

June 2008

This is a WORKING DRAFT for Section 59 (Zoning Ordinance) of the Village of Nyack Code prepared by the Nyack Zoning Code Revision Committee composed of present and past members of Land Use Boards and representatives of the Trustees. The objective of the revision is to have the zoning code support the objectives of the Nyack's Comprehensive Master Plan, which was adopted on January 11, 2007. We make this working draft available now for public review and comment so that the Final Draft that is to be formally reviewed and analyzed by the Planning Board, Village Board, the County of Rockland, the public and other interested parties is as inclusive and complete as possible.

Please note: this public review process will not take the place of the formal public review process including the review of the proposed amended Code under the New York State General Municipal Law and the State Environmental Conservation Law ("SEQRA") that will occur sometime in the fall of 2008

We encourage all interested persons to comment now---and then again during the formal public hearing process. All of the comments received by the Committee during this informal public review will be evaluated before the Zoning Code Revision Committee submits a final Draft to the Planning Board and Village Board for consideration for enactment. EACH and EVERY comment received by the Committee, whether incorporated or not in the final draft, will be appended to the draft for the Village Board's review and consideration.

All comments must be received by the Building Department, in writing, by August 1, 2008. It would be appreciated if the comments were accompanied by your name and your address. You may address correspondence related to this working draft to:

Nyack Zoning Code Revision Committee  
Building Department,  
Nyack Village Hall,  
9 North Broadway  
Nyack, New York 10960

Or email them to [buildingdepartment@nyack.org](mailto:buildingdepartment@nyack.org) with the subject: Code Revision Committee

# Village of Nyack Zoning Ordinance

## WORKING DRAFT FOR COMMENT June 2008

Need to repeal the following:

Chapter 11, Building Line

Chapter 20, Fences

Chapter 50, Subdivision of Land

Chapter 54, Trees

Chapter 59

Need to Revised Stormwater Management, Chapter 47 so that it relates to new Section 59-4.12.

Need to move Section 59-29.1, Affordable Housing, to a Chapter outside of Chapter 59 and revise to reflect the new zoning districts.

**Prepared by:**

**Village of Nyack Zoning Code Revision Committee**

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**Appendix A: ZONING MAP**

**Appendix B: VIEW PROTECTION CORRIDORS OVERLAY MAP** [altered to add Cedar Hill Avenue]



## **ARTICLE 1: GENERAL PROVISIONS**

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This Article provides general provisions related to the administration of the Zoning Ordinance applicable to all properties in the Village of Nyack.

### **§59-1.1. TITLE**

This chapter is officially known, cited and referred to as the "Local Zoning and Planning Law of the Village of Nyack, New York." It is referred to throughout this document as the "Zoning Ordinance" and "this chapter."

### **§59-1.2. AUTHORITY**

This chapter is a local law establishing zoning and planning regulations for the Village of Nyack and providing for the administration and enactment of those regulations, pursuant to §7-700 of the Village Law of the State of New York, as amended. This chapter has been adopted and enacted by the Village Board of Trustees of the Village of Nyack, by virtue of the power and authority vested in it by law.

### **§59-1.3. APPLICABILITY**

The regulations of this chapter apply to all development, public or private, within the limits of the Village of Nyack, unless otherwise expressly exempted or provided in this chapter.

### **§59-1.4. PURPOSE AND INTENT**

This Village of Nyack has adopted this chapter for the purposes set forth in §7-700 of the Village Law of the State of New York, which, in the interest of the protection and promotion of the public health, safety and welfare, shall be deemed to specifically include the following, among others:

- A. Implement adopted plans, including the Nyack Comprehensive Master Plan (CMP).
- B. Promote and enhance the downtown, including the historic scale and character and mix of uses.
- C. Enhance walkability throughout the Village, including connections between downtown, the waterfront and surrounding neighborhoods.
- D. Enhance uses and the walkability of the Corridor Commercial District and adjacent areas, including redevelopment that addresses design and safety concerns.
- E. Enhance the waterfront by protecting views, improving connections, and providing additional waterfront parks and access opportunities.
- F. Protect the character of established residential neighborhoods and ensure privacy for families.

- G. Maintain and promote economically vibrant and attractive business and commercial areas; Facilitate the efficient and adequate provision of public facilities and services through orderly and compatible land use and development patterns;
- H. Prevent and reduce traffic congestion and provide safe and adequate traffic access to uses generating large volumes of vehicles.
- I. Gradually eliminate nonconforming uses and limit their enlargement.
- J. Preserve historic and natural features that contribute to the economic strength of the Village and provide for the review of new development to encourage quality design that reflects and enhances the historic Village.
- K. Encourage development that accommodates solar energy systems, access to sunlight, and sustainable development techniques and materials.
- L. Ensure that the Village remains a place where a wide variety of residents can find and maintain a home.
- M. Provide clear and efficient development review and approval procedures.
- N. Provide privacy for families.
- O. Accommodate growth and development that complies with the preceding stated purposes.

#### **§59-1.5. MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this local law shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Site characteristics and constraints along with the implementation of the standards of this chapter may preclude the development of a specific site to the maximum density or bulk otherwise permitted by the Zoning Ordinance.

#### **§59-1.6. RULES OF CONSTRUCTION**

##### **A. COMMON MEANING**

The words in this chapter shall be construed in accordance with their common meaning unless their context expressly indicates another meaning or unless they are otherwise defined in Article 6 of this chapter. Words that are not defined in Article 6 have the meaning given in the latest edition of Merriam Webster's Collegiate Dictionary.

##### **B. HEADINGS, ILLUSTRATIONS AND CAPTIONS**

Headings, illustrations and captions are provided for convenience and reference only and do not define or limit the scope of any provision of this chapter.

### **C. NUMBERING**

Text within this chapter is divided into articles, sections, subsections, paragraphs, subparagraphs, and so on. The first numerals in a section number correspond to the Chapter of the Village Code in which the section is located—Chapter 59 in the case of this chapter. The article number is found immediately following the dash in the section number. The numerals following the article number identify the section number. Thus, "§59-1.5" identifies the fifth section of Article 1 of Chapter 59. Subsequent subsections, paragraphs, subparagraphs, etc., are identified with consecutive letters or numbers on a separate line.

### **D. DELEGATION OF AUTHORITY**

Whenever a provision appears requiring the head of a department or another officer or employee of the Village to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate that responsibility to others over whom they have authority, unless such delegation of authority is expressly prohibited by the provisions of this chapter.

### **E. SPECIFIC RULES OF CONSTRUCTION**

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

- (1) Words used in the present tense include the future;
- (2) The singular number includes the plural, and the plural number includes the singular;
- (3) The word "person" includes individuals and organizations, including corporations, firms, partnerships, associations and joint ventures, and combinations of one or more types of organizations, as well as any individual acting on their behalf;
- (4) The words "occupied" or "used" as applied to any land or building shall be construed as though followed by the words "or intended, arranged, or designed to be occupied or used."
- (5) The particular shall control the general.
- (6) The words "shall," "must," "will" and "may not" are mandatory.
- (7) The word "may" is permissive. The word "should" is advisory but is not mandatory or required.
- (8) The word "building" includes "structure"; the word "structure" includes "building"; a "building" or "structure" includes any part thereof.
- (9) The word "premises" shall include land and the buildings thereon.
- (10) The word "lot" includes the words "plot" and "parcel."
- (11) Unless the context clearly indicates otherwise, where a regulation involves two or more items or provisions connected by a conjunction, the conjunction shall be interpreted as follows:
  - (a) "And" indicates that all connected items or provisions apply;

- (b) "Or" indicates that the connected items or provisions may apply singularly or in combination.
- (c) "Either...or" indicates that the connected items or provisions shall apply singly but not in combination.
- (12) The word "includes" shall not limit a term to the specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (13) Unless the context clearly indicates otherwise, all distances in this chapter shall be measured horizontally.

#### F. FRACTIONS

##### (1) Minimum Requirements

Except as otherwise expressly provided in the Code, when a regulation is expressed in terms of a minimum requirement, any fractional result of 0.5 or more must be rounded up to the next consecutive whole number. For example, if a minimum requirement of one tree for every 30 linear feet is applied to a 50-foot dimension, the resulting fraction of 1.67 is rounded up to 2 required trees.

##### (2) Maximum Limits

Except as otherwise expressly provided in the Code, when a regulation is expressed in terms of maximum limits, any fractional result will be rounded down to the next lower whole number. For example, if a maximum limit of one dwelling unit for every 2,500 square feet is applied to a 6,250 square foot lot, the resulting fraction of 2.5 is rounded down to 2 (allowed dwelling units).

#### G. LISTS AND EXAMPLES

Unless otherwise expressly indicated, lists of items or examples that use "including," "such as," or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

#### §59-1.7. EFFECT OF ESTABLISHMENT OF DISTRICTS

Following the effective date of this local law:

- A. All general regulations affecting the use of land or buildings are in the affirmative and no other or further use is to be made of land or buildings except that shown in the local law as applying to the district in which the land or building is located.
- B. No land or building shall hereafter be used or occupied and no building or any part thereof shall be erected, relocated, altered, used or occupied unless in conformity with the regulations herein specified for the district in which such land or building is located.

- C. No building shall hereafter be erected, altered, relocated, used or occupied to be of greater height, to accommodate a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller front yards, rear yards, side yards or courts, than is specified herein for the district in which such building is located.
- D. No part of a street frontage, yard or other open space required by or about any building for the purpose of complying with the provisions of this local law shall be included or considered as part of a street frontage, yard or other open space required by or about any other building to comply with the provisions of this local law.
- E. No building shall hereafter be erected on a lot having less frontage on an official village street or way than that required for the district in which it is located.
- F. No lot shall be formed from part of a lot already occupied by a building if a nonconformity of lot, yard or open space is thereby created or increased, and the remaining lot shall comply with all requirements prescribed by this local law for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this local law.
- G. Nothing contained in this local law shall require any change in the plans, construction or designated use of a building complying with existing law, a permit for which shall have been duly issued and the construction of which shall have been started before the date of first publication of notice of the public hearing on this local law, and the ground-story framework of which, including the second tier of beams, shall have been completed within six months of the date of the permit, and which the entire building shall have been completed in accordance with such plans as have been filed within one year from the date of passage of this local law.

## **§59-1.8. CONFLICTING PROVISIONS**

### **A. CONFLICT WITH STATE OR FEDERAL REGULATIONS**

If the provisions of this chapter are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law. The more restrictive provision is the one that imposes greater restrictions or more stringent controls on development.

### **B. CONFLICT WITH OTHER VILLAGE REGULATIONS**

If the provisions of this chapter are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the Village, the more restrictive provision will control. The more restrictive provision is the one that imposes greater restrictions or more stringent controls on development.

### **C. CONFLICT WITH PRIVATE AGREEMENTS AND COVENANTS**

This chapter is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this chapter impose a greater restriction than imposed by a private agreement, the provisions of this chapter will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this

chapter, the provisions of the private agreement will control. The Village does not enforce private agreements.

### **§59-1.9. NONCONFORMITIES**

#### **A. INTENT**

The regulations of this section govern nonconformities, which are uses, buildings or signs that were lawfully established but, because of the adoption of new or amended regulations, no longer comply with one or more requirements of this chapter. In older communities, such as Nyack, many buildings and uses that were established in compliance with all regulations in effect at the time of their establishment have been made nonconforming by zoning map changes (rezoning) or amendments to the Zoning Ordinance text. The regulations of this chapter are intended to clarify the effect of such nonconforming status and avoid confusion with illegal buildings and uses (those established in violation of zoning rules). The regulations are also intended to:

- (1) Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;
- (2) Promote maintenance, reuse and rehabilitation of existing buildings; and
- (3) Place reasonable limits on nonconformities that have the potential to adversely effect surrounding properties or the community as a whole.

#### **B. DETERMINATION OF NONCONFORMITY STATUS**

The burden of proof for establishing that a use, structure or lot is a legal nonconformity rests with the subject landowner.

#### **C. MAINTENANCE AND RESTORATION OF NONCONFORMING STRUCTURES**

- (1) Nonconforming structures must be maintained to be safe and in good repair. Incidental repairs and normal maintenance necessary to keep a nonconforming structures in sound condition are permitted, consistent with all permit or approval requirements of this chapter and the Village of Nyack Code.
- (2) Normal maintenance, repair, or reconstruction in kind of a building which houses a conforming use but is nonconforming as to the dimensional standards of Table 4-1 is permitted if same does not increase the degree of or create any new nonconformity. “Increasing the degree of or creating any new nonconformity” shall be deemed to occur if:
  - (a) Any additional floor area or projection into a required front, rear or side yard is proposed; or
  - (b) Any increase in the height of a wall or roof is proposed; or
  - (c) Any increase in the -floor area per dwelling is proposed.
- (3) Nothing in this chapter shall be deemed to prevent normal maintenance and repair of any nonconforming structure. If structural alterations or demolitions are necessary in the

interest of public safety that would have the effect of increasing the degree of or create any new non-conformity, a building permit shall be required. In granting such a permit, the Building Inspector shall state the precise reason why such alterations were deemed necessary.

#### **D. NONCONFORMING USES**

Any nonconforming use may be continued indefinitely, but:

- (1) Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot, nor shall any external evidence of such use be increased by any means whatsoever.
- (2) Shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals and then only to a use that, in the opinion of said Board, is of the same or a more restricted nature.
- (3) Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to reestablish a nonconforming use shall not confer the right to do so.
- (4) Shall not be restored for other than a conforming use after damage from any cause exceeding 50% of the replacement cost of such building, exclusive of foundations, as determined by the Building Inspector. Any such building damaged to a lesser extent may be restored but not enlarged if application for a building permit is made within six months of such damage and the nonconforming use reinstated within one year thereafter; if the restoration of such building is not completed within said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.

#### **E. NONCONFORMING BUILDINGS**

The alteration, enlargement or horizontal extension of a building that is nonconforming with respect to dimensional and development standards, as specified in Article IV of this chapter, shall require a variance from the Zoning Board of Appeals. The increase in the height of a wall or roof that is nonconforming is prohibited.

#### **F. NONCONFORMING SIGNS**

- (1) A nonconforming permanent sign, except for a freestanding sign in place at the time of enactment of this law, must be removed within 24 months of the enactment of this law.
- (2) All non-conforming temporary signs shall be removed within 30 days of the passage of this law.
- (3) The maintenance of such nonconforming signs may be permitted, but any sign once removed for purposes other than maintenance shall be deemed permanently removed and may be replaced only in accordance with the provisions of this section.

## **§59-1.10. ENFORCEMENT**

### **A. VIOLATIONS**

All buildings and land used, and all buildings and structures erected, converted, enlarged, reconstructed, moved or structurally altered, must comply with all applicable provisions of this chapter. Failure to comply with applicable provisions constitutes a violation of this chapter. Express violations include, but are not limited to the following:

- (1) Using land or buildings in any way inconsistent with the requirements of this chapter;
- (2) Erecting a building or other structure in any way inconsistent with the requirements of this chapter;
- (3) Engaging in the development of land in any way inconsistent with the requirements of this chapter.
- (4) Installation or use of a sign in any way inconsistent with the requirements of this chapter.
- (5) Engaging in the use of a building or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this chapter without obtaining all such permits or approvals;
- (6) Failure to comply with any permit or approval granted under this chapter;
- (7) Failure to comply with any condition imposed on a permit or approval;
- (8) Obscuring, obstructing, removing or destroying any notice required to be posted or otherwise given under this chapter; or
- (9) Disobeying, omitting, neglecting, or refusing to comply with or resist the enforcement of any of the provisions of this chapter.

### **B. LIABILITY**

The property owner, tenant or occupant of any land or structure, or part thereof, or any design professional, builder, contractor, vendor, or authorized agent who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this chapter is jointly and severally liable for the violation and subject to all available penalties and remedies.

### **C. REMEDIES AND ENFORCEMENT POWERS**

The Village may use any lawful remedy or enforcement powers, expressly including those described in this section. The remedies and enforcement powers established in this chapter are cumulative, and the Village may exercise them in any order:

#### **(1) Withhold Permit**

Village officials may deny or withhold all permits or other forms of authorization for any land or structure for which there is an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit or other authorization previously granted by the



Village. This provision applies regardless of whether the current property owner or applicant is responsible for the violation in question.

**(2) Permits with Conditions**

Instead of withholding or denying a permit or other authorization, Village officials may grant such permit or authorization subject to the condition that the violation be corrected by a specified time. Village officials are also authorized to require adequate financial assurances that such correction will be made.

**(3) Revoke Permit**

**(a)** Any permit or other form of authorization required and issued under this chapter may be revoked when the Building Inspector determines that:

There is departure from the plans, specifications, or conditions required under terms of the permit;

**(i)** The development permit was procured by false representation or was issued by mistake; or

**(ii)** Any of the provisions of this chapter are being violated.

**(b)** Written notice of revocation must be served upon the property owner, the property owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued, or posted in a prominent location. Once notice of revocation is provided, all construction must stop.

**(4) Stop Work**

Whenever development is occurring in violation of this chapter, the Building Inspector may order the work to be immediately stopped, in accordance with the following standards:

**(a)** The stop work order must be in writing and directed to the person doing the work; and The stop work order must state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.

**(5) Injunctive Relief**

The Village may seek an injunction or other equitable relief in court to stop any violation of this chapter.

**(6) Abatement**

The Village may seek a court order in the nature of mandamus, abatement, or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed before the violation.

**(7) Remedial Action**

Any person who violates this chapter by alteration or modification of a structure to increase the number of dwelling units or living spaces within the structure, or by allowing any such alteration or modification to continue or to be used, is required to remove all fixtures, connections, furnishings, partitions and non-load bearing walls used in the violation. Failure to remove any of the foregoing constitutes a separate violation.

**(8) Penalties**

Any violation of this chapter is punishable by a penalty of not more than \$350 for the first offense, \$750 for the second offense, and \$1,000 for the third and each subsequent offense. In addition to any penalties, all costs and expenses including reasonable attorney's fees and costs incurred by the Village in determining such violation may be collected.

- (a) In addition, every violation of this chapter shall constitute disorderly conduct and every person violating the Zoning Ordinance shall be a disorderly person, subject to both a fine and imprisonment not in excess of the maximum fine and imprisonment prescribed by the Penal Law for such disorderly conduct.
- (b) Each week such violation or failure to comply exists after notice constitutes a separate and distinct offense.

**(9) Other Remedies and Enforcement Powers**

Nothing in this chapter will be construed as depriving the Village of the right to apply for an injunction to prevent any violation or of employing any other remedies, as allowed by law.

**D. CONTINUATION OF PREVIOUS ENFORCEMENT ACTIONS**

Nothing in this chapter will be interpreted to prohibit the continuation of previous enforcement actions, undertaken by the Village under previous, valid ordinances and laws.

**§59-1.11. EFFECTIVE DATE**

The Effective Date of this chapter shall be [ \_\_\_\_\_ ]. [To be filled in with the adopted date.]

**§59-1.12. TRANSITIONAL PROVISIONS**

**A. APPLICATIONS SUBMITTED BEFORE EFFECTIVE DATE**

Development applications or reapplications or requests for permit renewal or reinstatement that were submitted in complete form and are pending approval before the Effective Date, may be reviewed wholly under the terms of the zoning ordinance in effect immediately before this chapter and which this chapter supercedes in its entirety on the Effective Date ("Previous Ordinance"), or may be reviewed wholly under the terms of this chapter. Whether such review takes place under the Previous Ordinance or under this chapter shall be at the discretion of the applicant. The applicant's decision as to which ordinance shall apply, once submitted, shall not be subject to change. All development applications or re-applications or requests for permit renewal or reinstatement submitted on or after the Effective Date, will be subject to and reviewed wholly under the terms of this chapter.

**B. PERMITS ISSUED BEFORE THE EFFECTIVE DATE**

Any building, development or structure for which a final building permit was issued before the Effective Date may be completed in conformance with the issued building permit and other applicable permits and conditions, even if such building, development or structure does not fully comply with provisions of this chapter. If building is not commenced and diligently pursued within the time allowed under the original permit or any extension granted, then the building, development

or structure must be constructed, completed and occupied only in strict compliance with the standards of this chapter.

### **C. VIOLATIONS CONTINUE**

Any violation of the Previous Ordinance will continue to be a violation under this chapter and shall be subject to penalties and enforcement under §59-1.11. If the use, development, construction or other activity that was a violation under the Previous Ordinance complies with the express terms of this chapter, enforcement action will cease, except to the extent of collecting penalties for violations that occurred before the Effective Date. The adoption of this chapter does not affect nor prevent any pending or future prosecution of, or action to abate, violations of the Previous Ordinance that occurred before the Effective Date.

### **D. NONCONFORMITIES**

Any nonconformity under the Previous Ordinance will also be a nonconformity under this chapter, unless changes to this chapter, or any subsequent amendment to it, permit the previously nonconforming use, structure, or sign.

### **E. EXISTING USES**

- (1) When a use classified as a special use under this chapter exists as a special use or permitted use on the Effective Date, such use will be considered a legal special use except as otherwise expressly provided in this section.
- (2) When any amendment to this chapter changes the classification of a permitted use to a special use, any use legally established before such amendment will be considered a legal special use after the effective date of such amendment.
- (3) A lawfully established, existing use that is not allowed as a special use or permitted use in the district in which the use is now located will be considered a nonconforming use and will be subject to all applicable regulations of §59-1.10.

### **§59-1.13. REPEALER**

The following chapters of the Village of Nyack Code, together with changes and amendments thereto, are hereby repealed and declared to be of no effect due to incorporation within this chapter:

- A. Chapter 11, Building Line;
- B. Chapter 20, Fences;
- C. Chapter 50, Subdivision of Land, and
- D. Chapter 54, Trees.

### **§59-1.14. SEVERABILITY**

Should any section or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

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## **ARTICLE 2: ZONING DISTRICTS**

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This Article establishes the zoning districts and contains basic information pertaining to zoning districts, primarily statements of purpose and district-specific regulations. Article 3, Use Regulations, and Article 4, Development Standards, set forth the uses allowed within the districts and the dimensional and development standards applying to development in the districts, respectively.

### **§59-2.1. ESTABLISHMENT OF DISTRICTS**

The Village of Nyack is hereby divided into the following zoning districts:

<b>District Category</b>	<b>District Name</b>	<b>Abbreviation</b>
Residential	Single-Family Residential – 1	SFR-1
	Single-Family Residential – 2	SFR-2
	Two-Family Residential	TFR
	Multifamily Residential – 1	MFR-1
	Multifamily Residential – 2	MFR-2
	Multifamily Residential – 3	MFR-3
Mixed Use	Downtown Mixed Use	DMU
	Residential Mixed Use	RMU
	Office Mixed Use	OMU
Other	Corridor Commercial	CC
	Waterfront	WF
	Manufacturing	M

### **§59-2.2. ZONING MAP**

#### **A. OFFICIAL MAP ADOPTED**

The boundaries of the zoning districts are established as shown on the Zoning Map, Village of Nyack, dated [Effective Date], as amended from time to time. The map and all explanatory matter thereon, is hereby adopted and made a part of this local law. The Zoning Map shall be kept up-to-date in the office of the Building Inspector for the use and benefit of the public.

#### **B. INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

In determining the boundaries of districts shown on the map, the following rules shall apply:

- (1) Unless otherwise shown, the district boundaries shall be construed to coincide with the center lines of streets, alleys, parkways, waterways and main track or tracks of railroads.
- (2) Where such boundaries are indicated as approximately following the property lines of parks or other publicly owned lands, such lines shall be construed to be such boundaries.
- (3) In all cases where a district boundary line is located not farther than 15 feet away from a lot line of record, such boundary shall be construed to coincide with such lot line.

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- (4) Any boundary shown extended into the Hudson River shall be deemed to extend to the boundary of the village, unless otherwise indicated.
  - (5) In all other cases, where dimensions are not shown on the Zoning Map, the location of boundaries shall be determined by the Building Inspector utilizing the scale appearing on such map.

### C. LOTS IN TWO OR MORE DISTRICTS

Where a single lot is divided by one or more district boundary lines, the regulations for the less restrictive portion of such lots shall not extend into the more restricted portion of the lot.

## §59-2.3. RESIDENTIAL DISTRICTS

### A. GENERAL PURPOSE OF RESIDENTIAL DISTRICTS

The residential zoning districts contained in this Section are intended to:

- (1) Provide appropriately located areas for residential development that are consistent with the Village's Comprehensive Master Plan and with standards for public health, safety and general welfare;
- (2) Allow for a variety of housing types that meet the diverse economic and social needs of residents;
- (3) Protect sensitive environmental and historic resources;
- (4) Protect the scale and character of existing residential neighborhoods and community character;
- (5) Ensure adequate light, air, privacy, and open space for each residential dwelling, and protect residents from the harmful effects of excessive noise, glare and light pollution, traffic congestion, and other significant adverse environmental effects; and
- (6) Protect residential development from neighboring uses that are incompatible with a residential environment.

### B. SINGLE-FAMILY RESIDENTIAL DISTRICTS (SFR-1 AND SFR-2) [SFR-1 is a new name for the current R-1A district. SFR-2 is a new name for the current R-1B district]

The purpose of the SFR1-1 and SFR-2 districts is to provide a suitable area for single-family dwellings and other uses and facilities that are compatible with single-family neighborhoods in Nyack. The districts are distinguished by the required minimum lot area.

### C. TWO-FAMILY RESIDENTIAL DISTRICT (TFR) [TFR is a new name for the current R1 district.]

The purpose of the TFR District is to provide a suitable area for a mixture of one- and two-family dwellings in areas characterized by a mixture of housing types, and for other uses and facilities that are compatible with residential neighborhood development in Nyack.

### D. MULTI-FAMILY RESIDENTIAL DISTRICTS (MFR-1, MFR-2, AND MFR-3) [MFR-1 replaces R-2; MFR-2 replaces R-3, MFR-3 replaces R-4.]

The purpose of the multifamily residential districts is to provide for a range of housing types and densities that are commensurate with the scale and character of various neighborhoods in Nyack,

and to provide for other uses and facilities that are compatible with residential developments in these districts. The districts are distinguished primarily by the maximum allowed density of dwelling units per acre.

#### **E. RESIDENTIAL DISTRICT DESIGN STANDARDS**

##### **(1) Purpose**

The standards of this Section are intended to promote high-quality residential development and construction; protect property values; encourage visual variety and architectural compatibility; and promote an integrated character for the Village's neighborhoods. Specifically, the standards shall:

- (a) Provide variety and visual interest in the exterior design of residential buildings;
- (b) Provide for a variety of lot sizes and housing types for a range of households and age groups;
- (c) Enhance the residential streetscape and diminish the prominence of garages and parking areas;
- (d) Enhance public safety by preventing garages from obscuring main entrances or blocking views of the street from inside dwellings; and
- (e) Improve the compatibility of attached and multi-family residential development with the residential character of surrounding neighborhoods.

##### **(2) Orientation of Dwellings to the Street**

Each residential building shall have at least one primary pedestrian doorway for access to the dwelling located on the elevation of the dwelling facing the front lot line of the property, and clearly visible from the street or public area adjacent to the front lot line. On corner lots, the pedestrian doorway may be located facing any adjacent street. Unless prohibited by terrain or other site constraints, the orientation of new buildings and alterations shall repeat the predominant relationship of buildings to buildings and buildings to street along the same block face or the facing block face. An exception shall be made for single-family detached dwelling units that do not have street frontage but do front onto a park or park-like common open area. In such case where the dwelling unit does not have street frontage, one primary pedestrian doorway shall be oriented toward a pedestrian walk in the park that connects to a street.

##### **(3) Garages**

- (a) Detached garages are preferable to attached garages. Detached garages shall comply with the requirements for accessory buildings and structures contained in § 59-3.2.E(1).
- (b) Garage doors for attached garages shall face the side or rear of the lot when possible.
- (c) When garage doors for an attached garage cannot be designed to face the side or rear of the lot, such garage doors may face the street in accordance with the following requirements:
  - (i) Garages doors for an attached garage facing the street shall be setback a minimum of four feet behind the front façade of the dwelling portion of the structure.
  - (ii) Garages doors for an attached garage facing the street shall not comprise more than 15 percent of the front façade of a principal dwelling structure that is greater than one story in height, or 25 percent of the front facade of a principal dwelling structure that is one story in height.

- (4) Corner lots.
  - (a) Obstruction to vision at street intersections. At all street intersections in all residential districts, no obstructions to vision exceeding 30 inches in height above curb level shall be erected or maintained on any lot within the triangle formed by the street lines of such lot and a line drawn between points along such street lines 30 feet distant from their point of intersection.
  - (b) Rear and side yards. On a corner lot, front yards are required on both street frontages, and one yard other than the front yards shall be deemed to be a rear yard, and the other or others, side yards. The minimum district requirements for each shall be complied with.
- (5) Sidewalks  
Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot in the residential zoning districts. The sidewalk material shall be continuous through the drive.

## §59-2.4. MIXED USE DISTRICTS

### A. GENERAL PURPOSE OF MIXED USE DISTRICTS

Mixed-use districts define the uses of land and the siting and character of buildings and improvements to promote compatibility between uses. Buildings are typically designed and oriented to maximize visibility and provide a high quality of public space and architectural features. The districts are also intended to encourage redevelopment of underutilized parcels and infill development of vacant parcels. The mixed-use districts specifically are intended to:

- (1) Concentrate residential development, and commercial and office employment efficiently in and around the downtown and other key nodes of activity;
- (2) Encourage mixed use and higher-density redevelopment, conversion, and reuse of aging and underutilized areas, and more efficiently use land at key nodes in the Village;
- (3) Create compact and pedestrian-oriented environments that encourage pedestrian access;
- (4) Concentrate a variety of commercial services and public facilities that serve the surrounding community;
- (5) Ensure that the appearance and function of development in mixed use areas is well-integrated with surrounding neighborhoods;
- (6) Ensure that development in mixed use areas is of high quality and provides pedestrian scale and interest through use of varied forms, materials, details, and colors, especially at the ground-floor; and
- (7) Provide adequate light, air, privacy, and open space for each residential dwelling, and protect residents from the harmful effects of excessive noise, glare and light pollution, traffic congestion, and other significant adverse environmental effects.

### B. DOWNTOWN MIXED USE DISTRICT (DMU)

#### (1) Purpose

The purpose of the Downtown Mixed Use (DMU) district is to provide for the most intensive concentration of retail sales and service, personal services, office, and public and institutional uses in the heart of the Village. In addition, the district is intended to encourage

the development of residential units above the ground floor. Redevelopment should preserve the existing historic character, scale, and mix of uses in the downtown. Appropriate new development should add to the civic and economic vitality of the community. In order to encourage pedestrian-friendly environments, special standards are provided to address urban design, building design, and parking considerations.

**(2) District Specific Standards**

**(a) Ground Floor Uses Restricted**

In order to maintain an active streetscape for pedestrians and pedestrian-oriented businesses and activities, residential uses are prohibited along the entire length of the ground floor of the principal building adjacent to a public street. That nonresidential space shall be no less than 25 feet deep. A residential use may be located on the ground floor only when it shares that floor with another permitted use that occupies the portion of the floor adjacent to the street.

**(b) Building Entrances**

Buildings shall have one or more pedestrian entrances located on the front facade and facing the street. A building located on a corner may have an angled entrance at the corner of the two streets. The entrance setbacks should reflect adjacent buildings. The pedestrian entrance(s) shall be operable during normal hours of business operation.

**(c) New Curb Cuts Restricted**

To establish and maintain a continuous streetscape the construction of new curb cuts shall require a special permit. In no case shall a curb cut exceed 18 feet in width. Existing curb cuts shall be vacated when redevelopment of a property makes them unnecessary or inconsistent with the intended character of the zoning district.

**(d) Security Gates**

Solid security gates are prohibited.

**(e) Sidewalks**

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot. The sidewalk material shall be continuous through the drive.

**(3) Bulk and Density Incentives**

To provide an incentive which will encourage the most appropriate use and development of sites in the DMU district, the Village Board of Trustees may allow, following a public hearing following the procedures for zoning amendments, an increased FAR, density, building height or special uses, within the limits as set forth in Subsection A hereof and subject to the provision of specific public benefit features. It may also choose not to allow any such change. Village Board action on such an application shall be taken only after review of the proposed plan by the Planning Board and the Architectural Review Board and recommendation by those Boards to the Trustees. Final site plan approval by the Planning Board shall not occur until after the bulk and density incentive determination by the Village Board. The incentive features, and the guidelines for Village Board action, are as described below:

**(a) The specific public benefit features for which incentive density increases may be granted in the DMU Zone are as follows:**

- (i)** The provision of affordable/workforce housing units in excess of the requirements of § XXX [the Affordable/Workforce Housing Section of the Village ordinances].



- (ii) The provision of housing units specifically designed for, and limited in occupancy to, senior citizens, with priority for Nyack residents.
  - (iii) The provision of street improvements and parking spaces for short-term use beyond that which is required to serve the specific development proposed and designed to mitigate the problems of traffic and parking congestion in the downtown area.
  - (iv) The provision of special design amenities available for public use and enjoyment which would enhance the function and/or appearance of the downtown, including but not limited to pedestrian linkages, plazas, fountains, artworks, seating and other passive recreation areas, special landscape design features and other such similar improvements; conversely, the removal of existing features which detract from the function and/or appearance of said area, including but not limited to overhead utility lines, unattractive structures and other such features.
  - (v) The provision of indoor or outdoor recreation amenities available to the general public.
- (b) In determining the specific amount of density incentive increase that may be granted, if any, the Village Board, in each case, shall take into consideration the following:
- (i) The number, extent and combination of incentive features to be provided.
  - (ii) The need for such specific features in the Village at that time.
  - (iii) The degree of compatibility of such incentive features with the neighborhood in which they are located, taking into consideration the potential effects of noise, traffic, fumes, vibrations or other such characteristics on surrounding streets and properties, the visual impact of the resultant density increase and/or incentive feature applied for and the impact of the proposed development upon access to light, air and vistas known to be important to the community.
  - (iv) The consistency of such incentive features with the Village's Comprehensive Master Plan and related studies and plans adopted by the Village Board of Trustees.
  - (v) The quality of design of the proposed development as determined by the Architectural Review Board in accordance with §59-5.15. C.
  - (vi) The amount of incentive density increase necessary to more than offset the cost of providing the incentive feature(s), thereby creating the incentive for providing such feature(s).
- (c) No incentive density increase will be granted for the construction of any improvement which, in the Village Board's opinion, would otherwise be required by this chapter or other applicable regulation.
- (d) To assist the Village Board in determining the appropriate amount of density increase, if any, to grant as an incentive for the applicant's provision of the proposed public benefit feature(s), the applicant shall submit an estimate of the cost of providing the proposed feature(s) and the value of the density increase requested. The Village Board may also engage its own independent experts to either separately prepare such analyses or to review those prepared by the applicant. The reasonable cost of such expert assistance shall be reimbursed to the Village by the applicant.
- (e) In addition to the foregoing guidelines, the Village Board may take into account other considerations bearing upon the purposes and objectives of this subsection in determining the amount of any density increase.
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### **C. RESIDENTIAL MIXED USE DISTRICT (RMU)**

(1) Purpose

The purpose of the Residential Mixed Use (RMU) district is to maintain the existing character, scale, and mix of uses surrounding the downtown core, including single-family dwellings, and commercial uses located in former single-family residential buildings, while allowing for appropriate redevelopment. In addition, the RMU district is intended to serve as a buffer between more intensive commercial areas and residential neighborhoods.

(2) District Specific Standards

(a) Landscaping

All areas of the site that are not used for buildings, parking, vehicular and pedestrian use areas, must be landscaped with trees and/or plants. A landscaping plan must be submitted for site development review.

(b) Building Entrances

Buildings shall have one or more pedestrian entrances located on the front façade and facing the street. A building located on a corner may have any angles entrance<sup>4</sup> at the corner of the two streets.

(c) Security Gates

Solid security gates are prohibited.

(d) Sidewalks

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot. The sidewalk material shall be continuous through the drive.

### **D. OFFICE MIXED USE DISTRICT (OMU)**

(1) Purpose

The purpose of the OMU District is to provide opportunities for a mixture of office and residential uses in predominantly residential settings along select roads in Nyack, including the conversion of single-family dwellings to office uses. Retail sales and service uses, and their associated parking and traffic impacts, are not appropriate in these areas.

(2) District Specific Standards

(a) Landscaping

All areas of the site that are not used for buildings, parking, vehicular and pedestrian use areas, must be landscaped with trees and/or plants. A landscaping plan must be submitted for site development review.

(b) Building Entrances

Buildings shall have one or more pedestrian entrances located on the front façade and facing the street. A building located on a corner may have any angles entrance<sup>4</sup> at the corner of the two streets.

(c) Sidewalks

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot. The sidewalk material shall be continuous through the drive.

## §59-2.5. OTHER DISTRICTS

### A. CORRIDOR COMMERCIAL DISTRICT (CC)

#### (1) Purpose

The purpose of the CC district is to provide for a wide range of commercial uses that benefit from large numbers of motorists, that need larger parcels of land, and that involve heavy commercial uses such as storage, warehousing, hotels and large scale retail sales uses.

#### (2) District Specific Standards

##### (a) Landscaping

All areas of the site that are not used for buildings, parking, vehicular and pedestrian use areas, sidewalk cafes and plazas, must be landscaped with trees and/or plants. A landscaping plan must be submitted for site development review and a stormwater prevention plan, in accordance with §59-4.12.

##### (b) Buffer Area

A buffer area shall be provided along the portion of any property line of a lot located in the CC zoning district developed with a non-residential use that abuts a residential use. This buffer area shall have a minimum depth of 15 feet in which the only permitted improvements are landscaping and/or fencing, which shall be provided to screen the non-residential use from the property containing the residential use.

##### (c) Building Entrances

Buildings shall have one or more pedestrian entrances located on the front facade and facing the street. A building located on a corner may have an angled entrance at the corner of the two streets. The pedestrian entrance(s) shall be operable during normal hours of business operation.

##### (d) Sidewalks

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot in the CC zoning district. The sidewalk material shall be continuous through the drive.

##### (e) On-site Circulation

driveways, circulation aisles and parking areas shall be designed to fully accommodate vehicles on the property so that entering traffic does not back up onto any public street or portion thereof.

### B. WATERFRONT DEVELOPMENT DISTRICT (WF)

#### (1) Purpose

The purpose of the WF district is to provide for and encourage uses along and near the Hudson River related to and appropriate for a waterfront area. The zoning district is intended to encourage a proper balance of uses in and near the waterfront by facilitating water-dependent uses where public access will be provided, and to preserve the aesthetics and ambiance of the area. In order to provide a district in which commercial uses at the shoreline will be compatible with other waterfront uses and objectives and will encourage the overall development of Nyack, the specific intent of this section is to:

- (a) Maximize the utilization of waterfront land by water-oriented uses which require a waterfront location.

- (b) Regulate uses that may be enhanced by a location along or near the shoreline but do not require a waterfront location.
- (c) Maximize physical public access from the land to and along the Hudson River shoreline.
- (d) Protect water quality, fish and wildlife, scenic views and natural vegetation and enhance aesthetic resources to the greatest feasible extent.

**(2) District Specific Standards**

**(a) Site Development Plan Approval**

All buildings and other uses of land within the WF district shall be subject to review by the Planning Board in accordance with the provisions of §59-5.7. In addition to the considerations set forth in §59-5.7, the Planning Board shall consider the following factors for review:

- (i) The quality and extent of views from the adjacent public streets through the property to the Hudson River.
- (ii) The design and relationship of development to the waterfront as viewed from the Hudson River.
- (iii) The design and function of any easement or other access provided to the water's edge, including new bulkheading.
- (iv) The eligibility of proposed development to utilize any of the development incentives set forth in § 59-2.5.B(2)(c).
- (v) The consistency of such incentive features with the Village's Comprehensive Master Plan and related studies and plans adopted by the Village Board of Trustees.
- (vi) The quality of design of the proposed development as determined by the Architectural Review Board in accordance with its review in accordance with §59-5.15.C.

**(b) Special Bulk Requirements**

The following requirements shall apply to all development within the WF district:

- (i) **Building Height**  
No buildings or structures shall be erected to a height in excess of 35 feet, except as provided in §59-2.5B(2)(c)(i).
- (ii) **Building Width**  
The total cumulative width of buildings, structures, fences or walls more than 30 inches in height shall not occupy more than 50% of the width of a parcel as measured along a line parallel to the adjacent street measured at the front yard. Of the remaining open area, one uninterrupted space shall be at least 30% of such parcel width, unless the parcel provides more than one view corridor as required in §59-2.5B(2)(b)(iv).
- (iii) **Riverfront Setback**  
An average setback of 50 feet shall be provided from any buildings or structures on a lot to the normal high-water line of the Hudson River unless its design requires a location closer to such water line, as determined by the Planning Board. No part of any building or structure shall be closer than 15 feet to the normal high-water line.
- (iv) **View Corridor**

In addition to any general requirements required by the View Protection Overlay District established in §59-4.4.B, the following specific requirements apply within the Waterfront District:

- A. A view corridor to the Hudson River shall be maintained at the intersection where each street intersects Gedney Street or Piermont Avenue and at the northerly end of Gedney Street.
- B. Such view corridor shall have an unobstructed width of at least 50 feet at the street line and 100 feet at a distance 300 feet from such street line, measured perpendicular to the center line, extended, of such intersecting street. Such view corridor shall be unobstructed as to height; however, buildings may be located in this corridor if their highest elevation is below that of the mean elevation of the adjacent street line.
- C. No parking shall be allowed in the view corridor unless it is screened from view, and any landscaping within the view corridor shall be maintained at a height no greater than three feet from the mean level of the street line within the view corridor.

**(c) Development Incentives**

In order to encourage development which promotes the purposes for which the WF district has been established and to achieve the benefit of preserving the viewshed to and along the Hudson River, the following exceptions to the bulk requirements set forth above and in the lot and bulk regulations for the WF district may be permitted by the Village Board. Only one such exception may be granted for each property for each of the following categories:

- (i) Building height may be increased to no more than 45 feet under the conditions as follows: Maximum height may be increased by five feet for each five-percent reduction of maximum permitted width, up to a maximum of 45 feet (e.g., if width is 45%, maximum permitted height is 35 feet; if width is 40%, maximum permitted height is 40 feet). In the case of a building 40 to 45 feet in height, the exceptions to height limitations set forth in §59-4.2.C(2), as amended, shall not apply.
- (ii) Building width may be increased to a maximum of 60% of the width of a parcel if the parcel provides more than one view corridor as required in §59-2.5.B(2)(b)(iv).
- (iii) Floor area ratio may be increased to no more than 0.90 under the conditions as follows: the provision of special waterfront improvements open to the public, such as but not limited to park or plaza facilities, boat-launching facilities or off-street parking in addition to the parking required for the use intended for the site.

**(d) Determination of Lot Area**

To determine the maximum number of residential dwelling units that can be allowed on a parcel of land within the WF District, and for all other uses, the lot area of the site shall be determined by subtracting from the gross acreage of the site the following:

- (i) Land below the normal high-water line of the Hudson River.
- (ii) Land shown to be in the floodway or coastal high-hazard area (A and B Zones) of the Federal Emergency Management Agency's Flood Boundary and Floodway Map or Flood Insurance Rate Map.
- (iii) Land located within an easement that precludes development.

**(e) Public Access**

Permanent public access must be provided from the adjacent public street to and along the Hudson River if the property is used for any of these uses: multifamily dwellings, art

gallery, arts/crafts studio, bar or tavern, bed and breakfast, inn, hotel or motel, office-general, restaurant, retail sales and service, or public utility structure. Such access, in the form of a permanent easement, shall be at least 12 feet wide for at least 75% of its length and shall extend along the normal high-water line of the Hudson River for the width of the property and shall be part of a continuous connection between the north and south boundaries of the property. Porous pavement material, such as cobblestone, brick, etc., suitable for pedestrian use, at least six feet wide, shall be provided for the entire length of the easement; suitable landscaping shall also be provided. The access easement shall provide for permanently unobstructed views or vistas of the Hudson River along its entire length. Provision satisfactory to the Village Board shall be made by the property owner for maintenance of the public access.

**(f) Sidewalks**

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot. The sidewalk material shall be continuous through the drive.

**C. MANUFACTURING DISTRICT (M)**

**(1) Purpose**

The purpose of the M district is to allow a range of non-residential uses in an appropriate location close to the regional highway network.

**(2) District Specific Standards**

**(a) Landscaping**

All areas of the site that are not used for buildings, parking, vehicular and pedestrian use areas, must be landscaped with trees and/or plants. A landscaping plan must be submitted for site development review.

**(b) Buffer Area**

A buffer area shall be provided along the portion of any property line of a lot located in the M zoning district developed with a non-residential use that abuts a residential use. This buffer area shall have a minimum depth of 15 feet in which the only permitted improvements are landscaping and/or fencing, which shall be provided to screen the non-residential use from the property containing the residential use.

**(c) Sidewalks**

Sidewalks conforming to Village specifications shall be provided on the street frontage of the lot and/or within the right-of-way of any street located adjacent to a lot in the M zoning district.

## ARTICLE 3: USE REGULATIONS

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### §59-3.1. TABLE OF PERMITTED USES

Table 3-1, below, lists the principal and accessory uses allowed within all base zoning districts. Each of the listed uses is defined in Article 6, Definitions.

#### A. EXPLANATION OF TABLE ABBREVIATIONS

**(1) Permitted Uses**

“P” in a cell indicates that the use is allowed by right, without special conditions other than those imposed upon other uses by right in the district. Permitted uses are subject to all other applicable regulations of this chapter, including the use specific standards set forth in this Article.

**(2) Special Permit Uses**

“S” in a cell indicates that, in the respective zoning district, the use is allowed only if reviewed and approved as a special permit use in accordance with the procedures of §59-5.9. Special permit uses are subject to all other applicable regulations of this Code, including the use-specific standards set forth in this Article. Both principal and accessory uses may be special permit uses.

**(3) Accessory Uses**

“A” in a cell indicates that the use is allowed as an accessory use to a permitted use in the zoning district. Accessory uses are subject to all other applicable regulations of this chapter, including the use specific standards set forth in the Article. They may be permitted by right or require special permit review.

**(4) Prohibited Uses**

A dash ( - ) indicates that the use is prohibited in the respective zoning district.

**(5) Use-Specific Standards**

Regardless of whether a use is allowed by right or permitted as a special permit use, there may be additional standards that are applicable to the use. Use specific standards are noted through a cross-reference in the last column of the table. Cross-references refer to § 59-3.2, Use-Specific Standards. These standards apply in all districts unless otherwise specified.

#### B. TABLE ORGANIZATION

The tables in Appendix A classify land uses and activities into general “use groups” and more specific “use types” based on common functional or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. This classification provides a systematic basis for assigning present and future land uses into appropriate zoning districts. This classification does not list every use or activity that may appropriately exist within the categories, and

specific uses may be listed in one category when they may reasonably have been listed in one or more other categories. The categories are intended merely as an indexing tool and are not regulatory.

### **C. CLASSIFICATION OF NEW AND UNLISTED USES**

Any uses not specifically permitted shall be deemed to be prohibited. Any list of prohibited uses contained in any section of this local law shall be deemed to be not an exhaustive list, but to have been included for the purposes of clarity and emphasis, and to illustrate by example some of the uses frequently proposed that are deemed undesirable and incompatible in the particular district. Nonetheless, new land use types will develop and forms of land use not anticipated may seek to locate in the Village. In order to provide for such situations, a determination as to the appropriate classification of any new or unlisted form of land use shall be made. When application is made for a use type that is not specifically listed in Table 3-1, the procedure set forth below shall be followed.

- (1)** The Building Inspector shall provide an interpretation as to the use category and type into which such use should be placed. In making such interpretation, the Building Inspector shall consider its potential impacts, including but not limited to: the nature of the use and whether it involves dwelling activity; sales; processing; type of product, storage and amount, and nature thereof; enclosed or open storage; anticipated employment; transportation requirements; the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer.
- (2)** Standards for new and unlisted uses may be interpreted as those of a similar use.
- (3)** Appeal of the Building Inspector's decision shall be made to the Zoning Board of Appeals following procedures under §59-5.17.



**TABLE 3-1: PERMITTED USES**

**P**= Permitted Uses    **S** = Special Permit Uses    **A** = Accessory Uses    **-** = Prohibited Uses

Use	Residential Districts			Mixed Use Districts			Other Districts			Use-Specific Standards
	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M	
<b>Residential</b>										
Dwelling, single-family detached	P	P	P	-	P	P	-	-	-	
Dwelling, single-family attached	-	-	P	-	P	-	-	-	-	
Dwelling, two-family	-	P	P	-	P	P	-	-	-	
Dwelling, three-family	-	-	P	-	P	P	-	S	-	
Dwelling, multifamily (4+ units)	-	-	P	P	P	-	-	S	-	
Dwelling, mixed use	-	-	P	P	P	P	-	S	-	Yes
Conversion of single-family dwelling to two-family dwelling	-	-	S	-	S	S	-	-	-	
Conversion of single- or two-family dwelling to three-family dwelling	-	-	S	-	S	S	-	-	-	
Group home	S	S	S	-	S	S	-	-	-	Yes
Retirement home, nursing home or assisted-living facility	-	-	S	S	S	S	S	S	-	Yes
<b>Commercial</b>										
Adult uses	-	-	-	-	-	-	S	-	S	Yes
Animal hospital or kennel	-	-	-	-	-	-	S	-	-	Yes
Arts/crafts studio	-	-	-	P	P	P	P	S	-	Yes
Art gallery	-	-	-	P	P	-	P	P	-	
Bank	-	-	-	P	P	P	P	-	-	
Bar or tavern	-	-	-	P	P	-	P	S	-	
Bed and Breakfast	S	S	S	S	S	S	S	S	-	Yes
Bus or train station	-	-	-	P	P	-	P	-	P	
Commercial recreation - indoor	-	-	-	P	P	-	P	-	P	
Commercial recreation - outdoor	-	-	-	-	-	-	S	S	-	
Fast food establishment	-	-	-	-	-	-	S	-	-	
Inn	-	-	-	P	S	S	P	S	-	
Hotel or motel	-	-	-	S	-	-	P	S	-	
Office – general	-	-	-	P	P	P	P	S	-	Yes
Office – medical	-	-	-	P	P	P	P	-	-	
Office – research and development	-	-	-	S	S	S	S	-	-	
Outdoor storage and display-oriented retail	-	-	-	-	-	-	P	S	-	Yes

Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M	
<b>Commercial</b>										
Parking - structured	-	-	-	P	S	S	S	-	S	Yes
Personal services	-	-	-	P	P	P	P	S	-	Yes
Restaurant	-	-	-	P	P	-	P	S	-	Yes
Restaurant, take-out	-	--	-	P	P	-	P	S	-	
Retail sales and service	-	-	-	P	P	S	P	S	-	Yes
Theater or cinema	-	-	-	P	P	-	P	-	-	
Waterfront facilities	P	P	-	-	-	-	-	P	-	
<b>Public &amp; Institutional</b>										
Cemetery	S	-	-	-	-	-	-	-	-	
Clubhouse, community center or place of worship	S	S	S	P	S	S	P	S	-	Yes
Day care center or nursery school	S	S	S	S	P	P	S	S	-	Yes
Hospital, clinic or related health care facility	-	-	-	-	-	-	-	-	-	
Governmental use	P	P	P	P	P	P	P	P	P	
Museum	-	-	-	P	P	P	P	P	-	
School - elementary and secondary	P	P	P	S	S	P	S	S	-	Yes
School - specialized	-	-	-	S	-	-	S	S	-	
Utility structure	S	S	S	P	P	S	P	S	P	
<b>Industrial</b>										
Industrial service use	-	-	-	S	-	-	P	-	P	
Manufacturing and production - heavy	-	-	-	-	-	-	-	-	-	
Manufacturing and production - light	-	-	-	-	-	-	P	-	P	
Printing and publishing	-	-	-	P	P	-	P	-	P	
Self-storage	-	-	-	-	-	-	P	-	P	
Personal services	-	-	-	P	P	P	P	S	-	Yes
Telecommunications facility – collocated	-	-	-	P	P	P	P	P	P	Yes
Telecommunications facility – free-standing	-	-	-	-	-	-	S	-	S	Yes
Vehicle-related uses - general	-	-	-	S	-	-	P	-	-	Yes
Vehicle-related uses - intense	-	-	-	-	-	-	P	-	-	Yes
Wholesale storage, warehousing and freight movement use	-	-	-	-	-	-	P	-	P	

<b>Use</b>	<b>SFR</b>	<b>TFR</b>	<b>MFR</b>	<b>DMU</b>	<b>RMU</b>	<b>OMU</b>	<b>CC</b>	<b>WF</b>	<b>M</b>	
<b>Accessory Uses</b>										
Accessory building or structure	A	A	A	A	A	A	A	A	A	Yes
Drive-in or drive-thru facility	-	-	-	-	-	-	A/S	-	-	Yes
Home occupation	A	A	A	A	A	A	-	A	-	Yes
Mechanical amusement device	-	-	-	A	A	-	A	-	-	Yes
Office/studio – professional in a residential building	A	A	A (MFR-2 only)	A	A	A	A	A	-	Yes
Outdoor dining	-	-	-	A	A	-	A	A	-	Yes
Parking- surface lot								AS		
Parking-structured								AS		
Sidewalk cafe	-	-	-	A/S	A/S	-	-	A/S	-	Yes
Swimming pool	A	A	A	A	A	A	A	A	-	Yes

## §59-3.2. USE-SPECIFIC STANDARDS

Regardless of whether a use is permitted by-right, as a special permit use, or as an accessory use, and regardless of the zoning district in which the use is located, the following additional standards must be met in respect of the uses identified, except as authorized by other sections of this chapter. Conformance with these standards will be determined during the application review by the final decision-making body.

### A. RESIDENTIAL USES

#### (1) Mixed Use Dwelling

- (a) Access to any individual dwelling units above the street level must be provided from an enclosed lobby or corridor and stairwell, and must not pass through the use located on the first floor of the building. Unenclosed or partially enclosed exterior stairwells are prohibited.
- (b) The minimum habitable floor area in the dwelling unit shall be 600 square feet.

#### (2) Group Home

In furtherance of the policy of the State of New York to deinstitutionalize those persons who cannot be cared for in their natural homes by placing them in small, dispersed group homes which are designed to give an outwardly similar appearance to other one-family dwellings, the following regulations shall apply:

- (a) Said home shall be operated or sponsored by a public social service agency or nonprofit agency, authorized by the New York State Department of Social Services.
- (b) Said home shall have a maximum occupancy of 6 persons, excluding full-time sleep-in personnel.
- (c) Said home shall be set up in size, appearance and structure to bear the general character of a family unit in a relatively permanent household. As such it shall not permit transients or transient living.
- (d) Said home shall conform to and shall be maintained in accordance with the overall character and appearance of the surrounding neighborhood. No sign that advertises the use or occupancy of said home shall be erected.
- (e) Any applicant for a special permit for an agency group home shall submit the following information to the Zoning Board of Appeals:
  - (i) The governmental authorization to operate said facility.
  - (ii) A complete statement of the proposed number, age and permanency of residence of the persons to be cared for, and the number and qualifications of both resident and nonresident adult supervisory personnel.
  - (iii) Proof of licensure.
- (f) Any change in the operation that requires a change of licensure of any approved group home shall be subject to a complete new application for a special permit, in accordance with the same standards and procedures as required for the original application.

#### (3) Retirement Home, Nursing Home, or Assisted-Living Facility

- (a) The number of residents living within a facility at any one time (including live-in staff) shall not exceed one person per 400 square feet of living area.

- (b) A minimum of 30 percent of the site shall remain as an open planted area, landscaped area, natural vegetation area or usable yard, to exclude buildings, driveways, parking areas, sidewalk, etc.
- (c) All dimensional standards of the underlying zoning district shall apply.

## **B. COMMERCIAL USES**

### **(1) Adult Uses**

- (a) No business or person shall construct, establish or be issued a certificate of occupancy for any adult entertainment use within the Village of Nyack unless he has applied for and obtained a special permit from the Zoning Board of Appeals. To receive such a special permit, the applicant must satisfy the following criteria:
  - (i) No more than one of the adult entertainment uses as defined in §59-6.1 shall be located on any lot.
  - (ii) No adult entertainment use shall be established or permitted in any building of which any part is used for residential purposes.
  - (iii) No residential use shall be established in a building of which any part is used as an adult entertainment use.
  - (iv) No adult entertainment use shall be established closer than 500 feet to any lot line of any other adult entertainment use.
  - (v) No adult entertainment use shall be established closer than 200 feet to the lot line of any residential district, which shall include any zoning district that permits residential use.
  - (vi) No adult entertainment use shall be established closer than 200 feet to the lot line of any church, community center, funeral home, school, day-care center, hospital, alcoholism center or drug treatment center, counseling or psychiatric treatment facility or public park.
  - (vii) An adult motion-picture theater established as an adult entertainment use within the Village of Nyack, which adult motion-picture theater proposes to provide video booths for the purpose of presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas for observation by its patrons, shall be well lighted at all times and shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls wherein the adult entertainment is provided shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes, or by any other obstruction whatsoever.
  - (viii) The applicant must meet all other regulations of the Village of Nyack, including but not limited to district lot and bulk regulations, parking regulations and signage requirements. For purposes of this Chapter, an "adult bookstore" shall be deemed "retail sales" and a "massage establishment" shall be deemed a "personal service establishment."

### **(2) Animal Hospital and Kennel**

Any outdoor facilities, including outdoor dog runs and animal exercise areas, shall be set back at least 100 feet from any lot line and at least 500 feet from the boundary of any zoning

district allowing residential uses. Overnight boarding facilities must be located completely indoors.

**(3) Bed and Breakfast**

Bed and breakfasts shall:

- (a) Be owner-occupied, with the subject property serving as the primary dwelling for the owner-operator;
- (b) Be located within a structure that is permitted within the district in which it is located;
- (c) Be limited to a maximum of six guest rooms;
- (d) Not include cooking facilities in guest rooms, including but not limited to stoves, grills, or ovens.
- (e) Limit meal service to breakfast for paying overnight guests;
- (f) Limit exterior alterations to those necessary to assure safety of the structure or enhance compatibility of the bed and breakfast with the surrounding neighborhood; and
- (g) Limit advertising signage to one on-site sign a maximum of nine square feet in area.

**(4) Hotel or Motel**

Hotels or motels providing more than 100 guest rooms shall include recreational facilities on site such as swimming pools, gymnasiums and other typical health club facilities, and open space recreation areas.

**(5) Parking - Surface Lot (Principal Use)**

Off-street parking as a principal use shall meet the following standards:

- (a) No other business of any kind shall be conducted on the lot, including repair service, washing, display, or storage of vehicles or other goods;
- (b) Comply with all applicable standards for landscaping and parking lot design in § 59-4.5K.

**(6) Parking -Structured**

Parking structures shall meet the following standards:

- (a) Indoor parking facilities shall generally be integrated within the principal building or constructed as a separate structure behind the principal building.
- (b) Façade openings shall be screened so that light and vehicles are not visible from public streets. Openings facing a public street shall not expose vehicle ramps and the floors fronting on street-facing facades must be level.
- (c) A parking garage may front on a public street when it has been designed to include a first floor retail wrap meeting the following standards:
  - (i) the wrap faces on all streets, except alleys, for the entire length of the building, except for those places necessary to provide ingress and egress into the parking areas;
  - (ii) the depth of the retail wrap is a minimum of 25 feet; and
  - (iii) the space is used for retail, restaurant, municipal, or other pedestrian-oriented uses permitted in the zoning district.

**(7) Restaurant, Take-out Restaurant, Bar or Tavern, and Fast Food Establishment**

- (a) Drive-in or drive-thru facilities are prohibited, except as a special permit use in the CC district in accordance with the additional standards of §59-3.2. E(2).
- (b) No bar or tavern may be located within 200 feet of the following use types: parks, secondary or elementary schools, community centers, and places of worship. The distance shall be measured from the each and every corner of the building housing the bar or tavern to the property line of the above-listed use types.

**(8) Retail Sales and Service**

In the RMU district, no individual retail sales or service use shall exceed 5,000 square feet in floor area.

**(9) Waterfront Facilities**

Boat storage for waterfront facilities shall not exceed 25 feet in height, except for masts and standard rigging.

**C. PUBLIC & INSTITUTIONAL USES**

**(1) Clubhouse, Community Center and Place of Worship**

The Village shall have the authority to grant modifications to any of the standards listed in this section in order to eliminate a substantial burden on religious exercise as guaranteed by the federal Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. Sec. 2000), as amended. In granting such a modification, the Village may require conditions consistent with the federal act that will secure substantially the objectives of the modified standard and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties.

**(2) Day Care Center and Nursery School**

A day care center provided as an accessory use shall comply with these standards. A day care center or nursery school associated with and located on the same parcel as a place of worship shall be considered a second principal use and requires approval as such.

Day care centers shall comply with the following standards:

**(a)** Licensed or authorized by the State of New York;

**(b)** Provide an outdoor play area meeting the following additional standards:

**(i)** Include a fence at least three-and-one-half (3½) feet in height that completely encloses the play area, that is designed so all persons entering the play area are within direct line of sight from the classroom areas;

**(ii)** Not locate play equipment within the required yard or setback of any district;

**(iii)** Be safely segregated from parking, loading, or service areas; and

**(iv)** Not conduct outdoor play activities before 8:00 A.M. or after 8:00 P.M.

**(c)** If allowed as an accessory use to a permitted commercial use, the day care use shall not exceed 20% of the floor area of the principal use.

**(3) School – Elementary and/or Secondary**

A school provided as an accessory use shall comply with these standards. A school associated with and located on the same parcel as a place of worship shall be considered a second principal use and requires approval as such.

**(a)** The site shall meet the minimum standards established by the State Department of Education.

**(b)** In the case of private or parochial schools, these standards shall be used as guides, but if the site is below the state standards, the nonpublic schools will be reviewed as a special permit use.

**D. INDUSTRIAL USES**

**(1) Telecommunications Facility – Free-standing**

**(a)** Purpose

- (i) The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Village of Nyack, to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations and to protect the natural features and aesthetic character of the Village, with special attention to the aesthetic qualities of this Hudson River riverfront residential community. The Village seeks to maintain concealed or reduced antenna/tower height with groups of antennas/towers within close proximity to one another rather than isolated antennas/towers with many users at greater heights and at random locations throughout the Village. Where available, co-location is mandatory. The Applicant shall bear the burden of showing, by clear and convincing evidence, that co-location is not possible.
  - (ii) These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.
- (b) Application of Special Use Regulations
  - (i) No tower or antenna shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a tower or antenna unless in conformity with these regulations.
  - (ii) These regulations shall apply to all property within the following zones: all zoning districts contained in the Village of Nyack.
  - (iii) Exceptions to these regulations are limited to:
    - A. New uses, which are accessory to residential uses.
    - B. Lawful or approved uses existing prior to the effective date of these regulations.
  - (iv) Where these regulations conflict with other laws and regulations of the Village, the more restrictive shall apply, except for tower height restrictions, which are governed by these special standards.
- (c) Procedure for Special Use Permit; Fee; Facility Service Plan
  - (i) All applications shall be accompanied by a facility service plan, which shall include information necessary to allow the Zoning Board of Appeals to understand the existing, proposed and long-range plans of the applicant. The facility service plan shall include at least the following information:
    - A. The location, height and operations and characteristics of all existing facilities of the applicant in Orangetown and Clarkstown (including the incorporated areas therein).
    - B. A commitment to collocate or allow collocation wherever possible on all existing and proposed facilities.
  - (ii) The applicant shall provide funds to an escrow account to allow the Building Inspector or the Zoning Board of Appeals to retain such technical experts involving radio frequency as may be necessary to review the proposal, provided that no funds shall be deposited until a scope of work is agreed upon among the applicant, the expert and the Board.
  - (iii) Application to the Zoning Board of Appeals for a special permit under this section shall be accompanied by a fee as set forth in the Village's fee schedule.



- (iv) Prior to or concurrent with the filing of a formal application to the Zoning Board of Appeals to obtain a special permit under this section, the applicant shall submit information needed to meet the requirements of the New York State Environmental Quality Review Act (SEQRA) to the Zoning Board of Appeals, which Board shall determine whether the requirements of SEQRA have been met. The Zoning Board of Appeals may hold a joint public hearing under the provisions of SEQRA and this section whenever practicable. In the event that a final SEQRA determination has not been made, no application for a special permit under this section shall be granted.
- (v) The Zoning Board of Appeals shall hold a public hearing on due notice within 62 days after submission of a formal completed application, including such technical information from the applicant as may be required by the Zoning Board of Appeals for a special permit under the provisions of this section.
  - A. Notice of the public hearing shall be by publication in the official newspaper of the Village at least 10 days in advance of the hearing and may be continued from time to time to a specific adjourned date.
  - B. The hearing notice shall indicate that the application may be examined and further information is available from the Zoning Board of Appeals office during regular business hours.
  - C. Copies of the publication order shall be mailed by the applicant to the owners of property within 1,000 feet of the property which is the subject of the application, and an affidavit of service thereof shall be filed with the Zoning Board of Appeals due on or before the date of the hearing. Failure of any addressee to receive such notice shall not in any manner affect the jurisdiction of the Zoning Board of Appeals or any action taken on the application.
  - D. The Zoning Board of Appeals may approve, approve with conditions or disapprove the application for a special permit under the provisions of this section within 62 days after the close of the public hearing.
  - E. The decision shall be made at a meeting of the Zoning Board of Appeals with a quorum present and not less than a majority of the total membership voting "aye" on the resolution as a requirement for passage.
  - F. A super majority vote of the Zoning Board of Appeals will be required for any approval of an application for a special permit to erect or operate a wireless communications facility in any residentially zoned parklands. A super majority is 50% of the constituency of the Board plus one additional vote.
  - G. The period in which the Board may take action may be extended with the consent of the applicant.
  - H. The completed application shall be referred to the Planning Board and the Architectural Review Board for review prior to the public hearing. The Planning Board and the Architectural Review Board shall review the application and shall issue findings and a recommendation of approval or disapproval to the Zoning Board of Appeals. The Planning and Architectural Review Boards' recommendations shall be advisory and shall not be binding on the Zoning Board of Appeals.
- (vi) Information required for wireless communications antennas. For all proposed wireless communications antennas the applicant shall bear the burden of demonstrating by substantial evidence that a bona fide need exists for the facility

and that no reasonable combination of locations, techniques or technologies will obviate the need for or mitigate the height or visual impact of the proposed telecommunications tower. The applicant shall provide the following additional information. Items K. through Q. shall be included in a report prepared by a radio frequency engineer, health physicist or other qualified professional, whose qualifications and curriculum vitae shall be attached to the application.

- A.** Name and address of the property owner and the applicant.
- B.** Address, lot and block and/or parcel number of the property.
- C.** Zoning district in which the property is situated.
- D.** Name and address of the person preparing the plan.
- E.** Size of the property and the location of all lot lines.
- F.** Approximate location of nearest residential structure.
- G.** Approximate location of nearest occupied structure.
- H.** Location of all structures on the property which is the subject of the application.
- I.** Location, size and height of all proposed and existing antennas and all appurtenant structures on the property.
- J.** Type, size and location of all existing trees and shrubs, by dominant species and current height, and any and all proposed landscaping, identified by size of specimen at installation and by species.
- K.** A report by a New York State licensed professional engineer, documenting compliance with applicable structural standards and describing the general structural capacity of any proposed installation.
- L.** Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless communications facility at full build-out, including representations of the proposed mount, antennas, equipment shelters, cable runs, driveways, parking areas and any other construction or development attendant to the wireless communications facility. If the security barrier will block views of the wireless communications facility, the barrier drawing shall be cut away to show the view behind the barrier.
- M.** A description of the antenna's function and purpose.
- N.** The make, model and manufacturer of the antenna.
- O.** The frequency, modulation and class of service.
- P.** Transmission and maximum effective radiated power.
- Q.** Direction of maximum lobes and associated radiation and compliance with FCC regulations.
- R.** If the name or address of the owner or operator of the antenna facility is changed, the Building Department of the Village of Nyack shall be notified of the change within 90 days.
- S.** Within 90 days of operating any transmitting antenna, the owner or operator shall submit to the Building Inspector a written certification by a New York State licensed professional engineer (for monopole or tower installations) that the antenna complies with the Village of Nyack Code and all other applicable governmental regulations.
- T.** Consent to allow additional antennas (for purposes of collocating) on any new antenna towers, if feasible.

- U. A certified copy of the Federal Communications Commission (FCC) license to operate the telecommunications facility.
- V. A copy of the lease or rental agreement related to the property between the operator of the installation and owner of the property.
- W. In the case of collocation, a certified copy of the intercarrier agreement for the exchange of technical information in order to assure RF standards compliance.
- (vii) Requirements applicable to all wireless communications antennas. For all proposed wireless communications antennas the following requirements are applicable:
  - A. For proposed sites within 100 feet of other sources of radio frequency (RF) energy emanating from other wireless communications facilities, the applicant shall provide an estimate of the maximum total exposure from all nearby stationary sources and comparison with relevant standards. This assessment shall include individual and ambient levels of exposure. It shall not include residentially based facilities such as cordless telephones.
  - B. All obsolete or unused wireless communications antennas (including tower supports) shall be removed within 60 days of cessation of operations at the site. The Village may remove such facilities after 60 days and treat the cost as a tax lien on the property.
  - C. All wireless communications facilities shall be identified with signs not to exceed six square feet, listing the owner or operator's name, the site manager's name and emergency telephone number, which shall be posted in a conspicuous place. All wireless communications facilities shall likewise bear approved warning signage as required by federal and state law. No signs shall be permitted on either the tower or equipment building, except for those signs required by law or containing such information as owner contact information, warnings and "no trespassing" signs. Absolutely no commercial advertising shall be permitted on any wireless telecommunications tower or equipment building.
  - D. New wireless communications facilities may not be sited within 500 feet of any existing wireless communications antenna.
  - E. No source of NIER (nonionizing electromagnetic radiation), including facilities operational before the effective date of this section, shall exceed the federal or state NIER emission standard.
  - F. New antennas and supporting towers shall be designed to accommodate additional antennas, and supporting towers shall be designed to accommodate additional antennas for purposes of collocating.
  - G. The applicant bears the burden by a showing of substantial evidence that none of the sites listed on Appendix A, with a reasonable combination of technologies and techniques will provide sufficient coverage to meet the need set forth in the application.
  - H. Equipment shelters and accessory structures.
    - 1. Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Zoning Board of Appeals; or
    - 2. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Zoning

Board of Appeals shall determine the types of plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

3. Accessory structures for wireless communications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the communications facility, are the minimum size necessary to meet the needs of the specific site, and meet the following requirements:
    - a. Accessory structures may not include an office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.
    - b. Accessory structures must be of the minimum size necessary.
    - c. Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height to the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
    - d. In residential districts, or for installations within 100 feet of a residential district, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Zoning Board of Appeals.
    - e. All equipment shelters and accessory structures on one lot shall be architecturally uniform.
- (viii) Antenna locations where public exposure is likely. For roof-mounted, collocated or other situations wherein a special permit is required hereunder, the application shall include:
- A. An assessment of potential public exposure to radio frequency (RF) energy from the proposed facility indicating the facility's compliance with applicable federal or state standards. The applicant shall identify the maximum exposure level, the locations at which this occurs and the estimated RF levels at specific locations of community interest, such as schools, residential buildings or commercial buildings. Assumptions used in the calculations shall be stated, including building heights and topography.
  - B. A multiple-source exposure impact assessment shall be prepared if the wireless communications facility is to be situated on the same site as existing facilities, such as a tower or roof.
  - C. Evidence that the maximum exposure to the general public will not exceed federal or state standards.
  - D. An identification of rooftop areas to which the public may have access. The exposure in these areas shall be in compliance with the standards established by any federal or state agencies.
  - E. An identification of how much of the roof, if any, should be designated a controlled environment due to RF field levels in accordance with the applicable federal or state standard.

- F. Notification to the building management if any portion of the roof needs to be identified as a controlled environment due to RF levels in excess of the guidelines in the applicable federal or state standards.
- (ix) Requirements applicable to roof-mounted antennas.
  - A. Antennas shall not be placed more than 15 feet higher than the height limitation for buildings and structures within the zoning district in which the antenna is proposed to be erected.
  - B. In the event that an existing structure or building is proposed as a mount for a wireless communications facility, a fall zone shall not be required unless the Zoning Board of Appeals finds that a substantially better design will result from an increased setback. In making such a finding, the Zoning Board of Appeals shall consider both the visual and safety impacts of the proposed use.
  - C. The following material shall be provided to allow the Zoning Board of Appeals to determine the level of visual impact and the appropriateness of the facility:
    - 1. Existing ("before" condition) color photographs of views of the site from key viewpoints both inside and outside of the Village, 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 viewsheds identified in the Village Master 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 if different or in addition to those submitted by the applicant.
    - 2. Proposed ("after" condition) simulations. Each of the existing condition photographs shall have the proposed wireless communications facility superimposed on to it to show what would be seen from the key viewpoints if the proposed facility were built.
  - D. **Camouflage**
    - 1. Wireless communications facilities shall be the least obtrusive and the most appropriate to the proposed site, as determined by the Planning Board.
    - 2. All wireless communications facilities shall be designed to blend into the surrounding environment through the use of design and color except in such instances where color is dictated by federal or state authorities such as the Federal Aviation Administration.
    - 3. A wireless communications facility, which is roof-mounted on a building, shall be concealed within or behind existing architectural features to limit its visibility from public ways, and shall be stepped back from the front facade in order to limit its impact on the building's silhouette.
    - 4. A wireless communications facility, which is side-mounted on a building, shall be painted or constructed of materials to match the color of the building material directly behind it.
- (x) **Requirements applicable to new wireless communications towers.**
  - A. **Collocation Not Feasible**
    - 1. The applicant shall demonstrate to the Zoning Board of Appeals by clear and convincing evidence that no tower exists on which the antenna may collocate, or that collocation is not feasible for any of the following reasons:

2. The applicant has been unable to come to a reasonable agreement to collocate on another tower. The names and addresses of other service providers approached shall be provided, accompanied by a written statement as to the reason an agreement could not be reached.
3. The applicant's network of antenna locations is not adequate to properly serve its customers, and the use of facilities of other entities is not suitable for physical reasons.
4. Adequate and reliable service cannot be provided from existing sites in a financially and technologically feasible manner consistent with the service provider's system requirements.
5. Existing sites cannot accommodate the proposed antenna due to structural or other engineering limitations (e.g., frequency incompatibilities).
6. The Zoning Board of Appeals may require the use of stealth technology to camouflage ground-mounts.

**B. Camouflage by Vegetation**

If wireless communications facilities are not camouflaged from public viewing by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted wireless communications facilities shall provide a vegetative buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may exist on the subject property or be installed as part of the proposed facility or a combination of both. The Zoning Board of Appeals shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

**C. Camouflage by Design**

To the extent that any wireless communications facility extends above the height of the vegetation immediately surrounding it, the facility shall be camouflaged by design to minimize the adverse visual and aesthetic impact unless otherwise required by the Zoning Board of Appeals.

**D. Equipment Shelters and Accessory Structures**

1. Equipment shelters for wireless communications facilities shall be designed consistent with one of the following standards:
  - a. Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Zoning Board of Appeals; or
  - b. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Zoning Board of Appeals shall determine the types of plant materials and depth of the needed buffer based on-site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
2. Accessory structures for wireless communications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the communications facility, are the minimum size

necessary to meet the needs of the specific site, and meet the following requirements:

- a. Accessory structures may not include an office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.
- b. Accessory structures must be less than 500 square feet and 15 feet in height or 700 square feet and 12 feet in height.
- c. Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height to the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
- d. In residential districts, or for installations within 100 feet of a residential district, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Zoning Board of Appeals. In no case will metal exteriors be allowed for accessory structures.
- e. All equipment shelters and accessory structures on one lot shall be architecturally uniform.
- f. When a security fence is required, the outside of such fencing shall be landscaped with evergreen shrubs, trees or climbing evergreen material on the fencing or may contain wooden slats woven into the fence so as to mitigate and minimize the industrial character of the fence.
- g. An existing natural vegetative buffer, which meets or exceeds the above requirements, may be substituted to meet the landscape requirements set forth above.

**E. Access and Parking**

1. A road and parking plan shall be provided to ensure adequate emergency and service access and shall meet the requirements of the Zoning Board of Appeals. Any driveway shall meet the requirements of the Zoning Board of Appeals and the highway authority of the road on which the driveway fronts.
2. Maximum use of existing public and private roads shall be made, consistent with safety and aesthetic considerations.
3. Road construction shall minimize ground and vegetation disturbance. Road grades shall follow natural contours to reduce soil erosion potential and to ensure that roads are aesthetically compatible with the character of the surrounding area.
4. The Zoning Board of Appeals may require an erosion and sedimentation control plan and may refer the site plan to any other municipal authority or official (town, state) for review.
5. Unpaved roads shall be considered unless conditions require paving, as determined by the Zoning Board of Appeals, in consultation with the appropriate authorities or consultants.

6. Access roads, driveways or parking areas shall provide adequate interior turnarounds such that service vehicles will not have to back out onto a public thoroughfare.

**F. Dimensional Requirements**

Wireless communications towers shall comply with the following requirements:

**1. Height and Fall Zone**

- a. The total height of any mount or accessory elements attached to any structure shall be measured from the ground level to the top of the mount or the top of the uppermost accessory affixed to the mount, whichever is higher.
- b. A fall zone around any tower constructed as part of a telecommunications facility must have a radius at least equal to the height of the tower and any antenna(s) upon its zenith. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the telecommunications facility. If the facility is attached to an existing structure, release may be granted by specific permission of the Zoning Board of Appeals on a case-by-case basis.

**2. Setbacks**

- a. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:
- b. To ensure public safety, the minimum distance from the base of any ground-mounted wireless communications facility to any property line, road, habitable dwelling, business or institutional use, accessory structure, or public recreation area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the "fall zone." Additional setbacks may be required by the Planning Board to provide for the public safety.
- c. The maximum area permitted to be cleared shall be no more than 50 feet in extent from the outer edge of the primary structure's footprint. During construction and installation of facilities and structures, only the minimum amount of existing vegetation shall be cleared.

**(xi) Expert Reporting Requirements**

Any application for the approval of a special permit for a wireless communications facility shall include a report by a qualified radio frequency engineer, health physicist or other qualified professional as determined by the Zoning Board of Appeals which calculates the maximum amount of nonionizing electromagnetic radiation (NIER) which will be emitted from the proposed wireless communications facility upon its installation and demonstrates that the facility will comply with the applicable federal or state standards.

**(xii) NIER Measurements and Calculations**

All applicants for wireless communications antennas in any district shall submit calculations of the estimated NIER output of the antenna(s). The calculations shall



be provided to the Zoning Board of Appeals at the time of making the application for special permit. NIER levels shall be measured and calculated as follows:

- A. Measuring equipment used shall be generally recognized by the Environmental Protection Agency (EPA), National Council on Radiation Protection and Measurement (NCRPM), American National Standards Institute (ANSI) or National Bureau of Standards (NBS) as suitable for measuring NIER at frequencies and power levels of the proposed and existing sources of NIER.
- B. Measuring equipment shall be calibrated as recommended by the manufacturer in accordance with methods used by the NBS and ANSI, whichever has the most current standard.
- C. The effect of contributing individual sources of NIER within the frequency range of a broadband measuring instrument may be specified by separate measurement of these sources using a narrow-band measuring instrument.
- D. NIER measurements shall be taken based on maximum equipment output. NIER measurements shall be taken or calculated when and where NIER levels are expected to be highest due to operating and environmental conditions.
- E. NIER measurements shall be taken or calculated along the property lines at an elevation six feet above grade at such locations where NIER levels are expected to be highest and at the closest occupied structure.
- F. NIER measurements shall be taken or calculated following spatial averaging procedures generally recognized and used by experts in the field of RF measurement or other procedures recognized by the FCC, EPA, NCRPM, ANSI and NBS.
- G. NIER calculations shall be consistent with the FCC, Office of Science and Technology (OST) Bulletin 65 or other engineering practices recognized by the EPA, NCRPM, ANSI, NBS or similarly qualified organization.
- H. Measurements and calculations shall be certified by a New York State licensed professional engineer, health physicist or a radio frequency engineer. The measurements and calculations shall be accompanied by an explanation of the protocol, methods and assumptions used.

**(xiii) Annual Inspections**

**A. Structure**

- 1. All telecommunications facilities shall be inspected annually at the applicant's expense for structural integrity, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement Officer and/or Building Inspector. The structural inspection shall be performed by a New York State licensed professional engineer.
- 2. The annual inspection report shall describe the structural integrity, maintenance issues and repairs needed or made, if any.
- 3. In the event that the structural inspection indicates structural deficiencies, the deficiencies must be remedied by the applicant at the applicant's expense within a time period reasonably set by the Code Enforcement Officer and/or Building Inspector.

**B. NIER Monitoring and Enforcement**

- 1. The owner and/or operator of the antenna shall perform a NIER level reading as set forth above and shall submit the results of the test to the Nyack Building Department within 90 days of initially operating the

antenna system and annually thereafter. The owner or operator shall provide a report from a qualified professional who shall certify, under penalties of perjury, that the installation does not expose the general public to NIER standards in excess of those of any federal or state agency regulating RF energy. Failure to timely submit such annual inspections to the Building Inspector will act as an automatic revocation of the special permit. Within 10 days of notification of failure to submit such annual inspection report, the Building Inspector is empowered to take any reasonable means in order to enjoin and terminate the operations of the installation.

2. The town may measure NIER levels as necessary to ensure that the federal or state standards are not exceeded.
3. If the standards of any federal or state agency are exceeded at the location of a proposed transmitting antenna, the proposed facility shall not be permitted.

**(xiv) Bulk Regulations and Height**

- A. In residential districts, all wireless communications facilities shall comply with yard requirements of the Zoning Ordinance for principal buildings. No wireless communications facilities may be located between the principal structure and the street.
- B. In nonresidential districts, wireless communications facilities may be in side or rear yards as established in the Zoning Ordinance as acceptable to the Zoning Board of Appeals but not in buffers shown on an approved site plan or in a conservation or similar easement. No wireless communications facilities may be located between the principal structure and the street.
- C. Wireless communications facilities shall not exceed 45 feet in height unless the requirements of Subsection D below are met.
- D. In the event that applicants propose a height greater than that listed in Subsection N(3) above, the applicant must demonstrate to the satisfaction of the Zoning Board of Appeals that:
  1. Alternative means of mounting the antenna have been considered and are not feasible for the applicant; and
  2. Alternative locations for the antennas have been investigated both in and out of the Village and are not feasible; and
  3. The proposed height is the minimum height necessary for adequate operation to meet the applicants' communications need and the aesthetic intrusion has been minimized to the greatest extent practicable; and
  4. The site or building on which the facility is proposed to be installed does not become nonconforming or increase in nonconformity by reason of the installation of wireless communications facilities. This includes but is not limited to yard, buffer, height, and floor area ratio for equipment buildings, parking, open space and other requirements. Height requirements of the Zoning Ordinance shall apply to buildings and equipment shelters.
- E. Notwithstanding anything stated herein, the Zoning Board of Appeals shall be permitted to increase the height of any tower beyond any limitations set forth herein in order to accommodate additional users. In reviewing a request for greater height, the Zoning Board of Appeals shall balance the effect of a

greater height against the provision of one or more additional towers, collocating or other alternatives.

- F. In residential districts, wireless communications towers and monopoles shall be separated from residential buildings on adjacent or abutting properties by a distance of not less than two times the height of the tower or monopole. This provision shall apply to the proposed use for wireless communications facilities of towers or monopoles existing at the time of adoption of this section.

**(xv) Color and Lighting Standards**

Except as specifically required by the Federal Aviation Administration (FAA) or the FCC, antennas, including the supporting structure and all related appurtenances, shall:

- A. Be colored to reduce the visual impact to the greatest degree possible.  
B. Not be illuminated, except buildings may use lighting required by the New York State Fire Prevention and Building Code or when required for security reasons. When lighting is used, it shall be compatible with the surrounding neighborhood to the greatest degree practicable.

**(xvi) Fencing and NIER Warning Signs**

- A. The area surrounding the facility shall:
1. Be fenced or otherwise secured in a manner which prevents unauthorized access by the general public.
  2. Contain appropriate signage to warn of areas of the site where:
    - a. NIER standards are exceeded.
    - b. High risks for shocks or burns exist.
- B. For wall-mounted antennas, the signage shall be placed no more than five feet off the ground below the antenna.  
C. For antennas mounted on the roof, signage shall be placed on all doors that provide access to said roof. The signage shall be placed no more than five feet off the ground.

**(xvii) NIER Exposure Standards**

No antenna or combination of antennas shall expose the general public to NIER levels exceeding the standard of any federal or state agencies having jurisdiction. In addition, no antenna facility shall emit radiation such that the general public will be exposed to shock and burn in excess of the standards contained in ANSI C-95.1.

**(xviii) Registration**

The Building Department shall keep a list of the names, addresses, type and maximum emissions of all antenna operators in the Village. This list shall be maintained from applications to the Zoning Board of Appeals and Building Department and from FCC or similar inventories of facilities in the Village.

**(xix) Performance Standards for New Antennas**

New antennas must comply with the following performance standard that the estimated or measured NIER from a proposed antenna, when added to existing radio frequency electromagnetic radiation from existing sources, will not exceed the guidelines set forth in the applicable federal and state standards.

**(xx) Zoning Board of Appeals Findings**

The Zoning Board of Appeals shall make written findings that the issuance of a special permit is in compliance with all of the requirements of this chapter.

**(xxi) Expiration: Issuance of Certificate of Use**

Except as noted in §59-3.2.D(1)(vii)B and §59-3.2.D(2)(xiii)B.1 above:

**A. Duration of Special Use Permit**

1. Every special use permit shall be limited to the applicant and any assignment or transfer of the special use permit or any of the rights thereunder shall be made only with the approval of the Planning Board, except in the case of an assignment or transfer to a corporate affiliate or successor of the applicant.
2. The special use permit shall expire after two years from date of approval by the Zoning Board of Appeals.
  - a. Renewal must not be unreasonably withheld if the applicant is in conformance with the original approval and all conditions attached thereto.
  - b. Not less than 60 days prior to the expiration of a special use permit, the holder of the permit must submit to the Zoning Board of Appeals a renewal application. If the holder fails to submit a renewal application within the 60 days, the special use permit will expire.
3. The renewal application will contain the following:
  - a. A current updated build-out plan;
  - b. A special use permit renewal form;
  - c. A statement of need that a structure is still in use and is still necessary to provide satisfactory service to its customers;
  - d. The most recent structural and safety inspection reports for all structures on site;
  - e. Color photographs of the structure from all directions; and
  - f. Other materials or information deemed necessary by the Planning Board.
4. Within 45 days of the submission of a completed application for a special use permit renewal and determination by the Code Enforcement Officer that the application is sufficient for review, the Zoning Board of Appeals shall hold a public hearing on the application. A copy of its decision shall be mailed to the applicant.
5. The applicant has one calendar year from the date of approval of the special use permit to commence construction and 14 months from date of approval of the special use permit to complete construction. If construction is neither begun nor completed within these time frames, the special use permit shall expire.

**B.** The Building Inspector shall require issuance of a revised or new special permit prior to the issuance of a building permit use where the proposal requires a special permit.

**C.** The applicant shall provide a report to the Building Inspector prepared by a New York State licensed professional engineer certifying that any monopole or tower has been constructed in accordance with the plans approved by the Building Inspector.

**(xxii) Existing Installations**

The operator of any wireless communications facility existing at the time that this section takes effect shall be permitted to remain in operation, provided that the operator submits proof within six months of the enactment of this section that the

facility complies with the standards adopted by the Federal Communications Commission and all requirements of this section, as certified by a professional engineer with qualifications acceptable to the Village of Nyack. Operating antennas or towers that are legally nonconforming with respect to the area regulations of this section shall be permitted to remain until such time as a request is made to modify the antenna or tower. Any facility for which emission, structural and security compliance documentation is not received shall cease operations within six months of the enactment of this section and be immediately removed thereafter in accordance with the provisions of this section. Any facility (antenna or tower) in a residential zoning district which is not operating as of the effective date hereof shall be considered to be nonconforming and shall be removed within six months of the enactment of this section.

**(xxiii) Exclusion and Exemptions**

- A.** The Village of Nyack as a municipality shall be exempt from the provisions of this section and may operate a wireless communications facility or permit the operation of a wireless communications facility on nonresidentially zoned Village property without obtaining a permit and without being subject to the conditions set forth in this section.
- B.** This section acknowledges the interest of the Federal Communications Commission in promoting amateur radio operations, as expressed in FCC Order PRB1, by imposing the minimum practicable regulation on amateur radio antennas necessary to accomplish the Village's legitimate zoning purposes.

**(2) Vehicle-Related Uses**

- (a)** The minimum lot size for such uses shall be 20,000 square feet, and the minimum street frontage shall be 150 feet.
- (b)** Entrance and exit driveways shall have an unrestricted width of not less than 16 feet, shall be located not nearer than 10 feet to any property lines and shall be so laid out as to allow any vehicle entering the property to turn around on site and not have egress by backing out across any public right-of-way or portion thereof.
- (c)** Vehicle lifts or pits, dismantled or disabled automobiles and all parts or supplies shall be located within a building enclosed on all sides.
- (d)** All service or repair of motor vehicles, other than such minor servicing as change of tires or sale of gasoline or oil, shall be conducted in a building fully enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
- (e)** The storage of gasoline in bulk shall be located fully underground and not nearer than 35 feet to any property line other than the street line.
- (f)** No gasoline pumps shall be located nearer than 15 feet to any street line.
- (g)** No building permit shall be issued for a motor vehicle service station within a distance of 200 feet of any school, clubhouse, community center, place of worship, or hospital, said distance to be measured in a straight line between the nearest points of each of the lots or premises, regardless of the district where either premises are located.
- (h)** No new automobile service station and no gasoline or oil pump or automotive service appliance, unless within a building, shall be permitted to be established on a lot that is within 600 feet of another lot on which there is an existing automobile service station or

outdoor gasoline or oil pump or automotive appliance, or of another lot for which a building permit has been issued for the erection of such a station, pump or service appliance. Such distance shall be measured in all directions along public rights-of-way.

- (i) A fuel pump canopy shall meet the following standards:
  - (i) The canopy shall utilize compatible architectural design and materials as the principal building(s) on the lot.
  - (ii) Light fixtures mounted under canopies shall be full cut-off and shielded so that there is no glare or light spillage at the property line.
  - (iii) Lights shall not be mounted on the top or sides (fascias) of the fuel pump canopy and the sides (fascias) of the canopy shall not be externally illuminated.

#### **E. ACCESSORY USES**

##### **(1) Accessory Building or Structure**

- (a) Accessory buildings and structures shall be compatible in design with the principal building and shall be designed to fit in with the existing development pattern in a neighborhood and overall character of the area.
- (b) The Architectural Review Board shall review the design of accessory buildings and structures for design compatibility within the area of visual impact
- (c) An accessory building may be located in any required side or rear yard, provided that:
  - (i) Such buildings shall be set back three feet from any lot line and, if separated from the principal building, it shall not be located less than five feet from said principal building.
  - (ii) All such buildings in the aggregate shall not occupy more than 30% of the area of the required rear and side yards in which it is located.
- (d) Accessory buildings constructed at the same time may be located in pairs or groups in the required rear or side yard along the common side lot line or rear lot line of contiguous lots.
- (e) Any accessory building shall be located at least four feet behind the front façade of the principal building on the lot. Accessory buildings in the SFR, TFR, MFR and CC districts shall be located to the rear of the principal building. Freestanding garages in the SFR and TFR districts should be located in the rear corner of the lot when possible.
- (f) Accessory buildings with a floor area greater than 80 square feet shall be located no less than 25 feet from any street line or three feet from any side or rear lot line, except that party wall private garages for not more than two cars may be erected in any residential district across a side lot line between two adjacent lots.
- (g) No accessory building shall exceed 12 feet measured at the peak or high point of the roof structure and one story in height.
- (h) No accessory building in a residential zoning district shall exceed 300 square feet in gross floor area.
- (i) Any accessory building attached to a principal building, including attachment by means of a breezeway or a roofed passageway, shall comply in all respects with the requirements of this chapter applicable to the principal building.

##### **(2) Drive-in or Drive-thru Facility**

- (a) Existing parking or loading stalls must not be utilized as part of a drive-through lane.
- (b) Each drive-in or drive-through facility located on a lot or site adjacent to a lot containing a residential use must be limited to operate between the hours of 9:00 a.m. to 9:00 p.m.

- unless the drive-in or drive-through facility is separated from the residential structure by an intervening building, alley, or public street.
- (c) No portion of a drive-in or drive-through facility may be located in a required front yard except as required to access the drive-in or drive-through facility.
  - (d) The length of the drive-in or drive-through shall be sufficient to accommodate 100% of the anticipated volume on site during peak hours of operation. In no case shall such a facility be designed so that peak activity will result in cars stacking onto the adjacent public street.
- (3) Home Occupations**
- (a) No display of goods or sign shall be visible from the street, except as set forth in §59-4.11.
  - (b) Such occupation must be incidental to the residential use of the premises and carried on in the principal building by a resident thereon with not more than one nonresident assistant.
  - (c) Only customary household appliances and equipment shall be used in such occupation.
  - (d) Such occupation shall be carried on in an area not exceeding 30% of the area of the first floor of the main building.
- (4) Professional Office or Studio Accessory to a Residential Building**
- A professional office or studio, including but not limited to those of an architect, artist, dentist, engineer, lawyer, musician, teacher or physician, but not including veterinarians, is permitted as an accessory use on a lot where the principal use is residential provided that:
- (a) Such office or studio is incidental to the residential use of the premises and is carried on by a resident thereon with not more than one nonresident assistant.
  - (b) In any residential building other than a multifamily building, such office or studio shall occupy not more than 30% of the area of the first floor of the principal building or shall be located in a legal detached accessory building. This limitation shall not apply to structures located in the DMU, OMU or RMU Districts.
  - (c) In a multifamily residential building, not more than one professional office or studio shall be permitted for each 25 dwelling units or major fraction thereof on the lot. Such office or studio shall be only on the street floor, and there shall be direct access to such office or studio from outside the building.
  - (d) Studios where dancing or music instruction is offered to groups in excess of four pupils at one time, or where concerts or recitals are held, are prohibited.
  - (e) All signs shall comply with the regulations of §59-4.11..
- (5) Mechanical Amusement Devices**
- (a) The lot line of any establishment within which device or devices shall be located shall be at least 500 feet from the lot line of any school building, school playground, clubhouse, community center, or place of worship.
  - (b) If combined with other uses it shall be located in a separate room, separated from other uses on the premises and from pedestrian circulation to and from such other uses. The room shall be arranged so that there is a management attendant within the room, or such that management attendants outside the room can easily see and supervise the interior of the room.
  - (c) Adequate space shall be provided for each machine so as to allow its use without overcrowding. A minimum width of two feet shall be provided per machine where the

machine is designed for use by one player, and 3 1/2 feet where the machine is designed for use by two players. The depth of the space in front of the machine shall be at least five feet, and there shall be a minimum aisle width beyond this five feet of an additional three feet.

- (d) No machine may block any entrance or exit from the premises.
- (e) Readily visible signs shall be installed, with their location, size and text shown in the plans submitted to the Planning Board, indicating that the use of machines by persons under 16 years of age shall not be permitted between the hours of 10:00 p.m. and 8:00 a.m. or during normal school hours, and where the premises are used primarily for the serving or consumption of liquor, that the use of amusement machines by persons under the age of 19 is prohibited at all times.

**(6) Outdoor Dining**

**(a) Intent**

Outdoor dining other than in the form of a sidewalk café as defined in this chapter shall be permitted as an accessory use that is incidental to and in conjunction with an established permitted restaurant, bar, or delicatessen as permitted in the DMU, CC and WF districts. Outdoor cabarets and outdoor dining in conjunction with a cabaret are specifically prohibited.

**(b) Standards and Requirements**

- (i) Areas utilized for outdoor dining shall comply with setback requirements for a principal building for the district in which such use is located.
- (ii) Areas utilized for outdoor dining shall not be located within 50 feet of the boundary of any SFR, TFR or MFR district.
- (iii) Areas utilized for outdoor dining shall be included in the calculation of required parking for the principal use.
- (iv) All outdoor dining areas pursuant to this section shall provide a food menu, but this shall not be interpreted to prohibit the service of beverages only.
- (v) **Operating Restrictions**  
The Building Inspector or Planning Board may prohibit or limit the hours of operation of any activities that may impact an adjacent or nearby properties, such as the operation or use of musical instruments or sound reproduction devices, or any noise emanating from the outdoor dining area other than the conversational and service sounds.

**(7) Sidewalk Cafe**

**(a) Intent**

Sidewalk cafes may be permitted by special permit of the Building Inspector, provided that such use is incidental to and in conjunction with an established permitted restaurant, bar or tavern, or take-out restaurant as permitted in the DMU, RMU and WF districts. Sidewalk cafes and outdoor cabarets in conjunction with fast-food establishments are specifically prohibited.

**(b) Special permit; Site Development Plan**

The Building Inspector is authorized to issue a special permit renewable yearly to operate a sidewalk cafe on public property, provided that the standards and requirements set forth in Subsection (c) of this section have been complied with by the applicant.. The Building Inspector may refuse a renewal of the permit if in his judgment the use at that



- location has unreasonably interfered with vehicular or pedestrian traffic or the premises has a history of lack of cleanliness or a violation of site plan or for other good cause.
- (c) Standards and Requirements**
- The Building Inspector shall require a site plan to be filed as a part of each application and such plan shall conform in all respects to the following:
- (i)** There shall be a minimum of five feet of clear distance from any obstruction adjacent to the area occupied by the sidewalk cafe. The free area must be free of all obstructions (such as trees, parking meters, multispace parking control systems, utility poles, etc.) in order to allow adequate pedestrian movement. When an extended building line places a permitted establishment within 20 feet of the corner of a block, a sidewalk cafe shall only be permitted when it is determined that the use will not create a hazard, a sight distance obstruction for motor vehicle operators or unduly impede pedestrian traffic. There shall be no tables within or blocking an entrance or exit doorway.
  - (ii)** A sidewalk cafe may be located only directly in front of the establishment with which it is associated. Sidewalk cafes shall be placed adjacent to the building and where the sidewalk is of such width and design that it does not interfere with pedestrian or vehicular traffic.
  - (iii)** A sidewalk café may not be located within 50 feet of the boundary of any SFR, TFR or MFR district.
  - (iv)** A fully removable gateless fencing no higher than table height may be erected on the perimeter line and attached to the building if removed nightly. Otherwise, the perimeter of the outdoor cafe area shall be highlighted with an erasable or removable marking. Such fence or marking shall be applied by the permit holder as its sole cost. The permit holder shall be fully responsible for the proper application and removal of any such marking and shall be liable for any subsequent damage or permanent indication of such marking on the public sidewalk.
  - (v)** Furnishings shall consist solely of tables, table umbrellas, chairs, and planters containing live plants. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property.
  - (vi)** No permanent structure or enclosure to accommodate the storage of furniture, accessories or accumulated garbage may be erected or placed adjacent to or separate from the sidewalk care on public property.
  - (vii)** A sidewalk cafe shall not interfere with any public service facility such as a telephone, fire callbox, mailbox or public bench located on a sidewalk.
  - (viii)** All sidewalk cafes pursuant to this section must provide a food menu, but this shall not be interpreted to prohibit the service of beverages only.
  - (ix)** The permit holder of a sidewalk cafe shall maintain, at its sole expense, comprehensive general liability insurance coverage in an amount not less than \$1,000,000, with the Village named as additional insured.
- (d) Operating Restrictions**
- (i)** The establishment shall maintain all necessary licenses required by the State of New York.
  - (ii)** The Building Inspector may prohibit or limit the hours of operation of any activities that may impact an adjacent or nearby properties, such as the operation or use of musical instruments or sound reproduction devices, or any noise

emanating from the sidewalk cafe or outdoor vending area other than the conversational and service sounds.

- (iii) When the associated indoor establishment is not open or the sidewalk cafe is not in daily use, all furnishings shall be removed daily from public property.
  - (iv) All alcoholic beverages to be served at sidewalk cafes shall be prepared in the interior of the establishment.
  - (v) The restaurant shall not serve food or beverage to a patron at a sidewalk cafe unless that patron is seated at a table.
  - (vi) Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance that may damage the sidewalk or cause patron or pedestrian injury.
  - (vii) The total number of patrons at any outdoor cafe or at any sidewalk tables authorized under this chapter shall not exceed six patrons as of 12:00 midnight following an evening of food and beverage service.
  - (viii) All outdoor cafes and sidewalk tables authorized under this section, as well as any furnishings used in association with the outdoor cafe area, shall be removed from the outdoor cafe area at or before 1:00 a.m. of the morning following an evening of food and beverage service.
- (e) Enforcement  
This section shall be enforceable by the Building Inspector, Village Code Enforcement Officer, the Orangetown Police or the village parking enforcement aides.

**(8) Swimming Pool**

Any outdoor swimming pool with an area of 100 square feet or more and a depth in excess of two feet, accessory to a residential use shall meet the following requirements:

- (a) The pool shall not be operated for gain;
- (b) The edge of the pool shall be kept a distance of not less than 20 feet from all property lines.
- (c) If located within 50 feet of any property line, such pool shall be screened from the view of abutting properties.
- (d) All requirements of the New York State Uniform Fire Prevention and Building Code pertaining to swimming pools shall be met.

## **ARTICLE 4: DEVELOPMENT STANDARDS**

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The standards in this Article apply to the physical layout and design of development in the Village. These provisions address the physical relationship between development and adjacent properties, public streets, neighborhoods, and the natural environment. The general intent is to implement the Comprehensive Master Plan's vision of an attractive and vibrant community focused around a successful downtown, diverse neighborhoods, and a waterfront that provides outstanding visual, open space, and recreational amenities.

### **§59-4.1. ACCESS AND SEWER SERVICE**

No building permit shall be issued for the construction or alteration of any building upon a lot without frontage upon or legal permanent access to a public street improved to the satisfaction of the Planning Board, or without access to a public sewer.

### **§59-4.2. MEASUREMENTS AND EXCEPTIONS**

#### **A. LOT REQUIREMENTS**

- (1) The minimum lot area, width and depth requirements are intended to ensure that a lot is of a size, width, and frontage that is appropriate for the uses permitted in the subject zoning district and will ensure, in most cases, that the other site development standards of this chapter can be met. The lot area per dwelling unit standards control the intensity of use on a lot to ensure consistency and compatibility of new dwellings with the surrounding development.
- (2) Existing legally-established lots containing a single-family detached dwelling that fail to meet changes to the minimum lot area, width and depth requirements established as of [Adoption Date] shall be considered conforming despite such deficit. Any future subdivision or addition of additional dwelling units shall require full conformance with the lot area, width and depth requirements, except as authorized by a variance.

#### **B. SETBACKS**

Setbacks are a required horizontal distance between a building and any lot line. The combination of front, rear and side setbacks define an area, known as the "building envelope," in which buildings are permitted by right. The area between the lot line and the building is known as a "yard," the minimum depth of which is prescribed by the setback requirement.

- (1) **Required Setbacks**  
Setbacks shall be unoccupied and unobstructed by any structure or portion of a structure, except as permitted below.
- (2) **District Boundaries**  
Where the side or rear of any lot abuts a district boundary line, that abutting rear or side setback shall have the dimensions required by the more restrictive of the two adjoining districts.
- (3) **Exceptions**  
The following structures may project into required front, side or rear yards without the requirement of a variance or special permit, as follows:

**(a) Accessory Buildings**

An accessory building may be located in a required side or rear yard, subject to the requirements of §59-3.2.E.

**(b) Incidental Architectural Features**

Cornices, cantilevered roofs, eaves, canopies, sunshades, gutters, window wells, chimneys, belt courses, headers, sills, pilasters, lintels, ornamental features, and other similar architectural features may project not more than two feet into any required yard.

**(c) Fences, Walls or Hedges**

Fences or walls may only project into a required yard in accordance with the requirements of §59-4.9.

**(d) Terraces, Steps and Walks<sup>69</sup>**

Paved terraces, steps and walks (other than such as are needed for access to the buildings on the lot) shall not project within 15 feet of a street line or four feet of a property line.

**(e) Entries and Porticos**

A roofed-over but unenclosed projection in the nature of an entry or portico, not more than eight feet wide and extending not more than six feet out from the front wall of the building may project into a required yard when the building otherwise complies with the regulations of this section. In computing the average front setback, the presence of such entries and porticos shall be ignored.

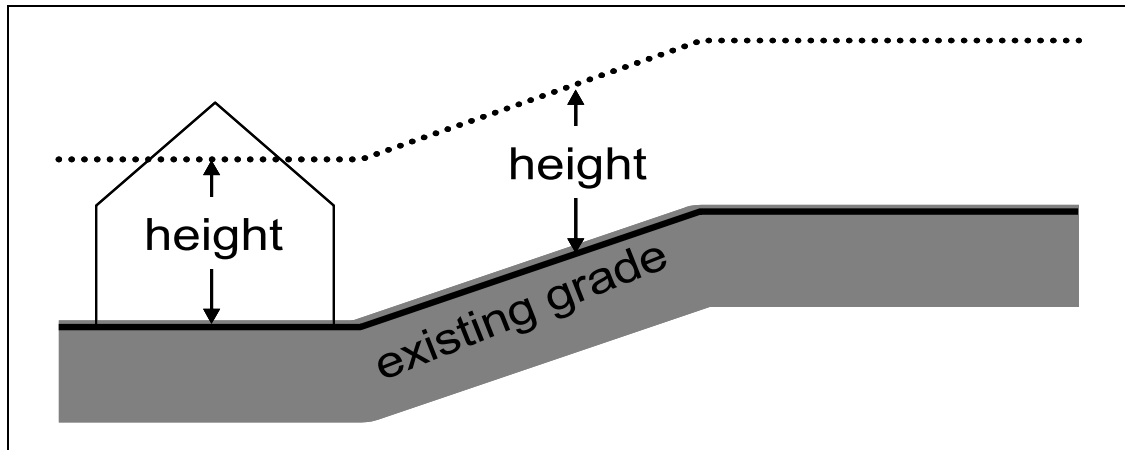
**(f) Average Front Setbacks**

No proposed one-family or two-family dwelling need have a front yard greater than the average setback of the two adjacent existing dwellings if they are located within 100 feet on each side of the said proposed dwelling, on the same side of the street and within the same block and the same zoning district.

**C. BUILDING HEIGHT**

**(1) Measurement**

The maximum height of a structure in feet shall be measured vertically from the existing grade to an imaginary plane located the permitted number of feet above and parallel to the existing grade. (See Figure 1.) For peaked roofs, height shall be measured to the midpoint of the roof. No portion of a peaked roof below the midpoint shall extend above said imaginary plane. For flat and mansard roofs, height shall be measured to the top of the roof. No portion of a flat or mansard roof shall extend above the imaginary plane.



**Figure 1: Building Height**

**(2) Height Exceptions for Appurtenances**

The height limitations contained in this code do not apply to the following:

- (a) Church spires, belfries, cupolas, domes, monuments, observation towers, chimneys, smoke stacks, derricks, flagpoles, radio towers, masts and aerials, which shall not be used for human occupancy.
- (b) Rooftop bulkheads, elevator penthouses, water towers, water tanks, monitors, fire towers, hose towers or cooling towers, air-conditioning or heating equipment, provided that such features shall be erected only to the height necessary to accomplish the purpose they are intended to serve, the total area covered by such features shall not exceed 10% of the horizontal area of the roof on which they are located and such features shall be grouped in no more than two locations on the roof, and provided that no such structures or appurtenances shall be used for sleeping or housekeeping purposes or for any commercial purposes.
- (c) Parapet walls or cornices which do not exceed the maximum height requirement for the district in which they are located by more than four feet.
- (d) Solar energy systems, provided that such systems shall be erected only to the height necessary to accomplish the purpose they are intended to serve.

**D. MAXIMUM FLOOR AREA RATIO**

The floor area ratio or FAR regulates how intensely a site may be used. The FAR provides a means to match the potential amount of use with the desired character of the area. The FAR, along with the height and setback standards, control the overall bulk of development on a site. The FAR listed in Table 4-1 is the maximum amount of floor area within the building or buildings on a lot in relation to the amount of lot area, expressed in square feet. For example, if the maximum FAR is 2, then a lot may contain up to two square feet of building floor area for every one square foot of lot area.

The FAR for all zoning districts except for the SRF and TFR districts apply to all buildings on the lot. In the SRF and TFR districts, the FAR for residential buildings applies to the principal building.

For residential neighborhoods the maximum floor area ratio standards respond both to the desire of residents to enlarge their homes to meet the needs of their families and to preserve the

neighborhood character by requiring buildings to appear to be of the same or similar scale to others in the neighborhood. The intent of the Village Board to encourage both new buildings and the expansions and alterations of existing buildings to have a consistent scale with the nearby buildings on both sides of the street within the same zoning district.

**E. MAXIMUM BUILDING COVERAGE**

The maximum building coverage standard helps to define the size of accessory buildings in the SFR and TFR districts by limiting the land area that can be covered by them. This standards work in conjunction the maximum floor area standard for the principal building and with setback requirements to determine how built-up a neighborhood appears. The maximum building coverage standard establishes the percentage of the total area of a lot that can be covered by the accessory buildings.

**F. LENGTH OF BUILDING WALL**

Walls intersecting at an interior angle of more than 135° shall be considered one building wall. To be considered a separate wall, a wall must have a break in the vertical with a minimum length and depth of at least 60 feet.

**G. FRONT FAÇADE AREA**

The area of the front façade of a building shall be the total surface area including any exposed foundations and projecting attic gables, but not including the roof.

**§59-4.3. DIMENSIONAL STANDARDS**

This Section contains Table 4-1, which defines the requirements for lot dimensions and building bulk, density, location, and height for all types of development. All primary and accessory structures are subject to the dimensional standards set forth in the following table. These general standards may be further limited or modified by other applicable Sections of this chapter. General rules for measurement and exceptions are in §59-4.1. Modification of these standards requires a variance.

**TABLE OF DIMENSIONAL STANDARDS**

**Table 4-1: Dimensional Standards**

	SFR-1	SFR-2	TFR One- family	TRF Two- family	MFR-1	MFR-2	MFR-3	DMU	RMU	OMU	CC	WF	M
Min. Lot Area (sq. ft.)	7,500	5,000	5,000	10,000	20,000	20,000	40,000	-	7,500 (j)	7,500	7,500	-	-
Min. Lot Width (feet)	50	50	50	75	100	100	100	-	25	50	60	25	50
Min. Street Frontage					100	100	100	-	25	50	60	25	50
Min. Lot Depth (feet)	-	-	-	100	100	100	-	-	-	-	-	-	-
Min. Front Setback (feet)	(e)	(e)	(e)	(e)	30	30(a)	20(d)	-(o)	-	15	15(o)	10	20
Min. Side Setback (one) (feet)	(p)	(p)	(p)	(p)	25	20(a)	20	(h) (o)	10	10	(h) (o)	10 (k)	20
Min. Side Setback (both) (feet)	(g)	(g)	(g)	(g)	50	20	40(d)	(h) (o)	20	20	-(o)	20	40
Min. Rear Setback (feet)	(f)	(f)	(f)	(f)	30	25(a)	20(d)	(i) (o)	15	25	25(o)	-	20
Building Height (stories)	2	2	2	2	3	4	8	3	2	2	2	n/a	2
Building Height (feet)	32	32	32	32	40	50	85	38	32	35	35	35	35
Max. Building Length (feet)	-	-	-	-	160	160	160	-	-	-	-	-	-
Max. Floor Area Ratio	(q)	(q)	(q)	(q)	-	-	-	2.0	0.75(j)	0.5	0.5(l)	0.65	1.0
Min. Usable Open Space (per du)	-	-	-	-	360	100	100	-	-	-	-	-	-
Maximum Density (du/acre)	-	-	-	-	14	30	50	30	18		-	24	-
Min. Dwelling Unit Size (sq. ft.)	900	900	900	750	600	600	600	600	600	600		600	-
<b>ACCESSORY BUILDINGS</b>													
Min. Front Setback													
Max. Building Height	12	12	12	12	12	12	12	12	12	12	12	12	12
Max. Building Coverage (%)	7	7	7	7	-	-	-	-	-	-	-	-	-

## DIMENSIONAL STANDARDS TABLE NOTES

- (a) Or one-half (1/2) the height of the building, whichever is greater
- (b) For end dwellings only.
- (c) Or one half (1/2) the height of the building, whichever is greater, except that for two story buildings this may be reduced to 15 feet where deemed necessary by the Planning Board. In all cases, the front yard shall be measured from the average setback of all front building walls. Average setback shall be determined as the sum of the length of each wall section multiplied by its setback, divided by total wall length.
- (d) In all MFR-3 districts where federal or state-assisted housing developments are involved the Planning Board may vary the minimum requirements so as to achieve proper development of the site.
- (e) The front setback should be 20% of lot area divided by lot width.
- (f) 30% of lot area divided by lot width
- (g) 30% of lot width
- (h) None required, but if provided a minimum of 5 feet is required.
- (i) A rear yard is not required for the first story or 17 feet, whichever is less, but there shall be a fifteen-foot minimum under other conditions.
- (j) For a lot 15,000 square feet or greater in area, the maximum floor area ratio may be increased from 0.75 to 1.0 with a special permit from the Planning Board for mixed use.
- (k) For properties with water frontage, the applicable yard requirements shall be measured from the mean high-water line.
- (l) For a lot 40,000 square feet or greater in area, maximum floor area ratio shall be 0.6 and maximum building coverage shall be 45%.
- (m) When a minimum of 50% of required off-street parking spaces are provided in a parking structure, maximum building coverage shall be increased to 50% for lots less than 40,000 square feet in area and 60% for lots 40,000 square feet or greater in area.
- (n) Inclusive of all accessory buildings.
- (o) Side and rear yards that are adjacent to residential zones must have a minimum setbacks of 15 feet including a landscaped buffer.
- (p) The minimum sideyard shall be 5 feet or 10% of the lot width, which ever is larger.
- (q) Maximum Floor Area Ratio in Residential Districts SFR-1, SFR-2, and TFR. In the calculation of maximum floor area ratio in SFR-1, SFR-2. and TFR residential zones the following apply:
  - A. Patio, decks, and porches
    - (1) Patios shall be excluded from the calculation of FAR.
    - (2) Unroofed decks shall count as 50% in the calculation of the FAR.
    - (3) The first 400 square feet of the roofed, but unenclosed, front porch do not count in the calculation of the FAR. Other square footage of unenclosed porches count as 50% in the calculation of the FAR.
    - (4) Enclosed porches shall count 100% in the calculation of FAR
  - B. Basement, cellars and garages
    - (1) Cellar space with structural headroom of less than 7 ½ feet and exterior exposed wall or walls of the front facade average less than 3' do not count in the calculation of FAR.



(2) All the remaining portions of the floor area of cellars, basements or basement garages, where the height of the exterior exposed wall or walls of the front façade are three feet or more shall be included in the FAR.

C. Attics or space under sloping roof

(1) All attic space, finished or unfinished, with structural headroom of 7 ½ feet or more shall count 100% in the calculation of FAR.

(2) Attic space, finished or unfinished with structural headroom less than 7 ½ feet shall not count in the calculation of FAR.

D. Accessory buildings including detached private garages

(1) Detached accessory buildings shall not count in the calculation of FAR.

E. Floor height

Any interior space with a floor-to-ceiling height in excess of 12 feet shall be counted twice.

F. Minor Alterations and Additions to Existing Dwelling

For minor alterations and additions to existing dwellings, the Building Inspector shall determine whether the calculation of floor area ratio is required and may waive floor area ratio calculation for alterations and additions that, by his estimations, do not appear to result in the building exceeding the maximum FAR and add 300 or less square feet.

The Maximum Floor Area Ratio of single and two-family dwellings in the SFR and TFR districts for the principal building shall be as follows:

Lot Area in square feet		FAR	27,000	27,999	0.2180	
Less than	5,999	0.4300	28,000	28,999	0.2120	
			29,000	29,999	0.2060	
Between	6,000	6,999	0.4140	30,000	30,999	0.2000
	7,000	7,999	0.3980	31,000	31,999	0.1955
	8,000	8,999	0.3820	32,000	32,999	0.1910
	9,000	9,999	0.3660	33,000	33,999	0.1865
	10,000	10,999	0.3500	34,000	34,999	0.1820
	11,000	11,999	0.3380	35,000	35,999	0.1775
	12,000	12,999	0.3265	36,000	36,999	0.1745
	13,000	13,999	0.3140	37,000	37,999	0.1715
	14,000	14,999	0.3020	38,000	38,999	0.1685
	15,000	15,999	0.2900	39,000	39,999	0.1655
	16,000	16,999	0.2840	40,000	40,999	0.1625
	17,000	17,999	0.2780	41,000	41,999	0.1605
	18,000	18,999	0.2720	42,000	42,999	0.1585
	19,000	19,999	0.2660	43,000	43,999	0.1565
	20,000	20,999	0.2600	44,000	44,999	0.1545
	21,000	21,999	0.2540	45,000	45,999	0.1525
	22,000	22,999	0.2480	46,000	46,999	0.1510
	23,000	23,999	0.2420	47,000	47,999	0.1495
	24,000	24,999	0.2360	48,000	48,999	0.1480
	25,000	25,999	0.2300	49,000	49,999	0.1465
26,000	26,999	0.2240	50,000	50,999	0.1450	

Lots over 50,000 square feet shall have a maximum FAR of 0.1450.

Any dwelling which exceeds 15,000 square feet shall be required to obtain a special permit from the Zoning Board of Appeals.

#### **§59-4.4. NATURAL AND SCENIC RESOURCE PROTECTION STANDARDS**

The purpose of this Section is to protect and enhance the natural and man-made features that contribute significantly to the Village's scenic quality and character, including: varying topography and hillsides, floodplains, wetlands, significant trees, view corridors, and historic sites and areas.

##### **A. GENERAL SITE DESIGN REQUIREMENTS**

- (1) To the maximum extent practicable, where significant natural features or areas of historic or cultural value exist on a property or an adjacent property, an applicant shall give priority to their preservation by locating new development away from those features or areas;
- (2) Priority for protection shall be given to the following features (not listed in order of significance):
  - (a) Slopes of greater than 25 percent;
  - (b) Views to the Hudson River and within other significant view corridors;
  - (c) Mature trees, specimen trees, and significant stands of trees and vegetation;
  - (d) Floodplains, watercourses and natural drainage ways;
  - (e) Wetlands;
  - (f) Historic, cultural, or archeological sites, buildings, or areas recognized by the Village or another government agency as significant; and
  - (g) Other significant and/or unique features.
- (3) Land use and development shall be designed in a manner that preserves the natural topography of the site and minimizes the use of cut and fill, as determined by the Planning Board through the site review process.

##### **B. VIEW PROTECTION**

- (1) Purpose and Establishment  
A View Protection Overlay District is hereby established in order to protect and preserve the character of the community, to preserve and enhance property values and to protect and enhance views from key locations within the Village of Nyack to the Hudson River waterfront.
- (2) Approval by Planning Board
  - (a) No building or structure shall be erected, altered, enlarged or moved in the district unless approved in accordance with the provisions of this section.
  - (b) Every application to permit the erection or exterior alteration of a building or structure in a View Protection Overlay District shall be referred by the Building Inspector per the requirements of §59-5.7. Following a review and recommendation by the Architectural Review Board, the Planning Board shall also consider, in addition to the usual site plan elements, the best siting, dimensions and configuration of principal and accessory structures so as to cause the least possible obstruction of the view of the Hudson River for neighboring properties and adjacent public property and rights-of-way.

##### **C. TREE PROTECTION**

- (1) Purpose

The Board of Trustees of the Village of Nyack has determined that the existing character of the community is highly dependent on the wooded landscape and streetscape. Further, the Board finds that trees are inherently beneficial to the economic value of property, as well as beneficial to the environmental, psychological and physical health, safety and general welfare of the community, and hereby enacts the following legislation:

- (a) To preserve an important attribute of the Village, by encouraging owners of existing developed lands, and developers of lands, to save or replace as many native and mature tree species as possible when making improvements to real property;
- (b) To control and regulate indiscriminate and excessive removal, cutting, and destruction of trees in order to regulate and prevent conditions which result in increased surface runoff, soil erosion, and decreased soil fertility;
- (c) To maintain the stability and value of real property by preserving existing woodland aesthetics;
- (d) To ensure the continued maintenance of landscaping in accordance with site plan or subdivision plan approvals, or in accordance with the regulations contained herein;
- (e) To help reduce the adverse impacts associated with vehicular noise and emissions resulting from the high volumes of traffic on the New York State Thruway which passes through the Village;
- (f) To encourage close attention to the Village's designation as a critical environmental area; and
- (g) To comply with the requirements of the 2003 EPA Stormwater Phase II of the Clean Water Act by identifying trees as "green infrastructure" and accounting for the water cleaning function they provide, and including their protection as part of the Village's Stormwater Management Plan in Chapter 47 and in §59-4.12.

**(2) Removal of Trees**

**(a) Prohibited Activities**

Except as permitted herein, no person or entity shall do or cause to be done by others, either purposely, carelessly, or negligently, any of the following acts upon privately or publicly owned property within the Village of Nyack:

- (i) Cut, destroy, remove, top, or substantially injure any significant tree as defined in this Code except as may be permitted in Subparagraph (b), Permitted Activities, below.
- (ii) Place or maintain upon the ground any substance or impervious surface which would impede the free access of air and water to the roots within the drip line of any significant tree.
- (iii) Apply any substance to any part of a significant tree, including the roots, which may injure or destroy the significant tree.
- (iv) Change the elevation of ground surrounding the trunk and drip line in a manner likely to have an adverse effect on the health of the significant tree.

**(b) Permitted Activities**

Notwithstanding the restrictions of Subparagraph (a) above, Prohibited Activities, the following activities shall be permitted:

- (i) The crown pruning, thinning, or trimming of a significant tree in a manner that is not harmful to the health of the significant tree.
- (ii) The cutting, destruction, or removal of significant trees which are diseased or dead or which endanger public safety and pose imminent peril based upon a

determination made by the Building Inspector or designee of the Village Board of Trustees. Except in the case of determinations referred to in the preceding sentence, any person who proposes to cut, destroy, or remove significant trees shall submit a written application to the Planning Board in accordance with Subsection D, (exceptions), and shall obtain approval from the Planning Board excepting said person from the regulations contained herein.

- (iii) The cutting, removal, or destruction of a significant tree as necessary to construct or add to any structure for which a building permit has been issued by the Building Inspector and which does not require subdivision or site plan approval, provided said cutting, removal or destruction is kept to the absolute minimum required to construct said structure. Any application shall indicate the extent of tree removal on the property. The Building Inspector, upon review of a building permit application, which requires extensive significant tree cutting or removal, may refer said application to the Planning Board for approval in accordance with Subsection D (exceptions) below.
  - (iv) The cutting, removal or destruction of any significant tree pursuant to an order or directive of a Village, county or state agency.
  - (v) The cutting, removal or destruction of significant trees as shown on an approved site plan or subdivision plan, or a plan approved by the Planning Board or Zoning Board of Appeals.
  - (vi) The necessary cutting, removal or destruction of significant trees by a utility provider for the purposes of power, cable, telephone, water or sewer service, provided that all utility companies shall notify the Village Clerk of any tree trimming schedule prior to commence tree trimming operations within the Village of Nyack.
  - (vii) Removal of dead significant tree with an inspection report by a licensed landscape architect or a tree professional recognized by the Village of Nyack, a removal permit may be issued by the Building Inspector.
- (c) Exceptions  
Upon written application to the Planning Board, the Board may, by resolution, grant an exception from any of the requirements of this chapter as may be reasonable and within the purposes and intent of this chapter if the enforcement of one or more of the provisions is impractical or will exact undue hardship because of specific conditions pertaining to the property in question, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood. The Planning Board may grant an exception from this chapter where the significant trees are to be removed in accordance with a landscaping plan approved as part of a subdivision or site plan application.

**(3) Protection of Trees During Development or Construction**

All significant trees indicated to remain as part of the landscaping plan of an approved subdivision or site plan shall be protected by a temporary four-foot-high fence constructed of two-inch by four-foot posts and rails around the drip line, wrapped with orange plastic mesh, before construction or site work begins.

**(4) Penalties for Offenses**

Notwithstanding other provisions of this chapter, the following shall apply to a violation of the provisions of these tree protection standards:

- (a) Where the Building Inspector determines that any person violates or refuses to comply with this chapter, that person shall be subject to a fine not to exceed \$10,000, per offense, upon conviction. Each significant tree cut, destroyed or removed shall constitute a single offense.
- (b) Any person convicted of violating this chapter shall also be referred to the Planning Board for the purpose of presenting a tree remediation plan, showing the existing and proposed landscaping conditions on the premises in question, and which shall be designed to mitigate the effects of the offense. The Planning Board may require such remedial or protective measures to be undertaken as may be necessary to protect the balance of the original landscaping status of the premises in question, such as, but not limited to, the use of snow fencing, chain link fencing, or other protective measures, including replacement of trees destroyed or removed.
- (c) In addition to any other penalty, the violator shall be required to replace, in kind, each and every significant tree removed, cut, or destroyed in violation of this chapter. If a significant tree was so large and mature as to be deemed irreplaceable by the Planning Board, the Planning Board may require the planting of multiple significant trees instead, based on the sole determination of the Planning Board on the number, species, and size of significant trees necessary to meet the objectives of this chapter. All significant trees required in satisfaction of the provisions of this subsection shall be guaranteed in full by a nursery and installer for a period of no less than one year from the date of installation; or the violator shall place a dollar amount equal to the cost of purchase and installation of the significant trees required in satisfaction of the provision of this subsection in escrow for a period of one year from the date of installation for use by the Village of Nyack in the event that the significant trees do not survive. If before one year from the date of installation it is the opinion of the Building Inspector, a licensed landscape architect or a tree professional recognized by the Village of Nyack that any significant tree required by the provision of this subsection is dead, diseased, or otherwise unhealthy to the extent that its imminent death in the sole judgment of said Building Inspector, landscape architect or tree professional is of reasonable certainty, such significant tree shall be replaced, in kind, by the guaranteeing nursery and installer or such significant tree may be replaced at the discretion of the Village of Nyack Board of Trustees using funds placed in escrow. No certificate of occupancy shall be issued for new construction on the lot or lots in contiguous ownership on which occurred any violation of this chapter unless and until the provisions of this subsection have been complied with.
- (d) Where a significant tree that is cut, removed or destroyed in violation of this chapter is located with a conservation easement required by the Planning Board as a condition of subdivision or site plan approval, fines may be doubled by the Planning Board.
- (e) Where a person is convicted of violating this chapter, and the prohibited activity upon which the conviction is based involved a tree, shrub, hedge, or plant shown or described to remain or be planted on a proposed or approved planting plan, landscape plan, site plan, subdivision plan, or a plan approved by the Planning Board or Zoning Board of Appeals, then no further action may be taken by the Planning Board or Zoning Board of Appeals on the lot or lots upon which the violation occurred for a period of one year from the date of conviction.

- (f) Whenever the Building Inspector observes any activity in violation of this chapter, the Building Inspector shall notify the property owner, owner's agent, or the person performing the work to suspend and halt work. Such direction by the Building Inspector (a stop-work order) shall be in writing and delivered to the owner, or the owner's agent, or the person performing the work or affixed to the site. Such stop-work order shall state the reasons therefore and the conditions under which work may resume.

#### D. STEEP SLOPES

(1) Purpose

The purpose of regulating development on and near steep slopes is to:

- (a) Promote safety in the design and construction of developments;
- (b) Minimize flooding, landslides and mudslides;
- (c) Minimize soil instability, erosion and downstream siltation; and
- (d) Preserve the scenic character of hillside areas.

(2) Standards

No development or improvements shall be permitted on that portion of a lot having slopes equal to or greater than twenty-five percent for single-family, two-family or three-family residential development or slopes equal to or higher than fifteen percent for any other type of land development permitted pursuant to this chapter, except for conservation measures or measures intended to remove debris which inhibits the function of a swale.

(3) Measurement of Slopes

Slope shall be determined based on a survey indicating contour lines at two foot or smaller intervals. No excavation is permitted to achieve the standard. Where a parcel contains distinct sections of differing slope, the average slope of each section may be determined according to the following contour measurement formula:

$$S = \frac{.00229(I \times L)}{A}$$

Where S = Average slope of area (in percent)

A = Total number of acres in area

L = Length of contour lines in scaled feet

I = Vertical distance of contour interval in feet.

The applicant shall be permitted to calculate the floor area ratio on the gross area of the lot to include that portion of the lot containing steep slopes as defined herein.

(4) Exempt Activities

- (a) An customary landscaping, i. e., land maintenance involving tree trimming and pruning, removal of dead or diseased vegetation, lawn and garden care, and planting or laying down of landscape materials, decorative trees, shrubs, and plants, not involving regarding or disturbance of existing terrain, provide that any such activities conform to all other applicable laws and regulations.
- (b) Emergency situations, as determined by the Village Engineer, where the disturbance of steep slopes is required to protect persons or property from imminent danger.

## §59-4.5. PARKING AND LOADING

### A. PURPOSE

This Section is intended primarily to provide for the location and design of off-street parking areas to accommodate motor vehicles, while balancing the needs of pedestrians, bicyclists, and transit users. Parking areas are typically accessory to the principal land use on the site. Even in the case of a parking area that serves as the principal use on a lot, it is still secondary to the surrounding context that it is serving. As such, parking area design should reflect that relationship, reducing the visual prominence of the parking area while emphasizing the primary buildings and orienting pedestrians toward the principal entranceways and walkways. Standards in this section addressing the location and design of parking areas are intended to meet this purpose. A secondary purpose of this section is to address the quantity of parking provided. Flexibility is integrated in these standards through the various alternative parking provisions.

### B. APPLICABILITY

The parking requirements of this Section shall apply to new development, expansions and increases in building size or density, and changes of use, as follows:

**(1) New Development**

Unless otherwise expressly stated, the parking standards of this section apply to the development of all new principal and accessory buildings on a site.

**(2) Expansions and Enlargements in Building Size, Density or Use**

**(a) Nonresidential Uses**

**(i)** Unless otherwise expressly stated, the parking standards of this Section apply when an existing nonresidential building or nonresidential use is expanded or enlarged by 15% or more in floor area.

**(ii)** If the expansion of a nonresidential building or use triggers requirements for additional parking, such additional off-street parking spaces are required only to serve the enlarged or expanded area, not the entire building or use.

**(b) Residential Uses**

The parking standards of this chapter apply whenever additional dwelling units are added to an existing parcel or to a newly created parcel. In all such cases, additional off-street parking is required only to serve the additional dwelling units. Existing off-street parking deficits are not required to be reduced or eliminated when additional dwelling units are added to an existing parcel. However, existing accessory parking may not be reduced to be less than, or if already less than, may not be reduced further below the minimum required parking standards set forth in Table 4-2: Minimum Parking Requirements. The intent of this provision is to ensure both that existing parking deficits in residential buildings are not increased as a result of additions and that existing deficits are not a deterrent to investment in existing properties.

**(3) Change of Use**

When the use of a lot or building changes, additional off-street parking facilities must be provided when the number of parking or loading spaces required for the new use exceeds the number of spaces required for the use that most recently occupied the building, based on the minimum parking standards of this Zoning Ordinance. In other words, the owner must

provide (or receive a variance for) parking equal to the difference between the parking requirement for the existing use and the parking requirement for the new use, not the difference between the actual existing parking and the parking requirement for the new use.

### **C. MINIMUM PARKING REQUIREMENTS**

#### **(1) Purpose**

The minimum parking standards are intended to lead to provide enough off-street parking to accommodate the typical demand for parking generated by the range of uses on a site, particularly in areas where sufficient on-street parking is not available. They are also intended to provide adequate parking on a site to prevent parking for nonresidential uses from encroaching into adjacent residential neighborhoods. The character of the DMU zoning district allows for lower parking requirements in some cases.

#### **(2) Minimum Parking Required**

Except as modified by the provisions of this chapter, the minimum number of accessory off-street parking spaces that must be provided is established for each use by Table 4-X, below. Any land that is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these regulations.

#### **(3) Rules for Computing Minimum Parking Requirements**

- (a)** Where a fractional space results, the number of parking spaces required is the closest whole number. A half space will be rounded down.
- (b)** In the case of mixed uses, the number of parking spaces required is equal to the sum of the requirements for the various uses computed separately.



**Table 4-2: Minimum Parking Requirements**

**BR = Bedroom Unit CR = Classroom DU = Dwelling Unit EU= Efficiency Unit GBR = Guest bedroom NA = Not applicable sq. ft. = Square feet - = Parking facility**

Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M
<b>Residential</b>									
Dwelling, single-family detached	2.0 per DU	2.0 per DU	2.0 per DU	NA	2.0 per DU	2.0 per DU	NA	NA	NA
Dwelling, single-family attached	NA	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	N/A	NA	NA	NA
Dwelling, two-family	NA	1.0 per EU 2.0 per 1 or greater BR	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA	NA	NA
Dwelling, three-family	NA	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA
Dwelling, multifamily (4+ units)	NA	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	NA	NA	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA
Dwelling, mixed use	NA	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	0.85 per EU 1.25 per 1 BR 1.7 per 2 or greater BR	0.85 per EU 1.25 per 1 BR 1.7 per 2 or greater BR	1.00 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA
Cluster development	2.0 per DU	1.0 per EU 2.0 per 1 or greater BR	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	0.85 per EU 1.24 per 1 BR 1.70 per 2 or greater BR	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA
Conversion of single-family dwelling to two-family dwelling	NA	NA	1.0 per EU 1.5 per 1 BR 2.0 per 2 or greater BR	NA	0.85 per EU 1.25 per 1 BR 1.70 per 2 or greater BR	1.0 per EU 1.5 per 1 BR 2 per 2 or greater BR	NA	NA	NA

§59-4.5 PARKING AND LOADING  
C. MINIMUM PARKING REQUIREMENTS

Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M
Group home	3 parking spaces	3 parking spaces	3 parking spaces	NA	3 parking spaces	3 parking spaces	NA	NA	NA
Retirement home, nursing home or assisted living facility	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	1 per every 2 beds	NA
<b>Commercial</b>									
Adult uses	NA	NA	NA	NA	NA	NA	1 per 333 sq. ft.	NA	1 per 333 sq. ft.
Animal hospital or kennel	NA	NA	NA	NA	NA	NA	1 per 333 sq. ft.	NA	NA
Arts/crafts studio	NA	NA	NA	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 333 sq. ft.	1 per 500 sq. ft.	NA
Art gallery	NA	NA	NA	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 250 sq. ft.	1 per 400 sq. ft.	NA
Bank	NA	NA	NA	1 per 200 sq. ft.	1 per 200 sq. ft.	1 per 200 sq. ft.	1 per 150 sq. ft.	NA	NA
Bar or tavern	NA	NA	NA	1 per 150 sq. ft.	1 per 150 sq. ft.	NA	1 per 100 sq. ft.	1 per 140 sq. ft.	NA
Bed and breakfast	NA	NA	NA	1 per GBR	1 per GBR	1 per GBR	1.5 per GBR	1 per GBR	NA
Bus or train station	NA	NA	NA	1 per 222 sq. ft.	1 per 222 sq. ft.	NA	1 per 333 sq. ft.	NA	1 per 333 sq. ft.
Commercial recreation- indoor	NA	NA	NA	1 per 500 sq. ft.	1 per 500 sq. ft.	NA	1 per 500 sq. ft.	NA	1 per 500 sq. ft.
Commercial recreation- outdoor	NA	NA	NA	NA	NA	NA	1 per 5,000 sq. ft.	1 per 5,000 sq. ft.	NA
Fast food establishment	NA	NA	NA	NA	NA	NA	1 per 150 sq. ft.	NA	NA
Hotel or motel	NA	NA	NA	1 per GBR	NA	NA	1.5 per GBR	1 per GBR	NA
Inn	NA	NA	NA	1 per GBR	1 per GBR	1 per GBR	1.5 per GBR	1 per GBR	NA
Office- general	NA	NA	NA	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 333 sq. ft.	1 per 400 sq. ft.	NA
Office- medical	NA	NA	NA	1 per 200 sq. ft.	1 per 200 sq. ft.	1 per 200 sq. ft.	1 per 150 sq. ft.	NA	NA
Office- research and development	NA	NA	NA	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 1,000 sq. ft.	1 per 500 sq. ft.	NA	NA
Outdoor storage and display-oriented retail	NA	NA	NA	NA	NA	NA	1 per 500 sq. ft.	1 per 500 sq. ft.	NA
Parking- structured	NA	NA	NA	-	-	-	-	NA	NA
Personal services	NA	NA	NA	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 250 sq. feet	1 per 400 sq. ft.	NA
Restaurant	NA	NA	NA	1 per 150 sq. ft.	1 per 150 sq. ft.	N1	1 per 100 sq. feet	1 per 150 sq. ft.	NA
Restaurant, take-out	NA	NA	NA	1 per 300 sq. ft.	1 per 300 sq. ft.	NA	1 per 150 sq. ft.	1 per 300 sq. ft.	NA
Retail sales and service	NA	NA	NA	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 250 sq. ft.	1 per 400 sq. ft.	NA
Theater or cinema	NA	NA	NA	1 per 150 sq. ft.	1 per 150 sq. ft.	NA	1 per 100 sq. ft.	NA	NA
Waterfront	1 per 3	1 per 3	1 per 3	NA	NA	NA	NA	1 per 3	NA

§59-4.5 PARKING AND LOADING  
C. MINIMUM PARKING REQUIREMENTS

facilities	boat moorings or boat slips	boat moorings or boat slips	boat moorings or boat slips					boat moorings or boat slips	
Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M
<b>Public &amp; Institutional</b>									
Cemetery	1 per staff member	NA	NA	NA	NA	NA	NA	NA	NA
Clubhouse, community center or place of worship	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	1 per 500 sq. ft.	NA
Day care center or nursery school	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	NA
Hospital, clinic or related health care facility	NA	*	NA	NA	NA	NA	NA	NA	NA
Governmental use	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.
Museum	NA	NA	NA	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 400 sq. ft.	1 per 250 sq. ft.	1 per 400 sq. ft.	NA
School, elementary or secondary	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	NA
School, specialized	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	NA	NA	1 per staff member plus 1 per CR	1 per staff member plus 1 per CR	NA
Utility structure	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 per 300 sq. ft.	1 pr 300 sq. ft.
Industrial service use	NA	NA	NA	1 per 750 sq. ft.	1 per 750 sq. ft.	1 per 750 sq. ft.	NA	NA	1 per 750 sq. ft.
Manufacturing and production- heavy	NA	NA	NA	NA	NA	NA	NA	NA	NA
Manufacturing and production- light	NA	NA	NA	NA	NA	NA	1 per 1,000 sq. ft.	NA	1 per 1,000 sq. ft.
Printing or publishing	NA	NA	NA	1 per 1,000 sq. ft.	1 per 1,000 sq. ft.	1 per 1,000 sq. ft.	1 per 500 sq. ft.	NA	1 per 1,000 sq. feet
Self-storage	NA	NA	NA	NA	NA	NA	1 per 1,000 sq. ft.	NA	1 per 1,000 sq. ft.
Telecommunications facility- collocated	NA	NA	NA	None required	None required	None required	None required	None required	None required
Telecommunications facility- free-standing	NA	NA	NA	NA	NA	NA	None required	NA	None required
Vehicle-related use-general	NA	NA	NA	1 per 500 sq. ft.	NA	NA	1per 333 sq. ft.	NA	NA
Vehicle-related use-intense	NA	NA	NA	NA	NA	NA	1 per 333 sq. ft.	NA	NA
Wholesale storage, warehousing, or freight movement use	NA	NA	NA	NA	NA	NA	1 per 1,000 sq. ft.	NA	1 per 1,000 sq. ft.
Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M
<b>Accessory Uses, parking required in addition to principal use</b>									
Accessory building or structure	None required	None required	None required	None required	None required	None required	None required	None required	None required
Drive-in or drive-thru facility	NA	NA	NA	NA	NA	NA	None required	NA	NA

Use	SFR	TFR	MFR	DMU	RMU	OMU	CC	WF	M
<b>Accessory Uses, parking required in addition to principal use</b>									
Home occupation	1	1	1	1	1	1	NA	1	NA
Mechanical amusement device	NA	NA	NA	None required	None required	NA	None required	NA	NA
Office/studio, professional in residential building	1	1	1	1	1	1	NA	1	NA
Sidewalk cafe	NA	NA	NA	None required	None required	NA	NA	None required	NA
Swimming pool	None required	None required	None required	None required	None required	None required	None required	None required	NA

\* Hospital, clinic or related health care facility are not an allowed use and expansion of pre-existing use will require a variance. In determining parking requirements use 1 per bed, plus 1 per 2 employees.

**D. AREAS COMPUTED AS PARKING SPACES**

- (1) Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than a street or a driveway. However, a driveway within a required front yard for a one-family or two-family dwelling may count as one parking space.
- (2) For any establishments in the CC and DMU districts that includes a drive-up or take-out window, the number of vehicles included in the queue to the drive-up or take-out window must be included in total parking spaces required, to ensure that parking and cuing don't cause back ups on to village street or Route 59.

**E. LOCATION AND OWNERSHIP OF REQUIRED ACCESSORY PARKING FACILITIES**

- (1) Required accessory parking spaces may be provided upon the same lot as the use to which they are accessory, or elsewhere, provided that all spaces therein are located within 1,200 feet of the principal lot in the DMU district, or 300 feet in all other districts. In all cases, such parking spaces shall conform to all the regulations of the district in which they are located; and in no event shall such parking spaces be located in any residential district unless the uses to which they are accessory are permitted in such districts, or by special permission of the Zoning Board of Appeals. The ongoing availability of such spaces shall be guaranteed by deed restriction or legal contract between the owner of the principal lot and the owner of the lot on which the remote parking is provided, to the satisfaction of the Planning Board.
- (2) No parking is permitted within a required front yard except as provided in §59-4.5.D for a one- or two-family house.
- (3) The parking of motor vehicles within 15 feet of any wall or portion thereof of a three-or-more-family dwelling, which wall contains legal windows (other than legal bathroom or kitchen windows) with a sill height of less than eight feet above the level of said parking space, is prohibited.

**F. SIZE OF SPACES**

A parking space shall measure a minimum of nine feet in width and 18 feet in length, exclusive of standing area and aisles for maneuvering. Entrance and exit roadways shall not be computed as parking space except for one-family and two-family dwellings as in §59-4.5.D, above.

## **G. ACCESS**

- (4) Unobstructed access to and from a street shall be provided. Such access shall consist of at least one ten-foot lane for parking areas with fewer than 20 spaces, and at least two ten-foot lanes for parking areas with 20 spaces or more.
- (5) No access shall exceed a total width of 24 feet. No entrance or exit for any accessory off-street parking area with over 10 parking spaces shall be located within 50 feet of the intersection of any two street lines.
- (6) No driveway shall provide access to a lot located in another district, which lot is used for any use prohibited in the district in which such driveway is located.

## **H. DRAINAGE AND SURFACING**

All open parking areas shall be properly drained and all such areas of over 10 spaces shall be provided with a dustless surface, except for parking spaces accessory to a one-family or two-family dwellings.

## **I. JOINT FACILITIES**

Required parking spaces may be provided in spaces designed to serve jointly two or more establishments, whether or not located on the same lot, provided that the number of required spaces in such joint facilities shall be not be less than the total required for all such establishments. In the CC District, parking areas shall be designed for shared use with neighboring properties to the greatest extent feasible.”

## **J. COMBINED SPACES**

When any lot contains two or more uses having different parking requirements, the parking requirements for each use shall apply to the extent of that use. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when other use or uses is not or are not in operation, the Zoning Board of Appeals may reduce the total parking spaces required for the use with the least requirement.

## **K. PARKING AREA LANDSCAPING**

- (1) Purpose  
Parking lot landscaping is intended to break up expanses of pavement, create shade, buffer views of parking lots from adjacent streets and development, and enhance the overall appearance of development projects.
- (2) Applicability  
All parking lots with 12 or more parking spaces in total or 8 or more spaces in a single row shall be subject to the requirements of this Section.
- (3) Perimeter Landscaping
  - (a) The view of parking areas from all abutting streets must be visually screened by permitted buildings, fences, walls, hedges, or by a combination thereof. Each fence, wall or hedge shall be not less than 2.5 feet in height and not more than 4 feet in height. This screening requirement is not to be interpreted as prohibiting the installation of or provision for openings reasonably necessary for access drives and walkways.

(b) Where a parking area is located adjacent to a residential use, residential zoning district, clubhouse, community center, place of worship, daycare, nursery school, educational use, hospital, or public park or open space, the screening requirement shall be met by a combination of building, fence, wall or hedge not less than 5 feet in height and not more than 6 ½ feet in height.

**(4) Interior Landscaping**

All parking areas subject to this subsection shall include interior landscaping according to the following standards:

(c) Landscaped islands with a minimum width of eight feet and surrounded by a minimum six inch curb shall be provided to direct the flow of traffic and to provide a place for shade trees to be planted.

(d) At least one tree per ten spaces shall be provided within the parking lot. No more than 12 contiguous spaces shall be permitted in a row without a landscaped interruption of at least 5 feet including curbing.

(e) Additional landscaping, including shrubs and ground cover, may be required by the Planning Board through the site development plan process.

**L. PAYMENT IN LIEU OF PARKING**

A payment-in-lieu of parking for development located within the DMU, RMU, OMU or CC zoning districts may be authorized by the Planning Board as a condition of approval for a site development review application to satisfy the off-street parking requirement, or a portion thereof, according to the following standards:

**(1) Payment**

Payment of the fee per space for the number of spaces determined by the Planning Board:

(f) The Village Board of Trustees shall set the fee per space by resolution and may change the fee whenever it deems appropriate to do so. The fee schedule shall be made available at the Building Inspector's office.

(g) The fee payable by an applicant shall be set and paid prior to the issuance of the certificate of occupancy. The fee must be paid in a lump sum or at the discretion of the Building Inspector in installments, and shall not be prorated or refundable should the applicant vacate the premises.

(h) Prior to issuance of the certificate of occupancy, the applicant must deliver to the Building Inspector's office a certified check, payable to the Village of Nyack Parking Authority, in the amount set by the Board of Trustees and determined by the Building Inspector.

**(2) Certificate of Occupancy**

The certificate of occupancy issued to the applicant must record the number of off-street parking spaces being satisfied by means of payment in lieu of providing actual spaces and the fee due to the Parking Authority. A certificate of occupancy will not issue, however, unless the applicant has fully satisfied its parking requirements by providing actual spaces and by making payments in lieu of parking. A variance shall be required if the applicant fails to provide all the spaces required under this §59-4.5.

## **§59-4.6. OFF-STREET LOADING BERTHS**

### **A. LOADING BERTH REQUIRED**

Any nonresidential use with a gross floor area of 25,000 square feet or more shall provide one off-street delivery/loading space. The requirements related to loading berths may be modified by the Planning Board if the property owner demonstrates that the use of the building does not require an off-street loading space and that the safety of pedestrians, motorists, and bicyclists is not impaired, and may be increased in the number of spaces required by the Planning Board if the Planning Board determines that there is evidence that the proposed use is of such a nature as to require more than one delivery/loading space.

### **B. SIZE, LOCATION AND ACCESS**

Unless otherwise specified, each required loading berth shall be at least 15 feet wide, 45 feet long and 14 feet high if enclosed. Unobstructed access at least 15 feet wide to and from a street shall be provided. Such access may be combined with access to a parking lot. All permitted or required loading berths shall be on the same lot as the use to which they are accessory, except as provided in §59-4.6.C. No entrance or exit for any loading berth shall be located within 50 feet of the intersection of any two street lines

### **C. JOINT FACILITIES**

Permitted or required loading berths may be provided in spaces designed to serve jointly two or more adjacent establishments. At the discretion of the Planning Board, the number of required berths in such joint facilities may be reduced below the individual requirement for each use.

## **§59-4.7. STREET TREES**

Except as modified by the Planning Board, any application for property located in the DMU, RMU, OMU or CC zoning district meeting the applicability requirements of § 59-4.5.B, above, shall provide one deciduous or ornamental street tree for every 40 linear feet of street frontage or portion thereof, with a minimum of two trees per lot for lots that have a minimum width of 60 feet. Street trees shall be planted within the tree lawn portion of the right-of-way with adequate spacing to allow for the mature spread of the trees. When a tree lawn is not provided, trees shall be planted within ten feet of the back of curb.

## **§59-4.8. SCREENING**

Any nonresidential use located on a lot within 25 feet of a residential district boundary shall be screened along any such lot line. Screening shall consist of a type of fencing or a hedge of such type and spacing as may be required by the Planning Board of an initial height of not less than five feet and adequate ultimately to screen all operations on the lot from the view of properties in the adjoining residential district.

## **§59-4.9. FENCES, WALLS AND HEDGES**

### **A. GENERAL STANDARDS**

All fences and fence installations shall comply with the following regulations:

- (1) When a fence is designed to have a “front” and a “back,” the “front” of the fencing shall face toward the closest property line, while the “back” of the fencing shall face toward the interior of the property upon which the fence is being erected.

- (2) Fence height shall be measured from ground level at the fence post to the highest portion of the fence. However, when a fence is erected upon a man-made berm or wall, the height shall be measured from the base of the man-made berm or wall. For the purpose of measuring the height of retaining walls, any retaining wall within five feet of another wall shall be considered a single wall.
- (3) Barbed wire or similar materials are prohibited.

Hedges on corner lots shall be sufficiently low so that they do not interfere with view lines of drivers. This is enforced by the Building Inspector.

#### **B. MAXIMUM HEIGHT**

- (1) Residential and Mixed Use Districts
  - (a) In the SFR, TFR, MFR, DMU, RMU, OMU and WF zoning districts the maximum height of fences, walls and hedges above grade shall be as follows:
    - (i) Front yard: Three feet, six inches, except as provided in Section 59-2.3.E(4). The Building Inspector shall have the ability to decrease the permitted height and modify the location of fences, walls and hedges in the front yard on corner lots in order to account for site-specific conditions. In the WF zoning district, any yard bounded by a street line and/or a body of water shall be considered a front yard for the purposes of this subsection.
    - (ii) Rear or side yard: Six feet, six inches.
  - (b) Those portions of a fence located in the front yard shall not have more than sixty percent (60%) closed surface. Chain link fences shall not be permitted within a front yard.
  - (c) When necessary for security purposes, taller fences or hedges may be approved by the Planning Board as part of the site plan review process.
- (2) CC and M Districts

Fences and walls in the CC and M zoning districts may be erected to a height not to exceed six feet above ground level in any yard. When necessary for security purposes, taller fences may be approved by the Planning Board as part of the site plan review process.
- (3) WF District

In the WF zoning district the maximum height of fences, walls and hedges at edge of riverfront walkways shall be sufficient in height to prevent people from falling in the river and appropriate height and materials for fences that separate public walkway from private spaces.

### **§59-4.10. LIGHTING**

#### **A. PURPOSE**

The purposes of the exterior lighting standards are to:

- (1) Provide adequate light for safety and security;
- (2) Promote efficient and cost effective lighting and to conserve energy;
- (3) Reduce light pollution, light trespass, glare, and offensive light sources;
- (4) Provide an environmentally sensitive nighttime environment that includes the ability to view the stars against a dark sky; and



- (5) Prevent inappropriate, poorly designed or installed outdoor lighting;

**B. GENERAL STANDARDS**

- (1) Any light source or lamp that emits more than 900 lumens (13 watt compact fluorescent or 60 watt incandescent) shall be concealed or shielded with a full cut-off style fixture with an angle not exceeding 90 degrees to minimize the potential for glare and unnecessary diffusion on adjacent property.
- (2) The maximum height of any lighting pole serving a residential use shall be 12 feet. The maximum height serving any other type of use shall be 15 feet, except in parking lots larger than five acres, the maximum height shall be 20 feet if the pole is located at least 100 feet from any residential use.
- (3) No flickering, rotating, or flashing lights shall be permitted, except for temporary decorative seasonal lighting.
- (4) The Planning Board shall review lighting for safety, illumination levels, and hours of operation. The Architectural Review Board shall review of lighting for aesthetics considerations (i.e. the design of fixtures and their placement on the exterior of buildings or, if free-standing, impact on the buildings).

**C. MAXIMUM LIGHT LEVELS**

Lighting shall comply with the maximum light levels, measured in footcandles, shown in Table 4-3, below. Lighting levels at property lines adjacent to a public sidewalk or right-of-way may meet the maximum footcandles permitted for pedestrian walkways. Lighting for outdoor recreation facilities such as sports fields shall be determined by the Planning Board as part of the site review process.

**Table 4-3: Maximum Light Levels**

Location	Residential Districts	Nonresidential Districts
Property Line	1.0	2.0
Building Entries	5.0	5.0
Parking Areas	3.0	5.0
Pedestrian Walkways	3.0	3.0

**§59-4.11. SIGNS**

**A. PURPOSE**

The purpose of this section is to control outdoor and window signs of all types and in all zoning districts by regulating size, location, quantity, quality, content and design to:

- (1) Enhance and protect Nyack's physical appearance and environment, so as to protect the village's scenic and natural beauty and to create an attractive economic, business and tourist climate. All signs must therefore be placed so as not to obliterate, conceal, or destroy architectural and decorative trim.
- (2) Provide an environment which will support the existing business and increase their profitability by encouraging residents and visitors to patronize village businesses.
- (3) Encourage excellence in sign design and materials and to provide uniform design standards.
- (4) Reduce sign or advertising distractions and obstructions that may contribute to traffic accidents or driver confusion.

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- (5) Replace or remove nonconforming signs that do not meet the requirements of this section.
  - (6) Promote the health, safety and welfare of the residents of the Village of Nyack.

#### **B. PERMIT REQUIRED**

- (1) No exterior or interior sign, advertising display or structure, poster or device shall be erected, moved to another portion of the building, enlarged or reconstructed or relettered or redesigned without the owner first having obtained and paid for and having in force a permit therefore from the Architectural Review Board.
- (2) The following two operations shall not be considered creating a new sign and therefore shall not require a sign permit:
  - (a) The changing of the advertising or message on an approved sign which is specifically designed for the use of temporary replaceable copy (i.e., a movie marquee or bulletin board).
  - (b) Painting, cleaning and other normal maintenance and repair of a sign or a sign structure, unless a structural change is made or there is a change in the graphic presentation on the face of a sign.

#### **C. RESTRICTIONS ON SIGNS IN ALL DISTRICTS**

No signs other than signs placed by agencies of the government shall be erected on any public property or public right-of-way unless consent is first obtained from the Village Board of Trustees. No sign shall be placed on any private property without the consent of the owner thereof. No sign shall be placed or painted on any tree or rock. No sign shall be placed on any utility pole except for utility identification or similar purposes. Signs shall be placed so as not to obliterate, conceal or destroy architectural and decorative trim. All signs shall be of good quality materials. The size and content of the sign shall be the minimum essential for legibility and for the provision of information to patrons seeking the particular use described on such sign. Signs must be placed so that they are integrated with design elements of the building(s) on the lot on which they are placed.

#### **D. PERMITTED SIGNS IN RESIDENTIAL DISTRICTS**

The following signs are permitted in the SFR, TFR and MFR district, provided that they are accessory to a principal use on the premises:

- (1) One nonilluminated nameplate or professional sign with an area of not over two square feet.
- (2) One temporary nonilluminated sign advertising the sale or rental of the premises on which such sign is situated, with an area of not over four square feet.. The signs are not permitted to obscure view lines from roads or project on to sidewalks.
- (3) One indirectly illuminated bulletin board or other announcement sign for civic, educational or religious institutions, with an area of not over 12 square feet.

#### **E. PERMITTED SIGNS IN NONRESIDENTIAL DISTRICTS**

In the DMU, RMU, OMU and WF Districts, the sign area for all signs on the property, in square feet, shall not be greater than two times  $\frac{2}{3}$  the width, in feet, of the store front of the front façade of commercial establishment to which the sign refers. In the CC and M Districts, the maximum sign area shall be 10 percent of the total surface area of the building's front facade upon which it is faced or 80 square feet, whichever is lesser. The total area of signage for all businesses or tenants in a building shall not exceed the area of signage that would be allowed if there were a single tenant.

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The following signs are permitted in the DMU, RMU, OMU, CC, WF and M Districts, provided that they are accessory to a principal use on the premises:

**(1) Wall Signs – Flat and Projecting**

Not more than two identification signs for each tenant on the premises on each wall fronting on a street, provided that:

- (a) One flat wall sign may be erected parallel to the face of the building
- (b) In addition, one projecting wall sign may be erected perpendicular to the building or street. The following limitations shall apply:
  - (i) The sign may protrude up to 42 inches from the plane of the building but not closer than two feet to the curbline
  - (ii) The bracket(s) supporting the sign shall be no more than four feet in length on a side.
  - (iii) The bottom of the sign or the protruding portion of the bottom bracket shall be at least 10' above the sidewalk in the CC and M Districts and at least 8 feet above the sidewalk or ground in the DMU, RMU, OMU, and WF Districts.
  - (iv) The size of the sign shall not exceed 15 square feet per face. Only two faces are permitted.
- (c) Signage in the DMU, RMU, OMU and WF Districts shall be designed so that it is visible and informative at the pedestrian scale. The following design standards shall apply:
  - (i) Street-oriented signs shall be limited to fascia bands above the store window, on the vertical fascia of an awning or on the window of the store.
  - (ii) Signage design shall be carefully integrated with other design elements.
  - (iii) All signs shall be stationary and contain no visible or moving parts.
  - (iv) If a sign is illuminated, the source of illumination must be shielded from streets, walkways and adjoining properties. External illumination such as gooseneck lamps, simple horizontal strip lighting or concealed spotlights shall be utilized. The lighting fixtures shall be placed so as to not negatively impact of the composition of the façade or damage building materials.
  - (v) Flat wall signs shall not project less than 1/2" or more than 3" beyond the rest of the wall. Any illuminating devices shall project no more than 42 inches beyond the rest of the wall nor any distance above the building.
  - (vi) Prohibited items shall include product advertisement outside of any retail space, signs mounted above the eave line of any structure and internally illuminated signage.
  - (vii) Sign copy shall be limited to the name of the business, product sold or service provided by and logo of the principal use of the premises. Telephone numbers or website addresses shall only be allowed on permanent interior signs on ground floor level windows and doors and upper floor windows (limited to a sign for a different business than is located on first story). The maximum height of letters for telephone numbers and website addresses shall be five inches on ground floor store windows and doors and three inches on upper floor windows.
- (d) Signage in the CC and M Districts shall be designed so that it is visible and informative at both the automobile and the pedestrian scale. The following design standards shall apply:
  - (i) Internal illumination is allowed.

- (ii) Flat wall signs excluding external illuminating devices shall not project more than 12". Any external illuminating devices shall project no more than 42 inches beyond the rest of the wall nor any distance above the building.
- (iii) Projecting wall signs shall be at least 10 feet above the sidewalk or pavement immediately beneath the sign.
- (e) Such sign or signs shall be placed so as not to obliterate, conceal or destroy architectural and decorative trim and cornices immediately above first-floor storefronts or on above stories, including at parapets and rooflines, or signs of adjacent buildings or views.
- (f) The mountings and installation hardware must be installed in such a way that it does not damage the materials of the building and all practical measure must be taken to conceal the hardware.
- (g) Signs that do not comply shall be removed no later than 24 months after this law is enacted.

## (2) Freestanding Signs

- (a) In the DMU, RMU, OMU and WF Districts, where the building is set back from the front lot line a distance of 25 feet or more, not more than one freestanding sign consisting of either a pole sign or a monument sign, with an area of not more than 20 square feet per face, may be erected not nearer than six feet to any building. No such freestanding signs shall encroach on any required yard, except in a motor vehicle service station, and not more than one standard sign may be erected in a required yard for purposes of identification. The maximum height of a pole sign shall be 15 feet and the maximum height of a monument sign shall be four feet, measured to the topmost portion of the sign above grade. Any building availing itself of a freestanding sign may not erect a perpendicular sign as provided in §59-4.11D(1)(b).
- (b) In the CC District, a maximum of one freestanding sign per property consisting of either a pole sign or a monument sign shall be permitted. The maximum sign area shall be 60 square feet per face. A pole sign shall be set back a minimum of 15 feet from a property line except that it shall be back a minimum of 50 feet from any residential use or zone boundary. A monument sign shall be set back a minimum of five feet from any property line. The maximum height of a pole sign shall be 25 feet and the maximum height of a monument sign shall be six feet, measured to the topmost portion of the sign above grade. Any building availing itself of a freestanding sign may not erect a perpendicular sign as provided in §59-4.11D(1)(b).
- (c) In the M District, a maximum of one monument sign shall be permitted. The maximum sign area shall be 60 square feet per face. The sign shall be set back a minimum of five feet from any property line. The maximum sign height shall be six feet, measured to the topmost portion of the sign above grade. Any building availing itself of a freestanding sign may not erect a perpendicular sign as provided in § 59-4.11D(1)(b).
- (d) Sign copy shall be limited to the name of the business, product sold or service provided by and logo of the principal use of the premises.

## (3) Directional Signs

Directional signs necessary for proper traffic flow and safety. All directional signs shall be subject to approval by the Architectural Review Board, which shall have discretion over the placement and number of signs permitted on the premises, bearing in mind the village's stated policy favoring reduction in the number of distracting signs. The area of each such

sign shall not exceed two square feet. Signs that do not comply shall be removed no later than 24 months after this law is enacted.

**(4) Marquees**

A marquee for a theater or public building shall be permitted.

**(5) Gas Station Signs**

Gas stations shall be allowed two signs on a freestanding pole with gas pricing information only allowed on the second sign. The area of signage of the price sign may be 22 square feet per face to accommodate the pricing information. All other requirements of Subsection E.

(2) shall apply. Signs that do not comply shall be removed no later than 24 months after this law is enacted.

**(6) Flag Signs**

(a) Flag sign is an advertising sign printed on a fabric flag of non-shiny material and flown from a pole that has a maximum length of 6 feet and is attached to a building at a minimum height of 6 feet if the flag is attached to a pole mounted to a building at an angle from horizontal of 45 degrees or greater or 10 feet if the flag is attached to a pole mounted to a building at an angle from horizontal of less than 45 degrees, where the flag has the maximum size of 15 square feet, and is no higher on the building than 12 feet, and is not closer than 3 feet to the curbline. The flag sign shall not have product advertising, but can have the name and/or logo of the business or advertise that the business is “Open,” “Closed,” or “Sale” Only two faces are permitted. One flag sign is permitted for each public entrance of a building, with a maximum of one (1) flag sign per business, and shall only be displayed when the business is open. This does not apply to any official national, state, or international flag.

(b) A flag sign is permitted in addition to other signs providing that: no specific product advertising is displayed, its design is integrated with other design elements of the building and its signs and it does not damage or hide significant architectural features.

(c) Signs that do not comply shall be removed no later than 24 months after this law is enacted.

**(7) Awning Signs**

A sign may not be suspended from or attached to an awning. Signs may be painted on or made a part of an awning. Such signs painted on an awning shall be computed in the allowable sign area, except for painted signs on awning valances solely identifying the store name with a letter size not exceeding six inches in height.

**(8) Permanent Interior Signs on Ground Floor Level**

Permanent interior signs include any sign of any material painted on or placed or hung within 24 inches from the inside window glass or door glass of any building, including all neon, LED, light borders, electronic and similar signs including words, logos, product signs, border tubing, permanent sculptures, or frames

(a) In no instance may a permanent and temporary interior sign cover more than 15% of the aggregate storefront window area or 36 square feet.

(b) Interior permanent signs that fail to comply with all provisions of this section shall be removed no later than 24 months after the effective date of this law is enacted.

**(8) Permanent Interior Signs on Upper Floor Windows**

Permanent interior signs include any sign of any material painted on or placed or hung within 24 inches from the inside window glass or door glass of any building, including all neon, LED, electronic, light borders And similar signs including words, logos, product signs, border tubing, permanent sculptures, or frames Such interior signs on upper floor windows may not cover more than 20% of the window area. The height of letters for telephone numbers and web addresses is limited to 3". Signs that do not comply shall be removed no later than 24 months after this law is enacted.

### **(9) Temporary Signs**

The following regulations shall apply to temporary signs, which are paper and cardboard, and other similarly impermanent material signs. Temporary interior signs are located within 24 inches of the storefronts glass windows and doors and include open, closed, and sale signs, menus, lists of products and services, are allowed and do not need permits when together they do not exceed 4 square feet. Temporary and permanent signs together cannot cover more than 15% of the ground floor window area or 36 square feet; or 20% of upper floor window area .

- (a)** Temporary signs are allowed for up to 30 days without a sign permit. This includes signs for which an application for a permanent sign has been submitted.
- (b)** A maximum of two temporary interior signs which do not need permits are allowed along with the exceptions below.
- (c)** Temporary signs shall not overlap, cover, or obscure permanent signs.
- (d)** Contractor signs. One contractor sign per frontage, with a maximum size of four square feet per side, with a maximum of two sides, shall be permitted, provided that such signs are located at ground floor level and shall be erected no more than five days prior to the beginning of construction for which a valid permit has been issued and shall be removed within five days after completion of the project or expiration of the permit, whichever comes first. The sign must include the proper name of the contractor and must list the telephone number of the contractor and of the Building Inspector for complaints.
- (e)** A temporary sign announcing the anticipated occupancy of a site or building may be permitted for a period not to exceed three months without the Building Inspector's approval. Such sign shall not exceed 24 square feet if it is affixed to a building or wall and not more than 40% of the window area if an interior sign.
- (f)** Special event, holiday signs and announcement signs may be permitted in DMU, RMU, OMU, CC and WF Districts without the Building Inspector's approval. These signs may be placed in the window only and may not cover more than 15% of the window area together with other signs. These signs may be put in place 4 weeks prior to the event and shall be removed within 1 week of the event.
- (g)** Real estate sale or rental signs may be permitted as long as the size of such signs does not exceed a maximum of 6 square feet and no more than one sign per tenancy per frontage at ground level. Such signs shall be subject to permit renewal at six-month intervals.
- (h)** Temporary signs pertaining to campaigns, drives, or events of civic, philanthropic or educational institutions, are permitted in DMU, RMU, OMU, CC, and WF Districts without the Building Inspector's approval for a period not to exceed 15 days. These signs may be placed in the window only and may not exceed six square feet in area. They should not overlap, cover or obscure permanent signs.

- (i) Temporary signs that fail to comply with all provisions of this section shall be removed by the effective date of this law.

#### **C. UNSAFE SIGNS**

- (1) The owner of a sign and the owner of the premises on which such sign is located shall be jointly liable to maintain such sign, including its illumination sources, in a neat and orderly condition and good working order at all times and to prevent the corrosion, rotting or other deterioration in the physical appearance or safety of such sign.
- (2) If the Building Inspector shall find that any sign regulated herein is unsafe, insecure, damaged, deteriorated or a menace to the public or has been erected in violation of the provisions of this section, he shall give written notice to the sign owner or the owner of the premises on which such sign is located. Said sign and all appurtenances shall be taken down and removed by the owner, agent or person having the beneficial use of the building or structure upon which such sign may be found within 30 days after written notification from the Building Inspector.
- (3) If, in the determination of the Building Inspector, a sign is an immediate peril to persons or property, he may cause such sign to be removed summarily and without notice and the expense of said removal, when certified by said Building Inspector to the Village Board, shall be paid by the village and such amount shall thereupon be and become a lien upon the premises in question and shall be levied and collected in the same manner and under the same penalties as an assessment for a public improvement.

#### **D. PROHIBITED SIGNS**

The following types of signs or artificial lighting are prohibited:

- (1) Billboards
- (2) Flashing or animated neon, L.E.D., electronic reader board ,or electronic graphics, or other artificial light sign or device. Flashing signs, including any sign or device on which the artificial light is not maintained stationary and constant in intensity and color at all times when in use.
- (3) Internally illuminated (including neon) signs located on the exterior of buildings, except in the CC and M zoning districts.
- (4) Signs that compete for attention with or may be mistaken for a traffic signal.
- (5) Outdoor signs made of impermanent materials, such as paper or cardboard.
- (6) Sandwich board signs
- (7) Exterior signs that emit noise, sounds or smoke.

#### **E. NONCONFORMING SIGN**

- (1) A nonconforming permanent sign, except for a freestanding sign in place at the time of enactment of this law, must be removed within 24 months of the enactment of this law.
- (2) All non-conforming temporary signs shall be removed by the effective date of this law.

- (3) The maintenance of such nonconforming signs may be permitted, but any sign once removed for purposes other than maintenance shall be deemed permanently removed and may be replaced only in accordance with the provisions of this section.

**F. MULTIPLE OCCUPANCY OVERALL SIGN PLAN**

When there are two or more occupants of a premises, such as a shopping center or strip mall, an overall plan for signage shall be required prior to installation or replacement of any individual sign. The overall plan shall satisfy all requirements and guidelines of this section. Individual signs shall be the same with regard to materials and color, but letter size and style may vary.

**G. NONCOMMERCIAL COPY**

Any sign authorized in this chapter is allowed to contain noncommercial copy in lieu of any other copy.

**59-4.12 STORMWATER PREVENTION**

**A. REQUIRED STORMWATER POLLUTION PREVENTION PLAN**

No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this chapter and Chapter 47, Stormwater Management

**B. CONTENTS OF STORMWATER POLLUTION PREVENTION PLANS**

- (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
  - (a) Background information about the scope of the project, including location, type and size of project;
  - (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
  - (c) Description of the soil(s) present at the site;
  - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than 1/2 acre shall be disturbed at any one time unless pursuant to an approved SWPPP;
  - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
  - (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices, to minimize exposure of the materials to



- stormwater, and spill-prevention and response;
- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
  - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
  - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
  - (j) Temporary practices that will be converted to permanent control measures;
  - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
  - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
  - (m) Name(s) of the receiving water(s);
  - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
  - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one quarter acre or 10,000 square feet, which ever is less, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules and meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in Subsection B(3) below as applicable:
- (a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
  - (b) Condition B: Stormwater runoff from land development activities disturbing five or more acres.
  - (c) Condition C: Stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family dwellings and construction activities at agricultural properties.
- (3) SWPPP requirements for Conditions A, B and C:
- (a) All information in Subsection B(1) of this article.
  - (b) Description of each postconstruction stormwater management practice.

- (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.
  - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
  - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.
  - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.
  - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.
  - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
  - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 59-33.4 of this article.
  - (j) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this article and Chapter 47, Stormwater Management.
- (4) Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- (5) Contractor certification.
- (a) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
  - (b) The certification must include the name and title of the person providing the signature, the address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
  - (c) The certification statement(s) shall become part of the SWPPP for the land development activity.
- (6) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

**C. PERFORMANCE AND DESIGN CRITERIA FOR STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL**

All land development activities shall be subject to the following performance and design criteria:

- (1) Technical standards. For the purpose of this article and Chapter 47, Stormwater Management, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article and Chapter 47, Stormwater Management:
  - (a) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").
  - (b) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").
- (2) Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Subsection A, and the SWPPP shall be prepared by a licensed professional.
- (3) Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

**D. MAINTENANCE, INSPECTION AND REPAIR OF STORMWATER FACILITIES**

- (1) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.
- (2) Maintenance and inspection during construction
  - (a) The applicant or developer of the land development activity or his or her representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article and Chapter 47, Stormwater Management. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
  - (b) For land development activities as defined in § 59-33.1 of this article and meeting Condition A, B or C in §59-33.2B(2), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.
- (3) Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by

the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Nyack to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article and Chapter 47, Stormwater Management. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Village of Nyack.

- (4) Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article and Chapter 47, Stormwater Management, shall ensure they are operated and maintained to achieve the goals of this article and Chapter 47, Stormwater Management. Proper operation and maintenance also includes, as a minimum, the following:
- (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article and Chapter 47, Stormwater Management.
  - (b) Written procedures for operation and maintenance and training new maintenance personnel.
  - (c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with §59-33.3C.
- (5) Maintenance agreements. The Village of Nyack shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions in the sample stormwater control facility maintenance agreement on file in the Village offices. The Village of Nyack, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this article and Chapter 47, Stormwater Management, and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

## §59-4.12. SUBDIVISION DESIGN STANDARDS

### A. MINIMUM REQUIREMENTS.

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth hereinafter. These standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in §59-5.8 herein.

### B. CHARACTER OF LAND; CONFORMITY; REQUIRED IMPROVEMENTS.

- (1) Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, mud slides or other casualty.
- (2) Conformity to Official Village Zoning Map and Master Plan. Subdivisions shall conform to the Official Map of the Village and shall be in harmony with the Master Plan.

- (3) Specifications for required improvements. All required improvements shall be constructed or installed to conform to the Village specifications, which may be obtained from the Village Engineer.

**C. STREET LAYOUT.**

- (1) Width, location and construction. Streets and any other type of access to subdivided lots shall be of sufficient width, suitably located and adequately constructed to accommodate the prospective traffic and to afford access for fire-fighting, snow removal, solid waste removal and road maintenance equipment.
- (2) Arrangement. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system and conform to the Master Plan. The arrangement of streets shall provide for the continuation or projection of principal streets to adjoining subdivisions and the accommodation, presently or when later required, of needed utilities and public services such as sewers, water and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- (3) Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.
- (4) Provision for future resubdivision. Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements in these regulations.
- (5) Dead-end streets. The creation of dead-end or cul-de-sac residential streets shall be discouraged. If such an arrangement is determined to be appropriate, the Board may require the reservation of an easement to provide for continuation of pedestrian traffic and utilities to the next street.
- (6) Block size. Blocks generally shall not be less than 400 feet nor more than 1,200 feet in length. In general, no block width shall be less than twice the normal lot depth. In blocks exceeding 800 feet in length, the Planning Board may require the reservation of an easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved foot path shall be included.
- (7) Intersections with collector or major arterial roads. Minor or secondary street openings into such roads shall, in general, be at least 500 feet apart.
- (8) Street jogs. Street jogs with centerline offsets of less than 125 feet shall be avoided.
- (9) Angle of intersection. In general, all streets shall join each other so that for a distance of at least one feet the street is approximately at right angles to the street it joins.
- (10) Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography.

**D. STREET DESIGN.**

- (1) Widths of rights-of-way. Streets shall comply with the minimum right-of-way widths as set forth in the Highway Law. Any variation from these requirements shall require a variance from the Zoning Board of Appeals.
- (2) Improvements. Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, streetlights and signs, street trees and fire hydrants, except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Village Engineer. Such grading and improvements shall be approved as to design and specifications by the Village Engineer.
- (3) Utilities in streets. The Planning Board shall require that all utilities be installed underground, and, wherever possible, require that underground utilities be placed in the street right-of-way between the paved roadway and street line to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities before the street is paved.
- (4) Utility easements. Where topography is such as to make impractical the inclusion of utilities within the street rights-of-way, perpetual, unobstructed easements shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block-to-block and shall present as few irregularities as possible. Such easements shall be cleared and graded where required.
- (5) Grades. Grades of all streets shall conform in general to the terrain and shall not be less than 1/2% nor more than 6% for major or collector streets, or 10% for driveways or minor streets in residential zones, but in no case more than 3% within 50 feet of any intersection.
- (6) Changes in grade. All changes in grade shall be connected by vertical curves of such length and radius that clear visibility shall be provided for a safe distance.
- (7) Steep grades and curves; visibility of intersections. A combination of steep grades and curves shall be avoided. In order to provide visibility for traffic safety, a portion of any corner lot as determined by the Planning Board shall be cleared, whether at an intersection entirely within the subdivision or of a new street with an existing street, except of isolated trees and obstructions above the level 30 inches higher than the centerline of the street. If directed, ground shall be excavated to achieve visibility. A minimum distance of 50 feet shall be maintained between public road intersections and any proposed driveway.
- (8) Dead-end streets (culs-de-sac). Dead-end streets should, in general, not exceed 500 feet in length and shall terminate in a circular turnaround having a minimum right-of-way radius of 50 feet and pavement radius of 40 feet.
- (9) Watercourses. Where a watercourse separates a proposed street from abutting property, provision shall be made for access to all lots by means of culverts or other structures of a design approved by the Village Engineer. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way as required by the Village Engineer.

- (10) Curve radii. In general, street lines within a block, deflecting from each other at any one point by more than 10°, shall be connected with a curve, the radius of which for the centerline of street shall not be less than 400 feet on major streets, 200 feet on collector streets and 100 feet on minor streets.

**E. STREET NAMES.**

- (1) Type of names. All street names shown on a preliminary plat shall be approved by the Planning Board. Streets shall have names, and not numbers or letters.
- (2) Names to be substantially different. Proposed street names shall be substantially different so as not to be confused in sound or spelling with present names. Streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name. No street should change direction by more than 40° without a change in street name.

**F. LOT REQUIREMENTS.**

- (1) Lots to be buildable. The lot arrangement shall be such that in constructing a building in compliance with the Zoning Law there will be no foreseeable difficulties for reasons of topography or other natural conditions.
- (a) All lots shall have frontage on an improved public street or highway. Any variation from this frontage requirement shall require a variance from the Zoning Board of Appeals. It is a stated purpose of this chapter to prohibit flag-shaped lots, and the Board of Trustees specifically finds that the Village of Nyack has been developed with traditional lots fronting public streets, such that allowing development behind existing structures would change the character of Village streets. Lots should not be of such depth as to encourage the later creation of a second building lot at the front or rear.
- (b) Lots must accommodate off-street parking.
- (2) Consolidation of lots. Subdivision approval shall be required for the merger or consolidation of lots. Applicants seeking to consolidate lots shall demonstrate that such consolidation will not result in lot sizes that are inconsistent with the established character of the surrounding area. Such applications shall be viewed more favorably in non-residential areas located along State highways and less favorably in residential and/or more densely developed areas.
- (3) Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines, unless a variance from this rule will give a better street or lot plan.
- (4) Corner lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each street and provide a desirable building site.
- (5) Driveway access. Driveway access and grades shall conform to requirements established in each case by the Village Engineer. Driveway grades between the street and the setback line shall not exceed 10% whenever possible.
- (6) Access from private streets. Access from private streets is prohibited.
- (7) Monuments and lot corner markers. Permanent monuments, meeting specifications approved by the Village Engineer as to size, type and installation, shall be set at such block corners, angle points, points of curves in streets and other points as the Village Engineer may require, and their location shall be shown on the subdivision plat.

- (8) Submerged lands, land in floodplains, lands which are burdened by an easement of any kind, and lands with a more than twenty-five-percent slope shall be specifically excluded from calculations of minimum lot area requirements. Additionally, any severe or deep "V" corners in proposed lots should be avoided, and any narrow necks (20 feet or less) shall be excluded from lot area calculations.

**G. DRAINAGE IMPROVEMENTS.**

- (1) Removal of spring and surface water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either previous to, or as a result of, the subdivision. Such drainage facilities shall be located in the street right-of-way where feasible or in perpetual unobstructed easements of appropriate width. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Village Engineer shall approve the design and size of such facility based on anticipated runoff from a one-hundred-year storm under conditions of total potential development permitted by the Zoning Law in the watershed.
- (2) Responsibility for drainage downstream. The subdivider's engineer shall also study the effect of each subdivision on the existing downstream drainage facilities outside the area of the subdivision; this study shall be reviewed by the Village Engineer. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a one-hundred-year storm, the Planning Board shall notify the Village Board of such potential condition. In such case, the Planning Board shall not approve the subdivision until provision has been made for the improvement of said condition.
- (3) Land subject to flooding. Land identified as a floodplain by any local, state or federal agency, or land deemed by the Planning Board to be uninhabitable, shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard. Such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or improved in accordance with flood zone regulations and in compliance with all applicable wetlands regulations, local, state or federal.

**H. PARKS, OPEN SPACE AND NATURAL FEATURES.**

- (1) Recreation areas shown in the Comprehensive Plan. Where a proposed park, playground or open space shown on the Comprehensive Plan is located in whole or in part in a subdivision, the Board shall require that such area or areas be shown on the plat. Dedication of such areas shall be offered to the Village.
- (2) Reserve strips prohibited. Reserve strips of land, which might be used to control access from the proposed subdivision to any neighboring property or to any land within the subdivision itself, shall be prohibited.
- (3) Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, waterfront areas, historic spots, vistas and similar irreplaceable assets, including view corridors to the Hudson River



along public rights-of-way. No significant tree shall be removed unless such tree is within the right-of-way of a street as shown on the final subdivision plat. Removal of additional trees shall be subject to the approval of the Planning Board. In no case, however, shall a significant tree be removed without prior approval by the Planning Board.

- (4) A subdivider shall provide the Planning Board with all information available regarding historic resources that may exist on the subject property. The Planning Board shall consider all information about historic resources, whether submitted by the subdivider or obtained from another source, and shall require the design of the subdivision to be such that significant historic resources, including their contributing features and landscapes, will be preserved to the extent possible.

#### **I. EROSION AND SEDIMENT CONTROL.**

- (1) Preservation of natural features. While removal of vegetation for necessary structures and yard space is allowed, the development will preserve natural topography and retain natural vegetation and trees to the maximum extent practicable in order to create the least erosion potential and handle adequately the volume and rate of surface water runoff.
- (2) Natural drainage patterns. Natural drainage patterns shall be protected and incorporated into site design. Where natural drainage patterns are demonstrated to be adversely affecting a protective feature, drainage patterns may be altered in a manner which reduces the threat to the natural protective feature and does not create other flooding or erosion problems.
- (3) Diversion of stormwater. In no case shall stormwater be diverted to another property.
- (4) Natural features for stormwater recharge. Natural land features, such as shallow depressions, shall be used, whenever possible, to collect stormwater on site for recharge. Under no circumstances, however, shall such a feature be used if subsurface conditions cause a stagnant pool to develop.
- (5) Minimize paving. Site designs shall minimize impermeable paving.
- (6) Stormwater discharge to surface waters. Stormwater runoff shall not be directly discharged to surface waters, marshes and wetlands. Stormwater pollutants shall be attenuated by using holding ponds, sedimentation basins, perimeter berming, vegetated buffer areas and other measures that reduce flow velocity and increase storage time. In addition, any filtering devices constructed as part of the drainage system must be adequately maintained in order to function properly.
- (7) Retaining wetland vegetation. All wetland vegetation shall be retained. Development should not disturb freshwater or tidal wetlands either by direct removal of vegetation or substrate or by the alteration of adjacent slopes that would undermine the stability of the substrate.
- (8) Subsurface sediments. Subsurface sediments shall be maintained to provide structural support for the soils of the wetlands.
- (9) Elevation of wetlands. The elevation of wetlands shall not be altered.
- (10) Discharge of pollutants. Pollutants shall not be discharged into wetlands or other lands or waters but shall be handled in accordance with all applicable laws and regulations.
- (11) Construction near wetlands. Construction should not be located within 100 feet of the upland boundary of a freshwater or tidal wetland. This includes the introduction of

impervious surfaces, roads, utility equipment and other infrastructure. An exception is made for a private dock, provided that no other opportunity for water access exists on the lot, except through wetlands. Wetland boundaries and the one-hundred-foot setback referred to in this subsection shall be identified on the plat as “conservation areas,” and notes shall be placed on the plat that expressly prohibit accessory structures and uses in such areas.

- (12) Fill not to encroach on watercourses. Fill shall not encroach on natural watercourses, constructed channels, wetlands or floodway areas. All fill shall be compacted at a final angle of repose which provides stability for the material, minimizes erosion and prevents settlement.
- (13) Natural vegetative buffer. To the extent practicable, a natural vegetative buffer of 100 feet shall be maintained adjacent to surface waters and wetlands to absorb floodwaters and trap sediment.
- (14) Trails and walking paths. Trails and walking paths along water bodies shall be sited and constructed so that they are not a source of sediment.
- (15) Amount and velocity of runoff. The amount and velocity of runoff from a site after development shall approximate its predevelopment characteristics, such that the development shall result in zero net incremental discharge of runoff from the development site. However, if the site is adjacent to coastal waters, stormwater shall be contained on-site, to the maximum extent practicable, to prevent direct discharge of runoff to coastal waters.
- (16) Alteration of stormwater channels. Stream channels, natural floodplains and major drainage swales shall not be altered or disturbed in a manner which decreases their ability to accommodate and channel stormwater runoff and floodgates. If no practicable alternative to the location of driveways, pathways and similar surfaces within these areas exists, such facilities shall be sited and constructed to minimize and mitigate the amount or velocity of stormwater entering the swale.
- (17) Slopes greater than 25%. No land having a slope equal to or greater than 25% shall be developed or disturbed except for conservation measures or measures intended to remove debris which inhibits the functioning of a swale. Natural vegetation and topography shall be retained to stabilize soils and reduce the volume of stormwater flow.
- (18) Highly erodible soils. On lands having slopes of less than 25% but composed of highly erodible soils, development proposals shall include consideration of the load-bearing capacity of the soils. Unless it can be demonstrated that the soils can be stabilized with a minimum of on-site disturbance and no adverse impacts to the stability of neighboring properties, the development proposal shall not be approved as submitted.
- (19) Time limits for installation. All permanent (final) vegetation and structural erosion control measures called for in approved plans shall be installed within the time limits specified by the Planning Board.
- (20) The subdivision plat shall include a note stating who is responsible for maintaining any drainage system.

**ARTICLE 5: ADMINISTRATION**

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**§59-5.1. SUMMARY AND ORGANIZATION OF THIS ARTICLE**

- A. This Article describes the procedures for review and approval of all applications for development activity in the Village, as well as outlines the responsibilities of the various decision-making bodies responsible for that review. Common procedures, which are applicable to all or most types of development applications, are in §59-5.3. Subsequent sections set forth additional provisions that are unique to each type of application, including staff and review board assignments, review standards, and other information.
- B. Table 5-1 summarizes the review and decision-making responsibilities for the administration of the procedures described in this Article. The table is a summary tool and does not describe all possible types of decisions made under this chapter. Other duties and responsibilities are described in this Article.
- C. The Building Inspector may also refer applications to other boards, commissions, government agencies, and non-governmental agencies not referenced in this Chapter.

**Table 5-1: Summary of Decision-making Authority**

**D = Decision-making Authority**

**R = Review Required**

**(other boards may review at the request of the board with decision-making authority)**

**H = Public Hearing Required**

**A = Appeal Authority**

Procedure	Section	Decision Making Bodies				
		Board of Trustees	Planning Board	Zoning Board of Appeals	Architectural Review Board	Building Inspector
Amendments to Zoning Ordinance (Rezoning)	§ 59-5.6	D-H	R-H			R
Site Development Plans	§ 59-5.7		D-H	A-H	R	R
Subdivisions	§ 59-5.8		D-H	A-H		
Special Use Permits	§ 59-5.9			D-H		R
Variances	§ 59-5.10			D-H		R
Certificate of Appropriateness, Historic Designation	§ 59-5.11			A-H	D-H	R
(Historic District or Landmark)	§ 59-5.12	D-H	R-H		R-H	R
Sign Permit	§ 59-5.13			A-H	D-H	R
Building Permit (No Board Review Required)	§ 59-5.14			A-H		D
Building Permit (ARB Review Required)	§ 59-5.15			A-H	D-H	R
Certificate of Occupancy	§ 59-5.16			A-H		D
Interpretation and Appeals	§ 59-5.17			A-H		D
Tree Removal Permits	§ 59-5.18		D-H	A-H		R
Demolition Permits	§ 59-5.7		D-H	A-H	R	R

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## §59-5.2. DECISION-MAKING BODIES

This Section establishes and identifies the roles, duties, and responsibilities of the Planning Board, Zoning Board of Appeals, Architectural Review Board, and Building Inspector (along with the Board of Trustees, collectively the “decision-making bodies”) in the administration of this Code.

### A. PLANNING BOARD

#### (1) Establishment and Organization

- (a) Pursuant to §7-718 of the Village Law of the State of New York, there is hereby established a Planning Board which shall consist of five members appointed by the Board of Trustees. All members of the Planning Board shall be residents of the Village. The Board of Trustees shall select one of the members of the Planning Board to serve as Chairperson.
- (b) To the extent practical, the terms of planning board members shall be staggered in such manner as to provide that one member’s term expires each year in accordance with the provisions of §7-718 of the Village Law of the State of New York.
- (c) In addition, the Board of Trustees shall appoint two alternate members, who may serve in the absence of the regular members. These alternate appointments shall be for two year(s).
- (d) The mayor shall appoint a new member to fill any vacancy occurring other than by the expiration of a term.

#### (2) Powers and Duties

The Planning Board shall have the following powers and duties:

- (a) To adopt rules and regulations for its operation and to follow said rules and regulations in the conduct of its official business.
- (b) To review and recommend changes to a comprehensive master plan adopted by the Board of Trustees pursuant to §7-722 of the Village Law of the State of New York.
- (c) To review and recommend proposed amendments to this chapter or other sections of this code relevant to the functions of the Planning Board.
- (d) To hear and decide requests for preliminary and final site plan approval pursuant to §59-5.4 and 5.7 of this chapter.
- (e) To hear and decide requests for preliminary and final subdivision approval pursuant to §59-5.4 and 5.8 of this chapter.
- (f) To hear and decide requests for tree removal permits pursuant to §59-5.4 and 5.18 of this chapter.
- (g) To hear and decide applications for the merger of adjacent lots.
- (h) To review development applications for compliance with the State Environmental Quality Review Act pursuant to state law and regulation.
- (i) To refer applications to the Board of Trustees, Zoning Board of Appeals, and Architectural Review Board, when required by the provisions of this Article or when, in the opinion of the board, such referral is necessary to fully evaluate the impacts and benefits of a development application.
- (j) Upon the granting of an approval, to impose such reasonable conditions and restrictions as are intended to promote the objectives of the State Environmental Quality Review Act, the Comprehensive Plan, the Local Waterfront Revitalization Program, or other relevant law or officially adopted local or regional plan, and are directly related to and incidental to the proposed use of the property.

- (k) To retain, as necessary, counsel, clerks, a secretary and experts, including but not limited to engineers, architects, landscape architects, historic preservationists and planners, to assist the Board in the conduct of its official business.
- (l) To submit a report to the Board of Trustees on any matter or class of matters referred to the Planning Board by the Board of Trustees for review and recommendation, before final action is taken by the Board of Trustees or other office or officer of the Village having final authority over said matter. The Board of Trustees may stipulate that final action shall not be taken until the Planning Board has submitted its report thereon, or has had a reasonable time to submit the report.
- (m) To maintain and make available minutes of all of its meetings in accordance with Article 7 of the Public Officers Law and to comply with all applicable public notice and hearing requirements specified in this Chapter.
- (n) To perform such other tasks as may be necessary in the carrying out the above powers and duties, or any additional powers and duties authorized by law.

## **B. ZONING BOARD OF APPEALS**

### **(1) Establishment and Organization**

- (a) Pursuant to §7-712 of the Village Law of the State of New York, there is hereby established a Zoning Board of Appeals (“ZBA”) which shall consist of five members appointed by the Board of Trustees. All members of the ZBA shall be residents of the Village. The Board of Trustees shall select one of the members of the ZBA to serve as Chairperson.
- (b) To the extent practical, the terms of ZBA members shall be staggered in such manner as to provide that one member’s term expires each year in accordance with the provisions of §7-718 of the Village Law of the State of New York.
- (c) In addition, the Board of Trustees shall appoint two alternate members, who may serve in the absence of the regular members. The Chairperson of the Zoning Board of Appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the Board, or when such member is unavailable to attend a meeting of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the Zoning Board of Appeals meeting at which the substitution is made.
- (d) The mayor shall appoint a new member to fill any vacancy occurring other than by the expiration of a term.
- (e) All the provisions of this local law relating to the Zoning Board of Appeals shall be strictly construed; the Board, as a body of limited jurisdiction, shall act in full conformity with all provision of law and of this local law and in strict compliance with all limitation contained there; provided, however, that if the procedural requirements set forth in this local law have been substantially observed, no application or appellant shall be deprived of the right of application or appeal.

### **(2) Powers and Duties**

The Zoning Board of Appeals shall have the following powers and duties:

- (a) To adopt rules and regulations for its operation and to follow said rules and regulations in the conduct of its official business.

- (b) To hear and decide appeals of an order, requirement, decision, interpretation, or determination of the Building Inspector, the Planning Board or the Architectural Review Board.
- (c) To hear and decide appeals for area and use variances in accordance with the provisions of §59-5.4 and 5.10 of this chapter.
- (d) To hear and decide requests for special permits to alter, enlarge or extend a lawfully existing nonconforming uses in accordance with the provisions of §59-5.9 of this code.
- (e) Upon the granting of a variance or special permit, to impose such reasonable conditions and restrictions as are intended to mitigate the impacts of such variance or special permit on the surrounding neighborhood and are directly related to and incidental to the proposed use of the property.
- (f) To refer applications to the Board of Trustees, Planning Board, and Architectural Review Board, when required by the provisions of this Chapter or when, in the opinion of the board, such referral is necessary to fully evaluate the impacts and benefits of a development application.
- (g) To retain, as necessary, counsel, clerks, a secretary and experts, including but not limited to engineers, architects, landscape architects, historic preservationists and planners, to assist the Board in the conduct of its official business.
- (h) To maintain and make available minutes of all of its meetings in accordance with §7-712-a of the Village Law of the State of New York and to comply with all applicable public notice and hearing requirements specified in this Chapter.
- (i) To perform such other tasks as may be necessary in the carrying out of the above powers and duties, or any additional powers and duties authorized by law.

### **C. ARCHITECTURAL REVIEW BOARD**

#### **(1) Legislative Findings**

The Board of Trustees hereby finds that monotonous similarity, striking visual discord, inappropriateness or poor quality of design in the exterior appearance of structures erected, reconstructed or altered in any area in the Village of Nyack adversely affects the desirability of the immediate area and neighboring areas within the community and, by so doing, impairs the benefits of occupancy or use of real property in such areas; impairs the stability and value of both improved and unimproved real property in such areas; prevents the most appropriate development of such areas; produces degeneration of the property in such areas, with attendant deterioration of conditions affecting the health, safety, morals and general welfare of the inhabitants of the community; and destroys a proper relationship between the taxable value of real property in the community and the cost of municipal services provided therefor. It is the purpose of this chapter to prevent these and other harmful effects and thus to promote and protect the health, safety, morals and general welfare of the community.

#### **(2) Purpose**

- (a) It is the purpose of this chapter to preserve and promote the character and appearance and conserve the property values of the village, the attractiveness of whose residential and business areas is the economic mainstay of the community, by providing procedures for an architectural review of structures henceforth erected, reconstructed or altered and items installed in the village. It is the purpose to encourage good qualities of exterior building design and good appearances and to relate such design and appearances to the sites and surroundings of structures, to permit originality and resourcefulness in design

- which are appropriate to the sites and surroundings and to prevent such design and appearances as are unnecessarily offensive to visual sensibilities and inconsistent with village character.
- (b) The Architectural Review Board shall assist applicants to focus on design principles, which can result in creative solutions that will develop a satisfactory visual appearance within the village, preserve property values and encourage an improvement in the overall quality of village life.
  - (c) The Architectural Review Board shall issue certificates of appropriateness for any exterior alterations of a building or site designated as a landmark or located within a designated historic district as set forth in §59-5.11.
- (3) Establishment and Organization**
- (a) There is hereby established an Architectural Review Board ("ARB"), which shall consist of five members appointed by the Board of Trustees. All members of the ARB shall be residents of the Village. All members shall be specifically qualified by reason of training or experience in architecture, design, building construction, other related business or profession. If available, at least one member shall be a professional architect licensed to practice in the State of New York. If available, at least one member shall be knowledgeable in architectural history, historic building design and construction, and/or local history.
  - (b) In addition, the Board of Trustees shall appoint two alternate members, who shall serve in the absence of the regular members. These alternate appointments shall be for two years.
  - (c) The mayor shall appoint a new member to fill any vacancy occurring other than by the expiration of a term.
- (4) Powers and Duties**
- The ARB shall have the following powers and duties:
- (a) To adopt rules and regulations for its operation and to follow said rules and regulations in the conduct of its official business.
  - (b) To hear and decide requests and impose reasonable conditions pursuant to §59-5.15 for a building permits for the construction or alteration of any structure or item within the Village of Nyack that would affect the exterior appearance or would be visible from the exterior, except for site grading and landscaping, but including:
    - (i) New Construction
    - (ii) Additions
    - (iii) Alterations
    - (iv) Mechanical equipment visible from the street or adjacent property
    - (v) Street furnishings
  - (c) To review the construction or installation by or for public agencies of structures, facilities and all other items listed above. Such approval or disapproval and all attendant procedures and rules shall apply whether or not an application for a permit for construction or alteration is required or has been submitted.
  - (d) To hear and decide requests and impose reasonable conditions for sign permits pursuant to §59-5.13.
  - (e) To provide recommendations related to design and appearances to the Village Board, Planning Board and other village boards and agencies on requests for site plan development, subdivision, and demolition.
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- (f) To hear and decide requests and impose reasonable conditions pursuant to §59-5.11 in its capacity as a historic review body with regard to building permit applications for exterior alterations, moving, and demolition of historic landmarks and properties in historic districts.
- (g) To review and recommend in its capacity as a historic review body with regard to building permit applications for exterior alterations of properties which:
  - (i) Are not designated local landmarks but which are listed on or are eligible for listing on the State and/or National Register of Historic Places or are properties included in the inventory of historic properties and districts within the Village, or
  - (ii) Are not locally designated historic districts but which districts are listed on or are eligible for listing on the State and/or National Register of Historic Places included in the inventory of historic properties and districts within the Village.
- (h) To recommend pursuant to §59-5.12 the designation of local historic landmarks and districts to the Board of Trustees, and to review and recommend with regard to any proposed designation of such landmarks or districts by the Board of Trustees.
- (i) To maintain an inventory of historic properties and districts within the Village.
- (j) To promulgate and make available to public written and graphic architectural and building design guidelines or standards to be used by it in treating any application before it for architectural review or for a certificate of appropriateness.
- (k) To prepare and make available to the public graphic and textual depictions which illustrate design principles to be encouraged throughout the Village or in particular districts or for particular building types and uses.
- (l) To retain, as necessary, counsel, clerks, a secretary and experts, including but not limited to engineers, architects, landscape architects, historic preservationists and planners, to assist the Board in the conduct of its official business.
- (m) To maintain and make available minutes of all of its meetings in accordance with §7-712-a of the Village Law of the State of New York and to comply with all applicable public notice and hearing requirements specified in this Chapter.
- (n) To perform such other tasks as may be necessary in the carrying out of the above powers and duties, or any additional powers and duties authorized by law.

#### **D. BUILDING INSPECTOR.**

Refer to Chapter 10 for the duties and responsibilities of the Building Inspector.

#### **§59-5.3. BOARD MEETINGS, RULES AND EXPENSES**

- A. Meetings of any decision-making boards shall be open to the public and held at regular monthly intervals or at such other times as the board may determine, subject to the notice requirements under New York State Law. A public hearing may be held when it is deemed to be in the public interest or required by the standards of this chapter.
- B. A majority of the members of a board shall constitute a quorum for the transaction of business. Each board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. When relevant or necessary to carry out the provisions of this chapter, the Board may exercise the following powers to assist it in arriving at its decisions:



- (1) To conduct examinations and investigations.
  - (2) To hear testimony and take proof, under oath if it should so determine.
  - (3) To enter, or delegate to any agent or representative of the Board the power to enter, any building or property for the purpose of conducting investigations, surveys or inspections.
- D. Boards shall have the power from time to time to adopt, amend and repeal rules and regulations not inconsistent with law. Every such rule or regulation, every amendment or repeal and every order, requirement or decision shall immediately be filed with the Building Department and shall be a public record.
- E. Boards shall have the power to employ consultants and to pay for their services and such other expenses as may be necessary and proper. The board, at its sole discretion, may require an applicant to reimburse the Village for the cost of consultant services pertinent to the subject application. Where such action is anticipated in advance, the Building Inspector may require that an appropriate and reasonable sum be placed in escrow by the applicant to cover such reimbursement.

#### **§59-5.4. GENERAL DEVELOPMENT REVIEW PROCEDURES**

The common development review procedures in this Section shall apply to all types of development applications under this Article, unless an exception to the common procedures is expressly called for in the particular development application requirements in subsequent Sections of this Article. To the extent that the provisions of this Article are inconsistent with the provisions of the Village Law of the State of New York at §7-712 et seq., the Board of Trustees hereby declares its intent to supersede the provisions of the Village Law pursuant to §10 et seq. of the Municipal Home Rule Law. For any application to build or construct multi-family or cluster dwellings, the applicant shall consult with the Building Inspector to determine if the proposed project impacts the Village's Affordable/Workforce Housing Law [code citation here].

##### **A. OPTIONAL: PRE-APPLICATION MEETING**

###### **(1) Purpose**

The purpose of a pre-application meeting is to provide an opportunity for an informal evaluation of an applicant's proposal and to familiarize the applicant and the relevant decision-making body with the applicable provisions of this chapter, the Comprehensive Master Plan, and any other issues that may impact the development application. A pre-application meeting is optional, but is recommended for applications that will likely require amendments to the Zoning Ordinance, Site Development Plan Review, or Subdivision.

###### **(2) Procedure**

- (a) An applicant may request a pre-application meeting with the Building Inspector. At the time of request, the applicant shall provide the Building Inspector with a description of the character, location and magnitude of the proposed development along with any other supporting documents, maps, plans, etc. available. While detailed plans and other materials are not required, the amount of material provided directly relates to the ability of the Building Inspector or other decision-making bodies to provide meaningful and reliable direction to the applicant.

- (b) Based on the character of the application, the Building Inspector shall determine the appropriate decision-making bodies to involve in the pre-application meeting. In general, the pre-application meeting will include the Building Inspector and a representative of one or more boards with review authority. In some cases, depending on the character of the development, the Building Inspector may schedule a pre-application meeting before an entire board.
- (c) At the pre-application meeting, the applicant, the Building Inspector, and any other persons the Building Inspector deems appropriate to attend shall discuss the proposed development, including the applicable requirements and standards of this chapter. The applicant is responsible for recording a summary of the discussion, which shall be submitted as part of any formal application.

**(3) Informal Evaluation Not Binding**

The informal evaluation provided during the pre-application meeting is not binding upon the applicant or the Village, but is intended to serve as a guide to the applicant in making the application.

**B. STEP ONE: APPLICATION SUBMITTAL**

**(1) Authority to File Applications**

Unless otherwise specified in this chapter, applications for review and approval may be initiated by:

- (a) The owner of the property that is subject to the application;
- (b) The owner's authorized agent;
- (c) The Board of Trustees;
- (d) The Planning Board; or
- (e) Other entities that have rights provided by law.

**(2) Application Required**

Applications and submission materials required under this chapter shall be submitted in a form and in such number as required by the Building Inspector. Such requirements shall be provided in the form of application checklists or other forms to the public. The Building Inspector may amend and update those requirements as necessary.

**(3) Plans and Specifications**

- (a) Plans and specifications for the erection, construction, enlargement, alteration or improvement of buildings for uses other than single-family, two-family or three-family dwelling units shall be approved by a registered architect or professional engineer licensed to practice in the State of New York.
- (b) Plans and specifications for the erection, construction, enlargement, alteration or improvement of single-family, two-family or three-family dwelling units where the total valuation of the work to be performed costs more than \$4,999 shall be approved by a registered architect or professional engineer licensed to practice in the State of New York.
- (c) The Building Inspector may require the approval of plans by a licensed architect or engineer for any work within this ordinance regardless of cost in order to protect the public health and welfare.
- (d) This paragraph shall not apply to violations of the provisions of the State Building Construction Code punishable under Section 385 of the Executive Law of the State of

New York; nor to violations of the provisions of the Multiple Residence Law punishable under Section 304 of the Multiple Residence Law of the State of New York.

**(4) Waivers**

The Building Inspector may waive specific submittal requirements when such requirements are clearly unrelated to any project impacts. Such waiver shall not limit the ability of a decision-making body to require additional materials during the course of the development review process, should such materials be determined necessary to evaluate whether an application complies with the requirements of this chapter.

**(5) Fees and Costs**

**(a) Development Fees**

The Board of Trustees shall adopt by resolution a schedule of fees for the purpose of recovering the costs incurred by the Village in processing, reviewing, and recording applications pertaining to development applications. The Board of Trustees, on recommendation of the Building Inspector, shall review and adjust the schedule of fees as necessary. Such adjustments shall be based on an analysis of actual expenses incurred by the Village to reflect inflation and other changes in costs, and shall be adopted by resolution of the Board of Trustees.

**(b) Recovery of Consultant Costs**

In addition to the development fee, an applicant shall pay all costs billed by the Village for expenses incurred in review of an application, including fees from consultants hired to assist in the review. Escrow funds may be required, at the discretion of the Building Inspector.

**(c) Outstanding Fees and Costs**

All fees and costs shall be paid by the applicant prior to scheduling of hearings and/or meetings for any development application. No new applications shall be accepted by the Village until all previous fees and costs associated with an applicant are paid in full by the applicant.

**C. STEP TWO: DETERMINATION OF APPLICATION COMPLETENESS**

After receipt of the development application, the Building Inspector shall determine whether the application is complete and ready for review.

- (1)** If the application is determined to be complete, the application shall then be processed according to the procedures set forth in this Code. An application will be considered complete if it is submitted in the required form, includes all required information and supporting materials, and is accompanied by the applicable fee. The determination of completeness shall not be based upon the perceived merits of the development proposal.
- (2)** If an application is determined to be incomplete, the Building Inspector shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected in a future re-submittal. The inclusion of false information in an application is grounds for determination that the application is incomplete.

**D. STEP THREE: APPLICATION REFERRAL, REVIEW AND STAFF REPORT**

After determining that a development application is complete, the Building Inspector shall process the development application as follows:

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**(1) Applications Requiring a Single Review and Approval**

Development applications requiring approval from a single decision-making body shall be forwarded to that body, along with a staff report by the Building Inspector outlining the application's conformance with the standards of this chapter. In the case of those applications for which the Building Inspector is the final decision-making body and no referral to another decision-making body is required, no official report is required.

**(2) Applications Requiring Multiple Reviews or Referrals**

- (a)** Development applications that require review by multiple decision-making bodies shall be scheduled for review in the following order, unless a different order is agreed to by the both the applicant and the decision-making body with final decision-making authority:
- (i)** Building Inspector;
  - (ii)** County Planning Board, as required under New York State General Municipal Law for certain variances, special use permits and amendments;
  - (iii)** Architectural Review Board;
  - (iv)** Zoning Board of Appeals;
  - (v)** Planning Board;
  - (vi)** Board of Trustees.
- (b)** At any time during its consideration of an application, an applicant and/or a decision-making body may request to forward the application to another decision-making body if, in the opinion of either party, the application involves issues which lie in the other board's area of expertise. The board to which the application is forwarded shall, within 45 days, review the application informally and make recommendations to the board from which the application was forwarded. Such review shall not be a public hearing on the application and the board shall neither approve or deny the application as part of that review.
- (c)** Joint meetings or hearings of the decision-making bodies may be scheduled and are encouraged where applications require review by more than one body.
- (d)** A staff report prepared by the Building Inspector outlining the application's conformance with the standards of this chapter shall be provided to each decision-making body.
- (e)** No building permit shall be issued for a building to be used for any use in any district where such use is allowed by special permit of the Zoning Board of Appeals unless and until such special permit has been duly issued by the said Board.
- (f)** No building permit shall be issued for any building where the site plan of such building is subject to approval by the Planning Board except in conformity with the plans approved by said Board.

**E. STEP FOUR: PUBLIC NOTICE**

**(1) Notice Required**

Public notice is required for all public hearings required by this chapter. All required notice shall include the following, unless otherwise specified within this Code:

- (a)** Date, time, and place of the public hearing;
- (b)** A description, where applicable, of the property involved in the application by street address and legal description;
- (c)** A summary of the nature, scope, and purpose of the proposed action;

- (d) An indication that interested parties may appear at the hearing and speak on the matter; and
- (e) An indication of where additional information on the matter may be obtained.

**(2) Summary of Notice Requirements**

The following Table 5-2 summarizes the notice requirements for each of the procedures set forth in this Article. These requirements may be modified or supplemented by standards within the individual review procedure section.

**Table 5-2: Notice Requirements**  
(X indicates type of notice required, if any)

Procedure	Section	Published Notice	Mailed Notice	Posted Notice
Amendments to Zoning Ordinance (Rezoning)	§ 59-5.6	X	X <sup>a</sup>	X <sup>b</sup>
Site Development Plans	§ 59-5.7	X		X
Subdivisions	§ 59-5.8	X	X	X
Demolition Permit	§ 59-5.16	X		X
Special Use Permits	§ 59-5.9	X	X	X
Variances	§ 59-5.10	X	X	X
Certificate of Appropriateness	§ 59-5.11	X	X	X
Historic Designation (Historic District or Landmark)	§ 59-5.12	X	X	X <sup>b</sup> X
Sign Permit	§ 59-5.13	X		X
Building Permit (No Board Review Required)	§ 59-5.14			
Building Permit (ARB Review Required)	§ 59-5.15			X
Certificate of Occupancy	§ 59-5.17			
Tree Removal Permit for Significant Trees	§ 59-5.18		X	X

a: Not required for text amendments

b: Only required for map amendments. Where a map amendment will affect an area larger than one acre, the Building Inspector shall determine the appropriate amount and location of postings.

**(3) Types of Notice**

**(a) Published Notice**

The Building Inspector shall cause notice to be published in a newspaper of general circulation no less than ten days and no more than 30 days prior to the hearing date.

**(b) Mailed Notice**

(i) The Applicant shall mail notice to the property owner of record for each property located within 200 feet (1,000 feet for telecommunications facilities) from the exterior boundaries of the land involved in the application, as the names of said owners appear on the last completed assessment roll of the village. Notice shall be mailed via U.S. Postal Service first class mail at least 10 days prior to the scheduled hearing date.

(ii) In addition to any requirement to notify property owners, some types of applications require written notice to neighboring municipalities, counties, or other public or quasi-public agencies. All such notice, as required by the Village Law of the State of New York and/or the Municipal Home Rule Law shall be provided, regardless of the requirements of this chapter.

(c) Posted Notice

The applicant shall post notice on the property at least 10 days before the scheduled hearing date. Such notice shall be of a dimension, design and materials as required by the Building Inspector.

(4) Minor Defects

Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description or typographical or grammatical errors that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed.

**F. STEP FIVE: PUBLIC HEARING**

Any public hearing shall be conducted according to the standards of the Village Law of the State of New York.

**G. STEP SIX: DECISION AND FINDINGS**

(1) Decision

After consideration of the development application, comments received from other reviewers (if applicable), and the evidence from the public hearing (if applicable), the decision-making body shall approve, approve with conditions, or deny the application based on its compliance with the applicable approval criteria, as described below for the specific application types. In approving any application, the decision-making body shall attach such conditions as necessary in order to further the general objectives of this chapter. If the application is disapproved, the application may not be refiled for a period of one year from the date of initial filing.

(2) Findings

All decisions shall include a clear statement of approval, approval with conditions, or denial, along with a statement describing the basis upon which the decision was made, including specific written findings of fact.

**§59-5.5. EXPIRATION OF APPROVALS AND PERMITS**

- A.** Every building permit, certificate of appropriateness, and approval by the Planning Board or Architectural Review Board shall expire if the work authorized has not commenced within 12 months after the date of issuance or approval or has not been completed within 24 months from such date. If no zoning amendments or other village regulations affecting the subject property have been enacted in the interim, the Building Inspector shall authorize in writing the extension of the latter period by an additional six months, following which no further work is to be undertaken without a new building permit or approval of the Planning Board or Architectural Review Board.
- B.** Every variance or special permit shall expire if the work or use authorized has not commenced within 12 months after the date of issuance. In such case, the variance or special permit shall become null and void.

## **§59-5.6. AMENDMENTS TO THIS CHAPTER**

### **A. PURPOSE AND APPLICABILITY**

The Board of Trustees may from time to time on its own motion, or on petition, or on recommendation of the Planning Board or the Zoning Board of Appeals or Architectural Review Board amend, supplement or repeal the regulations and provisions of this chapter after public notice and hearing, as provided in §7-706 and §7-708 of the Village Law of the State of New York.

### **B. PROCEDURE**

(1) Step One: Application Submittal  
Applicable.

(2) Step Two: Determination of Application Completeness  
Applicable

(3) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following referral requirements:

(a) Planning Board

Every such proposed amendment shall be referred by the Board of Trustees to the Planning Board for a report before the public hearing. The Board of Trustees shall not take action on any such amendment without a recommendation from the Planning Board unless the Planning Board fails to render such report within 60 days after the next regularly scheduled meeting of such Board following the time of such referral.

(b) Rockland County Planning Board

Any change in the district classification of or the regulations applying to real property lying within a distance of 500 feet of the following shall be referred to the Rockland County Planning Board prior to final action in accord with § 239-l and 239-m of the General Municipal Law.

- (i) The boundary of any other municipality (also requires referral to adjoining municipality).
- (ii) The boundary of any existing or proposed county or state park or other recreation area.
- (iii) The right-of-way of any existing or proposed county or state road, parkway or other controlled access highway.
- (iv) The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines.
- (v) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is located.

(4) Step Four: Public Notice

Applicable, with the following additional notice requirements:

- (a) A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the Public Housing law, as such area is shown on an approved zoning map filed with the Zoning Office, shall be given to the housing authority erecting or owning the project and to the government providing financial aid for assistance thereto at least ten days prior to the date of such hearing.

- (b) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any state park or parkway shall be given in the regional State Park Commission having jurisdiction over such State park or parkway no less than ten days prior to the date of such public hearing.
- (c) A written notice of any proposed change of amendment affecting property within 500 feet of the boundaries of any municipality, shall be given to the clerk of such municipality at least ten days, but not more than thirty days, prior to the date of such hearing.

**(5) Step Five: Public Hearing**

Applicable, with the following modifications:

- (a) If a protest against the amendment signed by the owners of 20% or more of the area of land included in such proposed change or of that immediately adjacent and within 100 feet of that area of land or that directly opposite thereto, as measured from the adjacent street frontage, such amendment shall not become effective except by the affirmative vote of at least four members of the Board of Trustees.
- (b) If the Rockland County Planning Board, following its review of the amendment as required above, provides a recommendation for disapproval or approval with modifications, along with a statement for its reasons for such recommendation, such amendment shall not become effective except by the affirmative vote of at least four members of the Board of Trustees.

**(6) Step Six: Decision and Findings**

Applicable.

**C. CRITERIA**

In considering a proposed amendment, the Planning Board and Board of Trustees shall consider the following items:

**(1) Text Amendments**

- (a) Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned.
- (b) Which areas and establishments in the village will be directly affected by such change and in what way they will be affected.
- (c) The indirect implications of such change in its effect on other regulations.
- (d) Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.

**(2) Zoning Map Amendments**

- (a) Whether the uses permitted by the proposed change would be appropriate in the area concerned.
- (b) Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional dwelling likely to be constructed as a result of such change.
- (c) Whether the proposed change is in accord with any existing or proposed plans in the vicinity.
- (d) The effect of the proposed amendment upon the growth of the village as envisaged by the Comprehensive Plan.



(e) Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the village and the probable effect thereof.

**(3) Consistency with Comprehensive Plan**

In all cases where the Board of Trustees shall approve an amendment to the Zoning Map, the Board shall find that such amendment is consistent with the aims of the Comprehensive Plan for the Village.

**§59-5.7. SITE DEVELOPMENT PLAN**

**A. PURPOSE**

The purpose of the site development plan process is to ensure compliance with the development and design standards and provisions of this Code, and to encourage quality development reflective of the goals, policies, and objectives of the Village Comprehensive Master Plan. For development activity requiring a site plan review, no building permits or other authorizations may be issued until a site plan showing the proposed development has been approved in accordance with the procedures and requirements of this Section. The site development plan process is intended to allow for the evaluation of both the intended design, arrangement and uses of the area, as well as the impacts of the development on the community.

**B. APPLICABILITY**

Site development plan approval by the Planning Board is required for:

- (1) All uses of land where no building is proposed and where a building permit or certificate of occupancy is not required;
- (2) The erection or enlargement of all buildings in all districts (excluding signage), or any change in the site characteristics, including but not limited to parking, traffic or pedestrian access, loading, drainage, lighting, utilities, landscaping, sight lines or view corridors;
- (3) Any application for a special permit;
- (4) The amendment of any previously approved site development plan.

**C. PROCEDURE**

- (1) Optional: Pre-Application Meeting  
Recommended.
- (2) Step One: Application Submittal  
Applicable.
- (3) Step Two: Determination of Application Completeness  
Applicable.
- (4) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following modification: If the review will be advanced by a joint meeting of the Planning Board and the Architectural Review Board, either board can schedule a joint meeting or request an advisory opinion from the other board. Only Planning Board members will vote on topics of Planning Board jurisdiction and only ARB members will vote on topics of ARB jurisdiction. Any site development plan application

that includes demolition shall be referred to the ARB for a formal advisory recommendation. In particular, the ARB shall consider whether the building(s) or structure(s) proposed for demolition may qualify for designation as a landmark and how the demolition effects design and appearance.

**(5) Step Four: Public Notice**

Applicable, with the following modifications:

**(a) Posted Notice**

The applicant shall post notice of the scheduled hearing at least every 20 feet along every property line, with a minimum of one sign along each property line.

**(b) Mailed Notice**

The required mailed notice shall be sent by first class mail for those applications that seek a change in the designation of an existing zoning district.

**(6) Step Five: Public Hearing**

Applicable, with the following modification: The Planning Board shall hold a public hearing on the application within 62 days of submission of a complete application.

**(7) Step Six: Decision and Findings**

Applicable, with the following modification: The Planning Board shall approve, approve with modifications, or deny the application within 62 days of the conclusion of the public hearing.

**D. CRITERIA**

In approving the site development plan for any particular use, the Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular, advice of the Architectural Review Board, and may attach such reasonable conditions and safeguards as a precondition to approval of said plan which will further the general purpose and intent of this chapter and the Village Comprehensive Master Plan. In addition, the Planning Board shall give specific consideration to the design of the following:

- (1)** Location, arrangement, massing, scale, and design of buildings and associated structures (e.g., signs, fences, lighting);
  - (2)** Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths and sections, pavement surfaces, dividers and traffic controls;
  - (3)** Location, arrangement, appearance and amount of off-street parking and loading;
  - (4)** Adequacy and arrangement of pedestrian traffic access and circulation, sidewalks, crosswalks, and overall pedestrian convenience and safety;
  - (5)** Adequacy and arrangement of landscaping materials, including the preservation of existing significant trees in accordance with §59-4.4.C;
  - (6)** Adequacy of stormwater and drainage facilities;
  - (7)** Adequacy of utilities, including underground electric service, water supply and sewage disposal facilities;
  - (8)** Preservation and maintenance of view corridors and sight lines (particularly Hudson River views).
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- (9) Continuation of pattern of front setbacks established by the streetscape.

## §59-5.8. SUBDIVISION OF LAND

### A. PURPOSE

Pursuant to the provisions of Article 7 of the Village Law of the State of New York, the Planning Board of the Village of Nyack is authorized and empowered to approve plats showing lots, blocks or sites, with or without streets or highways, to conditionally approve preliminary plats and to approve the development of plats, entirely or partially undeveloped, to be filed in the office of the Rockland County Clerk. It is declared to be the policy of the Planning Board to consider land subdivision regulations as part of a plan for the orderly, efficient and economical development of the Village. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that proper provision shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed street pattern shall conform to the Official Zoning Map and shall be properly related to the proposals shown on the Master Plan and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of fire-fighting equipment to buildings; and that proper provision shall be made for parks and playgrounds.

### B. APPLICABILITY

Whenever any subdivision of land is proposed, and before any contract for the sale or any offer with respect to any part thereof, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply in writing for approval of such proposed subdivision in accordance with the following procedures.

### C. PRELIMINARY SUBDIVISION PLAT PROCEDURES

- (1) Submission of proposed plat. Any owner of land shall, prior to subdividing or resubdividing land, submit to the Village Clerk, at least 14 days prior to the regular meeting of the Planning Board, eight copies of a proposed plan of the subdivision which shall comply with the requirements of §7-728 of the Village Law of the State of New York, along with the required fee, payable to the "Village of Nyack," of \$5,000. Such required fee may be changed from time to time by resolution of the Board of Trustees, and any such amendment shall be posted in the Building Department.
- (2) Required information. The following documents shall be submitted as part of the preliminary plat:
  - (a) Eight copies of the preliminary plat prepared at a scale of not more than 100 nor less than 50 feet to the inch, showing the following items:
    - (i) Proposed subdivision name, name of Village and county in which it is located, date, true North point, scale, name and address of record owner, subdivider and engineer or surveyor, including license number and seal.
    - (ii) The name of all subdivisions immediately adjacent and the name of the owners of record of all adjacent property.
    - (iii) Zoning district, including exact boundary lines of district, if more than one district, and any proposed changes in the zoning district lines and/or the Zoning Law text applicable to the area to be subdivided.

- (iv) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
  - (v) Location of existing property lines, easements, buildings, watercourses, marshes, rock outcrops, wooded areas, significant trees, historically significant features, view corridors to the Hudson River along public right-of-ways and other significant existing features for the proposed subdivision and adjacent property.
  - (vi) Location of existing sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
  - (vii) Contours with intervals of two feet or as required by the Board, including elevations on exiting roads. The grading plan shall show natural and proposed contours if such exceed a two-foot change.
  - (viii) The width and location of any streets or public ways or places shown on the Official Map or the Master Plan within the area to be subdivided and the width, location, grades and street profiles of all streets or public ways proposed by the developer.
  - (ix) The approximate location and size of all proposed water lines, valves and hydrants and sewer lines and fire-alarm boxes; connection to existing lines or alternate means of water supply.
  - (x) Storm drainage plan indicating the approximate location, size and type of storm drains and their proposed lines and profiles. Connection to existing lines or alternate means of disposal.
  - (xi) Plans and cross sections showing the proposed location and type of sidewalks, street lighting standards, trees, curbs, water mains, the character, width and depth of pavements and subbase, the location of manholes, basins and underground conduits, and any retaining walls proposed to be over four feet in height.
  - (xii) Plans for sanitary sewers, connections to existing lines or alternate means of treatment and disposal.
  - (xiii) Preliminary designs of any bridges or culverts which may be required.
  - (xiv) The proposed lot lines, with approximate dimensions and area of each lot.
  - (xv) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out, the boundaries of proposed permanent easements or under private property. The permanent easements shall be of adequate width and shall provide satisfactory access to an existing public highway or other public highway or public open shown on the subdivision plat or the Official Village Zoning Map.
  - (xvi) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial monuments of such size and type as approved by the Village Engineer and shall be referenced and shown on the plat.
  - (xvii) A bulk table.
  - (xviii) A title abstract, and a municipal violation report indicating that the premises are free from violations.
- (b) If the application covers only a part of the subdivider's entire holding, an accurate map of the entire tract, drawn at a scale of not more than 400 feet to the inch, showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract and the

- probable future drainage layout of the entire tract. The part of the subdivider's entire holding submitted shall be considered in the light of the entire holding.
- (c) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
- (3) Discussion. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, sewage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information.
- (4) Approval of preliminary plat
- (a) Submission of preliminary plats. All plats shall be submitted to the Planning Board for approval in final form; provided, however, the owner may submit or the Planning Board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.
- (b) Coordination with the State Environmental Quality Review Act. The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article VIII of the Environmental Conservation Law and its implementing regulations. The Planning Board shall make a determination of lead agency status within a reasonable amount of time from its receipt of the preliminary plat.
- (c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.
- (d) Planning Board as lead agency under the State Environmental Quality Review Act; public hearing; notice; decision.
- (i) Public hearing on preliminary plats. The time within which the Planning Board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act, as follows:
- A. If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within 62 days after the receipt of a complete preliminary plat by the Clerk of the Planning Board; or
- B. If such Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.
- (ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the Village at least

five days before such hearing if no hearing is held on the draft environmental impact statement, or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

- (iii) Decision. The Planning Board shall approve, with or without modification, or disapprove such preliminary plat as follows:

  - A. If the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, such Board shall make its decision within 62 days after the close of the public hearing; or
  - B. If the Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the preliminary plat. Within 30 days of the filing of such final environmental impact statement, the Planning Board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.
- (iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.
- (e) Planning Board not as lead agency under the State Environmental Quality Review Act; public hearing; notice; decision.

  - (i) Public hearing on preliminary plats. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, or if no public hearing is held on the draft environmental impact statement, the Planning Board shall hold the public hearing on the preliminary plat within 62 days after the receipt of a complete preliminary plat by the Clerk of the Planning Board.
  - (ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the Village at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.
  - (iii) Decision. The Planning Board shall by resolution approve, with or without modification, or disapprove the preliminary plat as follows:

- A. If the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the preliminary plat.
- B. (If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the preliminary plat within 62 days after the close of the public hearing on such preliminary plat or within 30 days of the adoption of findings by the agency, whichever period is longer.
- (iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.
- (f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the Clerk of the Planning Board as having been granted preliminary approval, and a copy of the plat and resolution shall be filed in such Clerk's office. A copy of the resolution shall be mailed to the owner.
- (g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the Board on the preliminary plat, the Chairman or other duly authorized member of the Planning Board shall cause a copy of such resolution to be filed in the office of the Village Clerk.
- (h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the Planning Board.

#### **D. FINAL SUBDIVISION PLAT PROCEDURES**

- (1) Plat for subdivision, application and fee. The subdivider shall file an application for the subdivision in the form described in Article IV, §50-20, hereof. The plat shall, in all respects, comply with the requirements set forth in §7-728 of the Village Law of the State of New York. Unless an application fee has been previously paid with the submission of the preliminary subdivision plat, the application for approval of the final plat shall be accompanied by a fee of \$5,000, or such fee as per the schedule adopted by the Board of Trustees and posted in the Building Department.
- (2) Number of copies. Eight copies of the plat, accompanied by a fee and all data required in the following subsection, shall be presented to the Planning Board Clerk at least 14 days prior to a regular meeting of the Planning Board. The original and one true copy of all offers of cession, covenants and agreements must also be submitted.
- (3) Required information
  - (a) The plat to be filed with the County Clerk shall be printed upon Mylar. The size of the sheets shall be 20 inches by 20 inches or 20 inches by 40 inches, including a margin for binding of two inches outside of the border along the left side and a margin of one inch outside of the border along the remaining sides. The plat shall be drawn at a scale of not less than 30 feet nor more than 100 feet to the inch and oriented with the North point at the top of the map. A vicinity plan scale not more than 1,000 feet to the inch shall be included. When more than one sheet is required, an additional index sheet of the same

- size shall be filed showing to scale the entire subdivision with lot and block numbers clearly legible.
- (b) The plat shall show the following items:
- (i) Proposed subdivision name or identifying title, the name of the village and county, the name and address of the record owner and subdivider and the name, license number and seal of the licensed land surveyor.
  - (ii) Street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.
  - (iii) Sufficient data acceptable to the Village Engineer to determine readily the location, bearing and length of every street line, lot line, boundary line and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
  - (iv) The length and bearing of all straight lines, radii, length of curves and central angles of all curves and tangent bearings for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and true North point.
  - (v) By proper designation thereon, all public open spaces for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner in which such areas are to be maintained and the provisions made therefor.
  - (vi) All offers of cession and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Village Attorney as to their legal sufficiency.
  - (vii) Lots and blocks within a subdivision shall be numbered in alphabetical order in accordance with the prevailing Village practice and shall bear tax lot designations as duly assigned.
  - (viii) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the Village Engineer. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the State Department of Transportation. They shall be placed as required by the Village Engineer and their location noted and referenced upon the plat.
  - (ix) All lot corner markers shall be permanently located satisfactorily to the Village Engineer, at least 3/4 inch (if metal) in diameter and at least 24 inches in length and located in the ground to existing grade.
  - (x) Monuments of a type approved by the Village Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street lines, points of curve and such intermediate points as shall be required by the Village Engineer.
- (c) Construction drawings, including plans, profiles and typical cross sections as required, showing the proposed location, size and type of streets, sidewalks, street lighting standards, street trees, existing significant trees, water mains, sanitary sewers and storm drains, pavements and subbase, manholes, catch basins and other facilities, and retaining walls proposed to be over four feet in height, shall also be submitted.



- (d) Official submission date. The time of submission of the subdivision plat shall be considered to be the date of the regularly scheduled meeting of the Planning Board at least 14 days prior to which the application for approval of the subdivision plat, complete and accompanied by the required fee and all data required by Article IV, § 50-20, of these regulations, has been filed with the Village Clerk.
  - (e) Endorsement by state and county agencies. Applications for approval of plans for sewer facilities shall be approved by the applicable sewer services agency (with proof of same provided to the Planning Board), and filed by the subdivider with appropriate Village, county (including the Rockland County Drainage Agency) and state agencies, and for water facilities with the Nyack Water Department. Endorsement and approval by the Rockland County Department of Health, if required, shall be secured by the subdivider before submission of the subdivision plat.
- (4) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the Planning Board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the Planning Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within 62 days of its receipt by the Clerk of the Planning Board.
- (5) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.
- (6) Final plats not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the Planning Board deems not to be in substantial agreement preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section, the following shall apply:
- (a) Planning Board as lead agency; public hearing; notice; decision.
    - (i) Public hearing on final plats. The time within which the Planning Board shall hold a public hearing on such final plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act, as follows:
      - A. If such Board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on final plat when no preliminary plat is required to be submitted, shall be held within 62 days after the receipt of a complete final plat by the Clerk of the Planning Board; or
      - B. If such Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion

- of such draft environmental impact statement in accordance the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within 62 days following filing of the notice of completion.
- (ii) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the Village at least five days before such hearing if no hearing is held on the draft environmental impact statement, or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.
  - (iii) Decision. The Planning Board shall make its decision on the final plat as follows:
    - A. If such Board determines that the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within 62 days after the date of the public hearing; or
    - B. If such Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the final plat. Within 30 days of the filing of the final environmental impact statement, the Planning Board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.
  - (iv) Grounds for decision, The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.
- (b) Planning Board not as lead agency; public hearing; notice; decision.
- (i) Public hearing. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, or if no public hearing is held on the draft environmental impact statement, the Planning Board shall hold the public hearing on the final plat within 62 days after the receipt of a complete final plat by the clerk of the Planning Board.
  - (ii) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the Village at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

- (iii) Decision. The Planning Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

    - A. If the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the final plat.
    - B. If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the final plat within 62 days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.
    - C. The Planning Board shall, within 90 days of the meeting, make specific recommendations in writing to be incorporated by the applicant in the application for final approval. The Planning Board shall state any specific changes which it will require in the proposed subdivision plat; the character and extent of the required improvements for which waivers may have been requested and which, in its opinion, may be waived without jeopardy to the public health, safety, morals and general welfare; the amount of improvement or the amount of all bonds therefor which it will require as a prerequisite to the approval of the subdivision plat. If the final plat is not submitted within six months after approval of the preliminary plat, the Planning Board may require resubmission of the preliminary plat.
- (7) Approval and certification of final plats.
- (a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the Clerk of the Planning Board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such Clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which, when completed, will authorize the signing thereof. Upon final approval of a final plat, or upon completion of such requirements of a conditionally approved plat, the plat shall be signed by the Chairperson of the Planning Board, or by a duly authorized officer of the Planning Board, and a Mylar copy of such signed plat shall be filed in the office of the clerk of the Planning Board, filed with the Village Clerk, filed in the office of the Orangetown Tax Assessor (five copies), and filed in the office of the Rockland County Clerk. Additionally, in accordance with the Rockland County Stream Control Act, the Rockland County Drainage Agency must review, approve and sign all subdivision plats before they are filed in the office of the Rockland County Clerk.
  - (b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the Planning Board. Conditional or final approval of the sections of a final plat may be

- granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the Planning Board.
- (c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within 180 days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Planning Board may extend, by not more than two additional periods of 90 days each, the time in which a conditionally approved plat must be submitted for signature if, in the Planning Board's opinion, extension is warranted by the particular circumstances.
  - (d) Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless the plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, or contrary to this provision, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.
- (8) Required improvements.
- (a) Improvements and performance bond. Before the Chairman of the Planning Board signs the subdivision plat, the subdivider shall follow the procedure set forth in either of the following subsections:
    - (i) The subdivider shall file with the Village Clerk, in an amount set by the Planning Board, either a cash deposit or irrevocable letter of credit, which complies with the requirements of §7-728 of the Village Law of the State of New York, and satisfactory to the Board of Trustees and the Village Attorney as to form, sufficiency, manner of execution and surety. A period of one year (or other period, not exceeding three years, that the Planning Board deems appropriate) shall be set forth in connection with the cash deposit or the terms of the letter of credit, as the time in which required improvements must be completed.
    - (ii) The subdivider shall complete all required improvements to the satisfaction of the Village Engineer, who shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Board. For any required improvements not completed or not approved by the Village Engineer, the subdivider shall file with the Village Clerk a cash deposit or irrevocable letter of credit covering the cost of such improvements. Any such cash deposit or irrevocable letter of credit shall be satisfactory to the Board of Trustees and the Village Attorney as to form, sufficiency, manner of execution and surety.
  - (b) Completion of improvements. The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Village Engineer and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements according to Subsection A(2), then said map shall be submitted prior to endorsement of the plat by the Chairman of the Planning Board. However, if the subdivider elects to provide a cash deposit or irrevocable letter of credit for all required improvements as specified in Subsection A(1), such cash or letter of credit shall not be released until such a map is submitted.
  - (c) Modification of design of improvements. If, at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the

- Village Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Village Engineer may, upon approval by a previously delegated member of the Planning Board, authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Village Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.
- (d) Inspection of improvements. At least five days prior to commencing construction of required improvements, the subdivider shall pay to the Village Clerk the inspection fee required by the Board of Trustees and shall notify said Board in writing as to the time when he proposes to commence construction of such improvements so that the Board may cause inspection to be made to assure that all Planning Board specifications and requirements shall be met during the construction of required improvements, to assure adequate protection of existing vegetation and historic resources, if any, and to assure the satisfactory completion of improvements and installation of utilities required by the Planning Board.
- (e) Proper installation of improvements. If the Village Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Board of Trustees, Building Inspector and Planning Board. The Board of Trustees then shall notify the subdivider and, if necessary, the bonding company and take all necessary steps to preserve the Village's rights under the bond. No plat shall be approved by the Planning Board so long as the subdivider is in default on a previously approved plat.

#### **E. CRITERIA**

The Planning Board shall study the practicability of the proposed subdivision plat, taking into consideration the requirements of the community and the best use of land being subdivided. Particular attention shall be given to the arrangement, location and width of streets; their relation to the topography of the land; preservation of view corridors to the Hudson River along existing public right-of-ways, water supply; sewage disposal; drainage; lot sizes and arrangement; the future development of adjoining lands as yet unsubdivided; neighborhood traffic patterns; and the requirements of the Master Plan, the Official Zoning Map and the zoning laws, and the comments of other interested/involved agencies (including but not limited to the Rockland County Planning Department; Rockland County Highway Department; Rockland County Drainage Agency; NYSDOT; NYSDEC; municipalities located within 1,000 feet of the proposed subdivision; New York State Thruway Authority; Rockland County Health Department).

#### **F. OTHER REQUIREMENTS.**

- (1) Public streets and recreation areas
- (a) Public acceptance of streets. The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Village of any street, easement or other open space shown on such subdivision plat, which shall only be established by the execution of a recordable dedication document submitted by the applicant to the Mayor after approval by the Village Attorney.

(b) Ownership and maintenance of recreation areas. When a park, playground or other recreation area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the Village of such area unless a map note on the plat indicates that the Village or another municipal entity is accepting same. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Board of Trustees covering future deed and title dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.

**(2) Cluster development**

In those instances where the Planning Board is empowered to modify applicable provisions of the Zoning Law in accordance with the provisions of §7-738 of the Village Law of the State of New York for the purpose of enabling and encouraging flexibility of design and development of land in such a manner as to promote the most appropriate use of land or to facilitate the adequate and economic use of streets and utilities and to preserve the natural and scenic qualities of open lands, the following shall be the procedures and standards:

- (a) Request by subdivider. A subdivider may request the use of §7-738 simultaneously with or subsequent to presentation of the preliminary plan as per procedure described in this article. Any submission subsequent to preliminary approval of a plat shall require a reapplication for preliminary plat review.
- (b) Request by Planning Board. The Planning Board may request the use of §7-738 simultaneously with or subsequent to presentation of the preliminary plan as per procedure described in this article. Any submission subsequent to preliminary approval of a plat shall require a reapplication for preliminary plat review.
- (c) Park, recreation, open-space or other municipal purposes. If the application of this procedure results in a plat showing land available for park, recreation, open space or other municipal purposes directly related to the plat, then conditions as to ownership, use and maintenance of such lands as are necessary to assure the preservation of such lands for their intended purposes shall be set forth by the Planning Board. Such conditions shall be set forth in notes on the plat.
- (d) Plat submission. A preliminary plat meeting all of the requirements of the Village Law §7-738 shall be presented to the Planning Board, and thereafter the Planning Board shall proceed with the required public hearings and all other requirements of these regulations. A plat submitted by a subdivider for cluster development shall include a separate sheet showing a standard layout that meets all zoning and subdivision requirements in order to determine the lot count for the cluster development.
- (e) Filing; notation on Zoning Map. On the filing of a plat in the office of the County Clerk of a plat in which §7-738 has been used, the subdivider shall file a copy with the Village Clerk, who shall make appropriate notations and reference thereto in the Village Zoning Map. The Village Clerk shall notify the Building Inspector when such a plat is filed.

**(3) Payment of professional fees**

Any professional fees incurred in connection with the subdivision review shall be paid by the applicant, who shall deposit an amount of monies in escrow with the Building Department, in an amount determined by the Building Inspector, at the time of the application. Billing statements submitted in connection with the subdivision review shall be paid from this escrow account, which shall be replenished at the request of the building department. All

fees must be paid in full prior to final plat being executed by the Chairman of the Planning Board.

### **§59-5.9. SPECIAL USE PERMITS**

#### **A. PURPOSE AND APPLICABILITY**

This Section provides for the review and approval of special permit uses, as identified by Table 3-1 of this chapter, by the Zoning Board of Appeals. Such uses typically have unique or widely varying operating characteristics or unusual site development features. While they may be appropriate in a given zoning district, the procedure below encourages public review and evaluation of the specific characteristics of the proposed use and the site in order to assure that proposed special permit uses are in harmony with this chapter and will not adversely affect the surrounding neighborhood or the community at large. In addition, the merger of two or more lots requires a special permit approval.

#### **B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
- (2) Step Two: Determination of Application Completeness  
Applicable.
- (3) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following addition: If an application for a special permit is within 500 feet of any area described below, it shall be referred to the Rockland County Planning Board in accordance with §239-l and 239-m of the General Municipal Law:
  - (a) The boundary of any other municipality (also requires referral to adjoining municipality).
  - (b) The boundary of any existing or proposed county or state park or other recreation area.
  - (c) The right-of-way of any existing or proposed county or state road, parkway or other controlled access highway.
  - (d) The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines.
  - (e) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is located.

The Rockland County Planning Board shall review the matter and report its approval, disapproval, or recommended modifications within 30 days after receipt of a full statement of the proposed action.

- (4) Step Four: Public Notice  
Applicable as set forth in §59-5.4.E, Table 5-2.
- (5) Step Five: Public Hearing  
Applicable, with the following addition: The Zoning Board of Appeals must render a decision on the special permit application within 62 days following the close of said hearing.
- (6) Step Six: Decision and Findings  
Applicable, with the following addition: The Zoning Board of Appeals may require that special permits be periodically renewed. Such renewal shall be granted following due public

notice and hearing consistent with the procedures of this section. Renewal may be withheld only upon a determination by the Building Inspector that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been or are no longer being complied with. In such cases, a period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.

### **C. CRITERIA**

In authorizing the issuance of a special permit, the Zoning Board of Appeals shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to ensure the accomplishment of the following objectives:

- (1) That all proposed structures, equipment and material shall be readily accessible for fire and police protection;
- (2) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties;
- (3) That, in the case of any use located in or directly adjacent to a residential district:
  - (a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said residential district or conflict with the normal traffic of the neighborhood.
  - (b) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
- (4) That the application is consistent with any additional use-specific standards required by Article 3 of this chapter.

### **D. CONFORMING USES**

Any use for which a special permit has been granted shall be considered a conforming use, provided that:

- (1) The provision in this chapter under which the permit was issued is still in effect.
- (2) The permit was issued in conformity with the provisions of this chapter.
- (3) The permit shall be deemed to affect only the lot or portion thereof for which the permit was granted.

## **§59-5.10. VARIANCES**

### **A. PURPOSE AND APPLICABILITY**

- (1) The variance process is intended to provide limited relief from the requirements of this chapter subject to terms and conditions to be fixed by the Zoning Board of Appeals as will not be contrary to the public interest. The Zoning Board of Appeals may authorize, upon



appeal in specific cases, a variance when, owing to exceptional and extraordinary circumstances, the strict application of the terms of this local law will create a practical difficulty or unnecessary hardship on the use of the land.

- (2) It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this chapter may impose on property owners in general. In addition, the needs or desires of a particular party shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. Nor shall the fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair, or the fact that the property is unimproved be deemed sufficient for approval of a variance.
- (3) In all cases where the Zoning Board of Appeals grants a variance from the strict application of the requirements of this local law, it shall be the duty of such Board to attach conditions and safeguards as may be required in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this local law.
- (4) A “use variance” is required for an application for a use not permitted in the underlying zoning district by this chapter. An “area variance” is required for an application involving a deviation from an area requirement provided in this chapter. While the criteria for the two types of variance are distinct, the review procedure is the same.

#### **B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
- (2) Step Two: Determination of Application Completeness  
Applicable
- (3) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following modifications:
  - (a) If, in the opinion of the Building Inspector, any application submitted does not comply with the provisions of the local law, the Building Inspector shall return one copy of the plans, along with a copy of the disapproval to the applicant, and forward one copy of the application to the Chairman of the Zoning Board of Appeals.
  - (b) Within 20 days after the date of the written disapproval by the Building Inspector of any such application, the applicant may appeal to the Zoning Board of Appeals from such ruling by serving upon the Village Clerk, in duplicate, a written notice of appeal addressed to the Building Inspector and to the Zoning Board of Appeals, of the taking of such an appeal from such decision specifying the grounds of the appeal. Such service upon the Village Clerk shall be deemed proper service upon the Building Inspector and upon the Zoning Board of Appeals. The Village Clerk shall immediately forward to the Building Inspector and to the Chairman of the Zoning Board of Appeals said due notice of appeal.
  - (c) At least 14 days before the date of any public hearing, the Zoning Board of Appeals shall transmit to the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing as required below. The Planning Board and Architectural Review Board may submit to the Zoning Board of Appeals an advisory opinion on said appeal or application at least 48 hours prior to the hearing.

(d) If an application for a variance is for property located in an area covered by with §239-l and 239-m of the General Municipal Law it shall be referred to the Rockland County Planning Board in accordance with that law.

**(4) Step Four: Public Notice**

Applicable as set forth in §59-5.4.E, Table 5-2., with the following modifications:

- (a) Published notice shall be published at least 10 days before the date of the public hearing and no more than 45 days after the filing of such appeal or application.
- (b) Mailed notice shall be by certified mail with return receipt requested
- (c) If the land involved in an appeal or application lies within 500 feet of the boundary of any other municipality, the applicant shall also transmit to the municipal clerk of such other municipality a copy of the official notice of the public hearing thereon not later than the day after such notice appears in the official newspaper of the village.

**(5) Step Five: Public Hearing**

Applicable, with the following addition: A public hearing is required for any variance application. Such hearing shall be held within 45 days of receipt of a complete

**(6) Step Six: Decision and Findings**

Applicable, with the following modification: The Zoning Board of Appeals shall decide upon the appeal or variance within 62 days following the close of the public hearing.

**C. CRITERIA**

**(1) Area Variances**

- (a) 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 by such grant. No such variance shall be granted unless the Board finds that the factors enumerated under Village Law §7-712-b(3)(b) of the State of New York, on balance, weigh in favor of the granting of the variance:
  - (i) 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;
  - (ii) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - (iii) whether the requested area variance is substantial;
  - (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  - (v) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (b) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**(2) Use Variances**

- (a) No use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary

- hardship. To show such hardship an applicant must prove each and every factor enumerated under Village Law §7-712-b(2)(b) of the State of New York.. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
- (i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (iv) that the alleged hardship has not been self-created.
- (b) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (c) Where the Zoning Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or building by the owner thereof, and where the Board deems the same condition to apply generally to other land or buildings in the same neighborhood or district, said Board may call this condition to the attention of the Board of Trustees.

#### **D. NONCONFORMITIES**

Use variances granted by the Zoning Board of Appeals shall be deemed nonconforming uses. Building variances granted by the Zoning Board of Appeals shall be deemed nonconforming structures.

### **§59-5.11. CERTIFICATE OF APPROPRIATENESS**

#### **A. PURPOSE AND APPLICABILITY**

Any exterior alteration of a building or site designated as a landmark or located within a designated historic district, including demolitions, shall require a certificate of appropriateness, issued by the ARB, in compliance with the requirements set forth in this section. This review is in addition to other permits or approvals required by this chapter. In some cases a certificate of appropriateness may be required even when a building permit is not required. Nothing in this section shall be construed to prevent ordinary maintenance or repair with like materials or similar quality and color of any designated landmark or any property located wholly or partly within the boundaries of an historic district.

#### **B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
- (2) Step Two: Determination of Application Completeness  
Applicable .
- (3) Step Three: Application Referral, Review and Staff Report

Applicable, with the following addition: This certificate of appropriateness review shall be coordinated with other required reviews for the application where possible, including site plan and building permit review.

- (4) Step Four: Public Notice  
Applicable as set forth in §59-5.4.E, Table 5-2.
- (5) Step Five: Public Hearing  
Applicable, with the following modification: The ARB shall approve or disapprove any permit application referred to it within 45 days of the date the application is deemed complete. If the ARB fails to act within 45 days of receipt of the application, the application shall be deemed to have been approved. Nonetheless, in no case shall a building permit be issued prior to site plan approval by the Planning Board when applicable.
- (6) Step Six: Decision and Findings  
Applicable.

### C. CRITERIA

In reviewing applications, the ARB shall consider how the following criteria:

- (1) Adopted design guidelines, including the *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
- (2) The historical and architectural value and significance of the building or structure and its relationship to the historic and architectural value of the surrounding area.
- (3) Consistency in terms of materials and architectural style with the particular architectural period with which the building or structure is associated.
- (4) New construction shall be visually compatible in scale, design, materials, color and texture with buildings of historic value in the historic district.
- (5) Moving of buildings or structures designated as landmarks or located wholly or partly within the boundaries of the historic district may be allowed as an alternative to demolition.
- (6) The general appropriateness of proposed exterior design, colors, arrangement, texture and materials.
- (7) Any other factors relating to aesthetic considerations that the Board deems pertinent to the benefit of the village and the historic or architectural significance of the structure or building and surrounding area.

### D. DEMOLITION

In the case of a request to demolish a building, structure or other site designated as a landmark or located within an historic district, a denial by the ARB shall be effective for one year from the date of the denial. During that year, the ARB shall endeavor to work with the property owner to develop an economically feasible plan for the preservation of such improvement. At the expiration of such one-year period, the request for an application shall be deemed approved. All construction, reconstruction, alteration or repair, however, shall remain subject to the other provisions of this section.

**E. EXCEPTIONS FOR PUBLIC SAFETY**

This section shall not apply in any case where the Building Inspector or any authorized village enforcement agency orders or directs the construction, removal, alteration or demolition of any improvement on a landmark site or in an historic district for the purpose of remedying conditions determined to be unsafe or dangerous to the life, health or property of any person.

**§59-5.12. HISTORIC DESIGNATION (HISTORIC DISTRICT OR LANDMARK)**

**A. PURPOSE**

- (1) The Village Board of the Village of Nyack finds that there exist within the village places, sites and structures that have a special character or special historical or aesthetic interest or value in American, New York State and local history, architecture and culture; that it is feasible to preserve and continue the use of such places, sites and structures; and that such places, sites and structures face the danger of being uprooted and destroyed without adequate consideration of the irreplaceable loss to the people of the village of the aesthetic, cultural and historical values represented by such improvements. It is the sense of the Village Board that the standing of Nyack as a viable community steeped in the history and culture of the mid-Hudson region requires the maintenance and enhancement of the historical, aesthetic, cultural and architectural heritage of the village.
- (2) It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation, preservation and use of improvements of historical, aesthetic, cultural and architectural value are a public necessity and are required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this section is to effect and accomplish the protection, enhancement, perpetuation and preservation of such places, sites and structures located within the village; safeguard the village's historic, aesthetic, cultural and architectural heritage as embodied and reflected in such improvements within Historic Districts; stabilize and improve property values in such Historic Districts; foster civic pride in the beauty and accomplishments of the past; protect and enhance the village's attractions to residents, visitors and business interests; strengthen the economy of the village and promote the use of the Historic Districts and landmarks sites for the education, pleasure and welfare of the people of the village and area.

**B. PROCEDURE**

- (1) Step One: Application Submittal

Applicable, with the following modification: Proceedings for the designation of a landmark, landmark site or historic district may be initiated either by the ARB on its own motion or by the request of any person on an application form furnished by the Village. In the case of a request for historic district designation initiated by other than the ARB, the application must be signed by at least one-third (33%) of the property owners within the proposed district.

- (2) Step Two: Determination of Application Completeness

Applicable.

- (3) Step Three: Application Referral, Review and Staff Report

Applicable, with the following modification:

- (a) The ARB shall refer all applications for designation to the Planning Board, which shall report its commendation prior to the public hearing before the ARB. Failure to submit a recommendation by that date shall be considered as a recommendation for approval.
  - (b) The ARB shall recommend either approval, approval with modifications, or disapproval of an application within 62 days of the date of the first ARB meeting following the receipt of the complete application. In the event that no decision is rendered within 62 days, the application shall be deemed to have been recommended for approval.
  - (c) The ARB's recommendation shall be forwarded to the Village Board for a public hearing.
- (4) Step Four: Public Notice as set forth in §59-5.4.E, Table 5-2.  
Applicable, with the following modification: Mailed notice to the owner or owners of the proposed landmark or properties within the proposed historic district shall be sent by via U.S. Postal Service first class mail at least 10 days prior to the date of the public hearing before the ARB.
- (5) Step Five: Public Hearing  
Applicable, with the following modifications:
- (a) The Board of Trustees shall hold a public hearing within 45 days of receipt of the recommendation from the ARB to determine whether to designate the site or district as a landmark or historic district.
  - (b) A request for landmark designation must be approved by the owner of the subject property. If, at least one-third of the property owners in a proposed historic district or the owner of a proposed landmark submit a petition to the Board of Trustees opposing such designation, it may only be enacted by a vote of at least four-fifths of the Board.
- (6) Step Six: Decision and Findings  
Applicable, with the following modifications: If the Village Board disapproves the application, the application may not be refiled for a period of one year from the date of initial filing.

### C. CRITERIA

The following criteria shall be used by the ARB and the Planning Board as a basis for their recommendations:

- (1) That designation is consistent with the purposes of this subsection and the Comprehensive Plan;
- (2) That particular districts, structures or sites:
  - (a) Are associated with events that have made a significant contribution to the broad patterns of our history; or
  - (b) Are associated with the lives of persons significant in our past; or
  - (c) Embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
  - (d) Have yielded or may be likely to yield information important in prehistory or history.
- (3) Certain types of sites that ordinarily shall not be considered eligible for historic designation, including cemeteries, birthplaces or graves of historical figures, properties owned by religious

institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature and properties that have achieved significance within the past 50 years, will qualify for designation if they are integral parts of districts that do meet the criteria, or if they fall within the following categories.

- (a) A religious property deriving primary significance from architectural or artistic or historical importance.
- (b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event.
- (c) A birthplace or grave of an historical figure of outstanding importance, if there is no appropriate site or building associated with his productive life.
- (d) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.
- (e) A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance.
- (f) A property achieving significance within the past 50 years if it is of exceptional importance.

#### **D. BUILDING PERMITS FOR PROPOSED LANDMARKS AND HISTORIC DISTRICTS**

- (1) No permit shall be issued to construct, alter, remove, or demolish any structure or other feature on a proposed landmark site or in a proposed historic district after a complete application for designation has been filed. No such permit application filed after such date shall be approved by the Building Inspector while proceedings are pending on such designation unless the applicant obtains a certificate of appropriateness pursuant to §59-5.11.
- (2) Nothing in this subsection shall be deemed to apply to the construction or alteration of a structure or other feature on a proposed landmark site or in an historic district if a permit for such work was issued before the application for designation was filed.

#### **E. IDENTIFICATION OF LANDMARKS AND HISTORIC DISTRICTS**

The Building Inspector shall be responsible for appropriate public identification of areas designated as landmarks and historic districts on the Landmark and Historic District Map. The ARB shall approve the size, color, typography, material of construction and wording of all public and private signs identifying landmarks and properties within historic districts.

### **§59-5.13. SIGN PERMIT**

#### **A. PURPOSE**

The purpose of this section is to control outdoor and window signs of all types and in all zoning districts by regulating size, location, quantity, quality, content and design to:

- (1) Enhance and protect Nyack's physical appearance and environment, so as to protect the village's scenic and natural beauty and to create an attractive economic, business and tourist climate;
- (2) Encourage excellence in sign design and to provide uniform design standards;

- (3) Reduce sign or advertising distractions and obstructions that may contribute to traffic accidents or driver confusion;
- (4) Reduce hazards from signs on public rights-of-way;
- (5) Increase the profitability of businesses in Nyack by encouraging residents and visitors to shop in the stores;
- (6) Replace or remove nonconforming signs; and
- (7) Promote the health, safety and welfare of the residents of the Village of Nyack.

#### **B. APPLICABILITY**

A sign permit is required for the erection, moving, enlargement, reconstruction or redesign of any exterior or window sign, except for the following:

- (1) The changing of the advertising or message on an approved sign that is specifically designed for the use of temporary replaceable copy (i.e., a movie marquee or bulletin board).
- (2) Painting, cleaning and other normal maintenance and repair of a sign or a sign structure, unless a structural change is made or there is a change in the graphic presentation on the face of a sign.

#### **C. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
- (2) Step Two: Determination of Application Completeness  
Applicable.
- (3) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following modifications: The ARB shall approve, approve with modifications, or disapprove the application within 60 days of receipt of the complete application, except where a sign application is part of a site plan or special permit application, in which case the sign shall be reviewed as part of that application. As part of a site plan or special permit application, the decision-making body shall refer the application to the ARB for a recommendation on the application.
- (4) Step Four: Public Notice  
Applicable.
- (5) Step Five: Public Hearing  
Applicable.
- (6) Step Six: Decision and Findings  
Applicable, with the following modification: The Building Inspector shall issue a sign permit within five calendar days of receipt of the ARB's decision, subject to delivery to the Building Inspector of an insurance certificate, in a form and amount acceptable to the Building Inspector, naming the village as an additional insured under the permit owner's comprehensive general liability coverage. Such certificate shall provide that the insurance cannot be canceled without 30 days' prior notice to the Village of Nyack Building Inspector. The permit shall be conditioned upon the permit owner keeping such insurance in effect.



**D. CRITERIA**

In reviewing a sign permit application, the ARB shall take into consideration the purpose and intent of this section and all relevant standards of this chapter, including the sign standards of Section 59-4.11, as well as strength of illumination of the sign and whether its design, materials and placement are appropriate for the building on which it will be located and compatible with nearby buildings and structures. For properties designated as a landmark or located within a designated historic district, the application must also meet the standards applicable to a certificate of appropriateness.

**§59-5.14. BUILDING PERMIT (NO BOARD REVIEW REQUIRED)**

**A. PURPOSE AND APPLICABILITY**

No person, firm or corporation shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure, or cause the same to be done, without first obtaining a separate building permit from the Building Department for each such building or structure; except that no building permit shall be required for the performance of ordinary repairs which are not structural in nature. Applications that involve exterior alterations or that require any additional approvals under the provisions of this chapter shall be referred to the appropriate decision-making body(ies) for approval prior to issuance.

**B. PROCEDURE**

**(1) Step One: Application Submittal**

Applicable, with the following modification: Applications shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application.

**(2) Step Two: Determination of Application Completeness**

Applicable.

**(3) Step Three: Application Referral, Review and Staff Report**

Applicable.

**(4) Step Four: Public Notice**

Not Required.

**(5) Step Five: Public Hearing**

Not Required.

**(6) Step Six: Decision and Findings**

Applicable, with the following additions: Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved." One set of such approved plans and specifications shall be retained in the files of the Department of Buildings, and the other set shall be returned to the applicant, together with the building permit, and shall be kept at the building site open to inspection by the Building Inspector or his authorized representative at all reasonable times. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the applicable building laws, ordinances or regulations. All work shall conform to the approved application, plans and specifications, except that no building permit shall be valid insofar as

it authorizes the performance of work or the use of materials which are not in accordance with the requirements of the applicable building regulations.

**C. CRITERIA**

No building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of this chapter, building codes, and other applicable laws. If a building permit is denied, upon the request of the applicant, the Building Inspector shall state in writing the reasons for such denial and the section of the Zoning Ordinance that would be violated. Any building permit issued in violation of the provisions of this local law shall be null and void and of no effect, without the necessity for any proceedings for revocations or nullification thereof; and any work undertaken or use established pursuant to any such permit shall be unlawful.

**D. AMENDMENTS**

Amendments to the application or to the plans and specifications accompanying the same may be filed at any time prior to the completion of the work, subject to the approval of the Building Inspector.

**§59-5.15. BUILDING PERMIT (ARB REVIEW REQUIRED)**

**A. PURPOSE AND APPLICABILITY**

No person, firm or corporation shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure, or cause the same to be done, without first obtaining a separate building permit from the Building Department for each such building or structure; except that no building permit shall be required for the performance of ordinary repairs which are not structural in nature. The provisions of this section apply to those applications that require approval by the ARB due to the nature of the application.

**B. PROCEDURE**

**(1) Step One: Application Submittal**

Applicable, with the following modification: Applications shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application.

**(2) Step Two: Determination of Application Completeness**

Applicable. When Planning Board decision is required for the application, the ARB will provide recommendation to the Planning Board. After the Planning Board decision, the application shall be resubmitted to the ARB.

**(3) Step Three: Application Referral, Review and Staff Report**

Applicable, with the following addition: Any application that requires ARB review shall be approved, approved with modifications, or disapproved within 60 days of the date the application is deemed complete. To advance the review either the ARB and the Planning Board can schedule a joint meeting on a application. Each board will decide only on topics within its jurisdiction.

**(4) Step Four: Public Notice**

Applicable

(5) Step Five: Public Hearing  
Applicable

(6) Step Six: Decision and Findings

Applicable, with the following additions: Upon approval of the application, both sets of plans and specifications shall be endorsed with the word “approved.” One set of such approved plans and specifications shall be retained in the files of the Department of Buildings, and the other set shall be returned to the applicant, together with the building permit, and shall be kept at the building site open to inspection by the Building Inspector or his authorized representative at all reasonable times. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the applicable building laws, ordinances or regulations. All work shall conform to the approved application, plans and specifications, except that no building permit shall be valid insofar as it authorizes the performance of work or the use of materials which are not in accordance with the requirements of the applicable building regulations.

### C. CRITERIA

In approving the building permit, the Architectural Review Board shall take into consideration the general design framework which respects the scale and architectural character of existing neighborhoods and which will allow development and alterations to be in harmony with and compatible with the existing design and architecture of the Village and not detrimental thereto. In reviewing applications, the ARB shall take into account natural features of the site and its surroundings, the exterior design and appearance of existing and planned structures in the immediate area and the character of the area and the Village encouraging the most appropriate use of the property, conservation of property values and prevention of harmful effects. Board may attach more or less weight to any guideline or part thereof in relation to other guidelines as may be appropriate under the particular circumstances. The Board may approve, approve subject to specified conditions or modifications or disapprove any application for a permit referred to it, provided that such action shall be by a majority vote of ARB members, and provided that the ARB shall not disapprove any application unless it finds the building, structure or sign for which the permit was applied would, if erected, be so detrimental to the surrounding area as to provoke one of more harmful effects due to

(1) Excessive similarity or dissimilarity to any other nearby buildings and structures existing or planned in the area of visual impact, in respect to location and alignment along a street related to neighboring development; architectural massing, width, height, proportion, and scale in relation to its surroundings; modulation of vertical and horizontal elements of the facades to reflects the scale of neighboring development; façade design; architectural style; exterior surface materials; heights of horizontal building features such as sill levels, lintels, cornices, etc.; roof design including roof elements such as dormers; porches and porticos and other attachments and projections; and rhythm or spacing and proportion of windows, doors, storefront, and other aspects of building fenestration; the nature of building trim and ornament; visibility of mechanical equipment, and other design elements.

- (2) Inappropriateness of design in respect to the quality of architectural design; to the nature of materials to be used in construction; and incompatibility of design features with the terrain on which it is to be located.

#### **D. AMENDMENTS**

Amendments to the application or to the plans and specifications accompanying the same may be filed at any time prior to the completion of the work, subject to the approval of the Building Inspector if minor. If major amendments, they are subject to the approval of the ARB.

### **§59-5.16. DEMOLITION PERMIT**

#### **A. PURPOSE AND APPLICABILITY**

The purpose of demolition review is to reflect the objectives of the Village Comprehensive Master Plan including to promote and enhance the Village's historic scale, character and charm.

#### **B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
- (2) Step Two: Determination of Application Completeness  
Applicable. The application should include photographs of the building and structure proposed for demolition and of all buildings and structures on the lot and on adjacent properties; a site plan locating the building or structure on the lot, a statement why the demolition is requested and, if requested, by the ARB or Planning Board cost estimates for rehabilitating the building or structure and other information necessary for making a decision.
- (3) Step Three: Application Referral, Review and Staff Report  
Applicable, with the following modification: A demolition application shall be referred to the ARB for a formal advisory recommendation prior to review by the Planning Board, except for applications on Landmark properties or within Historic Districts when the ARB shall decide. If the review will be advanced by a joint meeting of the Planning Board and the Architectural Review Board, either board can schedule a joint meeting or request an advisory opinion from the other board.
- (4) Step Four: Public Notice  
Applicable
- (5) Step Five: Public Hearing  
Applicable.
- (6) Step Six: Decision and Findings  
Applicable. The Planning Board will make the decision except for applications involving Landmarks or Landmark Districts when the ARB shall make the decision.

**C. CRITERIA**

- (1) The ARB shall consider whether the building(s) or structure(s) proposed for demolition may qualify for designation as a landmark using the criteria in §59-5.12.C. and how the demolition effects design and appearance in the visual impact area using the criteria in §59.5.15.C.
- (2) If the property is a Landmark or within a Landmark District, the ARB shall use the criteria in 59-5.11.C. to decide the demolition application.
- (3) The Planning Board shall take into consideration the location, arrangement, massing, scale, and design of the existing building or structure proposed for demolition and of any proposed new construction on the property, as well as other criteria found in §59-5.7.D..

**§59-5.17. CERTIFICATE OF OCCUPANCY**

**A. PURPOSE AND APPLICABILITY**

A certificate of occupancy is required prior to the occupancy, use, or change of occupancy or change of use of any building or part of a building in order to ensure conformance with all applicable requirements of this chapter. No building hereafter enlarged, extended or altered, or upon which work has been performed which required the issuance of a building permit, shall continue to be occupied or used for more than 30 days after the completion of the alteration or work, unless a certificate of occupancy shall have been issued by the Building Inspector. A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies.

**B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable, with the following additions:
  - (a) The applicant shall submit an application only after the erection of the subject building or part thereof has been completed in conformity with the provisions of this chapter.
  - (b) The applicant shall include a statement that the building or the proposed use of a building or land complies with all applicable provisions of this local law and, if applicable, all provisions of any variance or requirements for any special permit with every application.
  - (c) In the case of a new building, the applicant shall include an accurate survey prepared by a licensed surveyor showing the location of all buildings as built.
- (2) Step Two: Determination of Application Completeness  
Applicable.
- (3) Step Three: Application Referral, Review and Staff Report  
Applicable.
- (4) Step Four: Public Notice  
Not applicable.
- (5) Step Five: Public Hearing  
Not applicable.
- (6) Step Six: Decision and Findings

Applicable. A certificate of occupancy shall be issued within 10 days after receipt of a complete application, subject to the criteria below.

**C. CRITERIA**

- (1) When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations; and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit, the Building Inspector shall issue a Certification of Occupancy upon the form provided by him. If it is found that the proposed work has not been properly completed, the Building Inspector shall refuse to issue a certificate of occupancy and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.
- (2) The certificate of occupancy shall certify that the work has been completed, and that the proposed use and occupancy is in conformity with the provisions of the applicable building laws, ordinances and regulations, and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.
- (3) No certificate of occupancy shall be issued for any use of a building or of land allowed by special permit unless and until such special permit has been duly issued. Every certificate of occupancy for which a special permit has been issued or in connection with which a variance has been granted shall contain a detailed statement of such special permit or variance and of any conditions to which the same is subject.
- (4) (4) Upon request, the Building Inspector may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the building permit shall have been completed, provided such portion or portions as have been completed may be occupied safely without endangering life or the public welfare.

**§59-5.18. TREE REMOVAL PERMIT**

**A. PURPOSE AND APPLICABILITY**

See §59-4.4C.

**B. PROCEDURE**

- (1) Step One: Application Submittal  
Applicable.
  - (2) Step Two: Determination of Application Completeness  
Applicable.
  - (3) Step Three: Application Referral, Review and Staff Report  
Applicable.
  - (4) Step Four: Public Notice  
Not applicable.
  - (5) Step Five: Public Hearing
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Not applicable.

- (6) Step Six: Decision and Findings  
Applicable.

### C. CRITERIA

Where an application is submitted to the Planning Board to remove a significant tree, said permit may be granted only for the following reasons and under the following conditions:

- (1) Where the location of an existing significant tree provides no alternative but to place a proposed structure outside the permitted building setbacks, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood.
- (2) Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio, lawn area, or garden area other than in the vicinity of an existing significant tree, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood.
- (3) Where the area proposed for significant tree removal is to be occupied by a power, drainage, sewer or other utility easement or right-of-way; or where the area of tree removal is 20 feet or less from either side or around the perimeter of the foregoing, and only where there is no viable alternative route for such right-of-way, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood.
- (4) Upon the express written finding of an arborist licensed in the State of New York that the proposed significant tree removal will not result in or cause, increase or aggravate any of the following conditions: impaired growth or development of the remaining trees or shrubs on the property of the applicant or upon adjacent property, soil erosion, sedimentation or dust, drainage or sewerage problems, or any other dangerous or hazardous condition, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood.
- (5) Where the tree removal would not (1) have an adverse impact upon existing biological and ecological systems; (2) affect noise pollution by temporarily increasing noise levels to such a degree that a public nuisance may be anticipated or by significantly reducing the noise dampening effect of vegetation near sensitive noise receptors; (3) affect air quality by significantly affecting the natural cleansing of the atmosphere by vegetation; (4) affect wildlife habitat available for wildlife existence and reproduction by causing emigration of wildlife to adjacent or associated ecosystems, and only if significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood.

### §59-5.19. INTERPRETATIONS AND APPEALS

The Zoning Board of Appeals may, on appeal from an order, requirement, decision or determination made by the Building Inspector or another administrative official, or on request by any official, board or agency of the village, decide the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter. Appeals of decisions of the ARB or the Planning Board may be made to the Zoning Board of Appeals or to the Supreme Court pursuant to CPLR Article 78. Appeals of decisions of the Zoning Board of Appeals and Board of Trustees shall be to the courts.

## **ARTICLE 6: DEFINITIONS**

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### **§59-6.1. WORDS DEFINED**

#### **ACCESSORY BUILDING or ACCESSORY STRUCTURE**

Applies to a building or structure which is detached from and clearly incidental or subordinate to and customary in connection with the principal building and which is located on the same tax lot with such principal building. No residential building or dwelling shall be considered or allowed as accessory to any other residential building or dwelling. An accessory building attached to the principal building shall be considered part of the principal building. Accessory structures include garages, stadiums, reviewing stands, tennis courts, platforms, gasoline pumps, standpipes, outside bins, swimming pools, pergolas, walks, fences, gate posts, signs, driveways and paved walks. The word "structure" or "building" shall be construed as though followed by the words "or part thereof."

#### **ACCESSORY FACILITY**

In regards to a telecommunications facility, an accessory facility serves the principal use, is subordinate in area, extent and purpose to the principal use and is located on the same lot as the principal use. Examples of such facilities include transmission equipment and storage sheds.

#### **ADULT BOOKSTORE**

A person, establishment or business, whether retail or wholesale, having as more than a minimal portion of its stock-in-trade recordings, books, magazines, periodicals, films, video tapes/cassettes or other viewing materials for sale or viewing off premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas. For purposes of this definition, "minimal portion" means 10% of gross sales or receipts for any calendar year. No viewing of such electronic media shall be permitted on premises.

#### **ADULT ENTERTAINMENT CABARET**

A nightclub, bar, restaurant or similar public or private establishment which presents topless dancers, strippers or exotic dancers or other similar entertainments

#### **ADULT ENTERTAINMENT USES**

Any use constituting an adult bookstore, adult motion-picture theater, adult entertainment cabaret, adult motel or peep show, as those terms are defined herein.

#### **ADULT MOTEL**

A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television, transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of sexual activities or sexual anatomical areas.

#### **ADULT MOTION-PICTURE THEATER**

An enclosed or unenclosed building, structure or portion thereof, including video booths, cubicles, rooms or stalls, used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas for observation by patrons.

#### **AFFORDABLE/WORKFORCE HOUSING LAW**

The Village's Affordable/Workforce Housing Law while not made a part of this Zoning Chapter is incorporated by reference to this Zoning chapter. The Village Board resolves that it is in the public interest to encourage and require all sectors, public and private, to participate in the development and retention of



such affordable/workforce housing, and to that end, resolve to require that a certain portion of multifamily housing developments be set aside for low- and moderate-income households. See Chapter X.

**ALTER OR ALTERATION**

As applied to a building, to change or rearrange the walls, roof, ceiling, floors, supporting beams, columns or other structural parts, the interior plan or layout, the exterior architectural features or the exit facilities of a building, or the moving of a building from one location to another.

**ANIMAL HOSPITAL or KENNEL**

Commercial services related to the temporary care, boarding, or medical treatment of animals.

**ANTENNA**

A system of electrical conductors that transmits or receives radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, wireless and microwave communications. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

**APPLICANT**

A property owner or agent of a property owner who has filed an application for a land development activity.

**ARCHITECTURAL REVIEW BOARD or ARB**

The Architectural Review Board of the Village of Nyack.

**AREA OF VISUAL IMPACT**

The area of visual impact is the geographic area where a development activity may directly or indirectly cause visual changes in the character of the adjacent properties and neighboring areas. The extent of the area of visual impact is influenced by the scale and nature of the development activity.

**ARTS/CRAFTS STUDIO**

The manufacturing, assembling, converting, altering, finishing, cleaning or any other processing of products from finished goods, not including food products, where the products are to be sold at retail, exclusively on the premises.

**AWNING**

A roof-like covering of canvas, metal or duck, attached to a metal frame no less than seven feet above the sidewalk and attached to or supported entirely from a building.

**BANNER**

A piece of cloth or plastic or other flexible material mounted over sidewalks and a street, and attached to the sides of buildings and/or utility poles, bearing an advertisement, announcement, greeting or slogan. Banners are regulated by §48-2 and require a permit from the Board of Trustees.

**BAR or TAVERN**

A place of business duly licensed for the sale and on-premises consumption of alcoholic beverages by the drink as the principal or primary use, whether or not food service is also provided. For the purposes of this chapter, a “bar” shall also be deemed a “restaurant” only if food is prepared, served and consumed on the premises.

**BASEMENT**

That portion of a building that is partly below grade. A basement shall be considered as a story for purposes of height measurement where the finished floor above the basement is:

1. More than 6 feet above the grade plane;

2. More than 6 feet above the finished ground level for 50% or more of the total building perimeter; or
3. More than 12 feet above the finished ground level at any point.

**BED AND BREAKFAST**

A private dwelling used to provide lodging accommodations and a morning meal to visitors for compensation, provided that the owner lives on the premises and not more than six rooms are so used.

**BILLBOARD**

A sign, including the type commonly known as a "billboard," which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed or only incidentally upon such lot.

**BUILDING or STRUCTURE**

A combination of materials to form a construction adapted to permanent, temporary or continuous occupancy and having a roof or anything constructed or erected on or in the ground or attached to something having a location in or on the ground.. The term "building" shall include the term "structure" and shall be construed as though followed by the words "or part thereof."

**BUILDING AREA**

The maximum horizontal area of a building measured in one plane.

**BUILDING COVERAGE**

That percentage of lot area covered by the building area.

**BUILDING INSPECTOR**

The Village official, sometimes referred to as the "Code Enforcement Official," designated by the Board of Trustees to administer the Village Local Zoning Law and other Village regulations.

**BUFFER AREA**

Area(s) on a lot usually within required yard areas, used to screen development or uses on adjoining properties, composed of wither undisturbed or landscaped areas. The following types of uses shall not be allowed in a "buffer area": buildings or aboveground structures; vehicle overhangs, driveways and loading areas; signs or lighting fixtures; solid water receptacles; and other structures or uses prohibited by the Planning Board.

**BULK**

The size and shape of buildings and nonbuilding uses, and the physical relationship of the exterior walls or their location to lot lines and other buildings or other walls of the same building, and all open spaces required in connection with a building. Bulk regulations include regulations dealing with floor-area ratio, lot area, lot area per dwelling unit, lot frontage, lot width, height, required yards, useable open space, spacing between buildings on a single lot and length of buildings in a row.

**BULLETIN BOARD**

An announcement sign of a civic, educational or religious institution which is specifically designed for the use of temporary replaceable copy

**BUSINESS**

Any person, firm, association, partnership, corporation or other entity for profit.

**CELLAR**

That portion of a building that is partly or entirely below grade and having less than three feet of its floor-to-ceiling height above grade. A cellar is not considered a story for the purpose of height and setback

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regulations. A cellar does is exempt in the calculation of floor area ratio in single and two-family dwellings in SFR-1, SFR-2 and TFR residential zones unless the structural headroom is 7 ½ feet or more.

### **CLEARING**

An activity that removes the vegetative surface cover.

### **COMMERCIAL RECREATION**

A commercial facility used primarily for physical exercise, recreation, or culture. This use is divided into two subgroups based on indoor or outdoor operations.

#### **Indoor**

Indoor uses in this category may require larger indoor areas to accommodate equipment or facilities for the proposed activity. Examples include: Physical fitness centers; health clubs; gyms; bowling alleys; indoor skating rinks; billiard halls; amusement arcades; and indoor play parks.

#### **Outdoor**

Outdoor uses in this category are typically land-intensive uses that provide continuous recreation or entertainment-oriented activities. They may take place in a number of structures that are arranged together in an outdoor setting. Examples include: Commercial tennis and swimming facilities; drive-in theaters; outdoor skating rinks; golf driving ranges; outdoor miniature golf facilities; commercial amphitheaters; privately-owned active sports facilities such as ball fields.

### **CROWN THINNING**

The selective pruning of branches throughout the canopy of a tree to reduce wind resistance, which pruning may be considered as necessary forestry practice for purposes of exemption from this chapter.

### **CURB LEVEL**

The established elevation of the street grade at the point that is opposite the center of the wall nearest to and facing the street line.

### **CLUSTER DEVELOPMENT**

A subdivision plat or plats, approved pursuant to §7-738 of the Village Law of the State of New York in which the applicable zoning local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

### **DAY CARE CENTER or NURSERY SCHOOL**

An establishment, also known as a “child-care center,” providing for the care, supervision and protection of children.

### **DECISION-MAKING BODIES**

Those boards, commissions, or agents of the Village authorized to hear, review and approve development applications, including the Board of Trustees, Planning Board, Zoning Board of Appeals, Architectural Review Board and the Building Inspector.

### **DEMOLITION**

Any wrecking activity directed to the disassembling, dismantling, dismembering and/or razing of any structure or part thereof. Demolition regulation does not apply to temporary structures not intended to be permanent, i.e. tents, sukkahs, construction trailers.

**DEMOLITION PERMIT**

A written permit, on a form approved by the Building Inspector, authorizing demolition. No demolition permit shall be issued until the Applicant gains the required approvals of all required land use boards, unless a property owner is directed to demolish or make safe a structure under the provisions of Village of Nyack Code §10-24 or §30-13.

**DEVELOPER**

A person who undertakes land development activities.

**DRIP LINE**

A line on the ground surrounding the trunk of a tree that conforms to the widest extent of the tree's canopy.

**DRIVE-IN OR DRIVE-THRU FACILITY**

Any service window, automated device or other facility that provides goods or services to individuals waiting in a motor vehicle.

**DWELLING or DWELLING UNIT**

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

**DWELLING, MIXED-USE**

A dwelling unit located above the street level of a building with non-residential uses located on the street level.

**DWELLING, MULTIFAMILY**

A residential building that contains four or more dwelling units that share common walls or common floors/ceilings with one or more dwelling units. The land upon which the building sits is not divided into separate lots.

**DWELLING, SINGLE-FAMILY ATTACHED**

Three or more side-by-side attached dwelling units sharing one or more common walls with each dwelling unit located on a separate lot.

**DWELLING, SINGLE-FAMILY DETACHED**

A building containing one dwelling unit not physically attached to any other principal structure.

**DWELLING, THREE-FAMILY**

A building containing three individual dwelling units located on a single lot. The units may be located side-by-side with a common wall or one above the other with a common floor/ceiling.

**DWELLING, TWO-FAMILY**

A building containing two individual dwelling units located on a single lot. The units may be located side-by-side with a common wall or one above the other with a common floor/ceiling.

**EASEMENT**

Authorization, which runs with the land, by a property owner for the use by another of any designated part of his property for a specified purpose.

**EFFICIENCY UNIT**

A dwelling unit consisting of not more than one habitable room, together with kitchen or kitchenette and sanitary facilities.

**ENGINEER or LICENSED PROFESSIONAL ENGINEER**

A person licensed as a professional engineer by the State of New York.

**EROSION CONTROL MANUAL**

The most recent version of the “New York Standards and Specifications for Erosion and Sediment Control Manual,” commonly known as the “Blue Book.”

**FAMILY**

One or more individual persons occupying a dwelling unit as a single nonprofit housekeeping unit.

**FAST FOOD ESTABLISHMENT**

A drive-in establishment whose principal business is the sale of pre-prepared or rapidly prepared food, frozen desserts or beverages directly to the customer in a ready-to-consume state from a counter or drive-thru window for consumption either within the restaurant building, in vehicles on the premises or off the premises. A “fast food establishment” shall not be considered a “restaurant” or a “take-out restaurant”.

**FINAL DECISION-MAKING AUTHORITY**

The decision-making body responsible for the final decision on a development application, short of an appeal authorized by this chapter or law.

**FLOOR AREA**

The sum of the horizontal areas of the several floors of the building or buildings on a lot measured from the exterior faces of exterior walls or from the center line of party walls separating two attached buildings pursuant to §59-4.3.D and Table 4-1 and Table Notes.

**FLOOR AREA RATIO**

The total floor area of all buildings or structures, whether finished or unfinished on a lot divided by the net lot area of said lot.

**FRONT FAÇADE**

The wall or walls of a building facing the street line.

**FRONTAGE**

The side of a lot abutting a street; the street line. On lots with multiple street fronts, the frontage shall include the length of the lot abutting all such streets.

**GARAGE, PRIVATE**

An accessory building or a portion of a principal building, used only for the storage of motor vehicles owned or used by the occupant of the principal building to which the garage is an accessory. Any garage that is attached to a principal building, including attachment by means of a breezeway or a roofed passageway, shall be considered an “attached” garage and shall be considered part of the principal building. Any garage not so connected shall be considered a “detached” garage, an is an accessory building..

**GOVERNMENTAL USE**

A facility owned or operated by the Village or other government entity and not subject to the standards of this chapter, including but not limited to: water supply reservations; parks and open space; playgrounds; libraries; firehouses; police stations; and public parking areas.

**GRADE**

The elevation of completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

**GRADE, EXISTING**

The elevation of the ground surface before any change to it from filling, excavating, construction, or any similar activity.

**GRADE PLANE**

A reference plane representing the average of pre-construction ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, this reference plane shall be established by the lowest point within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building.

**GRADING**

Excavation or fill of material, including the resulting conditions thereof.

**GROUP HOME**

A noninstitutional home set up in theory, size, appearance and structure to bear the general character of a family unit in a relatively permanent household headed by a householder or householders which is operated or sponsored by or subject to the approval of a public social service agency or private nonprofit child caring agency, authorized by the New York State Department of Social Services.

**HEIGHT**

The vertical distance measured, in the case of flat roofs, from the grade plane to the highest point of the roof beams adjacent to the wall closest to the street, and, in the case of pitched roofs, from the grade plane to the average height of the gable. Where no roof beams exist or there are structures wholly or partly above the roof, the height shall be measured from the grade plane to the highest point of the building.

**HISTORIC DISTRICT**

A geographic area with distinctly definable boundaries composed of several buildings or sites which has acquired a unity of character through the interrelationships of component buildings and sites, and has been designated as having historical, archeological, cultural, scenic, architectural, or other significance as set for in §59-5.12.

**HOME OCCUPATION**

An accessory use of a dwelling unit for commercial purposes that does not alter the exterior of the property or affect the residential character of the neighborhood. Such occupation must be incidental to the residential use of the premises and carried on in the principal building by a resident thereon with not more than one nonresident assistant. Only customary household appliances and equipment shall be used in such occupation. Such occupation shall be carried on in an area not exceeding 30% of the area of the dwelling unit so used. No display of goods or sign shall be visible from the street, except as set forth in §59-4.11.

**HOSPITAL, CLINIC or RELATED HEALTH CARE FACILITY**

An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, that is licensed by state law to provide such services. Hospitals may include in-patient medical or surgical care for the sick or injured and related facilities such as laboratories, out-patient departments, training facilities, central services facilities, free-standing outpatient facilities and staff offices that are an integral part of the facilities. Cafeterias, restaurants, florists, gift shops, pharmacies, and other typical and subordinate uses may be permitted subject to the standards for accessory uses.

**HOTEL or MOTEL**

A facility offering lodging accommodations with more than 10 rooms to the general public. Such uses may include typical accessory uses including restaurants, retail sales and services and meeting/conference facilities.

**IMPERVIOUS COVER**

Those surfaces, improvement and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavements, sidewalks, driveways, etc.).

**INDUSTRIAL SERVICE USE**

A facility used in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Industrial service firms that service or repair consumer goods do so primarily by providing centralized services for separate retail outlets, rather than for individual customers. Few customers, especially the general public, come to the site. Examples include: Building contractor facilities, yards, and preassembly yards; welding shops; machines shops; tool repair; electric motor repair; repair of scientific or professional instruments; building, heating, plumbing or electrical contractors; exterminators; janitorial and building maintenance services; laundry, dry-cleaning, and carpet cleaning plants; schools for industrial trades.

**INN**

A facility offering lodging accommodations with no more than 10 guest rooms. Meals may be served to customers currently residing at the inn and their guests, only.

**LAND DEVELOPMENT ACTIVITY FOR STORMWATER POLLUTION PREVENTION PLAN**

Land development activities including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one quarter acre or 10,000 square feet, which ever is less, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules

**LANDMARK**

A building, structure, site or object which has special character or special historical and aesthetic interest as part of the development, heritage, or cultural characteristics of the village, state, or nation and which has been designated as a Landmark as set forth in §59-5.12

**INTERIOR SIGNS**

Any sign of any material painted on or placed or hung within 24 inches from the inside window glass or door glass of any building, including any neon, LCD, electronic and similar signs and light borders.

**LOT**

Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, if any, or by a group of buildings having any land in common and the buildings accessory thereto, if any, together with the required open spaces appurtenant to such building or group of buildings.

**LOT, AREA**

The total horizontal area included within property lines of a lot, exclusive of land within the public way.

**LOT, CORNER**

A lot at the junction of or abutting on two or more intersecting streets where the interior angle of intersection does not exceed 135°. A lot abutting a curved street shall be deemed a "corner lot" if the tangents to the

curve at the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than 135°.

**LOT, DEPTH**

The mean horizontal distance from the street line of a lot to the rear lot line of such lot measured along the side lot lines.

**LOT LINE**

Any boundary of a lot other than a street line.

**LOT LINE, REAR**

The lot line generally opposite to the street line.

**LOT WIDTH**

The average horizontal distance between side lot lines measured along two lines parallel to a line connecting the end points of the front lot line, and drawn through those two points of the principal building closest to and farthest from the street.

**MAINTENANCE EASEMENT**

A legally recorded document that acts as a property deed restriction. It can provide for long-term maintenance of stormwater management practices.

**MANUFACTURING AND PRODUCTION USES**

Facilities used in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors. Also known as “industrial uses.” Uses are divided into two subgroups based on the potential for noxious impacts, amount of outdoor storage and operations, and the demand for heavy truck traffic.

**Heavy**

Facilities that involve the generation outside the property of noise, odor, vibration, or dust, or any use where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, or processing exceeds 25 percent of the floor area of buildings on the lot. Examples may include, but are not limited to: manufacture or assembly of machinery, equipment, instruments, vehicles, appliances, communications equipment, computer or electronic equipment, precision items and other electrical items; the processing of food and related products; and lumber, pulp and paper mills. Specifically prohibited are rendering, petroleum refining, asphalt/concrete plants, and manufacture of chemicals, fertilizers, paint, and turpentine

**Light**

Facilities for the transformation of predominantly previously prepared materials into new products, including assembly of component parts and the creation of products for sale to the wholesale or retail markets or directly to consumers. Such uses are wholly confined within an enclosed building, do not include processing of hazardous gases and chemicals, and do not emit noxious noise, odor, vibration, or fumes. Examples may include, but are not limited to: production or repair of small machines or electronic parts and equipment; woodworking and cabinet building; publishing and lithography; computer design and development; research, development, testing facilities and laboratories; apparel production; sign making; and manufacturing of jewelry, clothing, trimming decorations, and any similar item.



**MASTER PLAN or COMPREHENSIVE PLAN**

A comprehensive plan, prepared by the Planning Board pursuant to §7-722 of the Village Law of the State of New York, which indicates the general locations recommended for various functional classes of public works, places and structures and for general physical development of the Village, and includes any unit or part of such plan separately prepared and any amendment to such plan or parts therein.

**MECHANICAL AMUSEMENT DEVICE**

Any table, board, machine, device or apparatus fitted for use by the public, the operation of which is permitted, controlled, allowed or made possible by means of a lever, switch, electric current or by the deposit or insertion of any coin, plate, disc, slug or key into any slot, crevice or opening, or by the payment of any fee or fees, and which operates, or which may be operated for use as a game, contest or amusement or which may be used for any such game, contest or amusement, but which table, board, machine, device or apparatus does not contain a payoff device and which does not return or vend any article or merchandise or any money, coin, check or token. This does not include picture taking and laminating machines, merchandise vending machines, electronic weight or reading machines or jukeboxes and other machines used solely for reproduction of music or sound.

**NONCONFORMING LOT**

A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

**NONCONFORMING BUILDING OR STRUCTURE**

A building or structure, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

**NONCONFORMING USE**

A use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

**NONPOINT SOURCE POLLUTION**

Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include but not be limited to pollutants from agricultural, construction, subsurface disposal and urban runoff sources.

**OFFICE, GENERAL**

Professional offices; financial services, such as mortgage lenders, brokerage houses, administrative and back office banking facilities; real estate agents; data processing; government offices; public utility offices; social service agency offices; television and radio studios.

**OFFICE, MEDICAL AND DENTAL**

A type of office use distinguished by a higher than typical number of customer visits. Examples include medical and dental clinics; chiropractic clinics; medical and dental labs; blood-collection facilities; physical therapy clinics.

**OFFICE/STUDIO, PROFESSIONAL IN RESIDENTIAL BUILDING**

The office of a member of a “professional” occupations listed in Title VII of the Education Law of the State of New York, Article 1 of the Judiciary Law of the State of New York and Article 15 of the Business Corporation Law of the State of New York, excluding dentist, physician, veterinarian and other medical

professionals. The owner of the dwelling unit must reside therein, maintain his/her professional studio/office therein with not more than one nonresident assistant. Only customary household appliances and equipment shall be used. Such occupation shall be carried on in an area not exceeding 50% of the area of one floor of the dwelling unit so used. No display of goods or sign shall be visible from the street, except as set forth in §59-4.11.

**OFFICE, RESEARCH AND DEVELOPMENT**

Laboratories and related offices devoted to research, design, experimentation and/or product testing.

**OFFICIAL MAP**

The Official Zoning Map of the Village of Nyack, showing streets, highways and parks, both existing and proposed.

**OUTDOOR DINING**

Food or beverage service areas outside of a fully-enclosed structure as an accessory use to a permitted restaurant or bar or cocktail lounge use and which is located on the same lot as the principal use.

**OUTDOOR VENDING**

An outdoor area, located on a sidewalk, that provides dry goods for sale to the public as part of an established indoor retail business. It is unenclosed by fixed walls and open to the air, except that it may have a retractable awning, umbrella or other nonpermanent cover.

**PARKING USES, NON-ACCESSORY**

Parking facilities that provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as non-accessory parking. Uses are divided into two subgroups based on provision of parking in surface lots or in structures (above- or below-ground.)

**PERSON**

Any individual, partnership, club, association, corporation, society or any other organized group of persons and shall include the officers, directors, stockholders and trustees of a club, corporation, association or society.

**PERSONAL SERVICES**

Establishments engaged in providing retail services such as banking establishments, laundromats, catering services, dry cleaners, tailors, shoe repair, photographic studios, photocopy services, quick printing services, blueprint services, beauty salons, tanning salons, therapeutic massage establishments, taxidermists, mortuaries, funeral homes and crematoriums.

**PLANNING BOARD**

The Planning Board of the Village of Nyack.

**POLLUTANT**

A human-induced condition or contaminant which, in some quantities, may be injurious to human, plant or animal life or to property.

**POLLUTANT OF CONCERN, STORMWATER**

Sediment or water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

### **PRELIMINARY PLAT**

A drawing or drawings, clearly marked “preliminary plat,” showing the salient features of a proposed subdivision, as specified § 7-728(4)(b) of the Village Law of the State of New York, submitted to the Planning Board for purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

### **PROJECT**

Land development activity

### **RAILROAD AND UTILITY RIGHTS-OF-WAY AND STRUCTURES**

Public or private buildings, structures, and lands used to provide rail, infrastructure and utility services. Uses are divided into two subgroups based on potential impacts to surrounding areas, including the number of employees and/or visitors on site and the potential for noise- and odor-related impacts.

#### **General**

Infrastructure services that need to be located in or near the neighborhood or use where the service is provided. Examples of general utilities include water and sewage pump stations, stormwater retention and detention facilities, telephone exchanges, and surface transportation stops such as bus stops and park-and-ride facilities.

#### **Intensive**

Infrastructure services providing regional or community-wide service that normally entail the construction of new buildings or structures such as water towers, waste treatment plants, potable water treatment plants, solid waste facilities, and electrical substations.

### **RECONSTRUCTION**

Rebuilding of a structure that includes new or replaced structure elements.

### **RECREATION VEHICLE**

A vehicle, towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for temporary living, recreation or sporting purposes. The term "recreation vehicle" shall include, but not be limited to, travel trailer, pickup campers, camping trailer, converted trucks and buses, boat and skimobile trailers and similar vehicles.

### **RESTAURANT**

An establishment where food and drink are prepared, served, and consumed, mostly within the principal building. A “bar” shall also be deemed a “restaurant” only if food is prepared, served and consumed on the premises. A “fast food establishment” or a “take-out restaurant” shall not be considered a “restaurant.”

### **RESTAURANT, TAKE-OUT**

An establishment primarily engaged in the sale of food and beverages selected by patrons from a limited line of specialized items for consumption either on or off the premises, in a facility where the floor area available for dining is less than ½ the gross floor area, a major portion of the sales to the public is stand-up-type counter. The term “take-out restaurant” shall not include bakeries, delicatessens or similar types of retail establishments unless they have tables or counters where diners are seated.

### **RETAIL SALES AND SERVICE**

Establishments selling, leasing, or renting consumer, home, and business goods, including, but not limited to, antiques, appliances, art, art supplies, bicycles, carpeting, clothing, dry goods, electronic equipment, fabric, flowers, furniture, garden supplies, gifts, groceries, hardware, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, videos. Also includes retail establishments that have a

cottage industry component, such as bakeries, confectioneries, upholsterer, artist/artisan's studios, and similar.

**RETAIL, OUTDOOR STORAGE AND DISPLAY-ORIENTED**

Establishments that typically include large areas of outdoor storage or display, such as lumber yards; sales of landscaping materials and nursery products; equipment rental businesses.

**RETIREMENT HOME, NURSING HOME or ASSISTED LIVING FACILITY**

A building, whether operated for profit or not, which provides housing, meals, health care assistance, and personal services to one or more adults who are not relatives of the owner or proprietor.

**RIPARIAN LAND**

Land that is traversed or bounded by a natural waterway or adjoining tidal lands.

**SANDWICH BOARD SIGNS**

An outdoor double-sided temporary sign type, generally in the shape of an isosceles triangle, with the angle at the apex being less than 60°. The dimensional measurements of such signs shall not exceed a total width of 24 inches, nor a total height of 44 inches, including the supports thereof. The erection of such signs requires a variance issued by the Zoning Board of Appeals and evidence of insurance naming the village as an additional named insured.

**SCHOOL, ELEMENTARY OR SECONDARY**

A public or private school at the primary, elementary, junior high, or high school level that provides state-mandated basic education, including such school owned or operated by a religious entity.

**SCHOOL, SPECIALIZED**

A school primarily engaged in offering specialized trade, business, or commercial courses, but not academic training. Also specialized and nondegree-granting school, such as a music school, dramatic school, dance studio, martial arts studio, language school and other short-term examination preparatory schools.

**SEDIMENT CONTROL**

Measures that prevent eroded sediment from leaving the site.

**SELF-STORAGE**

A facility that provides separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.

**SETBACK**

A setback is a required horizontal distance between a building and any lot line.

**SEXUAL ACTIVITIES**

Any act of masturbation, fellatio, sadomasochism, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast.

**SIDEWALK CAFE**

Food or beverage service areas outside of a fully-enclosed structure as an accessory use to a permitted restaurant or bar or cocktail lounge use and located on the sidewalk within a public street adjacent to the lot on which the principal use is located.

**SIGN**

Any writing (including word, letter, or numeral), pictorial representation, emblem (including symbol, logo, or trademark), flag, pennant, insignia, border tubing, permanent sculptures, awning, or other device of similar character which is attached to, painted on, or in any other manner represented on a building, structure, or a building's window or door (inside or outside) and is used to identify, announce, direct, attract, or advertise and is visible from outside the building.

**SIGN AREA**

Includes all faces of a sign measured as follows:

- (1) When such sign is a plate or framed or outlined, all of the area of such plate or the area enclosed by such frame or outline shall be included.
- (2) When such sign consists only of letters, designs or figures engraved, painted, projected or in any manner affixed on a wall, the total area shall be considered to be that of the smallest regular geometric shape which encompasses all of the letters, designs, figures or symbols.

**SIGN, DIRECTIONAL**

A sign necessary for proper traffic flow and safety.

**SIGN, FLAG**

An advertising sign printed on a fabric flag of non-shiny material and flown from a pole that has a maximum length of 6 feet and is attached to a building at a minimum height of 6 feet if the flag is attached to a pole mounted to a building at an angle from horizontal of 45 degrees or greater or 10 feet if the flag is attached to a pole mounted to a building at an angle from horizontal of less than 45 degrees, where the flag has the maximum size of 15 square feet, and is no higher on the building than 12 feet, and is not closer than 3 feet to the curblin. The flag sign shall not have product advertising, but can have the name and/or logo of the business or advertise that the business is "Open," "Closed," or "Sale". Only two faces are permitted. One flag sign is permitted for each public entrance of a building, with a maximum of one (1) flag sign per business, and shall only be displayed when the business is open. This does not apply to any official national, state, or international flag.

**SIGN, FLAT WALL**

A sign attached parallel to or flat to the face of or painted on the wall of any building or structure.

**SIGN, FREEESTANDING**

A sign placed upon or supported by the ground, independent of the principal building or structure.

**SIGN, MARQUEE**

A sign for a theater or public building with a means for changing text.

**SIGN, PERMANENT**

A sign constructed of durable materials and intended to exist for the duration of time that the use or occupant is located on the premises.

**SIGN, PERMANENT INTERIOR**

Any sign of any material which are painted, placed or hung within 24 inches from the inside window glass or door glass of any building for more than 30 days and are visible from outside the building, including words, logos, product signs, border tubing, permanent sculptures, or frames for replaceable copy and including all lighted devices such as neon, L.E.D., electronic, and light borders..

**SITE PLAN**

An illustrative plan that indicates proposed use and/or development of land and/or structures prepared in accordance with § 59-5.7 of this Chapter.

**SIGN, PROJECTING WALL**

A sign erected perpendicular to the face or projecting outward from the wall of the building.

**SIGN, TEMPORARY**

Interior signs of paper, cardboard, and other similarly impermanent materials located within 24 inches of storefront glass windows and doors including open, closed, and sale signs, menus, and lists of products and services. Other temporary signs also includes contractor signs, real estate and rental signs, and signs announcing the anticipated occupancy of a building as well as signs announcing campaigns, drives, or events of civic, philanthropic or educational institutions.

**SPECIAL USE PERMIT**

An authorization of a particular land use that is permitted by this chapter, subject to requirements imposed by this chapter to assure that the proposed use is in harmony with and will not adversely affect the neighborhood if such requirements are met.

**SPECIAL PERMIT USE**

A land use of property that is appropriate to a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted without a special use permit. A "special permit use," therefore, is one which is allowable only when facts and conditions specified in this local law as those upon which the use is permitted are found to exist.

**STORY**

That portion of a building between the surface of any floor and the surface of the floor above it or, if there is no floor above it, then the space between the floor and ceiling next above it. A basement shall be counted as a story for purposes of height measurement if the floor-to-ceiling height is more than six feet above the grade plane, more than six feet above the finished ground level for 50 percent or more of the total building perimeter, or more than 12 feet above finished ground level at any point.

**STORY, HALF**

Any space partially within the roof framing, where the clear height of not more than 50% of such space between the top of the floor beams and the structural roof is seven feet six inches or more.

**STREET**

A street shown on the Official Map of the Village of Nyack and improved to the satisfaction of the Planning Board.

**STREET, COLLECTOR**

A street which serves, or is designed to serve, as a traffic way for a neighborhood or as a feeder to a major street.

**STREET, DEAD-END or CUL-DE-SAC**

A street, or a portion of a street, with only one vehicular traffic outlet.

**STREET, MAJOR**

A street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic-generating areas.

**STREET, MINOR**

A street intended to serve primarily as an access to abutting properties.

**STREET LINE**

The dividing line between a lot and a street.

**STREET PAVEMENT**

The wearing or exposed surface of the roadway used by vehicular traffic.

**STREET WIDTH**

The width of right-of-way, measured at right angles to the centerline of the street.

**STORMWATER**

Rainwater, surface runoff, snowmelt and drainage.

**STORMWATER MANAGMENT**

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**STORMWATER MANAGEMENT PRACTICES (SMPs)**

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**STORMWATER RUNOFF**

For on the surface of the ground resulting from precipitation.

**STRUCTURAL ALTERATION**

Any change in the supporting members of a building.

**SUBDIVISION**

The division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways, and includes resubdivision of previously subdivided land or any other alteration of lot lines or dimensions of any lots or sites shown on a previously approved plat.

**SUBDIVISION PLAT or FINAL PLAT**

A drawing, in final form, showing a proposed subdivision, containing all information or detail as set forth in § 7-728(4)(d) of the Village Law of the State of New York, to be presented to the Planning Board for approval, and which, if approved, may be duly filed or recorded by the applicant in the office of the County Clerk.

**SURFACE WATERS OF THE STATE OF NEW YORK**

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**SURVEYOR**

A person licensed as a land surveyor by the State of New York.

**TELECOMMUNICATIONS FACILITY**

Any and all structures utilized for the transmission and reception of wireless communication signals of any kind, inclusive of an accessory facility, antenna(s) and a telecommunications tower or equipment.

**Collocated**

Any wireless telecommunication services facility located upon an existing freestanding tower or attached to a building, including directional antennas (such as panels, microwave dishes, satellite earth station antennas over two meters in diameter) and omni-directional antennas (such as whips). This term does not include antennas two meters or less in diameter.

**Freestanding**

Any wireless telecommunication services facility structure that is not connected to a building and that is designed and constructed primarily for the purpose of supporting one or more antennae.

**TELECOMMUNICATIONS TOWER OR EQUIPMENT**

Any structure or equipment on which transmitting and/or receiving antenna(s) are located.

**THEATER or CINEMA**

A building or part of a building used to show motion pictures or for drama, dance, musical or other live performances.

**TOPPING**

The removal of all or a portion of a tree's leafy crown, creating stubs of the large vertical leader stems, which shall be considered as removal under this chapter if performed on a significant tree.

**TRAILER or HOUSE TRAILER**

Any vehicle mounted on wheels movable either by its own power or by being drawn by another vehicle, and equipped to be used for living or sleeping quarters or so as to permit cooking. The term "trailer" shall include such vehicles if mounted on temporary or permanent foundations with the wheels removed. See Chapter 27.

**TREE, SIGNIFICANT**

A tree at least eight inches in diameter as measured 6 inches above the highest root stem; or a tree, shrub, hedge, or plant shown or described to remain or be planted on a proposed or approved planting plan, landscape plan, site plan, subdivision plan, or a plan approved by the Planning Board or Zoning Board of Appeals; or a tree, shrub, hedge, or plant required to be planted in satisfaction of the requirements of §54-5 of this chapter.



**USABLE OPEN SPACE**

An unenclosed portion of the ground area of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, the minimum dimension of which is 20 feet and which is available and accessible to all occupants of the building or buildings on the said lot for purposes of active or passive outdoor recreation. Accessory building roof space may be substituted for ground space, provided that such space is available and accessible to all said occupants.

**USE**

Refers to any purpose for which buildings or other structures or land may be occupied.

**USE, NONCONFORMING**

A use of a building or land, or both, which was lawfully established, but which does not conform to the use regulations for the district in which it is located in this chapter.

**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 regulations of this chapter.

**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 regulations of this chapter.

**VEHICLE-RELATED USE**

Sales of motor vehicles or services related to motor vehicles. Uses are divided into two subgroups based on the intensity of the use, vehicle types sold or serviced, amount of outdoor service or storage, and the potential for noise- and odor-related externalities.

**General**

General vehicle-related uses include limited service of passenger vehicles and the sale of vehicle parts, with outdoor storage limited to 25 percent of the lot size and all mechanical work performed within an enclosed building. Examples include:

- Car washes and auto detailing;
- Gasoline filling stations, other than truck stops, with no on-site vehicle repair; and
- Retail sales of passenger vehicle parts.

**Intensive**

Intensive vehicle-related uses allow for the sales and service of motor vehicles, including heavy vehicles and equipment. Outdoor storage areas for vehicles, parts, or other supplies may exceed 25 percent of the lot size. Examples include:

- Vehicle repair and servicing, including the installation of vehicle parts;
- Vehicle sales or rental; and
- Vehicle storage yards, including towing and wrecker services.

**VIEW CORRIDOR, SIGNIFICANT**

The line of sight identified as to height, width, and distance of an observer looking toward an object of significance to the community (e.g. ridgeline, river, historic building, etc.); the route that directs the viewer's attention.

**VILLAGE OR VILLAGE OF NYACK**

The incorporated area in the Village of Nyack, in the County of Rockland, State of New York.

**VILLAGE BOARD**

The Village Board of Trustees of the Village of Nyack.

**VILLAGE LAW**

The Village Law of the State of New York.

**WATER-RELATED RECREATION FACILITY**

A public or private recreational facility in a Waterfront zoning district, including daytime mooring or docking facilities to accommodate visitors, nonmotorized watercraft rental stores, and other similar uses.

**WATERFRONT FACILITIES**

Uses and facilities appropriate to waterfront settings, including:

- Facilities for hauling, launching, mooring, dry storage and drysailing of boats. Boat storage shall not exceed 25 feet in height, excepting masts and rigging.
- Public and private recreation facilities requiring a waterfront location, such as boat launches, fishing piers and docking and swimming facilities.
- Maritime centers and similar facilities which utilize the waterfront for recreational, educational, cultural or scientific uses.
- Waterfront trails, parks and scenic overlooks.
- Retail sale of materials, supplies, parts, tools and other equipment used in connection with boats.
- Retail sale of bait, supplies, equipment, materials and parts used in connection with fishing.
- Facilities for the sale and/or rental of boats, new and/or used.
- Fishing piers, including facilities for docking and transfers of catch from boat to ground transport.
- Docking facilities for tour boats, services and similar passenger vessels.

**WHOLESALE STORAGE, WAREHOUSING or FREIGHT MOVEMENT USE**

Facilities involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Examples include: Separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; major wholesale distribution centers; truck and air freight terminals; railroad switching yards; bus and railcar storage lots; taxi fleet parking and dispatch; fleet parking; parcel services; major postal facilities; grain terminals; and the stockpiling of sand, gravel, and other aggregate materials.

**WIRELESS TELECOMMUNICATION SERVICES FACILITIES**

Facilities for the transmission of analog or digital voice or communications information between or among points using electromagnetic signals via antennas, microwave dishes, and similar structures. Supporting equipment includes cabinets, towers, electrical equipment, and other accessory structures.

**YARD, FRONT**

An unoccupied ground area fully open to the sky between the street line and a line drawn parallel thereto.

**YARD, REAR**

An unoccupied ground area fully open to the sky between the rear lot line and a line drawn parallel thereto.

**YARD, SIDE**

An unoccupied ground area fully open to the sky between any property line drawn parallel thereto, and between the front and rear yards.

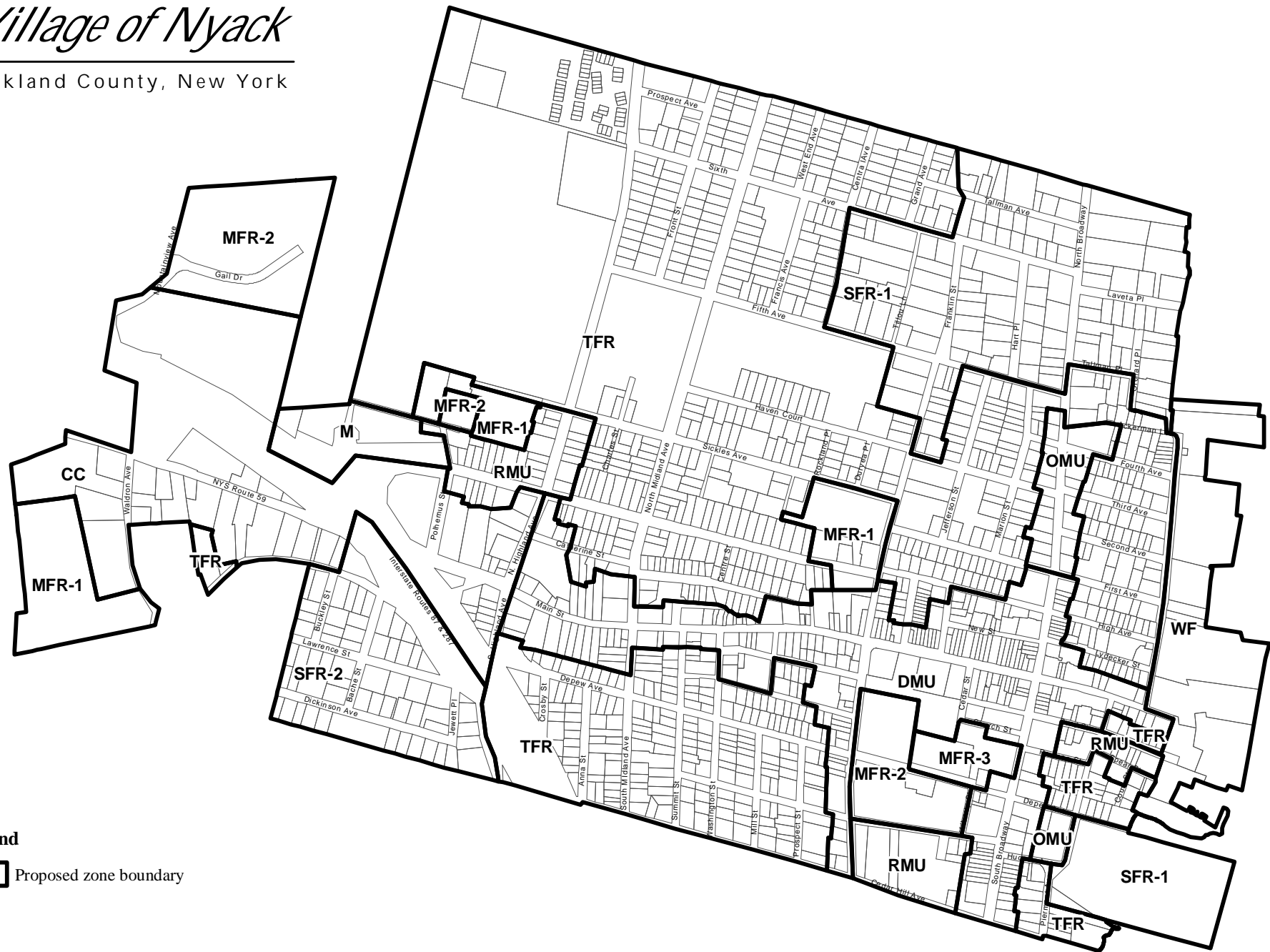
**ZONING BOARD OF APPEALS**

The Zoning Board of Appeals of the Village of Nyack.


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# Village of Nyack

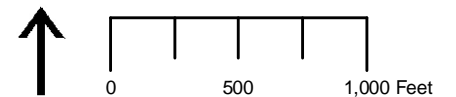
Rockland County, New York



## Legend

 Proposed zone boundary

PROPOSED ZONING  
APRIL 2008




Phillips Preiss Shapiro Associates, Inc.  
Base map source: Rockland County Department of Planning

# Village of Nyack

Rockland County, New York

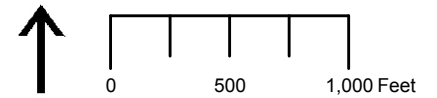


## Legend

 Proposed view corridor

## PROPOSED VIEW PROTECTION CORRIDORS

APRIL 2008



Phillips Preiss Shapiro Associates, Inc.  
Base map source: Rockland County Department of Planning