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Attachments:
220a Zoning Map

CHAPTER 220. ZONING

[HISTORY: Adopted by the Town Board of the Town of Gardiner 3-4-2008 by L.L. No. 1-2008. Editor's Note: This local law also repealed former Ch. 220, Zoning, adopted 3-20-1984 by L.L. No. 2-1984 as Ch. 30 of the 1984 Code, as amended. **Amendments noted where applicable.]**

GENERAL REFERENCES

Zoning Board of Appeals and Planning Board — See Ch. 75.
Kennels — See Ch. 80, Art. II.
Building construction — See Ch. 92.
Environmental quality review — See Ch. 110.
Flood damage prevention — See Ch. 121.
Junkyards — See Ch. 143.
Mobile homes — See Ch. 154.
Notification requirements for land use approvals — See Ch. 160.
Streets and sidewalks — See Ch. 184.

Subdivision of land — See Ch. 188.
Travel trailer parks and tourist camps — See Ch. 200.

ARTICLE I. Title, Scope, and Purposes

§ 220-1. Title.

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

§ 220-2. Introduction and user guide.

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

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

(1) This chapter divides the Town into land use and overlay districts and establishes rules for the use of land in each district. The text is accompanied by a Zoning Map which shows where the various districts are located.
Editor's Note: The Zoning Map is included at the end of this chapter.

(2) The Use Table in Article III (§ 220-10) tells what uses are allowed in each district. The definitions in § 220-74 explain what the different use categories in the table mean. Several of the uses are also regulated by "supplementary regulations" in Article VII, which are referenced in the Use Table.

(3) Article III, § 220-11, contains dimensional regulations for each district, covering lot size, setbacks, and other requirements about the permissible amount, size, type, and location of development on a lot.

(4) Article IV (§§ 220-13 through 220-18.1) covers "overlay" districts, "floating" districts, and the Shawangunk Ridge Protection District (SP). Overlay districts are special districts designed primarily to protect special resources from inappropriate development and to maintain the Town's character and natural resources. Floating districts allow uses not allowed in the underlying district, including resort development, mobile home parks, and soil mining. The provisions of the overlay districts apply in addition to those of the "underlying" land use district. The provisions of the floating districts replace those in the underlying land use district. The provisions of the SP District in § 220-16 are the land use district regulations for that zone.

(5) Article V contains options for flexibility in development patterns, particularly the use of "open space developments," which preserve open space by concentrating development on a portion of a parcel.

(6) Article VI contains rules for allowing the continuation of buildings and uses that were legal under previous regulations but do not conform to this Zoning Law. This is sometimes referred to as "grandfathering."

(7) Supplementary regulations in Article VII contain additional requirements for specific types of uses and structures (such as home occupations, signs, and parking), as well as performance standards for all development.

(8) Articles VIII and IX explain the procedures for obtaining various types of permits from the Town, including land use permits from the Building Inspector, special permits and site plan approval from the Planning Board, and variances from the Zoning Board of Appeals. Article X contains the procedures for amending this Zoning Law to change the map or the text.

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

(1) Check the Zoning Map to determine what land use district(s) your land is in.

(2) Check the Overlay District Map(s) to see which of the overlay districts apply to your land. Review the provisions of applicable overlay districts in Article IV to see how they may affect what you can do with your land.

(3) Consult the Use Table and text in § 220-10, along with any relevant definitions, to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also check the specific sections that deal with the district your land is located in as well as any supplementary regulations in Article

VII that may apply to your proposed use. (These are referenced in the Use Table.)

(4) Consult the dimensional table in § 220-11 to see which setbacks and other dimensional standards apply.

(5) If your land is in the SP District, a special set of regulations applies, which are contained in § 220-16.

(6) If your land is in the RA District, review the requirement of a conservation analysis and the various development options provided in §§ 220-20 through 220-22 to determine which you want to pursue.

(7) Consult Article VII to determine whether any of the special supplementary regulations in that section apply to your proposed land use. Some of these regulations relate to land characteristics (e.g., steep slopes and wetlands) and some relate to features of the proposed use (e.g., parking, home occupations, and signs).

(8) If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, check §§ 220-27 and 220-28 to determine what you can do with it.

(9) If the Use Table indicates that your proposed use or structure can go forward with just a building permit or a zoning permit, refer to Article VIII. If the use will require a special permit or site plan approval, turn to Article IX for the procedures to follow.

(10) If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in § 220-59) or a zoning amendment from the Town Board (as provided in § 220-69). If the use would potentially qualify under the Resort Development, Soil Mining, or Mobile Home Floating Districts, you may be able to apply for a zoning amendment to change the zoning designation of your property. These options should be discussed with the Building Inspector before they are pursued. Any zoning amendment is entirely at the discretion of the Town Board and must be consistent with the Comprehensive Plan.

(11) Where a section number is shown as "reserved," it means that space is being saved in the document for insertion of a new section at some future time, but no regulations have been established within that section.

§ 220-3. Scope, authority and purposes.

This chapter regulates the location, design, construction, alteration, occupancy, and use of structures and the use of land in the Town of Gardiner, dividing the Town into land use districts. This chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, § 10 et seq., and Chapter 62, Article 16, of the Consolidated Laws, in conformance with the updated Town of Gardiner Comprehensive Plan, adopted by the Town Board in December 2004 (as it may be modified from time to time), to advance the goals of the Town of Gardiner Comprehensive Plan. This chapter is adopted to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

A. To conserve the natural resources and rural character of the Town by encouraging development in appropriate locations and by limiting building in areas where it would adversely affect the Town's predominantly rural pattern and scale of settlement;

B. To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as the Shawangunk Ridge, along the Wallkill River, Shawangunk Kill, Palmaghatt Kill, Mara Kill, and their tributaries, in aquifer and aquifer recharge areas, and on steep slopes, erodible soils, wetlands and their buffers, floodplains, active farmlands, and other designated open space resources identified in the Comprehensive Plan;

C. To encourage a range of business activities in appropriate locations which are compatible with the Town's rural character and scale, concentrating retail businesses in and near hamlets, allowing large-scale business and industry in well-buffered locations with good transportation access;

D. In recognition of the economic value of Gardiner's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, steep slopes, agricultural land, existing and potential recreation areas, waterways, ground- and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, and to maintain environmentally significant open space in its predominantly undeveloped state, in order to maintain property values and preserve the open and rural character of the Town;

E. To preserve and protect lands and buildings that are historically significant and to enhance the aesthetic and

architectural quality of the entire community;

F. To encourage the continuation of agriculture and the preservation of open space, and to avoid regulating agricultural uses in a manner that unreasonably restricts or regulates farm structures or farming practices, while encouraging other economic activities that require large areas of contiguous open space, such as forestry, tree farming, and recreation, as well as the support services and industries that add value to all of these uses, such as wood products, food processing, resort, and tourist facilities;

G. To regulate building density in order to concentrate population in appropriate locations where municipal infrastructure is available, and to ensure access to light and air, conserve open space, facilitate the prevention and fighting of fires, minimize the cost of municipal services, and accomplish the other purposes enumerated in § 263 of the Town Law of New York State;

H. To integrate harmoniously different types of housing and varied land uses in hamlet centers to encourage pedestrian activity and reduce automobile traffic;

I. To provide a range of housing opportunities for all segments of the local population with due consideration for regional housing needs;

J. To protect residences from nonagricultural nuisances, odors, noise, pollution, and unsightly, obtrusive, and offensive land uses and activities;

K. To improve transportation facilities in areas designated for intensive settlement and to maintain a network of smaller country roads in areas designated for low-density development and the protection of open space, agriculture, steep slopes, and rural character;

L. To reduce traffic congestion on major roads by establishing a pattern of settlement and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling, and the use of public transportation;

M. To encourage the conservation of energy and the appropriate use of solar and other renewable energy resources;

N. To preserve the natural beauty of the Town as provided in the Comprehensive Plan, especially the unique ecological and scenic resources of the Shawangunk Ridge and escarpment, and to guide development consistent with maintaining the Town's natural, scenic, and ecological resources.

O. To provide a flexible system of land use regulation that enables the Town's economy and population to grow, while preserving the most important natural, historic, scenic, architectural, and cultural features; and

P. To base such flexible land use regulations on the unique characteristics of the landscape, the needs of the people of the Town of Gardiner, the property rights of landowners to make economically beneficial use of their land, and the impact of proposed land uses on the natural and human environment, and to avoid patterns of development that adversely affect the scenic, historic, rural, and natural character of the Town.

§ 220-4. Interpretation of provisions.

All provisions of this chapter shall be construed to fulfill the purposes stated in § 220-3 above. This chapter shall be construed to encourage agriculture. See § 220-37 for specific exemptions and protections for agricultural uses.

§ 220-5. Siting and design guidelines.

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

§ 220-6. Other laws; special agreements.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that when this chapter imposes a greater restriction on the use of structures or land or on the heights of structures, or requires larger open spaces, or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule, regulation or by any easement, covenant, or agreement, the provisions of this chapter shall control. Where the requirements of this chapter differ from the requirements of another statute, law, ordinance, rule, or regulation, the more restrictive shall govern, unless this

chapter specifically states otherwise.

ARTICLE II. Land Use and Overlay Districts

§ 220-7. Establishment of districts.

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

A. Rural Agricultural District (RA). The purpose of this district is to promote agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses by encouraging such activities and siting development in a manner that preserves large tracts of contiguous open space and agricultural land.

B. Shawangunk Ridge Protection District (SP). The purpose of the SP District is to protect the unique environmental and scenic resource of the Shawangunk Ridge and its foothills, while allowing limited development. The SP District is divided into three subdistricts, SP-1, SP-2, and SP-3. See § 220-16.

C. Hamlet Mixed-Use District (HM). The purposes of this district are to maintain the traditional scale, density, architectural style, and mixed-use character found in the existing Gardiner central hamlet, while allowing it to expand and become more economically viable.

D. Hamlet Residential District (HR). The purpose of this district is to maintain the traditional scale, density, and character of small hamlets and the residential neighborhoods surrounding the hamlet centers, and to allow expansion into surrounding land areas that are generally within walking distance from the hamlet centers.

E. Commercial Light Industry District (CLI). The purpose of this district is to allow areas for light industrial, service commercial, office, and research facilities. See § 220-10H.

F. Highway Commercial District (HC). The purpose of this district is to allow commercial uses that rely heavily on automobile and truck access and that would not be compatible with a hamlet mixed-use area, while minimizing their traffic and visual impact on the Town. See § 220-10J.

G. Floodplain Overlay District (FPO). The purpose of this overlay district is to control development within the one-hundred-year floodplain in order to minimize flood damage and protect water resources. This district also incorporates by reference the Town's existing Floodplain Protection Chapter. Editor's Note: See Ch. 121, Flood Damage Prevention. See § 220-13.

H. Hamlet Expansion Overlay District (HEO). The purpose of this overlay district is to show areas where the central hamlet of Gardiner may be expanded in the future by rezoning to HR. This is intended to occur only upon submission of a development plan that integrates new development into the fabric of the existing hamlet. See § 220-14.

I. Scenic Protection Overlay District (SPO). The purpose of this overlay district is to protect the scenic character of scenic resources in the Town, including scenic road corridors and the Wallkill Valley Rail Trail. See § 220-14.1.

J. Aquifer Overlay District (AQO). The purpose of this overlay district is to protect groundwater resources that provide both public water supplies and drinking water for private wells. (Not drafted yet.) See § 220-15.

K. Soil Mining Floating District (SMF). The purpose of this floating district is to provide appropriate locations for soil mining to occur where landowners can conduct sand and gravel mining operations without adversely impacting their neighbors. See § 220-17.

L. Resort Development Floating District (RDF). The purpose of this floating district is to provide use and design flexibility to encourage resort development that fits into the rural character of the Town and protects its scenic, historic, and environmental resources. This district provides a procedure for master planned development of large properties to promote tourism, recreation, and open space protection. See § 220-18.

M. Mobile Home Park Floating District (MHF). The purpose of this floating district is to protect existing mobile home parks and to provide appropriate locations for mobile home parks to be located, consistent with the requirements of § 220-44.

§ 220-8. Zoning maps.

A. The boundaries of the land use, floating, and overlay districts are hereby established on maps entitled "Town of Gardiner Land Use Districts Zoning Map" and "Town of Gardiner Overlay and Floating Districts Zoning Map" (hereinafter the "Zoning Maps"), adopted and certified by the Town Clerk, which accompany and are hereby declared to be a part of this chapter. Unofficial photo-reductions of these maps are appended to this chapter for reference purposes only. Editor's Note: The unofficial maps are included at the end of this chapter.

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

C. In the event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the final controlling authority as to the current zoning status of lands, structures and uses in the Town.

D. An unauthorized map change made by any person shall be considered a violation of this chapter, punishable under § 220-57 of this chapter.

E. Where a land use district boundary line divides a lot in a single ownership existing at the time of enactment of this chapter, the Planning Board may grant a special permit to allow the uses authorized and the district requirements of the less-restricted portion of such lot to extend up to a maximum of 50 feet into the more-restricted portion of the lot. This provision shall not apply to overlay district boundaries. For purposes of calculating impervious surface coverage limitations, land extending 100 feet into the more-restricted portion of a lot shall be included in the calculation of maximum impervious surface coverage for uses located in the less restricted portion.

§ 220-9. Interpretation of district boundaries.

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

A. Boundaries indicated as approximately following the center lines of streets, highways, or railroad tracks shall be construed to follow such center lines.

B. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.

C. Boundaries indicated as following shorelines of ponds and lakes shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.

D. Boundaries indicated as following center lines of streams shall be construed to follow such center lines and, in the event of change in the center line, shall be construed as moving with the actual center line.

E. Boundaries indicated as parallel to or extensions of features indicated in Subsections A through D above shall be so construed. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.

F. Where overlay district boundaries are based upon natural features such as topographic contour lines or aquifer and aquifer recharge areas, such boundaries may be more precisely established through field investigation by a qualified professional.

ARTICLE III. Land Use District Regulations

§ 220-10. Allowable uses.

A. Purpose. The use regulations in this article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of Gardiner's hamlets, neighborhoods, and rural areas. The use categories in the Use Table that follows are intentionally broad in order to allow flexibility and responsiveness to innovation. Most nonresidential uses require site plan review and/or special permits, which involve compliance with performance and design standards to ensure compatibility between neighboring uses. In reviewing applications for special permits and site plan approval, the Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The Planning Board shall deny any proposed use which does not satisfy the criteria in this chapter.

B. Use restrictions and Use Table. No structure or land shall be used except as provided in the Use Table below. Use regulations for the SP-2 and SP-3 Subdistricts in the Shawangunk Ridge (SP) District are contained in a

separate table in § 220-16. See § 220-74 for definitions of the use categories. In the event that a particular proposed use outside of the SP District does not fit into one of the categories shown on the Use Table and is not prohibited by § 220-10C below, it may be allowed by special permit issued by the Town Board. The meaning of the symbols on the Table is as follows:

P Designates a use permitted by right. Usually requires a zoning permit or a building permit and a certificate of occupancy from the Building Inspector, but does not require review by any municipal board.

PS Designates a use permitted by right, subject to site plan review by the Planning Board (see §§ 220-65 through 220-68).

S Designates a use permitted by special permit issued by the Planning Board (see §§ 220-60 through 220-64).

ST Designates a use permitted by special permit issued by the Town Board.

-- Designates a prohibited use.

Use Table
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)

Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
Residential Uses							
Single-family dwelling	P	P	P	–	P	P	
Two-family dwelling	PS or S	P	P	–	PS or S	PS or S	220-12A
Multifamily dwelling (conversion)	S	PS	S	–	PS	–	220-12B
Multifamily dwelling (new)	PS[1]	PS	S	–	S	–	220-12B
Accessory apartment	P	P	P	PS	PS	P	220-12C
Mobile home parks	See Chapter 154 of the Town Code and § 220-44 of this chapter.						220-44
Upper-floor apartment in mixed-use building	PS	PS	PS	PS	PS	–	
Residential care facility	S	S	S	–	–	–	220-52
Business Uses[2]							
Adult use	–	–	–	ST	–	–	220-48
Agriculture	P	P	P	P	P	P	220-37, 220-49
Bed-and-breakfast	PS	PS	PS	–	PS	S	
Camp	S	–	–	–	–	S	220-45

Use Table
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)

Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
Home occupation	P[4]	P[4]	P[4]	–	P[4]	P[4]	220-41
Kennel	S	–	–	S	S	–	220-49B
Light industry	–	S	–	PS	S	–	220-50
Lodging facility	S	PS	–	–	PS	–	
Motor vehicle gas station	–	–	–	–	S	–	220-10K
Motor vehicle repair shop	–	–	–	PS	S	–	
Office	S[3]	PS	–	PS	PS	–	
Public utility facility	S	S	S	S	S	S	
Recreational business, indoor	S	S	–	–	PS	–	220-10K
Recreational business, outdoor	S	–	–	–	S	S	220-10K
Restaurant	S[3]	PS	–	–	PS	–	
Retail business (not listed else- where)	S[3]	PS	–	S[5]	PS	–	
Service business (not listed else- where)	S[3]	PS	–	S	PS	–	
Soil mining	ST[6]	–	–	ST[6]	–	–	220-17
Solid waste management facility	–	–	–	S	–	–	220-50
Veterinary hospital	S	S	–	–	S	–	
Warehouse/ Wholesale business	–	S	–	PS	PS	–	
Wireless telecom- munications facility	ST	ST	–	ST	–	–	220-46
Riding academy	PS	–	–	–	–	PS	
Timber harvesting	S	–	–	–	–	S	220-16 (for SP)
Community Uses							
Cemetery	S	S	S	–	–	–	

Use Table
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)

Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
Educational/ Charitable/ Religious	S	S	S	–	S	S	
Health care facility	–	PS	–	–	PS	–	
Membership club	S	S	–	–	S	S	
Municipal	P	P	P	P	P	P	
Nature preserve	PS[7]	PS[7]	PS[7]	PS[7]	PS[7]	PS[7]	

Notes:

[1] Only permitted in an open space development (see § 220-20).

[2] Subject to limitations on building footprint in the Dimensional Table.

[3] Only in connection with agricultural use, or as provided in § 220-10I.

[4] Requires a special permit if more than two nonresident employees or 30% of dwelling unit floor space.

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

[6] Only within the Soil Mining Floating District.

[7] Site plan review required only if there will be a parking lot or any structure requiring a building permit.

C. Prohibited uses. Any use, whether or not listed in the Use Table, is prohibited if it does not satisfy the standards and criteria in §§ 220-40 and 220-63. The following uses are prohibited under all circumstances (existing uses may be continued pursuant to the nonconforming use provisions of Article VI): heavy industry, asphalt plants, facilities for disposal of hazardous or radioactive material, and, except as provided in § 220-50, solid waste management facilities as defined in Article XII, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a "beneficial use designation" from DEC) as fill. Existing uses listed above, if they were legal when they began operation, may be continued pursuant to the nonconforming use provisions of Article VI.

D. Accessory uses. Uses customarily incidental and subordinate to principal uses shown on the Use Table shall be allowed on the same terms as the principal uses unless otherwise indicated on the Use Table. Such accessory uses may be on the same lot, on adjoining lots, or on lots that face each other across a street. Noncommercial recreational use shall be permitted as an accessory use in all districts, provided that it does not create noise, traffic, dust, odor, or other impacts that exceed those normally associated with single-family residential uses. If there is no principal use on a residential lot, a use that is typically a residential accessory use, such as a residential garage, swimming pool, tennis court, or tool shed, may be allowed in the absence of the principal use by the Building Inspector. Solar and wind energy conversion systems producing electricity and/or heat primarily for on-site use, including those with net metering, shall be considered customary accessory uses to all principal uses.

E. Mixed use. The Town of Gardiner encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all special permit and/or site plan reviews for the same project shall be consolidated into

one proceeding before the Planning Board (except where the Town Board or Zoning Board of Appeals has jurisdiction over a special permit).

F. Change of use or structure. A change of use is the initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A mere change of ownership, tenancy, or occupancy is not a change of use. (An expansion of a use shall be reviewed according to the provisions of the use table for that particular use.) Once a special permit has been granted, it shall run with the land and apply to the approved use, as well as to any subsequent use of the property in the same use category. Any change to another use allowed by special permit shall require the granting of a new special permit or a special permit amendment.

G. Rebuilding, replacement, and expansion of structures. The rebuilding or replacement on the same footprint of any structure for a use which requires site plan review (PS) and/or a special permit (S) shall require site plan review, even if it is a continuation of the same use.

H. Special site design and operational considerations in the CLI District.

(1) The purpose of the CLI District is to allow larger-scale nonresidential uses that contribute to the Town's tax base and provide jobs for local residents, while protecting the Town's treasured scenic and rural qualities using open space buffers. Impervious surfaces are limited to 70% of total project area, requiring 30% to be maintained as open or undeveloped "green space." This green space shall be arranged in a manner that adequately buffers buildings and parking areas from public roads and neighboring properties, while protecting wetlands, watercourses, and scenic views.

(2) Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The Planning Board may modify or waive this requirement where environmental or topographic constraints or unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas as seen from residential streets or main thoroughfares. See § 220-38 for additional parking standards and parking lot design requirements.

I. Small-scale business uses in the RA District. Structures previously used for residential and agricultural purposes may be used for business purposes by special permit, if allowed by the Use Table, provided that their exterior appearance is not significantly modified and that the business use does not occupy more than 5,000 square feet of floor area. Any changes to an existing structure shall be made with consideration of the design guidelines referred to in § 220-5. The uses allowed by this Subsection I may only be permitted if they have frontage on and access to a state or county highway.

J. Standards for the Highway Commercial (HC) District. All new development in the HC District, excluding agricultural structures used on a farm operation, shall comply with the following design standards. Where alterations to existing structures and business operations require special permit or site plan approval, they shall comply with these standards to the extent practical; i.e. full compliance shall not be required if it would impose unnecessary economic hardship or discourage property owners from improving their properties. The overall design goal is to maintain and enhance the landscape character of commercial road corridors. This is to be accomplished by mitigating the visual impacts of business development through landscape, layout, and architectural standards. The design guidelines referred to in § 220-5 shall apply except where a building or site is screened from public roads and adjacent properties. The following standards shall apply in the HC District for buildings that are visible from public roads:

(1) Building placement.

(a) Buildings shall be clustered together to the extent practical, preserving existing green areas.

(b) Lots on which all buildings and all parking lots are screened from view by trees, natural topography, and other landscape features shall be entitled to an additional 20% impervious surface coverage allowance and shall be exempt from the architectural design requirements of this subsection.

(c) Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography.

(d) Parking lots on adjoining parcels shall interconnect wherever practical to minimize curb cuts and allow circulation between adjoining uses.

(2) Architecture.

(a) Existing structures with historic or architectural significance, as determined by the Planning Board, shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure.

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

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

(d) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the region.

(e) Large buildings (footprint larger than 10,000 square feet) shall generally be broken up into smaller volumes using building proportions found in the region's traditional architecture.

(3) Landscaping.

(a) A continuous green landscaped buffer shall be maintained along the road, consisting of trees, shrubs, fields, meadows, natural areas, and lawns, provided that such buffer vegetation does not interfere with required sight distances. Bikepaths and/or sidewalks may be constructed within this landscaped buffer. To the extent practical, existing trees, lawns, and shrubs shall be preserved.

(b) Undeveloped natural areas shall be managed to maximize recharge of groundwater, protection of surface water quality, and protection of wildlife habitat.

(4) Fences. Fence materials and designs shall be appropriate to the historic character of Gardiner and shall not block visual access to scenic views. Chain link fencing shall not be used in locations visible from public highways. Existing chain link fences may be replaced if coated with a dark, nonreflective finish or screened by an evergreen hedge.

(5) Outdoor storage and enclosed buildings. All permitted and accessory uses shall be confined within completely enclosed buildings, with the exception of off-street parking spaces, off-street loading berths, accessory fuel storage and employee recreational facilities. Outdoor storage of materials, equipment or vehicles in an orderly manner is permitted in any area other than required front, rear or side yards, provided that such outdoor storage does not exceed 10% of the area of the lot and is effectively screened from public roads and from any adjacent residential district boundary. This ten-percent limitation may be waived by the Planning Board in the course of site plan review for those uses which by their nature require outdoor storage of material or products, such as nurseries, lumberyards, outdoor sculpture galleries, and automobile service facilities and dealers. The screening requirement may be waived where it would prevent the necessary display of merchandise for public viewing, provided that the Planning Board finds that such display will be orderly and attractive.

(6) Curb cuts. The minimum distance between curb cuts shall be 600 feet, unless the configuration of a parcel in relation to adjoining parcels makes this requirement impossible to satisfy.

K. Requirements for specific uses.

(1) Motor vehicle gas stations. One motor vehicle gas station may be located in the HC District. No other motor vehicle gas stations may be established in the Town of Gardiner.

(2) Recreational businesses. The threshold for major project review for a recreational business shall be 5,000 square feet of building footprint or 15,000 square feet of land with or without structures. In reviewing proposals for recreational businesses, the Planning Board shall take into account the surrounding land uses and the type

of recreational use proposed to determine the suitability of the proposed use in a given location. Where the use may involve potentially significant amounts of noise, traffic, outdoor lighting, or other impacts on a neighborhood, the Planning Board shall impose additional setback and buffer requirements to minimize such impacts. If such impacts cannot be avoided, the Planning Board shall deny the application for a special permit.

§ 220-11. Density and dimensional regulations.

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

B. Dimensional Table.

(1) The following table is hereby adopted and will be referred to as the "Dimensional Table." Dimensional regulations for the SP-2 and SP-3 Subdistricts are contained in § 220-16.

(2) As used in the Dimensional Table, "n/a" means "not applicable."

(3) All dimensions are in feet unless otherwise indicated.

(4) Where there are two numbers separated by a slash mark (/), they indicate a minimum and maximum dimension, respectively.

(5) For purposes of density calculations in this chapter, a studio dwelling unit shall be counted as 0.5 dwelling unit, a one-bedroom dwelling unit shall be counted as 0.67 dwelling unit, a two-bedroom unit shall be counted as 0.75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as one dwelling unit.

Dimensional Table
(Dimensional regulations for the SP-2 and SP-3 Subdistricts are contained in § 220-16.)

	District					
	RA	**HM**	**HR**	**CLI**	**HC**	**SP-1**
Minimum lot size (acres)	5[1]	[4]	[4]	2	2	5
Minimum lot size (open space development)[2]	See § 220-11D	n/a	n/a	n/a	n/a	See § 220-11D
Maximum base density (open space)[3] (acres/du)	2	n/a	n/a	n/a	n/a	5
Minimum road frontage for conventional subdivision[5] (feet)						
Town road	250	40	40	200	200	250
County/ State road	300	50	50	200	300	300
Minimum/ Maximum front yard setback						
Town/private road[6] (feet)	30[1]	10/25	10/25	40	30	75

Dimensional Table
(Dimensional regulations for the SP-2 and SP-3 Subdistricts are contained in § 220-16.)

	District					
	RA	**HM**	**HR**	**CLI**	**HC**	**SP-1**
County/State road[6] (feet)	50[1]	15/35	15/40	125	40	75
Minimum side yard setback (feet)	30[1]	10[11]	15[11]	20[7]	20[7]	50
Minimum rear yard setback (feet)	50[1]	15	15	50[7]	50[7]	100
Setback in open space development	See § 220-20E	n/a	n/a	n/a	n/a	See § 220-20E
Maximum impervious surface coverage[8]	10%	70%	50%	70%	60%	10%
Maximum height[9] (feet)	35	45	40	35	35	35
Maximum footprint for nonresidential structures[10] (square feet)	6,000	10,000[12]	1,000	200,000	60,000	6,000

Notes:

All dimensions in feet unless otherwise indicated.

[1] For conventional development as defined in § 220-74.

[2] Open space development is described in § 220-19B.

[3] Not including bonuses, which may increase density. See Article V. "ac/du" means "acres per dwelling unit."

[4] Varies between 80,000 square feet and 5,000 square feet based upon district and availability of infrastructure; see § 220-11D.

[5] Lots in open space developments may have shorter frontages per § 220-20E.

[6] Measured from right-of-way of road. Front yard setbacks may be adjusted to the average of adjoining setbacks; a "build-to line" may be established to maintain the "street wall" in the HM and HR Districts. Setbacks do not apply to open space development.

[7] If the lot abuts a residential district, a setback of 100 feet with a wooded buffer is required for all structures, driveways, parking lots, and other paved areas.

[8] See definition in § 220-74; applies to each lot and to an entire subdivision, including new roads and other public areas (see § 220-20F); in open space developments, applies to entire subdivision only. This requirement may be waived by the Planning Board for lots in the HM District and shall not apply to preexisting nonconforming lots. For flexibility provisions, see § 220-11C below. Does not apply to agricultural uses.

[9] Above average grade. For height exceptions, see § 220-30E.

Notes:

[10] Excluding agricultural structures and all structures legally completed or granted a building permit, special permit, site plan approval, or variance prior to the adoption of this chapter. The purpose of this requirement is to maintain the historic scale and character of development in Gardiner. The intent of this provision shall not be evaded through the placement of multiple large buildings on the same site or otherwise in a pattern that is inconsistent with the scale and character of the Town. This limitation shall not apply in the RDF District or to any educational, religious, or institutional use.

[11] May be 0 for party-wall or zero-lot-line building and may be reduced by Planning Board consistent with hamlet context.

[12] May be enlarged up to 60,000 square feet for a supermarket, movie theater, or other destination use that attracts a substantial number of customers, provided that all special permit impact criteria are satisfied.

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

D. Minimum lot sizes in the HM and HR Districts and in open space developments. Minimum lot sizes in the HM and HR Districts and in open space developments shall be as shown below, provided that such lots comply with all applicable public health requirements and that all common water and sewage disposal facilities are owned and managed by the Town, county, or a duly constituted public authority or municipal district. Minimum lot sizes for such lots shall be:

(1) With common or municipal water supply but no common or municipal sewage disposal services: 40,000 square feet.

(2) With common or municipal sewage disposal services only: 20,000 square feet. This dimension may be reduced by the Planning Board to 7,500 square feet within the Town Center hamlet area shown on the Zoning Map if the applicant can demonstrate through well tests that a smaller lot area will not adversely affect wells in the surrounding area. Such demonstration shall be made to the satisfaction of a professional hydrologist retained by the Town at the applicant's expense.

(3) With common or municipal water supply and sewage disposal: no minimum in open space developments and 10,000 square feet in the HM and HR Districts. This number may be reduced in the Planning Board's discretion in consideration of an applicant's provision of inclusionary housing, infrastructure for an area greater than that served by the development, or other municipal support services (fire station, school, park, etc.), or the applicant's use of transfer of development rights (see § 220-22). The minimum lot size in the HM and HR Districts shall not be reduced to less than 6,000 square feet.

(4) Without common or municipal water supply or sewage disposal services: 80,000 square feet in the HM and HR Districts and 40,000 square feet in an open space development.

E. Maximum density in the HM and HR Districts. The minimum lot size provisions in Subsection D above, when combined with the density allowances for two-family and multifamily housing in §§ 220-12 and 220-12.1 and the inclusionary housing provisions of § 220-42, shall not result in a more than eight dwelling units per acre of buildable land in the HM and HR Districts (excluding accessory apartments from this calculation). For purposes of density calculations, a studio dwelling unit shall be counted as 0.5 dwelling unit, a one-bedroom dwelling unit shall be counted as 0.67 dwelling unit, a two-bedroom unit shall be counted as 0.75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as one dwelling unit.

§ 220-12. Multiple and accessory dwellings.

A. Two-family dwellings.

(1) In the HM and HR Districts, two-family dwellings shall be permitted by right on all conforming lots (with County Health Department approval), subject to the limitation on total density in § 220-11E.

(2) In all other districts, lots containing two-family dwellings shall be allowed by right with site plan review on lots with at least 1.5 times the minimum lot size in the district and by special permit on lots with less than 1.5 times the minimum lot size. This does not apply to accessory apartments (see Subsection C below).

(3) On lots created as part of an open space development, two-family dwellings may be approved as part of the approval process for the open space development, consistent with the overall density calculations for open space development in Article V.

B. Multifamily dwellings, congregate senior citizen housing, and residential care facilities.

(1) Buildings in existence as of the effective date of this section may be converted to multifamily use if permitted in the Use Table as multifamily conversions. Such buildings may be expanded by up to 10% in floor space to accommodate required utilities, entrances, hallways, and stairways. Maximum density shall be established by the Planning Board based upon applicable review criteria and the characteristics of the existing building. Conversions to mixed residential and compatible nonresidential uses are encouraged.

(2) For congregate senior citizen housing and residential care facilities, each bedroom (with or without a private bath) shall be counted as 0.5 dwelling unit. For multifamily dwelling units in such facilities, a studio dwelling unit (including a unit with a kitchenette) shall be counted as 0.5 dwelling unit, a one-bedroom dwelling unit shall be counted as 0.67 dwelling unit, and two-bedroom dwelling units shall be counted as 0.75 dwelling unit.

(3) Apartments located above nonresidential uses shall be allowed at the same density as multifamily dwelling units, except that for each lot, one apartment not exceeding 1,000 square feet may be located above a nonresidential use by right as an accessory apartment pursuant to Subsection C below.

(4) The maximum density for new multifamily dwellings in the HR and HM Districts shall be two units per acre with municipal water or municipal sewer service, six units per acre with municipal water and sewer service (which may increase to 10 units through TDR), or one unit per acre with no municipal water or sewer service. In the HM and HR Districts, multifamily dwellings shall face an existing or new street, with parking behind the buildings or off-site.

(5) No special permit or site plan approval shall be granted until plans are submitted for water supply and sewage disposal which, in the opinion of the Planning Board, are adequate to serve the proposed project without adversely affecting the water supply or sewage disposal system of other lots or property.

C. Accessory apartments and accessory residential structures. One accessory apartment per single-family dwelling may be located in an accessory structure or a principal building as provided in the Use Table. The lot containing the accessory apartment must contain the minimum acreage required by the Dimensional Table, unless it is located in an approved open space development. For nonconforming lots, an accessory apartment may be allowed by special permit in all districts. The accessory apartment shall not be counted as a residential unit for purposes of determining density. No approval shall be granted for an accessory apartment without approval or certification from the Ulster County Department of Health of the adequacy of the septic system.

D. Multiple residences on a lot. A lot may contain more than one single-family dwelling and accessory apartment, provided that the lot has sufficient acreage to comply with applicable density requirements. Such a lot may not be later subdivided unless the subdivided lots conform to the dimensional regulations and road construction requirements in effect when the subdivision is proposed. If a lot is proposed to have more than two single-family dwellings, a conservation analysis and site plan approval shall be required from the Planning Board. No more than five dwelling units may be permitted on a lot under this Subsection D.

E. Farm operations. The restrictions in this § 220-12 shall not apply to farm operations where the dwelling units are used to house farm workers, farm owners, or members of their families. On any farm operation containing more than five dwelling units, minor site plan review shall be required for such units.

§ 220-12.1. Traditional neighborhood development (TND) in HM and HR Districts.

The HM and HR Districts are intended to implement the concept of traditional neighborhood development (TND). TND is the development of complete communities that include single-family homes, apartments, workplaces, shops, restaurants, and recreational facilities. Its goal is to create a pedestrian-oriented environment in which

residents and those who work in the area can walk comfortably between different land uses. There is a large literature on TND (also known as "new urbanism" and "neo-traditional development"), and applicants are encouraged to consult that literature and the website of the Congress for the New Urbanism. The Charter of the New Urbanism, available on that website, is an expression of the intent of this § 220-12.1 and shall be considered by the Planning Board in evaluating applications in HR and HM Districts.

A. Open space requirement. Applicants for residential development in an HR or HM District shall provide a payment in lieu of providing recreational land (recreation fee) unless the development parcel is at least 10 acres and the applicant provides at least 15% of the land as publicly accessible open space in the form of squares, greens, parks, playgrounds, and/or trails. This requirement shall not apply to the construction of single-family residences on lots in existence as of January 1, 2008.

B. Multifamily dwellings. The maximum density for new multifamily dwellings in the HR and HM Districts shall be based upon the availability of water and sewer service, as provided in § 220-12B(4). New multifamily dwellings in the HR and HM Districts shall have their front entrances on an existing or new street, with parking behind the buildings. Multifamily dwellings, as defined in this Zoning Law (not by the Building Code), may take the form of rowhouses, townhouses, apartment buildings, mixed-use buildings containing apartments, or any other form, such as three-family and four-family houses, that fit into the traditional architectural character of Gardiner, as determined by the Planning Board.

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

D. Architecture.

(1) Existing structures with historic or architectural significance, as determined by the Planning Board if site plan review is required, shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure.

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

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

(4) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the region.

(5) Large buildings (footprint larger than 10,000 square feet) shall generally be broken up into smaller volumes using building proportions found in the region's traditional architecture.

E. The Hamlet Design Guidelines and Building Form Guidelines referred to in § 220-5 shall be consulted for nonbinding guidance on design in the HM and HR Districts. The Town Board may promulgate additional design standards or guidelines to assist in the administration of this § 220-12.1.

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

G. Streets and blocks. Streets in HM and HR Districts shall generally be interconnected, and permanent cul-de-sacs shall only be permitted where wetlands, watercourses, or steep slopes make street interconnections impractical. In such cases, pedestrian paths and public stairways shall be provided where practical. All streets in an HM or HR District shall be offered for dedication to the Town, and no street shall be gated. The requirements for streets in the Town's road specifications shall be waived if such waivers are necessary to permit street designs in traditional hamlet character. The average area of a new block shall not exceed two acres.

H. Consultants. For all development under the HM and HR District regulations in this § 220-12.1, the Town shall retain design experts with specific expertise in TND development as necessary to review the application and ensure that it complies with the principles contained in the Charter of the New Urbanism.

I. Specific plan option.

(1) An applicant or the Town may prepare a "specific plan" in the form of a conceptual site plan that covers all or a portion of an area zoned HM, HR, and/or HEO, including land in multiple ownerships. The minimum acreage for such a plan shall be 10 acres. If the plan is prepared by an applicant, all landowners covered by such a plan must consent to this specific plan option. If prepared by the Town, landowners shall be given notice and an opportunity to object, but the Town shall have the authority to prepare such a plan without their consent, provided that the owners of at least 80% of the land area subject to the specific plan consent to its preparation. The Town shall conduct outreach to all landowners to be covered by a proposed plan and shall involve them in the process of plan preparation.

(2) The specific plan shall contain design standards specific to the hamlet and shall specify street specifications and cross-sections, public spaces, public facilities, building heights, building types, and parking locations.

(3) The specific plan shall be prepared with a substantial public involvement process and shall be approved as an amendment to the Town's Comprehensive Plan following procedures required by law for such an amendment. The Town Board may, in addition, make the specific plan part of this Zoning Law, by adopting it as a zoning amendment binding upon all landowners as provided in § 220-69.

(4) Once a specific plan is adopted as a zoning amendment, any application for development which is in substantial compliance with it may be approved by the Planning Board through site plan review.

(5) If the specific plan is prepared by the Town, the cost of such preparation, including the cost of SEQR compliance, may be apportioned and recovered from the landowners through development fees charged at the time they receive development approvals, provided that there has been prior notice and opportunity for such landowners to be heard concerning the amount of such fees.

(6) This Subsection I shall not prevent the Town from conducting studies and preparing nonbinding conceptual plans for a hamlet or portion of a hamlet without complying with the requirements above.

ARTICLE IV. Overlay, Floating, and Special District Regulations

§ 220-13. Floodplain Overlay District (FPO).

A. General. The provisions of Chapter 121, Flood Damage Prevention, are incorporated herein by reference and shall apply in addition to any other applicable zoning or building regulations.

B. Boundaries. The Floodplain Overlay District shall be the one-hundred-year floodplain, as defined in Article XII, and shall be established based upon maps provided by the Federal Emergency Management Agency (FEMA). The boundaries shown on the Resource Protection Overlay Districts Zoning Map are approximate. If a landowner raises the elevation of land within the floodplain above the floodplain level as it existed at the time such land elevation is made, such land shall be deemed to remain within the Floodplain Overlay District.

C. Restrictions. In addition to any restrictions, requirements, or permits imposed or required by Chapter 121, no new structure intended for residential use and no new septic tank, leach field, or other sanitary sewage system shall be located within the Floodplain Overlay District. This shall not prevent the replacement of existing facilities.

§ 220-14. Hamlet Expansion Overlay District (HEO).

A. Purpose. The purpose of this district is to establish an area outside of the existing boundaries of the central hamlet HM and HR Districts where the central hamlet of Gardiner may be expanded by zoning amendment in the future.

B. Boundaries. The Hamlet Expansion Overlay District includes all land shown as such on the Zoning Map.

C. Regulatory effect on land uses. Within the Hamlet Expansion Overlay District, all of the underlying land use district rules remain in effect, except as they are specifically modified by this § 220-14. No rezoning of land to HM or HR surrounding the central hamlet shall be permitted except for land within the HEO District. Such rezoning shall not occur until the petitioner(s) has submitted a specific plan for the land as provided in § 220-12.1I, and the Town Board finds that the proposed specific plan complies with applicable provisions of this chapter.

§ 220-14.1. Scenic Protection Overlay District (SPO).

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

B. Boundaries. The SPO District includes all land shown on the Overlay Districts Zoning Map as part of the SPO District, land lying within 200 feet of the right-of-way of roads shown on the map and within 100 feet of designated portions of the Wallkill Valley Rail Trail. As used herein, the term "scenic road" shall be defined to include only specifically designated segments of road or rail trail corridors.

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

D. Site plan approval requirement. Within the SPO District, site plan approval shall be required for the following, even if such activities or uses are allowed by right without site plan review by the Use Table in § 220-10:

(1) Construction of any structure or any addition to a structure greater than 500 square feet in footprint area.

(2) Within any one-year period, in any location that is visible from a publicly accessible place (as defined in § 220-74) when there are no leaves on the trees:

(a) Filling or excavation of an area in excess of 5,000 square feet.

(b) Clear-cutting of more than 5,000 square feet of vegetation on any parcel.

(c) Grading or other alteration of more than 5,000 square feet of the natural landscape, including construction of roads and driveways.

E. Site plan approval exemptions. Within the SPO District, the site plan approval requirement shall not apply to:

(1) Agricultural uses.

(2) The repair and maintenance of existing structures.

(3) Activities carried out pursuant to a site plan or special use permit approved prior to the enactment of this section.

(4) Clearing and grading associated with construction of unpaved hiking trails.

(5) Single-family residences on existing lots (created before the adoption of this provision).

(6) Any other activity not included in Subsection D above.

F. General standards. Within the SPO District, site plan approval may only be granted if, with appropriate conditions attached, the proposed activity:

(1) Will locate and cluster buildings and other structures in a manner that minimizes their visibility from public places.

(2) Will comply with the requirements in Subsections G through J below, except where site features are screened from public roads or trails.

G. Landscape.

(1) A continuous green buffer consisting of existing vegetation or new landscaping, at least 100 feet deep along Routes 44/55, 208, and 299, and 50 feet deep along the other scenic roads or trails, shall be maintained. This buffer shall consist of native trees and shrubs, as well as fields, meadows, and lawn areas. Bikepaths and/or sidewalks may be constructed within this landscaped buffer. This buffer requirement shall not apply in the immediate area around existing residences located within the buffer area. This buffer requirement may be modified by the Planning Board in the course of site plan review where the Planning

Board determines that it is unnecessary, does not serve the purposes of this section, or would be impractical to implement.

(2) To the maximum extent practical, existing trees, lawns, and shrubs shall be preserved, unless they are proposed to be replaced by native trees or other native vegetation deemed appropriate by the Planning Board.

(3) Trees shall be planted as deemed necessary by the Planning Board to reduce visibility of new structures from public roads or trails.

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

H. Architecture.

(1) Existing structures with historic or architectural significance shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure. New structures shall be compatible with the historic structures in their vicinity.

(2) The Planning Board shall consult the building form guidelines referred to in § 220-5 in considering any applications under this section.

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

J. Rural siting principles. New development in the SPO District shall comply with the rural siting principles in § 220-31 to the extent practical.

K. Exemption for farm operations. Farm operations shall be exempt from all provisions in this § 220-14.1.

§ 220-15. [Reserved for Aquifer Overlay District (AQO)]

§ 220-16. Shawangunk Ridge Protection District (SP).

A. Findings.

(1) The Town of Gardiner finds that the unique scenic character, water resources, and fragile ecology of the Shawangunk Ridge, escarpment, and foothills are critical features of the Town whose conservation enriches and benefits residents and visitors.

(2) The ecological resources of this entire area (which includes not only the SP District but also land located in the same ecosystem in adjoining towns) are of national and international significance, considered by the State of New York and major conservation organizations as one of the most important sites for biodiversity conservation in the northeastern United States. Because this area includes a set of closely related ecosystems, whatever occurs on one portion of it can have a significant effect on other resources. This area includes visually prominent and geologically significant cliffs and talus slopes and five globally rare plant communities, including the world's best example of the dwarf pine ridge community. The significance of this area has been documented in numerous programs and studies, including the Town's 2004 Comprehensive Plan and the "Green Assets" program report referenced therein, entitled "Planning for People and Nature Along the Shawangunk Ridge" (hereinafter "the Green Assets Report"). Gardiner is a participating Town in the Green Assets Program along with the Shawangunk Ridge Biodiversity Partnership.

(3) As documented in the Town's 1992 Comprehensive (Master) Plan and the 2004 Comprehensive (Master) Plan update, which both contain provisions for the protection of the Shawangunk Ridge and its immediate surroundings, conservation of the visual resources, watersheds, and sensitive ecosystems in this area of the Town has repeatedly emerged as an important priority in the public planning process. While not all of this area is within the Town of Gardiner, any development within the Town at the higher elevations or on the steeper slopes of the Ridge can significantly affect the ecological integrity of this entire area. At higher elevations and on steeper slopes, the visual and ecological impacts tend to be more significant.

(4) The Town therefore finds that protection of the scenic character and ecological integrity of the Shawangunk Ridge area are important to maintaining rural character, a sense of place, and scenic landscapes, all of which contribute to the Town's quality of life and its attractiveness for tourism and for

residential and commercial development.

(5) The Town further finds that limited development of the area covered by this district may be appropriate, as long as such development is carefully planned and designed to maintain, conserve, and enhance the scenic and ecological features of the area and the views into the landscape from publicly accessible locations. Protection of this area from inappropriate development is necessary to protect visual quality, water resources, and environmentally fragile areas.

(6) In order to achieve the Town's goal of protecting the visual and environmental quality of this sensitive area, the Town finds that planning and zoning should direct development to areas of lower elevation by strictly regulating development at higher elevations and providing incentives for development to occur in the least sensitive locations. The Town finds that a "tiered" approach, in which land use is regulated less stringently at lower elevations and more stringently at higher elevations, is an appropriate tool to accomplish this goal, particularly with respect to protection of the steepest slopes and the large blocks of unfragmented forest.

B. Purpose. The purpose of the Shawangunk Ridge Protection District (hereafter the "SP District") is to protect the resource values of the Shawangunk Ridge area as described in the Comprehensive Plan and to establish clear guidelines for its future protection and sensitive development.

C. Location and boundaries. The Shawangunk Ridge Protection District is delineated on the Town of Gardiner Zoning Map and is divided into three subdistricts shown thereon as SP-1, SP-2, and SP-3. The purpose of this division into three subdistricts is to have a graduated system of regulation that is least restrictive at the bottom of the slope (SP-1), more restrictive on the middle portion of the slope (SP-2), and most restrictive at the higher elevations (SP-3). The subdistricts are shown on the Zoning Map. The location of the boundary lines between the subdistricts has been determined based on a combination of elevation, slope factors, and the pattern of existing development.

D. Use regulations.

(1) The uses permitted in the SP-1 Subdistrict are shown on the Use Table in § 220-10. Permitted uses in the SP-2 and SP-3 Subdistricts are contained in a table at the end of this § 220-16 (Subsection I).

(2) Any use not shown on the Use Table in Subsection I shall be prohibited in the SP-2 and SP-3 Subdistricts.

(3) The following are specifically prohibited within the SP District:

(a) Privately owned central sewage systems or sewage disposal facilities as defined in this chapter.

(b) Privately owned central water systems.

(c) Commercial excavation.

(4) In making its determination on a special permit application, the Planning Board shall require the preparation of a conservation analysis pursuant to § 220-20A and shall make conservation findings as provided in § 220-20A(8). The Board shall consider all resource protection criteria and standards listed in Subsection F below and shall ensure maximum feasible protection of the SP District's unique resources, in particular the cliffs and talus slopes and the five globally rare plant communities identified in the Comprehensive Plan.

(5) The Planning Board shall attach conditions to its special permit approval as it deems necessary to achieve the resource protection objectives of the SP District. Such conditions may include the following:

(a) Limiting building to a specified "building envelope" area.

(b) Requiring a conservation easement as described in § 220-21 on land outside a building envelope, only within the SP-3 Subdistrict.

(c) Requiring landscaping to buffer and screen proposed structures.

(d) Reducing the height, footprint, or floor area of a proposed structure.

(e) Modifying the architecture, building materials, or other design features of a structure so that it will blend

into the landscape.

(f) Limiting alteration of landforms through grading, cutting, or filling.

(g) Changing the location and siting of structures, including the alignment of roads and driveways and the placement of any other improvements on the property.

(h) Restricting clearing of trees and reduction of tree cover.

(6) In the event that, even with the imposition of conditions, the resource protection objectives of this section cannot be satisfied, the Planning Board shall deny an application for a special permit.

(7) In order to enable the Planning Board to fulfill its obligations under Subsection D(4) and (5) above, an applicant shall be required to submit site plans, architectural elevations and models, ecological data, viewshed analyses, or any other materials that are deemed necessary by the Planning Board to make an informed decision.

E. Dimensional regulations. The dimensional regulations for uses in the SP District shall be as follows:

(1) In the SP-1 Subdistrict, dimensional regulations shall be as shown on the Dimensional Table in § 220-11.

(2) In the SP-2 and SP-3 Subdistricts, dimensional regulations shall be as shown on the Dimensional Table in § 220-11 for SP-1, except as modified below in Subsection E(3) and (4).

(3) Within the SP-2 Subdistrict, the following modified dimensional standards shall apply:

(a) The minimum lot area shall be 10 acres except in open space developments. The maximum base density for open space developments shall be 10 acres per unit.

(b) Maximum building height shall be 25 feet.

(c) The maximum total floor area of all structures shall not exceed 6,000 square feet, unless the Planning Board finds that a structure of greater size will not compromise the purposes of this § 220-16 or the conservation findings, and that special design features or other mitigating circumstances justify allowing an increased floor area . Such circumstances may include the grant of a conservation easement on land of conservation value substantially in excess of the minimum lot area requirement.

(d) No lot shall have more than five-percent impervious surface coverage except in open space subdivisions.

(e) Subsection E(3)(c) and (d) above shall not apply to existing dwellings but shall apply to additions to such dwellings in excess of 750 square feet of floor area.

(4) Within the SP-3 Subdistrict, the following modified dimensional standards shall apply:

(a) The minimum lot area shall be 20 acres except in open space developments. The maximum base density for open space developments shall be 20 acres per unit.

(b) Maximum building height shall be 25 feet.

(c) The maximum total floor area of all structures shall not exceed 4,000 square feet, unless the Planning Board finds that a structure of greater size will not compromise the purposes of this § 220-16 or the conservation findings, and that special design features or other mitigating circumstances justify allowing an increased floor area . Such circumstances may include the grant of a conservation easement on land of conservation value substantially in excess of the minimum lot area requirement.

(d) No lot shall have more than three-percent impervious surface coverage except in open space subdivisions.

(e) Subsection E(4)(c) and (d) above shall not apply to existing dwellings, but shall apply to additions to such dwellings in excess of 750 square feet of floor area.

(5) For new subdivisions of land, the Planning Board may require an open space development based upon its conservation findings, as provided in Subsection F(1)(d) and (e) below. In such open space developments:

(a) The requirements for lot area, setbacks, lot width, impervious surface coverage, and street frontage listed above and on the Dimensional Table may be varied as provided in § 220-20.

(b) No units in an open space development may be built in the SP-3 Subdistrict, unless the entire parcel proposed for development is located within the SP-3 Subdistrict, as provided in Subsection F(10).

(c) As provided in Subsection F(1), the maximum impervious surface in an open space development in the SP District shall be 6%.

(6) The minimum lot area for any preexisting lot which lies in more than one subdistrict and is not created as part of an open space development shall be the same as the minimum lot area for the SP-2 Subdistrict. In new subdivisions that are not open space developments, lots lying entirely in one subdistrict shall comply with the lot area requirements for that subdistrict. Lots that cross subdistrict boundaries shall comply with the lot area requirements for the subdistrict in which more than 50% of the land is located.

F. Special resource protection design requirements for the SP District.

(1) Purpose and applicability.

(a) All development requiring a special permit within the SP District that requires review by the Planning Board, Town Board, or Zoning Board of Appeals shall comply with the standards in this Subsection F. The intent of the design requirements is to ensure that development within the SP District creates no more than a minimal impact on the scenic and ecological resources of the district and the surrounding area, makes open space planning a central focus of any future development, and provides siting principles to help landowners and the Planning Board plan projects that fit into the scenic and rural countryside in the Shawangunk Ridge area.

(b) The Planning Board shall insert conditions on any approval, or deny approval, as necessary to satisfy the requirements of this Subsection F or any other part of this § 220-16. Such conditions shall include the requirement that permitted construction occur at the lowest feasible elevation on the property.

(c) As part of any application for a subdivision, special permit, or site plan approval in the SP District, the applicant shall prepare a conservation analysis as described in § 220-20A, except in the case of a minor subdivision located entirely within the SP-1 Subdistrict. The scope of such a conservation analysis shall be tailored to the size, scale and impact of the proposed development. For applications involving only individual single-family dwellings on lots which existed on January 1, 2005, and for minor subdivisions and uses other than single-family dwellings, the conservation analysis requirement shall apply only to the portion of the property where construction or land disturbance is proposed. For lots created after January 1, 2005, the conservation analysis shall be prepared as part of the subdivision application process by which the lot is created. At the time of application for a special permit for a specific lot, the Planning Board shall rely on the prior conservation analysis but may request that the conservation analysis be updated or further detailed if necessary for the Board to make an informed decision.

(d) Before making any decision on an application for a special permit or site plan approval, or for a subdivision sketch plan, the Planning Board shall make conservation findings as provided in § 220-20A(8) based upon this conservation analysis.

(e) In the case of applications for conventional subdivisions, unless the Planning Board determines that the conventional subdivision would have less impact on the fragile visual and ecological resources of the district than an open space development, it shall deny tentative approval for the sketch plan of the conventional subdivision application and require the applicant to submit an open space development sketch plan consistent with its conservation findings, as provided in § 220-20.

(f) In the event that an applicant files an application for an open space development, and the Planning Board determines that a conventional subdivision would have less impact on the fragile visual and ecological resources of the district, the Planning Board may deny tentative approval of the sketch plan for the open space development and require the applicant to submit a conventional subdivision sketch plan application.

(g) The provisions of this section shall not apply to farm operations which are located within agricultural districts established pursuant to New York State Agriculture and Markets Law.

(2) Guidance and consulting assistance.

(a) For guidance in applying the standards in this § 220-16, the Planning Board may refer to recommendations in the Green Assets Report and "Gateway to the Shawangunks: Maintaining a Scenic Road Corridor" (1997), published by Mohonk Preserve, Inc. and Friends of the Shawangunks, as well as other design guidance documents which the Planning Board determines to be relevant to protecting the resources of the SP District.

(b) The Planning Board shall retain the services of qualified experts, including but not limited to landscape architects, ecologists, DEC-certified professional foresters, arborists, hydrologists, engineers, and architects to the extent necessary to adequately review a conservation analysis and proposed open space development plan, and may charge the applicant for the reasonable costs of review by such experts. The level of required professional qualification of the experts shall be determined by the Planning Board and shall be commensurate with the scale and impact of the proposed development and the characteristics of the site. The Planning Board shall also refer all applications to the Town of Gardiner Environmental Conservation Commission (ECC) for comment, which must be received at or prior to the public hearing.

(3) Building envelopes. To ensure that the placement of structures and other improvements complies with the standards in this Subsection F and minimizes visibility and impacts on the ecological resources of the escarpment and ridge, the Planning Board shall limit permitted development to specified building envelopes showing acceptable building sites and areas of permitted clearing of vegetation and grading of land. Constructed improvements and cleared vegetation shall not differ more than 20 feet in any direction from site locations within building envelopes shown on approved subdivision and/or site plans. Such building envelopes shall:

(a) Be clearly designated on the approved subdivision plat and/or site plan.

(b) Be the minimum size necessary to accommodate the approved development and protect the remainder of a site from significant alterations.

(c) Comply with all provisions of this § 220-16, including the conservation findings.

(4) Regulation of land disturbance. The natural contours of the land and existing vegetation shall be maintained as much as possible. Any alterations to the natural landscape shall not adversely affect natural drainage or cause erosion or sedimentation. The following regulations apply to all development and other land-disturbing activities. For purposes of determining the location of steep slope areas, only slopes containing at least 3,000 square feet of contiguous steep slope area at least 10 feet in width shall be considered.

(a) Limitation of area disturbed. All land-disturbing activities, including but not limited to clearing, grading, excavation, building construction, construction of driveways and roads, cutting, and filling, shall be limited to the minimum land area necessary to accommodate the proposed use or activity, and shall in no case be greater than 15,000 square feet plus land necessary for driveway access, unless a larger area is required by the County Health Department to accommodate a septic system, in which case that larger area shall be permitted to be disturbed.

(b) Disturbance of very steep slopes (greater than 20%).

[1] General prohibition on land disturbance. Land-disturbing activities, including but not limited to clearing, excavation, grading, construction, reconstruction, and investigative land-disturbing activities such as test wells, are prohibited on slope areas greater than 20% except as allowed under Subsection F(4)(b)[2] below.

[2] Permitted uses and activities. The following are permitted on very steep slope areas, subject to applicable development standards:

[a] Passive recreation uses, including trails not exceeding 10 feet in width.

[b] Open space, forestry, and other conservation uses.

[c] Land surveying or study.

[d] Local distribution utilities, roads and driveways, provided that they comply with the standards set forth in Subsection F(4)(c)[3] and (g) below.

[3] Any such development and uses on very steep slope areas shall minimize disturbance to soil geology, hydrology, and environmental features.

(c) Disturbance of moderately steep slopes (between 12% and 20%).

[1] Permitted uses and activities. All uses and activities allowed in the zoning subdistrict shall be allowed on moderately steep slopes, subject to applicable review procedures and standards.

[2] Grading standards. The applicant shall preserve natural landforms and minimize grading and other land disturbance.

[3] Limits on changing natural grade. The original, natural grade of a lot shall not be raised or lowered more than four feet at any point for the construction of any structure or improvements, except that:

[a] The original grade of a lot may be raised or lowered a maximum of eight feet if retaining walls are used to reduce the steepness of man-made slopes, provided that the retaining walls comply with the requirements of this Subsection F(4).

[b] These standards limiting change of natural grade shall not apply to grading required to construct or excavate a foundation or basement.

[c] The Planning Board may approve modifications to these standards if it finds that such modifications would result in less total site disturbance and visual impact than would compliance with the maximum limits on changing natural grade stated in this subsection.

(d) Revegetation required. Any slope exposed or created in new development on very steep or moderately steep slope areas shall be revegetated or landscaped with noninvasive species as soon as possible after land disturbance occurs, and such landscaping shall be properly maintained to prevent erosion.

(e) Excavation and clear-cutting.

[1] To the maximum extent feasible, excavation for footings and foundations shall be limited to minimize site disturbance and ensure compatibility with sloped terrain.

[2] Unless performed pursuant to an approved site plan, special permit, subdivision, or building permit, or as a normal and customary activity in conjunction with an approved timber harvesting plan, excavation of any area and clear-cutting any area exceeding 2,000 square feet shall require a special permit from the Planning Board. If such excavation or clear-cutting occurs without a special permit, the Planning Board may refuse to issue an approval upon a subsequent application for a special permit, site plan, or subdivision for a period of two years. This subsection shall not apply to excavation done as part of the routine maintenance of existing roads, driveways, utilities, septic systems, or drainage ditches.

(f) Retaining walls and terraces. Use of retaining walls and terraces is encouraged to reduce the steepness of man-made slopes and to provide planting pockets conducive to vegetation, in accordance with the following standards:

[1] Retaining walls shall not exceed eight feet in height from the finished grade, except for:

[a] A structure's foundation or basement wall (i.e., a retaining wall may be part of a permitted dwelling unit).

[b] As necessary to construct a driveway from the street to a garage or parking area.

[c] As otherwise expressly allowed by this section.

[2] Retaining walls shall be faced with stone or earth-colored materials similar to the surrounding natural landscape.

[3] Terracing shall be limited to two tiers, except that the Planning Board may approve more than two tiers when a greater number of tiers will result in less land disturbance and less steep man-made slopes.

[4] The width of the terrace between any two vertical retaining walls shall be at least five horizontal feet.

[5] Terraces created between retaining walls shall be permanently landscaped or revegetated with noninvasive species.

[6] The Planning Board shall determine the final configuration of retaining walls and terraces based upon the conservation findings and visual assessment.

(g) Roads, driveways, and utilities.

[1] All roads and driveways shall follow natural contour lines to the maximum extent feasible.

[2] Roads shall not be constructed on slopes greater than 30% under any circumstances.

[3] Roads shall not be constructed on very steep slopes between 20% and 30%, unless no other alternative exists to access a legal lot of record approved prior to the effective date of this section.

[4] Driveways and utilities shall generally not be constructed or installed on very steep slopes greater than 20%. However, a short run of no more than 250 feet or 10% of the driveway and/or utility's entire length, whichever is less, shall be allowed on very steep slopes between 20% and 30%, based on geotechnical and visual impact studies and findings that:

[a] Such driveway or utility will not have significant adverse visual, environmental or safety impacts; and

[b] No alternative location for driveway or utility access is feasible.

[5] Cuts shall be no higher than eight feet, with a final slope on each cut no greater than 20%.

[6] Driveway grades shall not exceed 12%, as shown by profiles submitted with an application.

[7] In order to minimize land disturbance, driveways shall be no longer than necessary to provide access to a buildable homesite on a lot. Driveways shall not exceed 1,200 linear feet in length, unless the Planning Board finds that a longer driveway is necessary to make access feasible. Driveways exceeding 1,200 feet in length, which are not otherwise subject to a special permit requirement, shall require a special permit from the Planning Board. Any home accessed by a driveway exceeding 1,200 feet shall incorporate a fire suppression system that complies with the recommendations of the Chiefs of the Gardiner and Shawangunk Valley Fire Departments. No driveway shall exceed a total of 2,500 feet in length. Driveways shall also comply with applicable requirements of §§ 184-33 and 220-43 of the Town Code.

(5) Protection of water resources.

(a) There shall be no structures located within 100 feet of a watercourse, wetland or spring unless specifically authorized by the Planning Board, consistent with the conservation findings.

(b) There shall be no net increase in runoff, and pollution load shall not exceed the predevelopment load of nutrients or sediment.

(c) Runoff from impervious surfaces shall be routed to detention ponds, cisterns, or infiltration structures. Any such ponds or structures shall be constructed in a manner that minimizes impacts on landscape character and ecological function.

(d) Landowners shall bear full responsibility for the installation, construction, and maintenance of all erosion control measures required as a condition of approval.

(e) All development shall be done with appropriate soil erosion and stormwater and sediment control measures, prepared in accordance with the requirements of the New York State Department of Environmental Conservation, as well as the erosion control standards described in other manuals specified by the Town's engineer. Soil erosion and stormwater and sediment control measures and facilities shall be properly maintained and the landowner shall permit periodic inspection by the Town at reasonable intervals and after major storm events to ensure such maintenance.

(6) Visual protection and landscaping.

(a) No principal or accessory structure in the SP-2 and SP-3 Subdistricts shall exceed a building height of 25 feet.

(b) All structures shall be sited to avoid, to the greatest extent practical, occupying or obstructing public views of land that is located within the SP District. Public views shall be determined by conducting a viewshed analysis as required by SEQR using the SEQR Visual Environmental Assessment Form Addendum (VEAF) contained in 6 NYCRR 617.20 Appendix B. Visibility shall be measured using a condition of no leaves on trees. Viewshed analyses shall be required only to the extent necessary to ensure compliance with this subsection.

(c) Existing vegetation shall be preserved to the maximum extent practical and shall be used as much as possible to buffer and screen new buildings.

(d) Noninvasive native vegetation shall be maintained or planted to screen structures and other improvements from public roads, parks, or other public places.

(e) Vegetation shall also be used as a backdrop to reduce the prominence of the structure.

(f) Views from a structure shall be opened up only by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

(g) Clearing of vegetation shall be minimized at the edge of road shoulders, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Curves in the driveway shall be used to increase the screening of buildings. This shall not apply to roadside clearing to maintain views of the valley from existing Town, county, or state roads.

(h) Structures and other development, including drainage structures, shall blend in with natural surroundings through use of materials such as stone or natural wood siding and shall avoid the use of reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them.

(i) Structures shall be constructed and maintained so that predominant exterior wall colors (including the colors of basement walls on the downhill side of the structure) and roof surfacing materials repeat the colors found most commonly in the land and vegetation around such structures.

(7) Avoidance of forest fragmentation and protection of habitats.

(a) Development of land, alteration of the landscape, and forestry activities shall be conducted in a manner that minimizes the fragmentation of contiguous forest habitats and other ecologically significant areas.

(b) For major subdivisions, determination of the location of such habitats or areas shall be made in consultation with a qualified ecologist, biologist, and/or forester, following any applicable guidelines or standards established by the State of New York, as identified by the Planning Board or its consultants.

(c) For major subdivisions in the SP-2 or SP-3 Subdistricts, the Planning Board shall refer the proposed plan to the New York Natural Heritage Program for its review and recommendations. The Planning Board may also refer the proposed plans to any other agencies or officials of the Town, county, state, or federal government as the Board may deem appropriate. If there is no response from any agency to which a referral is made within the time frame required for a decision, the Planning Board may proceed with its decision in the absence of a response.

(8) Forest management. Timber harvests and clear-cutting in excess of 2,000 square feet of land per year are allowed only by special permit from the Planning Board, provided that:

(a) Such activities minimize clear-cutting and comply with the most recent versions of Timber Harvesting Guidelines for New York and Best Management Practices, as promulgated by the New York State Department of Environmental Conservation (DEC) and available from the Town's Building Department.

(b) Such cutting is part of a forest management or wildlife habitat improvement plan prepared by a DEC-certified forester and approved by the DEC or other professional or organization deemed acceptable by the Planning Board; and/or

(c) Such cutting is necessary to prevent an imminent threat to life, public safety or property; and/or

(d) Such cutting is necessary to ameliorate damage arising from severe natural occurrences, such as ice, wind, or insect damage.

(9) Lighting.

(a) Exterior lighting shall be controlled in both height and intensity so that the light level at any lot line shall not exceed 0.2 foot-candle, measured at ground level.

(b) Floodlights shall not be used to light any portion of a principal or accessory structure facade, and all outdoor light sources mounted on poles or buildings or trees to illuminate driveways, sidewalks, walkways, parking lots, or other outdoor areas shall use fully shielded light fixtures pointed downward.

(c) For purposes of this section, a "fully shielded light fixture" is one in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted. All such fixtures shall be installed or shielded so that no part of the light source is visible beyond the property boundaries.

(10) Location of residential units outside of SP-3. No residential units may be built in the SP-3 Subdistrict, unless the entire parcel proposed for development is located within the SP-3 Subdistrict. For purposes of this Subsection F(10), the word "parcel" shall mean all contiguous land owned or controlled by the same person or entity, or by related persons or entities, regardless of tax parcel or existing lot or parcel boundaries.

(11) Water and sewer facilities.

(a) Sewage disposal facilities are permitted by special permit only within the SP-1 Subdistrict.

(b) Central sewage systems, water supply facilities, and central water systems are permitted only by special permit within the SP-1 and SP-2 Subdistricts.

(c) All such facilities shall comply with applicable requirements of state and county regulatory authorities and with the standards in this § 220-16. They shall be designed, sited, and constructed in a manner which does not produce odors and which minimizes land disturbance and excavation in environmentally sensitive areas.

(d) To the extent feasible, priority shall be given to the use of systems which recharge groundwater using subsurface discharge, and/or which contribute positively to the SP District's ecological and landscape character, such as the use of constructed wetlands. Facilities which are necessary and do not enhance landscape character shall be screened to the maximum extent practical.

(e) All water and sewer facilities described above shall be owned and operated by municipal water or sewer districts and shall not be owned or operated by transportation corporations.

G. Conservation easement.

(1) Except as provided in Subsection G(2) and (3) below, a conservation easement, as described in § 220-21C, shall be required by the Planning Board in connection with any approval in the SP-2 or SP-3 Subdistrict in order to ensure compliance with the requirements of this § 220-16, including the protection and buffering of views and significant habitats.

(2) This requirement of a conservation easement may be satisfied in an open space subdivision with the conservation easement required by § 220-21C. For minor subdivisions or special permits, a recorded declaration of covenants and restrictions enforceable by the Town may be substituted for a conservation easement if the Planning Board determines that a conservation easement is unnecessary.

(3) A conservation easement shall not be required in connection with a special permit for a single-family dwelling in the SP-2 Subdistrict.

H. Conflicts with other provisions. In case of any conflict between the requirements of this § 220-16 and any other provisions of the Town of Gardiner Zoning Law, Subdivision Law, Editor's Note: See Ch. 188, Subdivision of Land. or other local law, ordinance, or regulation, the requirements of this section shall control. The provisions of Article VI, Nonconforming Uses, Structures and Lots, shall be fully applicable in the SP District.

I. SP-2 and SP-3 Use Table.

Use Table
SP-2 and SP-3 Subdistricts — Principal/Accessory Uses

	SP-2	SP-3
Principal Uses		
1. Agriculture (only if located within a county-certified agricultural district)	P	P
2. Timber harvesting (over 2,000 square feet of land)	S	S
3. Public parks and playgrounds	S	S
4. Single-family dwellings	S*	S*
5. Two-family dwellings	–	–
6. Recreational camps and facilities	S	–
7. Low-impact recreation and nature preserves (special permit required if parking lot is built)	P	P
8. Religious, educational, or cultural uses (libraries, houses of worship, museums, art galleries, schools and similar uses)	–	–

Note:
* Additions to existing dwellings in the SP-2 and SP-3 Subdistricts which do not exceed a cumulative total of 750 square feet shall not require a special permit.

Accessory Uses		
1. Residential accessory structures (garages, guest cottages, sheds, tennis courts, pools, and other customary facilities)	S	S
2. Buildings for sale of agricultural products	–	–
3. Keeping of domestic animals* (horses, cows, sheep, chickens, goats, ducks, geese, etc.)	P	P
4. Home occupation	S	S
5. Noncommercial kennels (over 4 dogs)	S	–
6. Municipal sewage disposal facility	–	–
7. Municipal central sewage system	S	–
8. Municipal water supply facility; central water system	S	–

Note:
* Keeping of household pets is permitted in all subdistricts as a customary residential accessory use.

Legend/Key

P = Permitted use

S = Special permit required

– = Not permitted

§ 220-17. Soil Mining Floating District (SMF).

A. Findings and purpose. The purpose of this floating district is to provide appropriate locations for soil mining. The Town wishes to allow soil mining to provide jobs, produce needed building materials, and support agricultural operations, while protecting the rural peace and quiet enjoyed by Town residents. The Town of Gardiner will therefore allow commercial mining only in those locations where it will help promote the Town's goals of maintaining rural character with minimum disturbance to residential neighbors. The SMF District is a "floating district" and will be mapped only where there are sand and gravel resources that have direct state or county highway access and sufficient buffering from nearby residences to avoid disturbance to residential neighbors. Landowners who wish to have their land included in the SMF District may apply to the Town Board for a Zoning Map amendment pursuant to § 220-69.

B. Boundaries. The boundaries of the SMF District will be shown on the Floating District Zoning Map at such time as the Town Board amends that map consistent with the purposes in Subsection A above. The SMF District may be mapped only within areas zoned RA or CLI.

C. Regulatory effect on land uses.

(1) The land within the SMF District is the only land in the Town of Gardiner where new soil mines may be permitted and where existing soil mines will be allowed to renew their permits from the New York State Department of Environmental Conservation.

(2) All new soil mining operations or expansions of existing soil mining operations require a special permit from the Town Board, subject to all applicable special permit requirements in §§ 220-60 through 220-64 and the regulations in this section.

D. Soil mining regulations.

(1) Soil mining shall be allowed within the SMF Floating District, subject to a special permit by the Town Board, provided that the operator complies with all applicable requirements of the New York State Department of Environmental Conservation.

(2) Any application for a soil mining special permit shall be deemed a major project if it also requires approval of a mining permit from the New York State Department of Environmental Conservation (DEC). Proposed soil mining that does not require a DEC permit shall be deemed a minor project.

(3) An applicant for a major project special permit for soil mining shall submit copies of all applications and other materials submitted to the DEC in connection with its soil mining application.

(4) In determining whether to grant or deny a special permit application for soil mining, the Town Board shall consider all applicable special permit criteria, including but not limited to the environmental performance standards in § 220-40. If the Town Board grants a major project special permit subject to conditions, such conditions shall be limited to the following, unless the laws of New York State allow the imposition of additional conditions:

(a) Ingress from and egress to public thoroughfares controlled by the Town;

(b) Routing of mineral transport vehicles on roads controlled by the Town;

(c) Requirements and conditions specified in the permit issued by the DEC concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control, and hours of operation;

(d) Enforcement of reclamation requirements contained in any DEC permit.

(5) If the Town Board finds that the imposition of the above conditions in Subsection D(4)(a) through (d) will not be sufficient to enable the proposed soil mining operation to comply with applicable special permit criteria, it shall deny the special permit application.

(6) The Town Board may require, as a condition of its approval, that the applicant cover the costs of inspection and monitoring of compliance with the requirements in Subsection D(4) above for the life of the

mine.

(7) In issuing a minor project special permit for soil mining, the Town Board may impose any conditions it deems necessary, including but not limited to those in Subsection D(4)(a) and (b) above.

§ 220-18. Resort Development Floating District (RDF).

A. Purpose. The purpose of the RDF District is to provide use and design flexibility to encourage the development of inns, hotels, and small-scale resorts that fit into the rural character of the Town and protect its scenic, historic, and environmental resources. This district provides a procedure for master planned development of large properties to promote tourism, recreation, and open space protection. In exchange for granting permission for use flexibility and more intensive development than is allowed by the underlying zoning, the Town seeks to achieve significant protection of open space resources, especially scenic viewsheds, ridgelines, water resources, and ecosystems.

B. Boundaries. The RDF is a "floating district," which is not currently shown on the Zoning Map. Landowners who wish to develop according to this § 220-18 may apply to the Town Board for a Zoning Map amendment pursuant to § 220-69 to rezone their land RDF. In order to be mapped as an RDF District, the property must consist of at least 50 acres of land in the RA District with direct access to a state or county highway. The Town Board has the sole discretion whether or not to entertain such an amendment, which must be consistent with the Comprehensive Plan.

C. Regulatory effect of district on land uses. Within the RDF District, the following regulations apply, superseding the regulations of the underlying district where there is a conflict.

(1) Allowable uses. Within the RDF District, the following uses are allowed:

(a) All uses allowed in the RA District, as shown on the Use Table in § 220-10B.

(b) Lodging facilities, meeting rooms, and conference facilities.

(c) Restaurants.

(d) Retail, recreational, and service businesses associated with the resort use, including health spas.

(e) Riding academies and other equestrian uses.

(f) Such other uses as may be approved by the Planning Board in issuing a special permit for a development plan.

(2) Conservation analysis requirement. For any application for subdivision or any development that involves uses other than those allowed in the RA District, the applicant shall prepare a conservation analysis of the land as described in § 220-20A. This shall be submitted to the Planning Board, which shall make conservation findings prior to the preparation of any master development plan for the site pursuant to Subsection C(3) below.

(3) Special permit for master development plan. For any development that involves any uses other than those allowed in the RA District, the applicant shall prepare a master development plan for the entire site. The master development plan shall require special permit approval by the Planning Board and shall be consistent with the Town of Gardiner Comprehensive Plan. A master development plan shall be based upon the conservation findings and shall include a conceptual site plan showing an open space system (including preserved open space), access and road layouts, proposed buildings, including their uses, footprint, height, and total square footage, proposed recreational facilities, proposed utilities, including water supply and wastewater disposal, and a phasing plan if the project is to be built in phases. Where buildings will be visible from public roads, bicycle trails, or other publicly accessible areas, the Planning Board shall require the submission of proposed elevations of buildings and/or proposed architectural standards or covenants. The Planning Board shall review the special permit application as provided in §§ 220-60 through 220-63 and may attach such conditions as it finds necessary to ensure that the master development plan will be in harmony with surrounding land uses and the purposes of the floating district. Upon approval of the master development plan and conceptual site plan with attached conditions on use and dimensional standards, site plan approval only shall be required to implement individual components of the proposed plan.

(4) Minimum open space and protection of viewsheds and other resources. A minimum of 80% of the total

land area of the parcel shall be preserved by a conservation easement as open space, as provided in § 220-21, based upon the conservation analysis. Priority in open space protection shall be given to land within the SPO District, land that is prominent in the viewshed from the Shawangunk Ridge, historic resources, unique ecosystems, prime agricultural land, and water resources. Open space land preserved under this subsection may include farmland and farm structures, ponds and streams, and recreational land such as golf courses, cross-country ski trails, equestrian trails, and hiking trails. It shall not include land lying under nonagricultural structures taller than 20 feet, nonagricultural buildings larger than 200 square feet in footprint area, or land that is covered by impervious surfaces. Golf courses, if approved, shall be required to be certified by the Audubon Society or a similar organization with the certification program for the ecologically sound stewardship of golf courses.

(5) Maximum impervious surface coverage and dimensional standards. Maximum Impervious surface coverage, as defined in § 220-74, shall be 15% of the total site area, including preserved open space areas. Land and buildings used exclusively to house employees of the resort development shall be excluded from the calculation of impervious surface coverage, as an incentive to provide such housing on site. The dimensional standards in § 220-11 shall not apply. Maximum building height shall be 35 feet. Other dimensional and density standards shall be as approved by the Planning Board in the master development plan, based upon the physical characteristics of the site, the character of the proposed development, and the requirements of the SEQR process.

(6) Buffer requirements. A master development plan in the RDF District shall provide open space buffers of at least 200 feet from any existing residential uses that are not within the RDF District. Such buffers may be wooded or open and may contain trails, but may not contain any buildings or other recreational facilities.

§ 220-18.1. Mobile Home Floating District (MHF).

See § 220-44 and Chapter 154 of the Town Code for regulations that apply to the MHF District.

ARTICLE V. Residential Development in RA and SP Districts

§ 220-19. Residential development options.

A. Purpose and applicability; requirement of conservation analysis.

(1) The purpose of this Article V is to preserve large tracts of open space land in order to maintain the rural appearance and environmental resources of the Town of Gardiner. Article V offers development alternatives to landowners that avoid the land-consumptive pattern of conventional subdivision (see definition in § 220-74). To avoid this pattern, which conflicts with the goals of the Gardiner Comprehensive Plan, the Town of Gardiner encourages three preferred development options: open space development, transfer of development rights, and flag lots. The Town discourages conventional subdivisions that would detract from the Town's rural landscape and natural resources.

(2) Any applicant for a major subdivision in the RA District or for a major or minor subdivision in the SP District shall first submit to the Planning Board a conservation analysis as described in § 220-20A below. The Planning Board may also, in its discretion, require a conservation analysis for a minor subdivision in the RA District.

B. Open space development. The Town encourages open space developments as an alternative to conventional subdivisions. In open space developments, units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Open space developments may include a variety of lot sizes, ranging from large farm or estate lots to small hamlet-size lots. (Minimum lot size requirements are contained in § 220-11D.) Open space development results in the preservation of contiguous open space and important environmental resources, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions. Open space developments must satisfy the standards in § 220-20.

C. Transfer of development rights. Transfer of development rights is similar to open space development in preserving contiguous open space and allowing clustering of units on land most suitable for development. It differs from open space development in allowing the open space land and the developed land to be on different noncontiguous parcels, a "sending parcel" and a "receiving parcel." See § 220-22.

D. Flag (rear) lots. Flag lots are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, flag lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new Town roads. For regulations on flag lots, see § 220-23. Flag lots are not permitted in the SP

District.

E. Small-scale development. Small-scale development is any development of land in the RA District that results in the creation of no more than two new residential lots (excluding the parent parcel from which they are subdivided, which constitutes a third lot), subject to the requirements in § 220-24. Small-scale development also includes the development of residential lots that existed prior to the enactment of this chapter and do not meet the dimensional standards for a conventional subdivision in this chapter. This option is designed to minimize the burden and cost of development for landowners building on existing lots or creating only a small number of new lots. Small amounts of such development on a portion of a larger parcel, when combined with a Town program to preserve open space, enable the Town to preserve its rural character and natural environment while allowing some small lot development. See § 220-24.

§ 220-20. Standards for open space development.

Open space development allows design flexibility while preserving important natural attributes of the land. The purpose of open space development is to ensure that environmental resources are protected as much as possible and that development occurs on the land that is best suited for development. This technique is especially important in the SP District in order to protect the unique visual and ecological characteristics of the Shawangunk escarpment and ridge.

A. Conservation analysis.

(1) As part of any sketch plan submission for an open space development, an applicant shall prepare a conservation analysis, consisting of inventory maps, survey and topographic maps, description of the land, and an analysis of the conservation value of various site features.

(2) The conservation analysis shall be prepared by a qualified land planning professional and shall be reviewed on behalf of the Planning Board by a qualified land planning professional as provided in Subsection J below. The qualifications of the land planning professional shall be commensurate with the scale and impact of the proposed development and the characteristics of the site. For properties of less than 30 acres, the applicant's surveyor or engineer may prepare the conservation analysis.

(3) Minor subdivisions (as defined in the Land Subdivision Regulations Editor's Note: See Ch. 188, Subdivision of Land.) shall not require a conservation analysis, except within the SP-2 and SP-3 Subdistricts of the SP District.

(4) The conservation analysis shall identify lands with conservation value on the parcel and within 100 feet of the boundaries of the parcel, including but not limited to the following:

(a) "Constrained land" as defined in Subsection B(1)(a) below.

(b) Farmland.

(c) Existing or proposed trail corridors.

(d) Scenic viewsheds.

(e) Unique geological features.

(f) Public water supply wellheads.

(g) Documented aquifers and aquifer recharge areas.

(h) Sites identified as historic on any federal, state, or local register of historic places.

(i) Public parks and publicly accessible recreation lands.

(j) Unfragmented forest land, as shown in a forest inventory prepared by a qualified forestry or ecology professional, including "Planning for People and Nature Along the Shawangunk Ridge" ("the Green Assets Report").

(k) Land identified as having scenic, historic, ecological, water resource, archaeological or other open space significance in the Town's Comprehensive Plan, Open Space Plan, or the Green Assets Report.

(l) Buffer areas necessary for screening new development from adjoining parcels and from other publicly

accessible areas, including roads, parkland, and nature preserves.

(m) Stone walls.

(n) Trees 15 inches' dbh or larger, except where such trees are part of a larger stand of trees, in which case the entire stand may be identified as a unit.

(o) All land which requires protection under the provisions of the Shawangunk Ridge Protection District.

(p) If requested by the Planning Board after the initial submission of the conservation analysis, other land exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.

(q) Habitat and wildlife corridors.

(5) The conservation analysis shall also identify areas that are potentially suitable for development, especially those that have been previously disturbed (e.g., by mining, prior development, or clear-cutting) and their present condition. Such locations, depending on their condition and location, might be preferred locations for development or they may be more appropriate for environmental restoration as part of a mitigation plan.

(6) For areas that are proposed to be preserved as permanent open space (and land on adjacent parcels abutting such open space land) pursuant to § 220-21, the conservation analysis may consist of a general description of the land in sufficient detail to make the required conservation findings, but need not provide the level of detail required in Subsection A(4) above.

(7) The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site identified in Subsection A(4) and (5) above.

(8) The Planning Board shall make a final determination as to which land has the most conservation value and should be protected from development by conservation easement. This determination shall be based upon an analysis that weighs the relative importance of the environmental resources on the site and shall be expressed in a written report supporting its decision (the "conservation findings"). The Planning Board may incorporate information provided by its own research, as a result of site visits, or provided by its own consultants, the Environmental Conservation Commission, or other qualified experts or agencies. The Planning Board shall deny tentative approval to an application that does not include a complete conservation analysis sufficient for the Board to make its conservation findings.

(9) The outcome of the conservation analysis and the Planning Board's conservation findings shall be incorporated into the Planning Board's tentative approval of the sketch plan, pursuant to § 188-12A of the Town Code.

(10) The sketch plan, as tentatively approved, shall show the following:

(a) Preferred locations for intensive development as well as acceptable locations for less dense development.

(b) Land to be permanently preserved by a conservation easement, as well as conservation uses, ownership, and management guidelines for such land.

(c) Land suitable for stormwater management facilities, which may be located within the preserved land area.

(11) At least 50% of the total acreage shall be preserved by conservation easement and shown as such on the sketch plan, based upon the conservation findings. In the SP District, at least 80% of the land shall be preserved by conservation easement. The preserved land shall meet the requirements of § 220-21, and shall generally form unfragmented contiguous blocks of land.

B. Calculation of permitted number of dwelling units. The maximum number of dwelling units in an open space development is based upon a density formula that subtracts constrained land from the parcel's acreage and divides the "net acreage" by the minimum lot size in the district. The calculation of the number of permitted dwelling units may be done at either the sketch plan or preliminary plat stage of the application, at the applicant's election.

(1) To calculate the permitted number of dwelling units, the following steps shall be followed:

(a) Determine the unconstrained acreage by subtracting from the total (gross) acreage of the proposed development parcel the acreage of "constrained land." Constrained land consists of wetlands regulated by the DEC, one-hundred-foot buffers to such wetlands, federal wetlands regulated by the U.S. Army Corps of Engineers, watercourses, stream corridors extending 50 feet from the banks of any perennial stream or lake, one-hundred-year floodplains, cemeteries, and slopes over 20% (2,000 square feet or more of contiguous sloped area at least 10 feet in width). Slope determinations shall be based upon ten-foot contour intervals, unless an applicant elects to submit slope information with smaller contour intervals or another section of the Zoning Law or Subdivision Law Editor's Note: See Ch. 188, Subdivision of Land. requires the use of smaller contour intervals.

(b) Multiply the unconstrained acreage by a "development loss factor" of 0.85 (to account for roads and lot shape irregularities).

(c) Divide the resultant area by the maximum base density for an open space development in the district as shown on the Dimensional Table. Fractional units shall be rounded to the nearest whole number.

(d) The result of this calculation, as reviewed and approved by the Planning Board, establishes the maximum base number of units permitted in the open space development.

(e) For lots in more than one district (or subdistrict in the SP District), the permitted number of dwelling units for land in each district shall be computed separately, but the units may be located in the manner that best fits the character of the land.

(2) An applicant may increase the permitted number of dwelling units in one of the following two ways:

(a) By increasing the percentage of open space preserved by conservation easement beyond 50%. For every 10% of additional open space protected above the minimum required for the entire parcel, the applicant shall be allowed an increase in the permitted number of dwelling units of 10%. This density bonus shall not be available within the SP District.

(b) If the applicant allows public access to protected open space and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as a trail connector or access to an important natural area, with parking where necessary) the permitted number of dwelling units may be increased by a maximum of 20%, at the discretion of the Planning Board based upon the significance of the recreational benefit.

(3) Within the RA District, the number of permitted dwelling units, with the bonuses permitted by Subsection B(2) above, shall not exceed one unit per 1.5 "net" acres. "Net acres" shall mean the unconstrained acreage multiplied by the development loss factor as provided in Subsection B(1)(a) and (b) above.

(4) The maximum number of units allowed by this Subsection B shall not be considered an entitlement. The applicant must also demonstrate compliance with all applicable criteria and standards of the Zoning Law, Subdivision Regulations, Editor's Note: See Ch. 188, Subdivision of Land. Ulster County Health Department, and other applicable laws and regulations. These requirements may result in an actual approvable unit count that is less than the maximum allowed above.

(5) For purposes of density calculations in this section, a studio dwelling unit shall be counted as 0.5 dwelling unit, a one-bedroom dwelling unit shall be counted as 0.67 dwelling unit,, a two-bedroom unit shall be counted as 0.75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as one dwelling unit. All dwelling units which are treated as less than one full dwelling unit under this section shall be required to have permanent deed restrictions, in a form acceptable to the Planning Board, limiting them to the approved number of bedrooms. This shall not prevent an applicant from building a dwelling unit of less than three bedrooms and counting it as a full dwelling unit for density purposes, in which case no deed restriction shall be required and future expansion of the dwelling or dwelling unit shall be permitted.

C. Road and lot configuration and frontage.

(1) Roads shall be designed based upon the conservation analysis to maximize preservation of important natural features on the property, including but not limited to watercourses, wetlands, steep slopes, large trees, scenic views, agricultural fields, unfragmented forest land, and stone walls.

(2) Roads shall follow the contour of the land insofar as practical and minimize cutting and filling.

(3) Road access to lots shall be from interior roads rather than existing public roads to the extent practical.

(4) There shall be no minimum road frontage requirement for lots fronting on newly constructed interior roads, provided that the Fire Department determines that adequate access will be provided to the building site on the lot. To the extent that this subsection may be inconsistent with Town Law § 280-a, the Town Board hereby declares its intention to supersede § 280-a pursuant to § 10 of the Municipal Home Rule Law.

(5) The minimum road frontage for lots fronting on existing roads shall be 300 feet, unless the Planning Board determines after review of the conservation analysis, and based upon the conservation findings, that a lesser road frontage would be consistent with the purpose of open space development as stated in § 220-20. In no case shall the minimum road frontage be less than 150 feet. These minimum road frontage requirements shall apply only to lots obtaining access from their frontage on an existing road.

(6) Lots shall be arranged in a manner that protects land of conservation value, as determined by the conservation findings, and that facilitates pedestrian and bicycle circulation both internally and through interconnections with adjoining land. The lot layout shall be designed with consideration of the Rural Design Guidelines and Hamlet Design Guidelines published by the New York Planning Federation in 1994, adapted as necessary to conform to the requirements of this chapter. Requirements of the Subdivision Regulations Editor's Note: See Ch. 188, Subdivision of Land. concerning the shape or geometry of lots may be waived by the Planning Board as necessary to comply with this subsection.

(7) To the extent practical, roads shall be laid out in manner that facilitates interconnection with adjoining parcels, consistent with the policies in the Town of Gardiner's Comprehensive Plan.

D. Types of residential development.

(1) The allowable residential units may be developed as single-family or two-family dwellings.

(2) Multifamily dwellings shall be permitted if allowed in the zoning district in which the land is located, provided that applicable special permit requirements, if any, are satisfied. Multifamily dwellings shall be designed taking into consideration the Building Form Guidelines published by the New York Planning Federation in 1994, adapted as necessary to conform to the requirements of this chapter.

(3) If multifamily dwellings are not permitted in the zoning district, such dwellings may be allowed by special permit granted by the Town Board, provided that they are designed in the form of traditional rural clustered farmsteads, composed of extended farmhouses, barns or barn-like structures, garage apartments, and accessory structures that are designed using traditional architectural forms historically found in Gardiner before 1900.

(4) The subdivision and special permit/site plan reviews shall occur concurrently in one proceeding to the extent practical.

E. Dimensional regulations.

(1) Minimum lot area: The minimum lot area shall be as provided in § 220-11D. A lot with all or a portion of its septic system or well located within a preserved open space area shall not be considered a lot with an individual well or septic system for purposes of this subsection.

(2) Constrained land may be included in individual lots and counted toward lot area, provided that it is protected from development.

(3) For lots that have either central water systems or central sewer systems (but not both), or that have their septic system and/or well located within a preserved open space area, the minimum lot size shall be established by the Planning Board based upon site-specific soil and hydrological conditions and the approval of the Ulster County Board of Health.

(4) Setbacks. Appropriate minimum setbacks in an open space development depend upon the lot sizes, the type of road frontage (state, county, Town, or private) and the character of the subdivision (hamlet, suburban, or rural). Accordingly, the applicant shall propose, and the Planning Board shall approve, setback (or build-to line) requirements at the time of plat approval. These setback requirements shall be shown in a chart on the

plat. New structures in an open space development shall be set back a minimum of 300 feet from existing dwellings on lots that are not part of the open space development, unless the Planning Board finds that site conditions, lot configurations, or the conservation analysis make this requirement infeasible or inconsistent with the purposes of open space development.

F. Impervious surface coverage. The amount of pavement and building coverage is a major factor in determining the impact of a development. Therefore, limiting impervious surface coverage, as defined in § 220-74, is critical in maintaining environmental integrity.

(1) The maximum impervious surface coverage in an open space development shall be 12%, except in the SP District, where it shall be 6%. This applies to the entire area to be developed, including open space areas.

(2) Individual lots may have higher impervious surface coverage, as long as the total impervious surface coverage for the development is within the limits prescribed in Subsection F(1) above.

(3) Open space subdivision plats shall show the impervious surface coverage limit for each building lot on a table in order to establish compliance with this Subsection F. Such plats may limit impervious surfaces, other than driveways, to specified building envelopes shown on the plat.

G. Minimum preserved open space. One of the major purposes of an open space development is to preserve open space. To achieve this purpose, the following minimum requirements apply.

(1) All open space development shall preserve at least 50% of the land, based upon the conservation findings, unless a density bonus has been granted as provided in Subsection B(3) above, in which case additional open space shall be preserved as required to achieve the density bonus.

(2) In the SP District, at least 80% of the land shall be preserved as open space.

(3) All open space shall be preserved following the requirements described in § 220-21 below.

(4) Preserved open space may include constrained land. It may be contained in a separate open space lot or be included as a portion of one or more lots, provided that its ownership is not fragmented in a manner that compromises its conservation value.

(5) The required open space land to be preserved may not include private yards within 50 feet of a principal structure.

(6) Preserved open space land may be owned by any one of the following, as long as it is protected from development by a conservation easement:

(a) Homeowners' association.

(b) Private landowner(s).

(c) Nonprofit organization.

(d) Town of Gardiner or another governmental entity, as provided in § 220-21.

H. Partial open space development. In order to encourage small subdivisions to follow open space development principles, there is no minimum tract size or number of lots required for an open space development. A two-lot subdivision can be an open space development if the application complies with limitations on the permitted number of dwelling units and preservation requirements in Subsections A and G. In the case of a subdivision of a portion of a larger parcel, the Planning Board may require an applicant to show a sketch of an ultimate plan of subdivision of the property unless the applicant agrees to restrict the remainder of the property as permanent open space.

I. Accessory uses. In order to encourage co-housing, senior citizen communities, and other innovative forms of residential development, residential and nonresidential accessory uses may be combined in an open space development, provided that the applicant complies with limitations on the number of permitted dwelling units, and all maximum impervious surface and minimum open space requirements. Permitted nonresidential uses that may be included in an open space development include:

(1) Common buildings for dining, recreation, and for entertaining and lodging guests of the residents.

(2) Child-care facilities for residents of the development as well as those outside the development.

(3) Office space for use by administrators of the development as well as for use by residents of the development in the conduct of their own businesses, provided that such offices do not occupy more than 10% of the total floor area of the development.

(4) Storage facilities, which may be used for the needs of the development and the personal needs of its residents.

(5) Recreational facilities for use by residents and their guests.

J. Qualified experts. The Planning Board may retain the services of qualified experts, including but not limited to landscape architects, ecologists, DEC-certified professional foresters, arborists, hydrologists, engineers, architects, as well as the Town of Gardiner Environmental Conservation Commission (ECC) as necessary to adequately review a conservation analysis and proposed open space development plan, and may charge the applicant for the reasonable costs of review by such experts. The level of required professional qualification of the experts shall be determined by the Planning Board and shall be commensurate with the scale and impact of the proposed development and the characteristics and environmental sensitivity of the site.

K. Recreation land or fee. In applying the provisions of § 188-22A of the Town Code pertaining to parks and open space, the Planning Board shall apply the standards in § 277(4) of the Town Law to determine whether or not the preserved open space land in an open space development qualifies as the parkland required under § 277(4) for playgrounds or other recreational purposes within the Town. In the event that the Planning Board finds that the proposed development will generate demand for playgrounds or other recreational facilities which will not be satisfied by the preserved open space in the proposed development plan, the Planning Board shall require the payment of money in lieu of land pursuant to § 188-22A(3) of the Town Code.

§ 220-21. Permanent open space.

Open space set aside in an open space development shall be permanently preserved as required by this section. Land set aside as permanent open space may be, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that it forms one or more coherent blocks of contiguous land with conservation value, that a conservation easement is placed on such land pursuant to Subsection C below, and that the Planning Board approves such configuration of the open space as part of its approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land.

A. Conservation value of open space. The open space protected pursuant to this section shall have conservation value, based upon the conservation findings of the Planning Board, made pursuant to § 220-20A(8).

B. Notations on plat or site plan.

(1) Preserved open space land shall be clearly delineated and labeled on the final subdivision plat or site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of other lots in the subdivision to such land.

(2) The plat or site plan shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a note referencing deed recording information of any conservation easements or other title restrictions required to be filed to implement such restrictions.

C. Permanent preservation by conservation easement.

(1) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation, protection of natural resources, or similar conservation purposes, pursuant to § 247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Planning Board.

(2) Such conservation easement shall be approved by the Planning Board and shall be required as a condition of subdivision plat approval.

(3) The Planning Board shall require that the conservation easement be enforceable by the Town of Gardiner if the Town is not the holder of the conservation easement.

(4) The conservation easement shall be recorded in the County Clerk's office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk's office.

(5) The conservation easement shall prohibit residential, industrial, or commercial use of preserved open space land (except in connection with agriculture, forestry, and recreation) and shall not be amendable to permit such use.

(6) Access roads, driveways, local utility distribution lines, low-impact recreation (as defined herein), wells, septic systems and other subsurface sewage treatment facilities, and agricultural structures shall be permitted on preserved open space land, provided that the Planning Board determines that they do not impair the conservation value of the land.

(7) Forestry shall be permitted on preserved open space land only if conducted under a plan prepared by a certified professional forester and approved by the Planning Board.

(8) Dwellings and other allowable structures may be constructed on portions of parcels that include preserved open space land, but not within the area protected by the conservation easement.

D. Ownership of open space land.

(1) Open space land may be owned in common by a homeowners' association (HOA), dedicated to the Town, county, or state government, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value. The ownership entity and structure shall be selected based upon the conservation analysis and management objectives established by the Planning Board for the protected open space.

(2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(a) The HOA shall be set up before the final subdivision plat is approved and shall comply with all applicable provisions of the General Business Law.

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

(c) The open space restrictions shall be in perpetuity.

(d) The HOA shall be responsible for liability insurance, property taxes, stewardship of the land, and the maintenance of recreational and other facilities and private roads.

(e) Property owners shall pay their pro-rata share of the costs in Subsection D(2)(d) above, and the assessment levied by the HOA shall be able to become a lien on the property.

(f) The HOA shall be able to adjust the assessment as needs change.

(g) The applicant shall be required to make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer shall be irrevocable and may be accepted by the Town, at the discretion of the Town Board, only upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes. This subsection shall not prevent the applicant or HOA from voluntarily offering the open space for dedication to the Town at any time.

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

(i) The attorney for the reviewing board shall find that the HOA documents satisfy the conditions in Subsection D(2)(a) through (h) above and such other conditions as the Planning Board deems necessary.

E. Maintenance standards.

(1) Ongoing maintenance standards shall be established, enforceable by the Town against an owner of open space land as a condition of subdivision approval, to ensure that the open space land is not used for any purpose or structure prohibited by the conservation easement or for the storage or dumping of refuse, junk, or other offensive or hazardous materials.

(2) If the Town Board finds that the provisions of Subsection E(1) above are being violated, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

F. Easement donations prior to land development. A landowner who grants a conservation easement voluntarily prior to submitting an application for development may count the unconstrained land preserved by such conservation easement toward the permissible number of dwelling units using the formula in § 220-20B(1), applying the development loss factor of 0.85. Such conservation easement shall then be counted toward the requirement for permanent open space preservation required by §§ 220-20 and 220-21, provided that the following conditions are satisfied:

(1) The applicant submits a conservation analysis demonstrating to the Planning Board that the land preserved by conservation easement has conservation value, and the Planning Board makes conservation findings to that effect.

(2) The conservation easement satisfies all of the criteria for conservation easements contained in Subsection C.

(3) The conservation easement explicitly provides that the protected land may be counted for purposes of calculating the allowable number of dwelling units on land not covered by the conservation easement.

§ 220-22. Density transfer (transfer of development rights).

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

A. Procedure.

(1) All density transfers require a special permit from the Planning Board.

(2) The special permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.

(3) The special permit application shall show a proposed development plan for the receiving parcel (subdivision and/or site plan) as well as calculations of the permitted number of dwelling units for both the sending and receiving parcels, prepared according to the provisions of § 220-20B. The density calculation for the sending parcel shall be based upon only the base maximum density allowed for open space developments and shall not include any of the density bonuses available under § 220-20C.

(4) In reviewing an application for density transfer, the Planning Board shall first determine the number of allowable dwelling units permitted on the receiving parcel using all of the relevant standards in § 220-20B (or the lot size and dimensional standards for the HM or HR District if the receiving parcel is located in one of those districts.) The Planning Board shall then determine the number of dwelling units available to transfer from the sending parcel(s) pursuant to § 220-20B.

(5) The Planning Board may then grant a special permit allowing the transfer to the receiving parcel of some or all of the allowable dwelling units from the sending parcel(s). In order to accommodate the additional number of units on the receiving parcel, the Planning Board may waive one or more of the dimensional requirements applicable in the zoning district of the receiving parcel and may allow smaller lot sizes in the HM or HR District as provided in § 220-11D.

(6) As a condition of approval of the density transfer, a conservation easement on the sending parcel(s)

satisfying the requirements of § 220-21 shall be executed and recorded in the County Clerk's office, reducing the number of dwelling units allowed to be constructed on the sending parcel(s) by the number of dwelling units transferred. In addition, the conservation easement shall require that an area of land of conservation value be permanently restricted which is equal to the number of units transferred times the maximum density for open space developments in the zoning district. (For example, if five units are transferred and the maximum density for an open space development in the sending district is one unit per four acres, at least 20 acres of the sending parcel would have to be permanently restricted.) The owner of a sending parcel may retain the right to construct one or more dwelling units on the sending parcel, provided that the owner has not transferred all development rights on the sending parcel and that the dwelling units are not built on the portion of the parcel protected by the conservation easement.

B. Findings required. The Planning Board shall not approve any residential density transfer unless it finds that:

(1) All requirements for the granting of a special permit have been satisfied.

(2) If the receiving parcel is in the RA District, the addition of the transfer units to the receiving parcel will not increase the maximum allowable dwelling units under § 220-20B by more than 50%, and will not adversely affect the area surrounding the receiving parcel.

(3) The density transfer will benefit the Town by protecting developable land with conservation value on the sending parcel(s).

(4) The density transfer will be consistent with the Comprehensive Plan.

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

§ 220-23. Standards for flag (rear) lots.

Flag lots, also known as "rear lots," are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, such lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new Town roads. The RA District is hereby declared an open development area under § 280-a, Subdivision 4, of the Town Law. Building permits in this open development area may be issued for structures on lots that have no public or private road frontage and gain access by right-of-way easement over other lands, under the conditions contained in this section. Rear lots with or without access strips running to public or private roads may be created where they will not endanger public health and safety and will help preserve natural, historic, and scenic resources. The following requirements apply to rear lots:

A. Each rear lot shall have either a minimum frontage of 25 feet on an improved public or private road and an access strip as defined in this chapter, or a deeded right-of-way easement over other lands providing legally adequate and physically practical access to a public or private road.

B. Minimum lot sizes for rear lots shall be 10 acres. The area of the access strip shall not be counted in the calculation of minimum lot size.

C. Except as indicated in Subsection B above, rear lots shall meet all other dimensional requirements for a conventional subdivision lot in the applicable district. Minimum lot width shall be the same dimension as the minimum required road frontage. The minimum setbacks shall be 50 feet from all property lines.

D. There shall be no more than three adjoining access strips, which shall share one common driveway. The common driveway shall be subject to a recorded maintenance agreement approved by the Planning Board as provided in § 220-43C. No more than three lots may be served by a common driveway.

E. All rear lots shall have safe access for fire, police, and emergency vehicles.

F. The proposed rear lots shall not result in degradation of important natural resource and landscape features, including but not limited to ponds, streams, steep slopes, ridgelines, and wetlands.

G. When necessary to satisfy the criteria in Subsection F above, the Planning Board may require the applicant to grant a conservation easement or restrictive covenant enforceable by the Town that designates where the house, driveway, and utilities may be constructed on the rear lot, and requires preservation of the remainder of

the lot as open space.

§ 220-24. Standards for small-scale development.

A. Small-scale development is any development of land in the RA District that results in the creation of no more than two new residential lots (excluding the parent parcel from which they are subdivided), subject to the following standards.

(1) For parcels that are greater than 15 acres, the two new lots shall consume no more than 25% of the land area of a parcel.

(2) For parcels of 15 acres or less, the two new lots may consume more than 25% of the land area of a parcel. However, the parcel may not be further subdivided beyond the total of three lots created through this process. This restriction on future subdivision shall be noted on the approved subdivision plat.

(3) Any approved small-scale subdivision plat on a parcel greater than 15 acres shall contain a note stating that no more than two new lots may be created by small-scale development and that future subdivision beyond these two lots will be subject to the requirements in Subsection D below.

(4) All new lots created under this § 220-24 shall comply with Subsection C below.

(5) For purposes of this § 220-24, the determination of parcel size shall be based on the parcel as it existed on January 1, 2008.

B. Any lot in the RA District which was legally created and existed as of March 14, 2008, may be built upon as provided in Subsection C below. If such lot does not meet the standards in Subsection C, it shall be subject to the provisions of § 220-28, Existing nonconforming lots.

C. The dimensional regulations for small-scale development lots are as follows where a subsurface septic system is permitted. All dimensions are in feet, unless otherwise indicated:

Small-Scale Development Dimensional Table

Minimum lot size	2 acres
Minimum road frontage (feet):	
Town road	150
County/State road	200
Minimum front yard setback (feet):	
Town road	30
County/State road	50
Minimum side yard setback (feet)	30
Minimum rear yard setback (feet)	50
Maximum impervious surface coverage	10%
Maximum height	35

D. If more than two residential lots are proposed for subdivision from the parent parcel at any time on a parcel greater than 15 acres, the application for a third subdivided lot (the fourth lot including the parent parcel) shall require a conservation analysis and the application shall be treated as an application for open space development under the provisions of § 220-20. Such application shall take account of the two lots previously subdivided as if they were part of the new application and such lots shall count toward the total permitted number of dwelling units on the parcel, and their area shall be counted in determining the required amount of open space to be preserved.

E. Development of two or fewer new lots may also take the form of open space development, flag lot

development, or limited development subdivision at the landowner's option, in which case this § 220-24 shall not apply.

§ 220-25. (Reserved)

§ 220-26. (Reserved)

ARTICLE VI. Nonconforming Uses, Structures, and Lots

§ 220-27. Nonconforming uses and structures.

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

(1) A sign which is nonconforming under this chapter or under any previous ordinance or chapter shall be subject to the provisions of § 220-39D(6).

(2) Outdoor storage areas shall be required to comply with § 220-51.

(3) All nonconforming uses shall be required to comply with the requirements of the AQO District that pertain to the management of solid waste and hazardous substances.

B. Discontinuance. If a nonconforming use of land or structures is discontinued for a period of one year, it shall not thereafter be reestablished except as provided in Subsection C, and any future use shall be in conformity with this chapter.

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

D. Restoration, expansion, and repair. A nonconforming use or structure shall not be extended, enlarged, or structurally altered except as provided below. The extension of a conforming use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming structure or use.

(1) A nonconforming structure or use may be rebuilt in the event of its total or partial destruction, to occupy the same or a lesser amount of footprint, but may not exceed the original height of the totally or partially destroyed structure. Such rebuilding shall require site plan review by the Planning Board.

(2) A nonconforming use or structure may be repaired or restored to a safe condition.

E. Change of nonconforming use. A nonconforming use of a structure or parcel of land may, upon issuance of a special permit by the Planning Board, be changed to another nonconforming use which is of the same or lesser impact, except that no use prohibited by § 220-10C shall be permitted under any circumstances. No structure in which a nonconforming use has been changed to a use of lesser impact shall again be devoted to a nonconforming use with greater impact. In determining whether a use is of greater or lesser impact, the Planning Board shall consider the impact criteria listed in § 220-63.

F. Special permit uses. Any preexisting legal use which is allowable by special permit under this chapter, but which has not been issued a special permit, shall be considered a permitted use. The expansion of such a use, other than a single-family or two-family residence, shall require site plan approval.

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

§ 220-28. Existing nonconforming lots.

A. Any lot of record created prior to September 1, 2007, which does not comply with the area, density, or dimensional requirements of this chapter shall be deemed to comply with such requirements, and no variance shall be required for its development or for any addition to or other alteration of a structure, provided that the following conditions are satisfied:

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

(a) Lot area: 8,000 square feet.

(b) Front setback: not less than 10 feet from the road right-of-way.

(c) Side setback: 20% of lot width but not less than eight feet per side.

(d) Rear setback: 15% of lot depth but not less than 20 feet.

(2) All Health Department regulations are satisfied.

(3) Any residential use of such a nonconforming lot shall be limited to one single-family dwelling. On nonconforming lots of two acres or more, two-family dwellings shall be permitted with site plan approval by the Planning Board. Nonresidential uses of nonconforming lots shall be those permitted in the zoning district in which the lot is located, subject to the applicable review requirements of that district.

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

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

§ 220-29. Approvals under prior authority.

Site plan approvals, special permits, and building permits granted under prior authority, including all conditions attached to such approvals and permits, shall have full force and effect, except that any amendments to such approvals or permits shall comply with this chapter.

ARTICLE VII. Supplementary Regulations

§ 220-30. Supplementary dimensional regulations.

A. Wetlands in lot area calculations. In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from total acreage in the lot area calculation for lots newly created after the effective date of this chapter, except that in conventional subdivisions in the RA District, a maximum of 25% of the minimum lot area may consist of wetlands.

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

C. Projections into required yards.

(1) The following projections into required yards shall be permitted:

(a) Steps and stairs: four feet into required side or rear setback area.

(b) Awnings or movable canopies: six feet into any required setback area.

(c) Cornices, eaves, and other similar architectural features: three feet into any required setback area.

(2) Carport. An open or enclosed carport shall be considered a part of the building in determining compliance with setback requirements.

(3) Porch. An open or screened porch may project eight feet into a front setback area.

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

E. Height exceptions.

(1) The height limitations in the Dimensional Table shall not apply to any flagpole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet, or railing, water tank, or any similar nonhabitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than 10% of the roof area.

(2) Barns, silos, solar energy systems, and wind energy conversion systems may exceed height limits in the Dimensional Table, provided that they comply with applicable sections of this Article VII, and provided that for every one foot by which such structures exceed the height limit, the minimum setback requirements are increased by one foot. The requirements of this subsection do not apply to exempt agricultural structures under § 220-37C.

(3) Height limits for wireless telecommunication facilities are contained in § 220-46.

(4) This Subsection E shall not be construed to permit any structure that is not allowed elsewhere in this chapter.

F. Setbacks for accessory structures and uses.

(1) Any accessory structure attached to a principal building, and any detached barn, garage, stable, tennis court, or swimming pool, shall comply with the minimum setback requirements of this chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas, provided that they:

(a) Are not used for human habitation;

(b) Have a footprint no larger than 200 square feet;

(c) Do not exceed 16 feet in height;

(d) Do not occupy more than 10% of a rear setback area;

(e) Are set back at least 10 feet from side or rear lot lines;

(f) Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, bus shelters, and similar roadside structures with less than 100 square feet of footprint, as well as ornamental structures such as entry pillars and statues;

(g) Are not used for housing animals.

(2) For corner lots, the setback from all streets shall be the same for accessory structures as for principal buildings.

(3) For watercourse setbacks, see § 220-35E.

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

H. Fences (including hedges) and walls.

(1) The setback requirements of this chapter shall not apply to retaining walls of any height or to fences less than six feet high in any side or rear yard, except where corner clearances are required for traffic safety.

(2) The setback requirements of this chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher.

I. Corner clearance/visibility at intersections. Where necessary to provide visibility for traffic safety, the Highway Superintendent or the Planning Board may require all or a portion of any corner lot in the RA, CLI or HC District to be cleared of all growth (except isolated trees) and other obstructions that block visibility of traffic on an intersecting street. The Planning Board may require excavation to achieve visibility. This provision shall not apply to intersections with traffic signals or four-way stop signs.

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

§ 220-31. Rural siting principles.

The following nonbinding guidelines shall be considered in the siting of nonresidential uses that are subject to site plan or special permit approval and to the siting of residences in new subdivisions or other developments. They are also recommended for the siting of individual residences on existing lots.

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

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

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

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

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

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

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

H. Minimize land disturbance generally. Whenever development is undertaken, removal of vegetation, grading, and operation and storage of heavy equipment should only occur where necessary for the proposed development. Special attention should be given to preserving the root systems of existing trees by avoiding soil compaction within their drip lines.

§ 220-32. (Reserved)

§ 220-33. Water supply and municipal infrastructure.

A. Water supply. The Planning Board may require an applicant for any subdivision, special permit, or site plan approval to provide evidence of water availability, and may require test wells and professional hydrological studies sufficient to establish that a proposed development will have adequate supplies of potable water and will not adversely affect any aquifer resource or the supply or quality of drinking water in the surrounding area. (See § 220-15.)

B. Municipal infrastructure requirements. It is the policy of the Town of Gardiner to concentrate development in clustered settlements that are served by municipally owned water and sewer facilities. In order to achieve this pattern at the densities permitted by the Zoning Law, the Planning Board shall, where appropriate, recommend connection to and/or formation of municipal sewer and water districts, and applicants shall work with the Town Board to establish such sewer and water districts. To the extent feasible, such facilities shall be interconnected in a manner that provides maximum efficiency in the overall system. Privately owned sewage disposal facilities serving multiple owners shall not be permitted. The Town Board shall make best efforts to implement this policy by cooperating in the formation of such districts, and shall not unreasonably withhold approval or fail to act to create such districts where such districts are consistent with the Comprehensive Plan and this Zoning Law.

§ 220-34. Excavation, grading, and clearcutting.

A. Excavation and grading necessary for the construction of a structure for which a building permit has been

issued shall be permitted, provided that it does not adversely affect water quality, natural drainage, or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety.

B. In the event that construction of a structure is stopped prior to completion and the building permit expires, the premises shall be promptly cleared of any rubbish or building materials by the property owner, and any open excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced, or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

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

D. For regulation of soil mining, see § 220-17 of this chapter.

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

F. Excavation or grading of any area exceeding 2,000 square feet and/or clearcutting of any area exceeding three acres shall require a zoning permit from the Building Inspector, unless such excavation or clearcutting is performed pursuant to an approved site plan, special permit, subdivision, or building permit, or as a normal and customary activity in conjunction with commercial logging or a farm operation (as defined in Article XII).

G. Excavation, grading, and timber harvesting shall comply with applicable requirements for erosion and sediment control.

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

§ 220-35. Wetland and watercourse protection.

The Town finds that protection of its wetlands and watercourses helps to maintain water quality and the health of natural ecosystems, reduces flooding, erosion, and sedimentation, and protects important wildlife habitat areas. The Town also recognizes that both the state and federal governments regulate wetlands, and desires to avoid duplicating regulatory programs while cooperating with state and federal agencies. To ensure that development minimizes damage to wetlands and watercourses, the Town establishes the requirements in this section. In addition to these requirements, within the area regulated by the Shawangunk Kill Recreational River Standards, the more stringent standards shall apply.

A. State and federal wetland permit coordination. All applicants for any Town permit or approval that might result in disturbance to a wetland or watercourse shall submit copies to the Town of any application to or correspondence with U.S. Army Corps of Engineers (ACOE) and the New York State Department of Environmental Conservation (DEC) concerning required wetland permits for the project.

B. Required watercourse and wetland mapping and delineation. Any site plan, plot plan, building permit or zoning permit application, variance application, subdivision plat, preliminary subdivision plat, or other plan submitted to a Town regulatory board or official shall show the location and stream classification of all watercourses and the location of any DEC-regulated wetlands and wetland buffers on the parcel, as determined by a DEC field delineation, if available, or from current DEC wetland maps. If the proposal requires that a wetland delineation be performed for the ACOE, the applicant shall submit a copy of such delineation to the reviewing board or official. If no delineation is submitted and the reviewing board or official has reason to believe that the proposal would involve disturbance to wetlands, the applicant may be required either to submit a wetland delineation or to obtain a certification from a qualified wetlands expert acceptable to the Planning Board, that there are no wetlands within the area proposed to be disturbed. A wetland delineation may also be required if necessary to determine allowable maximum density for an open space development pursuant to § 220-20.

C. Imposition of conditions to protect wetlands and watercourses. The reviewing board or official shall ensure

that applicants comply with the requirements of DEC and ACOE, and shall impose appropriate conditions to minimize damage to wetlands and watercourses. Such conditions may include modifications in the size and scope of a proposed project, as well as changes in the location of structures or other improvements on the parcel.

D. Regulations to protect streams. Within 150 feet of the top of the bank of any stream classified as AA, A, B or C(t) by the DEC, the Planning Board shall ensure that any development subject to its approval:

(1) Will not result in erosion or stream pollution from surface or subsurface runoff. In making such determination, the Planning Board shall consider slopes, vegetation, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors;

(2) Will not result in impervious surface coverage exceeding 2% of the regulated area (i.e., the land lying within 150 of the stream bank);

(3) Will provide an adequate vegetated buffer along the stream to prevent adverse impacts on the stream; and

(4) Will maintain existing tree canopy over the stream and the stream bank.

E. Required setbacks.

(1) The following shall not be located within 100 feet of the top of the bank of a stream classified as AA, A, B or C(t) by the DEC or, in the absence of a clear bank, from the outer edge of the riparian wetland adjacent to the stream:

(a) Principal and accessory structures 200 square feet or larger in footprint area.

(b) Septic systems, leach fields, and wells.

(c) Driveways, roads, and parking lots, except as otherwise provided in Subsection E(3) below.

(d) Excavation and fill areas.

(e) Herbicide and fertilizer applications.

(f) Storage of chemicals.

(g) Vegetation removal, except as necessary to allow hiking trails and structures permitted by Subsection E(2).

(2) These setbacks shall not apply to docks, piers, bridges, and other water-related structures which by their nature must be located on, adjacent to, or over the watercourse, or to access driveways or roads associated with such structures.

(3) The Planning Board may reduce these setbacks in the course of its approval process if it finds that topographic conditions and/or project design features will adequately protect stream water quality.

§ 220-36. Steep slope regulations.

The Town finds that the alteration of steep slope areas poses potential risks of erosion, sedimentation, landslides, and the degradation of scenic views. Accordingly, the following requirements are hereby imposed in areas with slopes exceeding 15%. Within the SP District, the provisions of § 220-16 shall supersede this § 220-36.

A. For any subdivision, special permit, site plan, building permit, zoning permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:

(1) Adequate erosion control and drainage measures will be in place so that erosion and sedimentation does not occur during or after construction.

(2) Cutting of trees, shrubs, and other natural vegetation will be minimized, except in conjunction with logging operations performed pursuant to applicable guidelines of the New York State Department of Environmental Conservation.

(3) Safety hazards will not be created due to excessive road or driveway grades or due to potential

subsidence, road washouts, landslides, flooding, or avalanches.

(4) Proper engineering review of plans and construction activities will be conducted by the Town to ensure compliance with this section, paid for by escrow deposits paid by the applicant.

(5) No certificate of occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

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

C. For purposes of determining the location of steep slope areas, only contiguous slopes containing at least 5,000 square feet of steep slopes, as defined above, shall be considered.

§ 220-37. Protection of agriculture.

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

B. Keeping livestock as an accessory use. Subsection A above shall not apply where farm animals are kept on residential properties as an accessory use and are not part of a farm operation. See § 220-49.

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

(1) There shall be no height, building footprint, or impervious surface coverage limits on agricultural structures, including but not limited to barns, silos, grain bins, wind energy conversion systems, and fences, as well as equipment related to such structures, as long as they are being used in a manner that is part of the farm operation.

(2) There shall be no lot line setback restrictions on agricultural structures, except setbacks from lots that are either not within the agricultural district or lots that have existing residential uses. Agricultural structures containing animals, animal feed, or animal waste shall be set back at least 200 feet from watercourses and 100 feet from lots that have existing residential uses, whether or not such residential lots are within an agricultural district. This setback requirement shall not apply to preexisting nonconforming structures.

(3) Agricultural structures and practices shall not require site plan review or special permit approvals, except that agricultural structures with a footprint greater than 20,000 square feet or exceeding 35 feet in height shall require minor project site plan approval pursuant to § 220-67.

(4) Soil mining which does not require a permit from the New York State Department of Environmental Conservation shall be permitted by right, subject to a zoning permit from the Building Inspector.

D. Agricultural data statement. Any application for a special permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the Town Board, Planning Board, or Zoning Board of Appeals that would occur on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in § 220-74. The reviewing board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

§ 220-38. Off-street parking and loading.

A. Off-street parking.

(1) Purpose. The Town finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots damage the historic layout and architectural fabric of hamlet areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However,

the Town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The Town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking, and to avoid the negative impacts of excessive parking lot construction.

(2) Minimum parking required for residential uses.

(a) For a single-family or two-family dwelling: two spaces per dwelling unit.

(b) For a multifamily dwelling: 1.5 spaces per dwelling unit.

(c) These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed-use development, or other appropriate circumstances if the Planning Board determines that such reductions are warranted.

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

(a) Provisional parking standards.

[1] Retail or service business uses: three spaces per 1,000 square feet of enclosed floor space, excluding space used for storage.

[2] Industrial/Warehouse uses: two spaces per 1,000 square feet of enclosed floor space or one space per employee.

[3] Office uses: three spaces per 1,000 square feet of floor space.

[4] Lodging facility: one space for each bedroom plus one space for each nonresident employee and one space for every 200 square feet of floor space for meetings and functions.

[5] Restaurants, theaters, and other places of public assembly: one space for every three seats.

[6] Uses not listed above: as appropriate to the circumstances.

(b) Criteria for applying provisional standards. In applying or modifying the provisional parking standards for any proposed use, the Planning Board shall consider:

[1] The maximum number of vehicles that would actually be parked at the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking, bicycling, or carpooling to the proposed use shall be taken into consideration.

[2] The size of the structure(s) and the site.

[3] The environmental, scenic, or historic sensitivity of the site (including applicable limitations on impervious surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning Board may require a reduction in the size of the structure so that the available parking will be sufficient.

[4] The availability of safely usable on-street parking.

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

[6] The requirements for parking for the disabled as prescribed by the Americans with Disabilities Act.

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

(d) Parking lot as accessory use to residential dwelling. Parking spaces may be made available for nonresidential uses on residential lots in the HM District by special permit. Such spaces shall be screened from adjoining properties and roads, and shall not exceed five spaces per lot.

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

(4) Design, layout, and construction of parking areas for nonresidential and multifamily residential uses.

(a) Location and screening.

[1] All off-street parking shall be located behind or to the side of the principal building, except as provided in § 220-10H(2) for land within the CLI District.

[2] Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.

[3] Parking lot layouts in the HM and HR Districts shall follow the Hamlet Design Guidelines cited in § 220-5.

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

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

(d) Lighting. Lighting within parking lots shall comply with § 220-40L.

(e) Nonconforming parking lots shall be brought into conformity with this Subsection A(4) to the extent practical whenever a site plan or special permit application is filed for an expansion or change of the use.

B. Off-street loading.

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

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

loading shall be permitted.

§ 220-39. Signs.

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

(1) Protect public health and safety by ensuring that signs do not create dangerous conditions, obstruct vision necessary for traffic safety, or confuse, distract, or mislead motorists, bicyclists, or pedestrians; and

(2) Promote the general welfare by creating a more attractive visual environment that preserves the Town's historic and rural character, protects property values, encourages economic growth, enables businesses and other establishments to identify themselves, and minimizes negative impacts of signs on adjoining properties.

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

(1) Permanent signs.

(a) Signs not exceeding one square foot in area and bearing only property numbers, postal route box numbers, or names of occupants of premises.

(b) One sign, not exceeding 32 square feet in area, designating a farm.

(c) Flags and insignia of any government, except when displayed in connection with commercial promotion.

(d) Noncommercial information signs. Signs providing noncommercial information to the public, including community service information signs, public utility information signs, safety signs, danger signs, "no trespassing" signs, signs indicating scenic or historic points of interest, traffic control signs, directional parking signs, and all signs erected by a public officer in the performance of a public duty.

(e) One on-premises sign, either freestanding or attached, in connection with any residential building, for permitted home occupations, not exceeding three square feet and set back at least 10 feet from the traveled way or at the right-of-way, whichever is greater. Such signs shall state name and occupation only and shall not be illuminated.

(2) Temporary signs.

(a) Temporary nonilluminated "For Sale" or "For Rent" real estate signs and signs of similar nature, concerning the premises upon which the sign is located; for residential uses, one sign per lot, not exceeding six square feet per side; for nonresidential uses, one sign per lot, not exceeding 12 square feet, set back at least 15 feet from all property lines. All such signs shall be removed within three days after closing of the sale, lease, or rental of the premises. If a lot fronts on two roads, one sign shall be permitted along each frontage.

(b) Temporary nonilluminated window signs and posters not exceeding 25% of each window surface. (Such signs are normally used to advertise specific products or sales and are removed or replaced on a regular basis.)

(c) Two temporary signs for a roadside stand selling agricultural produce grown on the premises in season, provided that such signs do not exceed 32 square feet each, are set back at least five feet from the public right-of-way, and are removed at the end of the selling season.

(d) On-premises signs and off-premises directional signs for garage sales and auctions, not exceeding four square feet, for a period not exceeding seven days.

(e) Posters, banners, and signs, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, for a period not exceeding 60 days.

(f) Two signs, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses,

listing the architect, engineer, contractor and/or owner, on premises where construction, renovation, or repair is in progress, limited to the duration of the construction period.

(g) Signs, portable or otherwise, advertising special events for nonprofit organizations, such as firemen's field days, church bazaars, bake sales, etc. Such signs shall not exceed 24 square feet in area and shall not be displayed for more than 30 days.

(h) Signs required to be posted in connection with hearings on development applications, as provided in § 220-62F(3).

(i) Signs marking areas of highway or utility construction, repair, or maintenance.

(j) Sandwich signs not exceeding four square feet on a side for a period not exceeding seven days.

(k) A temporary sign which is regularly replaced by a similar sign in a similar location shall be deemed to be a permanent sign and subject to all sign regulations in this § 220-39.

C. Prohibited signs.

(1) No off-premises commercial signs shall be allowed, except that signs not exceeding four square feet directing the public to specific establishments may be allowed with site plan approval by the Planning Board.

(2) No exterior sign shall be illuminated internally, and no sign shall contain flashing, intermittent, rotating, or moving lights, except that one neon sign not exceeding three square feet may be allowed inside the window of a business establishment for the purpose of indicating that it is open.

(3) Portable signs that are mounted on wheels, including motor vehicles or trailers parked in one location for more than 30 days in any calendar year and functioning primarily as signs, shall be prohibited.

(4) No permanent sign or any part thereof shall contain or consist of any moving, rotating, or revolving device.

(5) No sign shall be inflatable or audible.

(6) Sandwich signs shall be prohibited, except as temporary signs as provided in Subsection B(2)(j) above.

D. General sign regulations. All signs that are not prohibited by Subsection C above are regulated by this section. Signs that are not exempt under Subsection B shall require building permits. However, if signs are proposed in connection with any special permit or site plan application, such signs shall be reviewed and approved under applicable criteria for the principal uses and shall not require a separate building permit if constructed pursuant to an approved plan.

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

(2) Location and maintenance.

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

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

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

(d) Freestanding signs shall be set into a landscaped and maintained ground area wherever possible.

(3) Sign area and height.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Maximum area per sign. Notwithstanding any provision of this section to the contrary, no sign or grouping of signs shall be greater than 100 square feet in size.

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

(a) Toward a residence;

(b) Upon a public street, highway, sidewalk, or adjacent premises in a manner that causes glare or reflection sufficient to constitute a nuisance or a traffic hazard; or

(c) Upward toward the sky.

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

(6) Nonconforming signs. Signs that do not conform with this § 220-39 and that were legally in existence prior to the adoption of this section (March 14, 2008) shall be permitted to continue for an amortization period that terminates July 1, 2012, at which time they must either be replaced by conforming signs that have valid

permits or be removed. Such signs may be altered only if the alterations increase their conformity with this section. This five-year amortization period may be extended by a temporary variance granted by the Zoning Board of Appeals, provided that the applicant demonstrates that the five-year amortization period is confiscatory as applied to the specific sign. The period of the variance shall be the minimum reasonably necessary to avoid confiscation. Signs that were not in compliance with the sign regulations of the Town of Gardiner existing prior to the enactment of this § 220-39 shall not be considered protected nonconforming structures and shall be treated as violations.

E. Removal of signs.

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

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

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

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

§ 220-40. Environmental performance standards.

A. Compliance with performance standards. No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy. This § 220-40 shall not apply to farm operations engaged in customary agricultural practices, except where necessary to protect public health and safety.

B. Purpose of performance standards. Consistent with the general purposes of this chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:

(1) Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollutants outside the building in which the use is conducted.

(2) Control noise and light perceptible beyond the boundaries of the site of the use.

(3) Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.

(4) Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.

(5) Limit physical hazard by reason of fire, explosion, radiation or any similar cause.

C. Noise.

(1) Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.

(2) No person, firm or corporation shall allow the emission of sound which, as measured at the property lines, has a sound level in excess of:

(a) Seventy decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; and

(b) Sixty decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.

(3) Sounds emitted at levels lower than those prohibited by Subsection C(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.

(4) Exemptions. The following shall be exempt from the noise level regulations:

(a) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset.

(b) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.

(c) Bells or chimes from a church or other place of worship.

D. Vibration.

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

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

Vibration Displacement

Frequency (cycles per second)	Steady-State (inches)	Impact (inches)
Under 10	0.0005	0.0010
10 to 19	0.0004	0.0008
20 to 29	0.0003	0.0006
30 to 39	0.0002	0.0004
40 and over	0.0001	0.0002

E. Smoke, dust and other atmospheric pollutants.

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

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

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

(4) Maximum permitted emission of dust.

(a) The emission of dust related to combustion for indirect heating from any source shall not exceed 0.30 pounds of dust per 1,000 pounds of flue gas adjusted to fifty-percent excess air for combustion.

(b) There shall be no measurable emission of dust or other particulate matter not related to combustion for

indirect heating.

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

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

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

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

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

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

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

L. Lighting, exterior illumination, and glare.

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

(2) Exterior lighting fixtures shall be shielded and directed downward to prevent light from shining directly onto neighboring properties or public ways or upward into the night sky. Light standards shall not exceed 20 feet in height.

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

(4) All lighting above 2,000 lumens shall be restricted to full cut luminaires.

(5) Gasoline canopy lights shall be fully recessed with an average of no more than 20 footcandles.

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

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

§ 220-41. Home occupations.

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

(1) Ensure the compatibility of home occupations with other uses;

(2) Maintain and preserve the rural and historic character of the Town; and

(3) Allow residents to engage in gainful employment on their properties while avoiding excessive noise, traffic, nuisance, fire hazard, and other possible adverse effects of nonresidential uses.

B. Criteria and standards.

(1) Home occupation as use permitted by right. Home occupations shall be permitted uses if they are in compliance with the following criteria and standards:

(a) The home occupation may be conducted only by residents of the dwelling unit plus no more than two nonresident assistants or employees at any one time. A home occupation may be conducted within a dwelling unit and/or within accessory structures. An area no larger than 50% of the floor space of the primary dwelling unit may be occupied by the home occupation, up to a maximum of 1,000 square feet.

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

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

(d) Parking shall be adequate for nonresident employees and customers or clients. No business vehicle larger than 12,000 pounds gross vehicle weight or 20 feet in box length may be parked regularly in a location visible from a public road or neighboring properties.

(e) Automobile and truck traffic generated shall not be greater than the volume of traffic that would normally be generated by a residential use.

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

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

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

(2) Home occupation by special permit.

(a) A home occupation occupying an area greater than that permitted in Subsection B(1)(a) above or employing more than two nonresident employees may be allowed by special permit, provided that it satisfies all criteria for granting of special permits as well as the criteria and standards in Subsection B(1)(a) through (h) above. Such criteria shall become standard conditions of the special permit. In no case shall the area occupied by a home occupation allowed by special permit exceed the lesser of 50% of the floor space of the primary dwelling unit or 2,000 square feet.

(b) A special permit granted for a home occupation shall include a condition requiring the operator to obtain an annual operating permit from the Building Inspector at a cost of $75 per year beginning in the second year of operation. Such operating permit shall be granted after the Building Inspector inspects the premises and finds the home occupation to be in compliance with all conditions of the special permit.

§ 220-42. Inclusionary housing.

A. Purpose and intent. In furtherance of one of the goals of the Town of Gardiner Comprehensive Plan adopted December 7, 2004, to "provide a diversity of housing types and styles to ensure housing choices for each level of income in the community," the Gardiner Town Board recognizes that people with moderate incomes who

live or work in Gardiner lack opportunity to find housing that is affordable to them within Gardiner. The Town Board further recognizes that there is a need to encourage the construction of housing units for rental or sale in the Town of Gardiner that will be affordable to moderate-income residents and/or workers and that these units must remain affordable in perpetuity for the benefit of current and future workers and residents of Gardiner. Eligibility for and occupation of these units will be administered under the authority of the Town Board by a Housing Board, or such other entity as the Town Board may designate to serve as administrator of the inclusionary housing program.

B. Definition of "inclusionary housing units." As used throughout this section, the term "inclusionary housing unit" refers to a single- or multi-family housing unit that is owned or rented by an eligible family, as defined herein, and that is priced to be affordable to moderate-income families who cannot afford market-rate housing.

C. Housing Administrator. The Town Board may establish a Housing Board to administer the inclusionary housing program and the housing units created under the program, or may contract with a not-for-profit or governmental entity or a private consultant to administer this program. The Board or other entity responsible for this program (hereinafter the "Housing Administrator") will have the following authority and responsibilities:

(1) Assistance to applicants in the preparation of and acceptance and review of applications submitted for inclusionary housing units, including adoption of rules and procedures to discharge this function.

(2) Maintenance of an eligibility priority list as well as certification of applications placed on the eligibility priority list according to the provisions herein. Priority lists will be reviewed at least annually and updated as deemed necessary.

(3) Submission of an annual report to the Town Board, documenting current housing needs indicating:

(a) Number on waiting list;

(b) Number and type of inclusionary housing vacancies; and

(c) Number of inclusionary housing units currently filled.

(4) Authority to take any other action necessary to effectuate the purpose of this section as authorized by the Town Board.

D. Inclusionary housing unit requirements.

(1) Applicants proposing to develop 10 or more dwelling units over any ten-year period, for sale or rent, on one or more contiguous parcels, are required to set aside at least 10% of all units for the inclusionary housing needs of the Town. When the number is not a whole number, it will be rounded to the nearest whole number (0.5 will be rounded up). This requirement shall not apply to the establishment or expansion of mobile home parks in the MHF District.

(2) An applicant may elect, instead of building some or all of the required inclusionary housing units on-site, to make a monetary payment to the Town of Gardiner Inclusionary Housing Fund.

(a) The amount of such payment shall be based on the difference between the minimum number of inclusionary housing units required by this section and the number actually included.

(b) The Town Board shall, by resolution, determine the applicable monetary payment, which shall be sufficient to enable the Town Board to arrange for the construction of such units in another location.

(3) All on-site inclusionary housing units shall be physically integrated into the design of the development. Inclusionary housing units shall be constructed to the same quality standards as market-rate units and include a comparable number of bedrooms. The exterior finishes of inclusionary housing units shall be indistinguishable from all other units. The developer may, however, propose different appliances and interior hardware where such substitutions would not adversely impact the livability of the unit. Appliances, lights and all components of HVAC systems shall be Energy Star compliant.

(4) All inclusionary housing units shall generally be physically distributed throughout the subdivision or development in the same proportion as other housing units. However, the inclusionary units may be included in two-family dwellings even if the remainder of the development consists of single-family dwellings.

(5) Minimum gross floor area (excluding common areas, stairways, decks, storage or hallways) per inclusionary housing dwelling unit will not be less than the following:

(a) Studio: 400 square feet.

(b) One-bedroom: 700 square feet.

(c) Two-bedroom: 900 square feet.

(d) Three-bedroom: 1,100 square feet.

(e) Four-bedroom: 1,300 square feet.

(6) Schedule of units.

(a) For any project that will be built in phases, the following schedule will apply for all inclusionary housing units:

Percentage of Market-Rate Units Receiving Certificates of Occupancy	Percentage of Inclusionary Housing Units Receiving Certificates of Occupancy
Up to 25%	None required
25% + 1 unit	At least 10%
50%	At least 50%
75%	At least 75%
100%	100%

(b) Certificates of occupancy will be issued for market-rate units when the required percentage of inclusionary housing units for the respective phase has been completed and certificates of occupancy have been issued for the inclusionary housing units.

(7) At the time of purchase or rent, the following schedule of occupancy will apply to inclusionary housing units:

	Number of Persons	
Number of Bedrooms	Minimum	Maximum
Efficiency	1	2
One	1	2
Two	2	4
Three	3	6

E. Eligibility

(1) To qualify for inclusionary housing, a family's income must be at or below 100% of the current Kingston, New York Metropolitan Service Area Median Family Income, adjusted for family size, as published annually by the United States Department of Housing and Urban Development.

(2) The Housing Administrator will require complete disclosure of all income and assets. Family income shall include the gross income from all sources for all family members, utilizing the latest federal income tax returns, in addition to full disclosure of assets. Non-income-producing assets may be assigned an income-producing value, deemed income by the Housing Administrator. Complete disclosure of income and assets is to be made on forms and/or applications provided by the Housing Administrator. Full income and asset disclosure is the responsibility of the applicant and is to be provided to the Housing Administrator with an

affidavit.

(3) For the purposes of these regulations, a "family" will be defined as provided in the Town of Gardiner Zoning Law, § 220-74, Definitions of terms. The terms "family" and "household" are used interchangeably.

(4) For the purposes of these regulations, family income will exclude earned income from each minor or full-time student, up to a maximum of $5,000 each.

F. Maximum sales price and rent.

(1) Maximum sales prices will be set by the Housing Administrator so that the annual cost of the sum of principal, interest, taxes and insurance (PITI) and common charges, if applicable, will not exceed the result of the following calculation: 100% of the current Kingston, New York Metropolitan Service Area Median Family Income, adjusted for family size [see Subsection E(1) above] multiplied by 30%. For example: Assuming that the adjusted median family income for a family of four is $63,500, the calculation would be as follows:

Step 1: $63,500 x 100% = $63,500

Step 2: $63,500 x 30% = $19,050 or $1,588 per month

(2) Maximum yearly rent, excluding utilities, for a particular household shall not exceed the result of the following calculation: 75% of the adjusted median family income [see Subsection E(1) above] multiplied by 25%. For example: Assuming that the adjusted median family income for a family of four is $63,500, the calculation would be as follows:

Step 1: $63,500 x 75% = $47,625

Step 2: $47,625 x 25% = $11,906 or $992 per month

G. Occupancy requirements. All inclusionary housing units shall be occupied by qualified households either owning or renting such units. All eligible households who own any other residence shall satisfy the Housing Administrator of their intent to sell or otherwise divest themselves of all other residences prior to the purchase of an inclusionary housing unit. For the purposes of this section, real estate used by the household to derive income shall be excluded from this requirement. Such income is to be included in determining the household's gross annual family income. Notwithstanding the above, it is intended that lenders will retain all of their rights in foreclosure so that a lender may take title to the premises for the limited purpose of transferring title of an owner-occupied property to another owner qualified under this section, or, in the case of rental properties, transferring title to an owner who will remain obligated to rent the premises to tenants qualified under this section.

H. Selection priorities.

(1) Once a household is determined to be eligible to participate in the inclusionary housing program based on income limits as set forth above, preference will be given to households on the basis of the following factors. For purposes of this subsection, a "household" shall include any and all family members who have reached the age of 21 and who will occupy the inclusionary housing unit as their primary residence. For each eligible household, all members over 21 shall be counted and the total number of points shall be added together and divided by the number of such members of the household to determine the household's score. Household members seeking preference based on voluntary service or employment must provide a certification letter from an authorized person within such organization attesting to the applicant's length of volunteer service or employment.

(2) The priority list will be as follows:

	Category	Point Value
a.	Current Gardiner resident, six months to one year	1; 1 additional point for each 10 full years of residence after the first, to a maximum of 5

	Category	Point Value
		points
	Gardiner resident 62 years of age or older	1
b.	Town of Gardiner full-time municipal employee, minimum 24 months, or retired employee	3
	Shawangunk Valley or Gardiner Volunteer Fire Department or Rescue Squad member in good standing, minimum 24 consecutive months; or	3
	Paid emergency service personnel serving Gardiner, including police, fire and emergency medical services, minimum 24 consecutive months	2
c.	Employee of a public school district serving Gardiner students, minimum 24 months, or retired employee	1
d.	Physically and/or mentally disabled resident of Gardiner, certified by a physician	1
e.	Former resident of Gardiner for at least two years	1
f.	Ulster County residents for at least 3 years, not residing in Gardiner	1
g.	Employee of a business located in Gardiner, minimum 24 months, or retired employee	2
h.	Active member of the armed forces of the United States or reserves, minimum 24 months, or honorably discharged member of the armed forces of the United States	1
i.	Gardiner resident of at least 6 months under 35 years old or child of such a Gardiner resident under 35 years old	3
j.	Parent of a Gardiner resident who has lived in Gardiner for at least 6 months	2

I. Rental of inclusionary housing units. A two-year lease will be offered to all tenants of inclusionary housing units available on a rental basis. At time of renewal, a tenant will resubmit all financial information required by the Housing Administrator to determine continued income eligibility. If the tenant family's income is more than 10% above the then-qualifying limit, the lease will be renewed for not more than one year in length and upon expiration of such lease, and subject to review by the Housing Administrator, the tenant will be required to vacate the inclusionary housing unit if family income still exceeds the then-current limit. The tenant will be notified of such requirement prior to signing a lease and a clause stating this requirement will be included in the lease.

J. Ownership and resale of inclusionary housing units.

(1) Ownership of an inclusionary housing unit will be on a fee-simple, condominium or cooperative basis, and title to the same will vest in the eligible purchaser either individually, as joint tenant with other eligible purchasers, or as tenants by the entirety. Inclusionary housing rental units may be owned by individuals or corporations, who or which will offer such units at rent levels that conform to the criteria established by the Housing Administrator.

(2) The owner of an inclusionary housing unit shall notify the Housing Administrator of his or her intent to sell prior to contact with any realtor or purchaser.

(3) The Housing Administrator shall calculate the resale price as provided in Subsection F(1). The Housing Administrator shall screen eligible purchasers as provided for in Subsection O and make the list of eligible purchasers available to the seller. In no event will the seller of an inclusionary housing unit be entitled to a profit obtained from a selling price in excess of the maximum sales price as determined in Subsection F(1).

(4) Upon the death of an owner, the executor or administrator of the estate of the deceased owner will place the inclusionary housing unit for resale on the basis as set forth herein. This shall not apply to a surviving spouse or resident parent who shall be eligible to continue ownership in the same manner as the deceased owner. In no other event will the beneficiaries of the estate, distributees or heirs at law of the deceased owner be entitled to occupy the inclusionary housing unit or be entitled to ownership status, unless the eligibility provisions of these regulations are separately adhered to and complied with.

(5) The original deed and any subsequent deeds or instruments used to transfer title to a inclusionary housing unit shall include a provision indicating that the housing unit is an inclusionary housing unit subject to perpetual restrictions on occupancy and resale. The following paragraph, or one substantially similar, must be included in all deeds and other transfer instruments:

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

K. Restriction on occupancy. Under no circumstances will an inclusionary housing unit, whether available for ownership or on a rental basis, be offered for rental, lease, sublease, boarding, timeshare or any other basis whereby persons other than the eligible owners and qualifying family members reside in the inclusionary housing unit on either a temporary (more than one week) or permanent basis.

L. Maintenance, upkeep and repairs.

(1) Prior to engaging in any nonemergency major repair or rehabilitation requiring a building permit, the owner of an inclusionary housing unit will first obtain the written permission and approval of the Housing Administrator. The Building Inspector must approve emergency structural repairs, and the Building Inspector will be responsible for inspecting the repair work when completed and for notifying the Housing Administrator when said work is completed. Under no circumstances will the Housing Administrator approve any addition in size to the structure. The original square footage of the unit will be maintained throughout the unit's existence.

(2) All inclusionary units will be maintained at a standard up to the original builder's specification level. At the time of resale, the Housing Administrator is authorized to determine the expense of repairs for conditions indicative of owner neglect to reasonably return the unit to its original condition; such assessment will be charged to the seller upon resale of the unit and must be paid by the seller at or prior to closing.

M. Tax assessment. The Town Assessor shall consider the limits on resale value of inclusionary housing units when determining the appropriate assessment on such units.

N. Appeals. The Town Board will review and decide appeals from any determination of the Housing Administrator. Applicants requesting an appeal must do so, in writing, within 10 business days of receipt of the determination of the Housing Administrator from which the appeal is filed. The Town Board will render its decision within 30 days thereafter.

O. Procedures for owner and tenant selection. The Housing Administrator shall establish procedures for making available the names and contact information of eligible families for any unit that becomes available. Such procedure shall be designed to implement the point system in Subsection H above, while providing for an efficient mechanism for owners to determine who is eligible to purchase or rent an inclusionary unit. Such procedures shall be prepared with an opportunity for public comment and shall be approved by the Town Board after a public hearing conducted under the rules for a special permit public hearing in this chapter.

P. Tenant verification. All tenants of rental inclusionary housing units will be required to verify their family incomes in accordance with Subsection E upon each renewal of a lease.

Q. Establishment of the Town of Gardiner Inclusionary Housing Fund. The Town hereby establishes an Inclusionary Housing Fund, the purposes of which will include:

(1) Funding of costs incurred by the Town in the administration and enforcement of the inclusionary housing program, including such activities with respect to inclusionary housing units established under this section, as well as funding of such future inclusionary housing programs as the Town may otherwise establish by legislation, order or resolution;

(2) Defraying consulting fee expenses incurred, or to be incurred, by the Town in the establishment of such inclusionary housing programs;

(3) Defraying the cost of improvements to municipal infrastructure, including but not limited to roads, water, sewer and drainage improvements, to the extent such capital expenditures are incurred to promote the development of inclusionary housing;

(4) Deposit of payments by project sponsors in mitigation, where deemed suitable and appropriate by the Town, of any private residential development proposal's failure to provide inclusionary housing;

(5) Construction of inclusionary housing units by the Town or by a qualified not-for-profit housing corporation or other entity selected by the Town Board; and

(6) Any other purpose authorized by state or local law in connection with the expansion or improvement of inclusionary housing opportunities within the Town, including but not limited to establishment, to the extent authorized by law, of a program of grants or loans to not-for-profit or for-profit entities.

§ 220-43. Driveways, common driveways and drive-up windows.

A. New driveway entrances (including the conversion of farm roads into residential or commercial driveway entrances) shall require permission from the Town Superintendent of Highways for Town roads, the Ulster County Department of Public Works for county roads, or the New York State Department of Transportation for state roads. For regulation of driveways, see § 184-33 of the Town Code.

B. The minimum safe access for a one- or two-family dwelling shall consist of a vehicle access driveway that extends to within not less than 20 feet from the principal structure. It shall be sufficiently improved throughout its length to carry fire and emergency apparatus. The following additional requirements shall be met:

(1) No driveway shall be greater than 2,500 feet in length.

(2) Driveways greater than 1,200 feet in length may be constructed only with site plan approval by the Planning Board.

(3) Buildings on driveways greater than 1,200 feet in length shall be built with fire suppression systems recommended by the Fire Chief for the fire district in which the building and driveway are located.

(4) A minimum of 30 feet of culvert pipe shall be installed at the entrance to all driveways (off Town, county, or state roads).

(5) For all dead-end driveways greater than 500 feet in length, a one-hundred-foot by fifteen-foot "T-Shaped" or one-hundred-twenty-foot outside diameter circle/loop unobstructed turnaround area shall be constructed at the end of the driveway.

(6) All driveways shall have and maintain a total of 15 feet of clearing to provide for the traveled way, which shall be 12 feet wide and able to support a twenty-ton load, and shoulder. Additional provision shall be made as necessary to allow for factors that could reduce the effective width of the driveway, such as drainage, snow removal, parking, and utilities.

(7) Turns in driveways shall maintain at least the minimum 15 feet cleared width and a driveway width of 12 feet. Driveways shall have a minimum radius of 25 feet at the inside curb line and a minimum radius of 50 feet at the outside curb line.

(8) The maximum grade between vertical curves shall be 12%.

(9) The minimum safe stopping sight distance shall be 250 feet at the driveway intersection with a public road improved to the Rural Street Specification set forth in Chapter 184, Article II.

(10) At least 13 feet six inches of vertical clearance shall be provided and maintained over the full width of the driveway.

(11) Driveways over 1,000 feet in length shall have a fifty-foot long by twelve-foot deep turn-out for every 1,000 feet of driveway length, with the turnouts evenly spaced over the length of the driveway.

(12) Driveway guide rails shall be installed if deemed necessary by the Town Code Enforcement Officer/Building Inspector or Planning Board.

C. The Planning Board may approve unpaved common driveways to provide access to flag lots or other contiguous lots, subject to the following conditions:

(1) The maximum number of lots gaining access through any portion of a common driveway shall be three.

(2) Written approval from the Town Superintendent of Highways and the Town's engineer shall be secured before approval of any common driveway.

(3) A recorded maintenance agreement acceptable to the Town Attorney must be executed to provide for the perpetual care and maintenance of the common driveway.

(4) The common driveway may never be offered for dedication to the Town of Gardiner unless it conforms to Town Highway specifications for rural streets in effect on the date of the offer of dedication. However, the Town Board shall be under no obligation to accept such an offer of dedication, even if the roadway conforms to Town Highway specifications. In the event such dedication becomes necessary to ensure public safety, the cost of bringing the road up to Town highway specifications shall be borne by the homeowners.

(5) The subdivision plat shall show the driveway clearly labeled "COMMON DRIVEWAY."

D. Drive-up or drive-through windows shall require site plan review. Street access points and queueing areas shall be sited in a manner that does not create safety hazards to pedestrians or motorists and that does not increase traffic congestion on existing streets.

E. Restaurant drive-up or drive-through windows shall be prohibited.

§ 220-44. Mobile home and construction trailer regulations.

A. Mobile home parks.

(1) New mobile home parks shall be permitted only within mapped MHF Districts consistent with the provisions of Chapter 154 of the Town Code.

(2) Existing mobile home parks not located in an MHF District may be continued as provided in Article VI and consistent with the provisions of Chapter 154 of the Town Code. The expansion of an existing mobile home park shall be allowed by special permit issued by the Town Board, provided that the mobile home park is included in a mapped MHF District. Until December 31, 2009, an applicant proposing to expand an existing mobile home park by not more than 25 mobile homes may elect to proceed under the special permit and site plan procedures existing on January 1, 2007. Upon site plan approval, the expanded mobile home use shall be considered a permitted use pursuant to § 220-27F.

(3) New mobile home parks may be permitted in the MHF District, provided that they obtain a special permit and license from the Town Board and fully comply with Chapter 154 and all standards for open space developments, except as follows:

(a) The number of permitted homes in any mobile home park shall be determined as provided by the formula in § 220-20B, using six dwelling units per acre as the maximum allowable density.

(b) The minimum protected open space shall be 30%.

(c) The development shall provide playground and recreational facilities for the use of residents.

(d) The maximum number of mobile homes in any mobile home park shall be 60.

(e) The minimum parcel size shall be 10 acres.

(f) All mobile homes shall be screened from view from public roads and other publicly accessible land.

(g) All mobile homes shall be set back at least 100 feet from property lines.

(4) All new mobile home parks and expansions of existing mobile home parks shall be required to comply with all applicable state and federal regulations and all applicable special permit and site plan review standards and criteria in this chapter. However, when provisions of this chapter establish requirements applicable to single-family dwellings, such provisions shall not apply to individual mobile homes in a mobile home park that comply with the conditions and requirements of the special permit and site plan approval for that mobile home park.. If the mobile home park will involve the creation of separate lots, the Town of Gardiner Subdivision Law (Chapter 188) shall apply.

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

C. Construction trailers. Construction trailers may be placed temporarily (without permanent footings) on construction sites for a period not to exceed the construction period, if allowed pursuant to a special permit, site plan, variance, or subdivision approval. Such trailers may be used for office, storage, or workshop space, and shall not be used for residential purposes.

D. Individual mobile homes. Mobile homes shall be regulated in the same manner as single-family dwellings, except as otherwise indicated in this section, and shall be permitted as single-family dwellings as shown on the Use Table, except that mobile homes shall be prohibited within the HM District.

E. Housing for farm operations. Mobile homes shall be permitted by right on farm operations without the requirement of site plan approval, provided that they comply with all state and federal standards and satisfy all applicable health regulations. Such mobile homes shall be located within the boundaries of the farm parcel operated by the applicant farm operator, subject to the following conditions:

(1) The mobile home shall be used exclusively for the housing of a farm employees and the immediate family of such employees.

(2) The mobile home shall be removed from the premises if any one of the following circumstances occur:

(a) If the mobile home is occupied by persons who do not qualify under Subsection E(1) above;

(b) If the mobile home remains unoccupied for a continuous period of two years or more; or

(c) If the mobile home becomes uninhabitable and is condemned by the Building Inspector.

§ 220-45. Camps.

A. Camp structures shall be set back at least 250 feet from property lines, unless the property line is the shoreline of a stream or lake, in which case the setback requirements of § 220-14D shall apply. Within the two-hundred-fifty-foot setback area, a natural buffer of wooded vegetation shall be maintained to screen camp structures and reduce the impacts of noise, odors, dust, and light on surrounding areas.

B. Depending upon the type of camp operation, the Planning Board may impose restrictions on hours of operation and on those activities that might disturb neighboring properties.

C. Camps shall comply with all applicable state licensing requirements.

D. A camp that has been approved by special permit, or that was in existence prior to the imposition of a special permit requirement, may add or remove structures without obtaining a special permit or special permit amendment. Such changes to the camp property shall require site plan approval only, provided that the setback and buffer requirements in Subsection A above are satisfied.

E. Travel trailer parks and tourist camps, as defined in Chapter 200 of the Town Code, shall comply with the provisions of Chapter 200 and this section; the more restrictive provision shall apply.

§ 220-46. Wireless telecommunication facilities.

A. Purposes, applicability, and definitions.

(1) Purposes of this section:

(a) To provide standards for the construction, modification, and operation of WTFs, in order to protect the scenic qualities of the Town while accommodating the growth of communications services.

(b) To encourage the placement, height, quantity, and appearance of WTFs in such a manner as to minimize any adverse impacts to the surrounding land, property, buildings, and other structures.

(c) To promote the location of WTFs in areas suitably screened and buffered, and in areas adequately separated from residential and other uses.

(d) To encourage the concealment of WTFs within or upon existing or planned structures, in a way that is consistent with surrounding land uses and architecture.

(e) To allow for the shared use of WTF sites, as an alternative to construction of additional communication facilities, while recognizing that co-location on higher towers is not always preferable to a larger number of shorter, less visible, and less obtrusive towers.

(f) To ensure that competition among wireless telecommunications providers in the Town is not unreasonably limited. The provisions of this chapter are neither intended to prohibit, nor to have the effect of prohibiting, the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services, consistent with federal regulation.

(2) Applicability. The Town Board may, in accordance with Article IX, issue special permits for wireless telecommunication facilities (WTFs) as provided in this § 220-46.

(3) Definitions. The following definitions are specific to WTFs and supplement Article XII. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number.

ANTENNA
A system of devices that transmit or receive electromagnetic waves or radio frequency (RF) signals. Such uses shall include, but not be limited to, radio, television, personal wireless services, cellular, paging, personal communications services (PCS), specialized mobile radio (SMR), and microwave telecommunications.

AVERAGE TREE CANOPY
The average height of a stand of trees. For the purpose of determining the maximum height of a WTF to be installed in a wooded area, the average overall height (from the ground to the top of the tree) of the trees located within 200 feet of the proposed site shall be used to determine the average tree canopy.

CAMOUFLAGE
Refers to a means of disguising or concealing a WTF in such a way that the facility blends with its surroundings. Camouflage generally conceals antennas of WTFs, and may also conceal other WTF components, such as structural supports, ground-mounted equipment, and accessory structures. Examples of camouflaged WTFs include, but are not limited to, facilities which are disguised as coniferous trees or farm silos, or which are incorporated into steeples, cupolas, or other new or existing architectural elements.

CARRIER
A person, licensed by the FCC, that provides wireless telecommunications services to customers. For the purposes of this chapter, radio and television broadcasters are considered carriers.

CO-LOCATION
The installation of more than one antenna array upon or within a single WTF support structure.

DRIVE TEST

The process of erecting a temporary transmit antenna for the purpose of measuring signal strength from a proposed WTF location, or the process of measuring the actual system performance of an existing WTF to establish the operational coverage and effectiveness of such a site. Such a test is referred to as a "drive test" because signal strength measurements are usually made from a vehicle traveling on roads surrounding the proposed site.

FUNCTIONALLY EQUIVALENT SERVICES

Services which include, but are not limited to, cellular, personal wireless services, personal communications services (PCS), enhanced specialized mobile radio, specialized mobile radio, and paging.

HEIGHT

When referring to a tower or structure, means the vertical distance measured from the preexisting grade level at the center of the base of the tower or structure to the highest point on the tower or structure, even if said highest point is an antenna, camouflage component, or other appurtenance.

MAJOR WTF

Any WTF which is not a minor WTF, including but not limited to any WTF requiring the construction or installation of a ground-mounted tower.

MINOR WTF

A WTF which has very little or no visual impact, and which fits one of the following categories:

(a) Installation within an existing structure, such as a steeple or farm silo, such that the WTF, including all antennas and significant accessory equipment, is completely hidden from view, is indistinguishable from the structure itself, and does not materially alter the structure's appearance or physical dimensions.

(b) Shared-use installation upon an existing WTF, where the new WTF's antennas and accessory equipment are hidden by any visual screening and/or camouflage used to conceal the existing WTF, with no material increase in visual impact of the facility.

PERSONAL WIRELESS SERVICES OR PERSONAL COMMUNICATIONS SERVICES

Shall have the same meaning as defined and used in the Federal Telecommunications Act of 1996.

PROFESSIONAL ENGINEER

A New York State licensed engineer.

PROPAGATION PLOT

A graphical representation of the expected signal strength at specific locations within a cell and the nearby area.

RADIO FREQUENCY (RF) RADIATION

The general term referring to high-frequency, nonionizing electromagnetic radiation utilized in wireless systems to transmit information from one location to another.

SEPARATION

The distance between one carrier's array of antennas and another carrier's array. Separation may be measured horizontally or vertically.

SHARED USE

The use of a WTF by more than one carrier, or to support more than one antenna array or type of service. Examples include co-location (either with or without horizontal or vertical separation) and shared use of the same antenna or radome.

TELECOMMUNICATIONS

The transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

VISUAL SCREENING

A buffer of new or existing trees, vegetation, landscaping, topographic features, or some combination thereof, which shields a WTF from view.

WIRELESS TELECOMMUNICATIONS FACILITY OR WTF

A facility used to physically and/or operationally support the use of antennas to transmit or receive wireless signals, including, but not limited to cellular, paging, personal communication services (PCS), commercial satellite services, microwave, mobile radio, specialized mobile radio (SMR), radio, television, and personal wireless services. Such facility shall be considered to include any antennas, towers, structural supports, equipment, accessory buildings, generators, camouflage systems and structures, security barriers, screening, and other components required for its construction or operation. For the purposes of this chapter, facilities used exclusively for the Town's fire, police, and other dispatch telecommunications, or used exclusively for private residential radio and television reception, private citizen's band, and amateur (ham) radio are excluded from the definition of "wireless telecommunications facility."

B. Standards for approval.

(1) Any person applying for a special permit for a WTF or operating a WTF pursuant to an approved special permit, including any successor or assign of an applicant or operator of a WTF, shall be one of the following:

(a) An FCC-licensed carrier; or

(b) A person who has a signed contract with or letter of intent from an FCC-licensed carrier to locate an antenna upon the applicant's proposed WTF.

(2) The reviewing board may, at any time during the application review process, require from the applicant such additional information, documentation, or test data as the board deems necessary to ensure that the health, safety, and welfare of the community are adequately protected.

(3) Approval requirements for major and minor WTFs.

(a) An application for a major WTF shall require special permit approval from the Town Board and site plan approval from the Planning Board.

(b) An application for a minor WTF shall require only special permit approval from the Town Board.

(4) Visual impact assessment. It is an intent of this chapter to encourage the concealment of WTFs, through the use of camouflage, visual screening, location, and distance, used separately or in combination. In addition to other available methods, the measures outlined below may be used by the Town Board and other applicable boards to evaluate the visual impact of a proposed WTF.

(a) The Board may require the applicant to conduct a balloon test. If so directed, the applicant shall, prior to the close of the public hearing on the application, conduct the test as follows: The applicant shall arrange to fly, or raise upon a temporary mast, a brightly colored balloon at the maximum height of the proposed new tower. The dates (including a second date in case of poor visibility on the initial date), time, and location of this balloon test shall be advertised by the applicant at no less than seven and 14 days in advance of the first test date in a newspaper with a general circulation in the Town, and agreed to by the Board. The applicant shall inform the Board, in writing, of the date and time of the test at least 14 days in advance. The balloon test shall be conducted on a weekend, and the balloon shall be flown for at least eight consecutive hours between 7:00 a.m. and 4:00 p.m. on the date chosen.

(b) To determine the effects of changes in WTF height on visual impact, the Board may require that some or all of the visual impact assessment methods described in this chapter also be provided for other heights which are higher or lower than that of the proposed WTF. Such additional information and tests shall be provided for heights differing from the proposed height by increments of a size and number specified by the Board. The assessment methods for which such additional information may be required include, but are not limited to, the following:

[1] Balloon test.

[2] "Zone of visibility" map, as described in § 220-26C(1)(q).

[3] Photographic representations of views before and after WTF installation, as described in § 220-26C(1)(q).

(5) Location of WTFs.

(a) It is the intent of this section to protect the following specific resources of the Town from any adverse effects resulting from the installation and operation of WTFs:

[1] The natural, environmental, historic, archeological, recreational, and scenic resources (including views both to and from the areas) of the following features of the Town:

[a] Parks and preserves, including Minnewaska State Park Preserve, the Mohonk Preserve, George Majestic Memorial Park, and the Wallkill Valley Rail Trail.

[b] Waterways, including the Wallkill River, Shawangunk Kill, and Mara Kill, and their associated floodplains.

[c] The Shawangunk Ridge.

[d] Viewsheds and scenic vistas from highways, including Town, county, and state roads.

[e] Viewsheds and scenic vistas from various neighborhoods and residential properties.

[2] The scenic, aesthetic, cultural, and historic qualities of the areas within and surrounding the Town's Hamlet Residential, Hamlet Mixed-Use and Highway Commercial Zoning Districts.

(b) WTFs shall not be located in that area of the Town which lies both west of County Route 7 and at or above an elevation of 400 feet above mean sea level.

(c) WTFs shall not be located within 100 feet of any campground, public park, preserve, or recreational trail.

(d) Unless mounted on or within an existing structure, WTFs shall not be located in or within 500 feet of any Hamlet Residential, Hamlet Mixed-Use or Highway Commercial Zoning District.

(e) Installation of WTFs in locations where they obtain additional prominence, such as along a ridge line or on a hilltop, shall be avoided. In particular, no WTF shall project above or along the Shawangunk Ridge or be visible along the ridge face.

(6) Height. The height of any WTF shall be the minimum height determined by the Town Board to permit the WTF to provide service over a reasonable range while limiting the WTF's visual impact to a minimum. Subsections B(6)(a) through (d) below provide additional height limitations on specific types of WTF installations. The Town Board may, at its discretion, allow these limitations to be exceeded, provided that the applicant demonstrates, to the Town Board's satisfaction, that no additional adverse visual impact will result from the deviation above the applicable height limit from Subsection B(6)(a) through (d) below. However, in no case shall the height of a WTF exceed 120 feet.

(a) For a ground-mounted WTF tower, the following height standards shall apply:

[1] In cleared areas, the maximum height of a WTF is limited to 80 feet.

[2] In wooded areas, the maximum height of a WTF is limited to 15 feet above the average tree canopy.

[3] In cases where the proposed WTF is located within 50 feet of the border between cleared and wooded areas, the entire surrounding area shall be considered cleared for the purposes of determining maximum tower height.

(b) When a WTF is to be installed within or upon an existing structure (such as a building, building component, barn, or farm silo, but not a high-voltage electrical transmission structure), the facility shall not add more than 10 feet to the height of the original structure.

(c) When a WTF is to be installed upon an existing high-voltage electrical transmission structure, the following height limitations shall apply:

[1] Where the utility right-of-way passes through or adjoins a cleared area, the WTF shall not add any height to the existing electrical transmission structure.

[2] Where the utility right-of-way passes through a wooded area, the WTF shall not add more than 10 feet to the height of the existing electrical transmission structure.

(d) When a WTF is incorporated into the design of a planned or proposed new building or structure, the portion of the structure supporting the WTF antenna shall not add more than 10 feet to the height of the remainder of the structure. The portion of the structure not used to support the WTF antenna shall be subject to the height restrictions of the underlying zoning district.

(e) No proposed WTF shall be of such a height that it requires obstruction lighting, strobe lights, or high-visibility markings of any kind under local, county, state, or federal regulations, including FAA regulations.

(f) In order to reduce the overall visual impact of a proposed WTF, the applicant may be required to achieve coverage objectives by using more than one shorter structure (existing or new) rather than a single tall structure.

(7) Demonstration of need for a WTF.

(a) An applicant shall demonstrate the need for a proposed WTF for a specific location by furnishing the Town Board with propagation plots and drive test results as required by the Town Board.

(b) To determine the effects of changes in WTF height on expected coverage, the Town Board may require that the information outlined in Subsection B(7)(a) above also be provided for other heights which are higher or lower than that of the proposed WTF. Such additional data shall be provided for heights differing from the proposed height by increments of a size and number specified by the Town Board.

(c) It is an objective of this chapter to facilitate the provision of adequate wireless telecommunications coverage throughout the Town. It should be noted, however, that the achievement of complete coverage throughout the Town may not be possible or practicable. Evidence of incomplete coverage throughout the Town shall not, by itself, demonstrate need for a proposed WTF.

(8) Lot size and setbacks.

(a) Minimum lot area for a WTF site shall be that required to comply with the setback requirements of Subsection B(8)(b) through (f) below, or the area specified in the Dimensional Table, whichever is greater.

(b) Setbacks are to be measured horizontally, and shall apply to all WTF components, including guy wire anchors, accessory structures, and fences.

(c) To ensure public safety and to mitigate adverse visual impact, the minimum distance from a WTF to any property line, road, residential or habitable dwelling, business use, or institutional use shall be 1 1/2 times the height of the WTF.

(d) In the event that a WTF is to be installed within a new or existing structure, such as a steeple, building, or farm silo, the setbacks in Subsection B(8)(c) above may be waived if deemed appropriate by the Town Board.

(e) The applicant shall "control," by way of ownership, easements, or other means, lands within the setbacks to ensure that no habitable structure can be built within the setback distances, and to ensure that any existing vegetation screening base facilities will be preserved. Written proof of such measures shall be furnished with the application as required by the Town Board.

(f) Additional setbacks may be required by the Town Board to preserve the privacy of adjoining properties, to provide additional visual screening, and to contain on site substantially all icefall and/or debris from tower failure.

(9) Camouflage.

(a) A WTF shall be camouflaged so as to minimize its visual impact.

(b) Any WTF shall employ an unobtrusive design and the most appropriate camouflage for the proposed site, as determined by the Town Board. All WTFs shall be designed to blend into the surrounding environment through the use of appropriate designs, building materials, colors, and textures.

(c) A WTF which is mounted upon an existing structure, or incorporated into the design of a new structure to be built for a purpose other than wireless telecommunications, shall be concealed within or behind new or existing architectural features (e.g., cupola, roof, steeple, clock tower, silo roof, etc.) to limit its visual impact.

(d) When determined to be appropriate by the Town Board, a ground-mounted WTF shall be camouflaged to resemble or mimic an object that would be consistent with the character of the surrounding area. Such objects might include a native coniferous species of tree, a farm silo, or some other innovative replication of a structure. Camouflage used in such cases shall be made to appear as realistic as possible using available techniques.

(e) On WTFs designed to allow co-location of additional antennas, camouflage systems shall conceal not only the initial antenna(s) installed, but also the spaces to be occupied by future antennas.

(f) Flush-mounted or completely hidden antennas shall be used whenever possible in order to improve the

effectiveness of the camouflage system and to reduce the overall visual impact of the WTF.

(g) If a proposed WTF is sufficiently small, visually screened, or distant from surrounding property lines that it is not materially visible to the naked eye from any viewing position outside the subject parcel, then the Town Board may waive some or all of the camouflage requirements of this section.

(h) In the particular case where a WTF is to be installed upon an existing high-voltage electrical transmission structure, any structural members added to support the WTF shall be consistent in design, finish, type of material, and color with the existing structure.

(10) Visual screening.

(a) Any WTF not effectively concealed from view within new or existing structures shall, in addition to any required camouflage described in Subsection B(9) above, be surrounded by a visual buffer consisting of dense tree growth, understory vegetation, topographic features, and/or landscaping. The buffer shall be of sufficient height and depth to effectively screen the WTF from view year-round. Buffer trees and vegetation may be preexisting on the subject property, installed as part of the proposed facility, or a combination of both. If on adjacent lands, required buffer trees and vegetation shall be subject to acceptable easements, which shall continue until the WTF is removed.

(b) If plantings of trees or shrubs are to be used for visual screening, they shall be selected to meet all of the following criteria:

[1] Minimize the likelihood of destruction by deer browsing.

[2] Be varied in size, type, and location so as to appear natural.

[3] Consist primarily of evergreen species in order to provide year-round screening.

(c) Any plantings shall be maintained in a healthy state or replaced as necessary to provide continued screening.

(d) The applicant shall "control," by way of ownership, easements, or other means, lands within the setbacks to ensure that any existing vegetation screening the WTF will be preserved. Visual screening may be located on the subject parcel, or on adjacent lands if subject to acceptable easements.

(e) Clearing of trees for a WTF site shall be kept to an absolute minimum in order to maximize the screening effect of existing woodlands.

(11) Lighting. WTFs shall not be artificially lighted except as follows:

(a) Security lighting for accessory structures or buildings shall be motion-activated and shall be minimized, shielded, and directed downward to prevent light pollution, light emission, and glare onto adjacent properties.

(b) Lighting for temporary night, emergency, or indoor work by technicians shall be allowed.

(12) Vehicles and movable equipment on WTF site. Vehicles and movable equipment not incidental to the operation of the WTF shall not be stored or parked on the WTF site unless specifically allowed by the Town Board.

(13) Utilities. The Town Board may require any utilities at a WTF site to be installed underground.

(14) Signage. A WTF shall contain an unlit sign no larger than six square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall include the names of the owner and operator of the WTF, as well as twenty-four-hour emergency phone numbers. The sign shall be posted on or near the entry gate, and shall be located so as to be visible from the access driveway of the site. In the case of roof-mounted antennas or antennas incorporated into an existing structure such as a steeple or farm silo, the sign shall be displayed at the access way to the antenna area. No other signage shall be permitted on a WTF unless required by applicable law or regulation.

(15) Radio frequency and electromagnetic standards.

(a) The Town may, at any time, require the owner and/or operator of a WTF to submit evidence of the facility's compliance with FCC standards and guidelines. If new, more restrictive standards or guidelines are adopted by any appropriate federal or state agency, the WTF shall be brought into compliance, or continued operation may be restricted by the Zoning Enforcement Officer.

(b) Before commercial transmissions begin, the applicant shall provide certification by a professional electrical engineer with expertise in RF engineering that the facility, as constructed or installed, does not exceed the maximum permissible exposure limits for levels of electromagnetic radiation in accordance with FCC standards and guidelines. This certification shall include a statement as to whether other significant transmitting sources are located at or near the WTF site and, if so, how their emissions were considered in determining compliance.

(16) Security of WTFs. All WTFs shall be located, fenced, or otherwise secured in a manner which prevents unauthorized access. Fencing shall be designed to minimize visual and aesthetic impacts. Electrified fences and razor wire shall be prohibited.

(17) Accessory structures.

(a) Accessory structures shall be limited to such dimensions as needed to accommodate equipment while minimizing the visual impact of said structures.

(b) Accessory structures may not include office space, vehicle storage, outdoor storage, or other uses that are not needed to send or receive wireless telecommunications transmissions unless allowed by the Town Board.

(c) Accessory structures shall be designed to be architecturally compatible, both in style and materials, with principal structures in the surrounding area, as determined by the Town Board. This requirement may be waived in cases where the structures are visually screened as set forth in Subsection B(10), Visual screening.

(d) Existing structures which are sound and well-maintained may be used, if practicable, to house WTF equipment, in lieu of the construction of new accessory buildings.

(18) Maintenance. The WTF owner and/or operator shall maintain the WTF in good condition, including, but not limited to, maintenance of telecommunications equipment, security features, painting and other finishes, camouflage, screening, buffer areas, landscaping, and structural integrity.

(19) Modification of existing WTFs.

(a) The holder of a special permit shall notify the Town concerning any intended modification of a WTF. The Town Board shall determine whether the intended modification is of such a nature that a full application as otherwise required by this chapter will be required. However, a proposed modification to an existing WTF shall be considered equivalent to an application for a new facility in any of the following cases:

[1] The applicant proposes to increase the number of WTFs or antenna arrays permitted on the site.

[2] The applicant proposes to make any change which will materially increase the physical dimensions of the WTF, including but not limited to antennas, appurtenant equipment, and accessory structures.

[3] The applicant proposes to make any change which will significantly alter the appearance of the WTF.

(b) If the Town Board determines, pursuant to the above criteria, that a full application is not required for a modification of a WTF, then the Town Board may specify which of the requirements of this chapter shall apply to the proposed modification.

(20) Shared use of WTFs.

(a) Shared use of WTFs, including, but not limited to, shared antennas and co-location of antennas, shall be allowed to the extent that it does not materially increase visual impact.

(b) The total number of antenna arrays on a WTF site shall not exceed three. Where there is sufficient capacity and no reduction in safety, reliability, or general engineering purposes, location of more than one carrier's equipment on a WTF site shall be accommodated as provided in this section.

(c) A proposed WTF with capacity for shared use shall include the following accommodations for future carriers:

[1] Adequate space for additional equipment or accessory structures as may reasonably be expected to be required within the secure area at the base of the WTF.

[2] Sufficient visual screening and camouflage to conceal the WTF, including future carriers' equipment and accessory structures.

(d) Capacity for co-location shall not be considered a legitimate justification for increased height of a WTF unless the Town Board determines that such an increase in height would not have an adverse effect on the visual impact of the WTF.

(21) Operational permit for a WTF.

(a) A WTF shall be subject to an operational permit issued by the Zoning Enforcement Officer. Such permit shall constitute permission to operate the WTF in compliance with the requirements of the Municipal Code of the Town and any requirements or conditions related to the special permit and site plan approvals for the WTF. The issuance of an operational permit shall not be construed to be a permit for, or an approval of, any violation of such provisions.

(b) Application for an operational permit, whether for an original permit or for a renewal, shall be made to the Building Department in such form and detail as prescribed by the Zoning Enforcement Officer. The Zoning Enforcement Officer may require, as a condition of permit issuance or renewal, the submission of any information as may reasonably be needed to make a determination regarding compliance of the WTF. An application for an operational permit shall be accompanied by a fee as set forth by the Building Department.

(c) An operational permit shall remain in effect until reissued, renewed, revoked, or expired. An operational permit shall be effective for a period not to exceed five years, at which time, if not renewed, it shall expire and operation of the WTF shall cease.

(d) The Zoning Enforcement Officer may, upon written request and demonstration of good cause by a holder of an unexpired operational permit, grant one or more written extensions of permit time for periods not to exceed 90 days each.

(e) Where more than one WTF operational permit is required for the same location, as may be the case with shared use of a WTF, the Zoning Enforcement Officer may consolidate such permits into a single operational permit, provided that each permitted use is identified in the operational permit.

(f) A WTF shall at all times be operated and maintained in full compliance with the standards and conditions under which special permit and site plan approval were granted, and in conformance with all applicable regulations. In addition to any other remedy provided in the Municipal Code of the Town, failure to so operate and maintain a WTF shall be grounds for revocation of the operational permit by the Zoning Enforcement Officer.

C. Procedures.

(1) Application. In addition to other applicable requirements for special permit applications in Article IX, an application for the placement, construction, or modification of a wireless telecommunication facility (WTF), shall also contain the following information:

(a) The names, addresses, and phone numbers of the following parties:

[1] The individual preparing the application.

[2] The applicant (including the legal form of the name of the applicant).

[3] The carrier(s) who will be using the facility.

[4] The builder of the facility.

[5] The property owner.

(b) Stamps and signatures of the following:

[1] A professional civil engineer.

[2] A professional electrical engineer with expertise in RF engineering.

(c) Estimated total project cost, including all site work, construction, materials, and equipment.

(d) A site development plan including the following information, in addition to the requirements of Article IX:

[1] Location and delineation of the area to be leased by the applicant, if applicable.

[2] Location, size, and height of all proposed towers, antennas, and appurtenant structures and equipment.

[3] Type, location, and dimensions of all proposed and existing landscaping, fencing, and visual buffers.

[4] In the case of a WTF proposed to be constructed in a wooded area, the average tree canopy height (see definition).

[5] Extent of any proposed clearing of existing trees and vegetation.

[6] Area map showing the following within a radius of 500 feet of the proposed WTF site or within 100 feet of the subject parcel lot lines, whichever is greater:

[a] All residential or habitable structures.

[b] All schools, day-care centers, campgrounds, public parks, preserves, recreational trails, and playgrounds.

(e) Description of the WTF (employing text, drawings, details, and elevation views as appropriate), providing the following information:

[1] Designs and types of all proposed towers and antennas.

[2] Height, dimensions, materials, colors, and lighting of the WTF and all related fixtures, structures, appurtenances, and equipment.

[3] Description of proposed camouflage system.

(f) Frequency, modulation, and class of service of transmitting equipment.

(g) Transmission power and maximum effective radiated power of the antenna(s).

(h) Diagram showing direction of maximum lobes and associated radiation of the antenna(s).

(i) Report demonstrating need.

[1] A report demonstrating the need for the proposed WTF, to include:

[a] Propagation plots or coverage maps showing the expected coverage of the proposed site and the coverage of all adjoining proposed, in-service, or existing sites.

[b] At the Board's request, results of drive tests for existing WTFs surrounding the proposed WTF site, and/or results of a drive test performed with a test antenna suspended at the height of the proposed WTF antenna. Such drive tests may be witnessed by a consultant or other expert selected by the Board.

[2] To determine the effects of changes in WTF height on expected coverage, the Board may require that the information outlined in Subsection C(1)(i)[1][a] and [b] above also be provided for other heights which are higher or lower than that of the proposed WTF. Such additional data shall be provided for heights differing from the proposed height by increments of a size and number specified by the Board.

(j) Certification by a professional electrical engineer with expertise in RF engineering that the

electromagnetic radiation levels at the proposed site will be in compliance with FCC standards and guidelines, and that the proposed facility will comply with all applicable federal standards. This certification shall include a statement as to whether other significant transmitting sources are located at or near the proposed WTF site and, if so, how their emissions have been considered in determining compliance.

(k) A copy of the carrier's FCC license for operation of WTFs.

(l) If the applicant is not an FCC-licensed carrier proposing to locate an antenna upon the WTF, then a copy of a signed contract with, or a signed letter of intent from, an FCC-licensed carrier to locate an antenna upon the applicant's proposed WTF.

(m) A long-range communications facilities plan showing how, for a period of three years following the date of application, the applying carrier plans to provide service throughout the Town and within five miles of the Town's boundaries, including the following:

[1] Locations of all WTF sites that the carrier currently operates, and all sites that the carrier is considering, reviewing, or planning.

[2] The carrier's network and coverage plans.

(n) If the applicant is not proposing to share use of an existing WTF or to locate upon an existing structure, then demonstration that shared use is not practicable. Such demonstration is to be in the form of a written report inventorying all existing WTFs and other appropriate structures for supporting WTFs, including sites within neighboring towns, within 1,500 feet of the proposed WTF site. The purpose of this report shall be to show that the applicant used its best efforts to secure shared use of existing WTFs and other existing structures as a preferred alternative to new tower construction. The report shall include a written summary of the applicant's efforts to secure shared use of existing WTFs, or use of existing buildings or other structures, within the Town and adjoining towns, as well as the reasons why shared use is considered impractical in each case. Copies of written requests and responses may be required by the Town Board.

(o) A copy of the applicant's lease or proposed lease from the property owner, if the proposed site is not owned by the applicant.

(p) In the event the proposed WTF is located upon an easement (such as a utility easement), the applicant shall provide proof that the easement permits the addition of a WTF as an accessory or incidental use to the use provided for in the easement, or shall provide proof of the consent of the fee owner of the lands on which the proposed WTF is to be located.

(q) For a major WTF, an assessment of the visual impact of the proposed facility, to include:

[1] A "zone-of-visibility" map, which shall show all locations, within a radius of seven miles, from which the WTF may be clearly seen with the naked eye.

[2] Photographic representations of "before" and "after" views from key viewpoints both inside and outside the Town, including but not limited to Town, county, and state highways, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and any location where the site is visible to a large number of visitors, travelers, or residents. The Town Board, acting in consultation with its consultants and the public, may provide guidance concerning the appropriate key sites.

[3] Elevation drawings or other accurate renderings showing the proposed WTF (including all base equipment, structures, and fences) in side view, both with and without any proposed screening and camouflage.

(r) For any proposed WTF which involves the construction of a tower, or which will add to the height of an existing structure in such a way that the WTF or any element thereof will protrude above the surrounding topography or vegetation, written confirmation from the FAA that no obstruction lighting, strobe lights, or high-visibility markings will be required under FAA regulations.

(s) A written, signed statement from the owner of the property that, should the Town Board determine that removal of the WTF is necessary, and should the WTF owner or special permit holder fail to carry out such

removal as required by this chapter, then the Town or its agent is authorized and permitted to enter the subject property for the purposes of removal of the WTF and restoration of the WTF site.

(2) Bond. In the case of a special permit for a wireless telecommunication facility (WTF), the applicant and/or the owner of record of the facility shall, at its cost and expense, be jointly required to execute and file with the Town a bond or other form of security acceptable to the Town Board as to type of security and the form and manner of execution, with such sureties as are deemed sufficient by the Town Board to assure the faithful performance of the terms and conditions of this chapter and conditions of any special permit issued pursuant to this chapter, including, but not limited to, maintenance and removal of the WTF. The amount of the security shall be that recommended by the Town Engineer or other consultant retained to review the WTF application. The full amount of the bond or security shall remain in effect throughout the term of the special permit and until the removal of the WTF and any necessary site restoration is completed. The amount may be adjusted from time to time in the event of circumstances such as increased costs, upon 20 days' prior notice to the applicant, who may appear at a Town Board meeting to offer any statements and evidence on the proposed increase. Failure to maintain the performance security in full force and effect shall be a violation of the provisions of the special permit, and shall entitle the Zoning Enforcement Officer to revoke the operational permit for the WTF.

D. Removal of wireless telecommunication facilities (WTFs) due to cessation of activity.

(1) A WTF, once constructed, shall be continuously used as a wireless telecommunication facility. If a WTF has ceased operation for a period exceeding a total of 180 days in any period of 365 days, then the Town Board may determine that such inactivity warrants removal of the WTF. (If such period of disuse of a WTF is caused by force majeure or acts of God, repair or removal by the special permit holder shall commence within 90 days.)

(2) If the Town Board makes such a determination of inactivity and cause for removal, then the holder of the special permit for the WTF, the owner of the WTF, and the property owner shall be notified of the Town Board's determination, and shall be notified of a date for a hearing. At such hearing, held no less than 14 calendar days after giving notice, the Town Board shall consider evidence submitted as to the existence and duration of the period(s) of inactivity in question.

(3) If the Town Board makes a final determination that he WTF is to be removed, then the holder of the special permit, or its successor or assign, shall dismantle and remove such WTF and all associated structures and facilities from the site, and restore the site to as close to its original condition as is possible, within 90 days of receipt of written notice from the Town Board.

(4) If the WTF is not removed within 90 days, then the Town Board may take steps to declare the WTF abandoned, and may order officials or representatives of the Town to effect removal of the WTF and site restoration at the sole expense of the owner of the WTF or special permit holder. If the WTF owner or special permit holder fails to pay the costs associated with such removal and restoration, then the permit holder's performance security may be used to meet the Town's expenses.

(5) If the Town removes, or causes to be removed, a WTF, and the owner of the WTF does not claim and remove it from the site to a lawful location within 10 days, then the Town may sell or dispose of the WTF and its components using the proceeds of the permit holder's performance security to the extent necessary. To the extent that performance security proceeds are insufficient or unavailable and the Town incurs costs, such costs shall be the responsibility of the WTF owner and the property owner, and until paid shall constitute a lien on the parcel, which lien, if left unpaid for one year, may be levied as a delinquent tax.

§ 220-47. (Reserved)

§ 220-48. Adult uses.

The Town of Gardiner finds that adult uses, as defined in Article XII, may have negative impacts upon the neighborhood and surrounding area where they are located. Such impacts include physical deterioration, disinvestment, and increased crime. Adult uses shall be allowed by special permit in the CLI District only. In addition to all applicable special permit and site plan criteria in Article IX, such uses shall satisfy the following additional standards:

A. No adult use shall be located within 1,000 feet of any single-family, two-family, or multifamily residence, or of any school, day-care center, library, religious institution, park or other public recreation area, or recreational business.

B. No adult use shall be located within 1,000 feet of any other adult use.

C. No more than one freestanding sign, not exceeding 12 square feet, shall be permitted for an adult use in a location visible from a public street. Such sign shall be limited to the name and address of the business. One wall-mounted sign, not exceeding 12 square feet, shall be permitted on the building, provided that it complies with Subsection D.

D. Adult uses shall be set back at least 200 feet from all public rights-of-way and shall be screened from view by a buffer at least 50 feet wide consisting of trees and shrubs.

§ 220-49. Keeping of animals; kennels.

A. Maintenance of livestock on residential properties. Animals kept on residential properties, not as part of a farm operation as defined in this chapter, shall be limited as follows:

(1) The amount land required for keeping large animals shall be one acre, allocated to the residence, plus one acre per "large livestock unit" (LLU). One cow, horse, bison, pig, or similar large animal shall be considered one LLU. The following shall be considered as fractional LLUs:

(a) Deer, llama, alpaca: 1/2 LLU.

(b) Sheep, emu, ostrich: 1/4 LLU.

(c) Goat: 1/6 LLU.

(d) Other large animals: as determined appropriate by the Building Inspector.

(2) The maintenance of small animals, such as raccoons, mink, rabbits, birds, snakes, geese, ducks, chickens, monkeys, dogs, cats, etc., shall not exceed 10 on a lot of less than two acres. Pens for such animals shall not exceed 5,000 square feet or 10% of the lot area, whichever is greater. These requirements may be modified by the Planning Board by special permit as provided below.

(3) The Planning Board may issue a special permit for maintenance of animals in greater numbers or larger pens than the maximum set forth above, provided that the applicant meets all conditions and satisfies applicable special permit criteria, that the Planning Board finds that adequate open space and facilities for the proper care of such animals are available and will be established, and that maintenance of such animals will not interfere with the reasonable use and enjoyment of the property of others.

(4) Buildings, pens, or other structures housing animals shall be located 20 feet from any lot line and 35 feet from any road or highway. No manure may be stored within 250 feet of any property boundary line or watercourse.

(5) In maintaining animals on a property, no person shall knowingly interfere with the reasonable use and enjoyment of the property of others.

B. Kennels.

(1) Kennels, as defined in Chapter 80 of the Town Code, shall comply with all provisions of Chapter 80.

(2) No provisions of this section shall prohibit or regulate the keeping of dogs as household pets in compliance with Chapter 80 of the Town Code.

§ 220-50. Solid waste facilities and industrial uses.

A. Limitations on solid waste management facilities. Solid waste management facilities, as defined in Environmental Conservation Law § 27-0701 and 6 NYCRR 3601.2(b)(158), with the sole exception of municipally owned and operated facilities, shall be prohibited in the Town of Gardiner.

B. Standards and enforcement. All industrial uses and municipal solid waste management facilities shall satisfy the following requirements. Nonconforming solid waste management facilities shall comply with these standards to the extent practicable.

(1) All operations, including loading and unloading, shall occur within fully enclosed buildings with an impervious floor system. Any leachate shall be collected in an impervious collection system and hauled off-site for disposal as required by applicable laws. There shall be no outdoor storage of hazardous materials

or of materials regulated under 6 NYCRR Part 360 in a manner that could allow them to become airborne, leach into the ground, or flow into any watercourse.

(2) No materials shall be disposed of into the ground, air, or into any watercourse, except pursuant to applicable permits and approvals issued by state and county health and environmental agencies.

(3) Procedures shall be in place to inspect all materials upon arrival at the facility to ensure that they are appropriate to the permitted operation and to ensure that deliveries of materials that cannot be safely handled and processed at the facility are not accepted.

(4) The operation shall comply with all applicable provisions of this chapter, including the environmental performance standards in § 220-40 and the aquifer protection provisions in § 220-15.

(5) The applicant may be required to furnish an irrevocable letter of credit, certified check, bond, or other form of security guaranteeing to the Town of Gardiner compliance with the standards in this Subsection B as well as any other standards, requirements, or conditions of any permit issued by federal, state, county, or local government agencies. The amount of such performance guarantee shall be based upon the potential cost of remediation in case of a violation.

(6) In addition to the requirements of Subsection B(5) above, the applicant may be required to pay annually into an environmental inspection fund to enable the Town to monitor the facility's performance and compliance with applicable standards using qualified technical experts.

§ 220-51. Outdoor storage.

A. Junkyards. See Chapter 136 of the Code of the Town of Gardiner for provisions on junkyards.

B. Outdoor storage of personal property.

(1) Boats, trailers, and seasonal or other recreational vehicles may be stored, maintained, or parked only in side or rear yards except where environmentally suitable and economically practical access to such yards is not feasible. Construction equipment and other heavy equipment may not be stored, maintained, or parked in any location visible from adjoining properties or public roads, except for purposes of loading and unloading. The restrictions of this Subsection B shall not apply in the CLI District, except that storage on properties in the CLI District shall be screened from abutting residential properties.

(2) Unless authorized by a special permit or site plan approved in connection with a business use, no commercial vehicle exceeding 12,000 pounds gross vehicle weight or 20 feet in box length shall be parked overnight in a residential district where it is visible from adjoining properties or public roads. The Planning Board may allow larger vehicles by special permit. This provision shall not apply to trucks used in connection with commercial agriculture, provided that parked trucks are set back at least 100 feet from property lines of adjacent landowners who are not related by family or business affiliation to the owner or operator of the farm operation.

§ 220-52. Residential care facilities.

In addition to generally applicable special permit and site plan review requirements, the applicant shall comply with the following:

A. Supervision. Every residential care facility shall provide qualified supervisory personnel on the premises 24 hours a day, seven days a week. Such personnel shall meet all standards of any agency responsible for the licensing or regulation of the residential care facility.

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

C. Required information for application. An application for a special permit for a residential care facility shall satisfy the submission requirements of Article IX and shall also include the following:

(1) A list of all agencies which must license or otherwise approve the establishment of operation of the facility.

(2) A list of regulations established by the public or private agencies listed in Subsection C(1) above.

(3) Copies of applications submitted to the agencies.

(4) A written statement explaining the status of such applications stating any facts known to the applicant

which might result in the denial or delay of any required approval.

(5) A written statement addressing the requirements of Subsection A above and demonstrating that the facility will comply with applicable regulations of licensing agencies and state law relating to minimum required floor area, bathroom facilities, and open space.

(6) A map identifying the location of all other residential care facilities in the Town of Gardiner at the time of the special permit application.

D. Findings. In making its determination upon a special permit for a residential care facility, the Planning Board shall, in addition to making the findings required by § 220-63, make the following specific findings:

(1) That the proposed facility, given its unique nature, will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, and other matters affecting public health, safety, and general welfare.

(2) That the proposed facility will be provided with or have ready access to facilities and services necessary and appropriate to the needs of its residents for active and passive recreation, medical care, education, cultural and religious activities, and public transportation.

(3) That the proposed facility will not generate a level of traffic which would be burdensome to the neighborhood, considering the number of visitors its residents may expect, truck delivery and loading requirements, and the availability and nature of public or private transportation.

(4) That the proposed facility will not result in an undue concentration of residential care facilities in the Town of Gardiner or in the neighborhood of the proposed facility.

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

ARTICLE VIII. Administration

§ 220-53. Enforcement official.

The provisions of this chapter shall be administered and enforced by the Building Inspector, who shall issue building permits and zoning permits. No building permit, zoning permit, certificate of occupancy, or other permit or license shall be issued if it would be in conflict with the provisions of this chapter, Chapter 92 of the Gardiner Town Code, entitled "Building Construction," or any other applicable local, state, or federal law or regulation.

§ 220-54. Building permits and zoning permits.

A. Building permit. Building permits shall be issued pursuant to Chapter 92 of the Town Code.

B. Zoning permit. A zoning permit shall be required for the conversion or change in use of any existing building, structure, or parcel of land where no new construction is involved and where no variance or special permit is required. No zoning permit shall be required when the new use is permitted by right, as provided in § 220-10F.

C. Application for zoning permit. All applications for a zoning permit shall be made on prescribed forms and shall contain the following information:

(1) Land: A description of the land on which the proposed use or construction will occur, including deed and filed map references, lot numbers, and tax parcel numbers.

(2) Use, occupancy: A statement of the existing and proposed use of all parts of the land and the location, character and existing and proposed use of any existing or proposed buildings or structures; including the number of floors, entrances, rooms, type of construction and the kind and extent of any exterior horizontal extension proposed toward any boundary or street line of the lot.

(3) Identity of owner, applicant: The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations, and written permission from the owner if the applicant is not the owner.

(4) Description of work or changes in use: A brief description of the nature of the proposed work or change in use.

(5) Plans and specifications:

(a) Each application for a zoning permit shall be accompanied by two copies of plans and specifications, including a map, survey (if applicable), site development or plot plan, drawn to scale, showing the courses, dimensions and detail of all the boundary lines of the proposed lot of occupancy and the street boundaries adjacent thereto; if any, and the location and size of all existing buildings, structures, parking areas, traffic access and circulation drives, open spaces and landscaping on the site, the nature and character of any work to be performed and the materials to be incorporated, distance from lot lines, the relationship of structures on adjoining property, widths and grades of adjoining streets, walks, and alleys, and such additional information as may be required by the Building Inspector, to determine compliance with the provisions of this chapter.

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

(6) Additional information: Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work or change in use with the requirements of this chapter.

D. Action upon application.

(1) The Building Inspector shall promptly review the application and approve or deny it, giving the reason for any denial. A copy of the approved or disapproved application shall be delivered or mailed to the applicant within five business days.

(2) An application with the approval of the Building Inspector endorsed thereon shall constitute the zoning permit, which shall become effective when the Building Inspector has filed written approval of the permit application in the office of the Town Clerk. A copy of the zoning permit shall be placed in the permanent property file for the property.

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

F. Termination of zoning permit. An approved building or zoning permit shall terminate and become void if there is no commencement of the new use within 12 months of the date of approval.

§ 220-55. Steps to obtain permits; appeals.

The steps to obtain zoning permits shall be the same as those required for building permits in Chapter 92. If the Building Inspector denies a building or zoning permit and does not refer the application to the Planning Board or Town Board, the applicant may appeal to the Zoning Board of Appeals.

§ 220-56. Certificates of occupancy.

No building or structure hereafter erected, constructed, enlarged, altered, or moved, and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a certificate of occupancy has been issued by the Building Inspector, in accordance with the provisions of Chapter 92 of the Town Code, this chapter, and any other applicable laws and regulations. Any structure for which a building permit has been issued, which remains partially complete with no substantial progress over a twelve-month period, shall be considered a violation of this chapter to be remedied pursuant to § 220-57.

§ 220-57. Inspection; enforcement; penalties for offenses.

A. Inspection. In order to determine compliance with this chapter, the Building Inspector is authorized, to the extent permitted by law, to enter, inspect, and examine any building, structure, place, premises, or use in the Town of Gardiner.

B. Notice of violation.

(1) Upon finding any new construction, improvements, or uses to be in violation of this chapter, the Building Inspector shall transmit a written notice of violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation, with a copy to the Town Board. The notice of violation shall require an answer or correction of the alleged violation to the satisfaction of the Building Inspector within a reasonable time limit set by the Building Inspector. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of the Building Inspector within the time limit constitutes admission of a violation of this chapter. The notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made, and that, if a violation as alleged is found, costs of the determinations will

be charged against those responsible, in addition to such other penalties as may be appropriate, and that, if it is determined that no violation exists, costs of determination will be borne by the Town.

(2) If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Building Inspector, the notation "Violation Corrected" shall be made on the Building Inspector's copy of the notice.

(3) If there is no reply within the time limit set (thus establishing admission of a violation of this chapter) and the alleged violation is not corrected to the satisfaction of the Building Inspector within the time limit set, the Building Inspector shall take action in accordance with Subsection C.

(4) A permanent record of all notices of violation and their disposition shall be kept in the offices of the Building Inspector.

C. Abatement of violations. The Building Inspector or the Town Board may issue a stop-work or cease-and-desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this chapter to prevent the occupancy of premises, or to prevent any activity, business, or use that violates this chapter. Such legal action may include the issuance of an appearance ticket pursuant to the Criminal Procedure Law, § 150.20.

D. Penalties.

(1) A violation of this chapter is an offense punishable by fine not exceeding $350, or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense. Conviction of a second offense, committed within five years of the first offense, is punishable by a fine not less than $350 nor more than $700 or imprisonment for a period not to exceed 15 days, or both. Conviction of a third or subsequent offense committed within a period of five years is punishable by a fine of not less than $700 nor more than $1,000, or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six months per violation.

(2) In addition, any person who violates any provision of this chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than $100. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.

(3) The imposition of penalties for any violation of this chapter shall not excuse the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this chapter shall not prevent the abatement of a violation pursuant to Subsection C. The expenses of the Town in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender, and may be recovered in a civil court of appropriate jurisdiction.

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

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

§ 220-58. Escrow deposits for review and inspection costs.

A. Deposits in escrow.

(1) In connection with any application for a special permit, site plan or subdivision approval, zoning amendment, variance, or other appeal, the reviewing board may require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of reviewing the particular type of application before it. The reviewing board may consider the professional review expenses incurred by it and neighboring municipalities in reviewing similar applications.

(2) Use of funds.

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

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

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

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

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

C. Upon receipt and approval by the Town Board of itemized vouchers from consultants for services rendered on behalf of the Town regarding a particular application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall debit the separate record of such account accordingly.

D. Review of vouchers; payment.

(1) The Town Board shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications and project inspections. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a similar application. In auditing the vouchers, the Town Board may take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the Town Board may deem relevant. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, and protect public or private property from damage.

(2) In no event shall an applicant make direct payment to any Town consultant.

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

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

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

H. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within 60 days after the applicant's request.

I. The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town of Gardiner for funds expended to compensate for services rendered to the Town under this section by private engineers, attorneys or other consultants. In order for a land use application

to be deemed complete, the applicant shall provide the written consent of all owners of the subject real property acknowledging potential landowner responsibility, under this section, for engineering, legal and other consulting fees incurred by the Town. In the event that insufficient funds have been deposited in escrow and the applicant or owners fail to reimburse the Town for such fees, the following shall apply:

(1) The Town may seek recovery of unreimbursed engineering, legal and consulting fees by action in a court of appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.

(2) Alternatively, and at the sole discretion of the Town, a default in reimbursement of such engineering, legal and consulting fees expended by the Town shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-assessed taxes and shall be applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§ 220-59. Zoning Board of Appeals.

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

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

B. Appeals for variance.

(1) Where there are practical difficulties or unnecessary hardships imposed by the strict letter of this chapter, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Building Inspector and after public notice and hearing, to vary or modify the application of any of the provisions of this chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.

(2) All applications for variances shall be submitted to the Building Inspector at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. An application for a use variance may require submission of an agricultural data statement pursuant to § 220-37D.

(3) Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within one year of the date of issuance shall automatically lapse.

C. Use variances.

(1) The Zoning Board of Appeals, on appeal from a decision or determination of the Building Inspector, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this chapter. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under this chapter for the district in which the applicant's property is located:

(a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) The alleged hardship has not been self-created.

(2) Failure to demonstrate any one of the requirements in Subsection C1(a) through (d) above is sufficient to justify the denial of a use variance.

(3) The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to § 220-37D.

(4) The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

(5) In addition to the grounds for granting a use variance in Subsection C(1) above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property. In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.

(6) If the use variance is granted for a nonresidential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

D. Area variances.

(1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Building Inspector, or in connection with a special permit or site plan application as provided in § 220-62D or § 220-66D, to grant area variances from the area or dimensional requirements.

(2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making its determination, the Board shall also consider:

(a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(c) Whether the requested area variance is substantial;

(d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(e) Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance.

(3) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

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

F. Procedures.

(1) Application. Appeals shall be taken by filing a written notice of appeal and any required plans with the Building Inspector and the Zoning Board of Appeals, within 60 days after the filing of the order, requirement, decision, interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Building Inspector shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.

(2) Referral to County Planning Board.

(a) Requests for variances that require referral to the County Planning Board shall be so referred pursuant to General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

(b) No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

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

G. Hearing and public notice.

(1) If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of any variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.

(2) The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.

(3) The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.

(4) At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to the Planning Board and by certified mail to all property owners within 200 feet of the property upon which the appeal is taken. The cost of publishing and mailing such notices shall be borne by the appellant.

(5) If the application is for a use variance on property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard.

(6) The clerk of the board and the Code Enforcement Officer shall comply with the supplemental notice requirements in § 220-59.1, and the costs shall be borne by the applicant.

(7) At the hearing, any party may appear in person or by agent or by attorney.

(8) The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal. If the hearing is adjourned for more than 30 days, the Board may require that it be re-noticed as provided in Subsection G(4) above.

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

(1) Any such action shall be decided within 62 days after the close of the hearing.

(2) Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by

resolution which contains a full record of the findings and rationale for the decision. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the County Planning Board, it shall give written reasons for such action.

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

J. Court review of Board decisions. Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules and § 267-c of the Town Law.

K. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within 12 months of the date of such decision.

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

§ 220-59.1. Supplementary notice requirements.

A. For any application or petition (collectively "application") received for a zone change, zoning variance, special permit, subdivision approval or site plan approval, whether before the Town Board, Planning Board or Zoning Board of Appeals, the clerk of the board in receipt of such application shall implement procedures to accomplish the notice requirements contained in this § 220-59.1. Where this section refers to distance, such distance is measured from the property boundary of the parcel which is the subject of the application.

(1) Notice of application. Upon receipt of an application, the clerk of the board shall make provision to notify certain property owners, as set forth herein, by providing written notice of the application to be delivered via first class mail with notice to be posted within seven days of the board's receipt of the application. Such notices shall be sent to the last known address of the property owner as shown by the most recent Town tax records. If the subject property lies within 500 feet of the boundary of any other municipality, the clerk shall notify the Municipal Clerk of such other municipality of the application in the manner set forth in this subsection. The property owners to be notified are:

(a) Special permit: properties within 500 feet;

(b) Use variance: properties within 500 feet;

(c) Area variance: adjacent and abutting properties;

(d) Subdivision approval (major): properties within 500 feet;

(e) Subdivision approval (minor): properties within 250 feet;

(f) Zoning Map amendments: properties within 500 feet; and

(g) Site plans: properties within 500 feet.

(2) Notice of public hearing.

(a) Upon the scheduling of a public hearing by a board, the clerk of the board shall make provision to notify certain property owners, as set forth herein, by providing written notice of the public hearing to be delivered via first class mail with posting of the notice to be completed at least 10 days prior to the public hearing. Such notices shall be sent to the last known address of the property owner as shown by the most recent Town tax records. If the subject property lies within 500 feet of the boundary of any other municipality, the clerk shall notify the municipal clerk of such other municipality of the application in the manner set forth in this subsection. The property owners to be notified are:

[1] Special permit: properties within 500 feet;

[2] Use variance: properties within 500 feet;

[3] Area variance: adjacent and abutting properties;

[4] Subdivision approval (major): properties within 500 feet;

[5] Subdivision approval (minor): properties within 250 feet;

[6] Zoning Map amendments: properties within 500 feet; and

[7] Site plans: properties within 500 feet.

(b) In addition, notice of such public hearing shall be published in a newspaper of general circulation in the Town at least 10 days prior to such hearing. Such notice shall also be displayed on the Town signboard maintained by the Town Clerk at least 10 days before the hearing.

(3) Posting of property subject to public hearing. Notice of the public hearing shall also be given by conspicuously posting signs on the subject premises which state the time, day and location of the hearing and a brief description of the approval sought. There shall be posted a minimum of two such signs on each subject parcel along the public roadway thereof. Such signs shall be of a form as determined by the Code Enforcement Officer. It is the responsibility of the Code Enforcement Officer to post such signs for at least 10 days prior to the public hearing and to take all steps necessary to ensure that the sign remain legible.

B. The Town may elect to combine the notice of the application and the notice of a public hearing into one mailing where the minimum timeframes can be met.

C. The Town may elect to combine the notices provided for in this section with any notices required under the State Environmental Quality Review Act.

D. The costs of all mailings, publications and signs shall be borne by the applicant. The applicant shall provide as part of its application two sets of envelopes, with appropriate postage affixed, with a return address for the Town of Gardiner displayed, along with a master list of the addresses.

E. Provided that there shall have been substantial compliance with these provisions, the failure to give notice in exact conformance herewith shall not be deemed to invalidate an action taken by a board in the granting or denying any application. Nothing contained in this chapter shall be construed to confer standing or any other rights in any proceeding commenced to challenge any action of the Town.

F. Nothing herein shall supersede any other notice or referral requirement contained in any state or other law. In the event of conflicting requirements, the earlier notification requirement shall control.

G. Any proposed zoning amendment introduced by the Town Board and of Town-wide or district-wide effect shall not be subject to this section except for the required publication of notice and the required notice to adjacent municipalities. However, nothing in this chapter shall prohibit the Town Board from determining on a case-by-case basis to provide additional notice of any such zoning amendment.

ARTICLE IX. Special Permits and Site Plan Review

§ 220-60. Purpose and applicability.

A. It is the policy of the Town of Gardiner to allow a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the rural and historic character of the Town. Many uses are therefore permitted only upon issuance of a special permit by the Planning Board, in order to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this chapter. Some uses are allowed by right, subject only to site plan approval (see Use Table in § 220-10). Wireless telecommunication facilities, adult uses, soil mines and uses not listed on the Use Table (if not prohibited by § 220-10C) require a special permit issued by the Town Board. In reviewing special permit applications, the Town Board shall follow the procedures and standards established for the Planning Board in this Article IX.

B. Accessory uses or structures used in connection with a special permit or site plan use shall be subject to the same approval requirements as the principal structure or use.

C. Minor and major projects.

(1) A minor project is a special permit or site plan application that does not exceed any of the following thresholds (over a three-year period):

(a) Construction of four multifamily dwelling units or a lodging facility with six bedrooms.

(b) Construction of facilities or structures for a nonresidential use covering 3,000 square feet of building footprint.

(c) Alteration of existing structures or expansion of such structures by 1,000 square feet.

(d) Conversion of existing structures totaling 5,000 square feet to another use.

(e) Alteration and active use of 10,000 square feet of land, with or without structures.

(f) Soil mining that does not require a DEC permit.

(g) Construction of a structure that is 80 feet or higher above average grade level.

(2) A major project is a special permit or site plan application exceeding any of the minor project thresholds.

§ 220-61. Required submissions for special permit applications.

Because the impact of special permit uses varies, the review procedure and information required to be submitted for a special permit varies depending upon whether it is a major or minor project.

A. Major project special permit. An applicant for a major project special permit shall submit the following:

(1) A major project application form.

(2) A site plan, containing the information listed in § 220-65B unless submission of certain information has been waived at a preapplication meeting.

(3) A narrative report describing how the proposed use will satisfy the criteria set forth in § 220-63, as well as any other applicable requirements relating to the specific use proposed.

(4) A long-form environmental assessment form or draft environmental impact statement.

(5) An agricultural data statement as defined in § 220-74, if required by § 220-37D.

(6) The major project special permit application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

(7) A conservation analysis, if required by § 220-16.

B. Minor project special permits. An applicant for a minor project special permit shall submit the following:

(1) A minor project application form.

(2) A plot plan providing information sufficient to enable the reviewing board to make an informed decision (which may include some of the site plan information listed in § 220-65B).

(3) A brief narrative describing the proposed use.

(4) A short-form environmental assessment form (EAF) (unless the Planning Board determines that the proposed special permit is a Type I action, in which case a long-form EAF shall be required).

(5) An agricultural data statement as defined in § 220-74, if required by § 220-37D.

(6) The minor project application fee as established by the Town Board, and an escrow deposit (if required).

(7) A conservation analysis, if required by § 220-16.

§ 220-62. Procedure for special permits.

A. Preapplication meetings. Before filing an application, a preliminary conference with the Building Inspector is required to discuss the nature of the proposed use and to classify it as a major or minor project. If the Building Inspector classifies the project as a major project, a preliminary meeting with the Planning Board is required to

discuss the nature of the proposed use and to determine the information that will need to be submitted in the site plan.

B. Mediation option. At any point in a project review process the Planning Board may, if it deems appropriate and the parties consent, appoint a mediator to work informally with the applicant, neighboring property owners, and other interested parties to address concerns raised about the proposed special permit use. Any party may request mediation. Such mediation may be conducted by any qualified and impartial person acceptable to the parties and the Planning Board. The mediator shall have no power to impose a settlement or bind the parties or the Planning Board, and any settlement reached shall require Planning Board approval to assure compliance with all provisions of this chapter. The cost, if any, of such mediation may be charged to the applicant as part of the cost of project review, with the applicant's written consent. Such cost may also be paid by the Town, or shared by other parties with their written consent.

C. Application.

(1) Application for a special permit shall be made to the Planning Board in the manner prescribed by the Board.

(2) If an application is for a parcel or parcels on which more than one use requiring a special permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining whether the application is a major or minor project, and for SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.

D. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special permit contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 220-59F without a decision or determination by the Building Inspector.

E. State Environmental Quality Review Act (SEQRA) compliance. Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision making in this chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

F. Referral to County Planning Board.

(1) Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the County Planning Board any application for a special permit affecting real property within 500 feet of the boundary of the Town of Gardiner, the boundary of any existing or proposed county or state park or other recreational area, the boundary of any existing or proposed county or state roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the county for which the county has established channel lines, the boundary of any existing or proposed county- or state-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25-AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

(2) No action shall be taken on applications referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the county and Town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

(3) County disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any special permit which receives a recommendation of disapproval from the County Planning Board before the Planning Board takes action. The Planning Board shall by resolution set forth its reasons for such contrary action.

G. Notice and hearing.

(1) If an agricultural data statement has been submitted, the secretary of the Planning Board shall, upon receipt of the application, mail written notice of the special permit application to the owners of land as

identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

(2) The Planning Board shall hold a public hearing on a complete special permit application within 62 days of its submission. The Board shall give public notice of such hearing by causing publication of a notice of such hearing in the official newspaper at least five days prior to the date thereof.

(3) The Clerk of the Board and the Code Enforcement Officer shall comply with the supplemental notice requirements in § 220-59.1, and the costs shall be borne by the applicant.

H. Action.

(1) The Board shall grant, deny, or grant subject to conditions the application for a special permit within 62 days after the hearing for a major project and within 31 days for a minor project. Any decision on a major project shall contain written findings explaining the rationale for the decision in light of the standards contained in § 220-63 below.

(2) In granting a special permit, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to § 220-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guarantees to insure the completion of the project in accordance with the conditions imposed.

(3) Every decision on a special permit shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the applicant within the same five-day period.

(4) The special permit and accompanying site plan shall be implemented as provided in § 220-68.

I. Expiration, revocation, and enforcement.

(1) A special permit shall expire if the special permit use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the special permit within 12 months of its issuance, or if its time limit expires without renewal.

(2) A special permit may be revoked by the Planning Board if the permittee violates the conditions of the special permit or engages in any construction or alteration not authorized by the special permit.

(3) Any violation of the conditions of a special permit shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided in § 220-57.

§ 220-63. Findings required.

In granting or denying special permits, the Planning Board shall take into consideration the scale of the proposed project, the possible impact of the proposed project on the functioning of nearby farm operations, and, in rural areas, the tradition of freedom of land use where such use does not interfere with or diminish the value of adjoining property. The Planning Board shall also take account of any proposed conservation easements, architectural restrictions, or other measures that would tend to mitigate potential adverse impacts and preserve or enhance the scenic and historic character of the Town. No special permit shall be granted for any property on which there exists a violation of this chapter, including a violation of any condition of a previous municipal approval, unless the Planning Board finds that the applicant has no legal right or ability to remedy the violation or that the grant of a special permit is necessary to remedy a condition that poses a risk to public health or safety.

A. Minor projects. A Minor Project shall be presumed to be acceptable if it complies with applicable health laws and other specific provisions of this chapter. In order to grant a minor project special permit, the Planning Board must determine that none of the criteria for major projects listed in Subsection B below will be violated. The Planning Board shall deny a minor project special permit if it determines that one or more of these criteria will be violated.

B. Major project criteria. Before granting or denying a major project special permit, the Planning Board shall make specific written findings establishing whether or not the proposed major project:

(1) Will comply with all applicable land use district, overlay district, floating district, and other specific requirements of this and other chapters and regulations, and will be consistent with the purposes of this chapter and of the land use district in which it is located.

(2) Will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.

(3) Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.

(4) Will be accessible to fire, police, and other emergency vehicles.

(5) Will not overload any public water, drainage, or sewer system, or any other municipal facility.

(6) Will not materially degrade any watercourse or other natural resource or ecosystem, or endanger the water quality of an aquifer.

(7) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.

(8) Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas or screening as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town.

(9) Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering nonresidential uses that are incompatible with residential use.

(10) Will not adversely affect the availability of affordable housing in the Town.

(11) Will comply with applicable site plan criteria in § 220-65D.

(12) If the property is in the SP, RA, or HR District, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

§ 220-64. Special permit amendments.

The terms and conditions of any special permit may be amended in the same manner as required for the issuance of a special permit, following the criteria and procedures in this section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require site plan review only, provided that the use does not change.

§ 220-65. Site plan review and approval.

A. Applicability.

(1) Site plan approval by the Planning Board shall be required for all permitted uses listed on the Use Table as requiring site plan approval only. Site plan review shall be included as an integral part of the special permit approval process and no separate site plan approval shall be required for uses requiring a special permit.

(2) The procedures for review of major and minor (as defined in Article XII) site plans are described in §§ 220-66 and 220-67. Agricultural structures with a footprint of over 15,000 square feet shall require minor site plan approval. Agricultural structures with a footprint of 15,000 square feet or less are exempt from site plan approval requirements.

(3) Site plan approval shall also be required for any development which is the functional equivalent of a land subdivision but which is structured for ownership purposes as a condominium project. In such cases, the Planning Board shall apply all relevant review criteria contained in the Subdivision Law (Chapter 188 of the Town Code) as well as the provisions of this chapter.

B. Required information for site plan. An application for site plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the applicant. Minor project site plans shall contain the information required by § 220-67C and other information listed below if the Planning Board deems

such information necessary to conduct an informed review. Major project site plans shall be prepared by a licensed professional engineer, architect, or landscape architect, and shall include the following (unless waived):

(1) A vicinity map drawn at the scale of 2,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. The map shall also show all properties, subdivisions, streets, and easements within 500 feet of the property. Such a sketch may be superimposed on a United States Geological Survey or New York State Department of Transportation map of the area.

(2) An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use such as rock outcrops, single trees eight or more inches in diameter located within any area where clearing will occur, forest cover, soils (including prime and statewide important agricultural soils), and ponds, lakes, wetlands and watercourses, aquifers, floodplains, and drainage retention areas.

(3) A site plan, drawn at a scale and on a sheet size appropriate to the project. The information listed below shall be shown on the site plan and continuation sheets.

(4) Name of the project, boundaries, date, North arrow, and scale of the plan. Name and address of the owner of record, developer, and seal of the engineer, architect, or landscape architect. If the applicant is not the record owner, a letter of authorization shall be required from the owner.

(5) The location and use of all existing and proposed structures within the property, including all dimensions of height and floor area, all exterior entrances, and all anticipated future additions and alterations.

(6) The location of all present and proposed public and private ways, off-street parking areas, driveways, outdoor storage areas, sidewalks, ramps, curbs, paths, landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.

(7) The location, height, intensity, and bulb type (sodium, incandescent, etc.) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.

(8) The location, height, size, materials, and design of all proposed signs.

(9) The location of all present and proposed utility systems, including:

(a) Sewage or septic system;

(b) Water supply system;

(c) Telephone, cable, and electrical systems; and

(d) Storm drainage system, including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes, and drainage swales.

(10) Erosion and sedimentation control plan to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable.

(11) Existing and proposed topography at suitable contour interval to show site changes as the Board shall specify. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the one-hundred-year floodplain, the area will be shown, and base flood elevations given. Areas shall be indicated within the proposed site and within 50 feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards.

(12) A landscape, planting, and grading plan showing proposed changes to existing features.

(13) Land use district boundaries within 200 feet of the site's perimeter shall be drawn and identified on the site plan, as well as any overlay or floating districts that apply to the property.

(14) Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and within 100 feet of the site. The Planning Board may, at its discretion, require a detailed

traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of § 220-40N.

(15) For new construction or alterations to any structure, a table containing the following information shall be included:

(a) Estimated area of structure currently used and intended to be used for particular uses such as retail operation, office, storage, etc.;

(b) Estimated maximum number of current and future employees;

(c) Maximum seating capacity, where applicable; and

(d) Number of parking spaces existing and required for the intended use.

(16) Elevations at a scale of one-quarter inch equals one foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.

(17) Where appropriate, the Planning Board may request soil logs, percolation test results, and storm run-off calculations.

(18) Plans for disposal of construction and demolition waste, either on-site or at an approved disposal facility.

(19) Long-form environmental assessment form or draft environmental impact statement.

(20) Where appropriate, a cultural resource survey of resources with historic or archaeological significance.

(21) Where appropriate, a site analysis using the Open Space Priority Scoring and Priority Conservation Network items from the adopted Town Open Space Plan.

(22) Other information that may be deemed necessary by the Planning Board.

C. Waivers. The Planning Board may waive or allow deferred submission of any of the information required in Subsection B above, as it deems appropriate to the application. Such waivers shall be discussed in the course of preapplication conferences. The Planning Board shall issue a written statement of waivers for all major projects. This statement shall be filed in permanent record of the property.

D. Criteria. In reviewing site plans, the Planning Board shall consider the criteria set forth below. The Planning Board shall also refer for nonbinding guidance to the three-volume set of illustrated design guidelines published by the New York Planning Federation in 1994, entitled Hamlet Design Guidelines, Building Form Guidelines, and Rural Design Guidelines.

(1) Layout and design.

(a) To the maximum extent practicable, development shall be located to preserve the natural features of the site and to avoid wetland areas, steep slopes, significant wildlife habitats and other areas of environmental sensitivity. The placement and design of buildings and parking facilities shall take advantage of the site's topography, existing vegetation and other pertinent natural features. The Planning Board may require that an applicant prepare a conservation analysis as described in § 220-20A of this chapter.

(b) All structures in the plan shall be integrated with each other and with adjacent structures and shall have convenient access between adjacent uses. Structures shall, where practical, be laid out in the pattern of a traditional hamlet.

(c) Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, proportion, texture, color and placement, and shall harmonize with traditional elements in the architectural fabric of the area. Building components such as windows, roof lines and pitch, doors, eaves and parapets shall be compatible with historic structures in the Town. Vertical, double-hung windows and steeply pitched roofs are encouraged. Designs shall avoid flat roofs, large expanses of undifferentiated facades, and long, plain wall sections. Rooftop and ground-level mechanical equipment shall be screened from public view using materials harmonious with the building, or shall be located where they are not visible from any public ways.

(d) Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

(e) The Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.

(f) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of Gardiner or the Building Form Guidelines.

(g) Impacts on historic and cultural resources shall be minimized.

(h) Newly installed utility service systems, and service modifications necessitated by exterior alterations, shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.

(2) Landscaping.

(a) Landscaping shall be an integral part of the entire project area, and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.

(b) Landscape plantings of shrubs, ground cover and shade trees, as well as perennials and annuals and other materials such as rocks, water, sculpture, art, walls, fences, paving materials and street furniture, shall be encouraged to create pedestrian-scale spaces and to maintain landscape continuity within the community. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of community aesthetic character. This shall be accomplished through the use of native plant material and the retention of existing natural vegetation, thereby reducing or eliminating the need for irrigation, pesticides, herbicides and fertilizers.

(c) Existing tree stock eight or more inches in diameter at breast height shall be protected and preserved to the maximum extent possible to retain valuable community natural resources and promote energy conservation by maximizing the cooling and shading effects of trees. The preservation of mature plant species, hedgerows, wetlands and woodlots shall be encouraged and included as a design element in the development of the site.

(d) Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forestland or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property and nature of buffer composition.

(e) If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall and two-inch caliper shall be planted and maintained at twenty-foot to forty-foot intervals along roads, at a setback distance acceptable to the Highway Superintendent.

(f) For landscaping parking lots, see § 220-38A(4)(c).

(3) Parking, circulation, and loading.

(a) Roads, driveways, sidewalks, off-street parking, and loading space shall be safe, and shall encourage pedestrian movement.

(b) Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.

(c) Off-street parking and loading standards in § 220-38 shall be satisfied.

(d) Access from and egress to public highways shall be approved by the appropriate highway department, including Town, county, and state.

(e) All buildings shall be accessible by emergency vehicles.

(f) Parking spaces shall have wheel stops or curbs to prevent injury to trees and shrubs planted in landscaped islands.

(g) Bicycle parking spaces and racks shall be provided in an area that does not conflict with vehicular traffic. Designated van/car pool parking, and other facilities for alternatives to single-occupancy vehicle use shall be provided wherever possible.

(h) In developments where a link to schools, churches, shopping areas, trails, greenbelts and other public facilities is feasible, or where a trail connection is recommended in the Comprehensive Plan or in a Town Open Space Plan, a trail corridor shall be reserved on the approved site plan for this purpose.

(4) Reservation of parkland. For any site plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to Town Law § 274-a(6).

(5) Miscellaneous standards.

(a) Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.

(b) Drainage of the site shall recharge groundwater to the extent practical. The peak rate of surface water flowing off-site shall not increase above predevelopment conditions and shall not adversely affect drainage on adjacent properties or public roads or increase turbidity of water flowing off-site.

(c) Applicable requirements for proper disposal of construction and demolition waste shall be satisfied, and any necessary permits or agreements for off-site disposal shall be obtained.

(d) No materials shall be placed below the finished grade of a site other than utilities, sand, gravel, rocks, and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection D(5)(d), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.

(e) Structures shall be located, constructed and insulated to prevent on-site noise from interfering with the use of adjacent properties. Similarly, buildings shall be situated to prevent off-site noise from intruding on new development. Methods for blocking noise shall be used where appropriate, and shall include fencing, walls and natural buffers, such as berms and landscape planting with deciduous and coniferous trees and large shrubs.

§ 220-66. Procedure for major project site plan approval.

A. Applicability. This § 220-66 applies to major project site plan approval applications where no special permit is required. See § 220-67 for minor project site plan applications.

B. Preapplication meetings and classification. Before filing an application, a preliminary discussion conference with the Planning Board is encouraged. The Building Inspector shall classify the application as a major or minor project.

C. Submission. All major project site plans shall be submitted, with multiple copies as required by the Planning Board, to the Building Inspector, who shall distribute them to the Planning Board and such other municipal boards, officials, and consultants as the Planning Board deems appropriate. In addition to the site plan drawings, the applicant shall submit:

(1) A long-form environmental assessment form or draft environmental impact statement.

(2) An agricultural data statement as defined in § 220-74, if required by § 220-37D.

(3) The site plan application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

D. Application for area variance. Where a proposed site plan contains one or more features which do not comply with the dimensional regulations of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 220-59F without a decision or determination by the Building Inspector.

E. SEQRA compliance. Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision-making in this chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

F. Public hearing and decision.

(1) The Planning Board shall hold a public hearing on the site plan and shall follow the provisions on notice, agricultural data statements, county review, and time limits for special permits in § 220-62E through G.

(2) Criteria for decisions on site plans shall be limited to those listed in § 220-65D. In granting site plan approval, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to § 220-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring performance guarantees to insure the completion of the project in accordance with the conditions imposed.

(3) A copy of the decision shall be immediately filed in the Town Clerk's office and mailed to the applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the Planning Board Chairman to stamp and sign the site plan upon the applicant's compliance with applicable conditions and the submission requirements stated herein.

(4) If the Planning Board's resolution includes a requirement that modifications be incorporated in the site plan, conformance with these modifications shall be considered a condition of approval. If the site plan is disapproved, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

§ 220-67. Procedure for minor project site plan approval.

The procedure for minor project site plan approval by the Planning Board shall be the same as prescribed in § 220-66 for major projects, except for the following:

A. A short-form environmental assessment form (EAF) will normally be required. If the application is classified as a Type I action under the State Environmental Quality Review Act, a long-form EAF shall be required. The Planning Board, at its discretion, may require the long-form environmental assessment form for any application categorized as "unlisted" under SEQRA.

B. A minor project application fee established by the Town Board shall be paid, and an escrow deposit may be required to cover review costs at the discretion of the Planning Board.

C. A minor project site plan application shall contain the following information. For nonagricultural structures, the Planning Board may request additional information listed in § 220-65B if the Board deems it essential to conduct an informed review. Minor project site plan application materials may be prepared by a licensed professional engineer, architect, or landscape architect, but the Planning Board shall not require this unless the services of such professionals are necessary to provide accurate information or are otherwise required by law.

(1) A sketch of the parcel on a location map (e.g., a tax map) showing boundaries and dimensions of the parcel and identifying contiguous properties that are within 200 feet of the proposed structure and any known easements or rights-of-way and roadways.

(2) Existing features of the site lying within 200 feet of the proposed structure, including land and water areas, water or sewer systems, and the approximate location of all structures within 200 feet of the proposed structures.

(3) The proposed location and arrangements of structures and uses on the site, including means of ingress and egress, parking, and circulation of traffic.

(4) A sketch of any proposed structures (including signs), showing exterior dimensions and elevations of front,

side, and rear views; copies of available blueprints, plans, or drawings.

(5) A concise description of the project, describing the intended use of proposed structures (including signs) and any changes in the existing topography and natural features.

(6) The name and address of the applicant and any professional advisors, and the authorization of the owner if the applicant is not the owner.

(7) If the parcel contains a stream, wetland, or floodplain, a copy of the floodplain map and wetland map that corresponds with the boundaries of the property.

D. No public hearing shall be required for a minor project site plan. The Planning Board may, in its sole discretion, hold a public hearing following the procedures in § 220-66F. If no public hearing is held, the Planning Board shall give notice to the County Planning Board and to farm operators as required in § 220-62E and F and render a decision within 45 days of its receipt of a complete site plan application. In order to approve a minor project site plan, the Planning Board must find that the proposal is generally consistent with the criteria in § 220-65D and will not adversely affect neighboring properties.

§ 220-68. Implementation, revision, and enforcement of approved site plans.

A. Within six months after receiving approval of a site plan, with or without modifications, the applicant shall submit multiple copies of the site plan to the Planning Board for stamping and signing. The site plan submitted for stamping shall conform strictly to the site plan approved by the Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:

(1) Record of application for and approval status of all necessary permits from federal, state, and county officials.

(2) Detailed sizing and final material specification of all required improvements.

(3) An estimated project construction schedule. If a performance guarantee pursuant to Subsection B is to be provided by the applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.

(4) Proof of payment of the Planning Board's reasonable review costs.

(5) Upon stamping and signing the site plan, the Planning Board shall forward a copy of the approved site plan to the Building Inspector, and the applicant. The Building Inspector may then issue a building permit or certificate of occupancy if the project conforms to all other applicable requirements.

B. Performance guarantee. No certificate of occupancy shall be issued until all improvements shown on the site plan are installed, or a sufficient performance guarantee has been posted for improvements not yet completed. The performance guarantee shall be posted in accordance with the procedures specified in § 277 of the Town Law relating to subdivisions. The amount and sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Attorney, Building Inspector, other local officials, and its consultants.

C. As-built plans and inspection of improvements. No certificate of occupancy shall be granted until the applicant has filed a set of as-built plans with the Building Inspector, indicating any deviations from the approved site plan. The Building Inspector shall be responsible for the inspection of site improvements, including coordination with the Town's consultants and other local officials and agencies, as may be appropriate, and shall grant a certificate of occupancy upon a finding that the project as built complies in all material respects with the site plan. The Building Inspector shall also have the authority to inspect soil mines for compliance with conditions authorized by § 220-17D throughout the life of the mine. Costs of any required inspections may be charged to the applicant as provided in § 220-58.

D. Site plan amendments. An approved site plan may be amended by filing an application with the Planning Board for a site plan amendment.

(1) If the Planning Board finds that such proposed amendment is consistent with the terms of any applicable special permit approval (or if no special permit is required) and does not represent a substantial change from the approved site plan, it shall grant the amendment without a hearing.

(2) If the Planning Board determines that the proposed amendment is consistent with the terms of the applicable special permit approval (or if no special permit is required), but is a substantial change from the approved site plan, it shall follow the procedures for site plan approval contained in § 220-66F and hold a public hearing if the amendment would be considered to be a major project.

(3) If the Planning Board determines that the proposed amendment is inconsistent with the terms of any special permit approval, it shall consider the application to be one for a special permit amendment and proceed pursuant to § 220-62.

E. Expiration, revocation, and enforcement.

(1) A site plan approval shall expire if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the site plan approval within 18 months of its issuance, or if the special permit with which it is associated expires. The Planning Board may grant up to two six-month extensions.

(2) A site plan approval may be revoked by the Planning Board that approved it if the permittee violates the conditions of the site plan approval or engages in any construction or alteration not authorized by the site plan approval.

(3) Any violation of the conditions of a site plan approval shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided herein.

ARTICLE X. Amendments

§ 220-69. Amendments.

A. Initiation. The Town Board, from time to time, upon its own motion or upon application by one or more property owners, or resolution of the Planning Board or Zoning Board of Appeals, may amend this chapter as provided herein. A property owner or authorized agent may apply for amendment to this chapter by filing three complete sets of a petition with the Town Board, and two complete sets with the Planning Board. The Town Board shall be under no obligation to consider or review a petition for a zoning amendment. The petition shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee. In the case of a proposed amendment which would apply only to properties which are not immediately identifiable or to a class of properties including six or more identifiable properties, no properties need be identified as affected.

B. Review by planning agencies. As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town Planning Board and to the County Planning Department as required by §§ 239-l and 239-m of the General Municipal Law.

(1) Referral to County Planning Department. No action shall be taken to approve a proposed zoning amendment referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the county and Town agree to an extension beyond the thirty-day requirement for the County Planning Department's review.

(2) Referral to Town Planning Board. Every proposed amendment or change initiated by the Town Board or by petition (but not if initiated by the Planning Board) shall be referred to the Town Planning Board for report thereon prior to public hearing. If the Planning Board does not report within 30 days of such referral, the Town Board may take action without the Planning Board report. This period of time may be extended by agreement of the Town Board and Planning Board.

C. Public hearing and notice. No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. If the Town Board chooses to consider a proposed zoning amendment, it shall, by resolution at a duly called meeting, set the time and place for a public hearing on the proposed amendment, and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities, if necessary.

(1) Publication of notice in newspaper. Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of

the hearing.

(2) Supplemental notice requirements. The clerk of the board and the Code Enforcement Officer shall comply with the supplemental notice requirements in § 220-59.1, and the costs shall be borne by the applicant.

D. Adoption. The Town Board may adopt amendments to this chapter by a majority vote of its membership, except in the case of local protest or disapproval by the County Planning Board as noted below.

(1) Local protest. The favorable vote of 3/4 (i.e., four) of the Town Board members shall be required for passage of any amendment which is subject to a written protest signed by the owners of 20% or more of the land in any of the following areas:

(a) The land area included in the proposed amendment.

(b) The land area immediately adjacent to the area proposed to be changed and extending 100 feet therefrom.

(c) The land area directly opposite the area proposed to be changed and extending 100 feet from the road frontage of such opposite land.

(2) County disapproval. A majority-plus-one vote of all Town Board members shall be required to pass any proposal which receives a recommendation of disapproval from the County Planning Board prior to Town Board action, along with a resolution setting forth the reasons for such contrary action.

E. Effective date. Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

ARTICLE XI. Miscellaneous Provisions

§ 220-70. Severability.

If any provision of this chapter or the application thereof to any person, property, or circumstances is held to be invalid, the remainder of this chapter and the application of each provision to other persons, property, or circumstances shall not be affected thereby.

§ 220-71. Conflict with state laws.

To the extent that any provisions of this chapter are inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, §§ 261 through 268, 274-a through 281, the Town Board of the Town of Gardiner hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under Municipal Home Rule Law, Article 2, § 10 et seq., of the Consolidated Laws of the State of New York. In particular, to the extent that Article V may be inconsistent with § 278 of the Town Law, the Town Board hereby declares its intent to supersede § 278.

§ 220-72. Conveyance of property.

No land or building shall be conveyed, nor shall any deed be filed except as provided in § 291 of the Real Property Law, which is not shown on a filed approved subdivision map; or which was lawfully formed prior to July 3, 1973, and subsequently reconveyed without change.

§ 220-73. When effective.

This chapter shall take effect upon filing with the New York State Secretary of State.

ARTICLE XII. Definitions

§ 220-74. Word usage; definitions of terms.

A. Use of words. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. The word "shall" is always mandatory. The word "may" is permissive. "Building" or "structure" includes any part thereof. The word "lot" includes the word "plot" or "parcel." The word "person" includes an individual person, a firm, a corporation, a partnership, and any other agency of voluntary action. The word "he" shall include "she" or "they." The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

B. Definitions. Where two words below are separated by a slash mark (/), they shall have the same meaning.

ACCESSORY APARTMENT

A dwelling unit occupying the lesser of 1,000 square feet or 30% of the floor space of an owner-occupied structure containing a principal use that is single-family residential or nonresidential, or a dwelling unit no

larger than 1,000 square feet located in an accessory structure on an owner-occupied property.

ACCESS STRIP

A strip of land abutting a public or private road, providing access to a rear lot (see § 220-23).

ACCESSORY STRUCTURE

A structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use, including accessory apartments.

ACCESSORY USE

A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.

ADULT USE

A bookstore, video store, nightclub, movie theater, retail store, or other establishment which prominently features entertainment or materials with sexually explicit content. An establishment which sells such materials as an incidental part of its business or which presents such material or entertainment primarily as a form of legitimate artistic expression shall not be considered an adult use.

AGRICULTURAL DATA STATEMENT

An identification of farm operations within an agricultural district located within 500 feet of the boundary of property upon which a subdivision is proposed, as provided in § 305-a of the Agriculture and Markets Law. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

AGRICULTURE

The commercial use of land and structures for the production, preservation, nonindustrial processing, storage and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry or dairy products, not including agricultural industry or farms primarily for the disposal of offal or garbage. Commercial horse boarding operations, as defined herein, and the raising or breeding of horses are agricultural uses, distinguished from the business use of teaching or training people to ride a horse. (See "riding academy.") A produce sales facility not exceeding 800 square feet in footprint area and a riding academy operated in conjunction with a farm operation (as defined herein) shall be deemed to be agricultural accessory uses.

ALTERATION

As applied to a structure, a change to or rearrangement of the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

APPLICANT

Any person, corporation, or other entity applying for a building permit, certificate of occupancy, special permit, site plan or subdivision approval, variance, or zoning amendment.

ASSISTED-LIVING FACILITY

A residential care facility providing residential units accompanied by services for housekeeping, personal care, recreation, and food.

AUTOMOBILE SERVICE STATION

Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning, servicing, or repairing such motor vehicles, including auto body shops.

BANK, STREAM

See "stream bank."

BED-AND-BREAKFAST

A dwelling in which overnight accommodations not exceeding five bedrooms and breakfast are provided for transient guests for compensation. A bed-and-breakfast must be the primary residence of the owner/proprietor.

BUILDABLE LAND

That portion of a lot which is suitable for building structures and locating septic disposal facilities, i.e. all land excluding wetlands and watercourses, slopes exceeding 30%, and flood hazard areas as mapped on the Federal Emergency Management Agency's Flood Insurance Rate Map.

BUILDING

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

BUILDING HEIGHT

The vertical distance measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck line of mansard roof; and to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

BUILDING, PRINCIPAL

A building or structure in which is conducted the main or principal use of the lot on which it is located.

CAMP

Any area of land containing recreation facilities and which may contain cabins, tents, recreational travel vehicles, shelters, or accommodations used for what is commonly known as "overnight camp" or "day camp" purposes, or otherwise designed for seasonal or other temporary recreational and living purposes occupied by adults, children, or any combination of individuals, families, or groups.

CEMETERY

Land used or intended to be used for the burial of dead human beings or pets and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

CHANGE OF USE

The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category on the Use Table, shall not be considered a change of use. See § 220-10F.

CHARITABLE ORGANIZATION

A not-for-profit corporation or association organized for charitable purposes, including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

CLEARCUTTING

Any cutting of all or substantially all trees over six inches in diameter at breast height.

CLUB, MEMBERSHIP

Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

BUILDING INSPECTOR

The Town official charged with the administration and enforcement of this chapter and/or Chapter 92 of the Gardiner Town Code. Also referred to as the "Zoning Administrator."

COMMERCIAL HORSE BOARDING OPERATION

An agricultural enterprise, consisting of at least seven acres and boarding at least 10 horses, regardless of ownership, that receives $10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production, not including operations whose primary on site function is horse racing.

COMMON DRIVEWAY

A driveway serving no more than four lots, owned in common or created by reciprocal easements.

COMPLETE APPLICATION

An application for a special permit, site plan, or subdivision approval, zoning amendment, or variance, found by the reviewing board to satisfy all information requirements of this chapter and of the New York State Environmental Quality Review Act, for which either a negative declaration has been issued or a draft environmental impact statement has been accepted as satisfactory pursuant to 6 NYCRR § 617.8(b)(1).

COMPREHENSIVE PLAN

The Comprehensive Plan or Master Plan adopted by the Town Board for the future preservation and development of the Town of Gardiner pursuant to § 272-a of the Town Law, including any part of such plan separately adopted and any update or amendment to such plan.

CONDOMINIUM

A system of ownership of dwelling units, either attached or detached, established pursuant to the Condominium Act of the State of New York (Article 9-B of the Real Property Law), in which the apartments or dwelling units are individually owned.

CONFORMITY/CONFORMING

Complying with the use, density, dimensional, and other standards of this chapter, or permitted to deviate therefrom by special permit, site plan approval, or variance.

CONSERVATION EASEMENT

A perpetual restriction on the use of land, created in accordance with the provisions of § 49, Title 3, of the Environmental Conservation Law or § 247 of the General Municipal Law, for the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

CONSTRUCTION TRAILER

A mobile home unit used for nonresidential purposes associated with on-site construction.

CONVENTIONAL DEVELOPMENT/CONVENTIONAL SUBDIVISION
A land development in the RA District that does not set aside land as permanently protected open space and that is required to comply with frontage and setback requirements of the Dimensional Table.

CORNER LOT
See "lot, corner."

CRAFT WORKSHOP
A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products, including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving. A craft workshop with more than six regular full-time equivalent employees or other staff is considered to be "light industry."

DEVELOPMENT
Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as mining, dredging, filling, paving, excavations, or drilling operations.

DRIVEWAY
A private way providing vehicular access from a public or private road to a residence or to a commercial or noncommercial establishment.

DWELLING
A building designed or used exclusively as living quarters for one or more families.

DWELLING, MULTIFAMILY
A building containing separate living units for three or more families, including apartment buildings, rowhouses, townhouses, regardless of the form of ownership (condominium, fee simple, rental).

DWELLING, SINGLE-FAMILY
A detached building designed for the use of one family, in which not more than three boarders are sheltered and/or fed for compensation. A mobile home outside of a mobile home park shall be considered to be a single-family dwelling.

DWELLING, TWO-FAMILY
A detached building containing two dwelling units.

DWELLING UNIT
A building or portion thereof providing complete housekeeping facilities for one family. For purposes of density calculations in this chapter, a studio or one-bedroom dwelling unit shall be counted as 0.5 dwelling unit, a two-bedroom unit shall be counted as 0.75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as one dwelling unit.

EQUIPMENT SHELTER
An enclosed structure, cabinet, shed or box at the base of the mount within which are housed the electronic receiving and relay equipment for a wireless telecommunications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage or broadcast studios.

EROSION
The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

FAMILY
One or more persons living together as a single nonprofit housekeeping unit, whether or not related by blood, marriage, or adoption, using one or more rooms and housekeeping facilities of a dwelling unit in common and doing their cooking on the premises, as distinguished from a group of people occupying a boardinghouse, rooming house, or lodging facility.

FARM OPERATION
Land used in agricultural production, including farm buildings, farm equipment, farm residential buildings, and farming practices.

FENCE
A hedge, structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

FLOATING DISTRICT
A type of zoning district or zone that replaces the zoning regulations of the underlying land use district or districts to allow uses not otherwise permitted in the underlying district. Floating districts change the use and dimensional requirements of the underlying land use districts as specified in the floating district provisions.

FLOODPLAIN/ONE-HUNDRED-YEAR FLOODPLAIN
Land subject to a one-percent or greater chance of flooding in any given years; same as the "area of special flood hazard" defined in Chapter 121 of the Town Code.

FLOOR SPACE

The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, including habitable finished basements but excluding cellars or unfinished basements.

FOOTPRINT

Area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered by roofing. In the case of party-wall buildings, each unit shall be considered a separate structure for purposes of measuring footprint area.

FORESTRY

Use or management, including commercial logging, of a forest, woodland, or tree plantation, and related research and educational activities, including the construction, alteration, or maintenance of roads, skidways, landings, fences, forest drainage systems, barns, sheds, garages, and research, educational, or administrative buildings or cabins directly and customarily associated with forestry use.

FRONT

The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

GAZEBO

An unenclosed structure not exceeding 12 feet in height without solid walls, screens, electricity, or plumbing.

GLARE

Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

GRADING

Any excavation, alteration of land contours, grubbing, filling, or stockpiling of earth materials.

HAZARDOUS SUBSTANCE/MATERIAL

Includes any of the following:

(1) Petroleum.

(2) Any substance or combination of substances designated as a hazardous substance under § 311 of the Federal Water Pollution Control Act (33 USC 1321).

(3) Any substance listed by the NYS DEC which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

HAZARDOUS WASTE

All materials or chemicals listed as hazardous wastes pursuant to Article 27 of the Environmental Conservation Law (ECL), and all toxic pollutants as defined in Subdivision 19 of § 17-0105 of the ECL.

HEALTH-CARE FACILITY

A hospital, nursing home, medical clinic, or office building for four or more doctors and other medical personnel.

HEAVY INDUSTRY

Manufacture, assembly, treatment, processing, or packaging of products in a manner that emits or is likely to emit objectionable levels of smoke, noise, dust, odor, glare, water pollution, or vibration beyond the property boundaries.

HOME OCCUPATION

An occupation, trade, profession, or other business activity resulting in a product or service for compensation, or a nonprofit organization office, where the activities are conducted wholly or partly in a dwelling unit or accessory structure by the occupant thereof.

HOTEL

See "lodging facility."

IMPERVIOUS/IMPERVIOUS SURFACE

Any roofed or other solid structure or material covering the ground through which water does not readily penetrate, including, but not limited to, concrete, oil and stone, tar or asphalt pavement, or compacted soil or gravel. Regardless of the construction materials, any area which is used for driveway or parking purposes, including disturbed grass, ground cover, or dirt, shall be considered impervious. A deck with spaced boards at least 1/8 inch apart, a swimming pool surface, and a patio with a permeable paving system shall not be considered impervious.

IMPERVIOUS/IMPERVIOUS SURFACE COVERAGE

The ratio between impervious surface and total land area of a lot (excluding wetlands, watercourses, and floodplains) expressed as the percentage of land covered by impervious surfaces.

INCLUSIONARY HOUSING

Single-family, two-family, or multifamily housing that is owned or rented by an eligible household, as defined in § 220-42, and priced to be affordable to moderate-income households whose members live and/or work in the Town of Gardiner and who cannot otherwise afford market-rate housing. See § 220-42.

INTERIOR ROAD

A road constructed off of an existing public street that provides access to the interior of a parcel.

JUNKYARD

Any place of storage or deposit, whether in connection with another business or not, where a person, corporation or other entity collects, buys, sells, trades, processes, dismantles, separates, stores or otherwise handles used metals, machinery, parts, paper, clothing, glass, or plastic in quantities in excess of ordinary household use; more than two wrecked, broken down, abandoned or unlicensed vehicles or the parts thereof, on any premises for a period of two or more weeks. However, the term "junkyard" shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal product is scrap iron, steel or nonferrous scrap for sale for remelting purposes only; nor shall "junkyard" be construed to include farm machinery and equipment on a bona fide, functioning farm.

LIGHT INDUSTRY

Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries, including dry-cleaning plants.

LODGING FACILITY

Any hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests, with or without a dining room or restaurant, excluding bed-and-breakfast establishments.

LOT/PARCEL

An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established either by the filing of an approved subdivision plat or by the recording of a deed prior to the adoption of Subdivision Regulations of the Town of Gardiner on June 17, 1968. Editor's Note: See Ch. 188, Subdivision of Land.

LOT, CORNER

A lot at the junction of and abutting on two or more intersecting roads.

LOT LINES

The property lines that bound a lot as defined herein.

LOT OF RECORD

Any lot which has been established as such by plat, survey record, or deed prior to the date of this chapter as shown on the records in the Office of the County Clerk.

LOT, REAR

A lot on which the buildable area is located generally to the rear of other lots having frontage on the same road as such lot, and having access to the road via a strip of land that does not have the minimum road frontage ordinarily required in the land use district.

LOT, THROUGH

A lot which faces on two streets at opposite ends of the lot, which is not a corner lot.

LOW-IMPACT RECREATION

Any recreational activities that do not involve buildings or motorized vehicles, with limited facilities such as trails, boardwalks, lean-tos, tents, gazebos, and other temporary camping facilities.

MAJOR PROJECT

A proposed use that requires a special permit or site plan approval and that exceeds any of the thresholds for a minor project. See § 220-61.

MEMBERSHIP CLUB

See "club, membership."

MINOR PROJECT

A use or combination of uses on a lot or a series of adjoining lots that requires either site plan review or a special permit and that, over a three-year period, does not exceed any of the following thresholds:

(1) Construction of four multifamily dwelling units or a lodging facility with six bedrooms.

(2) Construction of facilities or structures for a nonresidential use covering 3,000 square feet of building footprint.

(3) Alteration of existing structures or expansion of such structures by 1,000 square feet.

(4) Conversion of existing structures totaling 5,000 square feet to another use.

(5) Alteration and active use of 10,000 square feet of land, with or without structures (excluding soil mining).

(6) Soil mining that does not require a DEC permit.

(7) Construction of a structure that is 80 feet or higher above average grade level.

MIXED USE
Any combination of residential, commercial, or industrial uses on the same lot or in the same building.

MOBILE HOME
A transportable living unit used or designed to be used year round as a permanent residence and containing the same types of water supply, waste disposal, and electrical systems as immobile housing. Recreational vehicles designed to be driven or towed by an automobile or pickup truck, units designed for use principally as a temporary residence, or prefabricated, modular, or sectionalized houses transported to and completed on a site are not considered to be mobile homes.

MOBILE HOME PARK
Any court, park, place, lot, or parcel under single ownership which is improved for the placement of two or more mobile homes to be used as permanent residences.

MOTOR VEHICLE GAS STATION
An establishment that dispenses gasoline on the premises and also sells oil and other supplies for use in the operation and maintenance of motor vehicles.

MOTOR VEHICLE REPAIR SHOP
An establishment in which vehicles are serviced and repaired, including but not limited to auto body shop, repair garage, automobile inspection station, oil and lubrication shop, and antique car restoration business, excluding junkyards.

MULTIFAMILY DWELLING
See "dwelling, multi-family."

MUNICIPAL USE
A use conducted by the Town of Gardiner or any agency thereof or school district within the Town of Gardiner, not including uses owned or operated by other municipalities. Uses owned or operated by other municipalities are regulated according to the use category into which they fit as shown on the Use Table.

NONCONFORMING LOT
A lot of record which does not comply with the area, shape, frontage, or locational provisions of this chapter for the district in which it is located.

NONCONFORMING STRUCTURE
A structure which does not satisfy the dimensional requirements of this chapter for the district in which it is located, but which was not in violation of applicable requirements when constructed.

NONCONFORMING USE
Any use lawfully existing prior to and at the time of the adoption or amendment of this chapter or any preceding zoning law or ordinance, which use is not permitted by or does not conform with the permitted use provisions of this chapter for the district in which it is located. A preexisting lawful use which is allowed only by special permit under this chapter shall be considered a conforming use. (See Article VI.)

OFFICE
A business, professional, or nonprofit workplace in which manufacturing processes, retail sales, construction, and warehousing do not occur on the premises, including but not limited to professional offices for attorneys, accountants, health-care practitioners, architects, engineers, surveyors, consultants, sales representatives, real estate brokers, and financial planners . "Office" also includes business offices that support or manage manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted.

OFFICIAL NEWSPAPER
The newspaper or newspapers designated by the Town for the publication of official notices of meetings and public hearings.

ONE-HUNDRED-YEAR (100-YEAR) FLOODPLAIN
See "floodplain."

OPEN SPACE
An area of land not developed with structures. ("Permanent open space" is defined and discussed in § 220-21.)

OPEN SPACE DEVELOPMENT

A type of development in which residential units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as permanently protected undeveloped open space. See § 220-20.

OUTDOOR STORAGE AREA

Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

OVERLAY DISTRICT

A type of zoning district or zone that supplements the zoning regulations of the underlying land use district or districts to provide additional protection of important environmental resources.. Overlay districts may overlap different land use districts, but they do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this chapter.

PETROLEUM

Oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

PLAT

A map or plan submitted to the Planning Board as part of an application for subdivision approval (see the Subdivision Law Editor's Note: See Ch. 188, Subdivision of Land.).

PLOT PLAN

A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions, and submitted with an application for a minor project special permit or a variance.

PREMISES

A lot, together with all the structures and uses thereon.

PRINCIPAL BUILDING

See "building, principal."

PRIVATE ROAD

A privately owned road held in common ownership or easement by a homeowners' association.

PUBLICLY ACCESSIBLE PLACE

Any land or structure that is open to the general public, such as a public road, park, public school, recreation area, conservation area, or place of public accommodation such as a restaurant or hotel, excluding private retail and service businesses, offices, and other private property which is open to the public.

PUBLIC UTILITY FACILITY

An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high-voltage transmission lines, pump stations, water supply wells, water towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

RADIATION

Ionizing radiation; that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

RADIOACTIVE MATERIAL

Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials whose receipt, possession, use and transfer are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or United States Nuclear Regulatory Commission.

REAR LOT

See "lot, rear."

RECREATIONAL BUSINESS, INDOOR

A business and/or club which, for compensation and/or dues, offers indoor recreational services, including but not limited to a movie theater, billiard hall, live theater, children's play facility other than a day-care center, and other places of public or private indoor entertainment.

RECREATIONAL BUSINESS, OUTDOOR

A business and/or club which, for compensation and/or dues, offers outdoor recreational services, including but not limited to public stables, golf courses and driving ranges, miniature golf, hunting and fishing, and other places of public or private outdoor entertainment.

RECREATIONAL CAMPS AND FACILITIES

Seasonal recreational uses that may involve seasonal cabins and other permanent seasonal structures, including but not limited to seasonal transient lodging, information kiosks, clubhouses, pools, tennis courts, exercise facilities, basketball courts, and other recreational structures, excluding golf courses, hotels, resorts,

and facilities for travel trailers, campers, and other motorized camping vehicles.

RECREATION, LOW-IMPACT

See "low-impact recreation."

RELIGIOUS INSTITUTION

A church, synagogue, mosque, temple or other place of religious worship, as well as a monastery or other place of religious retreat.

RESIDENTIAL CARE FACILITY

Any building used as a group residence or extended-care facility for the care of persons, including assisted-living facilities and nursing homes, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services.

RESIDENTIAL DISTRICTS

The Suburban Residential, Hamlet Residential, Rural, and Resource Conservation Districts.

RESIDENTIAL UNIT

See "dwelling unit."

RESIDENTIAL USE

A use of land and structures in which people live and sleep overnight on a regular basis.

RESORT

A development that includes recreational, lodging, and second-home residential uses, combined to create a vacation environment, which may or may not also include a health spa, conference facilities, equestrian facilities, hiking trails, a golf course, ski facilities, and other related commercial and recreational uses. See § 220-18.

RESTAURANT

An establishment where prepared food is sold for consumption on the premises or as take-out, including a bar or pub or other establishment that sells food and alcoholic beverages for on-premises consumption.

RETAIL BUSINESS

An establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, convenience store, and variety store.

REVIEWING BOARD OR OFFICIAL

The board that grants a special permit, site plan, variance, subdivision approval, or zoning amendment, or the Building Inspector reviewing a building permit or zoning permit application.

RIDING ACADEMY

Any establishment where more than four horses are kept for riding, driving, horseback riding lessons, or stabling for compensation, or incidental to the operation of any club, association, resort, riding school, ranch, or similar establishment. A riding academy operated in conjunction with a farm operation shall be deemed to be an agricultural accessory use.

ROAD FRONTAGE

The distance along a street line measured at the front of a lot.

ROAD/STREET

A public or private way for pedestrian and vehicular traffic, including an avenue, lane, highway, or other way, excluding a driveway or common driveway.

SCREEN/SCREENING

The location of structures in such a manner that they are not visible (as defined herein) from a public road or any other public place during the summer months, and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

SERVICE BUSINESS

A business or nonprofit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, business and educational services, day care for children or adults (subject to limitations on local regulation of child day care under New York State law), catering, dry cleaning (drop-off and pick-up only), health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. "Service business" does not include retail business, restaurants, warehouses, offices, light industry, or other uses separately listed in the Use Table. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered both a retail business and a motor vehicle gas station.

SERVICE ROAD

A local road running generally parallel to a through road, providing vehicular access points for individual lots, constructed to reduce the number of access points on the through road.

SETBACK

The distance in feet between a structure and a property line, the center line of a road, or an identified natural feature such as a watercourse.

SIGN

Any billboard, signboard, inscription, pennant, or other material, structure, exterior painting, or device composed of lettered or pictorial material that is intended for outdoor viewing by the general public (including inside a window), and used as an advertisement, announcement, direction, or for identification.

SIGN AREA

The total area on each side of a sign within which all written and graphic material is contained.

SIGN, COMMERCIAL

A sign advertising a product, use, service, or activity sold or conducted for private financial gain.

SIGN, FREESTANDING

A sign and sign-support structure not attached to or part of a building.

SIGN, ILLUMINATED

A sign lighted by electricity, gas, or other artificial light, including reflective or phosphorescent light, paint, or tape.

SIGN, INTERIOR

A sign located within the exterior walls of a building which is readily readable from outside the building through a window, door, or other opening.

SIGN, INTERNALLY ILLUMINATED

An illuminated sign that is made of translucent material with internal artificial lighting.

SIGN, PROJECTING

Any sign which extends from the exterior of any building more than nine inches.

SINGLE-FAMILY DWELLING

See "dwelling, single-family."

SOIL MINING

Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in § 23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which a zoning permit has been issued.

SOLID WASTE

All putrescent and nonputrescent materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, and being those wastes defined as solid waste in 6 NYCRR Part 360-1.2. Any solid waste which receives a beneficial use determination (BUD) from the NYS DEC is still considered a solid waste for the purposes of these regulations.

SOLID WASTE MANAGEMENT FACILITY

Any facility employed to manage or process solid waste beyond the initial waste collection process, including, but not limited to, transfer stations, bailing facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolysis of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities, as defined in 6 NYCRR Part 360-1.2.

STREAM BANK

The land immediately adjacent to, and which naturally slopes toward, the bed of a watercourse, which is necessary to confine the watercourse in its natural channel. A stream bank is not considered to extend more than 50 feet horizontally from the mean high water line, except that where a generally uniform slope of 25% or greater adjoins the stream bed, the bank is considered to extend to the crest of the slope or to the first definable break in slope, which may be a natural feature or a constructed feature (such as a road), lying generally parallel to the watercourse.

STRUCTURE

A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin, or wall.

THIS CHAPTER

See "Zoning Law."

TOWN LAW

The Town Law of the State of New York, Chapter 62 of the Consolidated Laws.

TWO-FAMILY DWELLING

See "dwelling, two-family."

USE

The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on a premises.

USE, ACCESSORY

A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

USE, CHANGE OF

See "change of use."

VARIANCE, AREA

The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE

The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. An increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by special permit.

VISIBLE/VISIBILITY

Able to be seen by a person of average height and with normal vision on a clear day.

WAREHOUSE

A structure or structures in which materials, goods, or equipment are stored, including mini-storage facilities.

WATERCOURSE

Any stream, pond, lake, drainage channel, or other area of land that is normally or seasonally filled with water. Road ditches and shallow land depressions generally referred to as grassed waterways, swales, etc. that carry water only immediately (a few to several hours) after a runoff producing event are not considered a watercourse.

WETLAND

An area of land that is characterized by hydrophytic vegetation, saturated soils, or periodic inundation which is classified as a wetland by either the New York State Department of Environmental Conservation or the U.S. Army Corps of Engineers. See § 220-35.

WIND ENERGY CONVERSION SYSTEM

A mechanized system which converts wind energy into electrical or mechanical power.

YARD

An open space on the same lot with a structure.

YARD, FRONT

An open space extending across the full width of the lot between the front of the principal building and the street line.

YARD, REAR

An open space extending across the full width of the lot between the rear lot line and the wall of the principal building nearest the rear lot line.

YARD, REQUIRED/SETBACK AREA

That portion of any yard required to satisfy minimum setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

YARD, SIDE

An open space between a principal building and side line of the lot and extending from the front yard to the rear yard.

ZONING LAW/THIS CHAPTER

The officially adopted Zoning Law of the Town of Gardiner, together with any and all amendments thereto.

ZONING PERMIT

A permit issued by the Building Inspector, which is required for uses allowed by right that do not involve construction that requires a building permit. See § 220-54.

Attachments:

220a Zoning Map