

# **TOWN OF AMENIA, NEW YORK**

## **ZONING LAW**

**ADOPTED JULY 19, 2007**

**(Local Law No. 2 of 2007)**

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# TOWN OF AMENIA ZONING LAW

## TOWN OF AMENIA, NEW YORK

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## **TOWN OF AMENIA ZONING LAW**

### **TOWN OF AMENIA, NEW YORK**

#### **ARTICLE I TITLE, SCOPE, AND PURPOSES**

##### **§121-1 TITLE**

This chapter is known and may be cited as "The Zoning Law of the Town of Amenia."

##### **§121-2 INTRODUCTION AND USER GUIDE.**

This Zoning Law enables Amenia to protect the diverse character of the Town while also giving landowners a range of options and choices for the use, development, and conservation of their land. It is designed to strike a balance between achieving the community's goals as expressed in the Town's Comprehensive Plan and protecting the property interests of landowners, providing a development approval process that is predictable, efficient and fair.

##### **A. Overview** This section provides a brief overview of what is in the Zoning Law.

1. This Law divides the Town into land use and overlay districts and establishes rules for the use of land in each district. The text is accompanied by a Zoning Map which shows where the various districts are located.
2. The Use Table in Article III (§121-10) tells what uses are allowed in each district. The definitions in §121-74 explain what the different use categories in the table mean. Several of the uses are also regulated by "supplementary regulations" in Article VII, which are referenced in the Use Table.
3. Article III, §121-11, contains dimensional regulations for each district, covering lot size, setbacks, and other requirements about the permissible amount, size, type, and location of development on a lot.
4. Article IV (§§121-13 through 121-18) covers "overlay" districts, which are special districts designed primarily to protect special resources from inappropriate development and to maintain the Town's character and natural and historic resources. Some of these overlays also allow uses that are not allowed in the underlying district, including resort development and gravel mining. The provisions of these districts apply in addition to those of the "underlying" land use district.
5. Article V contains options for flexibility in development patterns, particularly the use of "conservation subdivisions," which preserve open space by concentrating development on a portion of a parcel.
6. Article VI contains rules for allowing the continuation of buildings and uses that were legal under previous regulations but do not conform to this Zoning Law. This is sometimes referred to as "grandfathering."
7. Supplementary regulations in Article VII contain additional requirements for specific types of uses and structures (such as home occupations, signs, and parking), as well as performance standards for all development.
8. Articles VIII and IX explain the procedures for obtaining various types of permits from the Town, including land use permits from the Code Enforcement Official, Special Permits and Site Plan approval from the Planning Board, and variances from the Zoning Board of Appeals. Article X contains the procedures for amending this Zoning Law to change the map or the text.

##### **B. How To Use This Zoning Law**

Landowners and others who use this Zoning Law are encouraged to meet with the Code Enforcement Official to discuss how this Zoning Law applies to their property. For any large-scale development (a large business or a development of several homes) it is also a good idea to consult the Town's Comprehensive Plan to understand how to make a proposed development fit within the Town's vision of its future. The usual sequence of steps in using this Zoning Law is as follows:

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1. Check the Zoning Land Use District Map to determine what land use district(s) your land is in.
2. Check the Overlay District Map(s) to see which of the overlay districts apply to your land. Review the provisions of applicable overlay districts in Article IV, to see how they may affect what you can do with your land.
3. Consult the Use Table and text in §121-10, along with any relevant definitions, to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also check the specific sections that deal with the district your land is located in as well as any supplementary regulations in Article VII that may apply to your proposed use. (These are referenced in the Use Table.)
4. Consult the dimensional table in §121-12 to see which setbacks and other dimensional standards apply.
5. If your land is in the RA, RR, or SR districts, review the requirement of a conservation analysis and the various development options provided in §§ 121-20 through 121-22 to determine which you want to pursue.
6. If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, check §§ 121-27 and 121-28 to determine what you can do with it.
7. If the Use Table indicates that your proposed use or structure can go forward with just a building permit or a zoning permit, refer to Article VIII. If the use will require a Special Permit or site plan approval, turn to Article IX for the procedures to follow.
8. If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in §121-59) or a Zoning Amendment from the Town Board (as provided in § 121-69). These options should be discussed with the Code Enforcement Official before they are pursued. Any zoning amendment must be consistent with the Comprehensive Plan.

**§121-3 SCOPE, AUTHORITY AND PURPOSES.**

This chapter regulates the location, design, construction, alteration, occupancy, and use of structures and the use of land in the Town of Amenia, dividing the town into land use districts. This chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, § 10 et seq., and Chapter 62, Article 16, of the Consolidated Laws, in conformance with the updated Town of Amenia Comprehensive Plan, adopted by the Town Board on July 19, 2007 (as it may be modified from time to time), to advance the goals of the Comprehensive Plan, and in particular to implement the Town's vision of its future, expressed in the Comprehensive Plan as follows: "We want Amenia to grow into a diverse, vital and business-friendly community of agriculture, small businesses and homes all located in an appealing setting with great natural beauty; a unique unity of six different, clean, well-preserved town hamlets (Amenia, Wassaic, Amenia Union, South Amenia, Smithfield, and Leedsville); and amenities that attract residents, travelers, shoppers, diners and vacationers." This chapter is adopted to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

- A. To conserve the natural resources and rural character of the Town by encouraging development in appropriate locations and by limiting building in areas where it would adversely affect the Town's predominantly rural pattern and scale of settlement;
- B. To avoid or minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as Delavergne Hill and its viewshed, along the Wassaic Creek, Amenia Creek, Webutuck Creek and Ten Mile River and their tributaries, in aquifer and aquifer recharge areas, and on steep slopes, erodible soils, wetlands and their buffers, floodplains, prime and statewide important agricultural soils, and other designated open space resources identified in the Comprehensive Plan;
- C. To encourage a range of business activities in appropriate locations which are compatible with the Town's rural character and scale, concentrating retail businesses in and near hamlets, encouraging farming operations, and allowing large-scale business and industry in well-buffered locations with good transportation access;

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- D.** In recognition of the economic value of Amenia's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, agricultural land, existing and potential recreation areas, waterways, ground and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, and to maintain environmentally significant open space in its predominantly undeveloped state, in order to maintain property values and preserve the open and rural character of the Town;
- E.** To preserve and protect lands and buildings that are historically significant and to enhance the aesthetic and architectural quality of the entire community;
- F.** To encourage the continuation of agriculture and the preservation of open space, and to avoid regulating agricultural uses in a manner that unreasonably restricts or regulates farm structures or farming practices, while encouraging other economic activities that require large areas of contiguous open space, such as sustainable forestry, tree farming, and recreation, as well as the support services and industries that add value to all of these uses, such as wood products, food processing, resort, and tourist facilities;
- G.** To regulate building density in order to concentrate population in appropriate locations where municipal infrastructure is available, and to ensure access to light and air, conserve open space, facilitate the prevention and fighting of fires, minimize the cost of municipal services, and accomplish the other purposes enumerated in § 263 of the Town Law of New York State;
- H.** To integrate harmoniously different types of housing and varied land uses in hamlet centers to encourage pedestrian activity and reduce dependency on automobiles;
- I.** To provide a range of housing opportunities for all segments of the local population with due consideration for regional housing needs;
- J.** To protect residences from non-agricultural nuisances, odors, noise, pollution, and unsightly, obtrusive, and offensive land uses and activities;
- K.** To improve transportation facilities in areas designated for intensive settlement, taking advantage of commuter railroad stations, and to maintain a network of smaller country roads in areas designated for low-density development and the protection of open space, agriculture, steep slopes, and rural character;
- L.** To reduce traffic congestion on major roads by establishing a pattern of settlement and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling, and the use of commuter rail and other forms of public transportation;
- M.** To encourage the conservation of energy and the appropriate use of solar and other renewable energy resources;
- N.** To provide a flexible system of land use regulation that enables the Town's economy and population to grow, while preserving the most important natural, historic, scenic, architectural, and cultural features; and
- O.** To base such flexible land use regulations on the unique characteristics of the landscape, the needs of the people of the Town of Amenia, the property rights of landowners to make economically beneficial use of their land, and the impact of proposed land uses on the natural and human environment, and to avoid patterns of development that adversely affect the scenic, historic, rural, and natural character of the Town.

**§121-4 INTERPRETATION OF PROVISIONS**

All provisions of this chapter shall be construed to fulfill the purposes stated in Sec 121-3 above.

**§121-5 SITING AND DESIGN GUIDELINES; GREENWAY CONNECTIONS**

**A.** The Town of Amenia encourages development that is compatible with the existing character of the Town. To that end, the Town Board hereby adopts as advisory guidelines the illustrated design guidelines published by the Dutchess County Department of Planning in 1994, entitled *Hamlet Design Guidelines, Building Form Guidelines, and Rural Development Guidelines* (hereinafter "the Guidelines").

**B.** In any discretionary decisions, the reviewing board shall apply the principles in "Greenway Connections," adopted by the Town of Amenia as Local Law No. 6 of the Year 2000 as Chapter 18 of the Town Code. Copies of "Greenway Connections" are available in the Town Hall.

**§121-6 OTHER LAWS; SPECIAL AGREEMENTS**

In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare. It is not intended by this Chapter to 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 structures or land or on the heights of structures, or requires larger open spaces, or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule, 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, unless this Chapter specifically states otherwise.

**ARTICLE II LAND USE AND OVERLAY DISTRICTS**

**§121-7 ESTABLISHMENT OF DISTRICTS**

The Town of Amenia is hereby divided into the following land use and overlay districts. Overlay districts are intended to provide additional protection of important environmental resources and/or to permit certain types of economically productive uses that would not otherwise be allowed in a particular land use district. They may overlap different land use districts, but they do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this Chapter.

***Rural Agricultural District (RA)***

The purpose of this district is to maintain the Town's working landscape by promoting agriculture, forestry, recreation, land conservation, and low-density residential uses, as well as compatible open space and rural uses by encouraging such activities and discouraging large-scale residential development.

***Rural Residential District (RR)***

The purpose of this district is to allow residential uses in a rural setting, at a lower density than is allowed in the hamlets.

***Hamlet Mixed-use District (HM)***

The purposes of this district are to maintain the traditional scale, density, architectural style, and mixed-use character of the existing Amenia and Wassaic hamlet core areas, to allow them to be restored, revitalized and expanded to become more economically viable, and to allow for the creation of new hamlet centers where access to commuter rail stations makes such centers viable for transit-oriented development. See §121-12.1.

***Hamlet Residential District (HR)***

The purpose of this district is to maintain the traditional scale, density, and character of small hamlets and the residential neighborhoods surrounding the hamlet cores, and to allow expansion into surrounding land areas that are generally within walking distance from the hamlet centers or the train stations. See §121-12.1

***Suburban Residential (SR)***

The purpose of this district is to maintain the character of existing suburban density residential developments and to allow a limited extension of suburban growth patterns.

***Highway Commercial District (HC)***

The purpose of this district is to allow commercial uses that rely heavily on automobile and truck access and that would not be compatible with a hamlet mixed-use area.

***Office/Commercial/Industry Mixed-Use District (OC)***

The purpose of this district is to allow areas for light industrial, service commercial, office, and research facilities. Such districts may also include, where compatible, housing and limited retail commercial development intended to support the primary uses or to provide adaptive reuses for existing commercial or industrial buildings.

***Industrial/Manufacturing District (M)***

The purpose of this district is to allow industrial and related uses and adult entertainment, uses that are not compatible with most commercial, office, or residential uses, in isolated and well-buffered locations.

***Floodplain Overlay District (FPO)***

The purpose of this Overlay District is to control development within the 100-year floodplain in order to minimize flood damage and protect water resources. This district also incorporates by reference the Town's existing Floodplain Protection Chapter. See §121-13.

***Stream Corridor Overlay District (SCO)***

The purpose of this Overlay District is to protect the water resource values and biodiversity of the Wassaic Creek, Amenia Creek, Webutuck Creek, and Ten-Mile River and certain designated tributaries. See § 121-14.

***Scenic Protection Overlay District (SPO)***

The purpose of this overlay district is to protect the scenic character of scenic resources in the Town, including scenic road corridors, the Harlem Valley Rail Trail, and prominent ridgeline areas that remain substantially undeveloped and/or that lie within important scenic viewsheds. See § 121-14.1.

***Historic Preservation Overlay District (HPO)***

The purpose of this overlay district is to protect the historic character of those hamlets and individual buildings and sites that have recognized historic significance, while encouraging their adaptive reuse where appropriate. See §121-14.2.

***Aquifer Overlay District (AQO)***

The purpose of this Overlay District is to protect groundwater resources that provide both public and private drinking water supplies. See § 121-15.

***Mixed-Use Institutional Conversion Overlay District (MCO)***

The purpose of this Overlay District is to provide use and design flexibility to encourage productive reuse of privately owned portions of what was formerly the Wassaic Developmental Center (now Taconic DDSO) campus. This district provides greater use flexibility and a procedure for master planned development of this property in a manner that advances the Town's development goals. See § 121-16 .

***Soil Mining Overlay District (SMO)***

The purpose of this Overlay District is to provide environmentally appropriate locations for soil mining to occur where landowners can achieve a reasonable return on their land from sand and gravel mining without adversely impacting their neighbors. See § 121-17.

***Resort Development Overlay District (RDO)***

The purpose of this Overlay District is to provide use and design flexibility to encourage resort development that fits into the rural character of the Town and protects its scenic, historic, and environmental resources. This district provides a procedure for master planned development of large properties to promote tourism, recreation, and open space and natural areas protection. See § 121-18.

***Mobile Home Park Overlay District (MHO)***

The purpose of this Overlay District is to provide appropriate locations for mobile home parks to be located, consistent with the requirements of §121-44.

**§121-8**

**ZONING MAPS**

A. The boundaries of the land use and overlay districts are hereby established on four maps adopted hereby and certified by the Town Clerk, which accompany and are hereby declared to be a part of this chapter. Unofficial

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reductions of these maps are appended to this chapter for reference purposes only. The four maps are entitled:

1. "Town of Amenia Land Use and Development Overlay Districts Zoning Map," showing the land use districts RA, RR, HM, HR, SR, HC, OC, and M, and the overlay districts HPO, SMO, MHO, MCO, and RDO.
2. "Town of Amenia Hydrological Overlay Districts," showing the SCO and FPO overlay districts.
3. "Town of Amenia Scenic Protection Overlay District"
4. "Town of Amenia Aquifer Overlay District"

**B.** The official Zoning Maps shall be kept in the office of the Town Clerk, and shall be reviewed for accuracy and updated at least once annually with any zoning map amendments adopted in the previous year by the Town Board or its designee. Changes may be made in district boundaries or other matter portrayed on the Zoning Maps only by a zoning amendment adopted by the Town Board pursuant to Article X of this chapter. Such changes shall be noted by the Town Clerk on the official Zoning Maps promptly after the Town Board adopts an amendment.

**C.** Each local law adopting an amendment shall be the final authority as to the current zoning status of lands, structures and uses in the Town.

**D.** An unauthorized map change made by any person shall be considered a violation of this chapter, punishable under § 121-57 of this chapter.

**E.** Where a land use district boundary line divides a lot in a single ownership existing at the time of enactment of this chapter, the Planning Board may grant a Special Permit to allow the uses authorized and the district requirements of the less restricted portion of such lot to extend up to a maximum of 50 feet into the more restricted portion of the lot. This provision shall not apply to overlay district boundaries.

**§121-9 INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of districts shown on the Zoning Maps, the following rules apply:

- A.** Boundaries indicated as approximately following the center lines of streets, highways, or railroad tracks shall be construed to follow such center lines.
- B.** Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
- C.** Boundaries indicated as following shorelines of ponds and lakes shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.
- D.** Boundaries indicated as following centerlines of streams shall be construed to follow such centerlines and, in the event of change in the centerline, shall be construed as moving with the actual centerline.
- E.** Boundaries indicated as parallel to or extensions of features indicated in Subsections (A) through (D) above shall be so construed. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.
- F.** Where overlay district boundaries are based upon natural features such as topographic contour lines or aquifer and aquifer recharge areas, such boundaries may be more precisely established through field investigation by a qualified professional.

**ARTICLE III LAND USE DISTRICT REGULATIONS**

**§121-10 ALLOWABLE USES**

**A. Purpose**

The use regulations in this Article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of Amenia's hamlets, neighborhoods, and rural areas. In reviewing applications for Special Permits and Site Plan approval, the Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The Planning Board shall deny any proposed use which does not satisfy the criteria in this chapter.

**B. Use Restrictions and Use Table**

No structure or land shall be used except as provided in the Use Table below. See § 121-74 for Definitions of the use categories. In the event that a particular proposed use does not fit into one of the categories shown on the Use Table and is not prohibited by § 121-10C below, it may be allowed by Special Permit issued by the Town Board. The meaning of the symbols on the Table is as follows:

- P Designates a use permitted by right. Usually requires a zoning permit or a building permit and a Certificate of Occupancy from the Code Enforcement Official, but does not require review by any municipal board.
- PS Designates a use permitted by right, subject to Site Plan review by the Planning Board (see Sections 121-65 through 121-68).
- S Designates a use permitted by Special Permit issued by the Planning Board with referral to the Zoning Board of Appeals for Major Projects (see Sections 121-60 through 121-64).
- ST Designates a use permitted by Special Permit issued by the Town Board.
- Designates a prohibited use.

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**USE TABLE**

USE CATEGORY	USE DISTRICTS								SECTION REFERENCE
	RA	RR	HM	HR	SR	HC	OC	M	
<b>RESIDENTIAL USES</b>									
Single-family Dwelling	P*	P*	P*	P*	P*	S	S	--	
Two-family Dwelling	S	S	P	P	S	S	S	--	121-12A
Multi-family Dwelling ( <i>conversion</i> )	S	S	PS	S	--	S	S	--	121-12B
Multi-family Dwelling ( <i>new</i> )	S <sup>1</sup>	S <sup>1</sup>	PS	S	--	S	S	--	121-12B
Accessory Apartment	P	P	P	P	P	S	S	--	121-12C
Mobile Homes/ Mobile Home Parks			See § 121-44						
Upper-floor Apartments in Mixed-use Building	--	--	PS	PS	--	S	S	--	
Residential Care Facility	S	S	S	S	--	--	--	--	121-52
<b>BUSINESS USES<sup>2</sup></b>									
Adult Use	--	--	--	--	--	--	--	ST	121-48
Agriculture	P	P	P	P	P	P	P	P	121-37,49
Bed & Breakfast	PS	PS	PS	PS	PS	PS	PS	--	
Camp	S	S	--	--	--	--	--	--	121-45
Craft Workshop	S	S	PS	S	--	P	PS	PS	
Home Occupation	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	--	121-41
Kennel	S	S	--	--	--	S	S	S	121-49D
Light Industry	--	--	S	--	--	S	S	S	121-50
Lodging Facility	--	--	S	S	--	PS	S	--	
Office	S <sup>3</sup>	S <sup>3</sup>	PS	S	--	S	PS	S	
Public Utility Facility	S	S	S	S	S	S	S	S	
Recreational Business	S	S	S	S	--	S	S	--	
Restaurant	S <sup>3</sup>	S <sup>3</sup>	PS	S	--	S	S	--	
Retail Business ( <i>not listed elsewhere</i> )	S <sup>3</sup>	S <sup>3</sup>	PS	S	--	S	S <sup>5</sup>	--	
Service Business ( <i>not listed elsewhere</i> )	S <sup>3</sup>	S <sup>3</sup>	PS	S	--	S	S	S	
Soil Mining (with DEC Permit)	ST <sup>6</sup>	ST <sup>6</sup>	--	--	--	--	ST <sup>6</sup>	ST <sup>6</sup>	121-17
Solid Waste Management Facility	--	--	--	--	--	--	--	--	121-50
Telecommunications Tower and Facility			See § 121-46						
Timber Harvesting	PS	PS	PS	PS	PS	PS	PS	PS	121-47
Veterinary Hospital	S	S	S	--	--	S	S	S	
Warehouse/Wholesale Business	--	--	--	--	--	S	PS	S	
Riding Academy	PS	PS	--	--	--	--	--	--	
<b>COMMUNITY USES</b>									
Cemetery	S	S	S	S	S	--	--	--	
Educational/Charitable/Religious	S	S	S	S	S	S	S	--	
Health Care Facility	S	S	PS	S	--	S	S	--	
Membership Club	S	S	S	S	--	S	S	--	
Municipal	PS	PS	PS	PS	PS	PS	PS	PS	

(\*) Single-family dwellings exceeding 5,000 square feet in floor space require minor project site plan review, except as set forth in §121-18C(3)(d).

(1) Only permitted in a Conservation Subdivision (see §121-20).

(2) Subject to limitations on building footprint in the Dimensional Table.

(3) Only in connection with agricultural use, or as provided in §121-10(I).

(4) Requires a Special Permit if more than two non-resident employees or 30% of dwelling unit floor space.

(5) Retail use shall not exceed 20% of floor area and shall include only sale of items produced on the premises and customary accessories to such items.

(6) Only within the Soil Mining Overlay District. Rock removal and small soil mines on farm operations are permitted in all districts. See §121-34I..

**C. Prohibited Uses**

Any use, whether or not listed in the Use Table, is prohibited if it does not satisfy the standards and criteria in §§ 121-40 and 121-63. The following uses are prohibited under all circumstances (existing uses may be continued pursuant to the nonconforming use provisions of Article VI): heavy industry, asphalt plants, facilities for disposal of hazardous or radioactive material, and, except as provided in § 121-50, solid waste management facilities as defined in Article XII, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a "beneficial use designation" from DEC) as fill. Any such specifically prohibited use which when initiated was not listed as a permitted or Special Permit use in the Town of Amenia Zoning Law (and was therefore initiated in violation of the Zoning Law) shall not be protected as a non-conforming use by the provisions of Article VI.

**D. Accessory Uses**

Uses customarily incidental and subordinate to principal uses shown on the Use Table shall be allowed on the same terms as the principal uses, whether or not on the same lot, unless otherwise indicated on the Use Table. Non-commercial recreational use shall be permitted as an accessory use in all districts.

**E. Mixed Use**

The Town of Amenia encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Permit and/or Site Plan reviews for the same project shall be consolidated into one proceeding before the Planning Board (except where the Town Board or Zoning Board of Appeals has jurisdiction over a Special Permit).

**F. Change of Use or Structure**

A change of use is the initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the change would result in the enlargement or addition of a sign or an increase of more than 20% in vehicle trip generation as indicated in current trip generation rates contained in the publications *Trip Generation* or *Trip Generation Handbook* published by the Institute of Transportation Engineers (ITE).

1. Uses by Right (P). Any change of use of land or existing structures to a use permitted by right without Site Plan review (P on the Use Table) shall not require approval from the Planning Board or the Code Enforcement Official. This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Code Enforcement Official under Chapter 63 of the Amenia Town Code.
2. Uses by Right Subject to Site Plan Review (PS). Any change of the use of an existing structure to a use permitted by right subject to Site Plan review shall require Site Plan review only if it involves the construction or enlargement of a structure, the clearing, excavation, or grading of more than 1,000 square feet of land, the addition of four or more parking spaces, or the enlargement or addition of signs.
3. Uses by Special Permit. (S on the Use Table)
  - a. A Special Permit shall be required for any change of use from a use that does not require a Special Permit to a use that does require a Special Permit.
  - b. Once a Special Permit has been granted, it shall run with the land and apply to the approved use and to all subsequent owners, tenants, and occupants engaged in the same use. The Special Permit shall also apply to any subsequent use of the property in the same use category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by Special Permit shall require the granting of a new Special Permit or a Special Permit amendment, except as otherwise provided pursuant to a Master Development Plan approved pursuant to Section 121-16 (MCO) or 121-18 (RDO).

**G. Rebuilding, Replacement, and Expansion of Structures**

The rebuilding or replacement on the same footprint of any structure for a use which requires Site Plan review (PS) and/or a Special Permit (S) shall require Site Plan review, even if it is a continuation of the same use.

**H. Special Site Design and Operational Considerations in the OC District**

1. The purpose of the OC District is to allow larger-scale non-residential uses that contribute to the Town's tax base and provide jobs for local residents, while protecting the Town's treasured scenic and rural qualities using open space buffers. Impervious surfaces are limited to 40% of total project area, requiring 60% to be maintained as open or undeveloped "green space." This green space shall be arranged in a manner that adequately buffers buildings and parking areas from public roads and neighboring properties, while protecting wetlands, watercourses, and scenic views.
2. Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The Planning Board may modify or waive this requirement where unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas.

**I. Small-Scale Business Uses in the RA and RR Districts**

Residential structures in the RA, and RR Districts that were in existence as of the date of adoption of this zoning law (*July 19, 2007*) may be used for office, restaurant, retail, and service business uses by Special Permit, provided that their exterior appearance is not significantly modified and that the business use does not occupy more than 5,000 square feet of floor space. New structures not exceeding 5,000 square feet in floor space may be built that comply with this section, provided that they maintain a residential appearance and that all parking areas are screened from view from adjoining properties and public roads. Any changes to an existing structure or construction of a new structure shall take into consideration the design guidelines referred to in § 121-5. The uses allowed by this subsection I may only be permitted if they have frontage on and access to a state or county highway, except that if such a use previously existed in a location with frontage on and access to a Town road, and its non-conforming use status has lapsed, such use may be re-established in conformance with this subsection I.

**§121-11 DENSITY AND DIMENSIONAL REGULATIONS**

**A. Purpose**

The regulations in this section are intended to encourage the preservation of Amenia's open space, while providing opportunities for needed housing and business uses. This is accomplished by clustering development in nodes surrounded by open space and, where practical, in the traditional compact pattern found in the Town's hamlets. This chapter contains flexible regulations for density and lot dimensions and encourages the use of Open Space Development (including Conservation Subdivision) as an alternative to conventional subdivision to preserve significant amounts of open space. See Article V for standards for Open Space Development.

**B. Dimensional Table**

The following table is hereby adopted and will be referred to as the "Dimensional Table."

*Amenia Zoning Law, Adopted July 19, 2007*  
**DIMENSIONAL TABLE**

	<b>DISTRICT</b>							
	<b>RA</b>	<b>RR</b>	<b>HM</b>	<b>HR</b>	<b>SR</b>	<b>HC</b>	<b>OC</b>	<b>M</b>
Minimum lot size <i>(conventional)</i> (1)	10 ac.	5 ac.	(4)	(4)	1 ac.	1 ac.	2 ac.	5 ac.
Minimum lot size <i>(conservation)</i> (2)	See §§ 121-20D and 121-11D							
Maximum density <i>(conservation)</i> (3)	5 ac/du`	3 ac/du	--	--	1 ac/du	--	--	--
Minimum road frontage for conventional subdivision(5)								
Town road	250	250	50	50	200	200	200	200
County/State road	300	400	50	50	200	300	200	200
Minimum/maximum front yard setback								
Town Road (6)	40	40	25/40	25/50	50	25	50	100
County/State road(6)	60	60	30/40	40/50	75	35	150	200
Minimum side yard setback	30	30	10 <sup>(11)</sup>	15 <sup>(11)</sup>	30	15 <sup>7</sup>	20 <sup>7</sup>	50
Minimum rear yard setback	50	50	15	15	50	50 <sup>7</sup>	50 <sup>7</sup>	75 <sup>7</sup>
Setback in Conservation Subdivision	See § 121-20F							
Maximum impervious surface coverage (8)	10%	10%	50%	30%	20%	60%	40%	30%
Maximum height (9)	35	35	45	40	35	45	35	35
Maximum footprint <i>(in square feet)</i> for non-residential structures (10)	6,000	4,000	10,000 <sup>(12)</sup>	1,000	1,000	40,000	200,000	--

**ALL DIMENSIONS IN FEET UNLESS OTHERWISE INDICATED.**

- (1) For conventional subdivision as described in §121-19A.
- (2) For conservation subdivision as described in §121-19B.
- (3) The abbreviation "ac/du" stands for "acres per dwelling unit." See Article V.
- (4) Varies based upon availability of infrastructure; see §121-11D.
- (5) Lots in limited development subdivisions and conservation subdivisions and rear lots may have shorter frontages. See §121-22, § 121-20F, and Subdivision Law, §105-21F.
- (6) Measured from centerline of road. Front yard setbacks may be adjusted to average setback of closest four parcels on all roads; a maximum setback or "build-to line" may be established by the planning board to maintain the "street wall" in the HM and HR Districts.
- (7) 100-foot setback with wooded buffer required if lot abuts a residential district.
- (8) See definition in §121-74; applies to each lot and to an entire subdivision, including new roads and other public areas (see §121-20G); in Conservation Subdivisions applies to entire subdivision only. This requirement may be waived by the Planning Board for lots in the HM District and shall not apply to pre-existing non-conforming lots. For flexibility provisions, see subsection E below.
- (9) Above average grade. For height exceptions, see §121-30E.
- (10) Excluding agricultural structures, residential accessory structures, structures used in connection with educational, religious, or charitable uses, camps, and all structures legally completed or granted a building permit, Special Permit, Site Plan approval, or variance prior to the adoption of this chapter. The purpose of this requirement is to maintain the historic scale and character of development in Amenia. The intent of this provision shall not be evaded through the placement of multiple large buildings on the same site or otherwise in a pattern that is inconsistent with the scale and character of the Town.
- (11) May be 0 for party-wall or zero-lot-line buildings.
- (12) May be enlarged up to 60,000 square feet for a supermarket, movie theater, or other destination use that attracts a substantial number of customers if all special permit impact criteria are satisfied.

**C. Minimum Floor Area**

The minimum floor area of a dwelling unit shall be 800 square feet and the minimum for an accessory apartment shall be 500 square feet.

**D. Minimum Lot Sizes in the HM and HR Districts and in Conservation Subdivisions**

Minimum lot sizes in the HM and HR Districts and in conservation subdivisions shall be as shown below, provided that such lots comply with all applicable public health requirements and that all common water and sewage disposal facilities are managed by entities which the Planning Board deems adequate to protect public health on a long-term basis. Minimum lot sizes for such lots shall be:

1. With common or municipal water supply but no common or municipal sewage disposal services: 40,000 square feet.
2. With common or municipal sewage disposal services only: 20,000 square feet.
3. With common or municipal water supply and sewage disposal: 8,000 square feet.
4. Without common or municipal water supply or sewage disposal services: 40,000 square feet

**E. Impervious Surface Flexibility**

In the course of site plan, special permit, area variance, or subdivision approval, an applicant may request permission to exceed the maximum impervious surface requirements through the use of partially permeable materials that allow for some infiltration of water into the ground. Such permission may be granted by the reviewing board only if the applicant demonstrates that the use of such materials will result in at least as much groundwater infiltration and no more stormwater run-off from the site than would occur if the applicant complied with the limitations in the Dimensional Table using impervious materials.

**§121-12 MULTIPLE AND ACCESSORY DWELLINGS**

**A. Two-family Dwellings**

1. In the HM and HR Districts, two-family dwellings shall be permitted by right on all conforming lots (with County Health Department approval).
2. In all other districts, lots containing two-family dwellings shall be at least twice the minimum lot size in the district, except as provided in Subsection (C) below.
3. On lots created as part of a Conservation Subdivision, two-family dwellings may be approved as part of the approval process for the Conservation Subdivision, consistent with the overall density requirements for the Conservation Subdivision in Article V.

**B. Multi-Family and Senior Citizen Dwellings**

1. Buildings in existence as of January 1, 2007, may be converted to multi-family use if permitted in the Use Table. Maximum density shall be established by the Planning Board based upon applicable review criteria and the characteristics of the existing building. Conversions to mixed residential and compatible non-residential uses are encouraged.
2. For congregate senior citizen housing and residential care facilities, each bedroom shall be counted as ½ of a dwelling unit. For multi-family units, studio apartments shall be counted as ½ of a unit and one-bedroom apartments shall be counted as ¾ of a unit.
3. The maximum density for new multi-family dwellings in the HR and HM Districts shall be two units per acre with municipal water or sewer service, eight units per acre with municipal water and sewer service, or one unit per acre with no municipal water or sewer service. In the HM and HR Districts, multi-family dwellings shall face an existing or new street, with parking behind the buildings or off-site.
4. The maximum density for multi-family dwellings in the OC District shall be determined in each case by the

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Planning Board based upon all relevant Special Permit and Site Plan review criteria. New residential development shall not exceed 20% of the total floor space in any development project in the OC District.

5. Apartments located above non-residential uses shall be allowed at the same density as multi-family dwelling units, except that for each lot, one apartment not exceeding 1,000 square feet may be located above a non-residential use by right as an accessory apartment pursuant to Subsection C below.

**C. Accessory Apartments and Accessory Residential Structures**

One accessory apartment per single-family dwelling may be located in an accessory structure or a principal building as provided in the Use Table. The lot containing the accessory apartment must contain the minimum acreage required by the Dimensional Table, unless it is located in an approved Conservation Subdivision. The accessory apartment shall not be counted as a residential unit for purposes of determining density. No special permit shall be granted for an accessory apartment without approval or certification from the Dutchess County Department of Health of the adequacy of the septic system.

**D. Multiple Residences on a Lot**

A lot may contain more than one principal residential structure and accessory apartment, provided that the lot has sufficient acreage to comply with applicable density requirements. Such a lot may not be later subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed. If a lot is proposed to have more than two principal residential structures, site plan approval shall be required from the Planning Board.

**121-12.1 TRADITIONAL NEIGHBORHOOD DEVELOPMENT (TND) STANDARDS FOR HM, HR , MCO , AND RDO DISTRICTS**

The HM, HR, and MCO districts are intended to implement the concept of traditional neighborhood development (TND). The RDO district is intended to incorporate major design elements of TND. TND refers to the development of compact complete communities that include single-family homes, apartments, townhouses, workplaces, shops, restaurants, inns, hotels, and recreational facilities. Its goal is to create a pedestrian-oriented environment in which residents and those who work in the area can walk comfortably between different land uses and minimize the use of automobiles. There is a large literature on TND (also known as “new urbanism” and “neo-traditional development”) and applicants are encouraged to consult that literature and the website of the Congress for the New Urbanism. The Charter of the New Urbanism, available on that website, is an expression of the intent of this §121-12.1 and shall be considered by the Planning Board in evaluating applications in these districts.

**A. Open space requirement.** Applicants for residential development in an HR or HM district shall provide a payment in lieu of providing recreational land (recreation fee) unless the development parcel is at least 10 acres and the applicant provides at least 15% of the land as publicly accessible open space in the form of squares, greens, parks, playgrounds, and/or trails. Open space requirements for the MCO and RDO districts are contained in Sections 121-16 and 121-18. Recreation fees shall also be charged for single-family and multi-family dwelling units in these districts, unless the applicant can demonstrate that all of the recreational needs of residents of the development will be provided on-site. Recreation fees shall not be charged for any units designated as workforce housing.

**B. Multi-family dwellings.** Multifamily dwellings shall have their front entrances on an existing or new street, with parking behind the buildings. Multi-family dwellings may take the form of rowhouses, townhouses, apartment buildings, hotel-condominiums, mixed-use buildings containing apartments, or any other form, such as three-family and four-family houses, provided that they fit into the traditional architectural character of Amenia, as determined by the Planning Board.

**C. Apartments in mixed-use buildings.** Apartments are encouraged to be located in the upper stories of buildings that have retail or service commercial on the ground floor, in the manner of traditional hamlet main streets.

**D. Design Guidelines.** TND development shall, to the extent practical, follow the “Hamlet Design Guidelines” and Greenway Connections referred to § 220-5. The Town Board may adopt additional design standards or guidelines to assist in the administration of this §121-12.1. An applicant may substitute proposed architectural covenants or a form-based code with design standards in lieu of following these guidelines. Such covenants or code may also substitute for the requirements in subsections E and F of this section.

**E. Setbacks and Build-to Lines.** Maximum setbacks and build-to lines may be established at the time of site plan approval, in conformance with the practices found in traditional hamlets, and shall supersede otherwise applicable setbacks in the Dimensional Table.

**F. Streets and Blocks.** Streets shall generally be interconnected and permanent cul-de-sacs shall only be permitted where wetlands, watercourses, or steep slopes make street interconnections impractical. In such cases, pedestrian paths and public stairways shall be provided where possible. The average area of a block shall not exceed 2.5 acres. Applicants shall show street cross-sections demonstrating compliance with TND principles. All streets shall be offered for dedication to the Town and no street shall be gated. The requirements for streets in the town’s road specifications shall be waived if such waivers are necessary to permit street designs in traditional hamlet character.

**G. Consultants.** For all development under the regulations in this §121.12.1, the Town shall retain design experts with specific expertise in TND development as necessary to review the application and ensure that it complies with the principles contained in the Charter of the New Urbanism.

**H. Applicability to the MCO and RDO Districts.** Development in the MCO and RDO districts shall conform to the requirements of this §121-12.1 with the following exceptions:

1. Within the MCO district, these requirements shall apply only within 3,500 feet, horizontal distance, of the Ten-Mile River Commuter Rail station platform.
2. Within the RDO district, the requirement of a complete mixed use community shall not apply if it would not be economically viable in the location of the resort development or if it would have an adverse impact on the economic viability of the Hamlet of Amenia. However, the requirements of subsections B, D, E, F, and G above may apply if such requirements are consistent with the proposed resort use of the property.

**ARTICLE IV            OVERLAY DISTRICT REGULATIONS**

**§121-13            FLOODPLAIN OVERLAY DISTRICT (FPO)**

**A. General**

The provisions of Chapter 67, "Flood Damage Prevention," are incorporated herein by reference and shall apply in addition to any other applicable zoning or building regulations.

**B. Boundaries**

The Floodplain Overlay District shall be the one-hundred-year floodplain, as shown on the Zoning Map.

**C. Restrictions**

In addition to any restrictions, requirements, or permits imposed or required by Chapter 67, no new structure intended for residential use and no new septic tank, leach field, or other sanitary sewage system shall be located within the Floodplain Overlay District. This shall not prevent the replacement of existing facilities.

**§121-14            STREAM CORRIDOR OVERLAY DISTRICT (SCO)**

**A. Findings and Purpose**

The Town of Amenia finds that special protection of the Town's stream corridors is necessary to preserve their scenic character, biodiversity, and water quality. The purpose of this section is to regulate land uses within stream corridors to protect water quality, scenic resources, and the overall appearance of the community, as well as to reduce the risk of damage from flooding.

**B. Boundaries**

The Stream Corridor Overlay District includes all land lying within 150 feet of the top of the bank on each side of the Webutuck Creek, Wassaic Creek, Amenia Creek, Ten Mile River, and other streams classified by the NY State Department of Environmental Conservation, if shown on the Resource Protection Overlay Districts Zoning Map. Where there is no clearly defined bank, the district boundary shall be measured from the mean high-water line of the stream. Certain areas in the hamlets of Amenia and Wassaic and in the MCO district have been excluded from this Overlay District, as shown on the map.

**C. Regulatory Effect on Land Uses**

Within the Stream Corridor Overlay District, all of the underlying land use district rules remain in effect, except as they are specifically modified by this section 121 -14.

**D. Setbacks**

Within the SCO District, no principal structure shall be located within 100 feet of a watercourse and no accessory structure 200 square feet or larger shall be located within 50 feet of a watercourse. These setbacks shall not apply to docks, piers, bridges, and other structures which by their nature must be located on, adjacent to, or over the watercourse. For purposes of determining setbacks, measurements shall be horizontal distances measured from the top of the bank or mean high-water line, as appropriate. For lots in existence as of [date of enactment], and for any project for which an environmental impact statement has been prepared, the Planning Board may modify these setback requirements, provided that the Planning Board finds that the proposed construction will comply with Subsection E(3) below.

**E. Site Plan Approval Requirement**

1. Within the SCO District, Site Plan approval shall be required for the following:

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- a. Construction of any structure greater than 500 square feet in footprint area.
- b. Within any one-year period:
  - (1) Filling or excavation of an area in excess of 5,000 square feet.
  - (2) Clear-cutting of more than 10,000 square feet of vegetation on any parcel.
  - (3) Grading or other alteration of more than 10,000 square feet of the natural landscape.
2. Within the SCO District, the Site Plan approval requirement shall not apply to:
  - a. Agricultural uses.
  - b. The repair and maintenance of existing structures.
  - c. Activities carried out pursuant to a Site Plan or Special Use Permit approved prior to the enactment of this §121-14 and still in effect.
3. Within the SCO District, the Planning Board may grant Site Plan approval only if it finds that, with appropriate conditions attached, the proposed activity:
  - a. Will not result in degradation of scenic character and will be aesthetically compatible with its surroundings.
  - b. Will not result in erosion or stream pollution from surface or subsurface runoff. In making such determination, the Planning Board shall consider slopes, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors.
  - c. Will comply with other applicable provisions of this chapter.
4. If a Special Permit, Site Plan, variance, or subdivision approval is required in connection with a project subject to this §121-14, the requirements of this section shall be considered in such proceeding and no separate Site Plan approval shall be required.

**F. Erosion and Stormwater Control Plan Requirement**

For any Special Permit, Site Plan, or subdivision application in which the area to be disturbed lies partially within the SCO District, an erosion and sediment control plan shall be required pursuant to §121-32 if the total disturbed area (including portions outside the SCO District) exceeds 10,000 square feet.

**§121-14.1 SCENIC PROTECTION OVERLAY DISTRICT (SPO).**

A. Findings and Purpose. Special protection of scenic road corridors, the Harlem Valley Rail Trail, and highly visible ridgeline areas is necessary to preserve the attractive rural and historic quality of the Town. The purpose of this Section is to regulate land uses within designated scenic corridors and ridgeline areas to protect the Town's scenic beauty and rural character. This section is intended to apply to those sections of ridgeline areas and road and rail trail corridors that are visible to the public and that substantially retain their scenic character.

B. Boundaries. The SPO District includes all land shown on the Resource Protection Overlay Districts Zoning Map as part of the SPO District, including mapped ridgeline areas visible from multiple viewpoints and land lying within 800 feet of the right-of-way of NY State Routes 44, 22, and 343 and within 500 feet of any other designated roads or the Harlem Valley Rail Trail. As used herein, the term "scenic road" shall be defined to include only specifically designated segments of road or rail trail corridors.

C. Regulatory Effect on Land Uses. Within the SPO District, all of the underlying land use district regulations remain in effect, except as they are specifically modified by this Section.

D. Site Plan Approval Requirement. Within the SPO District, Site Plan approval shall be required for the following uses and activities (including residential uses that are otherwise allowed without site plan review by the Use Table in § 121-10):

- (1) Construction of any structure or any addition to a structure where the size of the new structure or addition will be greater than 500 square feet in footprint area, including residential structures.
- (2) Within any one-year period, in any location that is visible from a publicly accessible place (as defined in §121-74) when there are no leaves on the trees:

*Amenia Zoning Law, Adopted July 19, 2007*

- (a) Filling or excavation of an area in excess of 5,000 square feet.
- (b) Clear-cutting of more than 5,000 square feet of vegetation on any parcel.
- (c) Grading or other alteration of more than 5,000 square feet of the natural landscape, including construction of roads and driveways.

E. Site Plan Approval Exemptions. Within the SPO District, the Site Plan approval requirement shall not apply to:

- (1) Agricultural uses, except for agricultural structures with a footprint exceeding 10,000 square feet.
- (2) The repair and maintenance of existing structures.
- (3) Activities carried out pursuant to a Site Plan or Special Use Permit approved prior to the enactment of this Section and still in effect.
- (4) Clearing and grading associated with construction of unpaved hiking trails.
- (5) Any other activity not included in (D) above.

F. General Standards. Within the SPO District, Site Plan approval may only be granted if, with appropriate conditions attached, the proposed activity:

- (1) Will not significantly impair scenic character and will be aesthetically compatible with its surroundings.
- (2) Will minimize the removal of native vegetation, except where such removal may be necessary to open up or prevent the blockage of scenic views and panoramas from publicly accessible places.
- (3) Will locate and cluster buildings and other structures in a manner that minimizes their visibility from public places.
- (4) Will be at least 40 feet below the crest line of any ridge and will not disturb the continuity of the treeline when viewed from a publicly accessible place. As used herein, "crest line" means the natural ground elevation of the land. The only portions of a structure that may project higher than 40 feet below the crest line shall be a chimney, satellite dish, antenna, or cupola, which shall not be higher than 30 feet below the crest line.
- (5) Will not result in clearing a building site area, including accessory structures and parking areas (excluding the area required for driveway and utility access), greater than 30,000 square feet in area for a single-family residence. This building site area shall be designated on the approved plan by a "building envelope," and all buildings and parking areas shall be located within the building envelope, except where additional clearing is required by the County Health Department for siting a subsurface sewage disposal system. Clearing for such disposal systems shall occur, to the maximum extent practical, where it will not detract from the visual protection purposes of this section.
- (6) Will comply with the requirements in Sections G through J below, except where site features are screened from public roads or trails.

G. Landscape

- (1) A continuous green buffer, at least 100 feet deep along Routes 44, 22, and 343 and 50 feet deep along the other scenic roads or trails, shall be maintained. This buffer shall consist of native trees and shrubs, as well as fields, meadows, and lawn areas. Bikepaths and/or sidewalks may be constructed within this landscaped buffer. This buffer requirement shall not apply in the immediate area around existing residences located within the buffer area.
- (2) Shade trees at intervals averaging every 50 feet, or other plantings consistent with the aesthetic character of the landscape, shall be provided within 25 feet of the right-of-way. Such trees or other plantings shall not be required where they would block scenic views. An applicant for site plan or Special Permit approval shall not be required to plant more than one shade tree per 1,000 square feet of floor area proposed to be developed on the parcel.
- (3) To the maximum extent practical existing trees, lawns, and shrubs shall be preserved, unless they are proposed to be replaced by native trees or other native vegetation deemed appropriate by the Planning Board.
- (4) Trees shall be planted as deemed necessary by the Planning Board to reduce visibility of new structures from

public roads or trails.

(5) Clear-cutting of trees shall be prohibited in any location where such clear-cutting would alter the crest line of a ridge when that crest line is viewed from any publicly accessible place.

#### H. Architecture

(1) Existing structures with historic or architectural significance shall be retained to the extent practical.

Alterations to such structures shall be compatible with the architecture of the existing structure. New structures shall be compatible with the historic structures in their vicinity.

(2) Buildings visible from public roads or trails, including canopies for accessory facilities, shall have peaked roofs with a slope of at least 8:12, except that hip roofs with a slope of at least 4:12 and flat roofs that are hidden by a raised cornice shall also be permitted.

(3) Windows shall be vertically proportioned and balanced on facades, with width to height ratios ranging from 1:2 to 3:5. Horizontal windows may be used just below roof eaves ("eyebrow" windows) and as first-floor display windows.

(4) The Planning Board shall consult the building form guidelines referred to in §121-5 in considering any applications under this section.

#### I. Fences.

Chain link fences and stockade or other fence designs that block visual access to land in a scenic road corridor shall be prohibited, unless such fences are necessary to screen a pre-existing use that does not conform to the requirements of this section.

#### J. Rural Siting Principles

New development in the SPO District shall comply with the Rural Siting Principles in §121-31.

#### K. Balloon Testing and Photographic Simulations

In connection with its review of a site plan review application within the SPO District, the Planning Board may require the applicant to conduct a balloon test where the location is near a ridgeline in order to determine whether or not a proposed structure or activity will project above the crest line when viewed from a publicly accessible place or otherwise adversely affect scenic quality. The Planning Board may also require an applicant to prepare photographic simulations for the same purpose.

#### L. Waivers

The Planning Board may waive one or more of the specific requirements of this section 121-14.1 upon a written finding that such waiver will not impair the scenic preservation purposes of the SPO District. Any development which is the subject of a detailed visual assessment as part of an Environmental Impact Statement shall be eligible for such waivers if supported by SEQR findings.

### **§121-14.2 HISTORIC PRESERVATION OVERLAY DISTRICT (HPO)**

A. Findings and Purpose. Special protection of historic hamlets and individual structures is necessary to preserve the attractive rural and historic quality of the Town. The purpose of this Section is to regulate construction, alteration, and demolition that affects identified historic areas and parcels with historic structures.

B. Boundaries. The HPO District includes all land and buildings shown as the Historic Preservation Overlay District on the Amenia Land Use and Development Overlay Districts Zoning Map.

C. Regulatory Effect on Land Uses. Within the HPO District, all of the underlying land use district regulations remain

in effect, except as they are specifically modified by this Section.

D. Site Plan Approval Requirement. Within the HPO District, Site Plan approval shall be required for the following activities (including residential uses that are otherwise allowed without site plan review by the Use Table in § 121-10):

- (1) Construction of any structure or any addition to a structure where the size of the new structure or of the addition will be greater than 200 square feet in footprint area, including residential structures.
- (2) Demolition of any structure more than 65 years old.
- (3) Alteration of any structure, including re-siding, re-roofing, window replacement, or other alterations that change the exterior appearance, excluding painting, repairs, and maintenance,.

E. Site Plan Approval Exemptions. Within the HPO District, the Site Plan approval requirement shall not apply to:

- (1) Agricultural uses, except for agricultural structures with a footprint exceeding 10,000 square feet.
- (2) The repair and maintenance of existing structures.
- (3) Activities carried out pursuant to a Site Plan or Special Use Permit approved prior to the enactment of this Section and still in effect.
- (4) Any construction, addition, or alteration, which is not visible from a public road or street when the leaves are off the trees.

F. General Standards

- (1) No construction or alteration shall be approved which will detract from the historic character of the structure being enlarged or altered or from the historic character of the setting in which the proposed structure or alteration is located.
- (2) The Planning Board shall refer to the Building Form and Hamlet Design Guidelines referred to in Section 121-5 for guidance.
- (3) The Planning Board may also refer any application under this section to the Amenia Historical Society, the Dutchess County Historical Society, and/or the New York State Historic Preservation Office for their opinion as to the historic significance of the structure and recommendations on appropriate restrictions on construction or alteration. If no response is received within 30 days of such referral, the Planning Board may proceed in the absence of such response.
- (4) Listing or eligibility for listing of a property on the National Register of Historic Places or the State Register of Historic Places shall create a presumption of the historic significance of a property. However, other properties not so listed or documented as eligible for listing may still be considered historic under the provisions of this Section.

G. Architectural Standards

- (1) Existing structures with historic or architectural significance shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure. New structures shall be compatible with the historic structures in their vicinity.
- (2) Buildings visible from public roads or trails, including canopies for accessory facilities, shall have peaked roofs with a slope of at least 8:12, except that hip roofs with a slope of at least 4:12 and flat roofs that are hidden by a raised cornice shall also be permitted.
- (3) Windows shall be vertically proportioned and balanced on facades, with width to height ratios ranging from 1:2 to 3:5. Horizontal windows may be used just below roof eaves ("eyebrow" windows) and as first-floor display windows.

H. Demolition Restrictions

- (1) The Planning Board shall refer any application involving demolition to the Amenia Historical Society, the Dutchess County Historical Society, and the New York State Historic Preservation Office for their opinion as to the historic significance of the structure proposed for demolition.
- (2) No structure greater than 65 years old shall be demolished without a public hearing held pursuant to §121-62E

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through G. This hearing requirement may be waived by the Planning Board if it finds that the structure has minimal historic value and/or that it is in a condition that is so seriously deteriorated that it cannot be economically restored and/or must be demolished for safety reasons.

- (3) If the Planning Board determines that the structure has historic value and should be preserved, the applicant shall advertise it for 60 days as available to be moved off the site to another location. The applicant shall be obligated to pay the moving costs up to the amount deemed by the Planning Board to be equivalent to the cost of demolishing the structure. If no person agrees to remove the structure at the end of 60 days, the applicant shall be permitted to demolish the structure.

#### I. Adaptive Reuse

The Town wishes to preserve the historic character and economic viability of important historic properties by allowing opportunities for flexible adaptive reuse and expansion while protecting the historic character of the property and the surrounding area. The Planning Board may, by Special Permit, allow an adaptive reuse development of land and buildings on a parcel of at least 5 acres within the HP Overlay district subject to following conditions:

- (1) The applicant shall submit a plan to preserve, maintain, restore, and/or renovate existing historic structures on the property and to place a historic preservation easement on the property to maintain its historic character.
- (2) The uses to be allowed on the property may include:
  - a. All uses allowed in the underlying district
  - b. Lodging facilities, meeting rooms, health spas, and conference facilities
  - c. Restaurants
  - d. Retail, recreational, and service businesses associated with the proposed reuse of the historic structures
  - e. Light industrial, warehousing, and other uses related to the historic function of the land or structures
  - f. Riding Academy and other equestrian uses
  - g. Multi-family dwellings
  - h. Such other uses as may be approved by the Planning Board in issuing a Special Permit consistent with the purposes of the HP Overlay District.

#### (3) Conservation and Historic Preservation Analysis Requirement

For any application for subdivision or any development that involves uses other than those allowed in the underlying district or residential density greater than allowed in the underlying district, the applicant shall prepare a conservation analysis of the land as described in §121-20A as well as an analysis of the historic and architectural character of the property and its immediate surroundings.

#### 3. Special Permit for Adaptive Reuse Plan

For any development that involves any uses other than those allowed in the underlying district, the applicant shall prepare an Adaptive Reuse Plan for the entire site. The Adaptive Reuse Plan shall require special permit approval by the Planning Board and shall be consistent with the Town of Amenia Comprehensive Plan. An Adaptive Reuse Plan shall be based upon the conservation findings and historic preservation analysis and shall include a conceptual Site Plan showing an open space system (including preserved open space), access and road layouts, locations and exterior elevations of existing and proposed buildings, including their uses, footprint, height, and total square footage, proposed recreational facilities, proposed utilities, including water supply and wastewater disposal, proposed architectural standards or covenants, and a phasing plan if the project is to be built in phases. The Planning Board shall review the Special Permit application as provided in § 121-60 through 121-63 and may attach such conditions as it finds necessary to ensure that the Adaptive Reuse Plan will preserve the historic character of the site and be in harmony with surrounding land uses and the purposes of the HP overlay district. Upon approval of the Adaptive Reuse Plan and conceptual Site Plan with attached conditions on use and dimensional standards, Site Plan approval only shall be required to implement individual components of the proposed plan.

#### 4. Minimum Open Space and Protection of Resources

A minimum of 50% of the total land area of the parcel shall be preserved by a conservation and/or historic preservation easement based upon the conservation and historic preservation analyses. Priority in open space

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protection shall be given to historic structures and landscapes, land within the SPO and SCO districts, ridgelines, unique ecosystems, prime agricultural land, and water resources. Preserved land under this subsection may include historic structures and groupings of structures, farmland and farm structures, ponds and streams, and recreational land such as golf courses, cross-country ski trails, equestrian trails, and hiking trails.

**5. Maximum Impervious Surface Coverage and Dimensional Standards**

Maximum Impervious surface coverage, as defined in §121-74, shall be 30% of the total site area, including preserved open space and historic areas. Land and buildings used exclusively to house employees of the development shall be entirely excluded from the calculation of impervious surface coverage, as an incentive to provide such housing on site. The density and dimensional standards in §121-11 and the parking and loading requirements in Section 121-38 shall not apply and are superseded by this subsection. Maximum building height shall be 35 feet except for historic structures. Other dimensional and density standards shall be as approved by the Planning Board in the Adaptive Reuse Plan, based upon the physical characteristics of the site, the character of the proposed development, and the requirements of the SEQR process.

**6. Maximum residential density**

The maximum number of dwelling units shall be 1.5 units per acre, counting the total acreage of the property without deductions for unbuildable land. Dwelling units and hotel rooms located within historic structures and workforce housing units shall not be included in this calculation. For purposes of this calculation, each hotel room located in a new structure shall be counted as one-half of a residential dwelling unit.

**7. Open Space Buffer Requirements**

An Adaptive Reuse Plan shall provide open space buffers of at least 100 feet from any existing residential uses that are not on the property. Such buffers may be wooded or open and may contain trails but may not contain any buildings or other recreational structures. This requirement shall not apply where the residential uses to be buffered lie across a state or county highway from the adaptive reuse project. The Adaptive Reuse Plan shall also screen any new development from adjoining public roads using natural topography and vegetation.

**§121-15      AQUIFER OVERLAY DISTRICT (AQO)**

**A. Legislative Findings, Intent, and Purpose**

The Aquifer Overlay AQO District has been created to protect the health and welfare of residents of the Town of Amenia by minimizing the potential for contamination and depletion of the Harlem Valley's aquifer system. The entire Town of Amenia contains an aquifer system that has been divided into four categories described in Subsection B. This aquifer system provides drinking water to public water systems and private wells and also provides groundwater and surface water that is essential to the maintenance of healthy aquatic and terrestrial ecosystems. The Town has determined that a limiting factor on the carrying capacity of the land is its capability to provide water in sufficient quality and quantity so that water use by some users does not adversely affect other users. Another limiting factor on the carrying capacity of the land is its ability to absorb wastewater without adversely affecting the quality or quantity of groundwater and surface water necessary for water supplies and other needs of the natural and human environment. The purpose of these regulations is to protect the Town's groundwater aquifer system, to provide the most protective standards to those areas of the aquifer at greatest risk of contamination, and to manage development so that groundwater supplies are not depleted or degraded.

**B. Delineation and Regulatory Effect of District**

1. The Aquifer Overlay (AQO) District encompasses the entire Town of Amenia and includes two basic types of aquifers: the Valley Bottom Aquifer, containing significant amounts of groundwater located in areas that are generally more developed, and the Upland Aquifer, containing lesser quantities of groundwater and less development (see definitions in subsection C below). The AQO district consists of three aquifer zones, two in the Valley Bottom Aquifer and one in the Upland Aquifer. These zones are designated as the Priority Valley Bottom Aquifer (PVBA), which is the aquifer area most susceptible to contamination that would affect public water supplies, the Buffered Valley Bottom Aquifer (BVBA), which is less susceptible than the PVBA because it is in an

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area serviced by public water systems, and the Upland Aquifer (UA) which consists of areas not covered by the Valley Bottom Aquifer zones. These zones are delineated on the Aquifer Overlay District Map. There is also provision in this §121-15 for an Upland Wellhead Protection Area (UWP), which has not been mapped at this time because the Upland Aquifer area does not presently contain any settlements with an intensity of development that would require additional groundwater protection. The UWP category has been established in this Chapter for possible future mapping in the event that more intensive development occurs within the UA zone, resulting in the need to protect public water supply wellheads within this area. The official Aquifer Overlay District Map can be found at the Town offices. A photo-reduction of this map is attached to this chapter for reference purposes. The Aquifer Overlay AQO District map and any amendments to it must be prepared or approved by a hydrogeologist working for the Town.

2. The official Aquifer Overlay District Map shall be used to determine the boundaries of zones within the AQO District. In case of a question or dispute as to the exact location of a boundary on a specific parcel of land, the Town may retain a qualified hydrogeologist at an applicant's expense to make such a determination in the field based upon the criteria in this § 121-15. An applicant may challenge the Town's determination by retaining a qualified hydrogeologist to make such determination independently based upon the criteria in this § 121-15. In the event of such a challenge, the Town's hydrogeologist shall review the report of the applicant's hydrogeologist at the applicant's expense and shall make the final determination as to the location of the specific boundary. Any such boundary delineation shall not, by itself, effect a change in the AQO District Map. The AQO District Map may only be changed by action of the Town Board as provided in Subsection 121-15H.

3. Within the Aquifer Overlay District, all of the underlying land use district rules shall remain in effect except as specifically modified by this § 121-15. In case of a conflict between this §121-15 and the underlying use regulations, the more restrictive shall control. Nothing in this § 121-15 shall be construed to allow uses that are not permitted by the underlying land use district.

### **C. Definitions**

For purposes of this § 121-15, the following definitions shall apply:

**Action:** A project or physical activity as defined in the SEQR Regulations of the NYS Department of Environmental Conservation, 6NYCRR Part 617, including all actions subject to SEQR that are covered by this Chapter, as well as subdivision applications and other actions requiring local government approval under SEQR.

**Aquifer:** A consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant or economically useful amount of groundwater to wells, springs or infiltration galleries.

**Aquifer Overlay AQO District Map:** The Town's overlay map showing Aquifer Overlay District zones.

**Buffered Valley Bottom Aquifer BVBA:** Areas delineated as Buffered Valley Bottom Aquifer BVBA on the Aquifer Overlay AQO District Map. As defined or approved by a hydrogeologist working for the Town, BVBA areas consist of regions within the Valley Bottom Aquifer VBA served by community water systems, where the sources of water supply for the community water system and for any other wells would not be substantially threatened by a contaminant release occurring within the BVBA. No portion of the BVBA may lie hydrogeologically upgradient of any wells, including wells used by the community water system.

**Community Water System:** A public Water System regulated by the New York State Department of Health that serves at least five service connections used by year-round residents or regularly serves at least 25 year-round residents.

**Conditionally Exempt Small Quantity Generators:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites generating or storing less than 100 kilograms per month and 1000 kilograms of listed and /or characteristic wastes, respectively, and generating and storing less than 1 kilogram per month and 1 kilogram of acutely hazardous waste, respectively.

**Consumption of Water:** The net loss of water from a watershed through evaporation and transpiration processes caused by any human activities and associated land uses, other than open space uses, including evaporative losses from

septic system leaching lines. The definition of Consumption of Water includes the use of water in diluting wastewater discharges so that groundwater quality at the property line downgradient from the discharge will be 50% or less of the New York State Department of Environmental Conservation's Title 10 Part 703 Groundwater (GA) Water Standards, i.e. the DEC's groundwater contamination standards.

**Discharge:** Any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of substances or materials into the waters of the State or onto lands from which the discharged substances or materials might flow or drain into said waters, or into waters outside the jurisdiction of the State, when damage may result to the lands, waters, or natural resources within the jurisdiction of the State.

**Generator of Hazardous Waste:** Any person or site whose act or process produces hazardous waste.

**Groundwater:** Water contained in interconnected pores and fractures in the saturated zone in an unconfined aquifer or confined aquifer.

**Hazardous Substance:** Any substance, including any petroleum by-product, which may cause harm to humans or the environment when improperly managed. A complete list of all hazardous substances except for petroleum by-products can be found in 6 NYCRR Part 597.2(b) Tables 1 and 2 and amendments thereto.

**Hazardous Waste:** See 6 NYCRR Part 371 and amendments thereto for the identification and listing of hazardous wastes.

**Herbicide:** Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, and being those substances defined as herbicides pursuant to Environmental Conservation Law § 33-0101, and amendments thereto.

**Large Quantity Generator:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites generating more than 1000 kilograms per month of listed and/or characteristic hazardous wastes, or generating or storing more than 1 kilogram per month and 1 kilogram of acutely hazardous waste, respectively.

**Major Oil Storage Facilities;** Facilities with a storage capacity of 400,000 gallons or more of petroleum.

**Natural Recharge:** The normal rate at which precipitation enters the subsurface to replenish groundwater in aquifers, without interruption or augmentation by human actions or landscape modifications.

**Non-point discharge:** Discharges of pollutants not subject to SPDES (State Pollutant Discharge Elimination System) permit requirements.

**Pesticide:** Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substances intended to for use as a plant regulator, defoliant or desiccant, and being those substances defined as pesticides pursuant to Environmental Conservation Law § 33-0101 et seq. and amendments thereto.

**Petroleum:** Oil or petroleum of any kind and in any form including but not limited to oil, petroleum fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline and kerosene, as defined in 6 NYCRR Part 597.1(7) and amendments thereto.

**Point Source Discharge:** Pollutants discharged from a point source as defined in Environmental Conservation Law § 17-0105 and amendments thereto.

**Priority Valley Bottom Aquifer PVBA:** The area delineated as the Priority Valley Bottom Aquifer PVBA on the Aquifer Overlay AQO District Map. As defined or approved by a hydrogeologist working for the Town, the PVBA consists of all areas within the Valley Bottom Aquifer VBA which are not included in Buffered Valley Bottom Aquifer BVBA areas.

**Pollutant:** Any material or byproduct determined or suspected to be hazardous to human health or the environment.

**Radioactive Material:** Any material that emits radiation.

**Small Quantity Generator:** As defined by the Resource Conservation and Recovery Act and amendments thereto, sites not meeting Conditionally Exempt Small Quantity Generator status but which generate and store less than 1000 kilograms per month and 6000 kilograms of listed and /or characteristic wastes, respectively, and generating and storing less than 1 kilograms per month and 1 kilogram of acutely hazardous waste, respectively.

**Solid Waste:** Generally refers to all putrescible and non-putrescible materials or substances, except domestic sewage, sewage treated through a publicly owned treatment works, or irrigation return flows, that is discarded or rejected as

being spent or otherwise worthless, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris and discarded automobiles, as defined in 6 NYCRR Part 360-1.2(a) and amendments thereto.

**State Pollutant Discharge Elimination System (“SPDES”):** The system established pursuant to Article 17 Title 8 of Environmental Conservation Law for issuance of permits authorizing discharges to the waters of the state of New York.

**Upland Aquifer UA:** The area delineated as Upland Aquifer UA on the Aquifer Overlay AQO District Map. As defined or approved by a hydrogeologist working for the Town, the UA consists of all areas on the Aquifer Overlay AQO District Map not included in the Valley Bottom Aquifer VBA or in Upland Wellhead Protection UWP areas.

**Upland Wellhead Protection UWP areas:** Areas delineated or to be delineated in the future as Upland Wellhead Protection UWP areas on the Aquifer Overlay AQO District Map. As defined or approved by a hydrogeologist working for the Town, UWP areas consist of wellhead protection areas for community water system wells not located within the Valley Bottom Aquifer VBA. At a minimum, wellhead protection areas enclose all lands situated within 60-days travel time (seepage velocity) from the community water system’s wells, and enclose sufficient land that average annual Natural Recharge in the UWP area matches the average water demand of the community water system.

**Valley Bottom Aquifer VBA:** The area delineated as the Valley Bottom Aquifer VBA on the Aquifer Overlay AQO District Map. As defined by a hydrogeologist working for the Town, the VBA consists of the following areas:

1. All locations where outcrops of the Stockbridge Formation, as generally defined by New York State Museum Geologic Maps, are present at grade;
2. All locations where the Stockbridge Formation is the first bedrock formation found under unconsolidated soil materials;
3. All overburden soils (sand, gravel, clay, till, etc.) overlying the Stockbridge Formation;
4. All locations which do not overlie the Stockbridge Formation but where moderately to highly permeably overburden soils ( $K > 10^{-5}$  cm/sec), including stratified silt, sand, and/or gravel are hydraulically connected to, and are substantially contiguous to, the Stockbridge Formation.

The VBA includes the Priority Valley Bottom Aquifer PVBA and Buffered Valley Bottom Aquifer BVBA areas.

**Wastewater:** Aqueous-carried solid or hazardous waste.

**Watershed:** That land area that includes the entire drainage area contributing water to the Town water supply and which includes the Aquifer Protection Overlay District.

**Water Supply:** The groundwater resources of the Town of Amenia, or the groundwater resources used for a particular well or community water system.

**Well:** Any present or future artificial excavation used as a source of public or private water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, driven wells, infiltration galleries, and trenches with perforated piping, but excluding ditches or tunnels, used to convey groundwater to the surface.

#### **D. General Provisions of the Aquifer Overlay District**

1. The manufacture, use, storage, or discharge of any products, materials or by-products subject to these regulations, such as wastewater, solid waste, hazardous substances, or any pollutant, must conform to the requirements of these regulations.
2. Usage of Water for proposed actions within the Aquifer Overlay AQO District shall be examined pursuant to SEQRA in accordance with the methodology set forth in Subsections F and G of this § 121-15.
3. In addition to the list of Statewide Type I Actions contained in § 617.4(b) of 6 NYCRR, all proposed actions resulting in discharges exceeding standards provided in 6 NYCRR Part 703.6(e) and amendments thereto (groundwater contamination standards), and all proposed actions where Water Consumption exceeds Natural Recharge, as defined in Subsections F and G herein, shall be designated as Type I Actions under the

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Implementing Regulations of the State Environmental Quality Review Act (6 NYCRR Part 617), unless the action is listed as a Type II action under such regulations.

4. Installation of any underground fuel tank or tanks, whose combined capacity is less than 1,100 gallons, is prohibited in the Aquifer Overlay AQO District.
5. This Section 121-15 shall not apply to customary agricultural practices conducted in conformity with applicable rules of the New York State Department of Environmental Conservation and the New York State Department of Agriculture and Markets which are in conformance with a whole farm management plan approved by the Dutchess County Soil and Water Conservation District.
6. This Section 121-15 shall not apply to any single-family, two-family, or multi-family residential use of land containing five or fewer dwelling units, or to any home occupation unless such residential use or home occupation includes one of the activities listed in subsection E below.

**E. Use and Permit Requirements in the Aquifer Overlay District**

In accordance with Article IX of this chapter, the Planning Board shall review and act upon Special Permit applications within the Aquifer Overlay AQO District. If the uses listed below are regulated by any state federal agency, the definitions of such uses and all applicable regulations under state and federal law shall apply.

1. Special Permits within the Priority Valley Bottom Aquifer PVBA and Upland Wellhead Protection UWP areas. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Permit within the Priority Valley Bottom Aquifer PVBA and the Upland Wellhead Protection UWP areas:
  - a. Photo labs;
  - b. Auto repair facilities and truck terminals, including engine repair and machine shops;
  - c. Furniture stripper/painter, metal works, wood preservers;
  - d. Printers and the use of printing presses;
  - e. Conditionally Exempt or Small Quantity Generators of Hazardous Waste.
  - f. Solid waste management facilities not involving burial, including incinerators, composting facilities, liquid storage, regulated medical waste, transfer stations, recyclables handling & recovery facilities, waste tire storage facilities, used oil, C&D processing facilities, each as defined in 6 NYCRR Part 360, and junk or salvage yards in general.
  - g. Salt storage facilities.
  - h. Uses where Water Consumption exceeds Natural Recharge.
  - i. Cemeteries, including pet cemeteries
  - j. Veterinary hospitals and offices
  - k. Funeral parlors.
  - l. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation that is covered by the exemptions in Section 121-37E.
2. Special Permits within the Buffered Valley Bottom Aquifer BVBA areas and the Upland Aquifer UA. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Permit within the Buffered Valley Bottom Aquifer BVBA and Upland Aquifer UA:
  - a. Gasoline service stations;
  - b. Major Oil Storage Facilities;
  - c. Junkyards and automobile cemeteries.
  - d. Salt storage facilities.
  - e. Conditionally Exempt, Small Quantity, or Large Quantity Generators of Hazardous Waste.
  - f. Disposal of any hazardous waste, as defined in 6 NYCRR Part 371, by burial.
  - g. Land application of septage, sludge, or human excreta, including land application facilities defined in 6 NYCRR Part 360-4.
  - h. Cemeteries, including pet cemeteries

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- i. Veterinary hospitals and offices
- j. Funeral parlors.
- k. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation that is covered by the exemptions in Section 121-37E.
3. Application Requirements: In addition to the Special Permit application requirements set forth in Article IX, applicants proposing actions listed in subsections (1) and (2) above that are located within the Aquifer Overlay AQO District shall identify the following as part of their applications:
  - a. The source of water to be used;
  - b. The quantity of water required;
  - c. Water use minimization measures to be implemented;
  - d. Water recycling measures to be implemented;
  - e. Wastewater discharge measures;
  - f. Grading and/or storm water control measures to enhance on-site recharge of surface water;
  - g. Point Source or Non-Point Discharges;
  - h. A complete list of any Hazardous Substances to be used on site along with quantity to be used and stored on site; and
  - i. A description of Hazardous Substance storage or handling facilities and procedures.
4. Special Conditions for proposed uses within the Priority Valley Bottom Aquifer PVBA and Upland Wellhead Protection UWP areas requiring a Special Permit:
  - a. Storage of chloride salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
  - b. Generators of Hazardous Waste shall provide the Town with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
  - c. Any projects where Water Consumption exceeds the Natural Recharge, as defined in Subsections F and G herein, shall demonstrate through SEQRA how such impact will be mitigated through, for example, compensatory recharge equal to the identified recharge deficit through a combination of artificial on-site or off-site recharge, or provision of compensatory natural recharge areas elsewhere in the Town.
5. Special Conditions for proposed uses within the Buffered Valley Bottom Aquifer BVBA areas and the Upland Aquifer UA areas requiring a Special Permit:
  - a. Gasoline service station operators shall provide the Town with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
  - b. Junkyard operators shall drain fuels, lubricants, and coolants from all cars stored on site to properly permitted above-ground holding tanks, provide to the Town copies of all applicable permits provided by State and/or Federal regulators and copies of all annual and incident reports, provide the Town with an annual summary of numbers of vehicles on site and total gallons of various classes of fluids drained from vehicles and disposal manifests or other documentation of disposition of such fluids.
  - c. Storage of chloride salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
  - d. Storage of coal and/or cinders is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
  - e. Generators of Hazardous Waste shall provide the Town with copies of all applicable permits provided by State and Federal regulators and copies of all annual, incident, and remediation-related reports.
  - f. Any projects where Water Consumption exceeds the Natural Recharge, as defined in subsections F and G herein, shall demonstrate through SEQRA how such impact will be mitigated through, for example, compensatory recharge equal to the identified recharge deficit through a combination of artificial on-site or off-site recharge, or provision of compensatory natural recharge areas elsewhere in the Town .
6. Prohibited uses within the Priority Valley Bottom Aquifer District PVBA and Upland Wellhead Protection UWP areas:

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- a. Municipal, private and C&D landfills as defined in 6 NYCRR Part 360-2 and 6 NYCRR Part 360-7.
  - b. Land application of septage, sludge, or human excreta, including land application facilities as defined in 6 NYCRR Part 360-4.
  - c. Disposal, by burial, of any hazardous waste, as defined in 6 NYCRR Part 371
  - d. Large Quantity Generators of Hazardous Waste.
  - e. Gas stations and Major Oil Storage Facilities.
  - f. On-site dry cleaning.
  - g. Junkyards and Junked car lots.
7. Prohibited uses within the Buffered Valley Bottom Aquifer BVBA and Upland Aquifer UA: Land application of septage, sludge, or human excreta, including land application facilities defined in 6 NYCRR Part 360-4.3.
8. General Non-Degradation Standard: No special permit shall be granted unless the applicant can show that the proposed action will not degrade the quality of the groundwater in a manner that poses a potential danger to public health or safety. Compliance with applicable standards, requirements, and permit conditions imposed by federal, state, or county agencies shall be deemed to constitute compliance with this standard.

**F. Determination of a Parcel’s Natural Recharge**

The natural recharge rate for a parcel shall be determined by identifying the soil types on the property, classifying them by hydrologic soil groups (A through D, A/D and C/D), and applying a recharge rate of 20.2 inches/year for A and A/D soils, 14.7 inches/year for B soils, 7.6 inches/year for C and C/D soils, and 4.2 inches/year for D soils, and multiplying the recharge rate(s) by the number of acres in the parcel for each soil group.

**G. Consumption of Water**

Water consumption is the net loss of liquid phase water through site activities, plus the water needed to dilute wastewater and other discharges to a concentration equal to 50% of the NYS Title 6 Part 703 Groundwater Standard.

The following table establishes the method to calculate water consumption:

<u>Use</u>	<u>Gallons per day</u>	<u>Multiplied by</u> <u>Dilution factor</u>	<u>Consumption/day</u>
Irrigated Lands (non-agricultural)	Irrigated Acres x 4,000 <sup>(1)</sup>	x 1	= _____
Uses with Surface Water Discharge	Site activity use x 0.2	x 1	= _____
Residential Uses with Subsurface Water Discharge <sup>(2)</sup>	70 gpd/capita	x 6	= _____
Nonresidential Uses with Subsurface Water Discharge <sup>(2)</sup>	Daily Use	x 6	= _____

(1) Applicable for vegetation requiring 1 inch/week irrigation. May be adjusted for vegetation with other water requirements.

(2) Calculate use per NYSDEC intermediate wastewater disposal guide. Discharge must not exceed NYSDEC Title 10, Part 703 effluent limits.

**H. Map Changes**

1. New Buffered Valley Bottom Aquifer BVBA and expanded Buffered Valley Bottom Aquifer BVBA areas may be established by the Town’s Hydrogeologist at the request of the Town, or proposed to the Town by groups of site owners where a new Community Water System source regulated by the NYS Department of Health is proposed, and where the Town’s Hydrogeologist concludes or agrees that the water source for the Community Water System and any private wells within or hydraulically downgradient from the new or expanded Buffered Valley Bottom Aquifer BVBA would not be threatened by a Pollutant Discharge originating anywhere within the Buffered Valley Bottom Aquifer BVBA.

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2. New Buffered Valley Bottom Aquifer BVBA shall be regional in nature and no single project, or single parcel Buffered Valley Bottom Aquifer BVBA may be proposed.
3. New Upland Wellhead Protection UWP areas, or expanded Upland Wellhead Protection UWP areas, must be defined for the water sources for any existing and future proposed Community Water Systems within the Upland Aquifer UA by their owners, and must be reviewed and approved by the Town's hydrogeologist.
4. The Aquifer Overlay District Map may be modified to reflect new or more accurate geological or hydrological information, provided that the Town's hydrogeologist reviews and approves any such modification.
5. Any new areas or revisions of boundaries made pursuant to this Subsection H shall be placed on the Aquifer Overlay District Map pursuant to the zoning map amendment process in Article X.

**I. Reporting of Discharges**

Any person or organization responsible for any discharge of a Hazardous Substance, Solid Waste, Hazardous Waste, petroleum product, or radioactive material shall notify the Town Clerk of such discharge within 24 hours of the time of discovery of the discharge. This notification does not alter other applicable reporting requirements under existing law and applies to all uses, whether conforming or non-conforming in any respect.

**J. Non-conforming Uses, Structures, and Lots**

See Article VI of this Chapter. For any non-conformity which requires a special permit to expand or change, all requirements of this § 121-15 shall apply to such expansion or change.

**§121-16 MIXED USE INSTITUTIONAL CONVERSION OVERLAY DISTRICT (MCO)**

**A. Purpose**

The purpose of this Overlay District is to facilitate the redevelopment of privately owned portions of land that were formerly part of the Taconic Developmental Disabilities Services Office (TDDSO) as a mixed-use transit-oriented community that fulfills the goals of the Town of Amenia Comprehensive Plan by providing needed jobs, public facilities, open space, housing, commercial, and other non-residential uses. The Town wishes to attract development to this site because it contains serviceable buildings and water and sewer infrastructure, as well as good highway and commuter rail access. The provisions of this Overlay District are intended to implement the specific goals of the Comprehensive Plan for this site by streamlining permitting and allowing use flexibility. The Town recognizes that, as of the date of enactment of this Section, about half of the land in the MCO district is owned by the State of New York for the care of developmentally disabled persons. The intent of this Section is to support the continuation of the TDDSO as the Town's major employer and to encourage a public-private partnership that enables development to occur in the immediate future for the portion of the site in private ownership. Such development should meet the needs of both the Town and the employees, customers, and other users of the TDDSO, while encouraging an integrated site design for the entire MCO district.

**B. Boundaries**

The boundaries of the MCO District are shown on the Land Use and Development Overlay Districts Zoning Map.

**C. Regulatory Effect of District on Land Uses**

1. Within the MCO District, all uses listed on the Use Table for the underlying district as requiring a special permit shall be permitted by right subject to Site Plan approval only. In addition, the uses listed in §121-16H shall be allowed by right subject to Site Plan approval only. Any use not listed on the Use Table and not prohibited by §121-10C may be allowed by Special Permit. Dimensional and density regulations and requirements for buffers between uses in §121-10H may be modified by the Planning Board in the course of Site Plan approval to fit the unique characteristics of the District. Buffer requirements intended to protect residential uses adjoining the MCO District shall not be modified.
2. Because the Town would prefer to have the MCO district developed as a coherent whole, rather than in smaller

parcels, this subsection C(2) provides a preferred development approval process based upon a site-specific rezoning that adopts a binding Master Development Plan for the parcel. This Master Development Plan, upon adoption by the Town Board, then becomes the zoning for the land rezoned. The Town Board may, by zoning amendment in its sole discretion, rezone all or a portion of the MCO District pursuant to a Master Development Plan for a portion of the property that includes at least 150 acres. Such rezoning shall be in the form of a Planned Development District and shall be consistent with the Town of Amenia Comprehensive Plan and any other master plan for the site adopted by the Town Board or Planning Board. A conceptual Site Plan shall be approved by the Town Board as part of the Master Development Plan rezoning application approved pursuant to Article X. If a conceptual site plan for this area has been incorporated into the Town of Amenia Comprehensive Plan, the Master Development Plan shall be generally consistent with such plan. The conceptual Site Plan shall show street layouts, an open space system, a phasing plan, and density and general use classifications within the Planned Development District, and shall indicate proposed architectural and site design standards that will apply within the district. A minimum of 50% of the land in the Master Development Plan shall be preserved as open space by a conservation easement pursuant to §121-20K. The Master Development Plan application shall also provide a fiscal impact analysis showing the impact of the development on town and school district taxes. The Town Board may attach such conditions as it finds necessary to ensure that the Master Development Plan for the Planned Development District will be in harmony with surrounding land uses and the purposes of the overlay district. Upon approval of the Master Development Plan and conceptual Site Plan with attached conditions on use, architecture, and site design, only Site Plan approval shall be required to implement individual components of the proposed plan.

#### **D. Applicability of Design Guidelines**

In reviewing any Site Plan application in the MCO District, the Planning Board shall consider the Dutchess County *Hamlet Design Guidelines*, *Rural Development Guidelines*, and *Building Form Guidelines* as appropriate to ensure that development is compatible with the character of the Town. If the Town Board has approved specific design or architectural standards as part of a Master Development Plan, such standards shall supersede the guidelines referred to above.

#### **E. Limitation on Residential Development**

No more than 30% of the gross floor area of all development in the MCO District may consist of residential dwelling units containing four or more bedrooms. No more than 70% of the gross floor area of all development in the MCO District may consist of residential development. No more than 80% of the gross floor area in any phase of a development may consist of residential development.

#### **F. Protection of Open Space Resources**

All development in the MCO District shall protect open space of conservation value by clustering development to the maximum extent practical. Prior to submitting any plan for development of a parcel in the MCO district, the applicant shall prepare a conservation analysis pursuant to §121-20A. Particular open space resources designated for protection may be as shown on a map included in the Town of Amenia Comprehensive Plan if such a map is prepared. These areas shall be protected by a conservation easement pursuant to §121-20K as a condition of development approval of adjoining land. The acreage of these areas may be counted for the purposes of determining allowable density for other portions of the MCO district.

#### **G. Requirement of Transit-Oriented Development**

Land lying within one-half mile of the Ten-Mile River commuter rail station shall be developed in the configuration of a “transit-oriented development” as described in more detail in the Comprehensive Plan, and shall be generally consistent with any illustrative site plan that may be incorporated into the Comprehensive Plan. Residential and retail development permitted on the property shall be clustered to the maximum extent practical within the area designated for transit-oriented development. No more than 25% of the residential development units shall be located more than one-half mile from the commuter rail station.

#### **H. List of Additional Uses Allowed by Right Subject to Site Plan Review**

In addition to the uses allowed pursuant to subsection C above, the following uses shall be permitted by right subject to site plan review anywhere within the MCO District, provided that they are not located in any area required to be protected as open space and do not interfere with the creation of an economically viable transit-oriented development within one-half mile of the commuter rail station.

1. Housing for senior citizens, including assisted living facilities and other housing facilities the provide services to residents.
2. Nursing home
3. Health care center
4. Office
5. Lodging Facility
6. Bed and Breakfast
7. Educational, charitable, and religious uses

#### **I. Development Parameters for Master Development Plans**

A Master Development Plan approved pursuant to §121-16C(2) above shall comply with the following requirements:

1. Maximum Impervious Surface Coverage and Floor Area. Maximum permissible impervious surface coverage of the entire MCO district site shall be 25%, counting as land area all areas protected as open space as required by subsection F above, as well as any other areas voluntarily protected by an applicant. Individual portions of the site may have a higher coverage, provided that the total coverage of the entire area of the MCO district does not exceed 25%. In order to achieve the 25% aggregate coverage, an applicant may remove existing buildings and pavement on the property. No retail establishment shall have a floor area exceeding 40,000 square feet.

2. Residential Density. The base residential density shall be 2 dwelling units per acre, including the entire area of the district. This density may be increased using density bonuses and transfer of development rights as provided in §121-20C. For purposes of density calculation, one-bedroom and studio apartments shall be counted as .4 dwelling unit and two-bedroom apartments shall be counted as .75 unit. No units may be built within the portions designated for open space protection, but the acreage of these portions may be used to compute the total density allowable on the site. Within the area designated for transit-oriented development, there shall be a minimum density of 6 units per acre and no maximum density.

3. Pedestrian amenities. As provided in the Comprehensive Plan, the entire site shall be designed in a manner that facilitates pedestrian and bicycle circulation through the provision of sidewalks, bikepaths, walking trails, pedestrian stairways, and other pedestrian amenities appropriate to each portion of the site.

4. Workforce Housing. At least 10% of all units approved in a Master Development Plan shall conform with the requirements for workforce housing contained in §121-42. The obligation to provide workforce housing may be satisfied by paying a fee in lieu of providing the housing on-site pursuant to Section 121- 42N.

#### **§121-17 SOIL MINING OVERLAY DISTRICT (SMO)**

##### **A. Findings and Purpose**

The purpose of this Overlay District is to provide appropriate locations for soil mining conducted as a commercial enterprise unrelated to a construction project or a farm operation. As expressed in the Comprehensive Plan, the Town wishes to allow soil mining to provide jobs, produce needed building materials, and support agricultural operations, while protecting the rural peace and quiet enjoyed by Town residents. The Town of Amenia will therefore allow commercial mining only in those locations where it will help promote the Town's goals of maintaining rural character with minimum disturbance to residential neighbors. The SMO District shall be mapped only where there are sand and gravel resources that have adequate highway access, sufficient buffering from nearby residences to avoid disturbance to residential neighbors, and minimal visual impact on publicly accessible places.

**B. Boundaries**

The boundaries of the SMO District are shown on the Land Use and Development Overlay Districts Zoning Map and may be modified by zoning amendment consistent with the purposes in Subsection A above.

**C. Regulatory Effect on Land Uses**

1. The land within the SMO District is the only land in the Town of Amenia where new soil mines may be permitted and where existing soil mines will be allowed to renew their permits from the New York State Department of Environmental Conservation. This shall not prevent farm operations from conducting soil mining that does not require a DEC permit as provided in §121-34I, if such soil mining is conducted for agricultural purposes and not for purposes of selling material on the commercial market.
2. All new soil mining operations or expansions of existing soil mining operations require a special permit from the Town Board, subject to all applicable special permit requirements in §§ 121-60 through 121-64 and the regulations in this section.
3. Because the right to mine is a property right that adds considerable value to the land, the Town deems the financial return from allowing mining of land to be sufficient to justify restricting future use of the land. When the Town Board rezones a parcel of land to include it within the SMO District, the Board may require the applicant to grant a conservation easement pursuant to §121-20K, perpetually restricting future use of the rezoned land to mining, agriculture, forestry, and recreation, upon receipt of all necessary permits to begin the mining operation. Such conservation easement shall be granted as a condition of the rezoning and shall be held in escrow by the Town Attorney and recorded in the Dutchess County Clerk's office upon final approval of the Soil Mining special permit and all applicable DEC permits.
4. Within the SMO district, the only uses permitted by right after a mining operation is undertaken and completed shall be agriculture, forestry, and recreation. The Town Board may, by special permit, allow another use of land that has been mined, provided that the applicant has submitted a complete conservation analysis of the land pursuant to §121-20A, that the new use is consistent with the Town of Amenia Comprehensive Plan, and that the special permit is conditional upon full reclamation of the land according to applicable requirements of the NYS Department of Environmental Conservation (DEC).

**D. Soil Mining Regulations**

1. Soil mining shall be allowed within the SMO Overlay District, subject to a Special Permit by the Town Board, provided that the operator complies with all applicable requirements of the New York State Department of Environmental Conservation.
2. Any application for a Soil Mining Special Permit shall be deemed a Major Project if it also requires approval of a mining permit from the New York State Department of Environmental Conservation (DEC). Proposed soil mining that does not require a DEC permit shall be deemed a Minor Project.
3. An applicant for a Major Project Special Permit for Soil Mining shall submit copies of all applications and other materials submitted to the DEC in connection with its Soil Mining application.
4. In determining whether to grant or deny a Special Permit application for Soil Mining, the Town Board shall consider all applicable Special Permit criteria, including but not limited to the Environmental Performance Standards in §121-40. If the Town Board grants a Major Project Special Permit subject to conditions, such conditions shall be limited to the following, unless the laws of New York State allow the imposition of additional conditions:
  - a. Ingress from and egress to public thoroughfares controlled by the Town;
  - b. Routing of mineral transport vehicles on roads controlled by the Town;
  - c. Requirements and conditions specified in the permit issued by the DEC concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control, and hours of operation;
  - d. Enforcement of reclamation requirements contained in any DEC permit.

5. If the Town Board finds that the imposition of the above conditions a through d will not be sufficient to enable the proposed soil mining operation to comply with applicable Special Permit criteria, it shall deny the Special Permit application.
6. The Town Board may require, as a condition of its approval, that the applicant cover the costs of inspection and monitoring of compliance with the requirements in subsection D(4) above for the life of the mine.
7. In issuing a Minor Project Special Permit for Soil Mining, the Town Board may impose any conditions it deems necessary, including but not limited to those in Subsections (4)(a) and (b) above.
8. For pre-existing non-conforming soil mining operations, see §121-27(D)(3).

**§121-18 RESORT DEVELOPMENT OVERLAY DISTRICT (RDO)**

**A. Purpose**

The purpose of the RDO District is to provide use and design flexibility to encourage resort development on appropriate large properties, where such development fits into the rural character of the Town and protects its scenic, historic, and environmental resources. This district provides a procedure for master planned development of properties of over 200 acres, following rezoning by the Town Board, to promote tourism, recreation, and open space protection. In exchange for granting permission for use flexibility and more intensive development than is allowed by the underlying zoning, the Town seeks to achieve significant protection of open space resources, especially scenic viewsheds, ridgelines, water resources, and ecosystems.

**B. Boundaries**

The boundaries of the RDO District are as shown on the Land Use and Development Overlay Districts Zoning Map. Landowners who wish to develop according to this § 121-18 may apply to the Town Board for a zoning map amendment pursuant to §121-69 if their land is not zoned RDO. In order to be mapped as an RDO district, the property must consist of at least 200 acres of land with road access no more than one-half mile from a State or County highway. The Town Board has the sole discretion whether or not to entertain such an amendment, which must be consistent with the Comprehensive Plan.

**C. Regulatory Effect of District on Land Uses**

Within the RDO District, the following regulations apply, superseding the use regulations of the underlying district.

1. Allowable Uses

Within the RDO district, the following uses are allowed:

- a. All uses allowed in the RA district, as shown on the Use Table in § 121-10B
- b. Lodging facilities, hotel-condominiums, meeting rooms, and conference facilities
- c. Restaurants
- d. Retail, recreational, and service businesses associated with the resort use
- e. Riding academy and other equestrian uses
- f. Such other uses as may be approved by the Planning Board in issuing a Special Permit for a development plan consistent with the purposes of the Overlay District.

2. Conservation Analysis Requirement

For any application for subdivision or any development that involves uses other than those allowed in the RA district, the applicant shall prepare a conservation analysis of the land as described in §121-20A. This shall be submitted to the Planning Board, which shall make conservation findings prior to the preparation of any master development plan for the site pursuant to Subsection (3) below. For projects for which a Draft Environmental Impact Statement has been submitted prior to the adoption of this Section, the environmental analysis included in the environmental impact statement may substitute for the conservation analysis.

3. Special Permit for Master Development Plan

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- a. For any development that involves any uses other than those allowed in the RA district, the applicant shall prepare a master development plan for the entire site. This master development plan may also include uses allowed in the RA district.
- b. The Master Development Plan shall require special permit approval by the Planning Board and shall be consistent with the Town of Amenia Comprehensive Plan. A Master Development Plan shall be based upon the conservation analysis and shall include a conceptual Site Plan showing, at a minimum, an open space system (including preserved open space), access and road layouts, proposed buildings, including their uses, footprint, height, and total square footage, proposed recreational facilities, proposed utilities, including water supply and wastewater disposal, and a phasing plan if the project is to be built in phases. The Master Development Plan shall also contain such other information as the Planning Board deems necessary to determine whether or not the Plan complies with the requirements of this Section 121-18 and other sections of this Chapter. The Master Development Plan shall contain a management plan for the future management of the proposed development as a unified entity.
- c. Where buildings will be visible from public roads, bicycle trails, or other publicly accessible areas, the Planning Board shall require the submission of proposed elevations of buildings and proposed architectural standards and covenants. These architectural standards and covenants may substitute for any of the design standards which would otherwise be required by §14.1H or any other section of this Chapter. Proposed signs and sign standards may substitute for the signage requirements in Section 121-39.
- d. The Planning Board shall review the Special Permit application as provided in § 121-60 through 121-63 and may attach such conditions as it finds necessary to ensure that the Master Development Plan will be in harmony with surrounding land uses and the purposes of the overlay district. All required subdivision, site plan, and special permit reviews shall be consolidated in one master development approval and no separate approval proceedings shall be required. If proposed single-family dwellings exceeding 5,000 square feet in floor space are included in any approved Master Development Plan, such single-family dwellings shall not be subject to minor project site plan review required in §121-10B, provided that such dwellings have been subject to the equivalent of a minor project site plan review as part of the review of the Master Development Plan.
- e. Any revision of the Master Development Plan shall require a Site Plan amendment. Any change of use within a Master Development Plan shall require a Special Permit amendment.
- f. Upon approval of the Master Development Plan and conceptual Site Plan with attached conditions on use and dimensional standards, Site Plan approval only shall be required to implement individual components of the proposed plan. To the extent that design details necessary for site plan approval have not been provided in the Master Development Plan, they shall be provided at the site plan approval stage.

**4. Minimum Open Space and Protection of Viewsheds and Other Resources**

A minimum of 80% of the total land area of the parcel shall be preserved by a conservation easement as open space, as provided in §121-20K, based upon the conservation analysis. Priority in open space protection shall be given to land within the SPO and SCO districts, especially the view to and from Delavergne Hill, ridgelines, historic resources, unique ecosystems, prime agricultural land, and water resources. Open space land preserved under this subsection may include farmland and farm structures, ponds and streams, and recreational land such as golf courses, cross-country ski trails, equestrian trails, and hiking trails. It shall not include land lying under non-agricultural structures taller than 20 feet, non-agricultural buildings larger than 200 square feet in footprint area, or land that is covered by impervious surfaces other than trails or golf cart paths.

**5. Maximum Impervious Surface Coverage and Dimensional Standards**

Maximum Impervious surface coverage, as defined in §121-74, shall be 15% of the total site area, including preserved open space areas. Land and buildings used exclusively to house employees of the resort development shall be excluded from the calculation of impervious surface coverage, as an incentive to provide such housing on site. The density and dimensional standards in §121-11, all other density and dimensional regulations in this Chapter other than those contained in this Section 121-18, and the parking and loading requirements in Section 121-38 shall not apply and are superseded by this subsection. No more than 5% of the total footprint area may be

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used for retail establishments that sell goods and supplies. Maximum building height shall be 35 feet except as provided in Subsection 9 below. Dimensional and density standards shall be as approved by the Planning Board in the Master Development Plan, based upon the physical characteristics of the site, the character of the proposed development, relevant performance standards in this Chapter, and the requirements of the SEQR process.

6. Open Space Buffer Requirements

A Master Development Plan in the RDO district shall provide open space buffers of at least 100 feet from any existing residential uses that are not within the RDO district. Such buffers may be wooded or open and may contain trails but may not contain any buildings or other recreational structures. This requirement shall not apply where the residential uses to be buffered lie across a state or county highway from the RDO district.

7. Traditional Neighborhood Layout

The layout of streets, blocks, public spaces, and buildings in the RDO district shall follow the principles of Traditional Neighborhood Development described in § 21-12.1 to the extent practical, unless the Planning Board determines that this requirement does not apply as provided in §121-12.1(H)(2).

8. Workforce Housing. See §121-42P.

9. Development Area Treated as a Unit

Regardless of the form of ownership of the property or of its division into separate parcels, the open space, buffer, and other dimensional requirements in this Section shall apply to the entire area covered by a Master Plan of Development and not to any individual parcels or lots which are portions thereof.

10. Modification and Waiver of Certain Requirements

- a. The Planning Board may waive specific requirements of the Stream Corridor Overlay District, where streams and water features are integrated into the Master Development Plan, provided that the Plan provides for water quality protection and mitigation of water quality impacts consistent with the purposes of the Stream Corridor Overlay District.
- b. The Planning Board may waive the 35-foot height limit, provided that a visual impact analysis is performed in the course of SEQRA review, to ensure that no significant views are adversely impacted, that any impacts on views are mitigated to the maximum extent practical, and that the building is sited to minimize visual impacts by taking advantage of natural topography. No building shall be more than five stories in height, counting the stories from average grade at the front of the building, and excluding any story contained within a roof. No waiver shall be granted without consultation with fire officials, who shall, if appropriate, make a recommendation to the Planning Board that the applicant provide equipment necessary to ensure adequate fire protection.
- c. Where porous pavement or other partially permeable surfaces are used, the Planning Board may adjust impervious surface coverage requirements upward if it determines, based upon the recommendation of the Town's Engineer, that such increases are appropriate, provided that a note is placed on any approved site plan or plat indicating requirements for maintaining the permeability of such surfaces.
- d. The open space buffer requirements may be reduced in situations where the siting of access roads, streets, or utilities within the buffer area can be accomplished without impact on adjacent residential uses.
- e. Requirements of the SPO district may be modified, consistent with the overall purposes of the SPO district, where the Planning Board finds based upon a viewshed analysis, that there will be no significant adverse impacts on the scenic character of the Town.

**§121-18.1 MOBILE HOME OVERLAY DISTRICT (MHO)**

See §121-44 for regulations that apply to the MHO District.

## **ARTICLE V            OPEN SPACE DEVELOPMENT**

### **§121-19            OPEN SPACE DEVELOPMENT OPTIONS**

#### **A. Purpose and Applicability; Requirement of Conservation Analysis**

1. The purpose of open space development is to preserve large tracts of open space land in order to maintain the rural appearance and environmental resources of the Town of Amenia. Open space development is intended to offer development alternatives to landowners that avoid the uniform pattern of conventional subdivision (see definition in §121-74), sometimes referred to as “suburban sprawl.” To avoid this pattern, which conflicts with the goals of the Amenia Comprehensive Plan, the Town of Amenia encourages four open space development options: conservation subdivision, transfer of development rights, limited development subdivision, and flag lots. The Town wishes to discourage conventional subdivisions where they would detract from the Town's rural landscape and natural resources. To mitigate any hardship that these options may impose on landowners wishing to create no more than three new lots, the Town has provided for a streamlined “small-scale development” option as well.

2. Any applicant for a conventional major subdivision (as defined in the Subdivision Law) in the RA, RR, or SR districts shall submit to the Planning Board a conservation analysis as described in § 121-20A below. If the Planning Board determines, based upon the conservation analysis, that a proposed conventional subdivision may adversely affect the town's rural landscape or natural resources, the Planning Board may require the applicant to submit a plan for a conservation subdivision (see Subsection B below) and may require that such a plan be approved as an alternative to a conventional subdivision. The Planning Board may also, in its discretion, require a conservation analysis for a minor subdivision.

#### **B. Conservation Subdivision**

The Town encourages Conservation Subdivisions as an alternative to conventional subdivisions. In Conservation Subdivisions, units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Conservation Subdivisions may include a variety of lot sizes, ranging from large farm or estate lots to small hamlet-size lots. Conservation Subdivision results in the preservation of significant blocks of open space, interconnected wildlife habitats and corridors, and other important environmental resources, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions. Conservation Subdivisions must satisfy the standards in §121-20.

#### **C. Transfer of Development Rights**

Transfer of development rights is similar to Conservation Subdivision in preserving contiguous open space and allowing clustering of units on land most suitable for development. It differs from Conservation Subdivision in allowing the open space land and the developed land to be on different parcels, a “sending parcel” and a “receiving parcel.” See § 121-21.

#### **D. Limited development subdivision**

A Limited development subdivision is a very low-density subdivision in which the average lot size is at least four times the minimum lot size for a conventional subdivision in the zoning district or 20 acres, whichever is greater. This option helps to preserve open space by keeping large amounts of land undeveloped. As an incentive to creating such subdivisions, town road construction requirements and frontage requirements may be waived, as provided in §121-22.

#### **E. Flag (Rear) Lots**

Flag lots are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, flag lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new town roads. For regulations on

flag lots, see the Subdivision Law, § 105-21F.

#### **F. Small-Scale Development**

Small-scale development is any development of land in the RA or RR Districts that results in the creation of no more than three new residential lots (excluding the parent parcel from which they are subdivided, which constitutes a fourth lot), subject to the requirements in Section 121-23. Small-scale development also includes the development of residential lots that existed prior to the enactment of this Chapter and do not meet the dimensional standards for a conventional subdivision in this Chapter. This option is designed to minimize the burden and cost of development for landowners building on existing lots or creating only a small number of new lots. Small amounts of such development on a portion of a larger parcel, when combined with a Town program to preserve open space, enable the Town to preserve its rural character and natural environment while allowing some small lot development. See Section 121-23.

#### **§121-20 STANDARDS FOR CONSERVATION SUBDIVISIONS**

In order to approve a conservation subdivision, the Planning Board must find that the proposed subdivision meets the standards in this section. Conservation Subdivisions are permitted in the RA, RR, and SR Districts and are intended to allow design flexibility while preserving important natural attributes of the land.

##### **A. Conservation Analysis.**

1. As part of any Sketch Plan submission for a conservation subdivision (or as required for a conventional subdivision in § 121-19A above), an applicant shall submit a conservation analysis, consisting of inventory maps, description of the land, and an analysis of the conservation value of various site features. Applicants shall consult the report “Significant Habitats in the Town of Amenia, Dutchess County, New York” by Hudsonia Ltd (2006) (hereinafter cited as the “Hudsonia Report”) in preparing the conservation analysis. Applicants are encouraged to consult with the Dutchess Land Conservancy and Dutchess County Soil and Water Conservation District when preparing a conservation analysis. The Planning Board may waive some of the requirements below for portions of a property where the applicant makes a binding representation that no development will occur and which have been identified as priority conservation areas by the Hudsonia Report or where the collection of field information listed below would be an unreasonable burden to the property owner. The Board may also waive any requirements that, in its sole discretion, it deems unnecessary for a complete conservation analysis. The conservation analysis shall show lands with conservation value on the parcel and within 200 feet of the boundaries of the parcel, including but not limited to the following:

- a. Wetlands, watercourses, slopes 15% to 30% and slopes over 30%.
- b. Prime and statewide important farmland soils, land in active agricultural use, trail corridors, scenic viewsheds, public water supply wellheads, park and recreation land, unfragmented forestland, wildlife corridors and habitats, vernal pools, and historic and archaeological sites, if such areas are specifically identified in the Comprehensive Plan, in the Hudsonia Report, in the New York Natural Heritage Program, in biodiversity maps prepared for the Town by an environmental consulting organization, or in any adopted open space or farmland protection plan.
- c. Designated overlay zones for stream corridors, aquifers, scenic protection, and floodplains.
- d. Buffer areas necessary for screening new development from adjoining parcels
- e. Stone walls and individual trees or forested areas containing trees that are 18” diameter at breast height (dbh) or larger.
- f. Land that has been disturbed or altered in the past and therefore may be more suitable for development. (This does not include land disturbed by an applicant prior to applying for a development approval.)
- g. If identified by the Planning Board or the Town’s planning consultant in the course of pre-application discussions, other land exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value

2. The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site identified in (1) above as well as potential ecological connections to adjacent parcels. In the course

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of pre-application conferences and initial Sketch Plan review, the Planning Board shall indicate to the applicant which of the lands identified as being of conservation value are most important to preserve. In making this determination, the Planning Board shall take into account the purposes of this Chapter and of the various overlay districts, the recommendations in the Amenia Comprehensive Plan, and the Town's goal of protecting biodiversity. The Planning Board may, at the applicant's expense, seek the guidance of a conservation organization or retain a consultant to assist in making this determination. Such expenses shall be paid from deposits made into an escrow account pursuant to §121-58.

3. The outcome of the conservation analysis and the Planning Board's determination shall be incorporated into the Sketch Plan showing land recommended to be permanently preserved by a conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land. The Sketch Plan shall also show preferred locations for intensive development as well as acceptable locations for less dense development.

4. The determination as to which land has the most conservation value and should be protected from development by conservation easement shall be made by the Planning Board, which shall make written findings supporting its decision (the "conservation findings"). The Planning Board shall not endorse any application that does not include a complete conservation analysis sufficient for the Board to make its conservation findings. The Planning Board's conservation findings shall be subject to revision based upon field analysis of the site and information developed in the course of the SEQRA process.

### **B. Density calculation**

Conservation subdivisions are intended to allow flexibility while preserving important natural attributes of the land. Density is calculated following a formula based upon the net acreage of the property. In order to determine the net acreage of a given area of land, it is necessary to subtract land that is unbuildable or that presents other development constraints.

1. To determine net acreage, subtract from the total (gross) acreage of the site the total acreage of all wetlands, watercourses, floodplains, and slopes over 30%, as well as 50% of the acreage of fifteen-to-thirty percent slopes (slopes measured as 5,000 square feet or more of contiguous sloped area at least ten feet in width). Fractional units of .5 or less shall be rounded down and fractional units greater than .5 shall be rounded up.
2. To determine the base number of allowable residential units on the site, multiply this net acreage by .85 (to account for roads and lot shape irregularities) and divide by the maximum density in the district for a conservation subdivision (see Dimensional Table in §121-11B).

### **C. Density Bonuses**

The maximum density permitted in (B)(2) above may be increased through density bonuses designed to advance important goals of the Comprehensive Plan. These density bonuses may be combined to result in a total density bonus not exceeding 100%, except that the use of a density transfer may increase this percentage up to 150%. The density permitted by this section shall not be reduced as a result of the conservation analysis required in Subsection A above or as a result of the reservation of parkland during the subdivision process. Density bonuses are given at the discretion of the Planning Board based upon written findings by the Planning Board documenting the expected public benefit. Density bonuses shall not be granted without written findings that the proposed density bonus will not adversely affect the environment or the availability of affordable housing in the Town of Amenia. Density bonuses are calculated by first determining the allowable base density under (B)(2) and then multiplying that number by 100% plus the percentages that follow:

1. If the applicant allows public access to the protected open space on the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as a trail connector or access to an important natural area): a maximum of 25%.
2. If the applicant preserves at least 60% of the parcel as working farmland (including the creation and preservation of new working farmland): a maximum of 25%.
3. If the applicant preserves as permanent open space more than the required amount of land: a maximum 10%

density bonus per additional 5% of the parcel preserved as open space.

4. If the applicant receives approval for a density transfer under § 121-21: the number of units transferred from the sending parcel, up to a maximum of 50% of the base density of the receiving parcel.

**D. Minimum lot size**

The limiting factor on lot size in conservation subdivisions is the availability of water and sewer infrastructure. Therefore, minimum lot sizes are based upon the availability of such infrastructure, and are the same as indicated for the hamlet districts in § 121-11D.

**E. Arrangement of lots**

Lots shall be arranged in a manner that protects land of conservation value, minimizes habitat fragmentation, and facilitates pedestrian and bicycle circulation. The lot layout shall be designed with consideration of applicable portions of the Rural Design Guidelines and Hamlet Design Guidelines published by the New York Planning Federation (1994). Such guidelines shall be adapted to conform to the requirements of this chapter.

**F. Front, side and rear yards and road frontage**

Appropriate minimum yard setbacks in a conservation subdivision will depend upon the lot sizes, the type of road frontage (state, county, town or private) and the character of the subdivision (hamlet, suburban or rural). Accordingly, yard requirements shall be established at the time of plat approval and shall be shown in a chart on the plat. Minimum yard and road frontage requirements shall be same as in the HM District for lots on Town roads.

**G. Impervious surface coverage**

The amount of pavement and building area is a major factor in determining the impact of a development. Therefore, limiting impervious surface coverage, as defined in §121-74, is critical in maintaining environmental integrity. The limitation on impervious surface coverage for each district shown on the Dimensional Table in §121-11B applies to the entire area to be subdivided, including all open space areas. Thus, individual lots may be allowed higher impervious surface coverage allotments, as long as the total coverage is within the limits prescribed. Conservation subdivision plats shall show on a table the impervious surface coverage limit for each building lot in order to establish compliance with this Subsection. Driveways, roads and parking areas that are unpaved or surfaced with porous pavement shall be considered impervious surfaces, unless the Planning Board determines, upon the recommendation of the Town's Engineer, that such surfaces are only partially impervious. In such cases the permitted coverage by such materials may be adjusted upward based upon the Engineer's recommendation, provided that a note is placed on any approved plat indicating requirements for maintaining the permeability of such surfaces.

**H. Accessory Uses**

Residential and nonresidential accessory uses may be combined in an open space development provided that the applicant complies with all residential density, impervious surface, and open space requirements. Permitted non-residential uses that may be included in a conservation subdivision include:

1. Common buildings for meetings, dining, recreation, and for entertaining and lodging guests of the residents.
2. Childcare facilities for residents of the development as well as those outside the development.
3. Office space for use by administrators of the development as well as for use by residents of the development in the conduct of their own businesses, provided that such offices do not occupy more than 10% of the total floor area of the development.
4. Storage facilities, which may be used for the needs of the development and its residents.
5. Recreational facilities for use by residents and their guests.
6. Convenience store not exceeding 5,000 square feet in floor space, providing goods for use primarily by residents of the development and the immediate neighborhood.

**I. Conservation subdivision with reserved land**

In order to encourage small subdivisions to follow conservation subdivision principles, there is no minimum tract size or number of lots required for a conservation subdivision. An applicant may create a conservation subdivision on a portion of a large parcel and reserve the remainder of the parcel for future development. In approving a subdivision of fewer than 15 lots on a parcel of land which may be further subdivided in the future, the Planning Board may require the applicant to execute a conservation easement that sets aside open space land on a pro rata basis in connection with the land being subdivided, rather than for the entire parcel. The land that is neither subdivided nor protected by a conservation easement shall be considered to be “reserved land” that is available for future subdivision and future open space protection. For example, if a parcel is large enough to have thirty lots, but the applicant is only proposing ten, the applicant may do a conservation subdivision on one-third of the property, preserving the amount of open space required only for the portion to be developed rather than the amount required if the entire property were developed. The open space land must be in a configuration that will preserve buildable land of conservation value based upon a conservation analysis, and must allow for subsequent extension of the conservation subdivision, unless the applicant elects to preserve the remainder of the parcel as open space land. The preserved open space therefore does not need to be contiguous with the building lots. Priority in open space protection shall be given to land identified as a priority conservation area in the Hudsonia Report. The Planning Board may require a conservation easement to limit future development of the parcel to the lot count permitted by §121-20B. The Planning Board may waive submission of documentation of the full lot count where, in the Planning Board's judgment, the number of lots proposed is substantially less than the total allowable lot count. This provision may not be used to circumvent the restrictions on segmentation of development under SEQRA.

**J. Minimum area and configuration of open space**

1. Since one of the major purposes of conservation subdivision is to preserve open space, conservation subdivisions shall preserve at least 50% of the land as open space. The requirements for preserving such open space are described in subsection K below.
2. Preserved open space may be included as a portion of one or more large lots or may be contained in a separate open space lot. Such open space may be owned by a homeowners' association, private landowner(s), a nonprofit organization or the town or another governmental entity, as long as it is protected from development by a conservation easement and does not result in fragmentation of the open space land in a manner that compromises its conservation value. The required open space land may not include private yards located within 100 feet of a principal structure. The required open space land may contain up to 25% land that is not buildable, except in the case of a partial conservation subdivision (see I above) where all of the open space land must be buildable land, as defined in §121-74.

**K. Preservation of open space by conservation easement**

Open space set aside in a conservation subdivision, or as a condition of any special permit or site plan approval, shall be permanently preserved by a conservation easement. Such land may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land pursuant to Subsection (3) below, and provided that the Planning Board approves such configuration of the open space as part of its approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land as established in the conservation analysis required by Subsection A above.

1. Conservation value of open space. The open space protected must have conservation value as established by the conservation analysis and conservation findings. Examples of lands with conservation value include view corridors along scenic roads, agricultural land, ridgelines, steep slopes, designated Critical Environmental Areas, large areas of mature forest, wetlands, water bodies and stream corridors. Prime and statewide important agricultural land, even if suitable for development, shall be considered land of conservation value.
2. Notations on plat or site plan. Preserved open space land shall be clearly delineated and labeled on the final

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subdivision plat or site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of other lots in the subdivision to such land. The plat or site plan shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a notation indicating the deed reference of any conservation easements or deed restrictions required to be filed to implement such restrictions.

3. Requirements for conservation easements.

a. A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation, protection of natural resources or similar conservation purposes, pursuant to § 247 of the General Municipal Law and/or §§49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such conservation easement shall be approved by the Planning Board and shall be required as a condition of approval. The Planning Board may require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk's office. In the case of subdivisions of less than five lots and minor projects, a deed covenant enforceable by the town may be substituted for a conservation easement. Applicants are encouraged to consult with a qualified conservation organization, such as the Dutchess Land Conservancy, in preparing a conservation easement.

b. The conservation easement shall protect the conservation values identified in the conservation analysis. It shall prohibit residential, industrial or commercial use of open space land (except in connection with agriculture, forestry and recreation) and shall not be amendable to permit such use. Access roads, driveways, local utility distribution lines, subsurface wastewater disposal systems, trails, temporary structures for outdoor recreation and agricultural structures shall be permitted on preserved open space land, provided that they do not impair the conservation value of the land. Dwellings may be constructed on portions of parcels that include protected open space land, provided that the dwellings are not constructed on the portion of the parcel that is protected by the conservation easement. The configuration of the open space land and dwellings shall not result in fragmentation of the open space land in a manner that interferes with its proper management and protection of its conservation values. (See the Rural Development Guidelines referred to in §121-5 for a fuller explanation of this.)

4. Ownership of open space land.

a. Open space land that is protected by a conservation easement may be, dedicated to town, county or state governments, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, owned in common by a homeowner's association (HOA), or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value, based upon the conservation analysis.

b. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

[1] The HOA must be set up before the final subdivision plat is approved and must comply with all applicable provisions of the General Business Law.

[2] Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance and maintenance of common open space, private roads and other common facilities.

[3] The open space restrictions must be in perpetuity.

[4] The HOA must be responsible for liability insurance, property taxes and the maintenance of recreational and other facilities and private roads.

[5] Property owners must pay their pro rata share of the costs in Subsection K(4) above, and the assessment levied by the HOA must be able to become a lien on the property.

[6] The HOA must be able to adjust the assessment to meet changed needs.

[7] The applicant shall make a conditional offer of dedication to the town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the town, at the discretion of the

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Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

[8] Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

[9] The attorney for the Planning Board shall find that the HOA documents presented satisfy the conditions in Subsections K(1) through (8) above and such other conditions as the Planning Board shall deem necessary.

5. Maintenance standards.

a. Ongoing maintenance standards shall be established, enforceable by the town against an owner of open space land as a condition of subdivision approval, to ensure that the open space land is not used for storage or dumping of refuse, junk or other offensive or hazardous materials.

b. If the Town Board finds that the provisions of §121-20K(5)(a) above are being violated such that the condition of the land constitutes a public nuisance, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

**§121-21**

**DENSITY TRANSFER (TRANSFER OF DEVELOPMENT RIGHTS)**

The Town of Amenia encourages flexibility in the location and layout of development, within the overall density standards of this Zoning Law. The Town therefore will permit residential density to be transferred from one parcel (the "sending parcel") to another (the "receiving parcel"). A density transfer may be permitted from any land with conservation value located in the RA or RR district to any land in the HM or HR districts, or to any land within the RR district which the Planning Board determines to be suitable for receiving additional density. Sending parcels may be located in either the RA or RR districts. The process of density transfer is as follows:

**A. Procedure**

1. All density transfers require a Special Permit from the Planning Board.
2. The Special Permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.
3. The Special Permit application shall show a proposed development plan for the receiving parcel (subdivision and/or Site Plan) as well as density calculations for both the sending and receiving parcels, prepared according to the provisions of § 121-20B. The density calculation for the sending parcel shall be based upon only the base maximum density allowed for conservation subdivisions and shall not include any of the density bonuses available under § 121-20C.
4. In reviewing an application for density transfer, the Planning Board shall first determine the number of allowable residential units permitted on the receiving parcel using all of the relevant standards in § 121-20B (or the lot size and dimensional standards for the HM or HR districts if the receiving parcel is located in one of those districts.) The Planning Board shall then determine the number of residential units available to transfer from the sending parcel(s) pursuant to § 121-20B.
5. The Planning Board may then grant a Special Permit allowing the transfer to the receiving parcel of some or all of the allowable residential units from the sending parcel(s). In order to accommodate the additional density on the receiving parcel, the Planning Board may waive one or more of the dimensional requirements applicable in the zoning district of the receiving parcel.
6. As a condition of approval of the density transfer, a conservation easement on the sending parcel(s) satisfying the requirements of § 121-20K shall be executed and recorded in the County Clerk's office, reducing the number of dwelling units allowed to be constructed on the sending parcel(s) by the number of dwelling units transferred. In addition, the conservation easement shall require that an area of land of conservation value be permanently

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restricted which is equal to the number of units transferred times the maximum density for conservation subdivisions in the zoning district. (For example, if five units are transferred and the maximum density for a conservation subdivision in the sending district is one unit per five acres, at least 25 acres of the sending parcel would have to be permanently restricted.) The owner of a sending parcel may retain the right to construct one or more dwelling units on the sending parcel, provided that the owner has not transferred all development rights on the sending parcel and that the dwelling units are not built on the portion of the parcel protected by the conservation easement.

**B. Findings Required**

The Planning Board shall not approve any residential density transfer unless it finds that:

1. All requirements for the granting of a Special Permit have been satisfied.
2. If the receiving parcel is in the RR district, the addition of the transfer units to the receiving parcel will not increase the maximum allowable density under § 121-20B by more than 50%, and will not adversely affect the area surrounding the receiving parcel.
3. The density transfer will benefit the Town by protecting developable land with conservation value on the sending parcel(s).
4. The density transfer will be consistent with the Comprehensive Plan.

**C. Financial contribution in lieu of transferring development rights**

An applicant may increase density on a receiving parcel in accordance with the above provisions by making a financial contribution to the Town's Land and Development Rights Acquisition Fund, provided that the Town Board has established a mechanism and a fee schedule for administering such a financial contribution in lieu of transferring development rights.

**§121-22 LIMITED DEVELOPMENT SUBDIVISIONS**

Within the RA, RR, and SR Districts, the Town of Amenia encourages the preservation of large tracts of open space by affording flexibility to landowners in road frontage requirements, layout, and design (including the use of unpaved private roads), provided that such landowners permanently preserve significant open space resources. The following standards shall be applied by the Planning Board in reviewing applications for a Limited Development Subdivision. Conventional Subdivisions and Conservation Subdivisions that contain roads that are not dedicated to the Town and remain private shall not be eligible for the benefits of this section 121-22 unless they qualify as a Limited Development Subdivision.

**A. Modification of Road Frontage and Construction Requirements**

Minimum road frontage requirements and otherwise applicable road construction requirements may be modified for a Limited Development Subdivision by the Planning Board pursuant to this §121-22, provided that all of the following requirements are met:

1. The average lot size in the proposed subdivision is the greater of 20 acres or 4 times the minimum lot size required for a conventional subdivision by the Dimensional Table.
2. A perpetual conservation easement is placed on the land to be subdivided, to maintain its natural and scenic qualities, to restrict building in locations deemed by the Planning Board to be environmentally or visually sensitive, and to ensure that the land will not be subdivided to a density higher than that permitted in Subsection 1 above;
3. Adequate access to all parcels by emergency vehicles can be ensured by private roads and/or common driveways. No common driveway shall provide access to more than four lots, except as provided in Subsection 121-22B(9) below. Private roads serving more than four lots shall comply with applicable private road standards in the Town's Highway Specifications.

**B. Private Road Requirements**

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The Planning Board may approve unpaved private roads to provide access to lots in Limited Development Subdivisions, provided that the Planning Board finds that the proposed subdivision will protect the rural, scenic, and natural character of the Town.

1. The maximum number of lots gaining access through any portion of a private road shall be ten.
2. Written approval from the Town Superintendent of Highways and the Town's engineer shall be secured before approval of any private roads.
3. A homeowners' association (HOA) must be created to own and provide for the perpetual care and maintenance of the private road. Such HOA shall meet all requirements for an open space HOA set forth in §121-20K(4) above. The HOA must have the power to assess the subdivision lot owners for their share of the maintenance costs of the private road. The HOA shall contract with a qualified road contractor to ensure that the road will always be maintained and kept open to permit emergency vehicle access. In the event that a private road contractor does not properly maintain the road, the Town of Amenia may assume maintenance responsibilities and charge the HOA for all reasonable costs thereof. Such costs, if unpaid for more than 60 days, shall, along with attorneys' fees for their collection, become a lien on the property and enforceable in the same manner as a property tax lien. The Planning Board shall have discretion to determine whether the applicant should be required to establish a maintenance fund at the time of approval and, if so, how much of a deposit should be required. The Planning Board shall also have discretion to determine whether a performance bond must be posted by the applicant to ensure the proper completion of the private road and, if so, how much the performance bond shall be and what form it shall take.
4. The HOA shall provide at regular intervals (not to exceed five years) a written certification from a licensed professional engineer that the physical integrity of the private road is adequate to meet its present needs and the needs which can reasonably be anticipated in the future.
5. The private road may never be offered for dedication to the Town of Amenia unless it conforms to Town Highway specifications for rural streets in effect on the date of the offer of dedication. However, the Town Board shall be under no obligation to accept such an offer of dedication, even if the road conforms to Town Highway specifications. In the event such dedication becomes necessary to ensure public safety, the cost of bringing the road up to Town Highway specifications shall be borne by the HOA.
6. The lots in the Limited Development Subdivision shall be restricted by conservation easement so that they may never be subdivided beyond the number of lots permitted in §121-22A(1) regardless of whether the private road remains a private road.
7. The subdivision plat shall show the road clearly labeled "PRIVATE ROAD."
8. Road design shall comply with the standards for private roads in the Subdivision Law.
9. The Planning Board may waive the requirement of a private road maintained by a HOA if it finds, after consulting with the attorney for the Planning Board or the Town Attorney, that a common drive maintained pursuant to a recorded maintenance agreement, executed by the applicant as a condition of subdivision approval, will provide the same protections to lot owners and the Town as would a private road owned by a HOA, and that all of the requirements and HOA functions described in Subsection B(3) through B(5) above and §121-20K(4) of this chapter will be properly fulfilled by such a common drive and maintenance agreement.

**C. Allowable Density**

No Limited Development Subdivision shall contain more lots than would be allowed in a conventional subdivision of the same parcel or parcels. The Planning Board may require an applicant for a Limited Development Subdivision to submit a conventional subdivision plan if the Planning Board has reason to believe that the proposed Limited Development Subdivision plan may contain more lots than would be permitted in the case of a conventional subdivision of the same property.

**§121-23 STANDARDS FOR SMALL-SCALE DEVELOPMENT**

**A. Landowner's Election: Maximum of Three New Lots**

A landowner may elect to do small-scale development as an alternative to a conventional subdivision or a conservation

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subdivision in the RA or RR districts, provided that the subdivision results in the creation of no more than three new residential lots (excluding the parent parcel from which they are subdivided), subject to the following standards.

- (1) For parcels that are greater than 20 acres, the three new lots shall consume no more than 25% of the land area of a parcel.
- (2) For parcels of 20 acres or less, the three new lots may consume more than 25% of the land area of a parcel. However, the parcel may not be further subdivided beyond the total of four lots created through this process. This restriction on future subdivision shall be noted on the approved subdivision plat.
- (3) Any approved small-scale subdivision plat on a parcel greater than 20 acres shall contain a note stating that it is a small-scale subdivision permitted under this §121-23, and that any future subdivision beyond these three lots will be subject to the requirements in subsection D below.
- (4) All new lots created under this §121-23 shall comply with subsection C below.
- (5) For purposes of this § 121-23, the determination of parcel size shall be based on the parcel as it existed on the official tax maps of the year 2007.

**B. Pre-Existing Lots.**

Any lot in the RR or RA District which was legally created and existed as of [date of enactment of this zoning law] may be built upon as provided in C below. If such lot does not meet the standards in C, it shall be subject to the provisions of § 121-28 (Non-conforming lots).

**C. Dimensional Requirements**

The dimensional regulations for small-scale development lots are as follows where a subsurface septic system is permitted, unless the Dutchess County Department of Health requires a larger lot size. All dimensions are in feet, unless otherwise indicated:

**SMALL-SCALE DEVELOPMENT DIMENSIONAL TABLE**

	<i>DISTRICT</i>	
	<b>RR</b>	<b>RA</b>
Minimum lot size	1 ac.	1.5ac.
Minimum road frontage: (feet)		
Town road	100	150
County/State road	150	200
Minimum front yard setback: (feet)		
Town Road	30	30
County/State Road	50	50
Minimum Side Yard Setback: (feet)	20	30
Minimum Rear Yard Setback: (feet)	30	50
Maximum impervious surface coverage	15%	10%
Maximum height	35	35

**D. Future Resubdivision**

If more than three residential lots are proposed for subdivision from the parent parcel at any time on a parcel greater than 20 acres, the application for a fourth subdivided lot (the fifth lot including the parent parcel) shall require a conservation analysis and the application shall be treated as an application for conservation subdivision under the provisions of §121-20. Such application shall take account of the three lots previously subdivided as if they were part of the new application and such lots shall count toward the total permitted number of dwelling units on the parcel, and their area shall be counted in determining the required amount of open space to be preserved.

**E. Other Options Available**

Development of three or fewer new lots may also take the form of conservation subdivision, conventional subdivision, flag lot development, or limited development subdivision at the landowner's option, in which case this section 121-23

shall not apply.

**[§§121-24 THROUGH 121-26 RESERVED]**

## **ARTICLE VI NON-CONFORMING USES, STRUCTURES, AND LOTS**

### **§121-27 NON-CONFORMING USES AND STRUCTURES**

#### **A. Continuation**

Any structure or use which was legal when built or commenced and which was in existence at the time of enactment or amendment of this chapter, which becomes non-conforming as a result of such enactment or amendment may be continued, except that:

1. A sign which is non-conforming under this chapter or under any previous ordinance or chapter shall be subject to the provisions of §121-39D(6).
2. Outdoor storage areas shall be required to comply with §121-51.
3. All non-conforming uses shall be required to comply with the requirements of the AQO District that pertain to the management of solid waste and hazardous substances.

#### **B. Discontinuance**

If a non-conforming use of land or structures is discontinued for a period of one year, it shall not thereafter be re-established except as provided in Subsection C, and any future use shall be in conformity with this chapter.

#### **C. Re-establishment**

The Planning Board may issue a Special Permit for the re-establishment of the use after the one-year period has expired if the applicant has been prevented from continuing the use during the one-year period due to strikes, acts of God, disability, or other similar hardship beyond the applicant's control.

#### **D. Restoration, Expansion, and Repair**

A non-conforming use or structure shall not be extended, enlarged, or structurally altered except as provided below. The extension of a conforming use to any portion of a non-conforming structure shall not be deemed the extension of a non-conforming structure or use.

1. A non-conforming structure or use may be rebuilt in the event of its total or partial destruction, to occupy the same or a lesser amount of footprint, but may not exceed the original height of the totally or partially destroyed structure. Such rebuilding shall require Site Plan review by the Planning Board.
2. The Planning Board may issue a Special Permit allowing an expansion of a non-conforming use or structure by up to 50% of its area at the time of the adoption of this chapter, provided that all other requirements can be met, and that such expansion does not reduce any non-conforming setbacks by more than 20%. Expansion or introduction of uses prohibited by §121-10C shall not be permitted.
3. A non-conforming soil mining operation may expand by mining within the boundaries of the original parcel on which the mine was legally permitted, only to the extent allowed by an existing DEC permit or as otherwise provided by the laws of New York State. Such an operation may not begin to process materials mined off-site by crushing, screening, sorting, washing, drying, or otherwise, unless the Planning Board grants a special permit to allow such processing. This shall not prevent the continuation of any non-conforming soil mining operation which was processing materials mined off-site at the time it became non-conforming, nor shall it prevent the continuation of any non-conforming industrial use of a property where soil mining products mined off-site are used as a raw material.
4. A non-conforming use or structure may be repaired or restored to a safe condition.

#### **E. Change of Non-conforming Use**

A non-conforming use of a structure or parcel of land may, upon issuance of a Special Permit by the Planning Board, be changed to another non-conforming use which is of the same or lesser impact, except that no use prohibited by

§121-10C shall be permitted under any circumstances. No structure in which a non-conforming use has been changed to a use of lesser impact shall again be devoted to a non-conforming use with greater impact. In determining whether a use is of greater or lesser impact, the Planning Board shall consider the impact criteria listed in §121-63.

**F. Special Permit Uses**

Any pre-existing legal use which is allowable by Special Permit under this chapter, but which has not been issued a Special Permit, shall be considered a permitted use. The expansion of such a use, other than a single-family or two-family residence, shall require Site Plan approval, unless such expansion has been permitted by a prior site plan approval.

**G. Construction Started Prior to This Chapter**

Any structure for which construction was begun prior to the effective date of this chapter, or of any amendment thereto, may be completed and used in accordance with the approved plans and specifications for such structure. Any structure for which construction has not begun pursuant to approved plans shall be subject to the provisions of this chapter and any amendments thereto, even if all pre-construction approvals have been granted. For purposes of this Subsection G, "beginning construction" shall mean excavation and pouring of footings or the installation of any other means of permanently attaching a structure to the ground.

**§121-28 EXISTING NON-CONFORMING LOTS**

**A.** Any lot of record created prior to January 1, 2007, which does not comply with the area, density, or dimensional requirements of this chapter shall be deemed to comply with such requirements, and no variance shall be required for its development or for any addition to or other alteration of a structure, provided that the following conditions are satisfied. A lot which satisfies the small-scale development requirements of Section 121-23 shall not be subject to the requirements below.

1. The following minimum area and dimensions are maintained, unless smaller dimensions are permitted in the district:

Lot Area:	8,000 square feet.
Front Setback:	Not less than 30 feet from the centerline of the road.
Side Setback:	20% of lot width but not less than 8 feet per side.
Rear Setback:	15% of lot depth but not less than 25 feet.
2. All Health Department regulations are satisfied.
3. Any residential use of such a non-conforming lot shall be limited to one single-family dwelling. Non-residential uses, if allowed in the zoning district, shall be permitted as if the lot were conforming.
4. Within the SR District, a lot containing 40,000 square feet or more shall be treated as fully conforming and not subject to the setback and use restrictions contained in (1) and (3) above.

**B.** A non-conforming lot may be subdivided only if the subdivision plat shows that every subdivided portion of such lot will be merged with adjoining properties to increase the area of such properties, thereby eliminating the non-conforming lot.

**C.** Notwithstanding the foregoing provisions, any undeveloped lot in a subdivision which was not properly approved by the Planning Board or Town Board or not filed in the Office of the County Clerk, and whose area or dimensions do not comply with the requirements of this chapter, shall be considered a violation of this chapter and shall not be protected under §121-28A.

**[§121-29 reserved]**

**ARTICLE VII SUPPLEMENTARY REGULATIONS**

**§121-30 SUPPLEMENTARY DIMENSIONAL REGULATIONS**

**A. Wetlands in Lot Area Calculations**

In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from total acreage in the lot area calculation. This shall not apply to lots created before the adoption of this subsection A.

**B. Corner Lots and Through Lots**

Wherever a side or rear yard is adjacent to a street, the front setback shall apply to such side or rear yard. Corner lots shall be deemed to have two front yards, two side yards, and no rear yard.

**C. Projections into Required Yards**

1. The following projections into required yards shall be permitted:
  - a. Steps and stairs: four feet into required side or rear setback area.
  - b. Awnings or movable canopies: six feet into any required setback area.
  - c. Cornices, eaves, and other similar architectural features: three feet into any required setback area.
2. Carport. An open or enclosed carport shall be considered a part of the building in determining compliance with setback requirements.
3. Porch. An open or screened porch may project eight feet into a front setback area.

**D. Driveways**

Driveways on lots with 100 feet or more of road frontage shall be set back at least 10 feet from side lot lines, except that common driveways may occupy any part of a side yard adjoining the lot of another user of the common driveway. On lots with less than 100 feet of frontage, no side yard setback shall be required.

**E. Height Exceptions**

1. The height limitations in the Dimensional Table shall not apply to any flag pole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet, or railing, water tank, or any similar non-habitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than 10% of the roof area.
2. Barns, silos, solar energy systems, telecommunication towers, and wind energy conversion systems may exceed height limits in the Dimensional Table, provided that they comply with applicable Sections of this Article VII, and provided that for every one foot by which such structures exceed the height limit, the minimum setback requirements are increased by one foot.
3. This Subsection E shall not be construed to permit any structure that is not allowed elsewhere in this chapter.

**F. Setbacks for Accessory Structures and Uses**

1. Any accessory structure attached to a principal building, and any detached barn, garage, stable, tennis court, or swimming pool shall comply with the minimum setback requirements of this chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas provided that they:
  - a. Are not used for human habitation;
  - b. Have a footprint no larger than 200 square feet;
  - c. Do not exceed 16 feet in height;
  - d. Do not occupy more than 10% of a rear setback area;
  - e. Are set back at least 10 feet from side or rear lot lines.
  - f. Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, bus shelters, and similar roadside

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structures with less than 100 square feet of footprint, as well as ornamental structures such as entry pillars and statues;

- g. Are not used for housing animals.
- 2. For corner lots, the setback from all streets shall be the same for accessory structures as for principal buildings.
- 3. For watercourse setbacks, see §121-14D.

**G. Setbacks Involving Irregular Buildings and Lot Lines**

Where structures or lot lines are irregular or unusual in configuration, all points on the structure shall satisfy the minimum setback requirements from that point on the lot line which is the shortest distance from the structure.

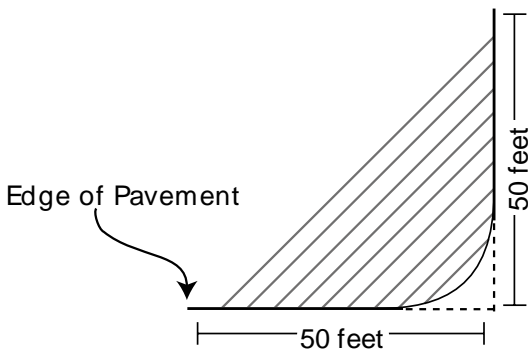
**H. Fences (Including Hedges) and Walls**

- 1. The setback requirements of this chapter shall not apply to retaining walls of any height or to fences less than six feet high in any side or rear yard, except where corner clearances are required for traffic safety.
- 2. The setback requirements of this chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher.

**I. Corner Clearance/Visibility at Intersections**

Where necessary to provide visibility for traffic safety, the Highway Superintendent or the Planning Board may require all or a portion of any corner lot which is within a sight triangle 50 feet from the corner, as shown shaded in Sketch A, to be cleared of all growth (except isolated trees) and other obstructions that block visibility of traffic on an intersecting street. The Planning Board may require excavation to achieve visibility. This provision shall not apply to intersections with traffic signals or four-way stop signs, or to intersections in hamlets where this requirement would conflict with the need to maintain a consistent build-to line to enclose the street.

**SKETCH A**



**I. Reduction in Lot Area**

No conforming lot shall be reduced in area in a manner that violates the dimensional requirements of this chapter.

**§121-31 RURAL SITING PRINCIPLES**

The following guidelines shall apply to the extent practical to the siting of non-residential uses that are subject to Site Plan or Special Permit approval and to the siting of residences in new subdivisions or other developments. **They are recommended but not required for the siting of individual residences on existing lots.**

**A. *Wherever feasible, retain and reuse existing old farm roads and lanes*** rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls.)

**B. *Preserve stone walls and hedgerows.*** These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.

**C. *Avoid placing buildings in the middle of open fields.*** Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.

**D. *Use existing vegetation and topography to buffer and screen new buildings*** if possible, unless they are designed and located close to the road in the manner historically found in the Town. Group buildings in clusters or tuck them behind treelines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.

**E. *Minimize clearing of vegetation at the edge of the road,*** clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.

**F. *Site buildings so that they do not protrude above treetops and crestlines of hills*** as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

**G. *Minimize crossing of steep slopes with roads and driveways.*** When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

**§121-32 EROSION AND SEDIMENT CONTROL**

In order to ensure that land will be developed with a minimum amount of soil erosion and sedimentation, for any site plan, special permit, or subdivision application, the Planning Board shall require that an applicant submit a plan demonstrating compliance with the following control practices:

- A.** The applicant shall provide effective sediment control measures for planning and construction of proposed developments. The following principles shall be applied as deemed appropriate.
1. The smallest practical area of land shall be exposed at any one time during the development.
  2. When land is exposed during development, the exposure shall be kept to the shortest practical period of time.
  3. Temporary vegetation and other protective measures shall be used to protect critical areas exposed during development.

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4. Sediment basins or debris basins (silting basins or silt traps) shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.
5. Provision shall be made to effectively accommodate the increased runoff caused by changing soils and surface conditions during and after development.
6. Permanent final vegetation and structures shall be installed as soon as practical in the development process.
7. The development plan shall be fitted to the type of topography and soils to minimize erosion potential.
8. Wherever feasible, natural vegetation shall be retained and protected.

**B.** A zoning permit is required to grade and/or shape the topography in accordance with §121-34F.

**C.** Design standards. Design standards and specifications for erosion and sedimentation control shall be as specified in the Empire State Chapter Soil and Water Conservation Society, New York Guidelines for Urban Erosion and Sediment Control.

**D.** All erosion and sedimentation control measures shall be installed prior to beginning any other land disturbances. Such devices shall not be removed until the disturbed land areas are permanently stabilized.

**E.** All erosion and sediment control measures shall be periodically inspected by the Town and shall be maintained by the developer or his successors in conformance with an approved schedule, so as to ensure effective operating conditions until such time as they are removed.

**F.** Erosion and sediment control measures shall comply with all applicable regulations and permit requirements of the New York State Department of Environmental Conservation. For any construction activity covering more than one acre, the applicant shall file with the DEC, with a copy to the Town Clerk, a Notice of Intent form 60 days prior to commencing excavation or grading in order to comply with the State Pollution Discharge Elimination System (SPDES) General Permit (GP) #02-01.

**§121-33            SANITARY DISPOSAL AND WATER SUPPLY**

**A. Sanitary Disposal**

No person shall construct any structure in the Town without meeting applicable requirements of the Town, the Dutchess County and New York State Departments of Health, the New York State Department of Environmental Conservation, and other governmental authorities that regulate water supply and sewage disposal systems. Issuance of a Certificate of Occupancy shall be subject to sanitary system inspection and certification by the Dutchess County Department of Health, and compliance with all conditions imposed by any other governmental authority.

**B. Water Supply**

The Planning Board may require an applicant for any subdivision, Special Permit, or Site Plan approval to provide evidence of water availability, and may require test wells and professional hydrological studies sufficient to establish that a proposed development will have adequate supplies of potable water and will not adversely affect any aquifer resource or the supply or quality of drinking water in the surrounding area. (See §121-15.)

**§121-34            EXCAVATION, GRADING, ROCK REMOVAL, AND CLEARCUTTING**

**A.** Excavation and grading necessary for the construction of a structure for which a Building Permit has been issued shall be permitted, provided that it does not adversely affect natural drainage or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety.

**B.** In the event that construction of a structure is stopped prior to completion and the Building Permit expires, the premises shall be promptly cleared of any rubbish or building materials by the property owner, and any open

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excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced, or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

**C.** The Planning Board may, in connection with a Major Project Site Plan or Major Subdivision, require an applicant to furnish an irrevocable letter of credit, certified check, or other form of security to guarantee reclamation of areas to be excavated or graded if a project is abandoned. Such security shall be for an amount reasonably related to the potential cost of such reclamation, and shall be in a form deemed acceptable by the Town Attorney.

**D.** For regulation of Soil Mining, see §121-17 of this chapter, except that soil mining below DEC permit thresholds on farm operations shall be governed by subsection I below.

**E.** No excavation or grading and no clearcutting of 10,000 square feet or more in preparation for site development shall be undertaken prior to the grant of any Special Permit, Site Plan, or subdivision approval required for such development.

**F.** Excavation or grading of any area exceeding 2,000 square feet, removal from a property of surface rocks in an area of up to 5 acres at a time, and/or the clearcutting of any area exceeding three acres shall require a zoning permit from the Code Enforcement Official, unless such excavation, rock removal, or clearcutting is performed pursuant to an approved Site Plan, Special Permit, subdivision, or Building Permit, or as a normal and customary activity in conjunction with commercial logging or a farm operation (as defined in Article XII).

**G.** Excavation, rock removal, and grading activities shall comply with applicable requirements for erosion and sediment control in §121-32.

**H.** No person, firm or corporation shall strip, excavate or otherwise remove topsoil for sale, or for use other than on the premises from which it is taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

**I.** A zoning permit application for surface rock removal or agricultural soil mining shall comply with the following requirements:

1. Surface rock removal and agricultural minor project soil mining shall be permitted only in the RA, RR, OC and M districts, and shall not be permitted on marble knolls and calcareous crests as identified on the map of Significant Habitats in Amenia.

2. A map of the property shall be submitted with relevant information from town GIS layers, including the map of Significant Habitats in Amenia, identifying the specific habitat types. The map shall also include boundaries, streams and wetlands, 10 ft. contour lines, geological features such as rock outcrops, and types of vegetation. The map shall indicate locations where mining and rock removal activities would occur and the location of existing and proposed access roads and landings.

3. The habitat and natural resource maps and application shall be reviewed by the building inspector and zoning administrator, and the zoning administrator shall issue the zoning permit if the application complies with the requirements of this subsection. The zoning administrator may seek expert guidance from a biologist or ecologist, or require the submission of a biologist's report, if any significant habitats will be affected by the proposed operation. The zoning administrator may deny or place conditions on the permit to ensure that there will be no disturbance of significant habitats.

4. Access roads and landings shall meet or exceed the requirements of the DEC for logging roads and landings. Reference shall be made to the Timber Harvest Guidelines of the NYS DEC, available on the DEC website.

5. Exposed top-soil areas exceeding 1000 sq. feet on slopes exceeding 15% (other than access roads and

gravel pits) shall be, at a minimum, hydro-seeded and mulched. Silt fences and hay bales to prevent erosion shall be used where practical and the operation shall expose the minimum area necessary and re-vegetate as quickly as practicable.

6. The town Building Inspector, Zoning Administrator or Environmental Officer shall inspect the site no less than twice a year at the permittee's expense.

7. Operations shall be conducted on weekdays only and shall not exceed 10 daylight hours.

8. If the operation is a commercial enterprise engaged in selling surface rocks, a performance guarantee of \$5000 per acre of disturbance, with a minimum of \$5000 shall be deposited with the town in order to assure that the land is re-vegetated and access points to public roads maintained and repaired. See §121-68B.

## **§121-35 WETLAND AND WATERCOURSE PROTECTION**

The Town finds that protection of its wetlands and watercourses helps to maintain water quality and the health of natural ecosystems, reduces flooding, erosion, and sedimentation, and protects important wildlife habitat areas. The Town also recognizes that both the State and Federal governments regulate wetlands, and desires to avoid duplicating regulatory programs while cooperating with State and Federal agencies. To ensure that development minimizes damage to wetlands and watercourses, the Town establishes the following requirements in addition to the Stream Corridor Overlay District provisions of §121-14.

### **A. State and Federal Wetland Permit Coordination**

All applicants for any Town permit or approval that might result in disturbance to a wetland or watercourse shall, as early as possible in the application process, apply to the New York State Department of Environmental Conservation (DEC) and/or the U.S. Army Corps of Engineers (ACOE), as appropriate, for any applicable permits. The applicant shall submit copies to the Town of any application to or correspondence with ACOE and DEC concerning required wetland permits for the project.

### **B. Required Watercourse and Wetland Mapping and Delineation**

Any Site Plan, plot plan, building permit or zoning permit application, variance application, subdivision plat, preliminary subdivision plat, or other plan submitted to a Town regulatory board or official shall show the location and stream classification of all watercourses, the location of any land or water identified as significant habitat in a Biodiversity Map adopted by the Town Board, and the location of any wetlands shown on the National Wetlands Inventory and DEC-regulated wetlands and wetland buffers on the parcel, as determined by a DEC field delineation, if available, or from current DEC wetland maps. If the proposal requires that a wetland delineation be performed for the ACOE, the applicant shall submit a copy of such delineation to the reviewing board or official. The applicant and reviewing board shall consult the report "Significant Habitats in the Town of Amenia, Dutchess County, New York" by Hudsonia Ltd (2006) (hereinafter cited as the "Hudsonia Report") and use the recommended methodologies for study and protection of wetland habitats identified in that publication. A wetland delineation may also be required if necessary to determine allowable maximum density for a conservation subdivision pursuant to §121-20.

### **C. Imposition of Conditions to Protect Wetlands and Watercourses**

The reviewing board or official shall ensure that applicants comply with the requirements of DEC and ACOE, and shall impose additional appropriate conditions to as necessary to minimize damage to wetlands and watercourses based upon studies of wetlands as recommended in the Hudsonia Report. Such conditions may include modifications in the size and scope of a proposed project, as well as changes in the location of structures or other improvements on the parcel. The reviewing board or official shall not be limited by the regulations of the DEC and ACOE, but may impose protections on wetlands and related upland habitat areas that are more stringent than required by these agencies, provided that such conditions are reasonable and are based upon the advice of a qualified expert. The Hudsonia Report shall be consulted in connection with this requirement.

**D.** For projects in the RDO for which a Draft Environmental Impact Statement has been submitted prior to the adoption of this section, the environmental analysis set forth therein for "Water Resources", "Vegetation" and "Wildlife" shall serve as a substitute for the provisions of this section applicable to the Town's review and regulation of wetlands and watercourses, provided that all field investigations, studies, data and other work supporting such environmental analysis have been performed to the satisfaction of the Town's retained biodiversity expert for environmental review of such a project.

#### **§121-36 STEEP SLOPE REGULATIONS**

The Town finds that the alteration of steep slope areas poses potential risks of erosion, sedimentation, landslides, and the degradation of scenic views. Accordingly, the following requirements are hereby imposed in areas with slopes exceeding 15%. Where a soil erosion and stormwater control plan is required by §121-32, such plan shall provide the information needed to comply with this §121-36.

**A.** For any subdivision, Special Permit, Site Plan, building permit, zoning permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:

1. Adequate erosion control and drainage measures will be in place so that erosion and sedimentation does not occur during or after construction.
2. Cutting of trees, shrubs, and other natural vegetation will be minimized, except in conjunction with logging operations performed pursuant to applicable guidelines of the New York State Department of Environmental Conservation.
3. Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding, or avalanches.
4. Proper engineering review of plans and construction activities will be conducted by the Town to ensure compliance with this section, paid for by escrow deposits paid by the applicant.
5. No Certificate of Occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

**B.** No disturbance, including cutting of vegetation or construction of driveways, shall be permitted on any slope of 30% or greater, except in any of the following circumstances:

1. As may be needed for stream bank stabilization, foot trails and utility lines.
2. In conjunction with timber harvesting operations performed pursuant to applicable guidelines of the New York State Department of Environmental Conservation.
3. In conjunction with activities of a farm operation protected by an exemption under § 121-37E below.
4. In conjunction with the establishment or maintenance of golf course fairways.
5. In conjunction with rock removal operations allowed pursuant to §121-34I.
6. Where an applicant can demonstrate that there is no feasible alternative and that the impacts of any land disturbance will be fully mitigated by the best available engineering, erosion control, and visual impact mitigation practices.
7. Where an applicant can demonstrate that the impacts of disturbing slopes do not negatively impact visual resources, that the areas impacted are part of a broader plan for a site that weighs and balances the full range of environmental issues, and that such disturbance is fully mitigated by engineering and soil erosion control practices.

**C.** Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as the reviewing board or official shall reasonably require or the applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the Town, at the applicant's expense, shall determine the location of regulated slopes.

**D.** For purposes of determining the location of steep slope areas, only contiguous slopes containing at least 5,000 square feet of steep slopes, as defined above, shall be considered. Within the HM and HR Districts, contiguous slopes containing at least 1,500 square feet shall be considered.

**E.** Driveway grades shall comply with the standards in Section 105-22 of the Town Code.

## **§121-37 PROTECTION OF AGRICULTURE**

### **A. Agricultural Buffers**

Wherever agricultural uses and other uses unrelated to the agricultural operations abut, the applicant for the non-agricultural use shall provide buffers to reduce the exposure of these abutting uses to odors, noise, and other potential nuisances associated with the agricultural operation. Such buffers may consist of vegetative screening, woodlands, vegetated berms, fences, or natural topographic features, at the discretion of the Planning Board.

### **B. Required Disclosure**

In the case of any proposed residential development that abuts agricultural uses, the Planning Board shall require the applicant to issue a disclosure to potential purchasers of lots or dwelling units as follows: "This property adjoins land used for agricultural purposes. Farmers have the right to apply approved chemical and organic fertilizers, pesticides, and herbicides, and to engage in farm practices which may generate dust, odor, smoke, noise and vibration." This disclosure shall be required as a note on a subdivision plat or Site Plan, and may also be required to be made through other means reasonably calculated to inform a prospective purchaser, such as by posting, distribution of handbills, inclusion in an offering plan or real estate listing information sheet, or letter of notification. This section may also be applied to any commercial development at the discretion of the Planning Board.

### **C. Agricultural Data Statement**

Any application for a Special Permit, Site Plan approval, use variance, or subdivision approval requiring municipal review and approval by the Town Board, Planning Board, or Zoning Board of Appeals that would occur on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in §121-74. The reviewing board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

### **D. Keeping Livestock as an Accessory Use**

Subsections A through C above shall not apply where farm animals are kept on residential properties as an accessory use and are not part of a farm operation. See §121-49.

### **E. Agricultural Zoning Exemptions**

Within an agricultural district as defined in Article 25AA of the New York State Agriculture and Markets Law, adopted by the County and certified by the State, the following exemptions from provisions of this Zoning Law shall apply to land and buildings on farm operations:

1. There shall be no height limits on agricultural structures, including but not limited to barns, silos, grain bins, and fences, as well as equipment related to such structures, as long as they are being used in a manner that is part of the farm operation.
2. There shall be no lot line setback restrictions on agricultural structures, except setbacks from lots that are either not within the agricultural district or lots that have existing residential uses. Agricultural structures containing animals, animal feed, or animal waste shall be set back at least 200 feet from watercourses and from lots that have existing residential uses, whether or not such residential lots are within an agricultural district. This setback requirement shall not apply to pre-existing non-conforming structures.

3. Agricultural structures and practices shall not require site plan review or special permit approvals, except that agricultural structures with a footprint greater than 10,000 square feet shall require minor project site plan approval pursuant to §121-67.
4. Soil mining which does not require a permit from the New York State Department of Environmental Conservation shall be permitted by right, subject to a zoning permit pursuant to §121-34I.

**§121-38 OFF-STREET PARKING AND LOADING**

**A. Off-Street Parking**

1. Purpose

The Town finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots damage the historic layout and architectural fabric of hamlet areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However, the Town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The Town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking, and to avoid the negative impacts of excessive parking lot construction.

2. Minimum Parking Required for Residential Uses

- a. For single-family or two-family dwelling: Two spaces per dwelling unit.
- b. For multi-family dwelling: One-and-one-half spaces per dwelling unit.
- c. These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed use development, or other appropriate circumstances if the Planning Board determines that such reductions are warranted.

3. Parking Requirements for Non-residential Uses

The number and layout of parking spaces for non-residential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic, and scenic resources. Since non-residential uses vary widely in their need for off-street parking, parking requirements shall be based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection (3)(a) below shall be applied and may be varied by the Planning Board according to the criteria in Subsection (3) (b) below.

a. Provisional Parking Standards

- (1) Retail or service business uses: Four spaces per 1,000 square feet of enclosed floor space, excluding space used for storage.
- (2) Industrial/warehouse uses: Two spaces per 1,000 square feet of enclosed floor space or one space per employee.
- (3) Office uses: Three spaces per 1,000 square feet of floor space.
- (4) Lodging Facility: One space for each bedroom plus one space for each non-resident employee and one space for every 200 square feet of floor space for meetings and functions.
- (5) Restaurants, theaters, and other places of public assembly: One space for every three seats.
- (6) Uses not listed above: As appropriate to the circumstances.

b. Criteria for Applying Provisional Standards

In applying or modifying the provisional parking standards for any proposed use, the Planning Board shall consider:

- (1) The maximum number of vehicles that would actually be parked at the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking, bicycling, or carpooling to the proposed use shall be taken into consideration.
- (2) The size of the structure(s) and the site.
- (3) The environmental, scenic, or historic sensitivity of the site (including applicable limitations on

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impervious surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning Board may require a reduction in the size of the structure so that the available parking will be sufficient.

(4) The availability of safely usable on-street parking.

(5) The availability of off-site off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant dedicates such off-site land for public parking or demonstrates a legal right to shared use.

(6) The requirements for parking for the disabled as prescribed by the Americans with Disabilities Act.

c. Set-aside for Future Parking

The Planning Board may, as a condition of reducing the provisional parking standards, require an applicant to set aside land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being developed for parking in the future.

d. Parking Lot as Accessory Use to Residential Dwelling

Parking spaces may be made available for non-residential uses on residential lots in the HM District by Special Permit. Such spaces shall be screened from adjoining properties and roads, and shall not exceed five spaces per lot.

f. Fee in Lieu of Parking Space

Where the required spaces cannot be provided on-site and are not currently available on the street and/or in municipal parking lots, the applicant shall pay a fee in lieu of one or more required spaces, in an amount established by the Town Board sufficient to cover the estimated cost of providing additional public parking spaces. Such fee shall be kept in a dedicated fund for municipal parking purposes and shall be used for such purposes within three years or returned to the applicant (or the applicant's successor).

4. Design, Layout, and Construction of Parking Areas for Non-Residential and Multi-family Residential Uses

a. Location and Screening

(1) All off-street parking shall be located behind or to the side of the principal building, except as provided in Subsections (2) and (3) below. The Planning Board may modify or waive this requirement on lots that are located in the OC, M and HC Districts only, where unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.

(2) Within any District, parking may be located anywhere on the site if it is screened from public roads and adjoining properties, or if it is part of a commercial development which is not visible from any public road, public recreation area, public building, or residential property.

(3) Within the HC District only, a maximum of one row of on-site parallel, perpendicular, or diagonal parking may be located in front of the principal building, but not within the required front yard. If any parking spaces are located in front of the principal building, the minimum front yard setback shall be increased by 30 feet and shall be planted with alternating double rows of trees or, if wooded, left in its natural state.

(4) If a parking lot containing ten or more spaces lies within or borders the SR, RA, or RR Districts, a buffer zone at least 50 feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in the HC, OC, or M Districts or contain a non-residential use.

(5) Parking layouts in the HM and HR Districts shall follow the *Hamlet Design Guidelines* cited in §121-5.

b. Construction of Parking Areas

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Parking areas shall be surfaced with a suitable durable surface appropriate for the use of the land, with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impervious pavement and run-off. Overflow or peak period parking surfaces shall be permeable. Oil traps may be required for larger paved parking lots. Parking areas shall comply with all applicable requirements of the Americans with Disabilities Act.

c. Landscaping

Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles by breaking them into separate parking lots divided by tree lines, alleys, pedestrian areas, or buildings. Parking lots containing more than 40 spaces shall be divided into smaller areas by landscaped islands at least 15 feet wide located no more than 120 feet apart. All islands shall be planted with 3-inch minimum caliper shade trees at a density of at least one tree for every 20 linear feet of island. Parking lots containing less than 40 spaces shall provide at least one 3-inch minimum caliper shade tree per eight spaces.

d. Lighting

Lighting within parking lots shall be on low poles of 12 feet to 15 feet maximum height, with color-corrected lamps and cut-off luminaires designed to minimize glare and light pollution. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining streetscape treatment. Sidewalks leading from parking lots shall be lit with bollard lighting and indirect illumination of buildings and vegetation.

e. Non-conforming parking lots shall be brought into conformity with this Subsection (A)(4) to the extent practical whenever a Site Plan or Special Permit application is filed for an expansion or change of the use.

**B. Off-Street Loading**

1. General Requirement

Loading docks and service access areas shall be located in a manner that minimizes visual intrusion on public spaces and ensures pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features designed to blend them with the architecture of the building. Adjacent buildings shall be sited to allow shared access to loading docks through the use of common loading zones or service alleys.

2. Exception for Hamlet Mixed Use District

The need to maintain the traditional layout and historic character of the Town's hamlets may preclude the establishment of modern loading facilities in some older buildings in the HM District. In such situations, the requirements of Subsection (1) above shall not apply and on-street loading shall be permitted.

**§121-39 SIGNS**

**A. Purpose**

The purpose of this section is to control the location, size, quantity, character, and lighting of signs in order to maintain the attractive appearance of the Town and avoid conditions of clutter and unsightliness. Through these regulations the Town seeks to:

1. Protect public health and safety by ensuring that signs do not create dangerous conditions, obstruct vision necessary for traffic safety, or confuse, distract, or mislead motorists, bicyclists, or pedestrians; and
2. Promote the general welfare by creating a more attractive visual environment that preserves the Town's historic and rural character, protects property values, encourages economic growth, enables businesses and other establishments to identify themselves, and minimizes negative impacts of signs on adjoining properties.

**B. Exempt Signs**

The following types of signs may be erected and maintained without zoning permits, board review, or fees, provided that these signs comply with the general regulations in §121-39D and with all other requirements of this chapter. As used in this Subsection B, the term "residential uses" shall include mixed-use lots on which at least 50% of the floor

space is residential.

**1. Permanent Signs**

- a. Signs not exceeding one square foot in area and bearing only property numbers, postal route box numbers, or names of occupants of premises.
- b. One sign, not exceeding 32 square feet in area, designating a farm.
- c. Flags and insignia of any government, except when displayed in connection with commercial promotion.
- d. Noncommercial information signs. Signs providing noncommercial information to the public, including community service information signs, public utility information signs, safety signs, danger signs, no trespassing signs, signs indicating scenic or historic points of interest, traffic control signs, directional parking signs, and all signs erected by a public officer in the performance of a public duty.
- e. One on-premises sign, either freestanding or attached, in connection with any residential building, for permitted home occupations, not exceeding three square feet and set back at least 10 feet from the traveled way or at the right-of-way, whichever is greater. Such signs shall state name and occupation only and shall not be illuminated.

**2. Temporary signs.**

- a. Temporary non-illuminated "For Sale" or "For Rent" real estate signs and signs of similar nature, concerning the premises upon which the sign is located. For residential uses, one sign per lot, not exceeding six square feet per side. For non-residential uses, one sign per lot, not exceeding 12 square feet, set back at least 15 feet from all property lines. All such signs shall be removed within three days after closing of the sale, lease, or rental of the premises.
- b. Temporary non-illuminated window signs and posters not exceeding 25% of each window surface. (Such signs are normally used to advertise specific products or sales and are removed or replaced on a regular basis.)
- c. Two temporary signs for a roadside stand selling agricultural produce grown on the premises in season, provided that such signs do not exceed 32 square feet each, are set back at least five feet from the public right-of-way, and are removed at the end of the selling season.
- d. On-premises signs for garage sales and auctions, not exceeding four square feet, for a period not exceeding seven days.
- e. Posters, banners, and signs, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, for a period not exceeding 60 days.
- f. One sign, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation, or repair is in progress, limited to the duration of the construction period.
- g. Signs, portable or otherwise, advertising special events for nonprofit organizations, such as firemen's field days, church bazaars, bake sales, etc. Such signs shall not exceed 24 square feet in area and shall not be displayed for more than 30 days.
- h. Signs required to be posted in connection with hearings on development applications, as provided in §121-62F(3).
- i. Signs marking areas of highway or utility construction, repair, or maintenance.

**C. Prohibited signs**

- 1. No off-premises commercial signs shall be allowed, except that signs not exceeding four square feet directing the public to specific establishments may be allowed with site plan approval by the Planning Board.
- 2. No exterior sign shall be illuminated internally, and no sign shall contain flashing, intermittent, rotating, or moving lights, except that one neon sign not exceeding three square feet may be allowed inside the window of a business establishment.
- 3. Portable signs that are mounted on wheels, including motor vehicles or trailers parked in one location for more than 30 days in any calendar year and functioning primarily as signs, shall be prohibited.
- 4. No permanent sign or any part thereof shall contain or consist of any moving, rotating, or revolving device.

**D. General sign regulations**

All signs that are not prohibited by Subsection C above are regulated by this section. Signs that are not exempt under

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Subsection B shall require building permits. However, if signs are proposed in connection with any special permit or site plan application, such signs shall be reviewed and approved under applicable criteria for the principal uses and shall not require a separate building permit if constructed pursuant to an approved plan.

1. Permit applications. Applications for new signs or proposed changes in existing signs shall include a scaled drawing showing the type of lettering, sign dimensions, colors, materials, and method of illumination, if any, and a plan showing the location of the sign on the building or property. A building permit shall be required for any change in the size, shape, lighting, materials, or location of an existing sign. No building permit shall be required if only the words or images on the sign are changed.

2. Location and maintenance.

a. Signs shall be erected, constructed, and maintained in a manner that does not obstruct traffic movement or visibility or cause any hazard to public safety.

b. No signs shall be placed, painted, or drawn on utility poles, bridges, culverts, or other road or utility structures or signposts, or on trees, rocks, or other natural features, except that signs not exceeding one square foot posting property boundaries may be placed on trees. No signs shall be placed on municipally owned property without permission of the Town Board.

c. All signs shall be kept in good repair. Painted surfaces shall be kept neatly painted at all times.

3. Sign area and height.

a. Freestanding signs. Individual freestanding signs shall not exceed 16 square feet in area nor 10 feet in height. Freestanding signs that are grouped together on one sign structure shall not exceed a cumulative total of 50 square feet per structure, and the individual components of such groupings shall be large enough to be read safely by passing motorists traveling at the speed limit.

b. Projecting signs. Projecting signs shall not exceed 12 square feet in area and shall not project more than four feet from the side of the building. The bottom of such signs shall be no lower than 10 feet and no higher than 15 feet above the finished grade.

c. Wall-mounted signs. Wall-mounted signs shall not exceed 32 square feet, extend more than one foot from the surface of the wall, cover more than 10% of the front surface of a building, cover a window, obscure architectural detailing, interrupt a roofline, or be placed on the roof of a structure.

d. Window signs. Signs placed in windows shall not cover more than 25% of the window area.

e. Awning signs. The valance portion of an awning may be used as a sign, with a maximum of 12 square feet of sign area. The bottom of the awning shall be at least eight feet above the finished grade.

f. Sign area bonuses. To encourage design excellence, the maximum sizes for individual signs specified above may be increased if the criteria below are satisfied. Sign bonuses shall not apply to exempt signs or to freestanding signs that exceed six feet in height. Although a separate increase is granted for compliance with each of the criteria and the total is cumulative, each percentage increase is based on the original sign size limitation. Maximum sign sizes shall be allowed to increase as follows:

[1] Fifteen percent when the sign is made of wood.

[2] Fifteen percent if the sign is designed to contain only the identification of the establishment without advertising any products sold on the premises.

[3] Twenty percent if the sign is the only sign identifying the establishment or its principal product.

[4] Twenty percent if the sign is not designed or used with illumination.

[5] Thirty percent if the Planning Board finds that the sign has special aesthetic merit or that additional size is necessary or appropriate due to such circumstances as the sign's distance from the road, the design speed of the road, or the size of the building on which the sign is placed. In order to take advantage of this Subsection D (3)(f)[5], an applicant not otherwise subject to site plan or special permit review may file a site plan application with the Planning Board. The content and review of such application shall be limited to consideration of signs.

g. Maximum cumulative sign area per lot. The maximum amount of total sign area per lot shall be one square foot of total sign area for every two linear feet of lot frontage on a public street.

h. Maximum area per sign. Notwithstanding any provision of this section to the contrary, no sign or grouping

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of signs shall be greater than 100 square feet in size.

4. Illumination. No illuminated sign or lighting device shall be placed or directed so that its light is directed or beamed:

- a. Toward a residence;
- b. Upon a public street, highway, sidewalk, or adjacent premises in a manner that causes glare or reflection sufficient to constitute a nuisance or a traffic hazard; or
- c. upward toward the sky.

5. Sign design manual. The Town Board may adopt a sign design manual developed specifically for the Town of Amenia or published for the general public or for another municipality. If such a sign design manual is adopted, it shall be incorporated by reference into this chapter.

6. Non-conforming Signs

Signs that do not conform with this § 121-39 and that were legally in existence prior to the adoption of this Section (*July 19, 2007*) shall be permitted to continue for an amortization period that terminates July 1, 2012, at which time they must either be replaced by conforming signs that have valid permits or be removed. Such signs may be altered only if the alterations increase their conformity with this section. This five-year amortization period may be extended by a temporary variance granted by the Zoning Board of Appeals, provided that the applicant demonstrates that the five-year amortization period is confiscatory as applied to the specific sign. The period of the variance shall be the minimum reasonably necessary to avoid confiscation. Signs that were not in compliance with the sign regulations of the Town of Amenia existing prior to the enactment of this § 121-39 shall not be considered protected non-conforming structures and shall be treated as violations.

#### **E. Removal of Signs**

1. Signs advertising an establishment or institution that has permanently closed shall be removed within one month of such closure.

2. The Code Enforcement Official shall notify in writing the owner of any sign which no longer serves the purpose for which it was erected, or which poses a safety hazard to the public or is otherwise in violation of this section. The Code Enforcement Official shall order such owner to remove or correct the unsatisfactory condition of such sign within 20 days from the date of such notice.

3. Upon failure to comply with such notice within the prescribed time, the Code Enforcement Official is hereby authorized to secure, repair, remove, or cause the removal of such sign. All costs of securing, repairing, or removing such sign, including related legal fees and expenses, shall be assessed against the land on which the sign is located and shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of a special ad valorem levy.

4. Where it reasonably appears that there is imminent danger to life, safety, or health or imminent damage to property unless a sign is immediately repaired, secured, or demolished and removed, the Town Board may, by resolution, authorize the Code Enforcement Official to immediately cause the repair, securing, or demolition of such unsafe sign. The expense of such remedial actions shall be a charge against the land on which the sign is located and shall be assessed, levied, and collected as provided in Subsection (3) above.

### **§121-40 ENVIRONMENTAL PERFORMANCE STANDARDS**

#### **A. Compliance with Performance Standards**

No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy. This §121-40 shall not apply to farm operations engaged in customary agricultural practices, except where necessary to protect public health and safety.

#### **B. Purpose of Performance Standards**

Consistent with the general purposes of this chapter, performance standards shall set specific controls on potentially

objectionable external aspects of all uses in order to:

1. Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollutants outside the building in which the use is conducted.
2. Control noise and light perceptible beyond the boundaries of the site of the use.
3. Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.
4. Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.
5. Limit physical hazard by reason of fire, explosion, radiation or any similar cause.
6. Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion and excessive noise in the streets.

**C. Noise**

No noises shall be emitted in violation of Chapter 80 of the Amenia Town Code. In addition, the following specific standards apply to noise.

1. Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.
2. No person, firm or corporation shall allow the emission of sound which, as measured at the property lines, has a sound level in excess of:
  - a. Sixty decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; and
  - b. Fifty decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.
3. Sounds emitted at levels lower than those prohibited by Subsection(C)(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.
4. Exemptions

The following shall be exempt from the noise level regulations:

- a. Noises not directly under the control of the property user.
- b. Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.
- c. The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.
- d. Bells or chimes from a church or other place of worship.

**D. Vibration**

1. Method of Measurement

For the purpose of measuring vibration, a three-component measuring system approved by the Town Engineer shall be employed.

2. Maximum permitted steady-state and impact vibration displacement. No activity shall cause or create a steady-state or impact vibration displacement by frequency bands in excess of that indicated in the following table:

**VIBRATION DISPLACEMENT**

<b>Frequency (cycles per second)</b>	<b>Steady-State (inches)</b>	<b>Impact (inches)</b>
Under 10	0.0005	0.0010
10-19	.0004	.0008
20-29	.0003	.0006
30-39	.0002	.0004

**E. Smoke, Dust and Other Atmospheric Pollutants**

1. General Control

The emission of smoke and other particulate matter shall not be permitted in violation of applicable regulations of the New York State Department of Environmental Conservation (DEC), including but not limited to 6 NYCRR Part 201. Pollutants that are not regulated by DEC shall not be emitted if they pose a substantial risk to public health, safety, or welfare.

2. Method of Measurement of Smoke

For the purpose of grading the density of smoke, the Ringelmann Smoke Chart or EPA methods 9 or 22 shall be used to determine the total smoke emitted. Where the Ringelmann method is used, a reading shall be taken every minute for an hour or, if less than an hour, until the total smoke emitted exceeds that allowed by these regulations. Each reading shall be multiplied by the number of minutes during which it was observed and the product added.

3. Maximum Permitted Emission of Smoke

There shall be no measurable emission of smoke, gas or other atmospheric pollutant, except as authorized by a permit granted pursuant to applicable state and federal regulations. The emission of one (1) smoke unit per hour and smoke with discernible density of No. 1 on the Ringelmann Smoke Chart shall be prohibited.

4. Maximum Permitted Emission of Dust

a. The emission of dust related to combustion for indirect heating from any source shall not exceed thirty-hundredths (0.30) pounds of dust per thousand pounds of flue gas adjusted to fifty-percent excess air for combustion.

b. There shall be no measurable emission of dust or other particulate matter not related to combustion for indirect heating.

c. Properties shall be suitably improved and maintained with appropriate landscaping, paving, or other materials to minimize windblown dust and other particulate matter.

**F. Odor**

No land use shall be permitted which emits any discernible obnoxious odor outside the lot on which the use is conducted.

**G. Toxic or Noxious Matter**

No use shall be permitted which will cause the release of toxic or noxious fumes or other matter outside the building in which the use is conducted.

**H. Radiation**

The handling, storage or disposal of radioactive materials or waste by-products shall be conducted strictly in accordance with applicable federal and state standards.

**I. Electromagnetic Interference**

No operation shall be permitted which produces any perceptible electromagnetic interference with normal radio or television reception in any area, unless federal or state regulation requires such operation to be permitted.

**J. Fire and Explosion Hazard**

All activities involving the use or storage of flammable or explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion, with adequate firefighting and fire suppression equipment and devices standard in the industry. Such activities shall comply with all applicable requirements of the New York State Uniform Fire Prevention and Building Code, DEC regulations, and the National Fire Protective Association (NFPA) Code. Copies of SARA forms filed with the Dutchess County Emergency Response Agency shall also be filed with the Code

Enforcement Official.

**K. Heat**

There shall be no emission of heat which would cause an air temperature increase in excess of one degree Fahrenheit along any adjoining lot line.

**L. Exterior Illumination and Glare**

No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of five-tenths (0.5) footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs or other uses shall be shielded and directed downward and away from adjoining streets and properties. The Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.

**M. Liquid and Solid Wastes**

The discharge of any or all wastes shall be permitted only if in complete accordance with all standards, laws and regulations of the Dutchess County Health Department, New York State Department of Environmental Conservation or any other regulatory agency having jurisdiction. Facilities for the storage of solid waste shall be so located and designed as to be screened from the street or from any adjoining property and so as to discourage the breeding of rodents or insects.

**N. Traffic**

For the purpose of preventing congestion in the streets, promoting the safe and efficient use of public transportation, protecting air quality, promoting fuel conservation, and otherwise protecting the public health, safety and welfare, the following specific traffic standards are hereby established to serve as a guide for town officials and agencies in the review of applications for development approvals:

1. The proponent of any development shall provide the Planning Board with information pertaining to potential traffic generation. If the Planning Board determines that it is necessary, the Planning Board may require the submission of a Traffic Impact Study (TIS) prepared by a qualified traffic engineer.
  - a. The TIS shall evaluate potential impacts to roadway and intersection operating conditions at locations and peak hours to be determined by the reviewing agency.
  - b. The latest available version of the Highway Capacity Manual and/or software based on the Highway Capacity Manual shall be used to conduct the TIS.
  - c. The TIS shall be based on traffic volume data not more than three years old.
  - d. Significant adverse traffic impacts requiring project mitigation shall be defined as any of the following occurring within the first year of operation of full build-out of the proposed project or, in the case of phased construction, during the first year of operation of each phase for which approval is sought:
    - [1] Any reduction in Level of Service (LOS) to less than LOS D at a street intersection that operates at LOS D or better without the proposed project.
    - [2] Any increase in delay times for intersections operating at LOS E or below.
    - [3] Introduction of new traffic volumes that will cause the overall volume of the roadway to exceed the design capacity of the mainline (nonintersection) highway sections within the TIS study area.
  - e. If the outcomes listed in (d) above would occur in any case due to other planned projects or background growth in the area that would affect that intersection or roadway segment, then the proposed project may be approved, provided that adequate mitigation plans are made to ensure safe and efficient operating conditions at the affected intersection(s).
2. Any development application for which a TIS is not submitted shall provide sufficient information to ensure safe entering and exiting conditions (e.g., sight distance, driveway width and grade) at all proposed ingress and egress

points.

3. In projecting future levels of service and the capacity of mainline highway sections, accepted traffic engineering procedures, as determined satisfactory by the Planning Board, shall be utilized, using the following requirements as a guide:

- a. Base-year traffic conditions, including peak-hour traffic volumes and turning movements, must be documented either through direct field surveys or from other available current data sources.
- b. Projected volumes must include estimated traffic generation from the proposed development during peak hours of on-site traffic activity as well as peak hours of street system activity.
- c. Daily trip generation estimates must be provided. Information published by the Institute of Transportation Engineers (ITE) will generally be relied upon as a basis for estimating trip generation, although the Planning Board may allow or require a departure from the use of specific ITE averages where the board determines that such departure is warranted by unique characteristics which may be present in the proposed project.
- d. Allowance shall also be made for traffic which is expected to be generated by other projects already approved or under construction within the town or within neighboring communities, as well as an additional allowance for general regional traffic volume changes.
- e. Estimated traffic generation must be distributed throughout the access network in accordance with clearly stated distribution assumptions determined acceptable by the Planning Board.
- f. The capacity analysis of the intersections or mainline highway section roadway system shall be calculated both with and without site-generated traffic. In analyzing such capacity, the applicant shall use methods generally recognized by national authorities, such as the Transportation Research Board of the National Academy of Sciences, and/or methods accepted by the New York State Department of Transportation. Traffic capacity estimates may take into account improvements planned by the applicant or by others, provided that, in either case, a specific commitment to construct such improvements has been made.
- g. In determining overall intersection level of service at signalized intersections, optimum practical signal timing may be assumed. Overall intersection level of service shall be determined, for both signalized and unsignalized intersections, based upon a volume-weighted average of each intersection approach level of service.

#### **O. Review Procedures**

As a part of site plan review of an application for the establishment of a use which, in the Planning Board's judgment, could have potentially objectionable external aspects and therefore be subject to these performance standards, the Planning Board may require the applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

### **§121-41 HOME OCCUPATIONS**

#### **A. Purpose and Intent**

The conduct of small-scale low-impact business and professional uses on residential properties shall be permitted under the provisions of this section. It is the intent of this section to:

1. Ensure the compatibility of home occupations with other uses;
2. Maintain and preserve the rural and historic character of the Town; and
3. Allow residents to engage in gainful employment on their properties while avoiding excessive noise, traffic, nuisance, fire hazard, and other possible adverse effects of non-residential uses.

#### **B. Criteria and Standards**

##### **1. Home Occupation as Use Permitted by Right**

Home occupations shall be permitted uses if they are in compliance with the following criteria and standards:

- a. The home occupation may be conducted only by residents of the dwelling unit plus no more than two non-resident assistants or employees at any one time. A home occupation may be conducted within a dwelling unit

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and/or within accessory structures. An area no larger than 30% of the floor space of the primary dwelling unit may be occupied by the home occupation, up to a maximum of 1,000 square feet.

b. A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes. It shall be conducted in a manner which does not give the outward appearance of a business, does not infringe on the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units, and does not alter the character of the neighborhood.

c. Signs used in conjunction with a home occupation shall not be animated or illuminated and shall not exceed three square feet.

d. Parking shall be adequate for non-resident employees and customers or clients. No business vehicle larger than 12,000 pounds gross vehicle weight may be parked regularly in a location visible from a public road or neighboring properties.

e. Automobile and truck traffic generated shall not be greater than the volume of traffic that would normally be generated by a residential use, unless the residence is located on New York State Routes 22, 44, or 343.

f. There shall be no exterior storage of materials, equipment, vehicles, or other supplies used in conjunction with a home occupation, unless screened from the road and from other properties.

g. No offensive appearance, noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances in a manner which may endanger public health or safety or which pollute the air or water shall be prohibited.

h. More than one home occupation may be conducted on a lot, provided that the combined impact of all home occupations satisfies these criteria and standards.

2. Home Occupation by Special Permit

a. A home occupation occupying an area greater than that permitted in Subsection (B)(1)(a) above or employing more than two non-resident employees may be allowed by Special Permit, provided that it satisfies all criteria for granting of Special Permits as well as the criteria and standards in Subsections (B)(1)(a) through (h) above. Such criteria shall become standard conditions of the Special Permit. In no case shall the area occupied by a home occupation allowed by special permit exceed the lesser of 40% of the floor space of the primary dwelling unit or 2,000 square feet.

b. A Special Permit granted for a home occupation shall include a condition requiring the operator to obtain an annual operating permit from the Code Enforcement Official at a cost of \$75 per year beginning in the second year of operation. Such operating permit shall be granted after the Code Enforcement Official inspects the premises and finds the home occupation to be in compliance with all conditions of the Special Permit.

**§121-42 WORKFORCE HOUSING**

In any development in which workforce housing is provided in order to obtain a density bonus (see §121-20C(4)) or where workforce housing is mandated by any other provisions of this Chapter (See Sections 121-16, and 121-42P) or by the Subdivision Law, such housing shall comply with the following requirements. **The provisions of this section shall not become effective until the Town Board has adopted a program for administering them and has passed a resolution certifying that the Town is prepared to administer the provisions of this §121-42 as provided in Subsection L below. Applicants shall, however, be required to submit plans showing compliance with this section in anticipation of its coming into effect prior to the time their applications receive final approval. If at the time of final approval of an application, the Town Board has not certified the Town's readiness to administer this program, applicants shall be discharged from the requirements of this §121-42. An applicant may choose to take advantage of incentives for workforce housing by postponing construction of workforce housing units and any bonus units related to them until the Town has adopted the program described in Subsection L.**

**A. Purpose and Intent**

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The Town Board of the Town of Amenia recognizes that people with moderate incomes that work in Amenia and/or provide volunteer services to the Town lack opportunity to find housing that is affordable to them within the Town. The Town Board further recognizes that there is a need to encourage the construction of housing units for rental or sale in the Town of Amenia that will be affordable to moderate income residents and to ensure that these units remain affordable in perpetuity for the benefit of the current and future workforce and residents of Amenia.

**B. Definition of Workforce Housing Units**

As used throughout this section, the term “workforce housing unit” refers to a single or multi-family housing unit that is owned or rented by an eligible household, as defined herein, and priced to be affordable to moderate income households whose members live and/or work in the Town of Amenia and who cannot otherwise afford market-rate housing.

**C. Development Standards**

1. **Physical Integration:** All workforce housing units must be physically integrated into the design of the development and constructed with the same quality building materials as the market-rate units. The exterior finishes for workforce housing units shall be indistinguishable from all other units. The developer may, however, substitute different appliances and interior hardware or other interior finishes where such substitutions would not adversely impact the livability of the unit. All electrical appliances shall bear the “energy star” rating, and no unit may use electric heat or hot water. The workforce housing units shall be integrated with the market rate units to the extent practical. The Planning Board may waive this requirement where an applicant proposes to build workforce housing units off-site in locations identified as appropriate for such housing in the Comprehensive Plan.
2. **Dwelling Unit Type and Size:** Workforce housing units may be located in multi-family, single-family attached, or single family detached dwellings, and may be studio, one-, two-, three- or four bedroom units.
3. **Minimum Floor Area:** The gross floor area per workforce housing unit shall be no less than the following:

<b>Unit Type</b>	<b>Minimum Floor Area</b>
Studio	400 square feet
1 Bedroom	500 square feet
2 Bedroom	700 square feet
3 Bedroom	1,000 square feet
4 Bedroom or more	1,200 square feet

4. **Phasing:** For any project that will be built in phases, the following schedule shall apply for all workforce housing units:

<b>Percentage of Market Rate Units Receiving Certificates of Occupancy</b>	<b>Percentage of Workforce Units Receiving Certificates of Occupancy</b>
Up to 25%	0 (none required)
25% +1 unit	At least 10%
50%	At least 50%

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75%	At least 75%
100%	100%

Certificates of occupancy shall be issued for market rate units when the required percentage of workforce housing units for the respective phase has been completed and a certificate of occupancy have been issued for the workforce housing units.

5. Waiver of Recreation Fee and other requirements: When a recreation fee is calculated in lieu of an approved reservation of recreation lands, the Planning Board may calculate such fee based on the total number of dwelling units exclusive of those which are workforce housing units.

**D. Determining Applicant Eligibility:**

1. **Income Limits:** To be eligible to purchase or rent a workforce housing unit, the household's aggregate annual income shall not exceed 80% of the Dutchess County median for owner-occupied units, and 50% for rental units, based upon the Dutchess County median family income.
2. **Other Assets:**
  - a. Any family with net assets exceeding 50% of the cost of a two-bedroom workforce housing unit shall be ineligible to own or rent a workforce housing unit. This limitation shall not apply to any household consisting of only senior citizens over the age of 65, provided that the household meets the income qualifications and that the members' net assets do not exceed 150% of the purchase price of a two-bedroom workforce housing unit.
  - b. Any non-income producing assets may be assigned an income producing value and included as income by the reviewing agency when determining eligibility.
3. **Minimum income:** The Town Board shall, by resolution, establish annually the minimum income requirements for a household to be considered eligible for the workforce rental and owner-occupied housing programs.

- E. Selection priorities:** Once an applicant is determined to be eligible to participate in the workforce housing program based on income limits as set forth above, preference will be given to applicants on the basis of the following factors. An "applicant" shall be defined to include any and all family members who have reached the age of majority and who will occupy the workforce housing unit as his/her primary residence. Applicants seeking preference based on voluntary service or employment must provide a certification letter from an authorized person within such organization attesting to the applicant's length of volunteer service or employment.

1. Volunteer Fire Department or Ambulance Corps members serving the Town of Amenia, with a minimum of 6 months consecutive active service. (3 points) maximum 6 points per family
2. Paid emergency service personnel serving the Town of Amenia, including police, fire and emergency medical services, with a minimum of 6 months employment. (2 points) maximum 4 points per family
3. Town of Amenia municipal employees, minimum of 6 months. (2 points) maximum 4 points per family
4. School district employees for any schools that provide educational services to students who live in Amenia, minimum of 6 months employment. (2 points) maximum 4 points per family
5. Veteran of US Armed Services, honorably discharged. (1 point) maximum 2 points per family
6. Persons employed in the Town of Amenia. (1 point) maximum 3 points per family
7. Residents of the Town of Amenia who have lived in Amenia for at least three years. (1 point) maximum 2 points per family

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8. Former residents of the Town of Amenia who can document that they lived in Amenia for at least five years. (1 point) maximum 2 points per family
9. Dutchess County residents for at least three years, not residing in Amenia. (1 point) maximum 1 point per family
10. All other income-eligible households not covered above. (1 point) maximum 1 point per family

In the event that two or more households have the same priority score, a lottery shall be held to determine the priority ranking among the households.

**F. Occupancy Requirements:**

1. Standards: To prevent overcrowding or underutilization of workforce housing units, at the time of purchase or rent, the following schedule of occupancy shall apply:

<b>Number of Bedrooms</b>	<b>Number of Persons</b>
0 (studio)	1
1	2
2	4
3	6
4	8

2. Residency: All workforce housing units shall be the primary residence of the owners or renters. Owners may not rent their unit to others and renters may not sublet their unit, except that one-year subleases shall be permitted if the household is required to move temporarily for reasons of employment, health, or family emergency, not to exceed a total of two years. These restrictions shall not apply to the developer of the workforce housing units.

**G. Initial Sale and Resale of Workforce housing Units:**

1. Calculation of initial sales price: Maximum sale price shall be set by resolution of the Town Board on an annual basis after review of relevant information that may be provided by federal, state, and county housing agencies, as well as by developers. The initial sales price of a unit shall be calculated such that the annual cost of the sum of principal, interest, taxes and insurance (PITI) and common charges, as applicable, shall not exceed 30% of the maximum family income allowed for such unit under Section 145-42D(1) above. Maximum sale prices shall be set in such a manner that eligible households will have sufficient income to qualify to purchase such units.
2. Resale of workforce housing units:
  - a. Workforce housing units shall only be resold to eligible moderate income households of similar size, consistent with the Town's point system for establishing priority.
  - b. The owner of a workforce housing unit shall notify the Town Board, or an appropriate department as may be designated by the Board, of his or her intent to sell prior to contact with any realtor or purchaser.
  - c. The maximum base resale price shall be set by resolution of the Town Board on an annual basis. The maximum base purchase price shall be calculated to include the purchase price of the workforce housing unit adjusted for the increase in the consumer price index [CPI to be recommended by the Dutchess County Department of Planning and Development] during the period of ownership. In addition to the base purchase price, the maximum

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permitted resale price shall also include the cost of permanent fixed improvements made by the homeowner (not to exceed 5% of the home's value per year of ownership) and necessary resale expenses.

- d. The original deed and any subsequent deeds or instruments used to transfer title to a workforce housing unit shall include a provision indicating that the housing unit is a workforce housing unit subject to perpetual restrictions on occupancy and resale. The following paragraph must be included in all deeds and other transfer instruments:

“This dwelling has been constructed for use by moderate income families pursuant to a special workforce housing program established under the Amenia Town Code. All future sales, resale or rental of this dwelling in perpetuity must be to a person who is determined to be eligible pursuant to the criteria and priority system set forth in the Amenia Town Code and at a price determined in accordance with the Town's workforce housing program.”

#### **H. Initial Lease and Renewals of Workforce Housing Rental Units**

1. Calculating permissible rent: Maximum monthly rent, including utilities (heat, hot water and electric), shall be set annually by resolution of the Town Board for each type of rental unit (studio, 1 bedroom, 2 bedroom, etc.), for each household size, and shall be amended from time to time after review of relevant information that may be provided by federal and state housing departments, as well as by developers. Rent for a workforce housing unit shall include an estimated cost for utilities and shall not exceed 30% of the maximum family income allowed for such unit. Maximum rent shall be set in such a manner that the eligible households will have sufficient income to qualify to rent such units.
2. Lease Terms and Renewal: Applicants for workforce housing rental units shall, if eligible and selected for occupancy, sign leases for an initial term of one year. As long as the household remains eligible and has complied with the terms of the lease, the household shall be offered a one-year renewal every year. If at the time of renewal the household's annual gross income exceeds the maximum income limit as set by the Town Board, such household shall be offered a market rate rental unit in the development, if available. If no such unit is available at a rental price that the household can afford, the household may renew the lease at the workforce housing rental rate for one more year, subject to the condition that should a market-rate unit become available, the household shall be required to move to such unit. At the end of the lease for such additional year, the household shall have no further right to reside in the workforce housing unit at the restricted workforce housing rent. At that time, the landlord shall have the option of increasing the rent of the unit to a market rate, provided that the landlord makes a comparable unit available to another eligible household at the restricted workforce housing rental rate.
3. Town Board Review: All lease terms shall be reviewed and approved periodically by the Town Board, or an appropriate department as designated by the Board.

#### **I. Maintenance, Upkeep and Repairs:**

1. All workforce housing units shall be maintained in a satisfactory manner as prescribed by the Town Board, or by an appropriate department as may be designated by the Board. Neither owners nor renters of workforce housing units shall make any improvements which require a building permit without prior written permission from the Town Board or an appropriate department as may be

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designated by the Board. Under no circumstances shall the Town Board or any agency or department approve any addition in size to the structure. The original square footage of the unit shall be maintained throughout the unit's existence.

2. All workforce housing units shall be maintained at least at the original builder's specification level. At the time of resale, the Town Board may determine that the unit has not been properly maintained and shall be authorized to impose such assessments as necessary to reasonably return the unit to its original condition. Said assessment shall be deducted from that portion of the selling price reverting to the seller of the unit.

**J. Tax Assessment:** The Town Assessor shall consider the limited resale value of workforce housing units when determining the appropriate assessment on such units.

**K. Incorporation of Conditions of Approval:** Any special permit, site plan, or subdivision approval involving the creation of workforce housing under this §145-42 shall include specific conditions referencing the requirements of this Section which shall also be noted on any approved site plan or subdivision plat and incorporated in any deeds, as required by subsection G above. In any phased development, such conditions shall also establish a phasing schedule to ensure that any required workforce housing units are built or fees in lieu of building such units are paid on a pro-rata basis as the development is built out. Such schedule may provide flexibility for the substitution of a fee in lieu for construction of units at a later date.

**L. Administration.** The Town Board shall appoint a Housing Board, which shall administer the workforce housing program. The Town Board may also hire staff or contract with Dutchess County or a qualified not-for-profit organization, government agency, or private consultant to administer all or a portion of the workforce housing program under the direction and oversight of the Housing Board. The following list identifies the responsibilities and duties of the Housing Board.

1. Accept and review applications
2. Maintain eligibility priority list, annually certify and re-certify applicants
3. Establish lottery procedures for selecting applicants that have equal priority
4. Assist Town Board/Planning Board in determining and reviewing applications to build workforce housing units
5. Recommend annual maximum income limits; rental prices; resale values
6. Review certification from owners and lessors of rental units certifying that units are occupied by eligible families
7. Maintain list of all workforce housing units in the Town
8. Review all deed restrictions for workforce housing units
9. Review all lease terms for workforce housing units
10. Promulgate rules and regulations as necessary

**M. Appeals**

Any person aggrieved by a decision of the Housing Board may appeal such decision to the Town Board.

**N. Fee in Lieu of Providing Workforce Housing**

The Town Board may establish, by separate local law, a fee to be paid into a dedicated Town workforce housing trust fund as an alternative to the construction of workforce housing, where such housing is either mandated or available as a condition of a density bonus. The amount of such fee shall be determined in the local law authorizing the fee, and shall be sufficient to cover the net cost of creating new workforce housing units, considering land acquisition, planning, design, construction, and administrative costs, offset by the

anticipated sale price or present value of rental income to be derived from the sale or rental of such unit at below market rates.

**O. Exception for Employee Housing**

An applicant may satisfy the workforce housing requirements of this §145-42 by providing housing for persons or families who have at least one member employed on the same property or on another property in the same ownership within Amenia. In such a case, the income and other eligibility requirements in this section 145-42, including the selection priorities in subsection E, shall not apply to such employees. However, in order for such employee housing to qualify as workforce housing under this section, the applicant must place a restrictive covenant on the employee housing property declaring that in the event the housing is not used for employee housing, it shall be subject to all of the requirements in subsections D through H of this §145-42.

**P. Mandatory Workforce Housing**

1. In any development of 10 or more dwelling units, at least 10% of the units shall be classified as workforce housing under this Section 121-42. In computing this number, fractional units of .5 or more shall be rounded up. The workforce housing units shall be added to the allowable unit count allowed pursuant to this Chapter. For example, if an applicant is permitted to build 25 dwelling units under this Chapter, the applicant shall be required to build at least 3 workforce housing units in addition, bringing the total unit count to 28.

2. The applicant may, instead of building the workforce units on-site, substitute one or more of the following alternative measures, if such measures are consistent with the Town of Amenia Comprehensive Plan and the purposes of this Section 121-42:

- a. Pay a fee in lieu of constructing the workforce housing units as provided in subsection N above.
- b. Construct the required housing units in another location.
- c. Place a restrictive covenant that satisfies the requirements of subsection G(2)(d) above on one or more existing dwelling units located on the same property or on adjoining property.
- d. Make a substantial contribution toward the cost of providing water and/or sewer infrastructure to the hamlet of Amenia or Wassaic. In order to allow this contribution to substitute for satisfying the workforce housing requirement, the Planning Board must find that (i) the contribution substantially advances the Town's goal of providing such infrastructure and (ii) that the provision of such water and sewer infrastructure will result in an increase in the availability of housing for persons who are the intended beneficiaries of the workforce housing program as described in this Section 121-42.

**Q. Recreation Fee**

New workforce housing units shall be exempt from recreation fee requirements that would otherwise apply.

**§121-43 DRIVEWAYS AND DRIVE-UP WINDOWS**

**A.** New driveway entrances (including the conversion of farm roads into residential or commercial driveway entrances) shall require permission from the Town Superintendent of Highways for town roads, the Dutchess County Department of Public Works for county roads, or the New York State Department of Transportation for state roads.

**B.** Drive-up windows shall require Site Plan review. Street access points and queueing areas shall be sited in a manner that does not create safety hazards to pedestrians or motorists and that does not increase traffic congestion on existing streets.

**C.** Drive-up windows shall be permitted only in the HC district.

**D.** Restaurant drive-up or drive-through windows shall be prohibited.

**E.** Driveways shall comply with the standards in Section 105-22 of the Town Code.

**§121-44 MOBILE HOME AND CONSTRUCTION TRAILER REGULATIONS**

**A. Mobile home parks**

1. New mobile home parks shall be permitted only within mapped MHO districts.
2. Existing mobile home parks not located in an MHO district may be continued as provided in Article VI and new mobile homes may be installed pursuant to plans approved before the enactment of this §121-44. The expansion of an existing mobile home park shall be allowed by special permit provided that the mobile home park is included in a mapped MHO district.
3. New mobile home parks may be permitted in the MH district provided that they obtain a Special Permit from the Planning Board and fully comply with all standards for Conservation Subdivisions, except as follows:
  - a. The number of permitted homes in any mobile home park shall be determined as provided by the formula in 121- 20B, using three dwelling units per acre as the maximum allowable density.
  - b. The minimum protected open space shall be 30%.
  - c. The development shall provide playground and recreational facilities for the use of residents.
  - d. The maximum number of mobile homes in any mobile home park shall be sixty.
  - e. The minimum parcel size shall be 10 acres.
  - f. All mobile homes shall be screened from view from public roads and other publicly accessible land.
  - g. All mobile homes shall be set back at least 100 feet from property lines.
4. All new mobile home parks and expansions of existing mobile home parks shall be required to comply with all applicable state and federal regulations and all applicable special permit and site plan review standards and criteria in this Chapter. If the mobile home park will involve the creation of separate lots, the Town of Amenia Subdivision Law (Chapter 105) shall apply.

**B. Individual Mobile Homes Outside of Mobile home parks**

1. Individual mobile homes permanently located outside of mobile home parks shall be prohibited, except in connection with farm operations as provided in subsection E.
2. Non-conforming mobile homes may be replaced by mobile homes that comply with currently applicable federal and state building standards.

**C. Temporary Mobile Homes**

An owner of land located within the Town of Amenia and who intends in good faith to construct a dwelling thereon for his own occupancy, may be granted a permit to place a mobile home on such land during the construction of the dwelling not to exceed a period of one year. A mobile home may also be temporarily placed on any lot for a period not to exceed one year in the event of major damage to or destruction of a dwelling located on such lot. To the extent practicable, such temporary mobile homes shall comply with the provisions of this section, except that such homes may be installed without permanent footings. After one year, the Code Enforcement Official shall send notice to remove the temporary mobile home or to apply for an extension not to exceed one additional year in the event that construction, repair, or reconstruction of the residence has not been completed. No further extension shall be granted, unless the Planning Board, after an examination of the facts and after providing the applicant an opportunity to be heard, may, upon finding a hardship or extenuating circumstances, grant a further extension of the permit if denial would work a hardship.

**D. Construction Trailers**

Construction trailers may be placed temporarily (without permanent footings) on construction sites for a period not to exceed the construction period, if allowed pursuant to a Special Permit, Site Plan, Variance, or subdivision approval. Such trailers may be used for office, storage, or workshop space, and shall not be used for residential purposes.

### **E. Farm Operations**

Mobile homes shall be permitted by right on farm operations, provided that they comply with all state and federal standards and satisfy all applicable health regulations. Such mobile homes shall be located within the boundaries of the farm parcel operated by the applicant farm operator, subject to the following conditions:

1. The mobile home shall be used exclusively for the housing of a farm employees and the immediate family of such employees.
2. Such employees shall be employed full-time in the occupation of the applicant farmer and derive the majority of their annual income from employment in agricultural operations on the farm.
3. The mobile home(s) shall be placed in such a manner and/or position or location that observation by adjoining property owners will be minimized.
4. If the mobile home is not occupied by persons who qualify under 1 and 2 above, the mobile home shall be removed from the premises.

### **§121-45 CAMPS**

The number of tents, trailers, houseboats, recreational vehicles, or other portable shelters in a camp shall not exceed the number of single-family dwellings which could be erected on such premises in a Conservation Subdivision. Camp structures shall be set back at least 250 feet from property lines, unless the property line is the shoreline of a stream, in which case the setback requirements of §121-14D shall apply.

### **§121-46 TELECOMMUNICATION TOWERS AND TELECOMMUNICATION FACILITIES**

No telecommunications tower shall be constructed, maintained or used unless in conformity with this section. No telecommunications tower shall hereafter be erected, moved, reconstructed, expanded, changed or structurally altered unless in conformity with this section. The construction, maintenance, use, erection, movement, reconstruction, expansion, change or structural alteration of telecommunications towers shall be governed by this section, and any provisions of this chapter which are inconsistent with this section shall be superseded by the terms of this section. Nothing herein shall be construed to apply to, prohibit, regulate or otherwise affect the erection, maintenance or utilization of antennas or support structures by those licensed by the Federal Communications Commission pursuant to 47 CFR Part 97 to operate amateur radio stations.

#### **A. Purpose**

The purpose of this section is to promote the health, safety and general welfare of the residents of the Town of Amenia ("town"); and to preserve the scenic, historic, natural and man-made character and appearance of the town, while simultaneously providing standards for the safe provision, monitoring and removal of wireless telecommunications towers and facilities consistent with applicable federal and state regulations; to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures; to minimize adverse visual effects from telecommunications towers by requiring careful siting and configuration, visual impact assessment and appropriate landscaping; to provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify telecommunications towers; and to encourage camouflaging of telecommunications towers.

**B. Use regulations**

Telecommunications towers and facilities, if permitted by the Use Table in §121-10, shall require one of the following: a building permit only (see Subsection (1) below); a building permit and site plan approval of the Planning Board (see Subsection(1)(e) below); or a building permit, site plan approval of the Planning Board and special permit approval of the Zoning Board of Appeals, as provided in the remainder of this §121-46.

1. The location or collocation of communication equipment on an approved communications tower or a tall structure is a permitted use subject to the issuance of a building permit, provided that the Code Enforcement Official determines that the location or collocation does not:
  - a. Increase the original approved height of the supporting structure by more than 15%;
  - b. Cause the original approved number of antennas to be exceeded by more than 50%;
  - c. Increase the original approved square footage of accessory buildings by more than 200 square feet;
  - d. Add new or additional microwave antenna dishes; and
  - e. Expand the footprint of said support structure or cause adverse impacts on the existing support structure or the surrounding area. If the Code Enforcement Official cannot make these findings, site plan approval will be required from the Planning Board, and the Code Enforcement Official shall refer the matter to the Planning Board.
2. New telecommunications tower construction, or modification, reconstruction or enlargement of such towers, is subject to obtaining a special permit from the Zoning Board of Appeals pursuant to Article IX of this chapter, as well as the standards and requirements hereafter established in this section. Applications for a special permit under the Subsection shall be a Type I action under the State Environmental Quality Review Act.
3. Construction of telecommunications towers shall comply with the Code of Federal Regulations pertaining to objects affecting navigable airspace as delineated with Federal Aviation Regulation (FAR) Part 77. Additionally, no application for construction of a telecommunications tower will be approved if the proposed tower violates the criteria for obstructions to air navigation as established by FAR Part 77.
4. Pending applications. Applications to construct, or collocate on, a communications tower pending before any Board of the town at the time of initial adoption of this section shall continue to be processed to minimize delay and expense to the applicant as much as possible. Information already on file with the reviewing Board shall be used to the extent applicable to satisfy submission requirements under this section. Any additional information required by this section shall be specified, upon request of the applicant, by the reviewing Board within 45 days after request. All pending applications shall be decided under the provisions of this section. If a public hearing has already been held on the application, no further public hearing shall be required except as may be required in the discretion of the reviewing board or agency. If a public hearing has not been held, then a public hearing shall be held as required under the terms of this section.

**B. Requirements for collocation proposals**

At all times, shared use of tall structures and existing or approved communications towers shall be preferred to the construction of new telecommunications towers.

1. Applications pursuant to Subsection B(1) shall be made to the Code Enforcement Official and shall include the following:
  - a. A completed application for a building permit.
  - b. Documentation of consent from the owner of the existing facility to allow shared use.
  - c. A New York State licensed engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
  - d. A copy of applicable Federal Communications Commission license.

- e. A statement, certified by a New York State licensed engineer, that the installation of the proposed antenna will not interfere with the radio, television or other wireless services enjoyed by residential and nonresidential properties or with public safety communications in proximity to the site.
2. Applicants that do not meet the requirements of Subsection B(1)(a) through (e) shall provide, in addition to the requirements of Subsection B(1)(a) through (e), a site plan which shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking and landscaping, grading plans for new facilities and roads, and such other information as the Planning Board deems appropriate in its review of the application. Any methods used to conceal the modifications of the existing facility shall be indicated on the site plan.

#### **D. Requirements for new telecommunications towers**

1. The Zoning Board of Appeals may consider a special use permit request to locate a new telecommunications tower if the applicant can: demonstrate that shared use of existing tall structures and existing or approved communications towers or communications tower sites are undesirable due to structural deficiencies; provide documented evidence that a site is unavailable because the owner is not willing to participate in a lease or ownership agreement; provide documented evidence that the site will not work from a technological aspect; or demonstrate that the applicant's proposed location or collocation on the site would have an adverse impact on the surrounding area. An applicant for a new telecommunications tower shall also obtain site plan approval from the Planning Board and shall submit a completed full environmental assessment form (EAF) and a completed visual EAF addendum to the Planning Board and Zoning Board of Appeals. An applicant shall be required to present an adequate report with an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site. The site inventory shall include a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds); ground elevation above sea level; and height of the structure and/or tower, and accessory buildings on the site of the inventoried location. The report shall outline opportunities for shared use of these facilities as an alternative to a proposed new communications tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided. The report shall include the following information to permit the town to evaluate the need for the new telecommunications tower site:
  - a. Information establishing the present need for the proposed tower. Special use permits are to be based on actual need and not on speculation of future needs.
  - b. RF signal coverage plots depicting the anticipated radio frequency coverage for the proposed site.
  - c. RF coverage plots depicting evidence that the proposed area to be provided coverage by the proposed new tower is currently deficient in radio frequency coverage.
  - d. The frequency spectrum (output frequency) to be used at the proposed site (cellular, personal communications systems, broadcast frequency, analog or digital, etc.). A copy of a current FCC license that authorizes the applicant to provide the specific service is required.
  - e. The type, manufacturer, model number of the proposed tower.
  - f. The height of the proposed tower, including the height of any antenna structure above the supporting structure of the tower.
  - g. The number of proposed antennas, type, manufacturer, model number, dB gain, size and orientation on the proposed tower.
  - h. Such other information as may be deemed necessary by the Board(s) so as to make a thorough evaluation of the applicant's proposal.
2. Applicants shall design proposed new telecommunications towers to accommodate future demand for reception and transmitting facilities. Applications for new telecommunications towers shall include an agreement

committing the owner of the proposed new telecommunications tower, and its successors in interest, to negotiate in good faith for shared use of said tower by other providers of communications in the future. This agreement shall be filed with the Code Enforcement Official prior to issuance of a building permit. Failure to abide by the conditions outlined in the agreement shall be grounds for the revocation of a special use permit. The agreement shall commit the telecommunications tower owner and lessee and their successors in interest to:

- a. Respond within 45 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 telecommunications tower by other providers of communications.
- c. Allow shared use of the telecommunications tower if another provider of communications agrees in writing to pay reasonable and customary charges in the prevailing market. The charges may include, for instance, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all of the costs of adapting the tower or equipment to accommodate shared use without causing electromagnetic interference.

**E. Special permit review -- submission requirements**

1. Applications to the Zoning Board of Appeals for a special permit shall be made in accordance with Article IX, and shall also include the following:
  - a. The report outlined in Subsection D.
  - b. Information and documentation indicating and identifying areas within the town where communications coverage by the applicant remains unsatisfactory. Applicants may be required to provide sufficient information to the town so as to clearly identify and describe the applicant's communications coverage master plan or siting and/or communications coverage plan.
  - c. A qualified New York State licensed engineer's report regarding nonionizing electromagnetic radiation for the proposed site. Such report will provide sufficient information to detail the amount of radio frequency radiation expected from the proposed site. Additionally, the engineer's report will comply with FCC reporting criteria, as amended, for a cumulative report, reporting levels of anticipated exposure from all users on the site. The report must indicate whether or not the proposed telecommunications tower will comply with FCC emission standards.
  - d. A completed full environmental assessment form (EAF) and a completed visual EAF addendum.
  - e. Existing or before-condition color photographs (minimum size eight inches by 10 inches) of views of the site from key viewpoints both inside and outside of the town, including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, scenic roads and scenic views identified in the Amenia Comprehensive Plan, and from any other location where the site is visible to a large number of residents or visitors. The Zoning Board of Appeals shall determine the appropriate key viewpoints from which the site shall be photographed.
  - f. Proposed or after-condition simulations. Each of the existing condition photographs shall have the proposed wireless telecommunications facility superimposed upon it to show what would be seen from the key viewpoints if the proposed facility is built.
2. Within 21 days of filing an application for a special use permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the town at least 14 days, but not more than 21 days, prior to the test.

**F. Special requirements for new telecommunications towers**

Any special permit proposal for a new telecommunications tower shall be subject to the following standards.

1. Setbacks. Each proposed telecommunications tower and telecommunications facilities structure shall be located on a single lot and shall comply with applicable setback requirements. In addition, the following

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setback shall be observed: The minimum distance from the base of any new tower to any property line, road, dwelling, business or institutional use or public recreation area shall be the height of the tower, including any antennas or appurtenances, in order to preserve a safe "fall zone," which is the area on the ground within a radius from the base of a tower where there is a potential hazard from falling debris (such as ice) or collapsing material.

2. Camouflage. New telecommunications towers shall be camouflaged as follows:

a. Camouflage by buffers of existing dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer of sufficient height and depth to effectively screen the entire facility. Where the bulk of the facility is screened, but portions remain unscreened, the Zoning Board of Appeals shall determine the types of trees and plant materials to be provided and depth of the needed increased buffer based on-site conditions.

b. To the extent that any tower extends above the height of immediately surrounding vegetation, it shall be constructed to resemble or mimic a native coniferous species of tree so as to minimize the adverse visual and aesthetic impact, unless otherwise required by the Zoning Board of Appeals. Towers may also be camouflaged by other means such as new construction of a silo, flagpole, clock tower, bell tower, cross tower, steeple, or other innovative replication of a structure that would be consistent with the character of the community as determined by the Zoning Board of Appeals.

3. Tower design and height. Alternative designs shall be considered for new telecommunications towers, including lattice and single pole structures. The design of a proposed new telecommunications tower shall comply with the following:

a. Any new telecommunications tower shall be designed to accommodate future shared use by other providers of communications.

b. Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

c. Notwithstanding the height restrictions listed elsewhere in this chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state and/or federal law and/or regulations.

d. The maximum height of a telecommunications tower in HC, CO, and M Districts shall be 120 feet above natural ground level, and in all other districts the maximum height shall be 70 feet above natural ground level.

e. The Zoning Board of Appeals may request a review of the application at the applicant's expense by a qualified New York State licensed engineer and/or consultant in order to evaluate the application. Fees for the review of the application by such engineer and/or consultant are in addition to the application fee, and shall be the sole responsibility of the applicant.

f. Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings. Accessory structure shall be limited to equipment shelters only and shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing of equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Planning Board shall determine the types of plant materials and the depth of the needed buffer based on-site conditions.

g. No portion of any telecommunications tower 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, except for the following. A sign of no greater than two square feet indicating the name of the facility owner(s) and twenty-four-hour emergency telephone number shall be posted adjacent to any entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signs shall conform to the

sign requirements of the town.

h. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of terrain so that, as much as possible, the top of the tower does not protrude over the ridge line, as seen from public ways. Alternative designs shall be considered for new telecommunications towers, including lattice and single pole structures.

i. Wireless telecommunications towers and facilities shall be designed by a New York State licensed engineer to withstand overturning and failure. In the event of failure, towers and facilities shall be designed so that they will fall within the setback area of the site and/or away from adjacent residential properties. The Zoning Board of Appeals shall require a foundation design and certificate of safety from the carrier to document structural soundness.

4. Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this section prior to the approval of the special use permit. Exceptions to tree cutting may be made on a case-by-case basis prior to approval of the special use permit for visual assessment activities specified in Subsection D(4), but such activity does not commit the respective board to approve the application.

5. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Planning Board.

6. Noise. The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners and emergency power generators. Telecommunications towers and facilities shall comply with all applicable §§ of the Town Code as it pertains to noise control and abatement.

7. Lighting. No exterior lighting of accessory buildings or accessways shall spill from the site in an unnecessary manner.

8. Access. Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the toe of fill, the top of cuts, or not more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

9. Parking. Sufficient parking shall be provided to assure adequate emergency and service access. The Zoning Board of Appeals shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

10. Fencing. The telecommunications tower and any accessory structure shall be adequately enclosed by a fence, the design of which shall be approved by the Zoning Board of Appeals. This requirement may be relieved by the Zoning Board of Appeals if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

11. Removal. Telecommunications towers and telecommunications facilities, including mounts, antennas, equipment shelters and security barriers shall be dismantled and removed by the applicant or the owner of the subject premises when they are no longer used or needed for their original purpose, or if a special use permit expires as provided in Subsection G. All applications for approval of new telecommunications towers shall be accompanied by a plan covering reclamation of the site after removal of the tower. No approvals shall be given under this article until all owners of the subject premises give the town, in a form suitable to the Town Attorney, a recordable instrument: running with the land; granting the town the right to enter upon the premises to

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dismantle and to remove the tower or facilities in the event of the owners' failure to comply within three months with a lawful written directive to do so by the Code Enforcement Official; and giving the town the right, after fair notice and opportunity to be heard before the Town Board by the owner(s) of the premises, to charge the actual costs associated with disassembly or demolition and of removal, including any necessary and reasonable engineering or attorneys' fees incurred to carry out its rights hereunder, by adding that charge to and making it a part of the next annual real property assessment roll of the Town of Amenia to be levied and collected in the same manner and at the same time as town-assessed real property taxes. The giving of such an agreement to the town shall not preclude the town from pursuing the alternative enforcement actions of seeking an injunction from a court of competent jurisdiction to compel removal, or seeking judgment to recover the costs, together with reasonable and necessary engineering and attorneys' fees, of dismantling and removal by the town. The town may secure removal of towers or facilities hereunder by requiring the applicant and/or the owner(s) of the premises to provide an undertaking and a continuing letter of credit covering the projected costs of dismantling and removal.

12. Proof of insurance. The applicant and the owner of the property where the communications tower is to be located shall provide the Town Clerk with proof of liability insurance in an amount not less than \$3,000,000 to cover potential personal injury and property damage associated with construction and subsequent operation and maintenance, and the policies of insurance shall name the town as an additional insured.

13. The applicant shall maintain the telecommunications facility in good condition, including, but not limited to: structural integrity of the mount and security barrier; painting; maintenance of stealth technology camouflaging; and maintenance of the buffer areas and landscaping. Telecommunications towers over 100 feet in height shall be inspected annually by a professional engineer licensed in New York State, and a copy of the inspection report submitted to the Town of Amenia Code Enforcement Official.

**G. Term of special use permits**

Special use permits issued under this section shall expire 10 years after approval unless reissued by the Zoning Board of Appeals prior to said expiration date.

**§121-47 TIMBER HARVESTING**

Timber harvesting shall be permitted by right subject to site plan review in all districts. The site plan submission requirements may be satisfied by presenting a forest management plan from a qualified professional forester, which shall be reviewed by a consulting forester retained by the Town at the applicant's expense. All timber harvesting plans shall comply with best management practices established by the New York State Department of Environmental Conservation and with the Scenic Protection Overlay District, if applicable. The Planning Board shall waive all site plan application and approval requirements that are not relevant to forest management and timber harvesting. The Planning Board shall not waive the requirement of performance guarantees necessary to ensure proper erosion control, stormwater management, reforestation, maintenance of on-site roads, and protection of off-site roads from damage resulting from timber harvesting, stormwater run-off, and trucking of timber.

**§121-48 ADULT USES**

The Town of Amenia finds that adult uses, as defined in Article XII, may have negative impacts upon the neighborhood and surrounding area where they are located. Such impacts include physical deterioration, disinvestment, and increased crime. Adult uses shall be allowed by Special Permit in the M District only. In addition to all applicable Special Permit and Site Plan criteria in Article IX, such uses shall satisfy the following additional

standards:

- A. No adult use shall be located within 1,000 feet of any single-family, two-family, or multi-family residence, or of any school, day care center, library, religious institution, park or other public recreation area, or recreational business.
- B. No adult use shall be located within 1,000 feet of any other adult use.
- C. No more than one free-standing sign, not exceeding 12 square feet, shall be permitted for an adult use in a location visible from a public street. Such sign shall be limited to the name and address of the business. One wall-mounted sign, not exceeding 12 square feet, shall be permitted on the building, provided that it complies with Subsection D.
- D. Adult uses shall be set back at least 200 feet from all public rights-of-way and shall be screened from view by a buffer at least 50 feet wide consisting of trees and shrubs.

**§121-49 KEEPING OF ANIMALS**

**A. Maintenance of Livestock on Residential Properties**

Animals kept on residential properties, not as part of a farm operation as defined in this Chapter, shall be limited as follows:

1. The land area required for keeping large animals shall be one acre, allocated to the residence, plus one acre per “large livestock unit” (LLU). One cow, horse, bison, pig, or similar large animal shall be considered one LLU. The following shall be considered as fractional LLUs:
  - a. Deer, llama, alpaca: 1/2 LLU
  - b. Sheep, emu, ostrich: 1/4 LLU
  - c. Goat: 1/6 LLU
  - d. Other large animals: as determined appropriate by the Code Enforcement Official or the Zoning Board of Appeals
2. The maintenance of small animals, such as raccoons, mink, rabbits, birds, snakes, geese, ducks, chickens, monkeys, dogs, cats, etc., shall not exceed ten on a lot of less than two acres, or ten per additional acre on lots of more than two acres. Pens for such animals shall not exceed 5,000 square feet or 10% of the lot area, whichever is greater. These requirements may be modified by the Planning Board by Special Permit as provided below.
3. All animals shall be kept in secure pens or otherwise be under the continuous control of their owners to prevent them from straying off of the property on which they are kept.
4. The Planning Board may issue a Special Permit for maintenance of animals in greater numbers or larger pens than the maximum set forth above, provided that the applicant meets all conditions and satisfies applicable Special Permit criteria, that the Planning Board finds that adequate open space and facilities for the proper care of such animals are available and will be established, and that maintenance of such animals will not interfere with the reasonable use and enjoyment of the property of others.
4. Buildings, pens, or other structures housing animals shall be located 20 feet from any lot line and 35 feet from any road or highway. No manure may be stored within 250 feet of any property boundary line or watercourse.
5. In maintaining animals on a property, no person shall knowingly interfere with the reasonable use and enjoyment of the property of others.

**B. Kennels**

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1. No provisions of this section shall prohibit or regulate the keeping of dogs as household pets, provided that the number of dogs does not exceed four per residential lot.
2. No kennel as defined in §121-74 shall be established within 200 feet of a developed residential parcel.
3. The minimum lot area required to establish a kennel as defined in § 121-74 shall be three acres.

**§121-50 SOLID WASTE FACILITIES AND INDUSTRIAL USES**

**A. Limitations on Solid Waste Management Facilities**

Solid waste management facilities, as defined in Environmental Conservation Law, § 27-0701 and 6 NYCRR 360-1.2(b)(158), with the sole exception of municipally owned and operated facilities, shall be prohibited in the Town of Amenia.

**B. Standards and Enforcement**

All industrial uses and municipal solid waste management facilities shall satisfy the following requirements. Non-conforming solid waste management facilities shall comply with these standards to the extent practicable.

1. All operations, including loading and unloading, shall occur within fully enclosed buildings with an impervious floor system. Any leachate shall be collected in an impervious collection system and hauled off-site for disposal as required by applicable laws. There shall be no outdoor storage of hazardous materials or of materials regulated under 6 NYCRR Part 360 in a manner that could allow them to become airborne, leach into the ground, or flow into any watercourse.
2. No materials shall be disposed of into the ground, air, or into any watercourse, except pursuant to applicable permits and approvals issued by state and county health and environmental agencies.
3. Procedures shall be in place to inspect all materials upon arrival at the facility to ensure that they are appropriate to the permitted operation and to ensure that deliveries of materials that cannot be safely handled and processed at the facility are not accepted.
4. The operation shall comply with all applicable provisions of this chapter, including the environmental performance standards in §121-40 and the aquifer protection provisions in §121-15 if the use is located within the Aquifer Overlay District.
5. The applicant may be required to furnish an irrevocable letter of credit, certified check, bond, or other form of security guaranteeing to the Town of Amenia compliance with the standards in this Subsection B as well as any other standards, requirements, or conditions of any permit issued by federal, state, county, or local government agencies. The amount of such performance guarantee shall be based upon the potential cost of remediation in case of a violation.
6. In addition to the requirements of Subsection B(5) above, the applicant may be required to pay annually into an environmental inspection fund to enable the Town to monitor the facility's performance and compliance with applicable standards using qualified technical experts.

**§121-51 OUTDOOR STORAGE**

**A. Outdoor Storage of Junk**

See Chapter 82 of the Code of the Town of Amenia for provisions on outdoor storage of junk.

**B. Outdoor Storage of Personal Property**

1. Boats, trailers, and seasonal or other recreational vehicles may be stored, maintained, or parked only in side or rear yards, unless vehicular access to such yards is not feasible. Construction equipment and other heavy equipment may not be stored, maintained, or parked in any location visible from adjoining properties or public roads, except for purposes of loading and unloading. The restrictions of this Subsection (B) shall not apply in the

M, HC, and OC districts.

2. Unless authorized by a Special Permit or Site Plan approved in connection with a business use, no commercial vehicle exceeding 10,000 pounds gross vehicle weight or 20 feet in box length shall be parked overnight in a residential district where it is visible from adjoining properties or public roads. The Planning Board may allow larger vehicles by Special Permit. This provision shall not apply to trucks used in connection with commercial agriculture, provided that parked trucks are set back at least 100 feet from property lines of adjacent landowners.

## **§121-52 RESIDENTIAL CARE FACILITIES**

In addition to generally applicable Special Permit and Site Plan review requirements, the applicant shall comply with the following:

### **A. Supervision**

Every residential care facility shall provide qualified supervisory personnel on the premises 24 hours a day, seven days a week. Such personnel shall have sufficient education and experience and shall be present in sufficient numbers to meet all standards of any agency responsible for the licensing or regulation of the residential care facility. Where no standards exist, the applicant shall present evidence establishing the minimum qualifications and number of personnel necessary for the operation of the residential care facility, and the Planning Board shall specifically establish minimum standards.

### **B. Other Required Approvals**

An applicant for a residential care facility shall demonstrate compliance with all applicable regulations, standards, and licensing requirements of public or private agencies.

### **C. Required Information for Application**

An application for a Special Permit for a residential care facility shall satisfy the submission requirements of Article IX and shall also include the following:

1. A list of all agencies which must license or otherwise approve the establishment of operation of the facility.
2. A list of regulations established by the public or private agencies listed in Subsection C(1) above.
3. Copies of applications submitted to the agencies.
4. A written statement explaining the status of such applications stating any facts known to the applicant which might result in the denial or delay of any required approval.
5. A written statement addressing the requirements of Subsection A above and demonstrating that the facility will comply with applicable regulations of licensing agencies and State law relating to minimum required floor area, bathroom facilities, and open space.
6. A map identifying the location of all other residential care facilities in the Town of Amenia at the time of the Special Permit application.

### **D. Findings**

In making its determination upon a Special Permit for a residential care facility, the Planning Board shall, in addition to making the findings required by §121-63, make the following specific findings.

1. That the proposed facility, given its unique nature, will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, and other matters affecting public health, safety, and general welfare.
2. That the proposed facility will be provided with or have ready access to facilities and services necessary and appropriate to the needs of its residents for active and passive recreation, medical care, education, cultural and religious activities, and public transportation.
3. That the proposed facility will not generate a level of traffic which would be burdensome to the neighborhood,

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considering the number of visitors its residents may expect, truck delivery and loading requirements, and the availability and nature of public or private transportation.

4. That the proposed facility will not result in an undue concentration of residential care facilities in the Town of Amenia or in the neighborhood of the proposed facility. This requirement shall not apply within the MCO Overlay District.

5. That the decision made by the Planning Board represents a reasonable accommodation to the needs of persons protected under the Federal Fair Housing Act, if applicable.

**ARTICLE VIII      ADMINISTRATION**

**§121-53      ENFORCEMENT OFFICIAL**

The provisions of this chapter shall be administered and enforced by the Code Enforcement Official, who shall issue building permits and zoning permits. No building permit, zoning permit, Certificate of Occupancy, or other permit or license shall be issued if it would be in conflict with the provisions of this chapter, Chapter 63 of the Amenia Town Code, entitled “Fire Prevention and Building Code Administration,” or any other applicable local, State, or Federal law or regulation.

**§121-54      BUILDING PERMITS AND ZONING PERMITS**

**A. Building Permit**

1. A building permit shall be required for the erection, construction, enlargement, alteration, replacement, demolition, or removal of any building or structure over 200square feet in footprint area. In the case of demolition, this permit shall be called a “demolition permit.”
2. No building permit shall be required for any alteration of or ordinary repairs to an existing building or structure which is not structural in nature, and which is not intended to or does not provide for a new or extended use of the building, structure or premises.
3. In the case of emergency action to deal with damage from fire or other casualty, the applicant may commence construction required to stabilize a structure without a building permit. In order to protect the safety of persons entering such a structure to stabilize it, a permit shall be applied for as soon as possible and in no event more than one week following such fire or casualty.

**B. Zoning Permit**

A zoning permit shall be required for the conversion or change in use of any existing building, structure, or parcel of land where no new construction is involved. No zoning permit shall be required when the new use is permitted by right, as provided in §121-10F.

**C. Application for Building or Zoning Permit**

All applications for a building or zoning permit shall be made on prescribed forms and shall contain the following information:

1. Land: A description of the land on which the proposed use or construction will occur, including deed and filed map references, lot numbers, and tax parcel numbers.
2. Use, occupancy: A statement of the existing and proposed use of all parts of the land and the location, character and existing and proposed use of any existing or proposed buildings or structures; including the number of floors, entrances, rooms, type of construction and the kind and extent of any exterior horizontal extension proposed toward any boundary or street line of the lot.
3. Identity of owner, applicant: The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations.
4. Description of work or changes in use: A brief description of the nature of the proposed work or change in use.
5. Valuation of work: The valuation of the proposed construction work, if any.
6. Plans and Specifications
  - a. Each application for a building or zoning permit shall be accompanied by two copies of plans and specifications, including a map, survey (if applicable), site development or plot plan, drawn to scale, showing

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the courses, dimensions and detail of all the boundary lines of the proposed lot of occupancy and the street boundaries adjacent thereto; zoning district and overlay district boundaries; the location and size of any proposed new construction and all existing buildings, structures, parking areas, traffic access and circulation drives, open spaces and landscaping on the site, the nature and character of any work to be performed and the materials to be incorporated, distance from lot lines, the relationship of structures on adjoining property, widths and grades of adjoining streets, walks, and alleys; wetlands, watercourses, slopes in excess of 15%; biodiversity mapping information, if available; and such additional information as may be required by the Code Enforcement Official, to determine compliance with the provisions of this chapter.

b. Plans and specifications shall bear the signature of the person responsible for the design and drawings and where required by the Education Law or any other applicable statutes, laws, rules or regulations of the State of New York, the seal of a licensed architect or a licensed professional engineer.

c. The Code Enforcement Official may waive one or more of the requirements of this §121-54C for minor alterations, as defined in the New York State Uniform Fire Prevention and Building Code.

7. Additional information: Such other information as may reasonably be required by the Code Enforcement Official to establish compliance of the proposed work or change in use with the requirements of this chapter.

**D. Action Upon Application**

1. The Code Enforcement Official shall promptly review the application and approve or deny it, giving the reason for any denial. A copy of the approved or disapproved application shall be delivered or mailed to the applicant within two working days.

2. An application with the approval of the Code Enforcement Official endorsed thereon shall constitute the building permit or zoning permit, which shall become effective when the Code Enforcement Official has filed written approval of the permit application in the office of the Town Clerk. A copy of the building permit shall be placed in the permanent property file for the property.

**E. Invalid Approval**

No building or zoning permit shall be valid unless it complies with all provisions of this chapter. Any permit approved in violation of this chapter shall be void.

**F. Termination of Building or Zoning Permit**

An approved building or zoning permit shall terminate and become void if there is no construction or commencement of the new use within twelve months of the date of approval.

**§121-55 STEPS TO OBTAIN PERMITS**

The steps to obtain necessary permits to erect, occupy, or change the use of a permitted structure or lot are as follows:

**A.** Any person intending to undertake new construction, structural alteration, or change in the use of a building or lot shall apply to the Code Enforcement Official for a building permit or zoning permit by submitting the appropriate application form and paying the required fee. For rules governing changes of use, see §121-10F.

**B.** The Code Enforcement Official shall grant or deny the permit as provided in §121-54, or refer the application to the Planning Board (or Town Board or Zoning Board of Appeals if appropriate) if a Special Permit and/or Site Plan approval is required.

**C.** If a building or zoning permit is issued, the applicant may proceed to undertake the action permitted. Upon completion of any construction, the applicant shall apply to the Code Enforcement Official for a Certificate of Occupancy (for building permits only).

**D.** If the Code Enforcement Official finds that the applicant's action has been taken in accordance with the building permit, the Code Enforcement Official shall issue a Certificate of Occupancy as provided in §121-54, allowing the structure to be occupied.

**E.** If the Code Enforcement Official denies a building or zoning permit and does not refer the application to the Planning Board or Town Board, the applicant may appeal to the Zoning Board of Appeals.

**§121-56 CERTIFICATES OF OCCUPANCY**

No building or structure hereafter erected, constructed, enlarged, altered, or moved, and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a Certificate of Occupancy has been issued by the Code Enforcement Official, in accordance with the provisions of Chapter 63 of the Town Code, this chapter, and any other applicable laws and regulations.

**A. Exception for Minor Alterations**

No Certificate of Occupancy shall be required for any alteration of or ordinary repairs to an existing building or structure which is not structural in nature and which does not require a zoning permit or a building permit pursuant to the provisions of this chapter or of Chapter 63 of the Town Code.

**B. Issuance of Certificate of Occupancy**

1. The Code Enforcement Official shall examine the location of any new structures or improvements to existing structures, and shall determine whether or not such new structures or improvements comply with the setbacks and other requirements of this chapter, including the terms and conditions of any Site Plan approval, Special Permit, variance, subdivision approval, or conservation easement granted. The Code Enforcement Official shall maintain complete records of the dates of inspections conducted hereunder, the names of all persons attending such inspections, the extent of completion of the work on each date, and any other observations relevant to determining compliance with this chapter.
2. After work has been completed, inspected, and found to be in full compliance with the building permit, the Code Enforcement Official shall issue a Certificate of Occupancy. A copy of the Certificate of Occupancy shall be placed in the permanent property file for the property.

**C. Effective Date of Certificate of Occupancy**

A Certificate of Occupancy shall become effective upon filing in the office of the Town Clerk, together with the building permit and all previous applications and approvals granted.

**D. Failure to Complete Construction**

Any structure for which a building permit has been issued, which remains partially complete with no substantial progress over a twelve-month period, shall be considered a violation of this chapter to be remedied pursuant to §121-57.

**§121-57 VIOLATIONS AND ENFORCEMENT**

**A. Inspection**

In order to determine compliance with this chapter, the Code Enforcement Official is authorized, to the extent permitted by law, to enter, inspect, and examine any building, structure, place, premises, or use in the Town of Amenia.

**B. Notice of Violation**

1. Upon finding any new construction, improvements, or uses to be in violation of this chapter, the Code Enforcement Official shall transmit a written Notice of Violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation, with a copy to the Town Board. The Notice of Violation shall require an answer or correction of the alleged violation to the satisfaction of the Code Enforcement Official within a reasonable time limit set by the Code Enforcement Official. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of the Code Enforcement Official within the time limit constitutes admission of a violation of this chapter. The notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made, and that, if a violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate, and that, if it is determined that no violation exists, costs of determination will be borne by the Town.
2. If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Code Enforcement Official, the notation "Violation Corrected" shall be made on the Code Enforcement Official's copy of the notice.
3. If there is no reply within the time limit set (thus establishing admission of a violation of this chapter) and the alleged violation is not corrected to the satisfaction of the Code Enforcement Official within the time limit set, the Code Enforcement Official shall take action in accordance with Subsection C.
4. A permanent record of all Notices of Violation and their disposition shall be kept in the offices of the Code Enforcement Official.

**C. Abatement of Violations**

The Code Enforcement Official or the Town Board may issue a stop-work or cease-and-desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this chapter to prevent the occupancy of premises, or to prevent any activity, business, or use that violates this chapter. Such legal action may include the issuance of an Appearance Ticket pursuant to the Criminal Procedure Law, Paragraph 150.20.

**D. Penalties**

1. A violation of this chapter is an offense punishable by fine not exceeding \$350.00, or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense. Conviction of a second offense, committed within five years of the first offense, is punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed 15 days, or both. Conviction of a third or subsequent offense committed within a period of five years is punishable by a fine of not less than \$700.00 nor more than \$1,000.00, or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six months per violation.
2. In addition, any person who violates any provision of this chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$100.00. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.
3. The imposition of penalties for any violation of this chapter shall not excuse the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this chapter shall not prevent the abatement of a violation pursuant to subsection C. The expenses of the Town in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender, and may be recovered in a civil court of appropriate jurisdiction.

**E. Complaints of Violations**

Whenever a suspected violation of this chapter occurs, any person may file a signed written complaint reporting such violation to the Code Enforcement Official. The Code Enforcement Official may also investigate any oral complaint made to his/her office. All complaints, written or oral, shall be properly recorded, filed, and promptly investigated by the Code Enforcement Official, and reported to the Town Board.

**F. Taxpayer Action**

Upon the failure or refusal of the Code Enforcement Official or Town Board to institute an appropriate legal action or proceeding for a period of ten days after written request by a resident taxpayer of the Town to do so, any three taxpayers of the Town residing in the district in which such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in the same manner as the Code Enforcement Official or Town Board.

**G. Accountability**

For every violation of the provisions of this chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists, shall be punishable according to the provisions of this chapter.

**§121-58 ESCROW DEPOSITS FOR REVIEW AND INSPECTION COSTS**

**A. Deposits in escrow**

1. In connection with any application for a special permit, site plan or subdivision approval, zoning amendment, timber harvesting permit, variance, or other appeal, the reviewing board may require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Such a deposit in escrow may be required at any stage in the application process, including for pre-application sketch plan discussions and the conservation analysis required by §121-20A. Said sum shall be based on the estimated cost to the Town of reviewing the particular type of submission before it. In determining the initial amount to be deposited, the reviewing board may consider the professional review expenses incurred by it and neighboring municipalities in reviewing similar submissions.

2. Use of funds.

a. The money deposited shall be used to cover the reasonable and necessary costs of reviewing an application, including costs of inspection of construction and completed improvements. Costs may include staff costs or consultant fees for planning, engineering, legal, and other professional and technical services required for the proper and thorough review of an application and project inspections. The reviews governed by this section shall include but not be limited to all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act (SEQR).

b. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other sections of the Amenia Town Code.

c. Monies deposited by applicants pursuant to this section shall not be used to offset the Town's general expenses of professional services for the several boards of the Town or its general administrative expenses.

d. Fees charged strictly for SEQR review shall not exceed the maximum amounts that can be charged by the lead agency pursuant to the SEQR regulations

**B.** Upon receipt of monies requested for an escrow account, the Town Supervisor shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.

**C.** Upon receipt and approval by the Town Board of itemized vouchers from consultants for services rendered on

behalf of the Town regarding a particular application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall debit the separate record of such account accordingly.

**D. Review of vouchers; payment**

1. The Town Board shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications and project inspections. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a similar application. In auditing the vouchers, the Town Board may take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the Town Board may deem relevant. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, and protect public or private property from damage.
2. In no event shall an applicant make direct payment to any Town consultant.

**E.** If, at any time during the review of an application or the inspection of an approved project under construction, there shall be insufficient monies on hand to the credit of an applicant to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board or inspecting official that such monies will be insufficient to meet vouchers yet to be submitted, the reviewing board or official shall cause the applicant to deposit additional sums as the board or official deems necessary or advisable in order to meet such expenses or anticipated expenses.

**F.** An applicant shall have the right to appeal to the Town Board the amount of any required escrow deposit or the amount charged to an escrow account by a consultant under this section.

**G.** In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy may be withheld or suspended by the reviewing board, officer or employee of the Town until such monies are deposited.

**H.** Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within sixty days after the applicant's request.

**I.** The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town of Amenia for funds expended to compensate for services rendered to the Town under this section by private engineers, attorneys or other consultants. In order for a land use application to be deemed complete, the applicant shall provide the written consent of all owners of the subject real property acknowledging potential landowner responsibility, under this section, for engineering, legal and other consulting fees incurred by the Town. In the event that insufficient funds have been deposited in escrow and the applicant or owners fail to reimburse the Town for such fees, the following shall apply:

1. The Town may seek recovery of unreimbursed engineering, legal and consulting fees by action in a court of appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.
2. Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal and consulting fees expended by the Town shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same

time and in the same manner as Town-assessed taxes and shall be applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

## **§121-59 ZONING BOARD OF APPEALS**

Pursuant to the provisions of § 267 of the Town Law, there is hereby established a Zoning Board of Appeals consisting of five members appointed by the Town Board. The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this chapter, generally the Code Enforcement Official. An appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town.

### **A. Appeals of Orders, Requirements, Decisions, Interpretations, or Determinations**

The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed from, and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this chapter. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

### **B. Appeals for Variance**

1. Where there are practical difficulties or unnecessary hardships imposed by the strict letter of this chapter, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Code Enforcement Official and after public notice and hearing, to vary or modify the application of any of the provisions of this chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.
2. All applications for variances shall be submitted to the Code Enforcement Official at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. An application for a use variance may require submission of an agricultural data statement pursuant to §121-37C.
3. Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within one year of the date of issuance shall automatically lapse.

### **C. Use Variances**

1. The Zoning Board of Appeals, on appeal from a decision or determination of the Code Enforcement Official, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this chapter. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under this chapter for the district in which the applicant's property is located:
  - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

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- 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.
2. Failure to demonstrate any one of the requirements in Subsections 1(a) through 1(d) above is sufficient to justify the denial of a use variance.
  3. The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to §121-37C.
  4. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems 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.
  5. In addition to the grounds for granting a use variance in Subsection (1) above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property. In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.
  6. If the use variance is granted for a non-residential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

**D. Area Variances**

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Official, to grant area variances from the area or dimensional requirements. Where a proposed Special Permit or Site Plan application contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance without a decision or determination by the Code Enforcement Official.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making its 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 shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance.
3. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

**E. Imposition of Conditions**

The Zoning Board of Appeals shall, in granting use variances and area variances, impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

**F. Procedures**

1. Application  
Appeals shall be taken by filing a written notice of appeal and any required plans with the Code Enforcement Official and the Zoning Board of Appeals, within 60 days after the filing of the order, requirement, decision,

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interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Code Enforcement Official shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.

**2. Referral to County Planning Board**

- a. Requests for variances that require referral to the County Planning Board shall be so referred pursuant to General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.
- b. No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Board's review.
- c. County Disapproval

A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

**G. Hearing and Public Notice**

1. If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of any variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.
2. The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.
3. The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.
4. At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to the Planning Board and by certified mail to all property owners within 200 feet of the property upon which the appeal is taken. The cost of publishing and mailing such notices shall be borne by the appellant.
5. If the application is for a use variance on property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard.
6. At the hearing, any party may appear in person or by agent or by attorney.
7. The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal. If the hearing is adjourned for more than 30 days, the Board may require that it be re-noticed as provided in subsection 4 above.

**H. Action**

The Zoning Board of Appeals may, in conformity with the provisions of this chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this chapter.

1. Any such action shall be decided within 62 days after the close of the hearing.
2. Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by resolution which contains a full record of the findings and rationale for the decision. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the County Planning Board, it shall

give written reasons for such action.

**I. Filing**

Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the appellant within the same five-day period.

**J. Court Review of Board Decisions**

Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, may apply to the Supreme Court for review by a proceeding under Article Seventy-eight of the Civil Practice Law and Rules and § 267-c of the Town Law.

**K. Expiration of Appeal Decision**

Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve months of the date of such decision.

**L. Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Official certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Code Enforcement Official's opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Official for due cause shown.

**M. Special Permits**

In addition to the power to hear appeals, the Zoning Board of Appeals shall have the power to issue special permits where so indicated in this Chapter. When reviewing and deciding upon special permit applications, the Zoning Board of Appeals shall apply the rules, standards, and procedures contained in Article IX, Special Permits and Site Plan Review.

## **ARTICLE IX SPECIAL PERMITS AND SITE PLAN REVIEW**

### **§121-60 PURPOSE AND APPLICABILITY**

**A.** It is the policy of the Town of Amenia to allow a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the rural and historic character of the Town. Many uses are therefore permitted only upon issuance of a Special Permit by the Planning Board, in order to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this chapter. Some uses are allowed by right, subject only to Site Plan approval (see Use Table in §121-10). Telecommunication towers require a Special Permit issued by the Zoning Board of Appeals. Adult uses, soil mines and uses not listed on the Use Table (if not prohibited by §121-10C) require a Special Permit issued by the Town Board. In reviewing Special Permit applications, the Town Board and Zoning Board of Appeals shall follow the procedures and standards established for the Planning Board in this Article IX.

**B.** Accessory uses or structures used in connection with a Special Permit or Site Plan use shall be subject to the same approval requirements as the principal structure or use.

#### **C. Minor and Major Projects**

1. A Minor Project is a Special Permit or Site Plan application that falls within all of the following thresholds (over a three-year period):
  - a. Construction of four multi-family dwelling units or a lodging facility with six bedrooms.
  - b. Construction of facilities or structures for a non-residential use covering 3,000 square feet of building footprint.
  - c. Alteration of existing structures or expansion of such structures by 1,000 square feet.
  - d. Conversion of existing structures totalling 5,000 square feet to another use.
  - e. Alteration and active use of 10,000 square feet of land, with or without structures.
  - f. Soil mining that does not require a DEC permit.
  - g. Construction of a structure that is 80 feet or higher above average grade level.
2. A Major Project is a Special Permit or Site Plan application exceeding any of the Minor Project thresholds.

### **§121-61 REQUIRED SUBMISSIONS FOR SPECIAL PERMIT APPLICATIONS**

Because the impact of Special Permit uses varies, the review procedure and information required to be submitted for a Special Permit varies depending upon whether it is a Major or Minor Project.

#### **A. Major Project Special Permit**

An applicant for a Major Project Special Permit shall submit the following:

1. A Major Project application form.
2. A Site Plan, containing the information listed in §121-65B unless submission of certain information has been waived at a pre-application meeting.
3. A narrative report describing how the proposed use will satisfy the criteria set forth in §121-63, as well as any other applicable requirements relating to the specific use proposed.
4. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.
5. An agricultural data statement as defined in §121-74, if required by § 121-37C.
6. The Major Project Special Permit application fee, as established by the Town Board, and any required escrow

deposit for review costs, as required by the Planning Board.

### **B Minor Project Special Permits**

An applicant for a Minor Project Special Permit shall submit the following:

1. A Minor Project application form.
2. A plot plan providing information sufficient to enable the reviewing board to make an informed decision (which may include some of the Site Plan information listed in §121-65B).
3. A brief narrative describing the proposed use.
4. A short-form Environmental Assessment Form (EAF) (unless the Planning Board determines that the proposed Special Permit is a Type I action, in which case a long-form EAF shall be required).
5. An agricultural data statement as defined in §121-74, if required by § 121-37C.
6. The Minor Project application fee as established by the Town Board, and an escrow deposit (if required).

## **§121-62 PROCEDURE FOR SPECIAL PERMITS**

### **A. Pre-application Meetings**

Before filing an application, a preliminary conference with the Code Enforcement Official is required to discuss the nature of the proposed use and to classify it as a Major or Minor Project. If the Code Enforcement Official classifies the project as a Major Project, a preliminary meeting with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan.

### **B. Mediation Option**

At any point in a project review process the Planning Board may, if it deems appropriate and the parties consent, appoint a mediator to work informally with the applicant, neighboring property owners, and other interested parties to address concerns raised about the proposed Special Permit use. Any party may request mediation. Such mediation may be conducted by any qualified and impartial person acceptable to the parties and the Planning Board. The mediator shall have no power to impose a settlement or bind the parties or the Planning Board, and any settlement reached shall require Planning Board approval to assure compliance with all provisions of this chapter. The cost, if any, of such mediation may be charged to the applicant as part of the cost of project review, with the applicant's written consent. Such cost may also be paid by the Town, or shared by other parties with their written consent.

### **C. Application**

1. Application for a Special Permit shall be made to the Planning Board in the manner prescribed by the Board.
2. If an application is for a parcel or parcels on which more than one use requiring a Special Permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining whether the application is a Major or Minor Project, and for SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.
3. Application for Area Variance  
Notwithstanding any provision of law to the contrary, where a proposed Special Permit contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §121-59F without a decision or determination by the Code Enforcement Official.

### **D. State Environmental Quality Review Act (SEQRA) Compliance**

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to

all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

**E. Referral to County Planning Board and Zoning Board of Appeals**

1. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the County Planning Board any application for a Special Permit affecting real property within 500 feet of the boundary of the Town of Amenia, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

2. No action shall be taken on applications referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Board's review.

3. County Disapproval

A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the County Planning Board before the Planning Board takes action. The Planning Board shall by resolution set forth its reasons for such contrary action.

4. Any Major Project Special Permit application shall be referred to the Zoning Board of Appeals no later than the time of referral to the County Planning Department. The Board of Appeals shall have a maximum of 45 days to review the application and submit written comments to the Planning Board. The Planning Board shall consider the written comments of the Board of Appeals in making its decision on the application. If no comments are received within the 45-day referral period, the Board of Appeals shall be deemed to have waived its right to comment.

**F. Notice and Hearing**

1. If an agricultural data statement has been submitted, the secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

2. The Planning Board shall hold a public hearing on a complete Special Permit application within 62 days of its submission. The Board shall give public notice of such hearing by causing publication of a notice of such hearing in the official newspaper at least five days prior to the date thereof. The Board shall also send notices of the hearing by certified mail to owners of contiguous properties. If the application is for a property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard. The cost of giving all notices shall be charged to the applicant.

3. For all major projects, the applicant shall also be required to post a notice on a sign purchased from the Town Clerk stating that there is a pending application on the property, and providing the date, time, and place of the hearing, the place and times the application may be reviewed by the public, and a telephone number to call for further information. This sign shall be posted in public view in a conspicuous location within three days after the Planning Board establishes a public hearing date, shall be updated if more hearing dates are scheduled, and shall remain in place until the day after the hearing is closed.

**G. Action**

1. The board shall grant, deny, or grant subject to conditions the application for a Special Permit within 62 days after the hearing for a Major Project and within 31 days for a Minor Project. Any decision on a Major Project shall contain written findings explaining the rationale for the decision in light of the standards contained in §121-63 below.
2. In granting a Special Permit, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to §121-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guarantees to insure the completion of the project in accordance with the conditions imposed.
3. Every decision on a Special Permit shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the applicant within the same five-day period.
4. The Special Permit and accompanying Site Plan shall be implemented as provided in §121-68.

**H. Expiration, Revocation, and Enforcement**

1. A Special Permit shall expire if the Special Permit use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary Building Permits or fails to comply with the conditions of the Special Permit within 12 months of its issuance, or if its time limit expires without renewal.
2. A Special Permit may be revoked by the Planning Board if the permittee violates the conditions of the Special Permit or engages in any construction or alteration not authorized by the Special Permit.
3. Any violation of the conditions of a Special Permit shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided in §121-57.

**§121-63 FINDINGS REQUIRED**

In granting or denying Special Permits, the Planning Board shall take into consideration the scale of the proposed project, the possible impact of the proposed project on the functioning of nearby farm operations, and, in rural areas, the tradition of freedom of land use where such use does not interfere with or diminish the value of adjoining property. The Planning Board shall also take account of any proposed conservation easements, architectural restrictions, or other measures that would tend to mitigate potential adverse impacts and preserve or enhance the scenic and historic character of the Town. No special permit shall be granted for any property on which there exists a violation of this chapter, including a violation of any condition of a previous municipal approval, unless the Planning Board finds that the applicant has no legal right or ability to remedy the violation or that the grant of a special permit is necessary to remedy a condition that poses a risk to public health or safety.

**A. Minor Projects**

A Minor Project shall be presumed to be acceptable if it complies with applicable health laws and other specific provisions of this chapter. In order to grant a Minor Project Special Permit, the Planning Board must determine that none of the criteria for Major Projects listed in Subsection B below will be violated. The Planning Board shall deny a Minor Project Special Permit if it determines that one or more of these criteria will be violated.

**B. Major Project Criteria**

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Before granting or denying a Major Project Special Permit, the Planning Board shall make specific written findings establishing whether or not the proposed Major Project:

1. Will comply with all land use district, overlay district, and other specific requirements of this and other chapters and regulations, and will be consistent with the purposes of this chapter and of the land use district in which it is located.
2. Will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.
3. Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.
4. Will be accessible to fire, police, and other emergency vehicles.
5. Will not overload any public water, drainage, or sewer system, or any other municipal facility.
6. Will not materially degrade any watercourse or other natural resource or ecosystem, or endanger the water quality of an aquifer.
7. Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.
8. Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town.
9. Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering non-residential uses that are incompatible with residential use.
10. Will not adversely affect the availability of affordable housing in the Town.
11. Will comply with applicable Site Plan criteria in §121-65D.
12. If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

**§121-64 SPECIAL PERMIT AMENDMENTS**

The terms and conditions of any Special Permit may be amended in the same manner as required for the issuance of a Special Permit, following the criteria and procedures in this section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require Site Plan review only, provided that the use does not change.

**§121-65 SITE PLAN REVIEW AND APPROVAL**

**A. Applicability**

1. Site Plan approval by the Planning Board shall be required for all permitted uses listed on the Use Table as requiring Site Plan approval only. Site Plan review shall be included as an integral part of the Special Permit approval process and no separate Site Plan approval shall be required for uses requiring a Special Permit.
2. The procedures for review of Major and Minor (as defined in Article XII) Site Plans are described in §§121-66 and 121-67. Agricultural structures with a footprint of over 10,000 square feet shall require minor site plan approval. Agricultural structures with a footprint of 10,000 square feet or less are exempt from site plan approval requirements.
3. Site plan approval shall also be required for any development which is the functional equivalent of a land subdivision but which is structured for ownership purposes as a condominium project. In such cases, the Planning Board shall apply all relevant review criteria contained in the Subdivision Law (Chapter 105 of the Town Code) as well as the provisions of this Chapter.

**B. Required Information for Site Plan**

An application for Site Plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the applicant. Minor Project Site Plans shall contain the information required by § 121-67C and other information listed below if the Planning Board deems such information necessary to conduct an informed review. Major Project Site Plans shall be prepared by a licensed professional engineer, architect, or landscape architect, and shall include the following (unless waived):

1. A vicinity map drawn at the scale of 2,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. The map shall also show all properties, subdivisions, streets, and easements within 500 feet of the property. Such a sketch may be superimposed on a United States Geological Survey or New York State Department of Transportation map of the area.
2. An existing conditions map or maps, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use such as rock outcrops, single trees eight or more inches in diameter located within any area where clearing will occur, forest cover, soils (including prime and statewide important agricultural soils), and ponds, lakes, wetlands and watercourses, aquifers, floodplains, and drainage retention areas. Such map or maps shall also show mapped ecological and natural resource information from the report "Significant Habitats in the Town of Amenia, Dutchess County, New York" by Hudsonia Ltd (2006) (hereinafter cited as the "Hudsonia Report").
3. A Site Plan, drawn at a scale and on a sheet size appropriate to the project. The information listed below shall be shown on the Site Plan and continuation sheets. The site plan shall also show all development overlaid on the ecologically significant habitats map in the Hudsonia Report.
4. Name of the project, boundaries, date, north arrow, and scale of the plan. Name and address of the owner of record, developer, and seal of the engineer, architect, or landscape architect. If the applicant is not the record owner, a letter of authorization shall be required from the owner.
5. The location and use of all existing and proposed structures within the property, including all dimensions of height and floor area, all exterior entrances, and all anticipated future additions and alterations.
6. The location of all present and proposed public and private ways, off-street parking areas, driveways, outdoor storage areas, sidewalks, ramps, curbs, paths, landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.
7. The location, height, intensity, and bulb type (sodium, incandescent, etc.) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
8. The location, height, size, materials, and design of all proposed signs.
9. The location of all present and proposed utility systems including:
  - a. Sewage or septic system;
  - b. Water supply system;
  - c. Telephone, cable, and electrical systems; and
  - d. Storm drainage system including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes, and drainage swales.
10. Erosion and sedimentation control plan required by §121-32 to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable.
11. Existing and proposed topography at two-foot contour intervals, or such other contour interval as the Board shall specify. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the 100-year floodplain, the area will be shown, and base flood elevations given. Areas shall be indicated within the proposed site and within 50 feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards.
12. A landscape, planting, and grading plan showing proposed changes to existing features.

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13. Land Use District boundaries within 200 feet of the site's perimeter shall be drawn and identified on the Site Plan, as well as any Overlay Districts that apply to the property.
14. Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and within 100 feet of the site. The Planning Board may, at its discretion, require a detailed traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of §121-40N.
15. For new construction or alterations to any structure, a table containing the following information shall be included:
  - a. Estimated area of structure currently used and intended to be used for particular uses such as retail operation, office, storage, etc.;
  - b. Estimated maximum number of current and future employees;
  - c. Maximum seating capacity, where applicable; and
  - d. Number of parking spaces existing and required for the intended use.
16. Elevations at a scale of one-quarter inch equals one foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.
17. Where appropriate, the Planning Board may request soil logs, percolation test results, and storm run-off calculations.
18. Plans for disposal of construction and demolition waste, either on-site or at an approved disposal facility.
19. Long-form Environmental Assessment Form or Draft Environmental Impact Statement.
20. Where appropriate, a cultural resource survey of resources with historic or archaeological significance.
21. Other information that may be deemed necessary by the Planning Board.

### **C. Waivers**

The Planning Board may waive or allow deferred submission of any of the information required in Subsection B above, as it deems appropriate to the application. Such waivers shall be discussed in the course of pre-application conferences. The Planning Board shall issue a written statement of waivers for all major projects. This statement shall be filed in permanent record of the property.

### **D. Criteria**

In reviewing Site Plans, the Planning Board shall consider the criteria set forth below. The Planning Board shall also consider the three-volume set of illustrated design guidelines published by the Dutchess County Department of Planning in 1994, entitled *Hamlet Design Guidelines*, *Building Form Guidelines*, and *Rural Design Guidelines*, and shall adapt the recommendations of those documents to the requirements of this chapter.

#### **1. Layout and Design**

- a. To the maximum extent practicable, development shall be located to preserve the natural features of the site and to avoid wetland areas, steep slopes, significant wildlife habitats and other areas of environmental sensitivity. The placement and design of buildings and parking facilities shall take advantage of the site's topography, existing vegetation and other pertinent natural features. The Planning Board may require that an applicant prepare a conservation analysis as described in §121-20A of this Chapter.
- b. All structures in the plan shall be integrated with each other and with adjacent structures and shall have convenient access between adjacent uses. Structures shall, where practical, be laid out in the pattern of a traditional hamlet.
- c. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, proportion, texture, color and placement, and shall harmonize with traditional elements in the architectural fabric of the area. Building components such as windows, roof lines and pitch, doors, eaves and parapets shall be compatible with historic structures in the town. Vertical, double-hung windows and steeply pitched roofs are encouraged. Designs shall avoid flat roofs, large

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expanses of undifferentiated facades, and long plain wall sections. Rooftop and ground level mechanical equipment shall be screened from public view using materials harmonious with the building, or shall be located where they are not visible from any public ways.

d. Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

e. The Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.

f. Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of Amenia or the Building Form Guidelines.

g. Impacts on historic and cultural resources shall be minimized.

h. Newly installed utility service systems, and service modifications necessitated by exterior alterations, shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.

2. Landscaping

a. Landscaping shall be an integral part of the entire project area, and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.

b. Landscape plantings of shrubs, ground cover and shade trees, as well as perennials and annuals and other materials such as rocks, water, sculpture, art, walls, fences, paving materials and street furniture, shall be encouraged to create pedestrian scale spaces and to maintain landscape continuity within the community. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of community aesthetic character. This shall be accomplished through the use of native plant material and the retention of existing natural vegetation, thereby reducing or eliminating the need for irrigation, pesticides, herbicides and fertilizers.

c. Existing tree stock eight or more inches in diameter at breast height shall be protected and preserved to the maximum extent possible to retain valuable community natural resources and promote energy conservation by maximizing the cooling and shading effects of trees. The preservation of mature plant species, hedge rows, wetlands and woodlots shall be encouraged and included as a design element in the development of the site.

d. Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forestland or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property.

e. If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall and two-inch caliper shall be planted and maintained at 20- to 40-foot intervals along roads, at a setback distance acceptable to the Highway Superintendent.

f. For landscaping parking lots, see Subsection 121-38A(4)(c).

3. Parking, Circulation, and Loading

a. Roads, driveways, sidewalks, off-street parking, and loading space shall be safe, and shall encourage pedestrian movement.

b. Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.

c. Off-street parking and loading standards in §121-38 shall be satisfied.

d. Access from and egress to public highways shall be approved by the appropriate highway department, including Town, County, and State.

e. All buildings shall be accessible by emergency vehicles.

f. Parking spaces shall have wheel stops or curbs to prevent injury to trees and shrubs planted in landscaped

islands.

g. Bicycle parking spaces and racks shall be provided in an area that does not conflict with vehicular traffic. Designated van/car pool parking, and other facilities for alternatives to single occupancy vehicle use shall be provided wherever possible.

h. In developments where a link to schools, churches, shopping areas, trails, greenbelts and other public facilities is feasible, or where a trail connection is recommended in the Comprehensive Plan or in a Town Open Space Plan, a trail corridor shall be reserved on the approved Site Plan for this purpose.

#### 4. Reservation of Parkland

For any Site Plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to Town Law, §274-a(6).

#### 5. Miscellaneous Standards

a. Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.

b. Exterior lighting fixtures shall be shielded and directed downward to prevent light from shining directly onto neighboring properties or public ways. Light standards shall not exceed 20 feet in height.

c. Drainage of the site shall recharge ground water to the extent practical. The peak rate of surface water flowing off-site shall not increase above pre-development conditions and shall not adversely affect drainage on adjacent properties or public roads.

d. Applicable requirements for proper disposal of construction and demolition waste shall be satisfied, and any necessary permits or agreements for off-site disposal shall be obtained.

e. No materials shall be placed below the finished grade of a site other than utilities, sand, gravel, rocks, and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection (e), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.

f. Structures shall be located, constructed and insulated to prevent on-site noise from interfering with the use of adjacent properties. Similarly, buildings shall be situated to prevent off-site noise from intruding on new development. Methods for blocking noise shall be used where appropriate, and shall include fencing, walls and natural buffers, such as berms and landscape planting with deciduous and coniferous trees and large shrubs.

### **§121-66 PROCEDURE FOR MAJOR PROJECT SITE PLAN APPROVAL**

#### **A. Applicability**

This §121-66 applies to Major Project Site Plan approval applications where no Special Permit is required. See §121-67 for Minor Project Site Plan applications.

#### **B. Pre-application Meetings**

Before filing an application, a preliminary conference with the Code Enforcement Official and one person designated by the Planning Board Chair is required to discuss the nature of the proposed use and to classify it as a Major or Minor Project. If the Code Enforcement Official classifies the project as a Major Project, a preliminary conference with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan.

#### **C. Submission**

All Major Project Site Plans shall be submitted, with multiple copies as required by the Planning Board, to the Code Enforcement Official, who shall distribute them to the Planning Board and such other municipal boards, officials, and consultants as the Planning Board deems appropriate. In addition to the Site Plan drawings, the applicant shall submit:

1. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.

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2. An agricultural data statement as defined in §121-74, if required by §121-37C.
3. The Site Plan application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

**D. Application for Area Variance**

Where a proposed Site Plan contains one or more features which do not comply with the dimensional regulations of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §121-59F without a decision or determination by the Code Enforcement Official.

**E. SEQRA Compliance**

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

**F. Public Hearing and Decision**

1. The Planning Board shall hold a public hearing on the Site Plan and shall follow the provisions on notice, agricultural data statements, county review, and time limits for Special Permits in §§121-62E through G.
2. Criteria for decisions on Site Plans shall be limited to those listed in §121-65D. In granting Site Plan approval, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to §121-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring performance guarantees to insure the completion of the project in accordance with the conditions imposed.
3. A copy of the decision shall be immediately filed in the Town Clerk's office and mailed to the applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the Planning Board Chairman to stamp and sign the Site Plan upon the applicant's compliance with applicable conditions and the submission requirements stated herein.
4. If the Planning Board's resolution includes a requirement that modifications be incorporated in the Site Plan, conformance with these modifications shall be considered a condition of approval. If the Site Plan is disapproved, the Planning Board may recommend further study of the Site Plan and resubmission to the Planning Board after it has been revised or redesigned.

**§121-67 PROCEDURE FOR MINOR PROJECT SITE PLAN APPROVAL**

The procedure for Minor Project Site Plan approval by the Planning Board shall be the same as prescribed in §121-66 for Major Projects, except for the following:

**A.** A short-form Environmental Assessment Form (EAF) will normally be required. If the application is classified as a "Type I" action under the State Environmental Quality Review Act, a long-form EAF shall be required. The Planning Board, at its discretion, may require the long-form Environmental Assessment Form for any application categorized as "unlisted" under SEQRA.

**B.** A Minor Project application fee established by the Town Board shall be paid, and an escrow deposit may be required to cover review costs at the discretion of the Planning Board.

**C.** A minor project site plan application shall contain the following information. For non-agricultural structures, the Planning Board may request additional information listed in §121-65B if the Board deems it essential to conduct an informed review. Minor project site plan application materials may be prepared by a licensed professional engineer, architect, or landscape architect, but the Planning Board shall not require this unless the services of such professionals are necessary to provide accurate information or are otherwise required by law.

1. A sketch of the parcel on a location map (e.g. a tax map) showing boundaries and dimensions of the parcel and identifying contiguous properties that are within 200 feet of the proposed structure and any known easements or rights-of-way and roadways.
2. Existing features of the site lying within 200 feet of the proposed structure, including land and water areas, water or sewer systems, and the approximate location of all structures within 200 feet of the proposed structures.
3. The proposed location and arrangements of structures and uses on the site, including means of ingress and egress, parking, and circulation of traffic.
4. A sketch of any proposed structures (including signs), showing exterior dimensions and elevations of front, side, and rear views; copies of available blueprints, plans, or drawings.
5. A concise description of the project describing the intended use of proposed structures (including signs) and any changes in the existing topography and natural features.
6. The name and address of the applicant and any professional advisors, and the authorization of the owner if the applicant is not the owner.
7. If the parcel contains a stream, wetland, or floodplain, a copy of the floodplain map and wetland map that corresponds with the boundaries of the property.

**D.** No public hearing shall be required for a Minor Project Site Plan. The Planning Board may, in its sole discretion, hold a public hearing following the procedures in §121-66F. If no public hearing is held, the Planning Board shall give notice to the County Planning Board and to farm operators as required in §§121-62E and F and render a decision within 45 days of its receipt of a complete Site Plan application. In order to approve a minor project site plan, the Planning Board must find that the proposal is generally consistent with the criteria in §121-65D and will not adversely affect neighboring properties.

#### **§121-68 IMPLEMENTATION, REVISION, AND ENFORCEMENT OF APPROVED SITE PLANS**

**A.** Within 6 months after receiving approval of a Site Plan, with or without modifications, the applicant shall submit multiple copies of the Site Plan to the Planning Board for stamping and signing. The Site Plan submitted for stamping shall conform strictly to the Site Plan approved by the Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:

1. Record of application for and approval status of all necessary permits from Federal, State, and County officials.
2. Detailed sizing and final material specification of all required improvements.
3. An estimated project construction schedule. If a performance guarantee pursuant to Subsection B is to be provided by the applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.
4. Proof of payment of the Planning Board's reasonable review costs.
5. Upon stamping and signing the Site Plan, the Planning Board shall forward a copy of the approved Site Plan to the Code Enforcement Official, and the applicant. The Code Enforcement Official may then issue a Building Permit or Certificate of Occupancy if the project conforms to all other applicable requirements.

**B. Performance Guarantee**

No Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed, or a sufficient performance guarantee has been posted for improvements not yet completed. The performance guarantee shall be posted in accordance with the procedures specified in § 277 of the Town Law relating to subdivisions. The amount and sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Attorney, Code Enforcement Official, other local officials, and its consultants.

**C. As-built Plans and Inspection of Improvements**

No Certificate of Occupancy shall be granted until the applicant has filed a set of as-built plans with the Code Enforcement Official, indicating any deviations from the approved Site Plan. The Code Enforcement Official shall be responsible for the inspection of site improvements, including coordination with the Town's consultants and other local officials and agencies, as may be appropriate, and shall grant a Certificate of Occupancy upon a finding that the project as built complies in all material respects with the Site Plan. The Code Enforcement Official shall also have the authority to inspect soil mines for compliance with conditions authorized by § 121-17D throughout the life of the mine. Costs of any required inspections may be charged to the applicant as provided in section §121-58.

**D. Site Plan Amendments**

An approved Site Plan may be amended by filing an application with the Planning Board for a Site Plan amendment.

1. If the Planning Board finds that such proposed amendment is consistent with the terms of any applicable Special Permit approval (or if no Special Permit is required) and does not represent a substantial change from the approved Site Plan, it shall grant the amendment without a hearing.
2. If the Planning Board determines that the proposed amendment is consistent with the terms of the applicable Special Permit approval (or if no Special Permit is required), but is a substantial change from the approved Site Plan, it shall follow the procedures for Site Plan approval contained in §121-66F and hold a public hearing if the amendment would be considered to be a Major Project.
3. If the Planning Board determines that the proposed amendment is inconsistent with the terms of any Special Permit approval, it shall consider the application to be one for a Special Permit amendment and proceed pursuant to §121-62.

**E. Expiration, Revocation, and Enforcement**

1. A Site Plan approval shall expire if the applicant fails to commence construction, to obtain the necessary Building Permits, or fails to comply with the conditions of the Site Plan approval within 18 months of its issuance, or if the Special Permit with which it is associated expires. The Planning Board may grant a one-time six-month extension.
2. A Site Plan approval may be revoked by the Planning Board that approved it if the permittee violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
3. Any violation of the conditions of a Site Plan approval shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided herein.

## **ARTICLE X AMENDMENTS**

### **§121-69 AMENDMENTS**

#### **A. Initiation**

The Town Board, from time to time, upon its own motion or upon application by one or more property owners, or resolution of the Planning Board or Zoning Board of Appeals, may amend this chapter as provided herein. A property owner or authorized agent may apply for amendment to this chapter by filing three complete sets of a petition with the Town Board, and two complete sets with the Planning Board. The Town Board shall be under no obligation to consider or review a petition for a zoning amendment. The petition shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee. In the case of a proposed amendment which would apply only to properties which are not immediately identifiable or to a class of properties including six or more identifiable properties, no properties need be identified as affected.

#### **B. Review by Planning Agencies**

As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town Planning Board and to the County Planning Department as required by § 239-1 and 239-m of the General Municipal Law.

##### **1. Referral to County Planning Department**

No action shall be taken to approve a proposed zoning amendment referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Department's review.

##### **2. Referral to Town Planning Board**

Every proposed amendment or change initiated by the Town Board or by petition (but not if initiated by the Planning Board), shall be referred to the Town Planning Board for report thereon prior to public hearing. If the Planning Board does not report within 30 days of such referral, the Town Board may take action without the Planning Board report. This period of time may be extended by agreement of the Town Board and Planning Board.

#### **C. Public Hearing and Notice**

No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. If the Town Board chooses to consider a proposed zoning amendment, it shall, by resolution at a duly called meeting, set the time and place for a public hearing on the proposed amendment, and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities, if necessary.

##### **1. Publication of Notice in Newspaper**

Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.

##### **2. Notice to Adjacent Municipalities**

Written notice of any proposed amendment affecting property lying within 500 feet of an adjacent town shall be

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served in person or by mail upon the Clerk of such municipality at least 10 days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon, but shall not have the right to review by a court.

**D. Adoption**

The Town Board may adopt amendments to this chapter by a majority vote of its membership, except in the case of local protest or disapproval by the County Planning Board as noted below.

1. Local Protest

The favorable vote of three-fourths (i.e., four) of the Town Board members shall be required for passage of any amendment which is subject to a written protest signed by the owners of 20% or more of the land in any of the following areas:

- a. The land area included in the proposed amendment.
- b. The land area immediately adjacent to the area proposed to be changed and extending 100 feet therefrom.
- c. The land area directly opposite the area proposed to be changed and extending 100 feet from the road frontage of such opposite land.

2. County Disapproval

A majority-plus-one vote of all Town Board members shall be required to pass any proposal which receives a recommendation of disapproval from the County Planning Board prior to Town Board action, along with a resolution setting forth the reasons for such contrary action.

**E. Effective Date**

Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

**ARTICLE XI MISCELLANEOUS PROVISIONS**

**§121-70 SEVERABILITY**

If any provision of this chapter or the application thereof to any person, property, or circumstances is held to be invalid, the remainder of this chapter and the application of each provision to other persons, property, or circumstances shall not be affected thereby.

**§121-71 CONFLICT WITH STATE LAWS**

To the extent that any provisions of this chapter are inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, §§261 through 268, 274-a through 281, the Town Board of the Town of Amenia hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under Municipal Home Rule Law, Article 2, §10, et seq. of the Consolidated Laws of the State of New York. In particular, to the extent that Article V may be inconsistent with §278 of the Town Law, the Town Board hereby declares its intent to supersede §278.

**§121-72 EFFECTIVE DATE**

This chapter shall take effect upon filing with the New York State Secretary of State.

## ARTICLE XII DEFINITIONS

### §121-73 USE OF WORDS

A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. The word *shall* is always mandatory. The word *may* is permissive. *Building* or *structure* includes any part thereof. The word *lot* includes the word *plot* or *parcel*. The word *person* includes an individual person, a firm, a corporation, a partnership, and any other agency of voluntary action. The word *he* shall include *she* or *they*. The phrase *used for* includes *arranged for, designed for, intended for, maintained for, and occupied for*.

B. In §121-74, where two words are separated by a slash mark (/), they shall have the same meaning.

### §121-74 DEFINITIONS OF TERMS

**Accessory Apartment:** A dwelling unit occupying the lesser of 1,000 square feet or 30% of the floor space of an owner-occupied structure containing a principal use that is single-family residential or non-residential, or a dwelling unit no larger than 1,000 square feet located in an accessory structure on an owner-occupied property.

**Accessory Structure:** A structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use, including accessory apartments.

**Accessory Use:** A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.

**Adult Use:** A bookstore, video store, nightclub, movie theatre, retail store, or other establishment which prominently features entertainment or materials with sexually explicit content. An establishment which sells such materials as an incidental part of its business or which presents such material or entertainment primarily as a form of legitimate artistic expression shall not be considered an adult use.

**Agricultural Data Statement:** An identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which a subdivision is proposed, as provided in § 305-a of the Agriculture and Markets Law. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed Project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the Project is proposed; and a tax map or other map showing the site of the proposed Project relative to the location of farm operations identified in the agricultural data statement.

**Agriculture:** The commercial use of land and structures for the production, preservation, nonindustrial processing, storage and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry or dairy products, not including agricultural industry or farms primarily for the disposal of offal or garbage. Commercial horse boarding operations, as defined herein, and the raising or breeding of horses are agricultural uses, distinguished from the business use of teaching or training people to ride a horse. (See "Riding Academy.") A produce sales facility not exceeding 800 square feet in footprint area and a riding academy operated in conjunction with a farm operation (as defined herein) shall be deemed to be agricultural accessory uses. Agricultural activities on residential parcels of less than seven acres shall be deemed to be not agriculture, but a residential accessory use.

**Alteration:** As applied to a structure, a change to or rearrangement of the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

**Applicant:** Any person, corporation, or other entity applying for a Building Permit, Certificate of Occupancy, Special Permit, Site Plan or subdivision approval, variance, or zoning amendment.

**Assisted Living Facility:** A residential care facility providing residential units accompanied by services for housekeeping, personal care, recreation, and food.

**Automobile Service Station:** Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning, servicing, or repairing such motor vehicles, including auto body shops.

**Bed and Breakfast:** A dwelling in which overnight accommodations not exceeding five bedrooms and breakfast are provided for transient guests for compensation. A bed and breakfast must be the primary residence of the owner/proprietor.

**Buildable Land:** That portion of a lot which is suitable for building structures and locating septic disposal facilities, i.e. all land excluding wetlands and watercourses, slopes exceeding 30%, and flood hazard areas as mapped on the Federal Emergency Management Agency's Flood Insurance Rate Map.

**Building:** A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

**Building Height:** The vertical distance measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck line of mansard roof; and to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

**Building, Principal:** A building or structure in which is conducted the main or principal use of the lot on which it is located.

**Camp:** Any area of land containing recreation facilities as well as more than four cabins, tent sites, recreational travel vehicles, shelters, or accommodations used for what is commonly known as "overnight camp" or "day camp" purposes, or otherwise designed for seasonal or other temporary recreational and living purposes occupied by adults, children, or any combination of individuals, families, or groups. This definition shall not apply to the recreational use of private property for personal use by owners, lessees, or their guests, which shall be considered to be an accessory use to a residence or a recreational business.

**Cemetery:** Land used or intended to be used for the burial of dead human beings and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

**Change of Use:** The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category on the Use Table, shall not be considered a change of use. See §121-10F.

**Charitable Organization:** A not-for-profit corporation or association organized for charitable purposes including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

**Clearcutting:** Any cutting of all or substantially all trees over six inches in diameter at breast height over more than 2000 square feet of land area.

**Club, Membership:** Premises used by an organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes, including shooting preserves licensed pursuant to ECL §11-1903 that are organized as membership clubs.

**Code Enforcement Official:** The Town official charged with the administration and enforcement of this chapter and/or Chapter 63, entitled "Fire Prevention and Building Code Administration," of the Amenia Town Code, regardless of whether or not such official has obtained certification from New York State as a Code Enforcement Officer in connection with Building Code enforcement. In this Chapter, the Code Enforcement Official is also referred to as the Zoning Administrator or Building Inspector, depending upon the context. The enforcement of this Zoning Law is the responsibility of the Zoning Administrator, who shall review all building permit applications for compliance with this Chapter. The Building Inspector is charged with enforcing Chapter 63 of the Amenia Town Code.

**Collocation:** The addition of commercial communications equipment to any existing or approved telecommunications tower or tall structure by any persons, corporations, firms, associations or entities.

**Common Driveway:** A driveway serving no more than four lots, owned in common or created by reciprocal easements.

**Complete Application:** An application for a Special Permit, Site Plan, or subdivision approval, zoning amendment, or variance, found by the reviewing board to satisfy all information requirements of this chapter and of the New York State Environmental Quality Review Act, for which either a Negative Declaration has been issued or a Draft Environmental Impact Statement has been accepted as satisfactory pursuant to 6 NYCRR § 617.8(b)(1).

**Comprehensive Plan:** The Comprehensive Plan or Master Plan adopted by the Town Board for the future preservation and development of the Town of Amenia pursuant to § 272-a of the Town Law, including any part of such plan separately adopted and any update or amendment to such plan.

**Condominium:** A system of ownership of dwelling units, either attached or detached, established pursuant to the Condominium Act of the State of New York (Art. 9-B of the Real Property Law) , in which the apartments or dwelling units are individually owned.

**Conformity/Conforming:** Complying with the use, density, dimensional, and other standards of this chapter, or permitted to deviate therefrom by Special Permit, Site Plan approval, or variance.

**Conservation Easement:** A perpetual restriction on the use of land, created in accordance with the provisions of Article 49, Title 3 of the Environmental Conservation Law or § 247 of the General Municipal Law, for the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

**Conventional Subdivision:** A land subdivision that complies with the minimum lot size requirements shown on the Dimensional Table and does not set aside land as permanently protected open space.

**Construction Trailer:** A mobile home unit used for non-residential purposes associated with on-site construction.

**Corner Lot:** See *Lot, Corner*.

**Craft Workshop:** A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving. A craft workshop with more than six regular full-time equivalent employees or other staff is considered to be “light industry.”

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as clear-cutting mining, dredging, filling, paving, excavations, or drilling operations.

**Driveway:** A private way providing vehicular access from a public or private road to a residence or to a commercial or non-commercial establishment.

**Dwelling:** A building designed or used exclusively as living quarters for one or more families.

**Dwelling, Multi-family:** A building containing separate living units for three or more families, including apartment buildings, rowhouses, townhouses, regardless of the form of ownership (condominium, fee simple, rental).

**Dwelling, Single-family:** A detached building designed for the use of one family, in which not more than three boarders are sheltered and/or fed for compensation.

**Dwelling, Two-family:** A detached building containing two dwelling units.

**Dwelling Unit:** A building or portion thereof providing complete housekeeping facilities for one family.

**Equipment Shelter:** An enclosed structure, cabinet, shed or box at the base of the mount within which are housed the electronic receiving and relay equipment for a wireless telecommunications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage or broadcast studios.

**Erosion:** The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

**Family:** One or more persons living together as a single nonprofit housekeeping unit, using all rooms and housekeeping facilities of a dwelling unit in common and doing their cooking on the premises, as distinguished from a group occupying a boardinghouse or rooming house or lodging facility.

**Farm Operation:** Land used in agricultural production, farm buildings, equipment, and farm residential buildings.

**Fence:** A hedge, structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

**Floodplain/One-hundred-year Floodplain:** Land subject to a one-percent or greater chance of flooding in any given years, shown on the Zoning Map as the FPO district.

**Floor Space:** The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, including habitable finished basements but excluding cellars or unfinished basements.

**Footprint:** Area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered by roofing. In the case of party-wall buildings, each unit shall be considered a separate structure for purposes of measuring footprint area.

**Forestry:** Use or management, including commercial logging, of a forest, woodland, or tree plantation, and related research and educational activities, including the construction, alteration, or maintenance of roads, skidways, landings, fences, forest drainage systems, barns, sheds, garages, and research, educational, or administrative buildings or cabins directly and customarily associated with forestry use.

**Front:** The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

**Gazebo:** An unenclosed structure not exceeding 12 feet in height without solid walls, screens, electricity, or plumbing.

**Glare:** Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

**Grading:** Any excavation, alteration of land contours, grubbing, filling, or stockpiling of earth materials.

**Hazardous Substance/Material:** Includes any of the following:

- Petroleum
- Any substance or combination of substances designated as a hazardous substance under § 311 of the Federal Water Pollution Control Act (33 USC 1321)
- Any substance listed by the NYS DEC which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

**Hazardous Waste:** All materials or chemicals listed as hazardous wastes pursuant to article twenty-seven of the Environmental Conservation Law (ECL), and all toxic pollutants as defined in subdivision nineteen of § 17-0105 of the ECL.

**Health Care Facility:** A hospital, nursing home, medical clinic, or office building for four or more doctors and other medical personnel.

**Heavy Industry:** Manufacture, assembly, treatment, processing, or packaging of products in a manner that emits or is likely to emit objectionable levels of smoke, noise, dust, odor, glare, water pollution, or vibration beyond the property boundaries.

**Home Occupation:** An occupation, trade, profession, or other business activity resulting in a product or service for compensation, conducted wholly or partly in a dwelling unit or accessory structure.

**Hotel:** See *Lodging Facility*.

**Hotel-Condominium:** A lodging facility or a set of dwelling units used as lodging for transient occupancy and/or as part-time residences by owners, renters, or lodgers, whether in condominium, time-share, fractional, fee simple, single-owner, cooperative, or any other form of ownership. For purposes of this definition, (1) "transient occupancy" shall mean that the lodging facility and/or dwelling units are not occupied by any occupant for more than 48 days in any calendar year nor more than 15 continuous days; and (2) "part-time residences" shall mean that the lodging facility

and/or dwelling units are not occupied by any occupant for more than 120 days in any calendar year nor more than 30 continuous days. For purposes of enforcement of these occupancy limitations, the Town may, in its discretion, require that compliance be established by annual certification provided by the owners of such units, the manager thereof, or any condominium or similar association for such units.

**Impervious/Impervious Surface:** Any roofed or other solid structure or material covering the ground through which water does not readily penetrate, including, but not limited to concrete, oil and stone, tar or asphalt pavement, or compacted soil or gravel. Regardless of the construction materials, any area which is used for driveway or parking purposes, including disturbed grass, ground cover, or dirt, shall be considered impervious. A deck with spaced boards at least 1/8 inch apart, a swimming pool surface, and a patio with a permeable paving system shall not be considered impervious.

**Impervious/Impervious Surface Coverage:** The ratio between impervious surface and total land area of a lot expressed as the percentage of land covered by impervious surfaces.

**Interior Road:** A road constructed off of an existing public street that provides access to the interior of a parcel.

**Junk:** Any worn-out, cast-off, discarded, or neglected article or material which is ready for destruction or has been collected or stored for salvage, sale, or conversion to another use. Junk does not include any article or material which unaltered or unchanged and without further reconditioning can be used for its original purposes as readily as when new, or any article stored for restoration or display as part of a bona fide hobby (such as antique automobiles, antique farm machinery, antique engines, special interest automobiles, etc.).

**Junk Car:** Any vehicle not operable on the public highway system, unless such vehicle is an antique or special interest automobile stored for restoration and/or display as part of a bona fide hobby.

**Junkyard:** The use of land outside a fully enclosed structure for the storage or collection of junk or junk cars.

**Kennel:** Any establishment, including cages, dog runs and structures wherein more than four dogs which are over six months of age are harbored, bred or boarded producing a gross income of \$150 or more annually.

**Light Industry:** Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

**Lodging Facility:** Any hotel, motel, inn, hotel-condominium, or other establishment providing sleeping accommodations for transient occupants, with or without a dining room or restaurant, excluding bed and breakfast establishments.

**Lot/Parcel:** An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established either by the filing of an approved subdivision plat or by the recording of a deed prior to the adoption of Subdivision Regulations of the Town of Amenia on June 17, 1968.

**Lot, Corner:** A lot at the junction of and abutting on two or more intersecting roads.

**Lot Lines:** The property lines that bound a lot as defined herein.

**Lot of Record:** Any lot which has been established as such by plat, survey record, or deed prior to the date of this chapter as shown on the records in the Office of the County Clerk.

**Lot, Rear:** A lot on which the buildable area is located generally to the rear of other lots having frontage on the same road as such lot, and having access to the road via a strip of land that does not have the minimum road frontage ordinarily required in the land use district.

**Lot, Through:** A lot which faces on two streets at opposite ends of the lot, which is not a corner lot.

**Major Project:** A proposed use that requires a Special Permit or Site Plan approval and that exceeds any of the thresholds for a Minor Project. See Section 121-61.

**Membership Club:** See *Club, Membership*.

**Minor Project:** A use or combination of uses on a lot or a series of adjoining lots that requires either Site Plan review or a Special Permit and that, over a three-year period, falls within the following thresholds:

1. Construction of four multi-family dwelling units or a lodging facility with six bedrooms.
2. Construction of facilities or structures for a non-residential use covering 3,000 square feet of building footprint.
3. Alteration of existing structures or expansion of such structures by 1,000 square feet.

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4. Conversion of existing structures totaling 5,000 square feet to another use.
5. Alteration and active use of 10,000 square feet of land, with or without structures (excluding soil mining).
6. Soil mining that does not require a DEC permit.
7. Construction of a structure that is 80 feet or higher above average grade level.

**Mixed Use:** Any combination of residential, commercial, or industrial uses on the same lot or in the same building.

**Mobile Home:** A transportable living unit used or designed to be used year round as a permanent residence and containing the same types of water supply, waste disposal, and electrical systems as immobile housing. Recreational vehicles designed to be driven or towed by an automobile or pickup truck, units designed for use principally as a temporary residence, or prefabricated, modular, or sectionalized houses transported to and completed on a site are not considered to be mobile homes.

**Mobile Home Park:** Any court, park, place, lot, or parcel under single ownership which is improved for the placement of two or more mobile homes to be used as permanent residences.

**Multi-family Dwelling:** See *Dwelling, Multi-family*.

**Municipal Use:** Any use conducted by the Town of Amenia or any department or agency of the Town of Amenia, or any School District within the Town of Amenia.

**Non-conforming Structure:** A structure which does not satisfy the dimensional requirements of this chapter for the district in which it is located, but which was not in violation of applicable requirements when constructed.

**Non-conforming Lot:** A lot of record which does not comply with the area, shape, frontage, or locational provisions of this chapter for the district in which it is located.

**Non-conforming Use:** Any use lawfully existing prior to and at the time of the adoption or amendment of this chapter or any preceding zoning law or ordinance, which use is not permitted by or does not conform with the permitted use provisions of this chapter for the district in which it is located. A pre-existing lawful use which is allowed only by Special Permit under this chapter shall be considered a conforming use. (See Article VI.)

**Office:** A business, professional, or non-profit workplace in which manufacturing processes, retail sales, construction, and warehousing do not occur on the premises, including but not limited to professional offices for attorneys, accountants health care practitioners, architects, engineers, surveyors, consultants, sales representatives, real estate brokers, and financial planners . Office also includes business offices that support or manage manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted.

**Official Newspaper:** The newspaper or newspapers designated by the Town for the publication of official notices of meetings and public hearings.

**One-hundred-year (100-year) Floodplain:** See *Floodplain*.

**Open Space:** An area of land not developed with structures. (*Permanent Open Space* is defined and discussed in §121-20.)

**Open Space Development:** A type of development that gives landowners a variety of development options and results in the permanent preservation of open space land. Open Space Development includes the following options, which are described in §121-19: conservation subdivision, transfer of development rights, limited development subdivision, and flag lots.

**Outdoor Storage Area:** Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

**Overlay District:** A type of zoning district or zone that supplements the zoning regulations of the underlying land use district or districts to provide additional protection of important environmental resources and/or to permit certain types of economically productive uses that would not otherwise be allowed in a particular land use district. Overlay districts may overlap different land use districts, but they do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this Chapter.

**Petroleum:** Oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

**Plat:** A map or plan submitted to the Planning Board as part of an application for subdivision approval (see

Subdivision Law).

**Plot Plan:** A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions, and submitted with an application for a Minor Project Special Permit or a variance.

**Premises:** A lot, together with all the structures and uses thereon.

**Principal Building:** See *Building, Principal*.

**Private Road:** A privately owned road held in common ownership or easement by a homeowners' association.

**Public Utility Facility:** An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high voltage transmission lines, pump stations, water supply wells, water towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

**Publicly Accessible Place:** Any land or structure that is open to the general public, such as a public road, park, public school, recreation area, conservation area, or place of public accommodation such as a restaurant or hotel, excluding private retail and service businesses, offices, and other private property which is open to the public.

**Radioactive Material:** Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials whose receipt, possession, use and transfer are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or United States Nuclear Regulatory Commission.

**Radiation:** Ionizing radiation; that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

**Rear Lot:** See *Lot, Rear*.

**Recreational Business:** A business which, for compensation, offers recreational services including but not limited to fishing preserves, golf courses and driving ranges, miniature golf, movie theaters, and other places of public or private entertainment. A recreational business may provide up to four sites for camping or other transient overnight occupancy in connection with the recreational use.

**Religious Institution:** A church, synagogue, mosque, temple or other place of religious worship, as well as a monastery or other place of religious retreat.

**Residential Care Facility:** Any building used as a group residence or extended care facility for the care of persons, including assisted living facilities and nursing homes, where compensation and/or reimbursement of costs is paid to an operator, pursuant to State or Federal standards, licensing requirements, or programs funding residential care services.

**Residential Districts:** The Suburban Residential, Hamlet Residential, Rural, and Resource Conservation Districts.

**Residential Unit:** See *Dwelling Unit*.

**Residential Use:** A use of land and structures in which people live and sleep overnight on a regular basis.

**Retail Business:** An establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, convenience store, and variety store.

**Reviewing Board or Official:** The board that grants a Special Permit, Site Plan, variance, subdivision approval, or zoning amendment, or the Code Enforcement Official reviewing a building permit or zoning permit application.

**Riding Academy:** Any establishment where more than four horses are kept for riding, driving, horseback riding lessons, or stabling for compensation, or incidental to the operation of any club, association, resort, riding school, ranch, or similar establishment. A Riding Academy operated in conjunction with a farm operation shall be deemed to be an agricultural accessory use.

**Restaurant:** An establishment where prepared food is sold for consumption on the premises or as take-out, including a bar or pub or other establishment that sells food and alcoholic beverages for on-premises consumption.

**Road Frontage:** The distance along a street line measured at the front of a lot.

**Road/Street:** A public or private way for pedestrian and vehicular traffic, including avenue, lane, highway, or other way, excluding a driveway or common driveway.

**Screen/Screening:** The location of structures in such a manner that they are not visible (as defined herein) from a public road or any other public place during the summer months, and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

**Service Business:** A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, automobile service station, vehicle repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, offices, or other uses separately listed in the Use Table. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered a retail business.

**Service Road:** A local road running generally parallel to a through road, providing vehicular access points for individual lots, constructed to reduce the number of access points on the through road.

**Setback:** The distance in feet between a structure and a property line, the centerline of a road, or an identified natural feature such as a watercourse.

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

**Sign Area:** The total area on each side of a sign within which all written and graphic material is contained.

**Sign, Commercial:** A sign advertising a product, use, service, or activity sold or conducted for private financial gain.

**Sign, Freestanding:** A sign and sign-support structure not attached to or part of a building.

**Sign, Illuminated:** A sign lighted by electricity, gas, or other artificial light, including reflective or phosphorescent light, paint, or tape.

**Sign, Interior:** A sign located within the exterior walls of a building which is readily readable from outside the building through a window, door, or other opening.

**Sign, Internally Illuminated:** An illuminated sign that is made of translucent material with internal artificial lighting.

**Sign, Projecting:** Any sign which extends from the exterior of any building more than nine inches.

**Single-family Dwelling:** See *Dwelling, Single-family*.

**Soil Mining:** Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in §23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which a zoning permit has been issued.

**Solid Waste:** All putrescent and non-putrescent materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form, and being those wastes defined as solid waste in 6 NYCRR Part 360-1.2. Any solid waste which receives a Beneficial Use Determination (BUD) from the NYS DEC is still considered a solid waste for the purposes of these regulations.

**Solid Waste Management Facility:** Any facility employed to manage or process solid waste beyond the initial waste collection process including, but not limited to, transfer stations, bailing facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolysis of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities, as defined in 6 NYCRR Part 360-1.2.

**Strip Commercial Development:** The layout of a commercial use or uses in separated structures more than 50 feet apart along a highway, with parking, gasoline pumps, or other drive-up facilities located between the highway and the

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commercial building(s), where such parking or drive-ups are visible from the road.

**Structure:** A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin, or wall.

**Tall Structure:** A structure which complies with the requirements of this chapter and is of sufficient height to be used as a telecommunications tower. Such structures include, but are not limited to, water towers, multistory buildings, church steeples and farm silos. (See Section 121-46C.)

**Telecommunications Tower:** Any structure owned or operated for commercial purposes which is capable of receiving and/or transmitting signals for the purpose of communication.

**Telecommunications Facilities:** Any commercial structures, buildings, sheds, huts, equipment enclosures, emergency generators, generator buildings and other such structures used in support of or as an ancillary use to a telecommunications tower.

**This Chapter:** See *Zoning Law*.

**Timber Harvesting:** The cutting, removal, or harvesting of timber or trees for the purpose of selling or milling such timber or trees, excluding the cutting of trees for the personal use of the landowner.

**Town Law:** The Town Law of the State of New York, Chapter 62 of the Consolidated Laws.

**Two-family Dwelling:** See *Dwelling, Two-family*.

**Use:** The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on a premises.

**Use, Accessory:** A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

**Use, Change of:** See *Change of Use*.

**Variance, Area:** The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**Variance, Use:** The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. An increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by Special Permit.

**Visible/Visibility:** Able to be seen by a person of average height and with normal vision on a clear day.

**Warehouse:** A structure or structures in which materials, goods, or equipment are stored, including mini-storage and self-storage facilities.

**Watercourse:** Any stream, pond, lake, drainage channel, or other area of land that is normally or seasonally filled with water. Road ditches and shallow land depressions generally referred to as grassed waterways, swales, etc. that carry water only immediately (a few to several hours) after a runoff producing event are not considered a watercourse.

**Wetland:** An area of land greater than 10,000 square feet that is characterized by hydrophytic vegetation, saturated soils, or periodic inundation which is classified as a wetland by either the New York State Department of Environmental Conservation or the U.S. Army Corps of Engineers, or which would be so classified if it met size thresholds established by these agencies. See §121-35.

**Wind Energy Conversion System:** A mechanized system which converts wind energy into electrical or mechanical power.

**Workforce Housing:** Single-family, two-family, or multi-family housing that is owned or rented by an eligible household, as defined in §121-42, and priced to be affordable to moderate income households whose members live and/or work in the Town of Amenia and who cannot otherwise afford market-rate housing. See §121-42.

**Yard:** An open space on the same lot with a structure.

**Yard, Front:** An open space extending across the full width of the lot between the front of the principal building and the street line.

**Yard, Rear:** An open space extending across the full width of the lot between the rear lot line and the wall of the principal building nearest the rear lot line.

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**Yard, Required/Setback Area:** That portion of any yard required to satisfy minimum setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

**Yard, Side:** An open space between a principal building and side line of the lot and extending from the front yard to the rear yard.

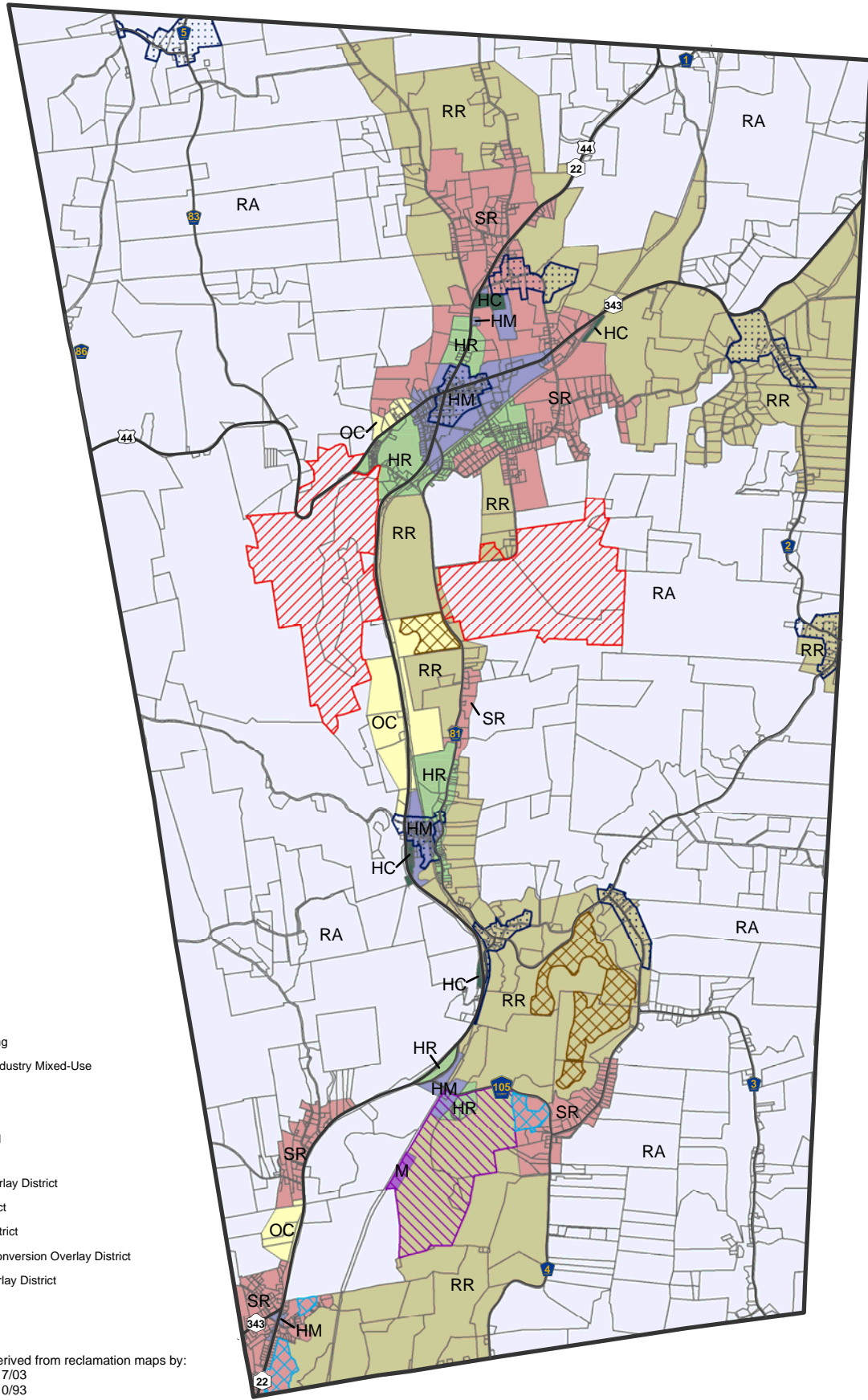
**Zoning Law/This Chapter:** The officially adopted Zoning Law of the Town of Amenia, together with any and all amendments thereto.

**Zoning Permit:** A permit issued by the Code Enforcement Official, which is required for uses allowed by right that do not involve construction that requires a building permit. See §121-54.

# Town of Amenia

## Land Use and Development Overlay Districts Zoning Map

Prepared By Dutchess County Department of Planning & Development  
Adopted Date: July 19, 2007



**Legend**

**Zoning Districts**

- HC Highway Commercial
- HM Hamlet Mixed-Use
- HR Hamlet Residential
- M Industrial/Manufacturing
- OC Office/Commercial/Industry Mixed-Use
- RA Rural Agricultural
- RR Rural Residential
- SR Suburban Residential

**Overlay Districts**

- Historic Preservation Overlay District
- Soil Mining Overlay District
- Mobile Home Overlay District
- Mixed Use Institutional Conversion Overlay District
- Resort Development Overlay District
- Parcel Boundaries

Soil Mining Overlay Districts derived from reclamation maps by:  
Roy T Budnik & Assoc. Inc, 6/17/03  
Roy T Budnik & Assoc. Inc, 8/10/93  
H2H Associates LLC

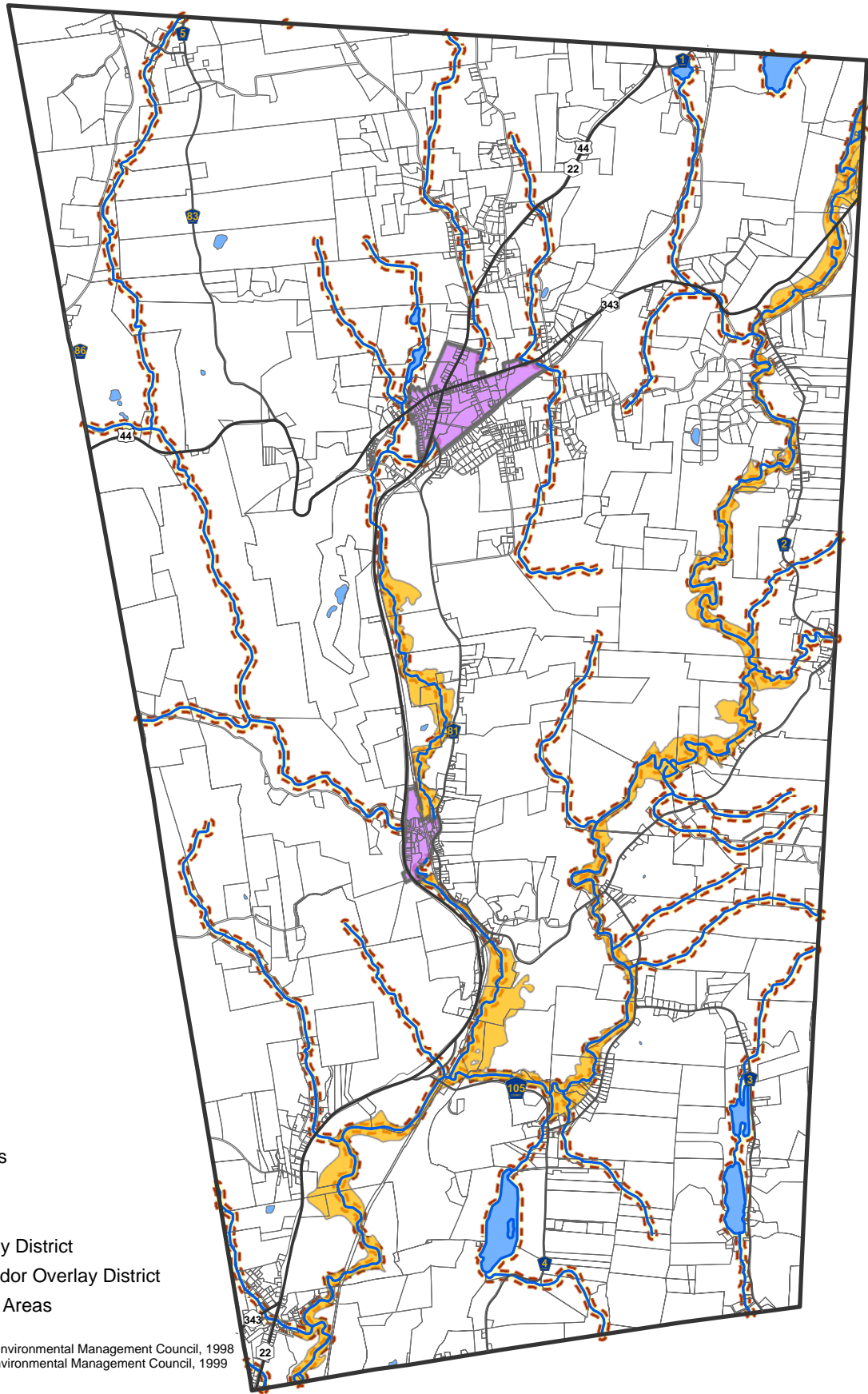


Not To Scale

# Town of Amenia

## Hydrological Overlay Districts

Prepared By Dutchess County Department of Planning & Development  
Adopted Date: July 19, 2007



### Legend

- Parcel Boundaries
- Streams
- Water Bodies
- Floodplain Overlay District
- 150' Stream Corridor Overlay District
- Hamlet Exclusion Areas

Minor Streams- Dutchess County Environmental Management Council, 1998  
Water Bodies- Dutchess County Environmental Management Council, 1999  
Floodplains- FEMA Q3 Data, 1996

For Discussion Purposes Only Subject to Field Verification

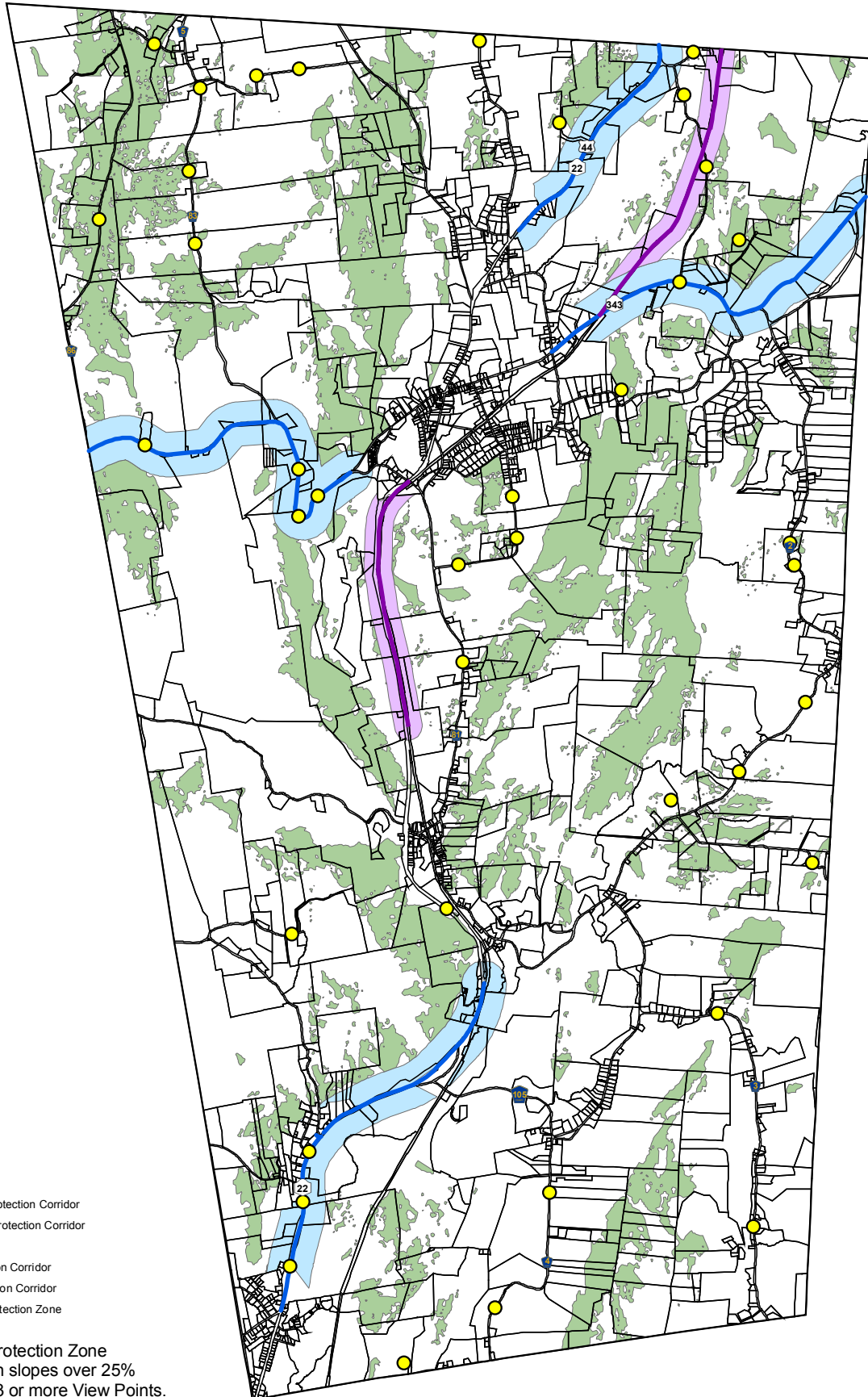


Not To Scale

# Town of Amenia

## Scenic Protection Overlay District

Prepared by: Dutchess County Department of Planning & Development  
Adopted Date: July 19, 2007



- Legend**
- View Points
  - Trails with Visual Protection Corridor
  - Roads with Visual Protection Corridor
  - ▭ Parcels
  - Trail Visual Protection Corridor
  - Road Visual Protection Corridor
  - ▭ Ridgeline Visual Protection Zone

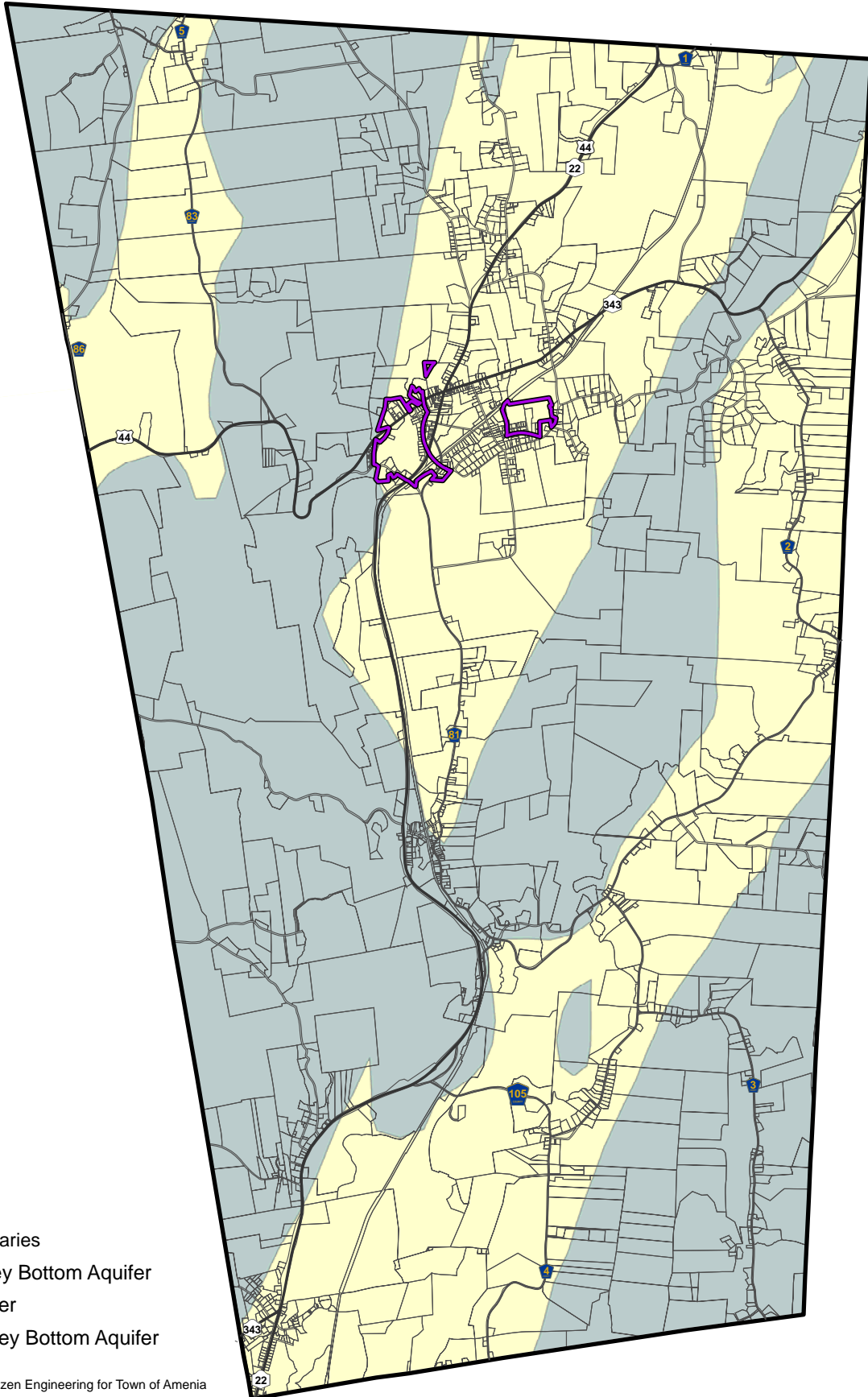
Ridgeline Visual Protection Zone includes areas with slopes over 25% and visibility from 3 or more View Points.







# Town of Amenia

## Aquifer Overlay District

Prepared By Dutchess County Department of Planning & Development  
Adopted Date: July 19, 2007



### Legend

-  Parcel Boundaries
-  Primary Valley Bottom Aquifer
-  Upland Aquifer
-  Buffered Valley Bottom Aquifer

Aquifer data developed by Chazen Engineering for Town of Amenia



Not To Scale