted within a completely enclosed building, such as junkyards, storage yards, lumber and building materials yards and parking lots and like uses, shall be entirely enclosed by a fence or landscaping sufficient to effectively shield such uses.

§ 199-41 **Shade trees.**

Any application requiring site development or subdivision approval shall be subject to these provisions. A minimum of one shade tree per each 40 feet of road frontage shall be planted on any lot within the BR, NR, HC, IO, LIO, and IC Zoning Districts. Shade trees shall be a minimum caliper of 2 1/2 inches [diameter at breast height (dbh)]. The Planning Board may waive the requirements of this section, provided that it may be demonstrated that the development application will result in the retention of existing mature tree stands within the front yard of the lot, and further provided that a restriction shall be duly noted and placed on the site or subdivision plan prohibiting the removal of said existing vegetation.

§ 199-42 **Shawangunk Ridge view protection area.**

- A. Purpose. To promote the health, safety and general welfare of the residents of the town, the Town finds that:
- (1) The natural, open character of Shawangunk Ridge is a critical feature of the unique heritage of the Town whose preservation enriches and benefits both residents and visitors;
  - (2) It is desirable to protect panoramic views of the ridge as well as sensitive natural habitats on Shawangunk Ridge;
  - (3) The ridge is the source for a major portion of the town's water resources;
  - (4) Recreational opportunities are to be protected, including support of local and regional trail systems; and
  - (5) Preservation of these features while providing for appropriate development can only be achieved by encouraging flexibility in the design of land use and development projects.
- B. Application of regulations. Except as provided herein, no land shall be developed and no building or structure erected, expanded or developed unless in conformity with these regulations. Any lot fully or partially within the Ridge Overlay District as mapped by the Town of Mamakating will be subject to these regulations. Where these regulations conflict with existing regulations, these regulations shall supersede.
- C. Nonconforming lots. Where new uses of preexisting, nonconforming lots require only a building permit, these regulations shall be applied to the maximum extent possible in meeting the purposes of this section.
- D. Approval conditions. Any condition of approval necessary to meet these regulations shall be clearly noted on the final plat or plan and filed with the County Clerk. Where appropriate, conditions shall also be noted on a filed deed.
- E. Design regulations. To meet the purpose of the Ridge Overlay District, the following regulations shall apply:
- (1) Building sites. Building sites shall be clearly noted on any plat or plan. All structures shall be sited away from ridgetops and ridgelines. Whenever possible, structures shall be sited at lower elevations and close to existing roads.
  - (2) Structure design. Structures shall blend in with natural surroundings through preferred use of stone or natural wood siding and use of roofing materials with earthtone colors.
  - (3) Lighting. Exterior lighting shall be controlled in both height and intensity. Screening or shielding of luminaries may be required.

- (4) Structure screening. As a condition of approval, an applicant may be required to preserve existing vegetation or provide new plantings of native vegetation to screen structures. Additionally, a conservation easement pursuant to § 247 of the General Municipal Law and §§ 49-0301 through 49-0311 of the New York Environmental Conservation Law shall be the preferred means to protect or buffer views.
  - (5) Existing vegetation. Existing vegetation shall be preserved to the maximum extent possible. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site in order to maintain native vegetation as an effective screen for structures that may be visible from public roads or parks and other public views.
  - (6) Tree cutting. No cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) except for harvests of less than 15 cords or less than 10,000 board feet on any one parcel shall take place except in accordance with an approved building permit, site plan, subdivision or timber harvesting plan. Cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
  - (7) Trail access and setback. The town, consistent with §§ 277 and 281(d) of the New York Town Law, shall seek trail corridor access and setback of development away from trails where documentation exists that the subject parcel includes an existing or potential public trail, such as the Long Path.
  - (8) Underground utilities. All electric, telephone, television and other communication lines, both main and service connections, servicing new developments shall be provided by underground wiring within easements of dedicated public rights-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.
  - (9) Recreation open space. As a condition of approval, the Town may require up to 20% of any parcel within the Overlay District for parkland, recreation and open space purposes, so long as this condition does not reduce the number of units allowable under applicable zoning. Such land shall be dedicated pursuant to Subsection F of these regulations.
  - (10) Telecommunication towers. Throughout the Shawangunk Ridge Overlay District, WTS facilities shall be discouraged. In all cases the Town shall encourage site plans having the least visual impact on the environment, shared use of towers rather than new construction, reduced tower height to limit the need for external lighting, and stealth design.
- F. Dedication of open space. Any land dedicated for open space purposes shall be used only for park, recreation, conservation or selective timbering and agricultural purposes. Such land shall be encumbered by appropriate covenants or conservation easements approved by the Planning Board ensuring that the open space cannot be further subdivided; the use of the open space will continue in perpetuity for the stated purpose; and appropriate provisions will be made for maintenance.
- (1) The ownership of land dedicated for park, recreation or open space use shall be determined by the property owner or applicant subject to approval by the Planning Board. The person or entity having the right of ownership shall be responsible for its proper maintenance and continued upkeep. Ownership shall be with one of the following:
    - (a) The town;
    - (b) Another public jurisdiction or agency subject to its acceptance;
    - (c) A private nonprofit organization incorporated with a purpose consistent with the use and management requirements of the dedicated land;
    - (d) Shared, common interest by all property owners in a subdivision;

- (e) A homeowner, condominium, or cooperative association or organization; or
  - (f) Private ownership encumbered by a conservation easement pursuant to § 247 of the General Municipal Law or §§ 49-0301 through 49-0311 of the Environmental Conservation Law.
- (2) Any land dedication for purposes of this section shall be recorded in the County Clerk's office. All lands dedicated for the purposes of this section shall be clearly identified on a final plat or plan. Such identification shall note use, ownership, and management as well as liber and page of relevant filings with the County Clerk's office.

**§ 199-43 Clear-cutting.**

- A. Purpose. The purpose of this section is to ensure that the trees and forests of the Town are protected from unregulated removal and destruction. It is the policy of the Town of Mamakating to limit clear-cutting activities in the Town since they have the effect of increasing the potential for soil erosion and can degrade existing water quality through siltation and sedimentation, create visual scars on the landscape, and reduce forest habitat.
- B. Approval required. No building permit shall be issued for any activity which proposes to clear-cut an area in excess of one acre unless in connection with a site plan or subdivision plan approved by the Planning Board, or in connection with a timber harvesting license issued by the Planning Board in accordance with Chapter **181**, Trees, of the Code of the Town of Mamakating. Any other activity which proposes to clear-cut one acre or more of land shall require site plan approval by the Planning Board. Nothing herein shall be construed to permit clear-cutting where otherwise prohibited in this chapter or elsewhere in the Code of the Town of Mamakating.
- C. Submission required. The proposed clear-cutting of land shall require submission of the following:
- (1) Survey map illustrating the property boundaries and delimiting the area proposed to be clear-cut.
  - (2) Location of any trees in excess of eight inches measured four feet from the ground within the clear-cut area.
  - (3) The location of any streams within 200 feet of the limits of the clear-cut activity.
  - (4) The removal of trees creates the potential for soil erosion and sedimentation impacts since clear-cutting activities are often conducted in association with land disturbance activities, e.g., grading and filling. Mitigation measures shall be documented on the site plan to reduce impacts associated with soil erosion and sedimentation. Best management practices promulgated by the New York State Department of Environmental Conservation shall be followed.
- D. Standards. An application to clear-cut land shall only be approved if it meets the following standards:
- (1) The activity is one that minimizes, to the maximum extent practicable, the need to conduct clear-cutting. Wherever possible, the applicant shall be required to perform selective cutting.
  - (2) Clear-cutting shall not be conducted within 10 feet of any rear or side lot line, nor within 25 feet of any front lot line.
  - (3) Clear-cutting activities shall be minimized to reduce visual impact to scenic views in the community. In these instances, selective cutting is the preferred alternative.
  - (4) Clear-cutting shall avoid removal of large-diameter trees (eight-inch diameter and greater). The Planning Board may require the use of protective measures to ensure that clear-cutting activities do



not impact said trees. Mitigation measures may include the temporary installation of fencing along the tree dripline to avoid disturbance or compaction of the tree's roots.

- E. Exceptions. A permit to clear-cut land shall not be required for the following activities, provided they do not exceed the disturbance of one acre or more:
- (1) Minor tree removal activities associated with home landscaping, repairs and maintenance work;
  - (2) Individual service connections and construction or installation of public utility lines, septic tank lines, or septic fields;
  - (3) Preparation of a site for the construction of a single-family or two-family residence separately built;
  - (4) Installation of fence and sign posts or telephone and electric poles and other kinds of posts and poles;
  - (5) Highway or public utility construction or maintenance;
  - (6) Emergency work to protect life, limb and property.
- F. Inspection required prior to issuance of permit. Upon site plan approval of the Planning Board, and prior to the issuance of a permit to clear-cut, the applicant shall be required to flag the area proposed to be cut and shall provide written notice to the Building Inspector that said area has been delineated. Large-diameter trees to be preserved shall also be flagged. All mitigation measures shall be installed. The Building Inspector shall inspect the premises and shall issue a permit to conduct the clear-cut activity upon a finding that the limits of clear-cut have been delineated in accordance with that area shown on the site plan and that mitigation measures have been implemented.

**§ 199-44 Stormwater control.**

Any land use application approved pursuant to this Chapter **199** (Zoning), shall conform with the requirements of Chapter **160** (Stormwater Control) of the Code of the Town of Mamakating.

**§ 199-44.1 Senior Mobile/Manufactured Housing Zone.**

- A. Notwithstanding the provisions of § **131-13** of this Code, there is hereby established a Senior Mobile/Manufactured Housing Zone in the Town of Mamakating. In the entirety of such zone, up to a total of 20 mobile or manufactured houses shall be authorized, subject to:
- (1) Site plan approval where the Planning Board shall consider, among other things, adequate spacing of each mobile/manufactured housing unit;
  - (2) Proof adequate to the Planning Board of the Town of Mamakating that water and sewer can be appropriately provided to the residents of such zone and to any residents whose water or sewer capacity may be impacted by the location of such zone;
  - (3) An agreement with the Planning Board that the owner of the land where a senior mobile/manufactured housing park is situated shall enforce the terms of this section against its tenants, including any terms of the addendum, and authorization from the mobile/manufactured housing park owner for the Town of Mamakating to enforce the terms at its option;
  - (4) The obtaining of any and all necessary permits or licenses;
  - (5) The other requirements of this section; and
  - (6) Compliance with all other applicable laws except § **131-13**.

- B. The adoption of this section is intended to expand upon the affordable housing options available to Mamakating residents by allowing for the creation of one new senior mobile/manufactured housing zone of up to 20 units in a single manufactured or mobile home park, thereby expanding the affordable housing opportunities available for those over the age of 55 in the Town of Mamakating. There shall be no minimum lot size for mobile/manufactured homes sited pursuant to this zone. The intent of this act is to create a housing community consistent with the Housing for Older Persons Act of 1995.
- C. The Senior Mobile/Manufactured Housing Zone shall be a stand-alone mobile home park or a designated area in an existing mobile home park where housing units are contiguous to each other and generally separated from the remainder of the mobile/manufactured housing park in an otherwise undeveloped area which does not have mobile/manufactured housing units located thereon. Each housing unit in each zone shall require at least one occupant per housing unit (defined as a mobile or manufactured home, whether owned by an occupant or otherwise) who is liable for the performance of the terms of a lease of at least one year with the manufactured/mobile home park owner to be over the age of 55, and shall prohibit occupants in such units under the age of 19 years, except as otherwise provided herein. The lease provisions shall be adopted by resolution by the Town Board and may be revised from time to time by the Town Board. In the event the provisions are revised, a public hearing shall be held on the same with notice to the owner of any mobile home park which contains a Senior Mobile/Manufactured Housing Zone. Such provisions shall relate to and effectuate the purposes of this section and shall be filed at all times with the Town Clerk.
- D. Temporary visitors; age restrictions.
- (1) Those who stay overnight in the housing unit for less than 14 consecutive days, whose visits are separated by at least 14 days, shall not be deemed "occupants."
  - (2) Those under the age of 19 may stay in the housing unit for not more than 14 consecutive days and not more than a total of 28 days per calendar year.
- E. In the event a mobile/manufactured home located in the Senior Mobile/Manufactured Housing Zone is owned by a person age 55 or older who resides in such home and such person dies or is otherwise hospitalized or requires long-term health care outside of his or her home, the same shall not prohibit the spouse of such person, regardless of the age of such spouse, from continuing to reside in such home or from having his or her lease renewed if he or she is otherwise in compliance with the terms of all applicable laws and otherwise in compliance with the lease and if the owner of the manufactured/mobile home park agrees to renew such lease. Upon the death of all persons of a mobile/manufactured home who were residents of housing in a Senior Mobile/Manufactured Housing Zone and who were signatories to any lease agreement with the owner or operator of the mobile/manufactured housing park in the Senior Mobile/Manufactured Housing Zone, those responsible for administering the estate of such decedent may sell a mobile/manufactured home in the Senior Mobile/Manufactured Housing Zone to the owner of the mobile/manufactured housing park where such mobile/manufactured home is located or to any person(s) who is (are) qualified to otherwise live in such zone. The owner of the mobile/manufactured housing park which has the Senior Mobile/Manufactured Housing Zone in it shall not unreasonably deny a tenancy or lease to a prospective purchaser of a mobile/manufactured home being sold by the estate of a tenant in such zone where such deceased tenant or his or her spouse previously had a lease with the owner of the mobile/manufactured home park. The terms of such lease shall be substantially similar to the terms of all other leases in the Senior Mobile/Manufactured Housing Zone where the tenant owns the mobile/manufactured home and leases lot space from the owner of the manufactured/mobile home park, except nothing shall prohibit the owner of such park from otherwise increasing his or her lot rental by not more than 10% of the highest lot rent otherwise paid for a lot rental in the zone.
- F. Exceptions to age restrictions.

- (1) Notwithstanding the foregoing, individuals under the age of 19 may stay with an occupant for extended periods, not to exceed six months, where the occupant has obtained temporary legal guardianship or custody of said individual(s). The occupant who has obtained such temporary legal guardianship or custody of such individual(s) under the age of 19 shall notify the park owner or its agent of this case, and such park owner or manager shall notify the Town of Mamakating Code Enforcement Officer of this fact and the start date of the occupancy of the individual(s) under the age of 19. Such notice shall be in writing and mailed returned receipt requested or hand delivered with a receipt therefor acknowledged to the Town of Mamakating Code Enforcement Officer. Said occupants may not invoke the provisions of this subsection more than two times.
  - (2) The six-month time period provided for herein may be extended for periods of six months or less, but not more than twice, upon application to the Town of Mamakating Planning Board by the tenant/occupants charged with performing the conditions of the lease and after a public hearing at which the other occupants of the Senior Mobile/Manufactured Housing Zone are given an opportunity to be heard. The notice for said public hearing shall be posted in the office of any mobile/manufactured housing park which has such zone in it and shall be mailed by mail (not return receipt requested) to the addresses of the occupants of the Senior Mobile/Manufactured Housing Zone, which addresses shall be supplied by the Park Operator to the applicant within five days of such applicant's request for same. Proof of such certified mailing (i.e., an affidavit of service or a receipt from the post office for each mailed notice) shall be filed with or otherwise made to the satisfaction of the Planning Board.
  - (3) It is the intent of this Subsection **F** to recognize that family situations do, from time to time, require young people to live with their grandparents or other relatives or friends over the age of 55 and to provide a reasonable manner of accommodating a temporary occupancy by such individuals where they may have no other practical or safe place to reside. The Planning Board may grant up to two extensions of up to an additional six months per extension upon application to the Board. The Planning Board, in considering an extension, shall consider the effect, if any, on the quiet enjoyment of neighbors, the impact on sewer and water in the community, and the efforts of the occupants over the age of 19 to pursue other, permanent housing for themselves or the individuals under age 19 during the extension being sought. In the event any provision of this subsection is adjudged illegal, unconstitutional, or unenforceable by any court of competent jurisdiction, the entire Subsection **F** shall be deemed to be stricken.
- G. Language shown on the addendum attached hereto shall be made an addendum to each lease between a mobile/manufactured home park owner who utilizes the senior mobile/manufactured housing designation and any tenant who is responsible for the performance of lease terms who resides in a Senior Mobile/Manufactured Housing Zone. The mobile/manufactured park owner(s) shall provide the Town of Mamakating Code Enforcement Officer with a copy of each signed lease for any mobile/manufactured home in a senior/manufactured mobile housing development within 14 days of such lease being executed by the occupants thereof. The language in the addendum may be amended from time to time by resolution of the Town Board, but such amendment shall not reduce the number of housing units approved under this section. If such language in the addendum is amended, the owner of the mobile/manufactured housing park where senior mobile/manufactured housing exists shall be given notice of the proposed amendment at least 30 days in advance and shall have the authority to challenge the addendum as having improperly diminished the provisions or purposes of any other agreement the owner has entered into, if any, with the Town of Mamakating Town Board, including the settlement of legal claims between the parties.
- H. A mobile/manufactured home park owner who utilizes the senior mobile/manufactured housing designation for the locating or placement of mobile/manufactured homes shall, and upon application to the Planning Board for site plan approval does, give the Town of Mamakating Building Inspector the right to commence a summary proceeding under the Real Property Actions and Proceedings Law, as amended, or any other applicable section of New York State law, for purposes of bringing an eviction proceeding against any occupant, tenant, lessee, or mobile/manufactured home owners in

violation of any term of the lease upon direction of the Building Inspector of the Town of Mamakating. Further, such owner agrees himself or herself to enforce the terms of the lease.

- I. This section shall take effect upon filing with the Secretary of State.

## Article IX Site Development Plan Review

### § 199-45 Site plan review and approval.

A. Approval required.

- (1) Except for single-family and two-family residences, agricultural operations, and accessory uses appurtenant to the foregoing, approval of a site plan by the Planning Board is required for:
  - (a) The development or redevelopment of any property or structure for a new use that proposes a building, structure or disturbed area in excess of 1,500 square feet of cumulative gross floor area or a structure that will be used for two or more stores or offices.
  - (b) The development or redevelopment of any property requiring the issuance of a special use permit.
  - (c) The expansion or relocation of any existing use resulting in a building, structure or disturbed area in excess of 1,500 square feet of cumulative gross floor area.
  - (d) The paving of nonresidential parking areas and associated driveways for purposes of reviewing stormwater facilities and to ensure adequate landscaping and screening.
  - (e) The development or redevelopment of any property or structure for a new use, including single-family and two-family residences, in accordance with § 199-42.
- (2) The creation or enlargement of a sludge lagoon or similar waste-holding facility related to any agricultural operation, agribusiness or similar use shall not be exempt from these regulations and shall require site plan approval by the Planning Board.
- (3) Accessory structures or uses which exceed the gross floor area of the principal structure shall not be exempt from these regulations and shall require site plan approval.
- (4) The development of a property with a structure or building that involves 1,500 square feet or less of gross floor area or disturbed area shall be reviewed by the Building Inspector and shall meet the requirements of this chapter. A building permit and certificate of occupancy shall be obtained for said development. For purposes of this section, "disturbed area" shall mean any area which is proposed to be graded, filled, or cleared, other than associated with landscaping activities.
- (5) No lot or parcel of land shall be used except in conformity with an approved site development plan, when required. In all cases where this chapter requires approval of site development plans by the Planning Board, no building permit shall be issued by the Building Inspector except upon authorization of and in conformity with the plans approved by the Planning Board. In considering and acting upon site development plans, the Planning Board may prescribe appropriate conditions and safeguards in order that the result of its action may, to the maximum extent possible, further the expressed intent of this chapter and the accomplishment of the following objectives in particular:
  - (a) Traffic access. That all proposed traffic access and ways are adequate but not excessive in number; adequate in width, grade, alignment and visibility; not located too near street corners or other places of public assembly; and other similar safety considerations.

- (b) Circulation and parking. That adequate off-street parking and loading spaces are provided to prevent parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking lots.
- (c) Landscaping and screening. That all playground, parking and service areas are reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is in character with that generally prevailing in the neighborhood. Existing trees over eight inches in diameter measured three feet above the base of the trunk shall be retained to the maximum extent possible.
- (d) Stormwater management. It shall be the policy of the Town of Mamakating to ensure that any increase in the rate of stormwater runoff is mitigated using Town and New York State Department of Environmental Conservation best management practices. Furthermore, it is also the policy of the Town of Mamakating to ensure that any proposed development shall not have an adverse impact on the quality of the town's water resources, including its ponds, lakes, streams, wetlands, and similar features, from pesticides, herbicides, road pollutants, and chemicals used in association with light industrial, automotive-related or other uses. As a condition of any site plan approval, the Planning Board may require that appropriate water quality protection devices be incorporated into the site plan.
- (e) Stormwater pollution prevention plan. A stormwater pollution prevention plan consistent with the requirements of Chapter **160** and § **199-44** shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in § **199-44**. The approved site plan shall be consistent with the provisions of Chapter **160** and § **199-44**.

**B. Effect of site development plan approval.**

- (1) No building permit shall be issued for any use or structure covered by this section until an approved site development plan or approved amendment of any such plan has been secured by the applicant from the Planning Board and filed with the Building Inspector.
- (2) No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site development plan or approved amendment of any such plan.

**C. Procedure.**

- (1) Presubmission conference. Prior to the submission of a site development plan, the applicant and/or an authorized representative shall meet in person with the Planning Board. The purpose of such conference shall be to discuss proposed uses or development in order to determine which of the site development plan elements listed in § **199-48** of this article shall be submitted to the Planning Board in order for said Board to determine conformity with the provisions and intent of this chapter.
- (2) Within six months following the presubmission conference, the site development plan and any related information shall be submitted to the Building Inspector, at least 15 days prior to the Planning Board meeting at which approval is requested. If not submitted within this six-month period, another presubmission conference shall be required. A sufficient number of copies shall be submitted to the Building Inspector and each member of the Planning Board.
- (3) The Building Inspector shall certify on each site development plan or amendment thereto whether or not the plan meets the requirements of all zoning ordinance provisions, other than those of this section regarding site development plan approval.

- (4) The Building Inspector shall retain one copy and transmit the balance of the certified site development plan to the Secretary of the Planning Board at least seven days prior to the Planning Board meeting at which approval is requested.
- D. County referral. Before taking final action on a site plan, the Planning Board shall refer any application involving real property described in Subdivision 3(b) of § 239-m of the General Municipal Law to the Sullivan County Planning Department for its review.
- E. Public hearing, notice and decision. Depending upon the complexity of a project and any potential controversy or public concern which may arise from the development, or as a basis for gathering additional public information, the Planning Board may require that a public hearing be held on an application prior to site development plan approval. In the event a public hearing is held, said hearing shall be conducted within 62 days from the day a complete application is received by the Planning Board. The Planning Board shall mail notice of said hearing to the applicant at least 10 days before said hearing and shall give public notice of said hearing in the official newspaper of the Town of Mamakating and all those deemed appropriate by the Planning Board at least five days prior to the date thereof. The Planning Board shall make a decision on the application within 62 days after such hearing, or after the day the application is received by the Planning Board if no hearing has been held. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Board.
- F. Filing of decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant. Planning Board disapproval shall include written findings upon any site development plan element found contrary to the provisions or intent of this chapter.
- G. Signing and filing. Upon submission of a final site development plan with any modifications required by the Planning Board in its final approval, and upon satisfaction of any conditions imposed by such approval, the Chair of the Planning Board shall sign the approved site plan and file it with the Town Clerk. One copy shall also be filed with the Building Inspector, who may thereafter issue a building permit or certificate of occupancy in reliance thereon.
- H. Expiration of approval. Site development plan approval shall expire 18 months from the date of approval, unless an extension is granted by the Planning Board at the request of the applicant prior to the expiration of 18 months.
- I. Field changes. During construction, the Building Inspector may authorize or require, at the Inspector's determination or upon request of the applicant, minor adjustments to the approved site plan when such amendments are necessary due to unforeseen site conditions first discovered during actual construction. Minor adjustments shall be consistent with the spirit and intent of the approved site development plan. Approval of such adjustment with the reasons therefor shall be submitted in writing to the Planning Board and a copy of said reasons filed with the site plan.
- J. Site plan amendments. Amendments to a site development plan shall be acted upon in the same manner as the approval of the original plan.
- K. Conditions of site plan approval. The Planning Board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. The Planning Board may require that site development plan approval be periodically reviewed. Upon approval of the site development plan, any such conditions must be met in connection with the issuance of permits by the applicable enforcement agents or officers of the town.
- L. Site maintenance. It shall be the duty of every property owner to maintain property in conformity with the approved site development plan. Failure to do so shall constitute a violation of this chapter.

M. (Reserved)

N. Fees. Application for a site plan shall be accompanied by fees to be established by a fee schedule adopted by the Town Board of the Town of Mamakating.

O. Prior to the start of construction and as a condition to final site plan approval, the applicant shall deposit with the Town Clerk funds to be utilized for reimbursing the Town for the cost of the Town's professional consultant's observations, including engineering inspections. The funds deposited with the Town Clerk shall be 5% of the performance security for all such construction. In the event no performance security is required to be filed with the Town, then the amount shall be 5% of the cost of all such improvements to be inspected, as estimated by the Town Engineer and/or consulting engineer for the Town.

**§ 199-46 Reservation of parkland.**

A. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required, a park or parks suitably located for playground or other recreational purposes.

B. Land for park, playground, or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

C. In the event the Planning Board makes a finding pursuant to § **199-46B** but a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board shall require a sum of money in lieu thereof to be established by the Town Board. In making such determination, the Planning Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether or not there is a need for additional facilities in the immediate neighborhood. Any moneys required by the Planning Board in lieu of land for park, playground or other recreational purposes shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including acquisition of property.

**§ 199-47 Performance bond or other surety.**

As an alternative to the installation of required infrastructure and improvements, prior to approval by the Planning Board, a performance bond or other security sufficient to cover the cost of the same, as estimated by the Planning Board or a Town department or official designated to make such estimate, where such department estimate is deemed acceptable by the Planning Board, shall be furnished to the Town by the owner. Such security shall be provided to the Town pursuant to the provisions contained in § 277(9) of the New York State Town Law.

**§ 199-48 Site development plan elements.**

The applicant shall have a site development plan map prepared by a civil engineer, surveyor, land planner, or architect. Site development plan elements shall include those listed below, which are appropriate to the proposed development or use, as indicated by the Planning Board in the presubmission conference:

A. Legal data.

(1) Lot, block and section number of the property taken from the latest tax records.

(2) The name and address of the owner of record.

(3) The name and address of the person, firm or organization preparing the map.

- (4) The date, North point and written and graphic scale.
- (5) Area map taken from, and at the same scale as, the Town of Mamakating Zoning Map. Existing zoning district boundaries within 500 feet of the property shall be shown on the area map.
- (6) Certified survey in a scale of one inch equals 50 feet or larger or information to define precisely the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.
- (7) The locations, names and existing widths of adjacent streets and curblines.
- (8) The locations and owners of all adjoining lands, as shown on the latest tax records, including section, block and lot number.
- (9) Applicant's entire holdings. The applicant and/or the owner of record shall show his entire contiguous holdings on said map.
- (10) The location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.
- (11) A complete schedule of existing deed restrictions of record or covenants applying to the property.
- (12) A blank square of 3.5 inches, in the lower right-hand corner, situated above the title block, to be used for the Planning Board Chair's signature.

B. Natural features.

- (1) Existing contours with intervals of two feet or less, referred to a datum satisfactory to the Board, in the area of the site which is satisfactory to the Planning Board.
- (2) Approximate boundaries of any areas subject to flooding or stormwater overflows.
- (3) Location of existing watercourses, marshes, wooded areas, rock outcrops, isolated trees with a diameter of eight inches or more measured three feet above the base of the trunk and other significant existing features. Freshwater wetlands under the jurisdiction of the Army Corps of Engineers and/or the New York State Department of Environmental Conservation shall be delineated.

C. Existing structures and utilities.

- (1) Location of uses and outlines of structures, drawn to scale, on the subject premises and adjacent properties within 100 feet of the subject property's lot lines.
- (2) Paved areas, sidewalks and vehicular access between the site and public streets.
- (3) Locations, dimensions, grades and flow direction of existing sewers, culverts and waterlines, as well as other underground and aboveground utilities within and adjacent to the property.
- (4) Other existing development, including fences, landscaping and screening.

D. Proposed development.

- (1) The location of proposed buildings or structural improvements.
- (2) All pertinent zoning setback and yard dimension lines.



- (3) Copies of single-line building floor plans and elevations.
- (4) The location and design of all uses not requiring structures, such as off-street parking and loading areas, fencing, benches, recreation facilities, and garbage dumpster locations.
- (5) The computation for the required number of parking spaces in accordance with the regulations contained in Article **VII**.
- (6) The location, direction, power, design, and time of use for any proposed outdoor lighting or public address systems. Isolux curves may be required.
- (7) The location and plans for any outdoor signs.
- (8) The location and arrangement of proposed means of access and egress, including sidewalks, driveways, or other paved areas, and profiles indicating grading and cross sections showing the width of roadway, location and width of sidewalks and location and size of water- and sewer lines.
- (9) An outline of any proposed deed restrictions or covenants.
- (10) Any contemplated public improvements on or adjoining the property.
- (11) If the site development plan only indicates a first stage, a supplementary plan shall indicate ultimate development.
- (12) A list of all required federal, state and county permits.
- (13) Bulk table, identifying noncomplying items or those needing a variance.
- (14) Buildings depicted on a site plan shall be located to take advantage of solar access, including orientation of proposed buildings with respect to sun angles and the potential shading by existing and proposed vegetation on and off site, and to not detrimentally impact solar access of adjoining uses and property.

E. Proposed grading, drainage and utility plan.

- (1) Existing and proposed contours at a maximum two-foot vertical interval extended 100 feet beyond the property boundaries.
- (2) Location and types, sizes and slopes, where pertinent, of existing and proposed waterlines, water wells, valves and hydrants, storm and sanitary sewer lines, individual sewage disposal systems, electric lines, telephone lines, gas and other utility lines, and utility poles. Typical cover should be indicated over all proposed underground utility lines.
- (3) Existing and proposed stormwater drainage and underdrain systems, including location, size and slopes of all pipes and swales, including invert and top elevations at each manhole, inlet, headwall or other appurtenant drainage structure; base width, side slope, inverts, and lining of each swale (riprap, asphalt, concrete, grass, etc.); and inverts of underdrain systems at bends and outlets. Roof drains and footing drain runoff shall be directed to an existing storm drainage system in the street, if possible, and not directed to adjacent properties. Underground detention of percolation systems may be required.

F. Soil erosion and sediment control plan.

G. Landscaping plan.

- H. Stormwater management plan. The Planning Board may require the applicant to submit a stormwater management plan to mitigate the potential effects in the increase of stormwater runoff as well as to mitigate potential water quality impacts. The Planning Board may require an applicant to install appropriate water quality protection devices.
- I. Any other information deemed by the Planning Board necessary to determine conformity of the site plan with the intent and regulations of this chapter.
- J. Waivers. The Planning Board may waive any of the site plan element requirements based on a finding that the required information is not necessary in the rendering of a decision on a site development plan application.

**§ 199-49 Site plan revisions.**

All site plans that are submitted to the Planning Board which have been revised shall have the revision number noted in a triangle along with a brief summary of the elements revised and the dates of the revision.

## **Article X Nonconformities**

**§ 199-50 Continuation.**

A use, building or structure lawfully in existence at the effective date of this chapter which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto may be continued except as otherwise provided in this article. The Zoning Board of Appeals and/or Building Department cannot waive the requirements of Appendix 75-A, Wastewater Treatment Standards, as promulgated by the NYSDOH, or the New York State Uniform Fire Prevention and Building Code that are governed by preemptive state law.

**§ 199-51 Regulations.**

- A. Nonconforming uses (nonresidential). Nonconforming uses, other than residences, of buildings or open land may be continued indefinitely but:
  - (1) Shall not be enlarged, altered, extended, reconstructed, restored or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this chapter, nor shall any external evidence of such uses be increased by any means whatsoever.
  - (2) Shall not be moved to another location where such use would be nonconforming.
  - (3) Shall not be enlarged to displace a conforming use.
  - (4) Shall not be changed to another nonconforming use without approval by the Zoning Board of Appeals, subject to a public hearing.
  - (5) Damage to building.
    - (a) If a building that contains a nonconforming use is damaged for any reason to an extent of 50% or less of the replacement cost of the building or structure, exclusive of land and foundation, it may be repaired, restored, reconstructed or used as before but not enlarged. The gross floor area of such use, building or structure shall not exceed the floor area that existed prior to such damage. All repairs shall be completed within two years after damages occur, or such use shall not be rebuilt except as a conforming use.
    - (b) Any building that contains a nonconforming use that is damaged to an extent greater than 50% of the replacement cost of the building or structure, exclusive of land and foundation, shall be used and

constructed in compliance with the regulations contained in this chapter in accordance with the use and bulk requirements applicable to the district in which it is located.

- B. Nonconforming residential uses. Any residential use located in a district in which such use is nonconforming shall be exempt from the provisions of § 199-51A. Such use may continue as a use permitted by right, provided that it shall comply with the bulk and lot area regulations of the most restrictive district in Schedule I in which the use would be conforming as to bulk on the effective date of this chapter. A building containing a nonconforming residential use may be altered in any way to improve interior livability; however, no structural alterations shall be made that would increase the number of bedrooms or dwelling units. Refer to § 199-54 for dwellings on nonconforming residential lots.
- C. Noncomplying buildings.
  - (1) Noncomplying buildings may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that such action does not increase the degree of or create any new nonconformity to district bulk regulations.
  - (2) If a building possessing noncomplying bulk is damaged for any reason to an extent of 50% or less of the replacement cost of the building or structure, exclusive of land and foundation, it may be repaired, restored, reconstructed or used as before but not enlarged. The floor area of such use, building or structure shall not exceed the floor area that existed prior to such damage. All repairs shall be completed within two years after damages occur, or such use shall not be rebuilt except as a conforming use. Any building possessing noncomplying bulk that is damaged to an extent greater than 50% shall be constructed in compliance with the regulations contained in this chapter in accordance with the use and bulk requirements applicable to the district in which it is located.
- D. Repairs. Normal maintenance, repair or incidental alteration of a structure containing a nonconforming use or possessing noncomplying bulk is permitted, provided that it does not increase the degree of nonconforming use or noncomplying bulk and involves nonstructural alterations that do not require a building permit pursuant to New York State Town Law.
- E. Preexisting uses made special permit uses. Any use lawfully existing at the time of adoption of these regulations or of any amendment thereto, in the district in which such use is classified herein as a special use, shall, without further action, be deemed a conforming use in such district. An extension of or addition to such use shall require special use permit approval and must meet all requirements for special uses contained in Article V of this chapter.
- F. Prior approval. Nothing contained herein shall require any change in the plans, construction or designated use of a building complying with existing laws, a building permit for which shall have been obtained before the date of adoption of this chapter or any applicable amendment thereto, and the ground story framework of which, including the second tier of beams, shall have been completed within six months of the date of the permit and which entire building shall have been completed according to such plans as have been filed within one year of the date of adoption of this chapter or any applicable amendment thereto.

**§ 199-52 Termination.**

The discontinuance of a nonconforming use for a period of two years and/or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived. Intent to resume a nonconforming use shall not confer the right to do so. This section does not apply to residential lots falling within the provisions under § 199-54.

**§ 199-53 Contiguous nonconforming lots.**

Where two or more contiguous lots, or combination of contiguous lots, are under single ownership at or after the adoption of this chapter, and if all or part of the lots do not meet the required bulk provisions for lots within the zone in which the lots are located, they shall be considered to be an undivided parcel for the purposes of this chapter. Such contiguous lots or groups of nonconforming lots may be resubdivided into new lots where each new lot conforms to the standards of the district in which they are located or may be added to adjoining properties to increase size of said owner's or owners' property or properties; they may not, however, be built upon as separate and individual nonconforming lots. Where the combination of contiguous lots or transfer of a portion of a nonconforming lot to an adjoining property results in a lot whose area or width is still less than the specified minimum lot requirement of this chapter for the district in which it is located, the provisions of § 199-54 shall apply.

**§ 199-54 Dwellings on nonconforming lots within districts that permit residential uses.**

Notwithstanding the limitations imposed by any other provision of this chapter, any lot held in single and separate ownership prior to the adoption of this chapter or any lot which was part of a subdivision or part of a section of a subdivision that received final approval of the Planning Board of the Town of Mamakating and was filed in the office of the Clerk of Sullivan County prior to the adoption of this chapter that is located in a zoning district that allows residential uses and whose area or width is less than the specified minimum lot requirement for the district in which it is located may be used by right provided that:

- A. Such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.
- B. Such lot has an area of at least 8,000 square feet, complies with § 199-54G and has a minimum lot width of at least 50 feet if it is to be used for residential purposes.
- C. The following minimum yard dimensions shall be maintained for residences:

<b>For Lots With Width</b>	<b>Minimum Side Yard</b>	<b>Total Both Side Yards</b>	<b>Required Front Yard</b>	<b>Required Rear Yard</b>
<b>(feet)</b>	<b>(feet)</b>	<b>(feet)</b>		
100 to 149	20	50	30% of average lot depth, but no greater than required in zone	20% of average lot depth, but no greater than required in zone
80 to 99	12	30		
50 to 79	10	25		

- D. The maximum development coverage permitted on a nonconforming lot shall be 35%.
- E. All other bulk requirements for that district are complied with, including building height and number of stories.
- F. In any district where residences are permitted, such undersized nonconforming lots may be used for not more than one single-family dwelling.
- G. In addition to the requirements contained in § 199-54A through F above, the applicant must demonstrate that the lot is suitable for residential construction, including water availability and quality (in accordance with NYSDOH Administration Rules and Regulations, 10 NYCRR Part 5, Appendix 5-B, Standards for Water Wells) and suitable sewage disposal (in compliance with Appendix 75-A, Wastewater Treatment Standards, as promulgated by the NYSDEC) and appropriate

drainage as certified by a licensed professional engineer in the State of New York. The Building Department shall not issue a building permit unless this condition is satisfied.

- H. Existing dwellings on any lot whose area or width is less than the specified minimum lot requirement may be extended, provided the requirements of § **199-54A** through **G** above are maintained.

§ 199-54.1 **Nonconforming residential subdivisions in IO, AD or IC Districts.**

A. Nonconforming residential subdivisions. Any residential subdivision within the IO, LIO, or IC Zoning District that was approved and filed with the Sullivan County Clerk's Office prior to the adoption of this chapter shall be exempt from the use and bulk provisions of these districts in which residential uses are prohibited. The residential lots within an approved subdivision as described herein may be developed for residential purposes as of right, provided the following standards are met.

- (1) Subdivision filing. The residential subdivision was approved by the Planning Board and filed with the Sullivan County Clerk's Office prior to the effective date of this chapter.
- (2) Residential lot. Each residential lot within the residential subdivision was granted New York State Department of Health approval for their water and sewage systems prior to the effective date of this chapter.

B. Bulk regulations. The construction of a single-family home on lots meeting the standards of § **199-55A** shall also meet the following bulk regulations.

- (1) Minimum yards. The minimum yards for a residence constructed under this section shall be as follows:
  - (a) Front yard: 25 feet;
  - (b) Rear yard: 25 feet; and
  - (c) Side yard: 10 feet per side.
- (2) Lot coverage; shall not exceed 25%.
- (3) Height; shall not exceed 2 1/2 stories or 30 feet, whichever is less.

§ 199-54.2 **Conversion of a seasonal dwelling on a conforming lot to year-round use.**

The conversion of a seasonal dwelling on conforming lot to year-round use shall be considered a change of use, and no seasonal dwelling shall be occupied on a year-round basis unless the following standards are met:

- A. The applicant obtains a building permit to make improvements to the seasonal dwelling unit to ensure that it meets the pertinent standards of the Existing Building Code for New York State and the Uniform Fire Prevention Code.
- B. The applicant must demonstrate that the lot is suitable to accommodate a year-round residence, including water availability and quality (in accordance with NYSDOH Administration Rules and Regulations, 10 NYCRR Part 5, Appendix 5-B, Standards for Water Wells) and suitable sewage disposal (in compliance with Appendix 75-A, Wastewater Treatment Standards, as promulgated by the NYSDOH, including all recommended or required separation distances), water availability and quality in addition to appropriate drainage as not to impact any adjoining parcels as certified by a licensed professional engineer in the State of New York.

- C. Subject to § **199-54.2B**, the Building Inspector of the Town of Mamakating is authorized to issue a certificate of occupancy in regard to any conversion of a seasonal dwelling upon receiving from a licensed professional engineer or architect as-built plans and a sworn certification which, to the satisfaction of the Building Inspector, certifies that the building complies with the requirements of the Town of Mamakating and the New York State Uniform Fire Prevention and Existing Building Code for New York State for the issuance of a certificate of occupancy which existed at the time erected, notwithstanding that the premises may not have otherwise requisite building permits. Such certificate of occupancy shall recite that the certificate is issued upon the certification of the licensed professional engineer or architect and that the building complies with all requirements of the Town of Mamakating and the New York State Uniform Fire Prevention and Existing Building Code for New York State for the issuance of a Certificate of Occupancy at the time enacted and that the Town issues the Certificate of Occupancy solely on the basis of that certification and not on the basis of any independent inspection or Investigation.

§ 199-54.3 **Conversion of a seasonal dwelling on a nonconforming lot to year-round use.**

When a seasonal dwelling is located on a nonconforming lot, the conversion of the seasonal dwelling to a year-round use shall adhere to § **199-54** of this chapter and the following additional standard.

- A. The applicant obtains a building permit to make necessary improvements to the seasonal dwelling unit to ensure that it meets the pertinent standards of the New York State Uniform Fire Prevention and Building Code.

§ 199-54.4 **Multiple seasonal dwellings.**

- A. Within the Town of Mamakating there are numerous individual parcels that contain multiple individual dwellings that were constructed for seasonal use. Over time, these dwellings have been converted to year-round use. Because of the close proximity of the dwellings to each other, and the increased usage of the site, there is concern that septic systems and wells intended to serve each unit may not be adequate to protect the health, safety and welfare of the residents as well as adjoining properties. In addition, the conversion of said dwellings is occurring on a piecemeal basis and without a coherent plan for the entire site that may establish appropriate locations for providing sewer and water service to each dwelling. For purposes of this chapter, multiple dwellings on an individual lot shall be deemed to be nonconforming uses subject to the provisions of § **199-51A**.

## Article XI Zoning Board of Appeals

§ 199-55 **Establishment; organization.**

- A. Creation and membership. There is hereby established a Zoning Board of Appeals having the powers authorized under the Consolidated Laws of the State of New York. Said Board shall consist of five members, appointed by the Town Board. Appointments shall be in accordance with § 267, Article 16, of Chapter 62 of the Consolidated Laws of the State of New York. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.
- B. Organization and procedure. The Zoning Board of Appeals shall determine rules of conduct and procedure as prescribed by § 267, Article 16, of Chapter 62 of the Consolidated Laws of the State of New York.

§ 199-56 **Powers and responsibilities.**

- A. Hear and decide appeals and applications. The Zoning Board of Appeals shall have the power to hear and decide appeals where it is alleged that error or misinterpretation in any order, requirement, decision, grant or refusal was made by the Building Inspector or other administrative official in the carrying out or enforcement of the provisions of this chapter. The Zoning Board of Appeals shall also have all the powers, authority and responsibility of the former Village of Bloomingburg Zoning

Board of Appeals to decide appeals and applications as set forth in an intermunicipal agreement, as may be amended, between the Town of Mamakating and the Village of Bloomingburg.

- B. Approve special uses. The Zoning Board may authorize the Building Inspector to issue a building permit for a special use for which this chapter requires Zoning Board of Appeals approval. Such authorization shall follow proper notice, hearing and findings by the Board.
- C. Grant use variances.
  - (1) The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances.
  - (2) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate to the Board that for each and every permitted use under the zoning regulations for the particular district where the property is located:
    - (a) The applicant cannot realize a reasonable return, provided that lack of return is substantially as demonstrated by competent financial evidence;
    - (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;
    - (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 Zoning Board, in granting 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.
- D. Grant area (bulk) variances.
  - (1) The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the administrative official charged with the enforcement of the zoning regulations, to grant area variances; provided, however, that application may be made to the Zoning Board of Appeals where a proposed special use permit or proposed site plan contains one or more features which do not comply with the zoning regulations without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.
  - (2) In making its determination, the Zoning Board shall take into consideration the benefit to the applicant if the variance is warranted, 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; and
  - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board but shall not necessarily preclude the granting of the area variance.
- (3) The Zoning Board, 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.
- E. Imposition of conditions. The Zoning Board shall, in the granting of both use and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to or incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- F. Permit building in bed of mapped streets. After due notice and hearing as provided for in the Consolidated Laws of the State of New York and in accordance with the provisions set forth therein, the Zoning Board may grant a permit for a building in the bed of a mapped street or highway shown upon the Official Map or plan of the Town of Mamakating, as it may be adopted and from time to time amended.
- G. Interpret chapter. Upon appeal from a decision by the Building Inspector to decide any question involving the interpretation of any provision of this chapter and where uncertainty exists as to the boundaries of any zone district, the Zoning Board shall, upon written application or upon its own motion, determine the location of such boundaries of such districts as are established in § **199-3** hereof and as designated on the Zoning Map of the Town of Mamakating.
- H. Authorize temporary uses. The Zoning Board of Appeals shall have the power to grant, after due notice and hearing, the temporary occupancy and use of a structure in any district for a purpose that does not conform to the district requirements, provided that such occupancy and use are truly of a temporary nature and subject to any reasonable conditions and safeguards which the Zoning Board may impose to minimize any injurious effect upon the neighborhood or to protect contiguous property. The approval of the Zoning Board and any permit based thereon for such temporary occupancy and use shall not be granted for a period of more than 12 months and shall not be renewable more than once, and then for a period of not more than 12 months.

**§ 199-57 Appeals.**

- A. Procedure for appellant.
- (1) An appeal to the Zoning Board from any ruling of any administrative officer administering any portion of this chapter may be taken by any person aggrieved or by an officer, department, board or bureau of the Town affected thereby. Such appeal shall be taken within 60 days after the filing with the officer from whose action the appeal is taken and with the Zoning Board by filing with the Secretary thereof a notice of appeal, specifying the grounds therefor.
  - (2) All applications and appeals made to the Zoning Board shall be in writing on forms prescribed by the Building Inspector. Every application or appeal shall refer to the specific provision of this chapter and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information:
    - (a) The name and address of the applicant or appellant.
    - (b) The name and address of the owner of the zone lot to be affected by such proposed change or appeal.



- (c) A brief description and location of the zone lot to be affected by such proposed change or appeal.
- (d) A statement of the present zoning classification of the zone lot in question, the improvements thereon and the present use thereof.
- (e) A reasonably accurate description of the present improvements, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

**B. Procedure for Building Inspector.**

- (1) The notice of appeal in any case where a permit has been granted or denied by the Building Inspector shall be filed within 60 days after the filing in the Town Clerk's office of any order, requirement, decision, interpretation, or determination of the Building Inspector. The Building Inspector shall forthwith transmit to the Zoning Board all papers constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers.
- (2) It shall be incumbent upon the Building Inspector to recommend to the Zoning Board a modification or reversal of his action in cases where he believes substantial justice requires the same but where he has not himself sufficient authority to grant the relief sought.

**C. Procedure for the Zoning Board.** The Zoning Board shall decide each appeal within 62 days after the conduct of a public hearing. The time within which the Zoning Board must render its decision may be extended by mutual consent of the applicant and the Board. Upon the hearing, any party may appear in person or be represented by an agent or attorney. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days after the decision is rendered and a copy thereof mailed to the applicant. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from or may make such order, requirement, decision or determination in accordance with the provisions thereof.

**D. Appeal from decision of Zoning Board.** All decisions of the Zoning Board are subject to court review in accordance with applicable laws of the State of New York.

**§ 199-58 Hearings; notices.**

- A. The Zoning Board shall fix a reasonable time for the hearing on the appeal or application and give due notice to the following officials, persons and owners of property not less than five days prior to the day of the hearing:
  - (1) When appealing action of the Building Inspector. In case of an appeal alleging error or misinterpretation in any order or other action by the Building Inspector, the following persons shall be notified: the Inspector, the appellant and the person or persons, if any, who benefit from the order, requirement, regulation or determination.
  - (2) When appealing for variance or special use. In case of an appeal for a variance or in case of an application for a special use as provided for in this chapter, the following persons shall be notified: all owners of property within 500 feet of the nearest line of the property for which the variance or special use is sought and such other property owners as the Chairman of the Zoning Board may direct.
- B. Adjournment of hearing. Upon the day of hearing any application or appeal, the Zoning Board may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems

proper to be served upon such other property owners as it decides may be interested in said application or appeal.

- C. Required interval for hearings on applications and appeals after denial. Whenever the Board, after hearing all the evidence presented upon an application or appeal under the provisions of this chapter, denies the same, the Zoning Board shall refuse to hold further hearings on said or substantially similar application or appeal by the same applicant, his successor or assign for a period of one year, except and unless the Zoning Board shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.

**§ 199-59 Alternate Zoning Board of Appeals members.**

- A. Short title and applicability. This section shall be known and may be cited as the "Alternate Zoning Board of Appeals Members Act." This section shall apply to the appointment, term, functions, powers of alternate members appointed to serve on the Zoning of Appeals in the Town of Mamakating.
- B. Policy. It is sometimes difficult to maintain a quorum of the Zoning Board of Appeals because members are ill, on extended vacation or find they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required timelines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

**ALTERNATE MEMBER**

An individual appointed by the Town Board to serve on the Town of Mamakating Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the respective Board, as provided herein.

**MEMBER**

An individual appointed by the Town Board to serve on the Town of Mamakating Zoning Board of Appeals pursuant to provisions of the local law or ordinance which first established such Zoning Board of Appeals.

**ZONING BOARD OF APPEALS**

The Zoning Board of Appeals of the Town of Mamakating as established by the Town Board of the Town of Mamakating by local law, pursuant to the provisions of § 267 of the Town Law.

- D. Authorization/Effect. The Town Board of the Town of Mamakating hereby enacts this section to provide a process for appointing two alternate members (Alternate A and Alternate B).
- E. Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board of the Town of Mamakating for a term of two years, which term shall expire on December 31 of the second year after the date of their appointment.
- F. The Chairperson of the Zoning Board of Appeals shall designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. The Chairperson shall alternate the assignment of the alternate members so that each serves in such capacity, with Alternate A serving on the first occasion that a substitute member for the Zoning Board of Appeals is required. When so designated, the alternate member shall possess all the powers

and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitute is made.

- G. All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.
- H. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board of the Town of Mamakating, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 267 of the Town Law relating to appointment of members of the Town of Mamakating Zoning Board of Appeals.

## Article XII Administration and Enforcement

### § 199-60 Enforcement official designated.

- A. The Town Board shall provide for the services of a Building Inspector. The Building Inspector is hereby given the duty, power and authority to enforce the provisions of this chapter. He shall examine all applications for permits, issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the requirements of this chapter and all nonconforming uses, record and file all applications for permits with accompanying plans and documents and make such reports as may be required.
- B. Building permits for a variance from the requirements of this chapter and for such special uses as may be enumerated in Schedule I hereof shall be issued only upon written order of the Planning Board or Zoning Board of Appeals.

### § 199-61 Building permits.

- A. Purpose. To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert any structure or building or part thereof nor alter the use of any land subsequent to the adoption of this chapter until a building permit has been issued by the Building Inspector. Building permits may be valid for a limited period of time for special uses of a temporary nature as set forth herein and for other uses as may be regulated by the Zoning Board. No building permit shall be issued for any building where the site plan of such building is subject to approval by the Planning Board except in conformity with the plans approved by said Board.
  - (1) Water supply and sewage disposal. All water supply and sewage disposal installations shall conform to the New York State Department of Health and New York State Department of Environmental Conservation regulations. No site plan shall be approved by the Building Inspector in any district unless such conformity is certified on the plan.
  - (2) Application. All such applications shall be accompanied by a site plan that shall have been approved by the Planning Board. For uses that do not require site plan approval, a survey shall be submitted, in duplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location of any building, sign, parking or loading area or other physical feature, existing and intended use of each building or part of a building, the number of families, dwelling units, employees, offices or other appropriate units of occupancy which the building is designed to accommodate and such other information as may be necessary to determine compliance with this chapter. One copy of such plans shall be returned to the owner when such plans shall be approved. One copy each of all applications with accompanying plans and documents shall become a public record after a permit is issued or denied.

- B. For special uses. All such applications shall be accompanied by plans and such other information as may be required by the Planning Board or Zoning Board of Appeals.
- C. Issuance of permits.
  - (1) It shall be the duty of the Building Inspector to issue a building permit, provided that he is satisfied that the structure, building, sign, parking area and the proposed use conform to all requirements of this chapter, and the New York State Uniform Fire Prevention and Building Code, and that all other reviews and actions, if any, called for in this chapter have been complied with and all necessary approvals secured therefor.
  - (2) All building permits shall be issued in duplicate, and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operations has been displayed as required by this chapter, nor shall be perform building operations of any kind after notification of the revocation of said building permit.
- D. Denial of permits. When the Building Inspector is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit, and the applicant may appeal to the Zoning Board of Appeals for a reversal of the Inspector's decision.
- E. Revocation of permits. If it shall appear at any time to the Building Inspector that the application or accompanying plan is in any respect false or misleading or that work is being done upon the premises differing materially from that called for in the applications filed with him under existing laws or ordinances, he may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to said Building Inspector. After the building permit has been revoked, the Building Inspector may, in his discretion, before issuing the new building permit, require the applicant to file an indemnity bond in favor of the Town of Mamakating with sufficient surety conditioned for compliance with this chapter and all laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building or structure if it does not so comply.
- F. Expiration. Every building permit to be issued by the Building Inspector shall expire if the work authorized by the building permit has not commenced within the time period after the date of issuance set forth below or has not been completed within the time period set forth below. Work authorized by a building permit shall commence and be completed as follows:
  - (1) Swimming pools: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit or by October 31 of that year, whichever comes first; building permits for swimming pools may not be renewed upon expiration of the foregoing period.
  - (2) Wood stoves: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit; building permits for wood stoves may not be renewed upon the expiration of said six-month period.
  - (3) Demolition: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit or by such other period of time after the issuance of the building permit as the Building Inspector, in the exercise of his reasonable discretion, determines; building permits for demolition work may not be renewed upon the expiration of said time period.

- (4) Decks: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit; upon the expiration of said six-month period, the Building Inspector may, in the exercise of his reasonable discretion, renew the building permit for one additional period of six months.
  - (5) Garages/sheds: The work pursuant to the building permit must commence within six months after the issuance of the building permit and must be completed within one year after the issuance of the building permit; upon the expiration of said one-year period, the Building Inspector may, in the exercise of his reasonable discretion, renew the building permit for one additional period of one year.
  - (6) Additions/alterations: The work pursuant to the building permit must commence within six months after the issuance of the building permit and must be completed within one year after issuance of the building permit; upon the expiration of said one year period, the Building Inspector may, in the exercise of his reasonable discretion, renew it for one additional period of one year.
  - (7) New home: The work pursuant to the building permit must commence within six months after the issuance of the building permit and must be completed within two years after the issuance of the building permit; upon the expiration of said two-year period, the Building Inspector may, in the exercise of his reasonable discretion, renew the building permit for one additional period of one year.
  - (8) Commercial buildings: The work pursuant to the building permit must commence within six months after issuance of the building permit and must be completed within two years after the issuance of the building permit; upon the expiration of said two-year period, the Building Inspector may, in the exercise of his reasonable discretion, renew it for one additional period of two years.
  - (9) Wells: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit; building permits for wells may not be renewed upon the expiration of said six-month period.
  - (10) Septic: The work pursuant to the building permit must commence and be completed within six months after the issuance of the building permit; building permits for septic may not be renewed upon the expiration of said six-month period.
- G. Stop order. Whenever the Building Inspector has reasonable grounds to believe that work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, ordinances or regulations, or not in conformity with all the provisions of the application, plans or specifications on the basis of which a building permit was issued, or in an unsafe and dangerous manner, he shall notify the owner of the property, or the owner's agent, or the person performing the work, to suspend all work, and any such person shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building under construction and sending him a copy of the same by registered mail.
- H. Access.
- (1) In accordance with § 280-a of the Town Law, no building permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the Official Map or plan or, if there is no map or plan, unless such street or highway is:
    - (a) An existing state, county or Town highway;
    - (b) A street shown upon a plat approved by the Planning Board as provided in §§ 276 and 277 of the Town Law, as in effect at the time such plat was approved; or

- (c) A street on a plat duly filed and recorded in the office of the County Clerk or Register prior to the appointment of such Planning Board and the grant to such Board of the power to approve plats.
- (2) For landlocked lots, access to the lot shall have been established in accordance with § 199-9G, Landlocked lots, prior to the granting of a building permit.

§ 199-62 **Certificates of occupancy.**

A. Certificate required; application; issuance.

- (1) No building or structure erected subject to the New York State Uniform Fire Prevention and Building Code and the provisions of this chapter shall be used or occupied, except to the extent provided in this section, until a certificate of occupancy has been issued.
- (2) No change shall be made in the use or occupancy of a building or structure unless a building permit and new certificate of occupancy authorizing the change of use shall have been issued. A change in use shall include, but not be limited to, a change in or of the type, class, nature or scope of the goods, services or operation.
- (3) The owner shall make application for the certificate of occupancy. After completion of the whole building or structure and upon the sworn application by the owner or his duly authorized agent setting forth such facts as the Building Inspector may require and after actual inspection of the premises by the Building Inspector or his duly authorized assistant, the Inspector shall, upon finding the facts to be as represented, issue, in duplicate, a certificate of occupancy. The certificate of occupancy shall certify that the premises comply with the provisions of this chapter and may be used for the purposes set forth in the certificate of occupancy, which purposes shall conform to the requirements of this chapter.

B. Upon request, a temporary certificate of occupancy may be issued if the building, structure or lot or a designated portion of a building, structure or lot is sufficiently improved that it may be put to the use for which it is intended. A temporary certificate of occupancy may, at the discretion of the Building Inspector, be renewed an indefinite number of times. A temporary certificate of occupancy may be issued where the required landscaping, concrete work, final asphalt course, or other improvement has not been installed due to seasonal or other constraints; provided, however, that such other portions as have been completed may be occupied safely without endangering life or public welfare. The applicant shall be required to furnish a performance bond or other security from the owner or holder of the building permit, which bond or other security shall run to the benefit of the town. The form and the amount of security shall be set and held by the Town Board, upon the advice of the Building Inspector and the Town Engineer, with the approval of the Planning Board, and in such form acceptable to the Town Attorney. Every application for a temporary certificate of occupancy shall be accompanied by a fee in accordance with the Fee Schedule of the Town of Mamakating.

C. No certificate of occupancy shall be issued except upon an inspection which reveals no uncorrected deficiency or material violation of the New York State Uniform Fire Prevention and Building Code and the provision of this code in the area intended for use.

D. The Building Inspector of the Town of Mamakating is authorized to issue a certificate of occupancy in regard to any building or structure upon receiving from a licensed professional engineer or architect as-built plans and a sworn certification which, to the satisfaction of the Building Inspector, certifies that the building complies with all requirements of the Town of Mamakating and the New York State Uniform Fire Prevention and Building Code for the issuance of a certificate of occupancy which existed at the time erected, notwithstanding that said premises may not have the otherwise requisite building permits. Said certificate of occupancy shall recite that the certificate is issued upon the certification of the licensed professional engineer or architect and that the building complies with all requirements of the Town of Mamakating and the New York State Uniform Fire Prevention and Building Code for the issuance of a certificate of occupancy at the time enacted and that the Town

issues the certificate of occupancy solely on the basis of that certification and not on the basis of any independent inspection or investigation.

- E. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this chapter. Any person desiring to change the use of a premises shall apply to the Building Inspector for a building permit prior to receiving a new certificate of occupancy for the change in use. A copy of the certificate of occupancy shall be kept at all times upon the premises affected and shall be displayed upon request made by any Building Inspector or police officer. A record shall be kept of all certificates of occupancy issued, and the original applications therefor shall be kept on file in the same manner as applications for building permits. A certificate of occupancy once granted shall continue in effect so long as there is no change of use, regardless of change in the personnel of tenants or occupants.

#### § 199-62.1 **Entity disclosure.**

- A. Legislative findings and intent. The Town Board finds and determines that in order to promote the public welfare and provide for open and transparent government processes, full and fair disclosure of all persons comprising or controlling an entity making a land use application or undertaking development of land or a structure must be required. Therefore, this section requires a nonperson entity making a land use application or undertaking development of land or a structure to disclose the names and contact information of the persons who own, comprise or control the entity. Such disclosure will inform the public concerning the names of the individuals behind the land use application or development, will facilitate application review by the reviewing boards, and will better disclose actual or potential conflicts of interest. The requirements of this section shall apply to all pending and future land applications.

- B. Definitions.

#### **APPLICANT**

The legal, beneficial and equitable owner(s) of land proposed for development in a land use application, including but not limited to the holder of an option or contract to purchase, or a person or entity having a proprietary interest in such land, or a person or entity authorized to make and process a land use application.

#### **AUTHORIZED PERSON**

Any person who is authorized to act or does act alone or in conjunction with others, on behalf of an entity or who has authority to direct, control or influence the entity in any manner.

#### **DEVELOPMENT**

The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure; mining or excavation; any change in, or extension of, the use of any land, building or structure.

#### **ENTITY**

A limited-liability company, limited-liability partnership, general or limited partnership, joint venture, doing business name or venture, corporation, association, or any other nonperson.

#### **LAND USE APPLICATION**

An application form and other documents submitted by an applicant for review and approval of a building permit, subdivision plat, site plan, special use permit, conditional use permit, variance, zoning amendment, certificate of occupancy, or any other permit, approval or certificate required necessary or requested for development of land or a structure.

C. Requirement for disclosure.

- (1) A land use application that lists an entity as owner, applicant or other person of interest shall include, as part of the application, and as a prerequisite to the land use application being deemed complete or heard or considered, a completed entity disclosure statement, affirmed and sworn to under the penalty of perjury, in a form approved by the Town Board. The form of the disclosure statement may be amended from time to time by resolution of the Town Board.
- (2) If a property for which a land use application is pending is sold or transferred and/or the ownership or control of an entity is changed, an updated entity disclosure statement shall be submitted. The reviewing board, officer or employee shall suspend review of the land use application until the entity submits the updated entity disclosure statement. There shall be no development of any land, building or structure until a current and complete entity disclosure statement is submitted. If site work or construction of a building or structure has commenced, the Building Inspector is authorized to issue a stop-work order, which shall remain in effect until the updated entity disclosure statement is submitted.
- (3) The Town Board, Planning Board, Zoning Board of Appeals, Building Department, or any municipal board, officer or employee shall not process, hear, rehear, approve, or sign any land use application, plans, permit or certificate unless and until a current and complete entity disclosure statement is submitted.

D. Information required in the entity disclosure statement. The following information shall be required to be disclosed in the entity disclosure statement:

- (1) If the applicant is an entity, the name, address and contact information for each owner, member, shareholder, officer, director, beneficial owner, general partner, limited partner and authorized person of the entity shall be disclosed. If any owner, member, shareholder, beneficial owner, general partner or limited partner is itself an entity, then the name, address and contact information of any member, shareholder, director, officer, beneficial owner, general partner or limited partner or authorized person of that entity shall be disclosed.
- (2) Each named person shall identify all Town officers or employees for which disclosure of a relationship would be required pursuant to state General Municipal Law § 809.
- (3) Other information reasonably required by resolution of the Town Board which implements or promotes the purpose and intent of this section.

E. Persons exempt from the disclosure requirements of this section.

- (1) A person who is not an officer, director or authorized person of a publicly traded corporation and who holds less than 5% of the shares or ownership interest in such corporation.

F. Land use applications exempt from the disclosure requirements of this section.

- (1) Renovations to a building which do not increase the size of the building;
- (2) Construction of a permitted accessory structure containing less than 500 square feet of floor area.

G. Penalties for offenses.

- (1) If an entity, its representative(s) or other person fails to submit, update or keep current a complete and correct disclosure statement required by this section, or otherwise violates a requirement of this section, such entity, its representative(s) or other person shall be subject to a civil penalty, not to exceed \$5,000, assessed by a court of competent jurisdiction.



- (2) Nothing herein shall preclude institution of a criminal or civil proceeding against the entity or any of its representatives or other person where conduct may constitute a violation of law.
- (3) In addition to the penalties prescribed in this section and in state law, any entity or person who violates any provision of this section shall be liable for all reasonable attorneys' fees, consultant and expert fees, costs and disbursements incurred by the Town in any legal proceeding to enforce the requirements of this section and/or to recover a civil penalty.

**§ 199-63 Violations; penalties for offenses.**

- A. Right of entry. The Building Inspector, or his authorized agent, upon the showing of proper credentials and in the discharge of his duties, may enter upon any land or building or structure at any reasonable hour, subject to all applicable laws.
- B. Complaints of violations. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board.
- C. Procedure for abatement of violations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or regulation made under authority conferred hereby, the Town Board or the Building Inspector, in addition to other remedies, may institute any appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- D. Penalties.
  - (1) A violation of this chapter is hereby declared to be a violation, punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation.
  - (2) A violation of this chapter shall be subject to a civil penalty enforceable and collected by the Town in the amount of \$250 for each such offense. Each week's continued violation shall constitute a separate additional violation. This provision is in addition to all other remedies to which the Town may be entitled as a result of a violation of this chapter.
  - (3) In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used or any land is divided into lots, blocks, or sites in violation of this chapter, the proper local authorities of the town, in addition to other remedies, may institute such appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises, and, upon the failure or refusal of the proper local officer, board or body of the Town to institute any such appropriate action or proceeding for a period of 10 days after written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district wherein such violation exists who are jointly or severally aggrieved by such violation may institute such appropriate action or proceeding in like manner as such local officer, board, or body of the Town is authorized to do.
- E. Nonapplicability. This section shall not apply to violations of the provisions of the New York State Uniform Fire Prevention and Building Code punishable under § 382 of the Executive Law of the State of New York, nor to violations of the provisions of the Multiple Residence Law punishable under § 304 of the Multiple Residence Law of the State of New York.

**§ 199-64 General and professional fees.**

- A. Building Department fees. Fees under this chapter shall be set pursuant to Chapter **95**, Fees, and shall be paid at the office of the Building Inspector upon the filing of an application.
- B. Professional fees; intent. The intent of this section is to reimburse the Town of Mamakating for all expenses incurred in connection with the review of applications made to the Building Inspector, Planning Board or the Zoning Board of Appeals. Both the Planning Board and Zoning Board of Appeals and the Town Building Department of the Town of Mamakating are hereby empowered to charge an applicant the expense for professional fees incurred by either of said Boards or Building Department for professional fees which are incurred as a result of professional work required to be done on behalf of either of said Boards or Building Department as a result of the filing of an application seeking approval by it.
- C. Professional services. Such professional services shall include, but not be limited to, architects, attorneys, engineers, planning consultants, and traffic consultants for services rendered in connection with the above.
- D. The professional involved, who will be hired at the request of either of the above said Boards or Building Department, will submit a statement setting forth the nature of services performed, the date such services were rendered, the time spent thereon (if such services are rendered in a timed basis) and the name of the party rendering such services. A voucher or other bill rendered to the Town and paid by the Town shall be deemed a fee statement in full compliance with this section.
- E. Payment of the fee by the applicant shall be a prerequisite for approval of the application but shall be paid regardless of whether approval is granted or not. If the relief sought by the applicant is granted but the fee(s) is not paid, the issuing authority can revoke its action ex parte and afterwards notify the applicant for the same of said revocation and that the relief sought will not be regranted until the fees are paid.
- F. If payment is by check, payment is not to be considered final until the check clears the bank of the drawer.
- G. Disputed fees. Any applicant who disputes any fee statement presented to him may bring a proceeding in the Supreme Court of the State of New York, in and for the County of Sullivan, pursuant to Article 78 of the Civil Practice Law and Rules of New York, within 30 days after presentation of such disputed fee statement. The commencement of such a proceeding shall not stay the obligation of the applicant to pay any fee statement presented to him pursuant to this chapter.
- H. Failure to reimburse fees. Any fee statement imposed by this section which remains unpaid at the time the Town certifies its annual tax roll shall become a lien upon the premises for which the application was made. Such unreimbursed fees shall thereupon be levied against said premises, as if a tax on real property, and in addition to all other taxes, fees, rents, or charges which would otherwise be so levied. In the event the affected premises comprise more than one tax lot, the Town Treasurer shall distribute such levy equally among such tax lots without regard to assessed value or any other factor.

**Article XIII  
Amendments; Interpretation**

**§ 199-65 Amendment procedure.**

- A. Town Board may amend. The Town Board may from time to time, on its own motion or on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter after public notice and hearing.

- B. Review by Town Planning Board. Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for.
- C. Public notice and hearing. The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendment and cause notice to be given as follows:
  - (1) Public notice. By publishing a notice at least 10 days in advance of such hearing in at least one newspaper of general circulation in the Town of Mamakating. Such notice shall state the date, time and place of such hearing and the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents and shall name the place or places where copies of the proposed amendment may be examined.
- D. Opportunity to be heard at hearing. At the public hearing, full opportunity to be heard shall be given to any citizen and all parties in interest.
- E. Service of written notice. At least 10 days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of zoning districts, including any amendments thereto, affecting property within 500 feet of the following shall be served personally or by mail by the Town upon each person or persons listed below:
  - (1) The property of a housing authority erecting or owning a housing project authorized under the Public Housing Law: upon the executive director of the housing authority and the chief executive officer of the municipality providing financial assistance thereto.
  - (2) The boundary of a city, village or town: the clerk thereof.
  - (3) The boundary of a county: upon the clerk of the board of supervisors or other person performing like duties.
  - (4) The boundaries of a state park or parkway: upon the regional state park commission having jurisdiction over such state park or parkway.
- F. General Municipal Law review. The Town Board shall, before taking final action, refer the same to the Sullivan County Planning Department for review in accordance with §§ 239-l and 239-m of the General Municipal Law.
- G. SEQRA. Before taking any action involving an amendment to this chapter or the Zoning Map, the Town Board shall comply with the relevant provisions of the State Environmental Quality Review Act (SEQRA).

**§ 199-66 Construal of provisions.**

In the interpretation and the application of the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances, provided that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height or bulk of a building or requires larger open spaces, the provisions of this chapter shall apply.

**Attachments – These attachments, as well as the attached zoning map referred to in Section 199-4, are made part of the local law and Chapter 199:**

[Attachment 1 - Sketch A](#)

[Attachment 2 - Sign Requirements-Nonresidential](#)

[Attachment 3 - Schedule I](#)

[Attachment 4 - Schedule II](#)