

**Town of Fremont  
Sullivan County, New York**

**Section 100  
Zoning Law**

Amended June 8, 2016  
Originally adopted May 8, 2002

**Town of Fremont  
12 County Road 95  
Fremont Center, NY 12736  
[www.fremontny.org](http://www.fremontny.org)**

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## **ARTICLE I – GENERAL PROVISIONS**

### **100.1. Repeal and Replacement.**

This law shall be known as the Town of Fremont Zoning Law (“the Law” or “this Law”). Upon its effective date, this Law shall repeal, in its entirety prior versions and amendments of the Town of Fremont Zoning Law, whether enacted as local law or by ordinance.

### **100.2. Effective Date.**

This law shall take effect immediately upon filing in the Office of Secretary of State.

### **100.3. Authority.**

This law regulates, by district, the use of land, buildings and structures in the Town of Fremont in the County of Sullivan. It further provides for the administration and enforcement of these regulations and fixes penalties for this violation. It is adopted under the authority of Article 16 of the New York State Town Law as well as the Municipal Home Rule Law and shall be known as the "Town of Fremont Zoning Law". It is also, pursuant to the authority granted under Section 10 of the Municipal Home Rule Law, the intent of this local law to amend and supersede Sections 130, 274(a), 274(b), 267, 276, 277 and 278 of Town Law to permit the coordinated and comprehensive regulation of manufactured homes and manufactured home parks, campgrounds and recreational parks, multi-family dwellings, junkyards and conservation subdivisions and specifically to allow:

- A. The coordination and combination of subdivision and zoning controls as they pertain to multi-family dwellings and conservation subdivisions.
- B. The integration of junkyard and other regulations adopted pursuant to Section 130 of the Town Law with site plan and special use review criteria adopted pursuant to Sections 274(a) and 274(b) of the Town Law.
- C. The establishment of special-use and site plan review procedures which provide for SEQRA action following public hearings rather than before, the use of preliminary site plans and employment of renewable special use permits.
- D. Authorization for the Planning Board to require the use of the conservation subdivision technique and allow density bonuses for using it in supersession of Section 278.3.(b) of the Town Law.
- E. Establishment of a procedure for designation of alternate members on Zoning Board of Appeals.
- F. Setting different penalties for violations, such violations to be treated as offenses rather than criminal violations as the Town Law provides.

- G. Authorization for the Planning Board to modify yard requirements for accessory buildings in supersession of Section 267.5 of the Town Law.

The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law so as to appoint alternate members of the Planning Board to serve for terms of one (1) year each or until their successors are appointed. Such alternate members shall attend meetings and act in the capacity of full members whenever regular members cannot attend or must recuse themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

#### **100.4. Purposes.**

This law is intended to address the comprehensive plan of the Town of Fremont as set out herein and earlier in the Town of Fremont Zoning Laws and Ordinances, the goals of the Upper Delaware River Management Plan and the general purposes of § 263 of the Town Law. The following are specific objectives:

- A. Preserving and enhancing the town's open spaces, scenic character, aesthetics and general living environment by providing for the proper relationships between man, building and open space in all site planning.
- B. Designing appropriate districts in the town for various land uses at densities which will conserve and enhance the value of property while meeting the community development needs of the town.
- C. Providing for a variety of housing units, in compatible residential environments, to address the full range of needs in terms of incomes, ages and family sizes.
- D. Encouraging compatible mixes of permitted uses within specified zoning districts.
- E. Establishing reasonable standards of development to which uses, buildings or structures shall conform so as to provide for the health, safety and general welfare of residents and reduce future costs to the community.
- F. Promoting orderly development to maintain the stability of residential, business and agricultural areas and improve the overall economic base of the Town.
- G. To protect natural features such as forested areas and water and drainage courses, and to minimize the hazards to persons and damage to property resulting from the accumulation or runoff of storm and flood waters.

#### **100.5. Conflicts and Interpretations.**

In the interpretation and the application of the provisions of this law, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is

not intended to interfere with or abrogate or annul other laws, rules, regulations, ordinances or private covenants, provided that where this law imposes greater restrictions upon the use of buildings or premises or upon the height or bulk or a building or requires larger open spaces, the provisions of this law shall apply. In the event of any internal conflict in any terms or conditions of this law, the more restrictive provisions shall apply.

**100.6. Separability.**

Should any provision of this law be judged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this law and it is hereby declared that the Town Board would have enacted the remainder of this law had such provision not been included.

**100.7. Amendments.**

This law may be amended from time to time by the Town Board pursuant to the provisions of the New York State Town Law and the Municipal Home Rule Law.

**ARTICLE II – DEFINITIONS**

**100.8. Use of Words.**

For purposes of this law, words used in the present tense shall include the future; the singular number shall include the plural, and the plural, the singular; the word "structure" shall include the word "building"; the word "use" shall include "activity," "project" or "development"; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," "occupied" or "intended to be used"; and the word "shall" is mandatory and not optional.

**100.9. Definitions.**

Unless the context clearly indicates a different meaning, the following terms shall, for purposes of this Law, have the meanings indicated below:

**ABANDONMENT:** The visible or otherwise apparent intention of an owner to discontinue a nonconforming use of a building or premise, or the removal of the characteristic equipment or furnishing used in the performance of the nonconforming use, without its replacement by similar equipment or furnishings, or the replacement of the nonconforming use or building by a conforming use or building.

**ACCESSORY USE OR STRUCTURE:** Any building, structure or use which is subordinate and incidental to the principal building or use on the same lot or an adjoining lot under the same ownership.

**ADULT ORIENTED BUSINESS:** This term shall be defined and regulated by the Adult Oriented Business subsection of this Law.

**AGRICULTURAL ACTIVITIES:** Uses involving the production of food and fiber, including animal husbandry, but excluding kennels and agricultural processing facilities. The simple clearing of land, tilling of soil, planting of crops, keeping of animals and other common practices in connection with an agricultural activity shall not be regulated by this Zoning Law, but the construction of buildings and improvements or establishment of new land uses in connection therewith shall be covered to the extent provided herein.

**AGRICULTURAL STRUCTURES:** A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products which is accessory to an Agricultural Use. With the exception of a roadside stand which shall be included, agricultural structures shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public, or include Agricultural Processing Facilities.

**AGRICULTURAL PROCESSING FACILITIES:** Facilities used to process food, fiber or fur for purposes of packaging and distribution, including feed mills, slaughterhouses and tanneries, but excluding on-farm dairies or similar facilities which serve as accessories to the principal farm use.

**ALTERATION:** Any construction, reconstruction or other action resulting in a change in the structural parts or height, number of stories, size, use or location of a building or other structure.

**ANIMAL HUSBANDRY:** The keeping of animals for purposes of producing food, fiber, fur, breeding stock or entertainment, including but not limited to dairy animals, poultry, livestock, equines, swine, goats, sheep, llamas, ostriches, bees, fur-bearing animals and other comparable species which are grown for monetary gain or personal use, excluding kennels and similar enterprises and the keeping of household pets in numbers which do not meet the threshold for being classified as a kennel.

**AUTOMOBILE-RELATED USE:** A building or place of business where gasoline, oil and grease, batteries, tires and automobile accessories are supplied and/or dispensed directly to the motor vehicle trade, at retail or where repair service is rendered. This definition shall also apply to the use of any building, land area or other premise for the display and sale, under license by the State of New York, of new and used automobiles of presently operable condition; panel trucks or vans; Manufactured Homes or trailers; recreational vehicles; or farm and construction equipment; including any warranty repair work and other repair service as an accessory use. This term is meant to include auto sale lots but such lots shall be restricted to automobile and light truck sales. It shall also include other automotive uses as may be allowed in each district. None of these terms, however, shall under any circumstance, be deemed to include junkyards, collectors of itinerant vehicles or vehicle dismantling operations. For purposes of this Law Automobile-Related uses shall be considered Heavy Commercial.

**BASEMENT:** That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.

**BED AND BREAKFAST:** An owner-occupied dwelling, of sufficient capacity in terms of sewage treatment and parking needs as shall be determined by the Planning Board, in which up to five (5) guest rooms are available as lodging for persons, either individually or as families, for specific periods of time, with one or more meals offered to lodging patrons and their guests (but not to the general public).

**BUFFER:** Landscaped areas, fences, walls, berms or any combination thereof used to physically and visually separate one use or lot of record from another in order to mitigate significant adverse impacts such as but not limited to light and noise.

**BUILDING:** A structure formed of any combination of materials which is erected on the ground and permanently affixed thereto, and designed, intended or arranged for the housing, shelter,

enclosure or structural support of persons, animals, or property of any kind.

**BUILDING HEIGHT:** The vertical distance measured from the average level of the ground surrounding the building to the highest point of the roof, but not including chimneys, spires, towers, tanks and similar projections.

**BUILDING, PRINCIPAL:** A structure in which is conducted the principal use of the site on which it is situated.

**CABIN, HUNTING AND FISHING:** (See also “Dwelling, Seasonal”). A Hunting and Fishing Cabin is a type of Single-family Dwelling and other than a mobile home or a recreational vehicle, that is of at least four-hundred (400) square feet in size and supplied with individual bathroom, cooking and sewage disposal facilities, often used in conjunction with outdoor recreation pursuits. Such dwellings are temporarily occupied by a person or persons having a usual residence elsewhere from whence they customarily journey to work, send children to school or conduct other principal activities. Listing such dwelling as the occupant’s legal residence for the purpose of voting, payment of income taxes, or motor vehicle registration shall be considered evidence that the dwelling is being used as a principal or year-round dwelling.

**CAMP, CAMPGROUND:** A tract of land providing two or more sites for the temporary parking of recreational vehicles or the erection of tents or other portable sleeping accommodations.

**CAMP, SUMMER CAMP:** A recreational institution, use, structure(s) or place with accommodations of tents or buildings, providing facilities for outdoor activities, sports, crafts, and other special interests during a short, specified period of time during the year, typically the summer months.

**CAMPING:** The use of a property as a site for sleeping outside, or; the parking of travel trailers, motor homes, recreational vehicles or similar equipment, the erection of tents or other shelters, to serve as temporary residences for recreational purposes.

**CAMPING, RESIDENTIAL:** The temporary and short-term erection of tents for the personal and non-commercial benefit of the property owner(s), such as backyard family camping.

**CEMETERY:** Land used for the burial of the dead and any cemetery related structures located thereon are dedicated for such purpose, which shall include but is not limited to columbaria, crematories and/or mausoleums.

**CENTRAL SEWER/WATER FACILITIES:** Systems for the provision of water supply to or the treatment of sewage from three (3) or more dwellings or the equivalent, where the principal services are offered from or take place on a lot apart from the individual dwelling units being served. (See "On-Site Water/Sewer Facilities).

**COMMERCIAL, HEAVY:** A commercial use that generally uses open sales yards, outside equipment storage or outside activities that generate noise or other impacts considered incompatible with less-intense uses. Typical establishments or businesses in this definition are but shall not be limited to bulk fuel storage facilities, lumber yards, heavy equipment suppliers, warehouses, and facilities that may generate a significant amount of activity and traffic by the nature of their size or other factor, such as movie theaters.

**COMMERCIAL, LIGHT:** A commercial use that generally has retail or wholesale sales, office uses, or services, which does not generate noise or other impacts considered incompatible with less-intense uses. Businesses within this definition only include those that conduct sales and storage entirely within an enclosed and permanent structure with the exception of occasional outdoor “sidewalk” promotions. Typical establishments or businesses in this definition are but shall not be limited to commercial/public garages, financial institutions (e.g. banks, credit unions, etc.), mercantile occupancies (pharmacy, coffee shop, clothing store, etc.), and uses intended for food and/or drink consumption (e.g., tavern, restaurant, etc.).

**CUSTOMARY RESIDENTIAL ACCESSORY USES:** Garden house, playhouse, tool sheds, greenhouse, swimming pool, and private garage; the keeping of domestic animals as pets; the raising of residential field and garden crops, vineyards, and orchards.

**DECK:** An elevated (more than 6 inches) attached accessory structure with no walls or roof; or also, area having the characteristics of a patio but more than one (1) foot in height at any point.

**DORMITORY:** A facility used for housing, with or without dining facilities, of students attending a primary, secondary, college, and university level school which meets the requirements of the Education Law and the Board of Regents of the State of New York, and which is approved as a residence for its students by such educational institution.

**DWELLING:** A building arranged, intended, designed, or used, as the living quarters for one or more families living independently of each other upon the premises. The term "dwelling" shall not be deemed to include hotel, motel, rooming house or tourist home.

- A. **DWELLING, SINGLE-FAMILY:** A detached building, designated for or occupied exclusively by one (1) family and containing not more than one (1) dwelling unit.
- B. **DWELLING, TWO-FAMILY:** A detached or semi-detached building where not more than two (2) individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.
- C. **DWELLING, MULTI-FAMILY:** A building or portion thereof used or designed as a residence for three (3) or more independent apartment or dwelling units having no cooking or sanitary facilities in common with any other dwelling unit.
- D. **DWELLING, SEASONAL:** A type of Single-family Dwelling, also referred to as a

Hunting and Fishing Cabin in this Law, and other than a mobile home or a recreational vehicle, that is of at least four-hundred (400) square feet in size and supplied with individual bathroom, cooking and sewage disposal facilities, often used in conjunction with outdoor recreation pursuits. Such dwellings are temporarily occupied by a person or persons having a usual residence elsewhere from whence they customarily journey to work, send children to school or conduct other principal activities. Listing such dwelling as the occupant's legal residence for the purpose of voting, payment of income taxes, or motor vehicle registration shall be considered evidence that the dwelling is being used as a principal or year-round dwelling.

**DWELLING UNIT:** One (1) or more rooms, including cooking facilities and sanitary facilities, in a structure designed as a unit for occupancy by not more than one (1) family for living and sleeping purposes.

**EASEMENT:** A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public or private purpose, and within which the lessee or owner of the property shall not erect any permanent structure, but shall have the right to make any other use of the land which is not inconsistent with the rights of the grantee.

**ENERGY GENERATING SYSTEM, LARGE-SCALE SOLAR:** This term shall be defined and regulated by the Energy Generating System subsection of this Law.

**ENERGY GENERATING SYSTEM, SMALL-SCALE SOLAR:** This term shall be defined and regulated by the Energy Generating System subsection of this Law.

**ENERGY GENERATING SYSTEM, LARGE-SCALE WIND:** This term shall be defined and regulated by the Electricity Generating Facilities subsection of this Law.

**ENERGY GENERATING SYSTEM, SMALL-SCALE WIND:** This term shall be defined and regulated by the Electricity Generating Facilities subsection of this Law.

**ENGINEER, TOWN:** A Professional Engineer licensed as such by the State of New York and appointed or hired on a consulting basis to provide engineering advice to the Town.

**ENVIRONMENTAL ASSESSMENT FORM (EAF):** A form used in the environmental review process prescribed in SEQRA as that term is defined in Chapter 6 NYCRR Section 617, SEQRA.

**ESSENTIAL SERVICES:** The erection, construction, alteration or maintenance, by public utilities, cable television companies, or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public

utilities or municipal or other governmental agencies or for the public health or safety and general welfare. This shall not include, however, cellular phone or other telecommunications towers. "Essential services" shall include ambulance facilities, firehouses, first-aid and emergency-aid squads and CATV.

**FAMILY:** One (1) person, or two (2) or more persons related by blood, marriage or adoption, or not more than five (5) persons not related by blood, marriage or adoption, who live together in a single dwelling unit and maintain a common household.

**FARM OPERATION:** This term shall bear the same meaning as "farm operation" that is defined in §301 of the Agriculture and Markets Law of NYS.

**FOUNDATION:** A wall or pier extending at least four (4) feet below grade or an equivalent load-bearing structure certified by a licensed professional engineer or architect, having a fixed location on the ground, being capable of serving as a support for a structure or structural part of a building and meeting the relevant criteria set forth in Articles 7 and 8 of Chapter B of the New York State Uniform Fire Prevention and Building Code.

**FORESTRY ACTIVITIES:** Establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products or performing of forest services, not including firewood processing or milling, planing or lumber distribution facilities involving permanent construction, all of which shall be separately regulated as provided herein.

**FUNERAL ESTABLISHMENT:** This term shall bear the same meaning as "funeral establishment" that is defined in §3400 of the Public Health Law of NYS.

**GARAGE, PRIVATE:** A detached structure or a portion of a building where vehicles used by the occupants of the principal building at a lot of record are stored. For the purposes of this Law, this definition shall also include carports and similar types of structures used for the storage of private vehicles.

**GROSS FLOOR AREA:** The sum of the total horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for vehicles, or any space where the floor-to-ceiling height is less than six (6) feet.

**HABITABLE SPACE:** A space in a building for living, sleeping, eating or cooking. Storage or utility spaces and similar areas are not considered habitable spaces.

**HOME-OCCUPATION:** Any business activity or occupation that occurs on property or within structures where a residence is the primary land use and the business activity or occupation is clearly incidental to such residential use. The term "home occupation" shall be interchangeable with the term "home-based business."

**HOSPITAL:** A heavy commercial use providing primary health services as well as medical and surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including as an integral part of the institution related facilities, such as but not limited to laboratories, outpatient facilities, training facilities, and medical offices.

**HOTELS AND MOTELS:** Establishments providing transient lodging accommodations to the general public without provisions for cooking in any individual room or suite, and with or without additional services such as restaurants, meeting rooms and recreational facilities.

**HUNTING AND SPORTSMANS CLUB:** A privately held area of open space used for the purposes of recreational hunting and/or fishing on a non-commercial basis, which may be accompanied by a clubhouse, hunting and fishing cabin, shooting range and similar accessory uses.

**IMPERVIOUS SURFACES:** Those surfaces in the urban landscape which do not have a permanent vegetative cover and/or cannot effectively infiltrate rainfall including, but not limited to building rooftops, pavement, sidewalks, driveways and roads with a surface of dirt, gravel, asphalt or concrete, decks and swimming pools.

**INDUSTRIAL or MANUFACTURING, LIGHT:** An industrial use where all processing, fabricating, assembly, or disassembly of items takes places wholly within an enclosed building, serviced by a low to medium volume of vehicles and imposes a negligible impact on the operational performance standards prescribed in this Law. Typical items for processing, fabricating, assembly, or disassembly tend to be targeted toward the end consumers rather than other businesses such as but shall not be limited to clothing manufacturing, consumer electronic manufacturing, food processing establishment & commissary, pharmaceuticals and other related uses, particularly those that require low to medium volume of truck traffic for supplies or shipments and will not create a significant adverse impact to the operational performance standards prescribed in this Law.

**INDUSTRIAL or MANUFACTURING, HEAVY:** An industrial use where any portion of the processing, fabricating, assembly, or disassembly takes place within an enclosed building and/or outside or in an open structure. Typical items for processing, fabricating, assembly, or disassembly include but shall not be limited to solid waste transfer stations, steel manufacturing, uses those that require very large buildings, have a heavy volume of truck traffic for supplies or shipments, or uses that may require substantial mitigation to avoid a significant adverse impact to the standards prescribed in this Law.

**JUNKYARD:** This term shall be defined and regulated by the Junkyard subsection of this Law.

**KENNEL:** Any enclosure, premises, building, structure, lot or area in or on which more than four (4) dogs or other domesticated animals of at least six (6) months of age are kept, harbored or maintained for commercial or noncommercial purposes for continuous periods of twenty-four hours or more.

**LOT -** A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as are required by this law.

**LOT, CORNER:** A lot abutting upon two (2) or more streets at their intersection or upon two (2) parts of the same street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five degrees (135°). The point of intersection of the street lot lines is the corner.

**LOT DEPTH:** The average horizontal distance between the front and rear lot lines.

**LOT FRONTAGE:** The width of a lot at the front lot line.

**LOT LINES:** The property lines bounding a lot.

**LOT LINE, FRONT:** The line separating the lot from a street or, where no right-of-way is established, a distance of twenty-five (25) feet from the centerline.

**LOT LINE, REAR:** The lot line opposite and most distant from the front lot line. The rear lot line for a triangular-shaped lot shall be considered to be zero feet in length.

**LOT LINE, SIDE:** Any lot line other than a front or rear lot line.

**LOT AREA:** The land area contained within the lot lines, excluding area within highway rights-of-way and land under water except for ponds contained wholly within a lot.

**LOT COVERAGE:** That portion or percentage of the lot area which is covered by buildings, roads, driveways, walkways, parking areas, or other Impervious Surfaces.

**LOT IMPROVEMENT:** A division or re-division of land wherein lot area is shifted from one parcel to another so to improve the shape or dimension of each. See Section 3.7 of the Town of Fremont Subdivision Law.

**LOT WIDTH:** The average horizontal distance between the two (2) side lot lines.

**MAJOR SUBDIVISION:** Any subdivision or land development which is not a minor subdivision or lot improvement. Any subdivision which involves the utilization of central sewage disposal systems or water supplies, the construction of any streets, or the utilization of conservation subdivision techniques shall also be considered a major subdivision, regardless of the number of lots. Major Subdivisions are further defined and regulated in the Town of Fremont Subdivision Law.

**MINOR SUBDIVISION:** A subdivision or development containing not more than ten lots, or a cumulative development on a lot-by-lot basis for a total of ten (10) lots, of any original tract of land of record (i.e., not previously subdivided or developed subsequent to the effective date of this Law, by the owner or the owner's duly appointed agent) where no new streets or accesses are required. Notwithstanding this, the Planning Board may, however, by waiver classify any subdivision as minor which does not involve new improvements. Minor Subdivisions are further defined and regulated in the Town of Fremont Subdivision Law.

**MANUFACTURED HOME:** A factory-manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD), Manufactured Home Construction and Safety Standards, 24 CFR Part 3208, 4/1/93, transportable in one or more sections, which in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on site, is three hundred twenty (320) square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Federal Department of Housing and Urban Development and complies with the standards established under the national Manufactured Housing Construction and Safety Act of 1974, as amended. The term "manufactured home" shall not include any self-propelled recreational vehicle. For the purposes of this Chapter, a manufactured home shall have the same use classification as a single unit dwelling when determining if it is a permitted, prohibited or special use for the subject zoning district. However, a manufactured home located within a manufactured home park shall be classified as part of such park. .

**MANUFACTURED HOME LOT:** A designated site of specific total land area which is located within a manufactured home park for the accommodation of one manufactured home and its occupants.

**MANUFACTURED HOME PARK:** A lot of record that is under control of one (1) owner, where such lot has been divided into Manufactured Home Lots for the purpose of placing five (5) or more manufactured homes for occupancy as single-family dwellings.

**MANUFACTURED HOME STAND:** A durable surface located on a manufactured home lot which is capable of supporting and which is used for placement of a manufactured home.

**MASS GATHERING:** This term shall be defined and regulated by the Mass Gathering subsection of this Law.

**MINI-STORAGE USES:** Buildings or structures used for the rental of multiple spaces for the

storage, principally of personal goods. For the purposes of this Law Mini-storage uses shall be consider Heavy Industrial.

**MOBILE HOME:** A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard, transportable in one or more sections, which in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on site, is three hundred twenty (320) square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term "mobile home" shall not include travel trailers or any self-propelled recreational vehicle. The installation of a mobile home shall be prohibited in the Town.

**MODULAR HOME:** A factory-built dwelling which is not constructed on a chassis so as to allow repeated towing.

**MULTI-FAMILY DWELLING:** This term shall be defined and regulated by the Multi-family Residential Uses subsection of this Law.

**NON-CONFORMING BUILDING OR USE:** A use of a building and/or land which was lawfully established but which does not conform to the use regulations for the district in which it is located.

**NOTICE OF VIOLATION:** An order issued by the Code Enforcement Officer pursuant to this Law.

**NURSERY, PLANT:** This term shall bear the same meaning as “nursery” that is defined in Article 14 of the Agriculture and Markets Law of NYS. For the purposes of this Law, Plant Nurseries shall be considered a Heavy Commercial use.

**NURSING HOME AND ADULT HOMES:** A facility in which persons not related to each other are housed, fed and furnished with long term nursing care and related therapeutic services necessary to maintain their health and such care is normally provided within the facility by persons said to provide such care. Not intended to include care for acutely ill, or surgical or obstetrical services.

**ON-SITE SEWER/WATER FACILITIES:** Systems for the provision of water supply or the treatment of sewage on the same lots with the individual dwelling units being served. (SEE "Central Sewer/Water Facilities.")

**PATIO:** An open recreational area or structure without walls or a roof, constructed no higher than six (6) inches from the ground level and resting directly on the ground. It may be attached to or detached from the principal building and may be constructed using wood, masonry, pavement, stone, or other material suitable for that purpose.

**PERSONAL SERVICE ESTABLISHMENT:** A facility providing personal care and services to people, such as barber shops, beauticians, and manicurists. For the purposes of this law Personal Services Establishment shall be considered Light Commercial.

**PLANNING BOARD:** The Planning Board of the Town of Fremont.

**PORCH:** An attached roofed patio or deck. With the exception of the wall adjoining the principal structure, all walls must be open or screened with a wall no higher than four (4) feet above the floor level. A porch is considered an attached accessory structure and must meet those setback requirements for principal structures.

**PRINCIPAL PERMITTED USE:** See “USE, PERMITTED”

**PROFESSIONAL OFFICE, HEALTH:** A building or portion thereof accommodating the offices of an individual or group in the private practice of medicine, dental or optical services, physical therapy, and chiropractors. Primary services include examination, consultation and limited testing and treatment. For the purposes of this Law these offices shall not provide emergency room or overnight patient service, any type of twenty-four-hour service, or retail sales. However, optical care products may be sold or serviced as part of an ophthalmologist's or optician's practice.

**PROFESSIONAL OFFICE, GENERAL:** The office of one or more members of a recognized profession maintained for the purpose of conducting the business of that profession. Retail or commercial sales are not permitted. The business is licensed by New York State to engage in the trade as certified by the issued license. Example uses include, but are not limited to, offices for lawyers, architects, engineers, and accountants. This definition does not include an office where the principal activity is medical, dental and/or optical treatment. (See also "professional office, health-related").

**PUBLIC USE:** Structures and uses operated by a governmental agency (whether municipal, county, regional, state or federal), or a fire protection or ambulance service provider in the proper exercise of their jurisdiction.

**QUARRYING:** The removal of rock, slate, gravel, sand, topsoil or other natural materials from the quarrying site by excavating, stripping, leveling or any other such process.

**RECREATION FACILITIES, INDOOR:** A building or group of buildings used for recreational purposes and operated as a business and open to the public for a fee, including, but not limited to, bowling alleys, skating and roller rinks, pool and billiard halls, indoor rifle and pistol ranges, indoor batting cages, recreation centers, indoor swimming pools, tennis courts, and similar uses.

**RECREATION FACILITIES, OUTDOOR:** Land and structures used for recreational purposes and operated as a business and open to the public for a fee, including, but not limited to, a golf course or club, a swimming club, tennis and racquetball club, a miniature golf course, a golf driving range, outdoor batting cages, outdoor skating or roller rinks, sports or athletic fields, and similar uses.

**RESTAURANT:** Any establishment where food is regularly prepared and served for consumption either on or off the premises, including eating and drinking places, food service establishments, commercial food stands and drive-in or fast-food establishments. A restaurant may be operated from any facility specifically constructed or renovated for this purpose but not from a parked vehicle or temporary structure unless otherwise specifically provided for herein. For the purposes of this Law, Restaurants are considered a Light Commercial use.

**RETAIL & SERVICE ESTABLISHMENT:** An establishment engaged in selling services, goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods, and which is not otherwise listed as a use in the Schedule of District Regulations. For the purposes of this Law, Retail & Service Establishments are considered a Light Commercial use.

**RETREAT OR CONFERENCE CENTER:** A facility for short term stays, typically for hospitality, training activities, conferences, and other short term functions, and which is designed to preserve natural features and the open space and rural character of its setting.

**ROAD RIGHT-OF-WAY LINE:** The right-of-way perimeter line or plan lines of any road or street which shall establish the starting measuring point of any yard setbacks of a lot. Where such right-of-way line is not established, the edge of the right-of-way shall be measured from the centerline of the pavement and established at a distance of 25 feet from such centerline.

**SAWMILL:** An establishment for processing logs into finished or semi-finished lumber but which does not include major wood products industries or lumberyards. Firewood processing shall be considered a sawmill for the purposes of this Law.

**SAWMILL, PORTABLE:** A temporary lumber sawing operation using portable sawmill equipment that is not permanently enclosed, used for the processing of on-site logs.

**SCHOOL, DAY CARE:** A facility licensed by the New York State Department of Social Services pursuant to § 390 of the Social Services Law. A day-care center program provides for more than three hours and less than 24 hours per day of care away from the child's home by an individual, association, corporation, institution or agency for seven or more children. A day-care school does not include those programs operating as a group family day care home, a family day care home, or a school-age child care program as defined by §390.1 of the Social Services Law of the State of New York. (Ref: NYS Social Services Law). This definition is not intended to regulate child care centers the regulation of which is preempted by New York State Law.

**SCHOOL, PROPRIETARY:** A private educational facility operating on a for-profit basis to provide educational services at primary, secondary, college, and university levels which meet the requirements of the Education Law and the Board of Regents of the State of New York.

**SCHOOL, PUBLIC OR PRIVATE:** An educational facility, either public or private, designed and operated to provide educational services at primary, secondary, college, and university levels which meets the requirements of the Education Law and the Board of Regents of the State of New York.

**SHORELINE:** The physical boundary of a lake or river that may fluctuate with natural changes in water elevation. Unless established by a federal or state agency, the shoreline shall be the annual mean high-water mark, as determined by a professional civil engineer or a licensed surveyor.

**SHORELINE FRONTAGE:** The width of Shoreline property adjacent to a lake or river, measured as the most direct straight or curved line parallel to the approximate center line of the adjacent water-body. The natural variations of a Shoreline shall not be used to determine Shoreline Frontage.

**SHORELINE IMPROVEMENTS:** An installation of any man-made materials or modifications to existing natural conditions to facilitate access, swimming, boating, or fishing to an adjacent water-body. It includes but is not limited to such activities as excavation of boat slips, launches or beach areas; installation of floating or permanent docks; and installation of seawalls.

**SHORELINE STRUCTURE:** A type of accessory structure specifically designed or modified to facilitate direct access to an adjacent water-body, such as a boathouse, or for water-front storage purposes.

**SPECIAL USE:** A primary use allowed subject to Planning Board approval and site plan review and modification in accordance with the standards and criteria contained in herein, which use may also be denied if such standards cannot be met or appropriate modifications made to safeguard the public interest.

**STORY:** That portion of a building, excluding a basement or cellar not used as living area, between the floor surface and the ceiling above it, having a height of not less than seven feet. Any portion of a building having a height of less than seven feet at five feet off center shall be considered a half-story.

**STREAM IMPROVEMENT STRUCTURES:** Structures, such as stream bank stabilization fencing or riprap, intended to protect, restore, and improve the native fish carrying capacity of rivers and streams.

**STRUCTURE:** Anything constructed, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground, including stationary and portable carports and storage sheds.

**UNREGISTERED AND/OR UNLICENSED VEHICLES:** Any vehicle, including, but not limited to a tractor-trailer and motorized vessel/boat, without a currently valid license plate or plates or which is in either a wrecked, discarded, dismantled, inoperative or abandoned condition and is not in a condition where it may be used on a public highway. An expired inspection sticker or lack of current inspection sticker shall be presumptive evidence that a vehicle is not in a condition capable of being used on a public highway. Vehicles capable of being driven on a public highway and offered for sale by an automobile dealer duly licensed or not licensed by the New York State Department of Motor Vehicles to sell automobiles shall not be considered “unregistered and/or unlicensed vehicles” when offered for sale at the dealer's place of business as stated in its application for an automobile dealer's license to the Commissioner of Motor Vehicles.

**USE, ACCESSORY:** A use of a building and/or land on the same lot as the principal use and which is incidental to and subordinate in area, extent and purpose to the principal use.

**USE, NON-CONFORMING:** A use of a building and/or land which was lawfully established but which does not conform to the use regulations for the district in which it is located.

**USE, PERMITTED:** The specific purpose for which a parcel of land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained and subject only to issuance of a permit from the Building Inspector and compliance with the district regulations and development standards contained herein.

**USE, PRINCIPAL:** The primary purpose or function that a lot serves or is intended to serve.

**USE, SPECIAL:** A primary use allowed subject to Planning Board approval and site plan review and modification in accordance with the standards and criteria contained in herein, which use may also be denied if such standards cannot be met or appropriate modifications made to safeguard the public interest.

**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.

**WORSHIP, PLACE OF:** A structure that by design and construction is intended for religious observances and assembly, by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under the state property tax law, where such building is located on a lot dedicated solely for the place of worship or approved accessory uses which may include uses commonly associated with a place of worship such as reasonable signage and single-family housing for a principal worship leader and his immediate family. Accessory uses shall not include activities which happen to be associated with or operated by a place of worship or other activities and uses which fall within a land use category as defined herein.

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

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

**YARD, REAR:** An open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward.

**YARD, SIDE:** An open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

**YARD, WATERFRONT:** An open space extending from the border of a lake, stream, or body of water not less than one hundred (100) feet in depth excluding Shoreline Improvements and Shoreline Structures. See §100.17.D.

**ZONING MAP:** The Zoning Map or Maps for the Town of Fremont, New York, together with all amendments subsequently adopted.

Where a term used in this Law is not specifically defined above or in the context of its use herein, it shall have the generally accepted legal definition

**ARTICLE III – BASIC DISTRICT REGULATION**

**100.10. Enumeration of Districts.**

The Town of Fremont is hereby divided into the following types of districts:

- RR Residential Recreation District
- R Residential District
- H Hamlet District
- RC River Conservation District
- MC-1 Mountain Conservation District (Basket Sub-District)
- MC-2 Mountain Conservation District (Plateau Sub-District)
- LC-1 Anawanda Lake Conservation District
- LC-2 Muskoday-Tennanah Lake Conservation District

As of the effective date of this Law, any prior Planned Unit Development (PUD) overlay districts are declared null and void. Floodplain Overlay Districts are provided for under §100.31 of this Law.

**100.11. Zoning Map.**

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

**100.12. Interpretation of District Boundaries.**

- A. Zoning district boundary lines are intended generally to follow or connect the center lines of rights-of-way; existing lot lines; the mean water level of rivers, streams and other waterways; or town boundary lines, all as shown on the Zoning Map; but where a district boundary line does not follow such a line, its position is shown on said Zoning Map by a specific dimension or relationship to such a line.
- B. Where a district boundary line divides a lot of record at the time such line is established, the Planning Board may allow the extension of activities permitted in one district to the other as a Special Use.
- C. When the specific location of a zoning district boundary line cannot be ascertained, the Code Enforcement Officer shall request the Planning Board to render an interpretation which shall then be used as the basis for applying zoning standard.

**100.13. Schedule of District Regulations.**

- A. The restrictions and controls intended to regulate development in each district are set forth in the Schedule of District Regulations which is then supplemented by other sections of this Law and other laws of the Town of Fremont. The following use categories are enumerated:
- (1) Principal Permitted Uses shall be permitted as a matter of right upon application to the Code Enforcement Officer, provided the proposed use is in compliance with these regulations.
  - (2) Special Uses are uses subject to site plan review and, specifically, Planning Board approval as pre-requisites to the Code Enforcement Officer issuing a permit for their establishment.
  - (3) Accessory Uses are permitted to accompany or precede Principal Permitted and Special Uses and permits for these uses shall be issued directly by the Code Enforcement Officer, provided the proposed use is in compliance with these regulations.

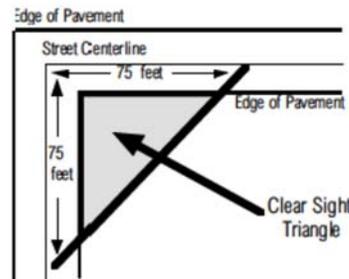
**100.14. Applicability of Regulations.**

- A. **General.** No structure, no use of any structure or land, and no lot of record now or hereafter existing shall be established, altered, moved, diminished, disturbed, divided, eliminated or maintained in any manner except in conformity with the provisions of this Law.
- B. **Zoning Permit Required.** Whenever any owner or occupant of land in the Town of Fremont shall, for any purpose or in any manner;
- (1) establish a new use,
  - (2) clear, excavate or grade land in advance of expanding an existing use or establishing a new use, (except for construction of a driveway onto a property, lawn or pasture),
  - (3) change an existing use,
  - (4) make permanent improvements,
  - (5) erect a new building,
  - (6) move, alter, add to or enlarge any existing land use or building;
- C. **Change in Use Requirement.** A zoning permit shall be required whenever a change in land use occurs, regardless whether any new construction is involved or not excepting that agricultural harvesting, grazing, tilling and crop rotation, shall be exempt from all permit requirements.

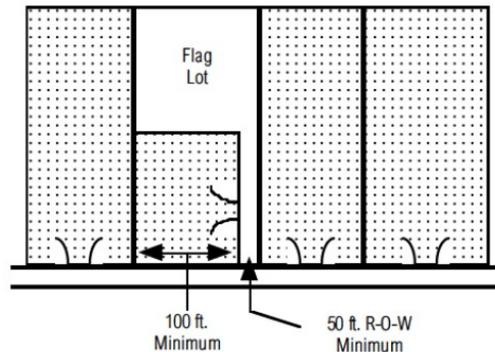
- D. **Responsibility of Owners.** An owner shall be responsible for compliance with this Law regardless of any agreement between or among agents, lessors, operators, occupants or persons as to which party shall be responsible.
  
- E. **Unlisted Uses.** If a proposed use is not specifically listed in any category of uses or within any zoning district on the Schedule of District Regulations, said use shall be prohibited, not excepting the following:
  - (1) Upon the formal request of an applicant or following a motion duly made by members of the Planning Board, the Planning Board shall consider and then render a formal determination as to whether a land use is permitted in a district or districts in the Town.
  - (2) If based on this review an unlisted use is determined to be permitted by the Planning Board, an applicant may proceed to submit an application for the proposed use as a Special Use.
  - (3) The Planning Board shall make its determination on the basis of similarities of the use to other specifically listed uses within various districts, taking into consideration the impacts of the use on the community and the neighborhood in which it is proposed.
  - (4) This process shall not permit the Planning Board to reclassify uses which are already listed nor shall the Planning Board allow any use which is not listed in a particular district if that use is already permitted in another district.
  
- F. **Preliminary Meeting.** Any person is encouraged to meet with the Code Enforcement Officer prior to conducting any action or operating a use that is regulated by this Law. Said meeting may be used to expedite the review process by allowing said person to be advised of applicable requirements and/or regulations such as but not limited to:
  - (1) The application requirements of this Law;
  - (2) Any applicable regulations of the Code of the Town of Fremont such as but not limited to the Flood Damage Prevention Law;
  - (3) The requirements and classification of the type of action pursuant to SEQRA; and
  - (4) The possible involvement of other government agencies in the review process.

**100.15. Lot Development Standards.**

- A. **Minimum development standards.** The development standards contained herein are minimums and shall apply to each dwelling unit unless otherwise specifically provided. A two-family dwelling shall, for example, require the equivalent of two minimum sized lots insofar as lot area, as will any two dwelling units on the same property. Conversions of existing structures or redevelopments of existing uses for two-family or multi-family dwelling use, regardless whether or not such conversions involve structural alterations, shall be subject to the multi-family dwelling standards of this Law.
- B. **Corner lots.** No obstruction to vision (other than an existing building, post, column or tree) exceeding thirty (30) inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the triangle formed by the centerlines and a line drawn between points along such street centerlines seventy-five (75) feet distant from their points of intersection. See illustration below:



- C. **Through lot requirements.** A through lot shall be considered as having two (2) street frontages, both of which shall be subject to the front yard requirements of this law.
- D. **Minimum lot frontage.** All residential lots shall have a front lot line with a minimum length of fifty (50) feet.
- E. **Flag lots.** Development of new interior lots with limited lot frontage consisting of only an access right-of-way shall be permitted pursuant to § 4.3.10 and § 4.9.18 of the Town of Fremont Subdivision Regulations provided:
- (1) The lot area shall be exclusive of that portion used as a right-of-way for purposes of meeting minimum lot area and all other development standards for the District.
  - (2) No right-of-way shall be established over an existing parcel of land to reach a new lot to the rear which would reduce the length of the front lot line of the existing parcel to less than one-hundred (100) feet.



- (3) The lot(s) in front of the flag lot(s) shall use the flag lot right-of-way for their own driveway access so that the number of driveways (curb cuts) shall be not be increased by the use of lag lots.

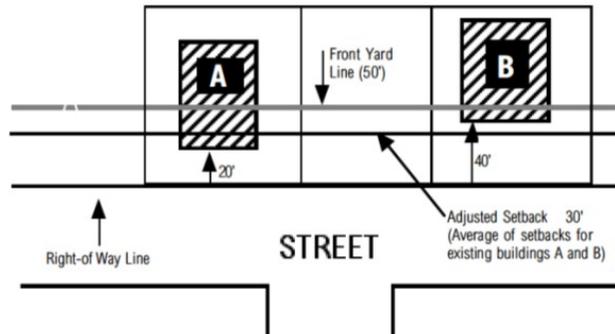
**100.16. Height Restrictions.**

- A. **General application.** No building or structure shall exceed in building height the number of feet permitted as a maximum on the Schedule of District Regulations for the district where such building or structure is located.
- B. **Permitted exceptions.** Height limitations stipulated elsewhere in this law shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, chimneys, smokestacks, flagpoles, radio and transmission towers, farm buildings or similar non- inhabited structures under 120 feet in height Structures over 120 feet in height may be permitted as special uses provided they are sufficiently setback from adjoining properties to avoid any safety hazard connected therewith and meet all State and Federal air safety and electronic communications standards.

**100.17. Yard Restrictions.**

- A. **Rear and side yard exceptions.** Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than one-half (1/2) the otherwise required minimum width. The Planning Board shall also have the discretion, in cases of "main street" businesses in the Hamlet District where no side yards are provided and/or buildings will directly adjoin, to permit zero lot line development. Furthermore, the Planning Board shall have the authority, for good cause in relationship to the particular nature of the property, to modify any yard requirements as applied to accessory buildings.
- B. **Front yard exception.** When an unimproved lot is situated adjacent to or between improved lots already having a principal building within the required front yard, the

front yard for the unimproved lot may be reduced to the average depth of the front yards for the two (2) nearest adjoining improved lots. Also, when such circumstances exist, no principal structure shall be setback further than this average depth plus ten (10) feet. The Planning Board shall also have the discretion in cases of "main street" businesses in Hamlet Districts to permit zero lot line development, where no front yards are typically provided. The following illustration depicts how the front yard exception shall apply.



- C. **Provision of yard or other open space.** No yard or other open space provided about any buildings for the purpose of complying with the provisions of the law shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- D. **Waterfront yards.** Any yard which borders on a lake, stream or body of water shall be not less than one hundred (100) feet in depth excluding Shoreline Improvements and Shoreline Structures.

**100.18. Accessory Structure and Use Standards.**

The location, limitation and coverage of accessory structures and uses shall be as follows:

- A. **General.** Accessory structures and/or uses shall be located on the same lot of record as the principal building and/or use. If a principal building and/or use do not exist on a lot of record, an accessory structure or use may be constructed on such lot of record but shall be incidental and subordinate to any future principal building and/or use.
- B. **Placement.** No accessory structures or uses permitted by this law shall be placed in any required side or front yard except as provided in this Article.
- C. **Lot coverage.** Accessory structures and uses, collectively, shall not cover more than thirty percent (30%) of any yard.

- D. **Unattached accessory structures.** Accessory structures not attached to a principal structure shall:
- (1) Be setback from any side or rear lot line a minimum of five (5) feet provided that this distance shall be increased to ten (10) feet for any garage or building structure absent Special Use review and approval.
  - (2) Be no closer to the street than a principal structure, except in the case of farm buildings. Residential garages may be located in front of residences but not in front yard areas.
  - (3) Be no more than 1 story in height unless approved as a Special Use.
  - (4) Not be used for habitation or contain Habitable Space.
- E. **Attached accessory structures.** Accessory structures attached to principal buildings shall comply with principal building requirements.
- F. **Unaccepted for accessory use.** Storage trailers, railroad cars, bulk containers or retired manufactured housing units and recreational vehicles shall not be used for purposes of accessory structures in connection with any use.
- G. **Principal use required.** Accessory structures shall only be permitted in connection with established principal structures and uses.
- H. **Fences, Stone Walls and Masonry Walls.**
- (1) Except as otherwise provided for elsewhere in the Law, erection of fences, stone walls or masonry walls, or a combination thereof, are allowed uses that are typically Accessory Uses that do not require a building permit or a certificate of occupancy, but which must be installed in accordance with this section.
  - (2) Agricultural fences are not considered fences or walls for the purpose of this section.
  - (3) Fences around utility power substations, telecommunications facilities, wind generation facilities, tennis courts, sports fields, and other such uses as determined by the Code Enforcement Officer are exempt from the height limitations of this section.
  - (4) Below-ground swimming pools shall be fenced to a height of at least four (4) feet using material sufficient to prevent entry by children, including secure gates. Swimming pool fences should also meet or exceed the applicable standards of New York State Law.
  - (5) A fence or wall of up to four (4) feet high may be constructed at any location on any parcel of property provided it is no closer than six (6) inches

to a side-yard or rear- yard line and no closer than three (3) feet to a front-yard line or waterfront-yard line.

- (6) A fence exceeding four (4) feet high and up to seven (7) feet high can be constructed on any parcel of property provided it is no closer than six (6) inches to a side-yard or rear-yard line and no closer to the front-yard line or the waterfront-yard line than is the parcel's principal structure.
- (7) Fences greater than thirty (30) inches are not allowed in the Clear Sight Triangle of corner lots as described in Section 100.15.B.
- (8) Fences shall be installed with the finished side facing out or away from the interior of the lot on which the fence is placed, and must be constructed in a quality workmanlike manner and shall not pose a health, safety threat, or nuisance.

**I. Decks, Patios and Porches.**

- (1) Decks, Patios and Porches are Accessory Uses. Unless specifically provided for in relation to a specific use or regulation of this Law, all decks, patios and porches in the Town must be installed in accordance with the following requirements.
- (2) Except for Patios less than 200 square feet in size, a building permit is required for all Decks, Patios and Porches.
- (3) The minimum side and rear yard setbacks for a Deck, Patio, or Porch are the same as the setbacks applicable to the principal structure.

**J. Shoreline.** Shoreline Structures and Shoreline Improvements shall also comply with the following, additional requirements.

- (1) With the exception of Seawalls, Shoreline Structures and Shoreline Improvements shall not occupy more than thirty-percent (30%) of the width a parcel's Shoreline Frontage except that in the case where a parcel has less than 50 feet of Shoreline Frontage, whereby said standard shall be increased to sixty-percent (60%).
- (2) Shoreline Structures and Shoreline Improvements shall not be used for Commercial or Home Occupation purposes except for Marina Facilities, which are allowed as defined in § 100.39.
- (3) Shoreline Structures shall not extend into the waterbody beyond the amount required to facilitate vessel access to the waterbody.
- (4) Shoreline Improvements shall not extend more than 40 feet into the waterbody or more than 20% of the width of the waterbody at the point of

construction, whichever is less.

**K. Outdoor hot tubs, spas, and swimming pools.**

- (1) Location. Outdoor hot tubs, spas and swimming pools shall be located only at a rear and/or side yard of a lot of record.
- (2) Setbacks. Outdoor hot tubs, spas and swimming pools shall be at least ten (10) feet from any lot line, measured to the exterior wall of the pool. Filters, pumps and other appurtenant machinery shall also be located at least ten (10) feet from any lot line.
- (3) Supported by other structures. Hot tubs, spas and swimming pools that are supported by other structures (e.g., decks, porches, etc.) shall be certified by a registered design professional to support such additional loads.

**ARTICLE IV – SITE PLANS AND SPECIAL USE REVIEW**

**100.19. Special Use and Site Plan Procedures.**

**A. Purpose and Authority.**

- (1) The Town of Fremont Planning Board is authorized, in accordance with Sections 274-a and 274- b of the New York State Town Law, to review and approve, approve with modifications or disapprove Special Uses and site plans connected therewith.
- (2) The function of Special Use Permits is to accept certain uses only upon compliance with specific conditions that are presented herein in addition to all other, general requirements of this Law.
- (3) Site plan review shall be required for all Special Uses, and such other uses as the Town Board may from time to time designate by local law or as is specified in this Law.

**B. Conceptual site plan.** An applicant for a Special Use permit may submit a conceptual site plan for review and advice by the Planning Board. Such a conceptual site plan should provide locations and dimensions of the proposed use in relation to the property boundaries and adjacent uses. It should also indicate all accesses, rights-of-way and improvements both existing and proposed and any site features which could have a bearing on the project including the general topography and existing ground cover. This conceptual plan shall be used by the Planning Board as a basis for advising the applicant regarding information it shall require on the site plan before it conducts a public hearing or takes any action with respect to the plan. The Planning Board shall give no formal final approval or disapproval regarding any conceptual site plan but may use it to schedule a public hearing, determine if any provisions of this article should be waived or begin its review of the application under the New York State Environmental Quality Review Act ("SEQR").

**C. Special Use Application.** At the first meeting on an application the Planning Board shall determine whether the application is complete for purposes of commencing the formal review process. If an application is determined to be incomplete, the Planning Board shall advise the applicant as to what aspects are lacking or otherwise insufficient. The time frames for holding a hearing or for any Planning Board action shall not commence until the submission of a fully complete application with supporting documents and materials and the determination by the Planning Board that the application is complete.

- D. **Site Plan Requirements.** The following information shall be provided on a Site Plan:
- (1) The location of all existing watercourses, wooded areas, rights-of-way, roads, structures or any other man-made or natural feature(s) including underground utilities, sewage tanks and systems, water tanks and systems, and fuel storage tanks on the property
  - (2) The location, use and floor or ground area of each proposed building, structure or any other land use, including sewage disposal and water supply systems.
  - (3) The location of all landscaping and ground cover features, both existing and proposed, including detailed planting plans and a visual depiction or rendering of the final appearance of the property after all landscaping and other physical improvements are completed.
  - (4) The location, dimensions and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or regrading involved.
  - (5) The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
  - (6) The location and identification of existing and proposed open spaces, parks or other recreation areas.
  - (7) The location and design of buffer areas and screening devices to be maintained.
  - (8) The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
  - (9) The location of public and private utilities, including maintenance facilities.
  - (10) The specific locations of all signs existing and proposed, including a visual depiction of the latter.
  - (11) Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height and general design or architectural styling.
  - (12) A completed SEQR Environmental Assessment Form.
  - (13) Any other information required by the Planning Board which is reasonably necessary to ascertain compliance with the provisions of this law.

- E. **Waivers.** The Town of Fremont Planning Board shall, pursuant to Section 274-a(5) of the Town Law, have the right to waive, when reasonable, any of the requirements of this article for the approval, approval with modifications or disapproval of Special Use permits and site plans submitted for approval. This waiver authority may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or are inappropriate to a particular site plan. Any such waiver shall be subject to the following conditions:
- (1) No waiver shall result in allowing a use not permitted within the applicable Zoning District.
  - (2) No waiver shall be given with respect to standards outside the scope of this article which would otherwise require a variance from the Zoning Board of Appeals.
  - (3) Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data and create unnecessary costs with regard to deciding the matter at hand, due to the scope or nature of the project involved. The proposed enclosure of a deck or a simple change of use with no significant structural modifications in the case of a commercial property, for example, might not require typical cross-sections for proposed regrading or water supply data.
  - (4) An applicant for site plan approval who desires to seek a waiver of any requirement pertaining to such applications shall submit a conceptual site plan as provided above. The Planning Board shall review the conceptual site plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such site plan as adequate when, in its judgment, the information submitted is sufficient to make a determination of compliance with the development standards contained herein and the intent of site plan review criteria found below.
  - (5) Nothing herein shall authorize the Planning Board to waive State Environmental Quality Review requirements.
- F. **Hearing and decision.** The Planning Board shall fix a time, within sixty-two (62) days from the day an application for a Special Use permit or site plan approval is made, for the hearing of any matter referred to under this section. It shall give public notice of such hearing at least five (5) days prior to it in a newspaper of general circulation in the Town and decide upon the application within sixty-two (62) days after such hearing. It shall not, however, do so before a decision has been made with respect to environmental impacts pursuant to SEQR. The Planning Board shall be the lead SEQR agency on all Special Use applications. The decision of the Planning

Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five (5) business days after such decision is rendered.

**G. Conditions.**

- (1) The Planning Board, as a condition of granting any special use permit, may specify its term of validity, unless otherwise specified in this Law. There are three types of Special Use permits which may be granted by the Planning Board, described as follows:
  - (a) Permanent: allows a specific use to continue indefinitely until the specific use ceases for any reason for a period of six consecutive months. Although no end date for the permit is established, permanent special use permit holders must maintain compliance with the provisions of this Law and any additional conditions specified as part of the Special Use permit approval.
  - (b) Temporary: allows a specific use to continue until a specified date, at which time the special use permit shall automatically terminate and the use shall be permanently discontinued. This type shall not be extendable.
  - (c) Renewable: allows a specific use to continue until a specific date, unless renewed or extended by the Planning Board for an additional period of time.
- (2) The applicant, in accepting a temporary or renewable special use permit, acknowledges and agrees that such special use permit confers no rights or privileges other than those specifically contained therein.
- (3) The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Special Use permit or site plan.
- (4) The location of special uses shall be demonstrably suitable and properly sized for such use, including, but not limited to, proper drainage and provisions for stormwater control such that the amount of water leaving the site after development shall not be greater than prior to development, and the ability to adequately buffer the sight and sound of such use from surrounding residential uses.
- (5) The Planning Board may require that the special use be substantially screened from the view of, or buffered from, neighboring properties, public roads, or water-bodies.
- (6) Nuisances. The scale, intensity, and operation of any use shall not generate unreasonable light, noise, traffic, congestion or other potential nuisances or

hazards to residential properties.

- (7) Upon approval of said permit and/or plan any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the applicant to provide parkland or to provide fees in lieu thereof pursuant to Section 274-a(6) of the New York State Town Law.
- H. **Referrals.** The Planning Board is authorized to refer Special Use permit applications and site plans to other agencies, groups or professionals employed or used by the Town for review and comment and to charge the applicant fees for any reasonable expenses connected therewith. The Board shall, in particular, ensure that the requirements of Section 239-m of the General Municipal Law regarding review by the Sullivan County Planning Department and Section 283-a of the New York State Town Law regarding Agricultural Data Statements are met. It shall also comply with all requirements of the New York State Environmental Quality Review Act.
- I. **Appeals.** Any person aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the town may apply to the ZBA under Article VIII hereof or Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.
- J. **Effect of site plan approval.** The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board. The site plan shall remain effective for a period of two (2) years from the date of approval.
- K. **Renewals.** The following conditions and procedures shall apply to Special Use permits classified as Renewable, as specified in this Law or as determined by the Planning Board:
  - (1) Renewal must not be unreasonably withheld if the applicant is in conformance with the original approval and all conditions attached thereto, but the Planning Board may refuse to renew a permit upon a finding that the permittee is in repeated or willful violation of any of the terms of the permit, this section or any rule, regulation, standard, or condition promulgated.
  - (2) Requests for renewal must be initiated by the special use permit holder of record no less than 60-days and no more than 120-days prior to expiration.
  - (3) Renewal applications shall contain the following:
    - (a) An updated and current site plan;

- (b) A special use application form;
  - (c) Photographs of the structure and use from all directions;
  - (d) Payment of a renewal fee as established by the Town Board from time-to-time; and
  - (e) Other information or materials deemed necessary by the Planning Board.
- (4) Within 45-days of the submission of a completed application for a special use renewal and determination by the Code Enforcement Officer that the application is technically sufficient, the Planning Board shall act on the application.
- (5) Failure of the special use permit holder to complete the renewal process shall result in the revocation of the special use permit and require the special use permit holder to cease all related use and activity. Further action may be required by the lot owner, including, but not limited to, the removal of related equipment or structures.

**L. Pre-existing Special Uses.**

- (1) The purpose of this subsection is to allow the Planning Board and Code Enforcement Officer the ability to document pre-existing Special Uses and any applicable conditions, and identify and extinguish historical special use permits that are no longer active or that were never developed.
- (2) Pre-existing Special Uses are those uses previously approved by the Planning Board or continually in use since prior to May 8, 2002.
- (3) Pre-existing Special Uses approved by the Planning Board prior to the effective date of the Law or a pre-existing use operating prior to May 8, 2002, shall be considered a permanent Special Use permit provided such use is:
- (a) currently in use and has been in continuous use since prior to May 8, 2002 or since receiving Planning Board approval; and
  - (b) in compliance with the permitting procedures which were enforceable by the Town at the time of construction or initial use, including any special use approval conditions at the time of approval or as so amended by the Planning Board.
- (4) Modifications to pre-existing special uses, including but not limited to changes in use, the addition of structures, expansion beyond the original site plan, and deviation from conditions of approval, must be approved by the Planning Board. Such approval is required for special uses regardless of its condition as permanent, renewable, or temporary, and regardless of its status

as a pre-existing special use. Failure to obtain Planning Board approval may result in the cancellation of the Special Use permit or other action by the Code Enforcement Officer.

- (5) The Code Enforcement Officer may review Special Use facilities and operations as required to ensure compliance with Special Use permits, terms and conditions. Such review may seek confirmation from the permit holder or property owner that the use is in accordance with the terms of the special use as approved by the Planning Board and that the use has been in continual use since the time of approval or prior to May 8, 2002.

**100.20. Site Plan Review Criteria.**

- A. The Planning Board, in reviewing the site plan, shall consider its conformity to Town of Fremont comprehensive planning and the various other plans, laws and ordinances of the Town. Conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire town shall be part of the Planning Board review. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The Planning Board shall further consider the following:
  - (1) Building design, lighting, location and signs insofar as suitability for the use intended and impact on and compatibility with the natural and man-made surroundings.
  - (2) Storm drainage, flooding and erosion and sedimentation control.
  - (3) Adequacy of community services and utilities including police protection, emergency services and the educational system.
  - (4) Environmental impacts in any form.
  - (5) Impacts on housing availability.
  - (6) The potential for nuisance impacts such as noise, odors, vibrations or glare.
  - (7) The adequacy of the trees, shrubs and other landscaping to buffer or soften a use in terms of visual or other impacts on adjoining property owners, Town residents and those visitors on whom the local economy often depends.
  - (8) Impacts on nearby property values.
  - (9) Any other factors which reasonably relate to the health, safety and general welfare of present or future residents of the Town of Fremont.
- B. The Planning Board, in acting upon the site plan, shall also be approving, approving with modifications or disapproving the accompanying Special Use permit application

taking into consideration not only the criteria contained above but also the following:

- (1) Whether the proposed use will result in an overconcentration of such uses in a particular area of the Town or is needed to address a deficiency of such uses. The Board shall, in this regard, consider the suitability of the site proposed for a particular use as compared to the suitability of other sites in the immediate area.
- (2) Whether the proposed use will have a detrimental or positive impact on adjacent properties or the health, safety and welfare of the residents of the Town of Fremont.
- (3) If the proposed use is one judged to present detrimental impacts, whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
- (4) Whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability or open space preservation.
- (5) Whether the granting of an approval will cause an economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies and fire-fighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town Planning Board shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply to, but not be limited to, additional fire-district expenses.
- (6) Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character which this law and the Town's comprehensive planning are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

**ARTICLE V – SUPPLEMENTARY REGULATIONS**

**100.21. Adult Oriented Businesses.**

A. **Purposes.** The primary purpose of this section is to preserve the character and quality of life in the Town neighborhoods and business areas, to maintain property values, to prevent crime, to protect retail trade, to restrict minors access to adult oriented businesses, and to maintain the general welfare, safety and morals of the Town of Fremont.

B. **Special Definitions.**

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

ADULT MATERIALS - Adult materials shall include but not be limited to any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, mechanical devices, instruments, clothing or any other writings, materials or accessories which are distinguished or characterized by their emphasis on matter depicted, described or related to "special sexual acts" or "specified anatomical areas" as defined herein, or an establishment with a segment or section exclusively devoted to the sale, lease, gift, trade, display of such materials or of any drug paraphernalia.

**SPECIFIED SEXUAL ACTIVITIES:**

- (1) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus [or] female breast.
- (2) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Acts of human masturbation, actual or simulated;
- (4) Excretory function as part of or in connection with any of the activities set forth in (1), (2) or (3) above.

SPECIFIED ANATOMICAL AREAS:

- (1) Less than completely and opaquely covered:
  - (a) Human genitals, pubic region;
  - (b) Buttock; and
  - (c) Female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

NUDITY - Nudity means the showing of the human male or female genitals, public area, buttocks, or anus, any part of the nipple or any part of a female breast below a point immediately above the top of the areola with less than a fully opaque covering.

- C. **Permit required.** No adult oriented business shall be commenced or continued without a special use permit being obtained from the Town of Fremont pursuant to this chapter.
- D. **Zone in which permitted.** Adult oriented business shall be permitted only in the RR Residential Recreation District of the Town of Fremont.
- E. **Geographical limitations.** No adult oriented business shall be located within 1,000 feet of any residence, residential facility, institution, health facility, church, synagogue, school, public or semi-public parks or recreational facility, any establishment which serves alcoholic beverages or any other existing adult oriented business.
- F. **Alcoholic beverages prohibited.** Sale of alcoholic beverages at an adult oriented business shall not be permitted unless the business is being operated as a bona-fide restaurant or eating and drinking establishment.
- G. **Signs and displays.** No exterior display or interior display which is visible from outside the business shall be made to identify or portray the type of activity which occurs at an adult oriented business excepting for one (1) approved ground sign not to exceed a surface area of twenty-four (24) square feet for both sides combined. Such sign shall be subject to all other limitations applicable to signs. It shall not incorporate any obscene material but shall be otherwise unlimited as to message.
- H. **Non-conforming buildings or lots.** No non-conforming building or lot shall be used for an adult oriented business. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting an adult oriented business unless application to do so has been made

pursuant to this section and Planning Board approval has been given.

- I. **Prohibited activities.** The following activities shall not be permitted on the premises of any adult oriented or other public place within the Town of Fremont:
  - (1) Public appearance by a person knowingly or intentionally engaged in sexual intercourse, deviate sexual conduct or the fondling of the genitals of himself or another person, or the fondling of female breasts.
  - (2) The knowing and intentional public appearance of a person in a state of nudity.

#### **100.22. Bed and Breakfasts**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Bed & Breakfast uses.
- B. **Access.** Access to the sleeping rooms shall be provided through the main entrance to the bed and breakfast dwelling. In addition, no sleeping rooms for transient use shall be located above the second story of a bed and breakfast dwelling.
- C. **Cooking facilities prohibited.** No cooking facilities (e.g., microwave) shall be provided or permitted in any sleeping room.
- D. **Meals.** Meals may be served to transient lodgers as part of the room fee, but in no case shall meals be served to persons not lodging at the bed and breakfast dwelling.
- E. **Owner's residency required.** The owner shall have his or her permanent place of abode at the bed and breakfast dwelling.
- F. **Transient Use.** Bed & Breakfasts are not residential facilities and use is strictly limited to transient guest use. As a condition of approval of a special use permit, and the maintenance of such special use permit, the permit holder shall provide notice to each guest upon reservation of use and arrival that their stay is of a transient nature. No person shall put up or stay, or allowed to be put up or stay, at a bed & breakfast for longer than twenty-one (21) days in a sixty (60) consecutive day.
- G. **Record keeping.** The owner shall keep a register of all guests, which shall include the minimum information: Name and address of each guest, dates of arrival and departure of each guest, and license numbers of all vehicles and state that issued such license. Said register shall be available to the Code Enforcement Officer upon request and be required for the purpose of special use permit review.

H. **Parking.**

- (1) One (1) off-street parking space shall be provided for each sleeping room, which shall be in addition to those required for the dwelling unit.
- (2) All parking spaces shall be located at the rear and/or side yards, and be designed to facilitate the exiting of vehicles in a forward motion from the lot of record onto the contiguous road.
- (3) A buffer shall be installed between all parking spaces and a contiguous lot of record that contain an existing residential use.

**100.23. Cabins, Hunting and Fishing**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Hunting and Fishing Cabins.
- B. **Compliance with the Sanitary Code.** Hunting and Fishing Cabins shall comply with Part 7, specifically Subpart 7-1, of the Sanitary Code of NYS, if it is applicable. Where, in any specific case, conflicts occur between provisions of this Law and such state law, the more restrictive requirement shall govern.
- C. **Lot Size.** Lot size and other dimensional and density requirements for a Hunting and Fishing Cabin are the same as those of a Single-family Dwelling in any district in which Hunting and Fishing Cabin uses are allowed.
- D. **Floor Area.** A Hunting and Fishing Cabin shall have a gross floor area equal to or greater than four hundred (400) square feet.
- E. **Occupancy.** A Hunting and Fishing Cabin shall not be used as a permanent dwelling unit and shall only be occupied occasionally for recreational purposes.
- F. **Two-family and multiple-family dwellings.** Hunting and Fishing Cabins are allowed for single-family purposes only and are prohibited to be built as two-family or multi-family structures.

**100.24. Camp, Campgrounds and Summer Camps.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Campgrounds and Summer Camps, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.

**B. Applicability.**

- (1) This section applies to all Campgrounds and Summer Camps, regardless of their establishment for overnight or day use, or for the use of children or adults, or for their use of tent-camping or other forms of accommodation as may be permitted as part of this section.
- (2) This section is not intended to regulate Residential Camping as defined in Section 100.09 and which is considered an allowed use in all districts in the Town and typically an Accessory Use for which no permits are required.

**C. Lot Size.** Unless otherwise approved by the Planning Board, all campgrounds and summer camps shall be located on parcels that have a Lot Area that is a minimum of thirty (30) continuous acres in size (uninterrupted by a public road or highway) and that contain a minimum of 500 feet of frontage on a public road or highway.

**D. Buffer.** In addition to the screening and buffering requirements detailed elsewhere in this Law:

- (1) A minimum 250 foot green space buffer shall surround the facility, except for road cuts no wider than 50 feet that provide access to a public highway from the internal roadway.
- (2) No campsite or portion thereof, building, structure or roadway shall be placed within any buffer area.
- (3) Under no circumstances shall campsites, buildings, tents, structures, or parking areas be located within front, side, rear or waterfront yard setback areas as stipulated within each zoning district, including existing non-conforming structures.

**E. Compliance with health and sanitary codes.** Each applicant shall demonstrate compliance with all applicable rules and regulations of the New York State Department of Health, for example, Part 7, specifically Subparts 7-2 and 7-3, of the Sanitary Code of NYS. Where, in any specific case, conflicts occur between provisions of this Law and such state law, the more restrictive requirement shall govern.

**F. Use of non-conforming buildings or lots.** No non-conforming building or lot shall be used for campground or summer camp use. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting campground, summer camp or retreat center use unless application to do so has been made pursuant to this section and Planning Board approval has been given.

- G. **Interior Roads.** Any interior roads shall be designed and certified as fire apparatus access roads pursuant to the Uniform Code and be at least twelve (12) feet wide for one-way traffic and twenty (20) feet wide for two-way traffic.
- H. **Utilities.** The Planning Board shall require adequate provisions for water supplies, sewage disposal, garbage disposal, and other site-specific conditions.
- I. **Garbage Disposal.** Adequate plans shall be made for the collection and disposal of garbage, rubbish and solid wastes generated within the park. There shall be no on-lot exposed garbage, junk, or other wastes. The operator shall provide for the pick-up of trash at least once a week.
- J. **Campground specific requirements.** A campground shall be divided into campsites and adhere to the following:
- (1) The corners of each campsite shall be clearly marked, and each campsite shall be numbered for identification.
  - (2) Each site shall have set occupancy limits but shall not exceed ten (10) persons.
  - (3) The minimum size of each campsite shall be 3,000 square feet, provided however, that there shall be no more than 10 campsites per acre and shall not be located less than 275 feet from a public road or highway.
  - (4) Campsites shall be occupied only by travel trailers, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation, and recreational purposes. The removal of wheels and placement of a unit on a foundation in a camping ground is prohibited and all trailers and vehicles must be registered and maintained in operable condition at all times.
  - (5) Each campsite shall have a designated area for a campfire and shall be located, cleared, maintained and operated in accordance with recommendations of the applicable Fire Department.
  - (6) A campground shall have suitable buildings for housings toilets, showers and slop sinks. The buildings shall be located to not exceed two hundred (200) feet travel distance from any campsite. The buildings shall be constructed to provide adequate lighting, privacy and ventilation as prescribed by the Uniform Code.
- K. **Transient Use.** Campgrounds and summer camps are not residential facilities and use is strictly limited to transient guest use. As a condition of approval of a special use permit, and the maintenance of such special use permit, the permit holder shall provide notice to each guest upon reservation of use and arrival that their stay is of a

transient nature. No person shall put up or stay, or allowed to be put up or stay, at a campground or summer camp for longer than twenty-one (21) days in a sixty (60) consecutive day period except in the case of a summer camp for minors whereby transient, seasonal stay up to sixty-two (62) days is permitted.

- L. **Management.** In every campground or summer camp there shall be an attendant or person in charge that is responsible for the following:
- (1) Keep a register of all guests, which shall include the minimum information: Name and address of each guest, dates of entrance and departure of each guest, and license numbers of all vehicles and state that issued such license. Said register shall be available to the Code Enforcement Officer upon request and be required for the purposes of special use permit renewal;
  - (2) Maintain the campground in a safe, orderly and sanitary condition; and
  - (3) Assist emergency response agencies in cases of emergency.
- M. **Recreation Area.** No less than twenty percent (20%) of the gross area of any campground or summer camp shall be devoted to common recreational areas with facilities, such as playgrounds, trails, or swimming pools on suitable land for the stated purpose, not including, for example, water bodies, wetlands or slopes greater than fifteen percent (15%).
- N. **Signs.** Illuminated signs and other lights shall be directed away and shielded from adjoining properties.
- O. **Public Address System.** No public address system is permitted except where such system will not be audible at any property line.
- P. **Mobile and Manufactured Homes.** Mobile and Manufactured homes, whether permanent or temporary, shall not be parked or stored in any campground or recreational vehicle park except if owned and occupied by the park management.

#### 100.25. Cemeteries

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Cemetery uses.
- B. **Accessory Uses.** Cemeteries shall be permitted to have all the accessory uses already permitted in the applicable zoning district as well as additional accessory uses that are commonly associated with cemeteries such as mausoleums and columbariums.

- C. **Compliance with the state law.** A cemetery shall comply with state law such as but not limited to Article 15 of the Not for Profit Corporations Law of NYS, §§450-451 of the Real Property Law of NYS and §§4216-4221 of the Public Health Law of NYS. Where, in any specific case, conflicts occur between provisions of this section and such state law, the more restrictive requirement shall govern.
- D. **Flood zone.** Burial plots or cemetery related structures shall only be permitted in areas outside the five hundred (500) year flood zone as prescribed by the Flood Insurance Rate Map of the Town, which is created by FEMA.
- E. **Setbacks.** All burial plots as well as cemetery related structures shall be setback from any lot line in accordance to the minimum yard dimensions for a principal building at the applicable zoning district.

#### **100.26. Conference Centers and Retreats**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Conference Centers and Retreats.
- B. **Applicability.** This section applies to all Conference Centers and Retreats, regardless of their establishment for overnight or day use, or for the use of children or adults.
- C. **Lot Size.** Unless otherwise approved by the Planning Board, all conference centers or retreats shall be located on parcels that have a Lot Area with a minimum of thirty (30) continuous acres (uninterrupted by a public road or highway) and that contain a minimum of 500 feet of frontage on a public road or highway.
- D. **Buffer.** In addition to the screening and buffering requirements detailed elsewhere in this Law:
  - (1) A minimum 250 foot green space buffer shall surround the facility, except for road cuts no wider than 50 feet that provide access to a public highway from the internal roadway.
  - (2) No building or structure shall be placed within any buffer area.
  - (3) Under no circumstances shall buildings, structures, or parking areas be located within front, side, rear or waterfront yard setback areas as stipulated within each zoning district, including existing non-conforming structures.

- E. **Use of non-conforming buildings or lots.** No non-conforming building or lot shall be used for conference center or retreat use. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting a conference center or retreat use unless application to do so has been made pursuant to this section and Planning Board approval has been given.
- F. **Interior Roads.** Any interior roads shall be designed and certified as fire apparatus access roads pursuant to the Uniform Code and be at least twelve (12) feet wide for one-way traffic and twenty (20) feet wide for two-way traffic.
- G. **Utilities.** The Planning Board shall require adequate provisions for water supplies, sewage disposal, garbage disposal, and other site-specific conditions.
- H. **Garbage Disposal.** Adequate plans shall be made for the collection and disposal of garbage, rubbish and solid wastes generated within the facility. There shall be no on-lot exposed garbage, junk, or other wastes. The operator shall provide for the pick-up of trash at least once a week.
- I. **Transient Use.** Conference centers and retreats are not residential facilities and use is strictly limited to transient guest use. As a condition of approval of a special use permit, and the maintenance of such special use permit, the permit holder shall provide notice to each guest upon reservation of use and arrival that their stay is of a transient nature. No person shall put up or stay, or allowed to be put up or stay, at a conference center or retreat for longer than twenty-one (21) days in a sixty (60) consecutive day period.
- J. **Management.** In every conference center or retreat there shall be an attendant or person in charge that is responsible for the following:
- (1) Keep a register of all guests, which shall include the minimum information: Name and address of each guest, dates of entrance and departure of each guest, and license numbers of all vehicles and state that issued such license. Said register shall be available to the Code Enforcement Officer upon request and be required for the purposes of special use permit renewal;
  - (2) Maintain the facility in a safe, orderly and sanitary condition; and
  - (3) Assist emergency response agencies in cases of emergency.
- K. **Recreation Area.** No less than twenty percent (20%) of the gross area of any conference center or retreat shall be devoted to common recreational areas with facilities, such as playgrounds, trails, or swimming pools on suitable land for the stated purpose, not including, for example, water bodies, wetlands or slopes greater than fifteen percent (15%).

- L. **Signs.** Illuminated signs and other lights shall be directed away and shielded from adjoining properties.

**100.27. Conservation Subdivisions.**

- A. The Town of Fremont Planning Board shall be authorized, pursuant to § 278 of the Town Law and simultaneously with the approval of plats under the Town of Fremont Official Subdivision Regulations, to modify applicable provisions of this Zoning Law so as to accommodate conservation subdivision projects.

Also known as "cluster development", conservation subdivisions offer flexibility in design, facilitate the economical provision of streets and utilities and preserve open space. They shall be allowed anywhere within the Town of Fremont, except the River Conservation District, and be processed pursuant to subdivision plat approval procedures.

- B. The Planning Board may require conservation subdivisions, as a form of development, in those instances where conventional subdivisions or residential developments would cause significant loss of open space or otherwise result in significant negative environmental impacts - within the Upper Delaware River valley area, for example.
- C. Conservation subdivisions provide for single and two-family dwelling units wherein dwelling units are grouped in sections in order to maximize the amount of common open space and to preserve the natural settings. Illustrations of such design follow. Proposed developments shall be processed in the same manner as a major subdivision and in accord with the standards following.
- D. Conservation subdivisions shall include at least five (5) lots and 10 acres of land and the Planning Board shall have the authority to require an alternative Sketch Plat, for any subdivision of ten (10) lots or more, depicting how the property might be developed using this technique. If this alternative Sketch Plat is determined to provide a superior design in accord with the purposes of this Law and the same density can be achieved the Planning Board may then require use of this technique.
- E. The maximum permitted number of dwelling units shall be determined by deducting from the total tract area:
  - (1) Land contained within public rights-of-way;
  - (2) Land contained within the rights-of-way of existing or proposed private streets. (where formal rights- of-way are not involved, the width of the street shall be assumed as fifty (50) feet wide);

- (3) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service;
  - (4) All wetlands, floodplains, slopes of 15% or greater grade, water bodies and other undevelopable areas; The net figure shall then be divided by the minimum lot size applicable and rounded to the nearest whole number of dwelling units permitted.
- F. Only single-family detached and two family dwellings shall be employed in developing conservation subdivisions. All other dwelling types shall be considered and processed as multi-family dwellings.
- G. Development standards for lot size, lot width and lot depth may be reduced, provided no dwelling structure (single-family or two-family) is located on less than 40,000 square feet of land where on-site sewer and water facilities are to be provided or 20,000 square feet of land where central sewer and water facilities are to be provided; and further provided the total density (in individual dwelling units) for the tract shall not exceed that which would result from a conventional subdivision plan designed in accord with this Law, as determined from the basic Sketch Plan submission. Yard requirements may also be reduced, but in no instance to less than thirty-five (35) feet from the front yard and twenty (20) feet for the side and rear yards.
- H. No individual parcel of common open space shall be less than one (1) acre except as to roadway median strips, traffic islands, walkways, trails, courtyards, play areas, recreation facilities, drainageways leading directly to streams, historic sites or unique natural features requiring common ownership protection. No less than 50% of the total land area of the conservation subdivision shall be dedicated to permanent open space and at least 50% of such open space shall be usable for active recreational activities and not include water bodies, wetlands, floodplains, slopes over 15% in grade or other undevelopable areas.
- I. The open space resulting from conservation subdivision design shall be permanently protected through a conservation easement. Unless alternative provisions satisfactory to the Town Board of the Town of Fremont are made to ensure maintenance of the open space, it shall be titled to a property owner's association (POA) prior to the sale of any lots or dwelling units by the subdivision. Membership shall be mandatory for each property owner within the subdivision and successive owners with voting of one vote per lot or unit and the subdivider's control, therefore, passing to the individual lot/unit owners on sale of the majority of the lots or units. All restrictions on the ownership, use and maintenance of common open space shall be permanent and the POA shall be responsible for liability insurance, local taxes, and maintenance of all open space, recreational facilities and other commonly held amenities. Each property

owner must be required to pay their proportionate share of the POA's cost and the POA must be able to file liens on the lot/unit owner's property if levied assessments are not paid. The POA must also have the ability to adjust the assessment to meet changing needs.

**100.28. Dormitory**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Dormitory uses.
- B. **Applicability.**
- (1) Dormitories as defined in this Law are facilities used for housing, with or without dining facilities, of students attending a primary, secondary, college, and university level school which meets the requirements of the Education Law and the Board of Regents of the State of New York, and which is approved as a residence for its students by such educational institution.
  - (2) Dormitory facilities are by their very nature facilities that are accessory to a primary, secondary, college or university level school but, because of their unique characteristics and potential land use impacts, shall be considered a Special Use within the zoning districts in which they are allowed. A Special Use permit is required for all dormitory uses.
  - (3) Additional review criteria and requirements may be determined by the Planning Board based on the particular project size and type of facilities proposed.
- C. **Lot Size.** Unless otherwise approved by the Planning Board, all Dormitory uses shall be located on parcels that have a minimum Lot Area of ten (10) continuous acres in size (uninterrupted by a public road or highway) and that contain a minimum of 500 feet of frontage on a public road or highway.
- D. **Parking.** Off-street parking and on-site circulation shall be provided.
- E. **Use of non-conforming buildings or lots.** No non-conforming building or lot shall be used for Dormitory use. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of a Dormitory use unless application to do so has been made pursuant to this section and Planning Board approval has been given.

**100.29. Energy Generating System, Large-scale and Small-scale Solar**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Large-scale and Small-scale Solar Energy Generating Systems, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Purpose.** The purpose of this section is to provide standards to facilitate the development and operation of both Large-scale and Small-scale Solar Energy Generating Systems in the Town of Fremont, subject to the Special Use permit process and reasonable conditions that will protect the public health, safety and welfare.
- C. **Applicability.**
  - (1) The requirements of this section shall apply to all solar energy generating systems proposed, operated, modified, or constructed after the effective date of this Law, including modification of existing systems.
  - (2) Replacement or modification. Replacement in-kind or modification of a Solar Energy Generating System may occur without Planning Board approval provided there is no increase in total size, no change in the location of the solar energy equipment, no additional lighting, or change in facility color.
- D. **Special Definitions.**

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) – NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

RATED NAMEPLATE CAPACITY - The maximum rated output of electric power production of a photovoltaic system in watts of Direct Current (DC).

SOLAR ACCESS AREA - Space open to the sun, mostly clear of overhangs or shade that allows the use of solar energy generating systems on individual properties.

SOLAR ARRAY - A group of multiple solar panels or modules linked into a single unit or system.

SOLAR COLLECTOR - A photovoltaic cell, panel, array, or other device that

converts solar radiation to electricity or transfers solar energy to air, water, or another storage media.

**SOLAR EASEMENT** - An easement recorded pursuant to the NY Real Property Law§335-b, the purpose of which is to secure the right to receive direct sunlight across neighboring property to operate a solar energy generating system.

**SOLAR ENERGY GENERATING SYSTEM** - A combination of components that utilize solar radiation (direct, diffuse, or reflected) to produce energy designed to provide heating, cooling, hot water and/or electricity, including solar photovoltaic systems and facilities and solar thermal systems and facilities. Facilities shall be classified as Small-scale or Large-scale based on the following criteria:

- (1) Small-scale Solar Energy Generating System - Solar photovoltaic systems with a rated nameplate capacity of up to 15 kilowatts (kW) DC or solar thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings.
- (2) Large-scale Solar Energy Generating System – Solar photovoltaic systems with a rated nameplate capacity of more than 15 kilowatts (kW) DC or solar thermal systems that distribute energy to multiple buildings and/or properties, and/or solar energy generating facilities that do not otherwise qualify as small-scale for the purposes of this Section.

**SOLAR PHOTOVOLTAIC SYSTEMS** – Systems that collect and convert solar radiation directly into electricity.

**SOLAR THERMAL SYSTEMS** - Systems that collect and convert solar radiation into forms of energy for water heating, space heating, or space cooling.

**QUALIFIED SOLAR INSTALLER** - A person listed as an eligible photovoltaic installer by the New York State Energy Research and Development Authority (NYSERDA) or who is listed as a certified solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be a qualified solar installer for the purpose of this definition.

**E. General provisions.**

- (1) Public service agency notification. The owner of a solar energy generating system shall provide evidence that the applicable public service agency has approved the owner’s intent to install an interconnected customer-owned solar energy generating system. Off-grid solar energy generating systems shall be exempt from this requirement.

(2) Limitations of Approvals.

- (a) Nothing in this law shall be deemed to give any applicant or system owner the right to have trees and vegetation cut down on any property over which the applicant or system owner does not have ownership or other legal control, in order to increase direct sunlight to a solar energy generating system.
- (b) Nothing in this law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the sunlight flow to any solar energy generating system.
- (c) It shall be the sole responsibility of the applicant or system owner to acquire any necessary solar energy easements, or rights, in order to provide for and maintain appropriate solar access areas.

(3) Location.

- (a) The location of a solar energy generating system shall be one demonstrably suitable and sized for such use, including, but not limited to, proper drainage and provisions for stormwater control such that the amount of water leaving the site after development shall not be greater than prior to development, and the ability to adequately buffer such use from surrounding parcels and roadways.
- (b) A solar energy generating system shall be located to avoid concentrated glare or reflection onto habitable structures, areas of scenic beauty or historical value, as well as onto adjacent roads, and shall not interfere with traffic or create a safety hazard.

(4) Abandonment or Decommissioning.

- (a) If a solar energy generating system ceases to perform its originally intended function for more than twelve (12) consecutive months, the owner may be required to remove the system per order of the Code Enforcement Officer, including but not limited to any mounts and associated equipment, by no later than ninety (90) days after the end of the twelve-month period.
- (b) Additional abandonment and decommissioning requirements shall apply to Large-Scale Solar Energy Generating Systems as detailed in the following sub-sections.

(5) NYS Real Property Tax Law exemption. The Town exercises its right to opt out of the tax exemption provisions of §487 of the Real Property Tax Law of NYS.

**F. Small-Scale Solar Energy Generating Systems.****(1) General Application.**

- (a) Small-scale building-mounted and ground-mounted solar energy systems are permitted in all zoning districts as an Accessory Use provided such systems comply with the requirements of this section.
- (b) A small-scale solar energy generating system shall provide electricity or and/or hot water for the principal use and/or accessory use of a lot of record on which the solar energy system is located. However, this provision shall not be interpreted to prohibit the sale of excess electricity from time to time to a public service agency.

**(2) Small-scale building-mounted solar energy systems.**

- (a) Small-scale building-mounted solar energy systems shall include systems mounted on the top of a structure either as a flush-mounted system or as panels fixed to frames which can be mounted at an optimal angle towards the sun.
- (b) Such systems may be mounted on a principal and/or accessory structure and shall not be more than two (2) feet higher than the highest point of the roof to which it is mounted.
- (c) Prior to obtaining a building permit from the Code Enforcement Officer, applicants shall submit a report prepared and sealed by a registered design professional that documents the suitability of the proposed system including the ability of the structure being mounted to support the additional imposed loads.

**(3) Small-scale ground-mounted solar energy systems.**

- (a) Small-scale ground-mounted solar energy systems have solar panels that are freestanding and structurally mounted directly to the ground.
- (b) The height of such systems shall not exceed fifteen (15) feet when oriented at maximum tilt.
- (c) The location of such systems and related mechanical equipment shall not be located in the front yard, and shall conform to the rear and side yard requirements of the applicable zoning district or one-and one-half times the height of the system, whichever is greater.
- (d) The total surface area of such a system, regardless of the mounted angle, shall be considered impervious and calculated in the building coverage of the lot of record on which the system is located.

- (e) The total surface area of such a system shall not exceed eight hundred (800) square feet. Ground-mounted systems greater than eight hundred (800) square feet may seek approval as large-scale solar energy generating systems as provided for elsewhere in this section.
- (f) All plumbing and/or power transmission lines from a ground-mounted solar energy generating system shall be located underground.

**G. Large-scale Solar Energy Generating Systems.**

- (1) Site Plan Requirements. Large-scale solar energy generating systems require a site plan and drawings of the solar energy generating system signed by a licensed Professional Engineer. Site plans should include those items generally required for special use site plans as detailed in this Law as well as the following:
  - (a) A description of the solar generating system and the technical, economic and other reasons for the proposed location and design.
  - (b) A description of any solar or other easements on the site or on adjoining or nearby parcels, including evidence that the applicant has secured legal rights for said easements.
  - (c) One or three line electrical diagram detailing the solar system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices.
  - (d) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.
  - (e) Confirmation that the solar system complies with all applicable Federal and State standards.
  - (f) Documentation of the major system components to be used, including the photovoltaic panels, mounting system, batteries, and inverter.
  - (g) An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
  - (h) Information on noise (inverter) and reflectivity/glare of solar panels and identify potential impacts to nearby properties.

- (i) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the nearest proposed solar energy generating system equipment;
  - (j) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
  - (k) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles.
  - (l) List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed site.
  - (m) A Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the solar energy generating system. This Full Environmental Assessment shall, at a minimum, a visual impact study, a study of light reflection, a fire protection and emergency response plan, and evidence of potential impacts on neighboring property values compiled by a licensed appraiser based on experience at other locations, extrapolating that evidence to analyze potential impacts on property values near the site.
- (2) Minimum Design Standards. Large-scale solar energy systems shall conform to the following standards which shall be regarded as minimum requirements:
- (a) Minimum lot size standards applicable to the zoning district shall also apply to solar energy systems.
  - (b) Maximum lot coverage standards applicable to the zoning district shall also apply to solar energy systems except that the Planning Board may modify this requirement to allow up to a maximum of 30% lot coverage. The total surface area of such a system, regardless of the mounted angle, shall be considered impervious and included in the lot coverage calculation.
  - (c) All ground-mounted panels shall not exceed fifteen (15) feet in height.
  - (d) All mechanical equipment, including any structure for batteries or storage cells, are completely fenced.
  - (e) The installation of a vegetated perimeter buffer to provide year round screening of the system from adjacent properties.

- (f) All solar energy production systems are designed and located in order to prevent reflective glare toward any habitable buildings, as well as streets and rights-of-way.
  - (g) All plumbing and/or power transmission lines from a ground-mounted solar energy generating system shall be located underground.
  - (h) The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
  - (i) All solar energy system components shall have a minimum 50 foot setback from adjoining parcels and roadways, except where the adjoining parcel includes a residential use whereby the setback shall be a minimum of 200 feet from the property line.
  - (j) Lighting of large-scale solar generating systems shall be consistent with state and federal law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar system shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
  - (k) There shall be no signs except announcement signs, such as “no trespassing signs or any signs required to warn of danger”. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a 24-hour basis.
- (3) Additional Conditions.
- (a) The large-scale solar energy generating system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire department. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
  - (b) A large-scale solar energy generating system shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Department and Emergency Medical Services.
- (4) Abandonment and Decommissioning. All applications for a large-scale solar generating system shall be accompanied by a Decommissioning Plan to be

implemented upon abandonment and/or in conjunction with removal of the facility. Prior to removal of the solar system, a permit for removal activities shall be obtained from the Code Enforcement Officer. The plan shall include details on how the applicant plans to address the following requirements:

- (a) The owner, operator, his successors in interest shall remove any ground-mounted solar collectors which have reached the end of their useful life or have been abandoned. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Town Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal.
- (b) Physical removal of all ground-mounted solar collectors, structures, equipment, security barriers, transmission lines and other infrastructure from the site.
- (c) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (d) Remediation of soil and stabilization or re-vegetation of the site as necessary to minimize erosion.
- (e) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the large-scale solar system shall be considered abandoned if a solar energy generating system ceases to perform its originally intended function for more than twelve (12) consecutive months. If the owner or operator of the solar system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation at the expense of the property owner or against any financial surety assigned to the Town.
- (f) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available suitable evidence as required by the Code Enforcement Officer.

- (5) Estimate and Financial Surety. A valid performance bond assigned to the Town of Fremont may be required for systems greater than 50 kilowatts (kW) DC:
  - (a) As part of its application the applicant shall provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the large-scale solar energy generating system at issue.
  - (b) The Town Board may establish the amount of such surety to be established by the applicant prior to the issuance of a building permit. The surety may be in the form of escrowed funds, bonds or otherwise, but it is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations and restore landscaping consistent with the above section, in the event the applicant fails to comply with its decommissioning obligations.
- (6) Issuance of Special Use Permit.
  - (a) The Planning Board shall, within 120 days of determining the application is complete, and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended with consent of the applicant. Should the applicant not consent to such an extension and the time period elapses without a decision by the Planning Board, the application shall be considered approved without conditions.
  - (b) If approved, the Code Enforcement Officer will issue a zoning permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
  - (c) The decision of the Planning Board shall be filed within 15 days in the office of the Town Clerk.
  - (d) If any approved solar energy generating system is not substantially commenced within twelve (12) months of issuance of the special use permit, the permit shall expire, unless the Planning Board shall have granted an extension.

**100.30. Energy Generating System, Large-scale and Small-scale Wind.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Large-scale and Small-scale Wind Energy Generating Systems, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Purpose.** The purpose of this section is to provide standards to facilitate the development and operation of both small-scale and large-scale wind energy systems in the Town of Fremont, subject to the Special Use permit process and reasonable conditions that will protect the public health, safety and welfare.
- C. **Applicability.**
  - (1) The requirements of this section shall apply to all Wind Energy Systems proposed, constructed, operated, or modified after the effective date of this Law, including modification of existing systems and the use of wind measurement towers erected for the purpose of testing the feasibility of wind energy generation.
  - (2) No permit or other approval shall be required under this law for mechanical, non-electrical wind turbines utilized solely for agricultural operations.
- D. **Special Definitions.**

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) – NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

WIND ENERGY SYSTEM, LARGE SCALE– A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

WIND ENERGY SYSTEM, SMALL SCALE – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

SOUND PRESSURE LEVEL – According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, a measure of sound pressure in the atmosphere which can be determined according to the International Standard for

Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (dB) or A-weighted decibel scale dB(A). For example, an L10– 30 dBA indicates that in any hour of the day 30 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes.

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of the wind turbine.

**TRANSMISSION OWNER** – The owner of the electric distribution networks. Examples include New York State Electric & Gas, Niagara-Mohawk, and Con Edison.

**WIND ENERGY SYSTEM** – Any wind turbine, small wind turbine or wind measurement tower or combinations of these, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND MEASUREMENT TOWER** – A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**E. General Provisions.**

- (1) Replacement and Modification. Replacement in-kind or modification of a wind energy system may occur without Planning Board approval when (1) there shall be no increase in total height; (2) no change in the location of the wind turbine; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the wind turbine.
- (2) Public service agency notification. The owner of a wind energy generating system shall provide evidence that the applicable public service agency has approved the owner's intent to install an interconnected wind energy generating system. Off-grid wind energy generating systems shall be exempt from this requirement.
- (3) Limitations of Approvals. Nothing in this law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy system. Nothing in this law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy system. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

- (4) NYS Real Property Tax Law exemption. The Town exercises its right to opt out of the tax exemption provisions of §487 of the Real Property Tax Law of NYS.

F. **Application Requirements.** A complete application for a Special Use permit shall include:

- (1) A copy of an executed interconnection agreement with NYISO and the applicable transmission owner.
- (2) A completed Special Use permit application.
- (3) A site plan prepared by a licensed professional engineer, including:
  - (a) Property lines and physical dimensions of the site.
  - (b) Location, approximate dimensions and types of major existing structures and uses on the site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed wind turbines, or 1½ times the total height of such wind turbines, whichever shall be greater.
  - (c) Location and elevation of each proposed wind turbine.
  - (d) Location of all above and below ground utility lines on the site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
  - (e) Locations of buffers as required by this law.
  - (f) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the nearest proposed wind turbine.
  - (g) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- (4) A vertical drawing of the wind turbine showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data, and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine.
- (5) A lighting plan showing any FAA-required lighting and other proposed lighting.

- (6) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town of Fremont Planning Board on the recommendation of its Town Engineer or consultants.
- (7) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- (8) An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- (9) A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning cost shall be kept current, and the manner in which the wind turbine shall be decommissioned and the site restored, less any fencing or residual minor improvements requested by the landowner.
- (10) List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed site.
- (11) A complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
- (12) A Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the wind energy system. This Full Environmental Assessment shall, at a minimum, include:
  - (a) A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures to be taken to eliminate or mitigate problems.
  - (b) A visual impact study of the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the site accurately depicting existing conditions shall be

included. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.

- (c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site, as well as Sullivan County Emergency Services.
- (d) A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed wind turbine, existing noise levels at site property lines and at the nearest residence not on the site. The noise analysis shall include low frequency noise. The applicant shall also submit plans for post- development noise monitoring.
- (e) Evidence of potential impacts on neighboring property values compiled by a licensed appraiser based on experience at other locations, extrapolating that evidence to analyze potential impacts on property values near the site.
- (f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
- (g) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species.

G. **Wind Energy System Development Standards.** The following standards shall apply to wind energy systems in the Town of Fremont, unless specifically waived by the Planning Board.

- (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- (2) No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Town of Fremont Planning Board. Applications may be jointly submitted for Wind Energy Systems and Telecommunications Facilities.
- (3) No advertising signs are allowed on any part of the wind energy system, including fencing and support structures.
- (4) No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the wind energy system development plan.
- (5) All applicants shall use measures to reduce the visual impact of wind turbines to the extent possible. Wind turbines shall use tubular towers. All

structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

- (6) Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.
- (7) No wind turbine shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other communication systems would produce electromagnetic interference with signal transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of issues with the affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use permit for the specific wind turbine(s) causing the interference.
- (8) All construction debris shall be removed from the site or otherwise disposed of in a manner acceptable to the Planning Board.
- (9) Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the State Department of Agriculture and Markets, to the maximum extent practicable.
- (10) Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
- (11) No shadow flicker shall be permitted on any off-site residences.

**H. Required Site Safety Measures.**

- (1) All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- (2) Wind energy systems shall be gated or fenced to prevent unrestricted public access to the systems and reduce any attractive nuisance aspects of the use.
- (3) Warning signs shall be posted at the entrances to the wind energy system and at base of each tower warning of electrical shock or high voltage and

containing emergency contact information.

- (4) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- (5) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (6) Wind turbines shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

**I. Traffic Routes and Road Maintenance.**

- (1) Construction and delivery vehicles for wind energy systems shall propose, and the Planning Board shall approve or modify, designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads and impacts on local business operations.
- (2) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a wind turbine. A public improvement bond may be required prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to Town or County roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent and/or the Sullivan County Department of Public Works to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Town Board.
- (3) The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town or County roads along the proposed route.

**J. Setbacks.**

- (1) Each wind turbine shall be set back a distance of 500 feet or 1.5 times the total height of the largest wind turbine, whichever shall be greater, from any public road, off-site residence, lodging facility, public building, church and other institution. No wind turbine shall be located within its own total height of a site boundary line.
- (2) The statistical sound pressure level generated by a wind turbine shall not exceed L 10- 30 dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall

apply to the combined properties. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement.

- (3) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (B) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- (4) Should the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall ambient dBA plus 5 dBA. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. Ambient noise level measurements shall be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation.

**K. Noise and Setback Easements.**

- (1) An applicant may, with approval from the Planning Board, meet noise and setback standards by obtaining written consents from affected property owners stating they are aware of the wind energy system and the noise and/or setback limitations imposed by this law, and that consent is granted to allow noise levels to exceed the maximum limits provided herein or reduce setbacks to less than required.
- (2) Such consents shall be in the form required for easements and be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the decommissioning of the benefited wind turbine in accordance with this law, or the acquisition of the burdened parcel by the owner of the benefited parcel or the wind turbine. No such easement

shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this law.

**L. Issuance of Special Use Permit.**

- (1) The Planning Board shall, within 120 days of determining the application is complete, and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended with consent of the applicant. Should the applicant not consent to such an extension and the time period elapse without a decision, the application shall be considered approved without conditions.
- (2) If the Planning Board approves the Special Use permit, the Code Enforcement Officer will proceed with issuance of appropriate building permits upon the satisfaction of all conditions for said Special Use permit, and upon compliance with the New York State Building Code.
- (3) If any approved wind energy system is not substantially commenced within two years of issuance of the Special Use permit, the permit shall expire, unless the Planning Board shall have granted an extension.

**M. Abatement.**

- (1) If any wind turbine remains non-functional or inoperative for a continuous period of 24 months, the applicant shall remove said system at its own expense following the requirements of the decommissioning plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the demonstrates to the Town that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- (2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by Jack of income generation. The applicant shall make available (subject to a non- disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is functioning, which reports may be redacted as necessary to protect proprietary information.
- (3) The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be

determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the decommissioning plan.

**N. Permit Revocation.**

- (1) The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use permit and this Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- (2) A wind turbine shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a wind turbine become inoperable, or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- (3) Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or order revocation of the Special Use permit for the wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Town shall have the right to use the security posted as part of the decommission plan to remove the wind turbine.

- O. Wind Measurement Towers.** Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Special Use permit, to determine the wind speeds and the feasibility of using particular sites. The distance

between a wind measurement tower and the property line shall be at least 1.5 times the total height of the tower. Special Use permits for wind measurement towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board. An application for a wind measurement tower shall include:

- (1) Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- (2) Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
- (3) Proposed development plan.
- (4) Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for wind energy generation.

Other development standards as set forth above for wind energy facilities shall be applied to the maximum extent practicable, as determined by the Planning Board, recognizing the temporary nature of wind measurement towers.

**P. Small Scale Wind Energy Systems.** The Planning Board is hereby authorized to approve, approve with conditions, or disapprove Special Use permits for small scale wind energy systems designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all wind energy systems, but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All small scale wind energy systems shall comply with the following standards and, to the maximum extent practicable, with all other requirements of this law not in conflict herewith:

- (1) A system shall be located on a lot a minimum of one acre in size.
- (2) Only one small wind turbine per legal lot shall be allowed.
- (3) Small wind turbine shall be used primarily to reduce the on-site consumption of electricity.
- (4) Total heights shall be a maximum of 100 feet on parcels between one and five acres and 150 feet or less on parcels of five or more acres.
- (5) The maximum turbine power output is limited to 100 kW.
- (6) Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anticlimb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.
- (7) Anchor points for any guy wires for a system tower shall be located within

the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

**100.31. Floodplain Development Standards.**

- A. There is hereby created a special zoning district, the boundaries of which shall be congruent with those areas identified as Special Flood Hazard Areas on the Flood Hazard Boundary Maps for the Town of Fremont, as issued by the Federal Insurance Administration or its successor.
- B. This district shall be an overlay zone, within which the normal provisions of the zoning districts as mapped on the Official Zoning Map shall apply, except that no development shall be permitted which does not comply with the provisions of the Town of Fremont Flood Damage Prevention Law, as amended.

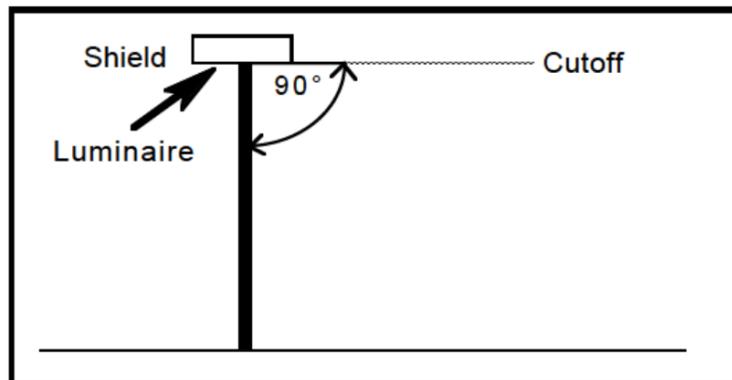
**100.32. General Non-Residential Performance Standards.**

- A. **Applicability.** Wherever a new or modified commercial, manufacturing, industrial or other non-residential use, with the exception of agricultural activities and home occupations, is proposed, a Site Plan shall be required according to the specifications detailed in Section 100.19(D), and the following general use standards shall apply. The Code Enforcement Officer shall ensure these standards are met prior to issuing either a Building Permit and/or a Certificate of Occupancy for the use and may require the applicant(s) to provide documentation of compliance.
- B. **Buffers.** Where a non-residential use is contiguous to an existing residential use or approved residential lot in any District (including those situated on the opposite side of a highway), the Planning Board may require that the minimum front, side and rear yards be increased by up to one-hundred and fifty percent (150%). The Board may also require, for purposes of separating incompatible activities or shielding residential properties from negative impacts, that a buffer consisting of a solid fence of wood, a twenty (20) feet wide dense evergreen planting not less than six (6) feet high, and/or an earthen berm be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded. See also § 100.40 regarding Landscaping.
- C. **Inflammables.** All activities involving the manufacturing, production, storage, transfer or disposal of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Fire-fighting and fire suppression equipment and devices shall be provided pursuant to National Fire Protection Association guidelines. Burning of waste materials in open fires is

prohibited. Details of the potential hazards and planned safety and accident response actions shall be provided by the applicant and the Planning Board may require greater front, side and rear yards and/or fencing.

- D. **Electrical Disturbances.** No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.
- E. **Noise.** The Planning Board may also apply noise standards to non-residential uses. Agricultural and temporary construction activities shall be exempt from these requirements.
- F. **Vibration.** No vibration shall be permitted on a regular or continuing basis which is detectable without instruments at the property line.
- G. **Lighting and Glare.**
  - (1) All lighting shall be designed so as to avoid unnecessary or unsafe spillover of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source. Light sources shall comply with the following standards:

Type of Light Source	Maximum Illumination Permitted at Property Line	Maximum Permitted Height of Light
Globe light	0.20 Footcandles	15 Feet
>90% Cutoff	0.75 Footcandles	25 Feet
<90% Cutoff	2.00 Footcandles	30 Feet



- (2) No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line on a regular or continuing basis, shall be permitted.

- H. **Air Pollution.** No emission shall be permitted on a regular or continuing basis from any chimney or otherwise, of visible gray or otherwise dark smoke and all emissions shall comply with State and Federal environmental standards. The Planning Board and Code Enforcement Officer may rely upon such governmental and/or industry standards for purposes of evaluating this factor.
- I. **Emissions.** No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted on a regular or continuing basis which can cause any damage to health, to animals, vegetation, or other forms of property, or which can cause any excessive soiling.
- J. **Water Pollution.** All activities involving the possible contamination of surface or ground water shall be provided with adequate safety devices to prevent such contamination. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and planned safety devices and contamination response actions shall be provided by the developer.

### 100.33. **Home Occupation Regulation.**

- A. Home occupations, including home-based businesses that rely upon attraction of the general public (e.g. flea market sales conducted as businesses) are permitted as Accessory Uses in all districts, provided they do not detract from the residential character, appearance (handicapped access notwithstanding), or make-up of the neighborhood in which the business is located. Because of the need these types of businesses may have for advertising and display, and the unpredictability of traffic generation, owners of such businesses must be very cautious about how they operate their business to ensure they do not adversely impact the surrounding neighborhood. The following factors shall be used to determine if a home- occupation will comply with or is in violation of this Law. The determination can be made on any one, or a combination, of these factors and shall be made by the Code Enforcement Officer, who may in his or her discretion, consult with the Town Planning Board for advice and recommendations.
- (1) Extent of the business - whether or not the residential use is still the primary use of the property. Factors that shall be used to determine the primary use of the property shall include, but are not limited to, the area of the property used for the business and the amount of time the business is operated on a daily basis. Employees on-site shall be limited to two (2) other than immediate family members.
  - (2) Appearance from an adjacent street - whether or not the use of the property as a business is distinguishable from an adjacent street. Except for a non-

illuminated, permanent identification sign no larger than six (6) square feet in size attached to the principle structure and occasional deliveries, there shall be nothing that occurs on the property that can be observed from adjacent streets that make it readily apparent that a business is being operated on the premises. In cases where the principal structure is obscured from the street, or the structure is setback more than fifty (50) feet from the property line, a non-illuminated ground sign not to exceed twelve (12) square feet may be used. Factors for evaluating this standard shall be that the residential dwelling not be altered to change its residential appearance, and no activity related to the conduct of the home occupation shall be permitted to occur in such a manner as to be obtrusive to the neighborhood, attract attention to the business or adversely impact the residential character of the neighborhood.

- (3) Impact on the neighborhood - whether or not the business activity is causing a nuisance to surrounding property owners; is adversely impacting the peace, health, or safety of neighborhood residents; and/or is causing a deviation from the residential character of the neighborhood. Factors for evaluating this standard shall be:
  - (a) Traffic - whether or not the business is generating traffic that is excessive and/or detrimental to the neighborhood. A home occupation will be allowed to generate no greater than twenty-five (25) vehicle trips per day, based on estimates provided by the Institute of Transportation Engineers. However, based on the characteristics of a specific neighborhood, these amounts may be lowered or raised, at the discretion of the Planning Board. The factors which shall be used for such a determination include, but are not limited to, pertinent characteristics of the neighborhood such as width of properties, width of the streets, hills, curves, and the number of children present.
  - (b) Parking - whether or not parking problems could result from the business use. Factors which shall be used to evaluate this criteria include, but are not limited to the following: 1) parking required for the business shall be provided on- site; 2) parking on the property shall be on a surface equal in quality to the paving surface of any existing driveway unless there is no surface other than the ground, in which case a gravel surface shall be provided at a minimum; and 3) no home occupation shall be permitted which requires parking of tractor-trailer combinations along the street on a continuing basis.
  - (c) Nuisance - whether or not the business activity is causing a nuisance to surrounding property owners or is deviating from the residential character or appearance of the neighborhood.

- B. No home occupation, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this law and such permission or establishment shall not be a basis for a later application to establish a principal commercial use. Moreover, the conversion of a residence with a home occupation to a commercial use by the abandonment of the residence or sale, rent or transfer of the business to a party which does not reside on-site is strictly prohibited unless the business is then moved off-site.

**100.34. Hotels and Motels**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to hotel and motel uses.
- B. **Accessory uses.** Accessory uses associated with a hotel or motel, which are but shall not be limited to a restaurant, cafeteria, swimming pool and health facility, newsstand, pharmacy, barbershop, hairdresser, gift shop and other personal service shops for the convenience of guests, shall be classified as an customarily accessory use and shall be permitted.
- C. **Compliance with the health and sanitary codes.** A hotel shall comply with Part 7, specifically Subpart 7-1, of the Sanitary Code of NYS. Where, in any specific case, conflicts occur between provisions of this Law and such state law, the more restrictive requirement shall govern.
- D. **Lot Size.** Unless otherwise approved by the Planning Board, all hotels and motels shall be located on parcels that have a minimum Lot Area of ten (10) continuous acres in size (uninterrupted by a public road or highway) and that contain a minimum of 500 feet of frontage on a public road or highway. Lot use shall be dedicated solely for hotel or motel or approved accessory uses.
- E. **Transient Use.** Hotels and motels are not residential facilities and use is strictly limited to transient guest use. As a condition of approval of a special use permit, and the maintenance of such special use permit, the permit holder shall provide notice to each guest upon reservation of use and arrival that their stay is of a transient nature. No person shall put up or stay, or allowed to be put up or stay, at a bed & breakfast for longer than twenty-one (21) days in a sixty (60) consecutive day.
- F. **Record keeping.** The owner shall keep a register of all guests, which shall include the minimum information: Name and address of each guest, dates of arrival and departure of each guest, and license numbers of all vehicles and state that issued such

license. Said register shall be available to the Code Enforcement Officer upon request.

**100.35. Hunting and Sportsman’s Clubs and Game Preserves.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Hunting and Sportsman’s Clubs and Game Preserve uses but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Lot Size.** Unless otherwise approved by the Planning Board, all sportsman’s clubs and game preserves shall be located on parcels that have a minimum Lot Area of thirty (30) acres in size.
- C. **Shooting range facilities.** The planning, design, construction and maintenance of shooting range facilities shall comply with the NRA Range Source Book.
- D. **Game Preserve.** To the extent a game preserve is intended to exist as a business with services available to the public, the Planning Board may impose additional conditions as is appropriate for commercial businesses providing goods and services to the public.

**100.36. Industrial or Manufacturing, Light or Heavy**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to manufacturing and industrial uses, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Sole Use.** Lot use shall be dedicated solely for the approved industrial or manufacturing use and approved accessory uses.
- C. **Parking.** Off-street parking and on-site circulation shall be provided.
- D. **Heavy Industrial and Manufacturing.** Heavy industrial or manufacturing uses are those that typically have a greater impact on the surrounding environment, surround properties, road and infrastructure, and the Town in general, and as such, distinguished from Light Commercial uses, may require, for example but not limited to, greater lot sizes, more significant buffering, and increased parking standards.

**100.37. Junkyards and Junk Storage**

A. **Purpose.** The storage, deposit, placement, maintenance or causing or permitting to be stored, deposited, placed or maintained outdoors any junk, regardless of quantity, within sight of persons traveling the public roads shall be regulated by this section. The intent of this Section is to regulate and control the storage or keeping of junk, and to regulate junkyards whether operated for commercial profit or otherwise. The Town Board hereby declares that a clean, wholesome, and attractive environment is of vital importance to the continued general welfare of its citizens, and that junk and junkyards can constitute a hazard to property and persons and can be a public nuisance. Such materials may be highly flammable and sometimes explosive. Junk and particularly junked vehicles can constitute attractive nuisances to children and certain adults. The presence of junk and junkyards is unsightly and tends to detract from the value of surrounding properties unless properly screened from view.

B. **Special Definitions.**

**JUNKYARD:** An area established for the storage, deposit, placement, maintenance or causing or permitting to be stored, deposited, placed or maintained outdoors any junk, regardless of quantity. This definition includes uses such as scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, auto-recycling center, used auto parts yard and temporary storage of automobile bodies or parts.

**JUNK STORAGE:** The outdoor storage or deposit of any of the following shall constitute junk storage:

- (1) Three (3) or more junk motor vehicles as herein defined;
- (2) Two (2) or more abandoned or inoperable major appliances or machinery including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions; and
- (3) Two (2) or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers Temporary Permit for Prior Existing Junkyard.
  - (a) Any person maintaining a junkyard prior to the effective date of this law within the Town shall apply for a permit within sixty (60) days of the adoption of this local law. If the junkyard does not meet the requirements of this section, a temporary permit shall be granted for a period not to exceed one (1) year, during which time the junk storage area shall be arranged to comply with said requirements.
  - (b) If at the end of such period junkyard has not been arranged to comply with said requirements, such person shall cease and desist from maintaining a

junkyard and all junk shall be removed from the premises.

**JUNK MOBILE HOME:** A structure, transportable in one (1) or more sections, built on a permanent chassis and designed to be used as a dwelling unit, which is currently not inhabited and is no longer habitable under the New York State Uniform Fire Prevention and Building Code. Includes but is not limited to mobile homes, travel trailers and campers. The outdoor storage of one (1) or more uninhabitable mobile homes shall require licensing as a junkyard unless structures are in use for permitted nonresidential or accessory auxiliary uses.

**JUNK MOTOR VEHICLE:** A motor vehicle or part of a motor vehicle which:

- (a) Is unregistered and/or unlicensed; and
- (b) Is not in condition for legal use upon the public highways or waterways.

**C. Junkyard Regulations.**

- (1) Location. No junkyard shall be located less than:
  - (a) One-hundred (100) feet from any adjoining property;
  - (b) Five-hundred (500) feet of any public park, house of worship, education facility, nursing home, public building or other place of public gathering;
  - (c) One-hundred and fifty (150) feet of any stream, lake, pond or wetland or other body of water; or
  - (d) One-hundred (100) feet from the right-of-way of any public highway.
- (2) Fencing. There must be erected and maintained an eight foot high fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and other in the area of the activity or business, and to contain within such fence the materials dealt with but the operator of the junkyard. Fencing requirements may modified by the Planning Board where topography or other natural conditions warrant such modifications.
- (3) Buffering and Screening. Where a junkyard is or would be visible from a public highway or from neighboring properties the fence provided in the section above, shall be of wood or other materials sufficient to totally screen the junkyard from view. Such screening may be permitted by adequate planting of evergreen trees or shrubbery, or earthen berms, such adequacy to be determined by the Planning Board.
- (4) Burning. No materials shall be burned in the junkyard except in compliance with the New York State Solid Waste Disposal Law and other relevant laws.

- (5) Burying. No junkyard items shall be buried in a junkyard except in compliance with the New York state Solid Waste Disposal Law and other relevant laws.
- (6) Approved Junkyard Items. No junkyard items shall be stored in any area other than an authorized junkyard as approved by the Planning Board pursuant to this law, and which shall be in compliance with all New York State laws and regulations affecting the operation of a junkyard.
- (7) Exceptions. Inoperable agricultural equipment or machinery stored on an operating farm for future restoration or for use as a source of spare parts for other equipment in use on an operating farm shall not be subject to the above provisions of this section.

**D. Junkyard Permit.**

- (1) Permit Required.
  - (a) No person shall establish or maintain a junkyard within the Town of Fremont unless a permit has first been issued for such junkyard pursuant to this law.
  - (b) No person owning, having any right to, or any interest in, any real property within the Town of Fremont shall license, rent, lease, or otherwise permit the use of such real property or any part thereof for a junkyard unless a permit has first been issued for such junkyard pursuant to this law.
  - (c) All permits shall be issued for a period of one (1) year, after which time a renewal shall be required. The annual renewal fee will be as established and changed from time-to-time by the Town Board.
- (2) Temporary Permit for Prior Existing Junkyard.
  - (a) Any person maintaining a junkyard prior to the effective date of this law within the Town shall apply for a permit within sixty (60) days of the adoption of this local law. If the junkyard does not meet the requirements of this section, a temporary permit shall be granted for a period not to exceed one (1) year, during which time the junk storage area shall be arranged to comply with said requirements.
  - (b) If at the end of such period junkyard has not been arranged to comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed from the premises.

**E. Application Process.**

- (1) Application. The applicant for a junkyard permit shall obtain application forms from the Code Enforcement Officer. The completed forms along with

- one (1) copy of the proposed site plan, and the appropriate fees, shall be returned to the Code Enforcement Officer.
- (2) Site Plan Contents. The site plan shall be drawn to scale and shall indicate all dimensions and set-off distances as required by the above section and show:
- (a) all existing and proposed structures, including fences;
  - (b) all property lines, including the names of owners of adjacent property;
  - (c) all streams, lakes, wetlands, floodplains, and other water bodies;
  - (d) all well and sanitary facilities;
  - (e) all roads and easements;
  - (f) all existing and proposed junk storage areas; and
  - (g) all existing and proposed accessways, and parking and loading areas.
- (3) Environmental Review Compliance. A full or long Environmental Assessment Form (EAF) shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Review Act, Part 617 of the New York Code of Rules and Regulations. If the EAF indicates that the proposed activity may have significant environmental consequences, the Planning Board shall require that an Environmental Impact Statement (EIS) be submitted with the application. The application shall not be considered complete until the EIS has been accepted by the Planning Board.
- (4) Public Hearing. The Planning Board shall fix a time within forty-five (45) days of the date of receipt of a complete application for a public hearing. Notice of the hearing shall be made in the official newspaper at least seven (7) days prior to the date thereof. Notice of the hearing shall be given by registered mail to all adjoining property owners.
- (5) Planning Board Action. Within forty-five (45) days of the hearing the Town Board shall render a decision to approve, approve subject to conditions, or disapprove the application for a junkyard permit. The forty-five (45) day period may be extended by mutual consent of the applicant and the Planning Board.

- (6) Issuance of Permit. If the application is approved by the Planning Board, a junkyard permit shall be issued by the Code Enforcement Officer upon satisfactory compliance with the conditions, if any, attached to the Planning Board approval.

**F. General Considerations.**

- (1) Aesthetic Considerations. In granting or denying a permit, the Planning Board shall take into the following aesthetic factors into consideration:
  - (a) Type of road servicing the junkyard or from which the junkyard can be seen;
  - (b) Natural or artificial barriers protecting the junkyard from view;
  - (c) Proximity of the site to established residential or recreational areas or main access routes thereto.
- (2) Locational Considerations. In granting or denying a permit, the Planning Board shall take into the following locational factors into consideration:
  - (a) The nature and development of surrounding property, such as the proximity of public parks, places of worship, educational facilities, nursing homes, public buildings, or places of public gathering.
  - (b) Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
  - (c) The proximity of streams, lakes, wetlands, floodplains, groundwater supplies, and public water supplies.
  - (d) Local drainage patterns.
  - (e) Long range comprehensive plans for the Town.
  - (f) Proximity of the site to established residential or recreational areas.
  - (g) Availability of other suitable sites for the junkyard.

**G. Administration and Enforcement.**

- (1) Waivers. Where the Planning Board finds that due to special circumstances of the particular case, a waiver of certain requirements as stated in the above section herein is justified, a waiver may be granted. No waiver shall be granted, however, unless the Planning Board finds, and records in its minutes that:

- (a) Granting the waiver would be in keeping with the intent and spirit of this law, and is in the best interests of the community.
  - (b) There are special circumstances involved in the particular case.
  - (c) Denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed.
  - (d) The waiver is the minimum necessary to accomplish the purpose.
- (2) Code Enforcement. The Code Enforcement Officer may, from time to time, arrange and make inspections of the premises of any junkyard to verify compliance with this Section.

**100.38. Kennel**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to kennels.
- B. **Laws.** This use shall comply with applicable provisions of state and federal laws, for example:
  - (1) Article 7 of the Agriculture and Markets Law of NYS, Licensing, Identification and Control of Dogs.
  - (2) Article 26 of the Agriculture and Markets Law of NYS, Animals.
  - (3) Article 26-A of the Agriculture and Markets Law of NYS, Care of Animals by Pet Dealers.
  - (4) Article 35-D of the General Business Law of NYS, Sale of Dogs and Cats.
  - (5) 1 NYCRR Part 65, Importation of Dogs and Cats.
  - (6) United States’ Animal Welfare Act (AWA).
- C. **Lot Size.**
  - (1) Commercial Kennel. The minimum lot size for a commercial kennel shall be as follows:
    - (a) Five (5) to ten (10) dogs, each of which complies with the criteria prescribed in the definition of a commercial kennel, shall have a minimum lot size of three (3) acres or the minimum lot size prescribed for the applicable zoning district, whichever is greater.

- (b) Eleven (11) to thirty (20) dogs, each of which complies with the criteria prescribed in the definition of a commercial kennel, shall have a minimum lot size of five (5) acres.
    - (c) For each additional one (1) acre beyond three (5) acres, an additional five (5) dogs, each of which complies with the criteria prescribed in the definition of a commercial kennel, is permitted.
  - (2) Noncommercial Kennel. The minimum lot size for a noncommercial kennel shall comply with the minimum lot size for the applicable zoning district as prescribed by this Law.
- D. **Hours of confinement.** All dogs shall be confined in a fully enclosed shelter between the hours of 9:00 P.M. and 7:00 A.M.
- E. **Setbacks.**
  - (1) No outdoor area enclosed by fences for the use of kennels shall be permitted within the front yard or within fifty (50) feet of any side or rear lot line.
  - (2) Shelters for the use of kennels shall be a minimum of one hundred (100) feet to any lot line.
  - (3) Additional setbacks may be required as determined by the Planning Board to reduce the impact on neighboring properties, for purposes that include noise abatement.
- F. **Standard of care.**
  - (1) State or federal licensed kennels. A kennel that is licensed by NYSDAM and/or the USDA shall comply with the minimum standards of care prescribed by such state and/or federal departments.
  - (2) Other kennels. A kennel that is not required to be licensed by NYSDAM and/or the USDA shall comply with the minimum standards of care prescribed within §401 of the Agriculture and Markets Law of NYS regardless if such kennel is classified as a pet dealer as defined in §400 of the Agriculture and Markets Law of NYS.
  - (3) Veterinary care. All veterinary care shall be provided in accordance with Article 135 of the Education Law of NYS and the “Practice Guidelines for Veterinary Medicine and Veterinary Technology in NYS,” which such guidelines were developed and approved by the NYS Board for Veterinary Medicine and the NYSED.
- G. **Complaints.**
  - (1) State or federal licensed kennels. Complaints of cruelty, abuse, or neglect of

dogs at a kennel that is required to be licensed by NYSDAM and/or the USDA shall be investigated by such state and/or federal department.

- (2) Other kennels. Complaints of cruelty, abuse, or neglect of dogs at a kennel that is not required to be licensed by NYSDAM and/or the USDA shall be investigated by any police officer having jurisdiction in the Town or an agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, which such authority is prescribed in §373 of the Agriculture and Markets Law of NYS.

- H. **Assistance from a veterinarian.** The Code Enforcement Officer shall have the authority to obtain the assistance from a veterinarian as may be deemed necessary and appropriate under the circumstances. The owner shall pay any expense incurred by the Town as it pertains to such assistance.

#### **100.39. Lake and Waterfront Access and Lake Conservation District Standards**

- A. **Purpose.** The Purpose of this Section is to prevent overdevelopment or careless use of the Town's largest lakes that would reduce from their current water quality, appeal, and value to the Town.
- B. **Applicability.** The regulations contained in this Section, and the Development Standards set forth in the Schedule of District Uses for the Lake Conservation Districts—LC-1 and LC-2, shall apply to all parcels established as of the effective date of this Law that are located, in-part or in-full, within the two Lake Conservation Districts or are parcels in the Tennanah Hamlet District that have Shoreline Frontage.
- C. **Marinas.** Marina facilities may only be proposed as part of a development plan and shall be owned and controlled by the Home Owner's Association for the development. The number of boat slips for motorized boats in such marina facilities (excluding personal water craft and pontoon boats, which shall not be permitted) shall be limited to one boat per dwelling or the equivalent of one boat per 200 feet of lake frontage, whichever shall be less. There shall be no more than two marina facilities in any development and no more than 10 boat slips in each, subject to the above maximums. The Home Owner's Association must own and maintain all aspects of any marina facility, including any boathouse, docks, motorized and non-motorized boats or other recreational equipment. All marina facilities and equipment associated therewith shall be operated by qualified professional operators. The number of boats permitted to operate at any one time from marina facilities shall not exceed the number of permitted boat slips. Lake access for motorized boats for commercial purposes or as part of a Subdivision is prohibited except as described in this section.

- D. **Easements.** The creation of easements or rights-of-ways, or other funneling techniques, to create new lake accesses is prohibited.
- E. **Impervious Surfaces.** Impervious Surfaces located within an individual parcel's Waterfront Yard cannot exceed fifteen-percent (15%) of Waterfront Yard surface area. For example, a parcel with 200 feet of Shoreline Frontage contains 20,000 square feet of Waterfront Yard surface area (200 feet Shoreline Frontage multiplied by 100 feet Waterfront Yard depth per Section 100.17.D) and Impervious Surfaces could not exceed 3,000 square feet (15% of the 20,000 square foot Waterfront Yard).
- F. This section shall supersede the provisions of Section 4.12 of the Town of Fremont Subdivision Law.

**100.40. Landscaping Standards for Special Uses.**

- A. The Planning Board shall, to assure an acceptable buffer between adjacent residential and non-residential uses and create a healthy, safe and aesthetically pleasing environment in the Town, require a landscape plan be prepared as part of any Special Use application. Such a plan shall also be required whenever any non- residential use is proposed in any district so as to buffer parking areas, buildings and other uses from the highway, each other and other uses. Where it is determined by the Planning Board that a proposed Special Use would not because of its size or nature have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified or waived.
- B. The landscape plan shall specify locations of all mature shade trees or other species of six (6) inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan.
- C. Landscape plans shall be prepared by a licensed landscape architect or other design professional qualified to perform such services and include consideration of all man-made and natural features, including signs.
- D. The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals and seek the non-binding advice of interested civic organizations concerned with community beautification. The Board shall also specifically consider the following before approving, approving with modifications or disapproving the Special Use:

- (1) The plan should promote attractive development, preserve existing vegetation to the maximum extent possible, enhance the appearance of the property and complement the character of the surrounding area.
- (2) The plan should use landscaping to delineate or define vehicular and pedestrian ways and open space.
- (3) The plant material selected should be of complementary character to buildings, structures and native plant species and be of sufficient size and quality to accomplish its intended purposes.
- (4) The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.
- (5) The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to Zone 4.

Consideration and determination of the adequacy of the above plan requirements are at the Planning Board's discretion.

- E. All new landscaping required shall meet the following minimum specifications.
- (1) The minimum branching height for all shade trees shall be six (6) feet.
  - (2) Shade trees shall have a minimum caliper of three (3) inches (measured 4 feet above grade) and be at least twelve (12) feet in height when planted.
  - (3) Evergreen trees shall be a minimum of six (6) feet in height when planted.
  - (4) Shrubs shall be a minimum of 24" in height when planted. Hedges shall form a continuous visual screen within two (2) years after planting.
  - (5) A buffer screen at least fifteen (15) feet in width along any residential lot line shall be provided. It shall include, at a minimum, an opaque wooden stockade fence six (6) feet in height and one (1) evergreen tree for every fifteen (15) linear feet of property line. An additional row of evergreens meeting these standards and off-set such that each row serves to place trees between the gaps of the other, may be permitted as a substitute for the stockade fence.
  - (6) A landscape strip at least fifteen (15) feet in width that includes at least one (1) deciduous tree for every 35 linear feet of perimeter lot line shall be required for any non-residential use. Such deciduous trees shall also be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the highway but still allow for visibility of the use.

- (7) All lot area (except where existing vegetation is preserved) shall be landscaped with grass, ground cover, shrubs, or other appropriate cover.
  - (8) The preservation of mature shade trees shall be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Code Enforcement Officer or Planning Board, as the case may be, determines the purpose of this section is achieved.
  - (9) Trees shall not be deliberately planted in locations where they would directly and substantially shade and block the view from a neighboring residential property owner's window, an existing electronic reception or an existing solar energy device.
- F. A performance guarantee in a form acceptable to the Town Attorney in the amount of one-hundred-twenty-five percent (125%) of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition one (1) full year. The Town Board shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Code Enforcement Officer shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunted or infested plant materials.
- G. All applicable requirements of these landscaping regulations shall be fully met prior to the Code Enforcement Officer granting a Certificate of Occupancy for a new building or use subject to these regulations.

#### **100.41. Manufactured Homes and Parks.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Manufactured Homes and Parks, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Purpose.** Manufactured home parks, where permitted as special uses, shall require site plan review and be processed pursuant to the requirements of Section 274(a) and 274(b) of the Town Law. The Town of Fremont Planning Board shall be authorized to review and approve, approve with modifications or disapprove such site plan and special use application and, if necessary to attach conditions on any approval. The Planning Board shall, in reviewing and acting upon such a site plan and special use application, apply the following standards and review criteria:

C. **Location.**

- (1) The location of the park shall be one demonstrably suitable and sized for such use, including, but not limited to, proper drainage and provisions for stormwater control such that the amount of water leaving the site after development shall not be greater than prior to development, and the ability to adequately buffer the sight and sound of such use from surrounding residential uses.
- (2) The manufactured home park shall not result in an over-concentration of such uses in a particular area of the Town.
- (3) The manufactured home park shall not have a detrimental or negative impact on adjacent properties or the general welfare of the residents of the Town of Fremont.
- (4) If a proposed park is one judged to present detrimental impacts, the Planning Board shall consider whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
- (5) No manufactured home anywhere in the Town of Fremont shall be located on an already occupied lot unless sufficient lot area and yards are provided to accommodate an additional detached one-family dwelling at the minimum standards applicable to the zoning district.

D. **Utilities.** There shall be documentation of the availability and adequate capacity of all utility providers to service the park. Off-site or centralized sewer and water facilities shall be provided.

E. **Open Space and Buffering.** In addition to screening and buffering requirements detailed elsewhere in this Law, the park shall be designed to provide maximum open space consistent with the minimum manufactured home lot size requirements of the Manufactured Home Law and offer buffering of individual manufactured homes from each other and from other adjoining lot owners. It shall be landscaped so as to develop and maintain a high quality aesthetic environment and neighborhood character for prospective new and existing residents.

F. **Storage.** Adequate provisions shall be made for outside storage space and this shall not in any way interfere with emergency access.

G. **Nuisances.** Adequate provisions shall be made to control potential nuisance situations such as accumulation of unused materials or vehicles.

H. **Recreational Facilities.** Recreational facilities sufficient to accommodate the number of dwellings proposed shall be provided.

- I. **Water Supply.** There shall be adequate groundwater supplies to support the proposed water system without causing a detrimental impact on adjoining water supplies and evidence of this shall be provided and professionally reviewed.
- J. **Maintenance.** The management and operations plan for the park shall provide for maintenance of all common facilities and ensure the purposes and requirements of this law are met. It shall also provide for limitation of occupancy to manufactured home meeting U.S. Department of Housing Urban Development regulations under the Manufactured Housing Act.
- K. **Mixed-Use Development.** Mixed-use residential developments where in manufactured homes and other single family detached dwellings are both provided shall be encouraged where the other criteria contained herein can be met. All other single- family detached development, however, shall comply with the requirements of the Town of Fremont Zoning Ordinance and Subdivision Regulations.
- L. **Additional building standards.**
  - (1) Concrete slab foundations in connection with any manufactured home placed anywhere in the Town of Fremont shall be a minimum of six (6) inches in depth and include tie- downs for the home at each end which shall be utilized to anchor the home.
  - (2) Each home shall also be provided with a peaked roof and a landing of wood or concrete construction which is one and one-half (1.5) times the width of the door it serves and steps as necessary.
  - (3) No manufactured home of less than twelve (12) feet in width or 650 square feet in gross floor area shall be permitted.
- M. **Single Family Use.** Manufactured homes placed anywhere in the Town of Fremont shall be used for one- family dwelling purposes only. All other uses, including but not limited to use as a warehouse, storage shed, tool shed, outbuilding or garage, are strictly prohibited.

#### **100.42. Mass Gatherings.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Mass Gatherings.
- B. **Purpose.** The purpose of this section is to protect the public health, welfare, safety, peace and tranquility by regulating mass gatherings within the Town.
- C. **Application.** The requirements of this Section shall apply to any mass gathering of 300 people or more at any one time, except:

- (1) Functions sponsored by a public, private or proprietary school based in the Town related to an educational or athletic activity;
- (2) Functions sponsored by the Town, examples include the Memorial Day Parade; and
- (3) Functions at Town parks sponsored by civic organizations based in the Town, examples include Little League Baseball;

**D. Permit and Zoning Compliance Required.**

- (1) No person shall hold or promote, by advertising or otherwise, a mass gathering unless a permit has been issued for the gathering by the permit-issuing official.
- (2) No person shall use, allow, let or permit to be used property for a mass gathering as defined herein unless and until the written permit authorizing such use and assembly has been issued by the Town Code Enforcement Officer. The underlying use for which the mass gathering permit is requested must comply with all zoning requirements as set forth in the Fremont Town Code.
- (3) Application for such permit shall be by application on forms to be furnished by the Town, addressed to the Code Enforcement Officer, who shall have jurisdiction and authority to review, approve or deny such application.
- (4) Applications shall be made at least three (3) months prior, but not more than twelve (12) months prior, to the date upon which such use and assembly shall occur.
- (5) A determination granting or denying permits shall be made as soon as practical after all application information has been received and reviewed. No permit shall be granted unless the applicant complies with all requirements of this law. Denial of the permit by the Code Enforcement Officer shall be in writing. However, failure to make such determination shall not be construed as a default or other approval.
- (6) Separate permits shall be required for each mass gathering. A separate permit is required for any mass gathering which is separated by more than 48 hours from a previous mass gathering for which a permit had been granted.
- (7) Any permit may be revoked by the permit-issuing official if, after a public hearing on notice to the permittee, it finds that the mass gathering for which the permit was issued is maintained, operated or occupied in violation of this law or the Sanitary Code of the State of New York. A permit may also

be revoked upon request of the permittee or upon abandonment of operation.

- E. **Contents of Application.** All applicants for a permit to conduct a mass gathering shall include the following information:
- (1) **Applicant.** The name, residence, mailing address and telephone number and state drivers' license number of the applicant; a statement of the applicant's legal status, such as individual, partnership, corporation, etc.; and whether the applicant has ever been convicted of a felony or misdemeanor. If the applicant is a partnership, state the name, residence, mailing address, telephone number of each partner and the partnership EIN (Employer Identification Number); and if a corporation, the names and addresses of all corporate officers and directors, together with a copy of the articles of incorporation, a list of the names and addresses of all persons directly in charge of the activity and the corporate EIN (Employer identification Number).
  - (2) **Location.** The location and description of the property where the activity is proposed, including all lands to be used directly, indirectly or incidental to the proposed activity or any part thereof; attaching to the application copies of documents disclosing the nature of the interest of the applicant relating to such property. If such interest is a lease hold, a copy of such lease shall be attached.
  - (3) **Dates.** The date or dates and the hours during which the activity is to be conducted and the total time period of such activity.
  - (4) **Program and Plans.** The program and plans of the activity in its entirety, with particular emphasis on the following:
    - (a) **Parking.** Detailed plans for parking facilities off public roadways able to serve all reasonably anticipated requirements. Parking facilities should accommodate up to 100 passenger cars per acre or 30 buses per acre.
    - (b) **Transportation.** Detailed plans for transportation arrangements, if any, from noncontiguous parking facilities to the site to fully serve all reasonably anticipated requirements; including, if determined to be necessary by the Code Enforcement Officer, a statement from the New York State Police and/or the Sullivan County Sheriff certifying that the traffic control plan associated with the event is satisfactory.
    - (c) **Site Diagram.** An outline map of the area to be used, to an appropriate scale, showing the location of all areas of assemblage, including emergency access and egress roads.

- (d) Attendance. The total number of persons permitted at the event, including performers, staff members and audience, which shall be determined by providing a net assembly area of at least 50 square feet per person. Parking areas which are contiguous to the site may be included in such square footage calculation.
- (5) Security. Plans for private security and/or police enforcement.
- (6) Crowd Control. A plan for controlling unauthorized admittance, including methods of entering the area, number and location of ticket booths and entrances, and provisions for keeping non-ticket holders out of the area.
- (7) Signs. A detailed plan for use of signs to locate all facilities and roadways.
- (8) Fire Safety Statement. A statement from local fire authorities having jurisdiction over the area verifying that the facilities available to such mass gathering are suitable to provide adequate fire safety, that they are aware of the event and are willing to cooperate if needed.
- (9) Emergency Plans. A detailed plan of response for possible emergency situations of a medical, fire or security nature. Said plan shall provide for emergency first aid including on-site qualified medical personnel, evacuation plans, emergency access roads, names and locations of hospitals and ambulances in the area, and other provisions deemed relevant to reasonably anticipated emergencies.
- (10) Command Post. A command post to be used, if required, by on-site security personnel, County and State Police, Department of Health personnel or the permit-issuing official and his/her lawful representatives, or both, consisting of at a minimum, a specific location equipped with a communication system satisfactory to the Code Enforcement Officer.
- (11) Refuse. Detailed plans for internal storage and collection of refuse, including provisions for disposal and cleaning the property, surrounding properties and public streets within 48 hours after the event.
- (12) Sound. Detailed plans for amplifying equipment designed to control the noise level at the perimeter of the site to no more than 75 decibels on the A scale of a sound-level meter, which meets the specifications of the American National Standards Institute, between the hours of 10:00 pm and 9:00 am. Additional noise level control may be required as determined by the Code Enforcement Officer.
- (13) Lighting. Detailed plans for lighting designed to illuminate the public areas of the site as reasonably required and demonstrating that the lighting will not reflect on any area beyond the boundary of said site, when the event is

planned to occur after daylight hours.

- (14) **Buffer.** A plan showing that the proposed activity is adequately buffered by fencing or other crowd control device and that the event's perimeters are no less than 500 feet from a residential parcel.

**F. Public Liability and Property Damage Insurance.**

No permit shall be issued unless the applicant shall furnish the Town with a comprehensive liability insurance policy insuring the Town against liability for damage to person or property with limits of not less than \$1,000,000/\$2,000,000 for bodily injury or death and limits of not less an \$1,000,000 for property damage, to save the Town harmless from any and all liability or cause of action which might arise by reason of the granting of the permit, which policy shall not be cancelable without ten (10) days' prior written notice to the Town and which shall be in effect during the entire period of the mass gathering, to include set up and take down. Failure to keep such policy in effect will result in automatic revocation of the permit without hearing.

**G. Additional Duties of a Permittee for a Mass Gathering.**

- (1) The site shall be provided with adequate interior roads to be kept clear at all times for service and emergency vehicles, and shall be serviced by access roads which will permit an adequate flow of traffic and ensure the free passage of emergency vehicles.
- (2) Adequate signs shall be provided locating all facilities.
- (3) Children under 16 years of age not accompanied by an adult at a mass gathering shall be provided with adequate and competent adult supervision, such supervision to be provided by the permittee and exercised by a supervisor or supervisors present on the property.
- (4) The person to whom a permit has been issued to operate or hold a mass gathering shall provide an individual who is acceptable to the permit-issuing official as suitable and responsible to be in charge of the property and who shall be on the property or available while the property is occupied or open for occupancy.
- (5) A person to whom any permit is issued shall comply with the provisions of this Section and with all conditions stated in the permit, and shall allow the permit-issuing official or his/her representative to enter the premises at any reasonable time to ascertain compliance with the Law.
- (6) No permittee will sell, or offer for sale, nor allow any other person to sell, or offer for sale, any alcoholic beverage upon the premises designated in the

permit application during the time period delineated for such mass gathering unless the permittee shall possess a valid NYS Liquor License for the service of other types of alcohol on the premises.

(7) Each permittee shall provide for the removal of any temporary structures and signs erected for use during such mass gathering within one week after the time specified in the permit application for termination of such mass gathering. Nothing contained in this subsection will relieve any party from the requirements of any other law regulating construction of such temporary structures.

H. **Fees.** Each application shall be accompanied by a fee in the amount set by the Town Board by resolution from time to time as it deems appropriate, payable at the time of its submission. A fee shall be compensation to the Town for its examination and processing of such application and shall not be refundable in whole or in part.

I. **Enforcement and Penalties.**

- (1) Any person who shall use, allow, let or permit to be used property for a mass gathering as defined herein, or any person who shall promote or advertise such mass gathering without first obtaining a written permit in accordance with the provisions of this Section, shall be deemed to have violated this Section. Any person who commits or permits any act in violation of any provisions of this Section shall be liable for the penalties provided.
- (2) For each violation of the provisions of this Section, the person violating the same shall be subject to a fine of not more than \$10,000, nor less than \$100, in addition to relevant civil and/or criminal charges.
- (3) The Town may also pursue an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with, or to restrain by injunction, the violation of this Section.

#### **100.43. Multi-family Residential Uses.**

A. Multi-family dwelling projects shall be considered major subdivisions. This "major subdivision" classification shall apply to all subdivisions of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision. Application for preliminary approval of multi-family dwelling projects, accordingly, will be made to the Town in the manner provided under the Town Subdivision Regulations. The subdivider shall also submit all information required by such Regulations plus the following additional data;

- (1) An application for multi-family dwelling approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.
  - (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this Law. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in Town of Fremont. Setbacks from property lines, improvements and other buildings shall also be indicated.
  - (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this Law to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed covenants and restrictions, but shall in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either; (1) activities intended for the sole benefit of the occupants of the particular project proposed or, (2) permanent open space as hereinafter provided.
- B. The Planning Board shall act on the Preliminary Plat and Special Use application concurrently provided an Environmental Assessment is also conducted pursuant to the New York State Environmental Quality Review Act. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any preliminary Plat, shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to Preliminary approval. This requirement notwithstanding, the building permit application shall be made with the Preliminary Plat and shall, if granted, be valid for a period equal to that for Preliminary Plat approval. If the Preliminary Plat shall be rejected no building permit shall be granted.
- C. Following Preliminary Plan approval, the developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. Building

improvements shall similarly be completed or guaranteed prior to the applicant's request for Final Plat approval. No Certificate of Occupancy (where the same is required) shall, however, be issued until such time as; (1) Final Plat approval shall have been granted in accordance with the procedures and requirements of this Law and (2) buildings have been completed and inspected by the Town Code Enforcement Officer.

- D. Complete final building plans shall also be submitted as part of the Final Plat Application.
- E. No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this Law, unless and until Final Plat approval shall have been granted (unless the improvements shall have been guaranteed), and the Plan has been recorded in the Office of the Sullivan County Clerk.
- F. Multi-family dwelling density may be granted a density bonus above the number of dwelling units per acre which would be permitted within the district if the parcel on which the units are to be constructed were to be developed for single-family residential use. Density shall be calculated by taking the total acreage of the development and deducting the following acreages:
  - (1) Land contained within public rights-of-way;
  - (2) Land contained within the rights-of-way of existing or proposed private streets. (where formal rights-of-way are not involved, the width of the street shall be assumed as fifty (50) feet wide);
  - (3) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service;
  - (4) All wetlands, floodplains, slopes of 15% or greater grade, water bodies and other undevelopable areas; and dividing by the number of proposed units.
- G. All areas of a multi-family development not conveyed to individual owners; and not occupied by buildings and required or proposed improvements shall remain as permanent open space or be dedicated to recreation area to be used for the sole benefit and enjoyment of the residents of the particular units being proposed. No less than 50% of the tract shall be used for this purpose and fees in lieu of dedication may not be substituted for such space. Such open space shall be subject to the following regulations:
  - (1) No less than 50% of the open space to be provided (25% of the total tract) shall be dedicated to recreational area for the sole benefit and enjoyment of

the residents of the particular units proposed. Developments of 30 units or more shall specifically provide, as part of this recreation area, one-half acre of playground area per 30 units, unless restricted to adult occupancy only. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in sub-section (1) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.

- (2) Land designated simply as open space shall be permanently maintained as open space and may not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all plats. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a "pre-approved plan" if density or other zoning requirements shall have been modified to preclude such development.
- (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by either one or both of the following mechanisms:
  - (a) Dedication to a property owners association which assumes full responsibility for maintenance of the open space.
  - (b) Deed-restricted private ownership which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open space is guaranteed.
  - (c) Whichever mechanism(s) may be used, the developer shall provide, to the

satisfaction of the Town Attorney and prior to the granting of any Final Plat approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.

- H. **Central Sewage and Water.** All multi-family developments shall be served with central sewage facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multi-family buildings and structures as a minimum.
- I. **Design Criteria.** The following design criteria shall apply to multi-family developments;
- (1) There shall be no more than ten (10) dwellings in each multi-family building.
  - (2) No structure shall be constructed within fifty (50) feet of the edge of any access road to or through the development or within ten (10) feet of the edge of any parking area.
  - (3) Access roads through the development shall comply with minor street requirements as specified in this Law and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
  - (4) No multi-family development shall be served by more than one entrance and one exit from any public highway, unless topography or other physical circumstances would preclude the use of a single entrance in a safe manner.
  - (5) Parking spaces of two (2) per unit shall be provided plus, for every two (2) units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods.
  - (6) No more than sixty (60) parking spaces shall be provided in one lot, nor more than fifteen (15) in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and so arranged as to direct lighting away from residences.
  - (7) No structure shall be erected within a distance equal to its own height of any other structure.
  - (8) All multi-family structures shall be a minimum of 100 feet from any of the exterior property or boundary lines of the particular project involved and 75

- feet from any public right-of-way.
- (9) Where a property line is not wooded, a planting strip of fifty (50) feet in width shall be required to buffer adjoining property owners and ensure privacy. Similar buffering of areas adjoining County and State highways shall be required. A landscaping plan shall also be prepared and submitted to the Planning Board for approval.
  - (10) Multi-family developments shall be subject to the stormwater management requirements of this Law and facilities shall be designed to accommodate storms of a 25 year average frequency unless a more stringent standard shall be recommended by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development shall not exceed that estimated for the site prior to development. In instances where stormwater facilities are impractical for engineering reasons the Town Engineer may modify this standard as it applies to a particular project but shall provide for the maximum practical reduction in flow which can be achieved under the circumstances.
  - (11) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.
  - (12) All multi-family developments of 50 dwellings or more within any H Hamlet District in which they are permitted shall include a commercial component equal to no less than 10% and no more than 20% of the floor area of the project, which component shall be developed concurrently with the construction of the dwelling units according to a phasing plan subject to approval by the Planning Board. The elements of this this commercial component and the development mix shall also be subject to approval of the Planning Board. Such commercial component shall provide for the convenience retail needs of the project and be designed to achieve a traditional neighborhood form of development compatible with the character of the neighborhood that serves to strengthen the hamlet as a center. It may include other commercial elements with respect to recreation, lodging and services, subject to approval of the project mix by the Planning Board. The commercial component shall be in addition to the ordinarily permitted residential density and require no additional land area, provided the Planning Board has approved the site plan for the project or it otherwise meets all the standards of this law. Nothing herein shall be construed to permit uses not otherwise permitted within the Hamlet District in question.
  - (13) All multi-family developments of 50 dwelling units or more within an H

Hamlet District in which they are permitted shall be subject to the following additional specific site plan review criteria:

- (a) Building placement and site development layout shall respectfully incorporate the site's topography, existing vegetation and other unique features. Spatial relationship between buildings and other structures shall be geometrically logical and/or architecturally formal (i.e. not haphazard or random). Buildings located in the interior of the site shall front towards and relate to one another, both functionally and visually, and may be organized around features such as courtyards, greens or quadrangles. Smaller, individualized groupings of buildings are encouraged. Buildings shall be sited to provide adequate and safe fire and emergency access.
- (b) New construction affecting existing buildings of acceptable architectural design shall respect the existing building height, bulk, scale and style of the existing architecture. Materials used may be required to be of a similar color, texture and style of the existing architecture.
- (c) Buildings shall relate in scale and design features to the surrounding buildings, showing respect for existing and neighborhood architecture. Buildings shall avoid long, monotonous uninterrupted walls or roof planes. Building wall offsets, including projections, recesses, and changes in floor level shall be used in order to add architectural interest and variety, and to relieve the visual effect of a simple, long wall. Similarly, roof-line offsets shall be provided, in order to provide architectural interest and variety to the massing of the building and to relieve the effect of a single, long roof.
- (d) All materials, colors and architectural details used on the exterior of the building shall be compatible with the building's style and with each other. A building designed of an architectural style that normally includes certain integral materials, colors and/or details shall incorporate such in its design.
- (e) The architectural treatment of the front façade shall be continued, in its major features, around all sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details. Blank walls or unscreened service areas along side and/or rear elevations are discouraged.
- (f) All disturbed areas of the site not occupied by buildings, parking areas and access drives, other improvements or textured paving shall be intensively planted with trees, shrubs, hedges, ground covers and/or grasses.
- (g) Site landscaping shall maintain landscape continually with community selections. Placement of landscape materials shall be appropriate to adjacent land use activities. Preservation of existing mature plants, hedge

rows, wood lots, and wetlands is encouraged, as is low maintenance planting. Existing trees over 8” dbh shall be incorporated in the site design to preserve existing vegetative resources. Landscaping plans shall consider seasonal plantings in planters, planting beds and hanging baskets.

- (h) Plant suitability, maintenance and compatibility with site and construction features are critical factors which shall be considered, particularly with regard to: areas along building foundations; between buildings and sidewalks; between sidewalks and roadways; and within and around parking areas.
  - (i) The Planning Board shall be authorized to modify other requirements of the § 100.40 to achieve these objectives, provided that the intent of each provision continues to be met.
- J. Maintenance of a multi-family project shall be vested in (1) an association or other legal entity organized prior to the offering of the first unit for occupancy, or (2) a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or (3) the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five (5). If the developer shall opt to manage the project or designate a manager, the preliminary application shall include financial statements, a description of previous management experience and other data sufficient for the Planning Board to ascertain the financial responsibility of the manager.
- K. The association or manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units. The project instruments shall specify the expenses which the maintenance organization may incur and collect from purchasers as a maintenance fee and secure maintenance of the project as well as enforcement of applicable covenants and restrictions in perpetuity. The Planning Board may require that a Certified Public Accountant review such financial data for purposes of determining that proposed fees are, in fact, adequate to secure maintenance on a continuing basis.
- L. The developer shall, in filing a Preliminary Plat, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from on-going routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance and care of the units and common facilities during any sales program, based on which the Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable

instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer and/or with the occupants.

- M. Any developer who proposes to construct multi-family dwellings and convey the common elements of said multi-family dwelling project, including recreation areas, to an association of purchasers of units therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements. Such maintenance bond or other guarantee shall;
- (1) Be for a period of not less than fifteen (15) years from the date of the final approval of said multi-family dwelling-transient use by the Town;
  - (2) Be in an amount equal to the amount collected or to be collected for long-term maintenance (as indicated in the budget referenced above) by the developer or other responsible parties from each purchaser during the first year after sales to such purchases begin, multiplied by the total number of expected purchasers.
- N. If the development shall be subject to the New York State statutes governing the sale of real property used for multi-family occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this sub-section such certification shall suffice as to conformance with these requirements.
- O. Conversions of motels, hotels or other existing structures to multi-family dwelling use regardless of whether such conversions involve structural alterations, shall be considered subdivisions and, moreover, be subject to the provisions of this Law, including the following:
- (1) The Preliminary Plat shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound and that the proposed conversion will not impair structural soundness.
  - (2) The conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than two residential units shall be exempt from these requirements, unless such units are intended to be a condominium.
  - (3) This shall not, however, exempt an owner from any requirements of the remainder of this Law, the State Building Code or Town Law as they may pertain to such activities.

**100.44. Nursing Homes and Adult Homes.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Nursing Homes and Adult Homes, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Purpose:** It is the purpose of this section to encourage the development of well-designed nursing and adult care housing for the elderly (55 years of age or older). Limiting these facilities to large parcels of property will maintain the visual and aesthetic environment. Further, a properly planned nursing or adult care housing home will provide area residents with employment opportunities.
- C. **Lot Size.** A nursing home or adult home facility shall be located on a minimum of ten (10) acres dedicated solely for the nursing home or adult home use or approved accessory uses, except that Adult Homes may be located on a parcel with a minimum of five (5) acres provided such use is owner-occupied.
- D. **Applicability.**
- (1) Nursing Homes may include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a twenty-four-hour basis of more than five persons who are not capable of self-preservation.
  - (2) Adult Homes shall be limited to no more than five clients at any one time and such facilities shall be owner-occupied. Only one such facility shall be contained on a lot of record and such uses cannot be used in conjunction with a Manufactured Home Park, Seasonal Dwelling, or other such uses as determined by the Planning Board.
- E. **Licensing.** Facilities must be licensed by the appropriate state or federal agency and adhere to all applicable health and safety laws, including but not limited to certificates of need, financial-feasibility, character and competence, and legal review.
- F. **Non-conforming buildings or lots.** No non-conforming building or lot shall be used for nursing homes or adult homes. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting a nursing home or adult home use unless application to do so has been made pursuant to this section and Planning Board approval has been given.

**100.45. Other Non-residential Uses**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to commercial, retail and service, professional office, restaurants and uses but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Applicability.** For the purposes of this Section non-residential commercial uses shall include, but not be limited to retail and service establishments, professional offices, public uses, not-for profit and religious uses, and funeral establishments, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- C. **Sole Use.** Lot use shall be dedicated solely for the approved non-residential commercial use and approved accessory uses.
- D. **Parking.** Off-street parking and on-site circulation shall be provided.
- E. **Heavy Commercial.** Heavy Commercial uses are those that typically have a greater impact on the surrounding environment, surround properties, road and infrastructure, and the Town in general, and as such, distinguished from Light Commercial uses, may require, for example but not limited to, greater lot sizes, more significant buffering, and increased parking standards.
- F. Whenever a vehicle and equipment sales, mechanical and body repair use is proposed as a Special Use, or as an expansion of an existing non-conforming use, the following additional performance standards shall apply:
  - (1) All mechanical and body repair work other than minor repairs such as changing belts and tires shall be performed within buildings.
  - (2) All automobile or vehicle parts, new or used, shall be stored within buildings.
  - (3) Vehicles which are temporarily on the property awaiting to be repaired, shall be stored in an area which meets the minimum yard and buffer requirements applicable for the district and the use.

**100.46. Parking, Loading, Access and Traffic Standards.**

- A. Off-street parking, loading and unloading facilities shall be provided as necessary in connection with every use. Single-family and two-family residential uses shall be provided with two (2) off-street parking spaces per dwelling unit. Parking needs with respect to all other uses shall be determined in conjunction with site plan review. The amount of parking required shall be based on the following factors:

- (1) Industry studies of parking needs for the type of use proposed or actual case-study comparisons for projects of similar character. The Planning Board may require the developer or applicant to gather and submit such data in support of its proposed parking provisions. The National Parking Association and the Urban Land Institute are examples of such industry sources.
- (2) The characteristics of the proposed customers, residents, occupants or visitors to a given facility. Housing for the elderly would, for example, require fewer spaces per dwelling unit than time-shared recreational units, though the number of dwelling units might be the same.
- (3) The expected occupancy rates, traffic levels and numbers of employees in connection with any enterprise and the degree to which these directly relate to parking requirements.
- (4) Recommendations, if any, from other public agencies or information sources which suggest, based on experience, the appropriate amount of parking in connection with a given use.
- (5) The likelihood that parking will be shared with adjoining facilities, the availability of sufficient on- street parking, the impact of daily peak visitation or use periods on demand and the hours of operation as compared to other neighborhood activities.
- (6) Where industry standards are inadequate for the particular use or site involved or such standards are unavailable, the following standards may be applied by the Planning Board or Code Enforcement Officer, as the case may be:

Home Occupations	1 space per 200 sq. ft. of floor area devoted to use
Hotels/motels	1 space per rental room
Industrial uses	1 space per 400 sq. ft. floor area
Commercial uses	1 space per 200 sq. ft. floor area
Places of public assembly	1 space per 5 seats
Offices	1 space per 300 sq. ft. floor area
Restaurants	1 space per 50 sq. ft. floor area
Auto service stations	4 spaces plus 1 per employee

B. Each parking space shall consist of not less than an average of two hundred seventy (270) square feet of usable area for each motor vehicle, including interior driveways, driveways connecting the garage, or parking space, with a street or alley. Garages, carports, and driveways not in the public right-of-way may be considered parking spaces.

- C. Any lighting used to illuminate any off-street parking shall be so arranged as to reflect the light away from adjoining premises and public right-of-ways.
- D. All parking areas which are designed to accommodate twelve (12) or more vehicles shall be landscaped using materials of sufficient growth and height to aesthetically balance the impact of the open paved area and provide effective stormwater control. The following minimum layout standards shall apply unless the Planning Board, for demonstrated and recorded good cause, shall (and it is hereby authorized to do so) modify the same to produce a site plan more beneficial to the public health, safety and welfare:
- (1) No more than twelve (12) parking spaces shall be allowed in a continuous row uninterrupted by landscaping. Raised planting beds shall be located at intervals of twelve (12) spaces and at the end of each row. Such beds shall be a minimum of five (5) feet in width and each planted with at least one (1) shade tree of 1 - 1/2 inch caliper. The remainder of the bed shall be surfaced with flowers, grass, groundcover, low maintenance shrubs and/or mulches (no crushed stone or chips).
  - (2) Planting beds meeting the above standards shall also be required along the perimeter of all parking areas and between parking areas and buildings. The area between a parking area and any building shall be a minimum of ten (10) feet in width, however.
  - (3) No parking areas shall be designed such that a vehicle might directly back out onto a public highway or through road within the development. Traffic flows through a parking area shall be minimized and limited to connections from one lot to another and to the public highway or through road.
  - (4) All parking spaces associated with commercial uses shall be located not more than three-hundred (300) feet distant from the nearest entrance to the inside of the structure wherein the enterprise is situated.
  - (5) Parking areas shall generally be located in the rear yard of any use, with the principal building situated near the front lot line as permitted by Schedule of District Regulations. This is for the purpose of maintaining the continuity of the building line along any highway and avoiding the effective merger of parking areas along a highway into one mass of pavement where entrances and exits become difficult to identify.
- E. Any building erected, converted or enlarged for commercial, office, manufacturing, wholesale, institutional or similar uses shall, in addition to the off-street parking space required above, provide adequate off-street areas for loading and unloading of vehicles. Public rights-of-way shall, under no circumstance, be used for loading or

unloading of materials where new uses are proposed unless such uses take place within existing non-conforming structures where no other alteration is possible. The minimum size loading space shall be sixty (60) feet in depth and twelve (12) feet in width, with an overhead clearance of fourteen (14) feet.

- F. Access to and from all non-residential off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well-defined separate or common entrances and exits and shall comply with the following provisions:
- (1) Access drives shall not open upon any public right-of-way within (80) feet of the nearest right-of-way line of any intersecting public street or highway or where the sight distance in either direction would be less than two-hundred (200) feet. Access drives onto state highways shall be subject to New York Department of Transportation standards and access drives onto County highways shall be subject to the Sullivan County Department of Public Works standards.
  - (2) There shall be no more than one entrance and one exit to any business or commercial use parking area on any one highway unless safety considerations should demand it. Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits. In no case shall one entrance and exit be located within 80 feet of any other on the same property or adjoining property along the same public right-of-way. Non-conforming lots, however, may be exempted from this requirement.
  - (3) All access drives shall be subject to the requirement of obtaining a road occupancy or street encroachment permit from the Town of Fremont Highway Superintendent, the Sullivan County Department of Public Works or the New York State Department of Transportation, as the case may be, and approval of any permits hereunder or subdivision approvals may be conditioned upon the application for and/or receipt of such permits from these authorities.
  - (4) No use shall be permitted that requires year-round access from a Town highway that has been designated by the Town of Fremont Town Board as a low volume or minimum maintenance seasonal highway pursuant to Section 205-a of the New York State Highway Law, unless the applicant assumes the cost associated with upgrade to year-round status.
- G. All non-residential parking and loading areas and parallel circulation and service lanes shall be separated from the paving edge of a public thoroughfare or adjoining property lines by a planting strip at least twenty (20) feet in depth landscaped according to § 100.40.E.

- H. The Planning Board may require a traffic impact study with any Special Use application involving an activity likely to generate more than five-hundred (500) trip-ends per day based on the following daily rates:

Residential uses	9.6 trip-ends per dwelling unit
Industrial uses	3.3 trip-ends per employee
Restaurants	7.9 trip-ends per seat
Fast-food restaurant	23.9 trip-ends per seat
Convenience market	605.6 trip-ends per 1,000 sq. ft. gross floor area
Supermarket	177.6 trip-ends per 1,000 sq. ft. gross floor area
Car wash	108.0 trip-ends per car stall
Offices	6.0 trip-end per employee
Other commercial uses	50.0 trip-ends per 1,000 sq. ft. gross floor area
Institutional uses	4.0 trip-ends per employee
Other uses	See "Trip Generation"
	Institute of Transportation Engineers

NOTE: Each trip has two trip ends, one at the point of origin and the other at the point of destination.

The study shall examine existing and projected traffic flows before and after development and generally follow the guidelines set forth for such studies by the Institute of Transportation Engineers. Its purpose shall be to ensure that proposed developments do not adversely affect the transportation network and to identify any traffic problems associated with access to the site from the network. It shall identify solutions to potential problems and any improvements needed. The scope of the study shall be approved in advance by the Planning Board with the final product incorporated in the SEQR submission.

**100.47. Parking, Storage and Use of Recreational Vehicles and Equipment.**

- A. One recreational vehicle may be parked or stored on any occupied lot or within an approved campground provided it complies with the applicable front, side and rear setback requirements of the district or the approved site plan.
- B. No recreational vehicle shall be stored on a lot otherwise unoccupied by a principal permitted use or building unless such lot is in the same ownership as an adjoining lot with a principal permitted use. No recreational vehicle shall be used for camping outside an approved campground without complying with all applicable Department of Health regulations. However, no recreational vehicle shall be used as a permanent residence.
- C. Existing recreational vehicles shall be brought into compliance with this standard within 180 days of the effective date of this Law.

**100.48. Quarrying**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to quarrying uses.
- B. The applicant shall meet the requirements of the Environmental Conservation Law of the State of New York, Article 23, Title 27, known as the “Mined Land Reclamation Law” and must demonstrate to the Planning Board in order to obtain a special use permit for quarrying, that the public health, safety and welfare are adequately protected taking into account at least the following:
- (1) The final slope of material in any excavation or pit shall not exceed the normal limiting angle of repose of such material;
  - (2) In addition to standard setbacks and buffers required in this Law:
    - (a) No part of the quarrying operation shall be permitted closer than one hundred (100) feet, nor shall any accessory access road, parking area, or office building be permitted closer than fifty (50) feet to public right of ways or property boundaries unless otherwise determined by the Planning Board; and
    - (b) Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where in the determination of the Code Enforcement Office such fencing or barrier is necessary for the protection of the public.
  - (3) The need to control dust, noise, erosion and visual impacts. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration. Access and haulage roads on the site shall be maintained in a dust-free condition by surfacing or treatment as directed by the Code Enforcement Officer.
  - (4) The hours of operation.
  - (5) The adequacy of existing public highway system to handle any increase in heavy truck traffic.

**100.49. Recreational Facilities, Indoor and Outdoor**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to recreational facilities, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.

- B. **Setbacks and Buffers.** In addition to screening and buffering requirements detailed elsewhere in this Law:
  - (1) No building or structure shall be located within 100 feet of any property line;
  - (2) Unenclosed recreational facilities shall be located not less than 150 feet from any property line, except where greater distances are otherwise required herein, and shall be effectively screened from adjoining dwelling uses.
- C. **Non-conforming buildings or lots.** No non-conforming building or lot shall be used for recreational facility uses. No other existing building, lot or use shall be added to, enlarged, expanded in size or program or converted for purposes of conducting a nursing home or alternative care housing use unless application to do so has been made pursuant to this section and Planning Board approval has been given.
- D. **Lighting.** Illuminated signs and other lights shall be directed away and shielded from adjoining properties.
- E. No public address system is permitted except where such system will not be audible at any property line.

**100.50. Sawmills**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to sawmills.
- B. **Applicability.** Portable sawmills temporarily utilized for the processing of forestry products on a tract of land may be exempt from the special use requirements of this Law. Exempt portable sawmills may only be used on a tract of land to process forestry products that were taken from the same tract of land (i.e. forestry products cannot be processed that have been delivered to the site from other properties) and must obtain a building permit from the Code Enforcement Officer.
- C. **Buffer.** All elements of the sawmill, including storage area for logs and sawn lumber, bark, sawdust and other waste materials; and buildings and equipment areas shall be screened by existing landform and/or vegetation from the direct view of abutting residential properties and public roadways.

- D. **Setbacks.** The following setbacks are required in addition to those of the zoning district:
  - (1) Any and all mechanized sawing equipment not located within an enclosed structure shall be located a minimum of one hundred (100) feet from any contiguous lot of record.
  - (2) No storage area for logs, sawn lumber or waste materials shall be located within one hundred (100) feet of any watercourse

**100.51. School, Proprietary and Public or Private**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to proprietary and public or private schools, but such uses shall not be considered the same use and any one such use may be included or excluded from specific zoning districts.
- B. **Elementary and secondary school.** Elementary and/or secondary schools shall be regulated by the applicable provisions of 8 NYCRR and the Designated Approval Authority is the Commissioner of the NYSED.
- C. **Higher education school, public, parochial or private school.** A higher education school shall comply with any applicable provision of 8 NYCRR.
- D. **Sole Use.** Lot use shall be dedicated solely for the approved school use and approved accessory uses.

**100.52. Signs.**

- A. **Special Definitions.**

**SIGN** - Any device, facade, fixture, material, placard or structure that uses any color, form, graphic, picture, illumination, symbol or writing to advertise, announce, declare or identify a purpose or entity or to communicate information of any kind to the public outside of a building, including neon or fluorescent painted building outlines and similar devices.

**SURFACE AREA** - The size of any sign, computed by multiplying its greatest length by its greatest height, provided that the rear side of any sign surface area shall not be counted.

**SIGN HEIGHT** - The height of any sign shall always refer to the height of the topmost portion of the sign as measured above the surface of the ground, unless the foundation for such sign shall be positioned below the adjoining road grade, in

which case the height shall be measured from the road grade.

B. The following signs shall be permitted within any Town of Fremont zoning district:

- (1) One (1) non-illuminated name plate of up to six (6) square feet in sign surface area.
- (2) One (1) non-flashing announcement sign of up to thirty-two (32) square feet in sign surface area for churches, schools and other similar institutions.
- (3) Two (2) real estate or construction signs of up to six (6) square feet each in sign surface area.

C. Advertising signs shall be permitted subject to the following regulations:

(1) Numbers of advertising signs shall not be limited provided the combined sign surface area of all signs on any given lot does not exceed the following limitations:

RC River Conservation District	25 square feet
LC Lake Conservation Districts	25 square feet
RR Residential Recreation District	50 square feet
R Residential District	50 square feet
MC Mountain Conservation Districts	50 square feet
H Hamlet District	100 square feet

(2) The following regulations shall apply to all signs:

- (a) So as to limit the unnecessary proliferation of signs, they shall be permitted only in connection with a permitted use or for the purposes of specifically directing travelers to businesses or services.
- (b) All signs shall be immediately removed when the reasons for their erection no longer apply.
- (c) Signs shall not be permitted on the roof or above the roof line of the building to which they are attached.
- (d) No part of any sign shall project above the top or beyond the ends of the wall surface on which it is located.
- (e) Signs, other than official traffic signs, which exceed twenty-four (24) square feet in surface area shall be setback at least five (5) feet from the side lot line. Signs shall also comply with clear- sight triangle requirements herein.
- (f) No sign, except a public sign, visible from a public street, shall use the

words "stop," "danger," or any other word, phrase, symbol or character which could be interpreted by a motorist as being a public safety warning or traffic sign.

- (g) No light shall be permitted that by reason of intensity, color, location, movement or directions of its beam may interfere with public safety.
- (h) No sign shall be attached to any tree, utility pole or other object not intended for such use.
- (i) A portable sign shall be considered as any other sign and shall be subject to all regulations contained in this Law.
- (j) Temporary signs are allowed within all districts without the necessity of obtaining permits. Each sign shall be limited to twenty (20) square feet in surface area. Such signs shall not be hung or attached to fences, trees, utility poles, bridges, or traffic signs. Also, such signs shall be erected no sooner than forty-five (45) days before an event and shall be removed within seven (7) days after the event.

**D. Exceptions.**

- (1) The signs actually physically attached to the supporting wall of a business building shall not be counted in the number of signs permitted hereunder but shall be limited in total coverage for all signs to a maximum of 10% of any wall surface area. The Planning Board may grant waivers to this regulation in cases where the entire wall is devoted to a single sign otherwise meeting the review criteria contained herein.
- (2) Signs to provide for the normal and safe flow of traffic into and out of the place of business such as entrance, exit and parking signs shall be permitted in excess of the limitations provided herein (e.g. "Office Entrance This Way"). Such signs shall be of a size no greater than necessary for persons of normal vision to observe.
- (3) Signs of less than one square feet in sign area, posted in windows or attached to gasoline pumps and similar devices shall not be regulated.

**E. Permit Requirements.** All signs other than those excepted from regulation by subsection (E) above, shall be subject to these regulations. However, those of less than twenty-four (24) square feet in sign surface area shall be allowed without permits from the Town of Fremont. Those of twenty-four (24) square feet or more in sign surface shall require sign permits from the Town Code Enforcement Officer and those of more than thirty-two (32) square feet in sign surface area shall require site plan review by the Town of Fremont Planning Board.

**100.53. Telecommunication Facilities.**

- A. **General.** In addition to the general standards specified in this Law and as determined by the Planning Board during Special Use review, the following requirements shall apply to Telecommunication Facilities.
- B. **Purpose.** The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Town of Fremont; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations, to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, consideration of visual impact assessment and appropriate landscaping so as to minimize the impact upon the environment.

C. **Special Definitions.**

ANTENNA - A device of thirty-five (35) or more feet in height used to collect or transmit telecommunications or radio signals. Examples are: panels, microwave dishes, and single poles known as whips. This definition is not meant to include home television or amateur radio apparatus.

ARRAY - Telecommunications signal receiving or transmitting device attached to telecommunications tower and not extending the height thereof.

TELECOMMUNICATIONS FACILITIES - Consists of the equipment and structures involved in receiving or transmitting telecommunication or radio signals, but limited to those facilities with respect to which the State and Federal governments have not, under public utility laws, strictly pre-empted the Town of Fremont from regulating.

TELECOMMUNICATIONS EQUIPMENT BUILDING - The building in which the electronic receiving and relay equipment for telecommunication facilities is housed.

TELECOMMUNICATIONS TOWER - A structure of thirty-five (35) or more feet in height that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures includes monopoles and lattice construction steel structures.

D. **Application.**

- (1) No telecommunications facility, except those approved prior to the effective date of this section, shall be used unless in conformity with these regulations. No telecommunications facility shall hereafter be erected,

moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a telecommunications facility unless in conformity with these regulations.

- (2) Applicants proposing new telecommunications facilities, physical expansions of existing telecommunications facilities or the location of telecommunications facilities within or on other existing structures shall require a Special Use permits and Site Plan Review hereunder.
- (3) Applicants proposing to co-locate new telecommunications arrays on a previously approved telecommunications facilities without extending the height thereof or otherwise physically expanding the facilities except for additional equipment buildings within previously designated fenced-in areas shall not require a Special Use Permit or Site Plan Review but shall require Accessory Use permits.
- (4) All applications for Special Use permits to construct telecommunications facilities shall be accompanied by the following additional information where applicable:
  - (a) Documentation of intent from the owner of any existing facility to allow shared use of the same.
  - (b) A site plan depicting all existing and proposed structures and improvements including antennas, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modifications of the existing facility shall also be indicated on the site plan.
  - (c) A Professional Engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of any existing structure, and explaining what modifications, if any, will be required in order to so certify. A soils report prepared by such Professional Engineer shall also be submitted to support the design specifications of the foundation for any new tower, and anchors for the guy wires, if used.
  - (d) A completed Visual Environmental Assessment Form addendum. This addendum shall be accompanied by a visual impact assessment which shall include:
    - [1] A Zone of Visibility Map, which shall be provided in order to determine locations where the tower may be seen.
    - [2] Visual representations of "before and after" views from key viewpoints both inside and outside of the town, including but not limited to state highways and other major roads, state and local

parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the appropriate key sites at a pre-submission conference with the applicant.

- [3] Assessment of alternative tower designs and color schemes (see below).
  - [4] Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
  - [5] Review of those alternative sites determined to be feasible from an engineering perspective (see requirements below) to determine which would be in the best interest of preserving the aesthetic and natural character of the neighborhood.
- (e) A certified copy of the Federal Communications Commission (FCC) license to operate the telecommunications facility.
  - (f) If land is leased, documentation of intent from the owner to allow use and affirming intent to remove the tower if abandoned, obsolete or unused for more than twenty-four (24) months.
  - (g) A letter of intent committing the owner of any proposed new tower and successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. Failure to abide by the conditions outlined in the letter may be grounds for revocation of any Special Use Permit granted. The letter shall commit the new tower owner and his/her successors in interest to:
    - [1] Respond within 90 days to a request for information from a potential shared-use applicant.
    - [2] Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
    - [3] Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

- (h) Documentation that the proposed tower adequately addresses all aspects of aviation safety in view of known local aviation traffic as well as Federal Aviation Regulations (Code of Federal Regulations - Part 77).
  - (i) All property owners and adjacent municipalities within five-hundred (500) feet of the outside perimeter of the telecommunications facility, including guy wires, shall be notified by certified mail at least ten (10) days prior to the Planning Board granting Special Use approval for such a structure. This responsibility shall be the applicant's and such applicant shall provide proof of notification as part of their final application.
  - (j) A site location alternative analysis, including an analysis of the location priorities as set forth above, describing the locations of other sites considered, the availability of those sites, the extent to which other sites do or do not meet the provider's service or engineering needs and the reason why the subject site was chosen. The analysis shall address the following issues:
    - [1] How the proposed location of the wireless telecommunication tower or antennae relates to the objective of providing full wireless communication services within the Town of Fremont.
    - [2] How the proposed location of the wireless telecommunications tower/facility relates to the location of any existing antennas or towers within or near the Fremont area.
    - [3] How the proposed location of the wireless telecommunications tower/facility relates to the anticipated need for additional antennae or towers within and near the Town of Fremont by the applicant, and by other providers of wireless telecommunications services within the area.
    - [4] How the proposed location of the wireless telecommunications tower/facility relates to the Town's goal of maintaining concealed or reduced tower height with groups of towers within close proximity to one another rather than isolated, taller towers with many users at greater tower heights at random locations throughout the Town of Fremont.
- E. **Design and location standards.** The following design and location standards shall apply to all telecommunications facilities:
- (1) The location of the tower and equipment building shall comply with all natural resource protection standards of this Law.
  - (2) An evergreen screen consisting of a row of at least eight (8) feet high evergreen trees planted ten (10) feet on center maximum in staggered

formation, shall be located around the perimeter of the security fence. The Planning Board may, however, modify or waive screening requirements if the site is entirely or partially wooded so as to provide existing screening. Existing on-site vegetation shall be preserved to the maximum extent possible.

- (3) An eight (8) foot high security fence shall completely surround the tower (and guy wires if used) and equipment building.
- (4) The tower and antenna shall be designed and constructed to all applicable standards of the American National Standards Institute, TAI/EIA-222-F manual, as amended, and withstand wind gusts of up to 100 miles per hour.
- (5) An antenna may not be located on a building or structure that is listed on a historic register or within five-hundred (500) feet of such a structure.
- (6) Telecommunications facilities shall be permitted as a sole use on any lot in any district subject to Special Use procedures and the following:
  - (a) Minimum lot size. The standard minimum lot size applicable for a principal use for the district shall apply to Telecommunications Facilities provided such additional setback requirements as specified in the section shall be met.
  - (b) Minimum yard setback requirements. Two-hundred (200) feet.
  - (c) Maximum height. Tower - Two-hundred (200) feet and Equipment building - Thirty (30) feet.

Provided no residences directly adjoin the site minimum setback requirements may specifically be reduced to the fall-down limit plus fifteen (15) feet, where the net effect of requiring the full setback would be to necessitate additional lighting or tower height. Maximum height requirements may be exceeded, provided such height can be demonstrated to be absolutely necessary and the additional height is matched with an equal amount of additional setbacks on all sides.

- (7) A telecommunications facility shall be permitted on a property with an existing use subject to the following conditions:
  - (a) The telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance.
  - (b) Minimum lot area. The standard minimum lot size applicable for a principal use for the district shall apply to Telecommunications Facilities provided such additional setback requirements as specified in the section

shall be met and provided that an existing use can be accommodated.

- (c) Minimum setbacks. The minimum yards required above shall apply to the area proposed for use as a telecommunications facility and the land remaining for accommodation of the principal use on the lot shall comply with the standard minimum yard provisions of the district.
  - (d) Access. The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.
  - (e) Maximum height. Tower - Two-hundred (200) feet and Equipment building - Thirty (30) feet
- (8) Where an antenna for a telecommunications facility is to be attached to an existing structure or building it shall be subject to the following conditions:
- (a) Maximum height. Seventy-five (75) feet above the existing building or structure.
  - (b) If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with the minimum setback requirements for the subject zoning district, an eight (8) foot high security fence shall surround the building, a buffer yard shall be planted as required above and vehicular access to the building shall not interfere with the parking or vehicular circulations on the site for the principal use.
  - (c) Elevations of existing and proposed structures showing width, depth, and height, use statistical data on the antenna and support structure shall be presented.
  - (d) The antenna or array shall be camouflaged or otherwise designed to be aesthetically compatible with the existing architectural and natural environment.
- (9) Notwithstanding minimum setbacks provided for above, any tower shall be setback from all property lines a distance that is at least equal to the height of the tower.
- (10) Vehicular access shall be provided to the facility and be of such passable condition as to be safely accessible by emergency and maintenance vehicles and equipment. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the edge of cuts or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Parking shall be provided to assure

adequate emergency and service access in accordance with the Code.

- (11) No signs shall be permitted on either the tower or equipment building, except for those signs required by law or containing such information as owner contact information, warnings. These signs shall not exceed 2 square feet in total area. Absolutely no commercial advertising shall be permitted on any wireless telecommunications tower or equipment building.

F. **Plan Review Criteria.** Telecommunications Facilities shall be subject to all the ordinary review criteria applicable to Special Uses plus the following:

- (1) The Planning Board shall be satisfied that the tower for the telecommunications facility is the minimum height necessary for the service area and that the site chosen is the one that will afford the opportunity to construct the lowest height telecommunications tower possible, taking into consideration all lands available within a reasonable distance including those which may lie within adjoining municipalities.
- (2) The need for additional buffer yard treatment shall be evaluated. Proximity of the telecommunications facility to existing or platted residential properties shall be considered in applying such requirements. Existing trees on the site which serve to provide a natural buffer shall be preserved unless absolutely required to be removed for purposes of access or safety.
- (3) Visual assessment data shall be used to determine how the telecommunications facility will appear once constructed in relation to the surrounding natural environment and from the perspective of adjacent or nearby residents as well as travelers. Camouflaging or relocation of the structure may be required. The Planning Board shall also consider alternative sites in assessing visual impacts and the imposing of conditions as may be required to minimize such impacts including requirements that any tower be of a shape, contour and finish (either painted or unpainted) that minimizes its visual impact. The Planning Board may also require a tower to be in the shape of a tree, flagpole, church steeple or other similar tall structures. Accessory structures shall similarly maximize the use of building materials, colors and textures designed to blend with natural surroundings.
- (4) Free-standing pole-type telecommunications structures shall be given preference over towers supported by guy wires.
- (5) All telecommunications structures shall be lighted for safety in a manner consistent with industry best practices and where lighted additional setbacks may be imposed to shield adjacent properties from the effects of such lighting.

- (6) Should any tower cease to be used as a telecommunications facility, the owner or operator or then owner of the land on which the tower is located, shall be required to remove the same within one (1) year from the abandonment of use. Failure to do so shall authorize the Town of Fremont to remove the facility and charge back the cost of removal to the foregoing parties. The Town of Fremont may also file a municipal lien against the land to recover the costs of removal and attorney's fees. Depending upon the nature of the facility and the potential cost of removal, the Planning Board may require a performance bond or other suitable guarantee to ensure removal.
- (7) Shared use of existing structures (for example, municipal water towers, multistory buildings, church steeples and farm silos) and existing or approved towers shall be given preference over construction of new towers. Where shared use of all existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection (11) above. Any proposals for a new telecommunications tower on an existing site shall also be subject to Special Use permit procedures.
- (8) An applicant for approval of a telecommunications facility shall include with the application evidence of written contact with all wireless service providers who supply service within the Town for the purpose of assessing the feasibility of co-located facilities and co-location shall be mandatory wherever physically feasible. Should co-location not be feasible, the applicant shall demonstrate that a good faith effort has been made to mount the antenna on an existing building or structure, including of proof of contacts, building investigations and similar evidence. Should such efforts fail to result in a suitable site, a new telecommunications tower may be permitted, but shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities, including provision of the necessary tower height to accommodate such other users without adding additional height in the future. Where co-location is proposed, the different companies using the facility shall also work from common maintenance and service buildings, if the same are located on the site.
- (9) Locations outside of the H-1 Hamlet and RC River Conservation Districts shall be given preference over sites within said Districts. Applicants proposing to locate new towers within such Districts shall be required to

clearly and unambiguously demonstrate that sites within these Districts are the only feasible locations to achieve the objectives of this Law.

**100.54. Unsafe Buildings, Structures and Dams**

A. **Purpose.** Unsafe buildings, structures and dams pose a threat to life and property in the Town of Fremont. Buildings, structures and dams may become unsafe by reason of damage by fire, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows also serve as an attractive nuisance for young children who may be injured therein, as well as point of congregation by vagrants and transients. A dilapidated building may also serve as a place of rodent or other pest infestation thereby creating a health menace to the community. A dam that is not properly maintained may cause a serious risk to life and property. Debris, rubble or parts of buildings left on the ground and not removed constitute dangerous, unhealthy and unsightly conditions. It is the purpose of this local law to provide for the safety, health protection and general welfare of persons and property in the Town of Fremont by requiring such unsafe buildings be repaired or demolished and removed, or dams to be repaired.

B. **Special Definitions.**

UNSAFE BUILDING OR STRUCTURE – means any building, structure or dam, or portion thereof which:

- (1) Has interior walls or other vertical structure members which list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle 1/3 of its base;
- (2) Exclusive of the foundation, shows thirty-three percent (33%) or more damage to or deterioration of the supporting member or members or fifty percent (50%) damage to or deterioration of the non-supporting enclosing outside walls or covering;
- (3) Has improperly distributed loads upon the floors or roofs or in which the same are overloaded or have insufficient strength to be reasonably safe for the purpose used;
- (4) Has been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the people of the Town of Fremont;
- (5) Has become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation or are likely to cause sickness or disease, so as to cause injury to the health, morals, safety or general welfare of those living

therein;

- (6) Has light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein;
- (7) Has inadequate facilities for egress in case of fire or panic or insufficient stairways, elevators, fire escapes or other means of communication;
- (8) Has parts thereof which are so attached that they may all and injure members of the public or property;
- (9) Because of its condition, is unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of the Town of Fremont;
- (10) Is open at the doorways or windows or walls, making it accessible to and an object of attraction to minors under 18 years of age, as well as vagrants and other trespassers;
- (11) Is or may become a place of rodent infestation;
- (12) Consists of debris, rubble or parts of buildings left on the ground after demolition, reconstruction, fire or other casualty; and
- (13) Presents any other danger to the public health, safety or general welfare.

**C. Maintenance of buildings, structures, dams, prohibitions.**

- (1) It shall be unlawful for any owner, tenant or occupant of any building, structure or dam, or portion of any building, structure or dam in the Town to keep such building, structure or dam, or portion of such building, structure or dam in any condition or manner which shall be unsafe as defined in the above Section.
- (2) Any owner, occupant or person in custody of real property located within the Town who allows or permits a building or dam to continue as a dangerous building or dam after due notice as provided in this Section shall be guilty of a violation of this Law and shall be punished as provided in the Section below.

**D. Investigation and Report.** When it is the opinion of the Code Enforcement Officer or upon receipt of information that a building or dam (1) is or may become dangerous or unsafe to the general public, (2) is open at the doorway or windows making it accessible to and an object of attraction to minors under eighteen years of age, as well as to vagrants and other trespassers, (3) is or may become a place of rodent or other pest infestation, (4) presents any other danger to the health, safety, morals and general welfare of the public, or (5) is unfit for the purposes for which it

may lawfully be used, the Code Enforcement Officer shall cause or make an inspection thereof and report in writing to the Town Board his findings and recommendations in regard to its repair or demolition and removal.

- E. **Town Board Order.** The Town Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building or dam is unsafe and dangerous and order its repair if the same can be safely repaired or its demolition and removal, and further order that a notice be served upon the persons and in the manner provided herein.
- F. **Trespass Prohibited.** In addition to serving the notices as provided in this Section, the Town Board may, if it determines that the purpose of this law will be further effectuated, order that no person other than the owner or his agent shall enter upon the property and shall post on such property signs, indicating no trespassing. When such a determination is made, notice of such fact shall be included in the notice referred to in the section above. Anyone found trespassing in violation of this section shall be liable for a fine not to exceed \$100 for each offense.
- G. **Contents of Notice.** The notice shall contain the following:
- (1) The name of the owner or person in possession as appears from the tax and deed records;
  - (2) A description of the premises and its location;
  - (3) A statement of the particulars in which the building or dam is unsafe and dangerous;
  - (4) An order outlining the manner in which the building or dam is to be made safe and secure, or demolished and removed;
  - (5) A statement that the repair or removal of such building or dam shall commence within a specified number of days of the service of the notice and shall be completed within a specified number of days;
  - (6) A date, time and place for a hearing before the Town Board in relation to such dangerous and unsafe building or dam, at which hearing the owner or occupant shall have the right to contest the order and findings of the Town Board;
  - (7) A statement that in the event of neglect or refusal to contest said order and to comply with the same, the Town Board is authorized to provide for its repair or demolition and removal, to assess all expenses thereof against the land on which it is located in the same manner as the levy of a real property tax;
  - (8) That in any case where a building or dam which is required to be made safe

and secure under this section is made safe by the boarding up thereof, the material for such boarding shall be painted, as near as practicable, the same color as the building;

- (9) The failure to commence the necessary repairs, improvements or demolition within the time specified in the notice will constitute a violation of the law subjecting the violators to a fine not to exceed \$250 for each week of such violation.

H. **Service of Notice.** The said notice shall be served:

- (1) By personal service of a copy thereof upon the owner, executor, administrator, agent, lessee, or any person having a vested or contingent interest in such unsafe building or dam as shown by the records of the tax collector or the county clerk, or if no such person can be reasonably found by mailing such owner by registered mail a copy of such notice directed to his last known address as shown by the above records;
- (2) By personal service of a copy of such notice upon any adult person residing in or occupying said premises if such person can be reasonably found; and
- (3) By securely affixing a copy of such notice upon the unsafe building or dam.

I. **Filing.** A copy of the notice served as provided shall be filed in the office of the Town Clerk.

J. **Refusal to Comply.** In the event of the refusal or neglect of the person so notified to comply with said order of the Town Board and after the hearing, the Town Board shall provide for the demolition and removal of such building or structure either by Town employees or by contract. Except in emergency as provided in this Section, any contract for demolition and removal of a building, or repair or restoration of a dam, in excess of \$5,000 shall be awarded through competitive bidding.

K. **Assessment of Expenses.** All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building or dam, including the cost of actually removing such building or repairing such dam, shall be assessed against the land on which the building is located and shall be levied and collected in the same manner provided for the levy and collection of real property taxes.

L. **Emergency Cases.** Where it is reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building or dam is immediately repaired and secured or demolished, the Town Board may by resolution authorize the Code Enforcement Officer to immediately cause the repair or demolition of such unsafe building or repair of such dam. The

expenses of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in the above section. If the building becomes a clear and imminent danger because of fire or a natural disaster (force majeure) then the appropriate fire chief or his deputy, in the case of fire, or the Code Enforcement Office or his deputy, may immediately cause the repair or demolition and removal of such unsafe building or repair of such dam without a resolution of the Town Board.

- M. **Application for Court Order.** The Town Board, in its discretion, may elect to apply to the Supreme Court of the State of New York for an order directing that the building or dam be repaired and secured or demolished and removed.
- N. **Special Proceeding for Costs.** The Town Board may commence a special proceeding to Section 78-b of the general Municipal law to collect the costs of demolition or repair, including reasonable and necessary legal expenses.

## **ARTICLE VI – NONCONFORMING STRUCTURES, USES AND LOTS**

- A. **Purpose.** It is the purpose of this Article to limit the injurious impact of non-conforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of non-conforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration. It is further the purpose of this Article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a non-conforming use and to establish when Town review and approval shall be required for such actions
- B. **General.** A use, building, lot or structure lawfully in existence as of the effective date this law and non-conforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Code Enforcement Officer may issue Certificates of Non-Conformance to owners or operators of bona fide non-conforming uses, buildings or structures who desire confirmation of their rights hereunder. The protections extended by this Article to existing non-conforming uses, buildings, lots or structures, commonly known as "grandfathering," shall not extend to any non-conforming activity occurring subsequent to the effective date of this law, as amended.
- C. **Certificate of non-conformance.** Upon request, the Code Enforcement Officer may issue Certificates of Non-Conformance to owners or operators of bona fide non-conforming lots, uses, buildings or structures who desire confirmation of their rights hereunder.
- D. **Illegal lots, structures and uses.** Lots, uses and structures that were illegally established prior to the adoption of this Law, as amended, shall remain illegal.

### **100.55. Non-conforming Structures and Uses**

- A. A nonconforming structure or use may continue to exist provided that it remains otherwise lawful, subject to the following conditions:
- (1) Any nonconforming structure or use shall not be enlarged or altered in a manner that increases its nonconformity, but any structure or use or portion thereof may be altered to decrease its nonconformity.
  - (2) Any nonconforming structure or use which is altered to conform to an applicable provision of this Law shall thereafter be required to conform to such provision and the nonconformity may not be renewed.

- (3) If a nonconforming structure or use is moved for any reason, regardless of distance, it shall thereafter conform to the applicable provisions of this Law.

**B. Normal maintenance and repair.**

- (1) Normal maintenance and repair activities, such as painting, replacing a roof or fixing gutters, shall be permitted. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas or result in extended or increased non-conforming use of a building, lot or structure.
- (2) Increases in outside storage or display of retail or wholesale inventory, which in the ordinary course of business would be sold within one year, shall be permitted, junkyards excepted, provided they do not eliminate parking spaces, unoccupied open spaces or accesses required by this law. Notwithstanding this provision, however, the Planning Board, in reviewing any Special Use application for expansion or upon determining, with respect to any present use, that a condition exists which requires remedies, may establish limits on such storage or display or require removal of inventory (altogether or to another location on the site) to preserve adequate sight distances and residential buffers or otherwise protect public health, safety and welfare.

**C. Restoration, Reconstruction or Re-establishment.**

- (1) If less than 75% of the floor area of any non-conforming use, building or structure is damaged, it may be restored or reconstructed within eighteen (18) months of the date of the damage, with an extension in time allowable where proven necessary to the Planning Board. If more than 75% is affected, then the replacement or reconstruction shall be permitted by Special Use permit.
- (2) A non-conforming use, building or structure may be re-established within a period of twelve (12) months after it has been discontinued or vacated, with an extension in time allowable where proven necessary to the Planning Board.
- (3) Any non-conforming use of a structure and/or a lot which has been abandoned for a continuous period of at least two (2) years shall not be used again except by a conforming use. A non-conforming use, building or structure shall be considered abandoned under the following circumstances:
  - (a) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or

- assessments or other measures which demonstrate the enterprise is going out of business or the use is otherwise ending; or
- (b) The building has not been occupied for twelve (12) months or more; or
  - (c) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town; or
  - (d) The equipment and furnishings used in furtherance of the non-conforming use have been removed from the premises.
- D. The Code Enforcement Officer, on determining these circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use is considered abandoned and may not be re-established once a period of twelve (12) additional months has expired. If an owner cannot be reached through the mail, the Code Enforcement Officer shall publish the notice once in a newspaper of general circulation in the Town and/or post the property and the owner shall be presumed to have been notified.
- E. **Changes and Additions.** Excepting for activities provided for in § 100.55.B and § 100.55.C, all changes and additions to non-conforming uses shall be considered Special Uses, and permits for alterations, changes in use or additions shall be granted only after a determination by the Planning Board that the following conditions have been, or will be, satisfied.
- (1) There shall be no expansion in the amount of land area outside a non-conforming facility which is used for storage of materials, supplies and/or products, excepting with respect to those types of uses outlined in § 100.55.B(2) above and § 100.55.E(2) below.
  - (2) Where the non-conforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
  - (3) No addition, change or expansion of a non-conforming use shall further violate setback and/or height regulations of the district in which it is located in any material way. Moreover, no change of use shall be to one of less restrictive classification, as determined by the Planning Board. A non-conforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.
  - (4) There shall be no increase in the amount of storm water runoff for the site over what was existing as of the date of the enactment of this law. The

U.S.D.A. Soil Conservation Service, a Professional Engineer or other appropriate professional may be relied upon to recommend appropriate measures to control storm water runoff. Such measures shall be attached as conditions of approval by the Planning Board.

- (5) In no case will a change, addition or extension of a non-conforming use be allowed which would result in a traffic increase of 50% or more, the diversion of traffic closer to a nearby residence or a violation of any of the parking and unloading requirements of this law. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this law, the Planning Board may require vegetative screening of the parking area from nearby residential areas.
- (6) The use may only be expanded or extended onto another property of record if; that property is immediately adjacent to the lot on which the original structure or use was located as of the effective date of this law or amendments hereto and the use is not one which has been altogether prohibited as a new use under this law.
- (7) Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this law, the requested expansion or extension shall be denied.

**100.56. Non-conforming Lots.**

- A. Non-conforming Lots. Notwithstanding other limitations and standards contained herein, a structure may be erected on any existing non-conforming lot of record, providing:
  - (1) The owner does not own adjoining property;
  - (2) No yard on any lot of less than one-acre in lot area is reduced to less than fifty (50) percent of the requirement for the district in which it is located; and
  - (3) A sewage disposal system meeting New York State standards can be placed on the lot should public facilities be unavailable.

As an example, an owner of an existing lot of record of 200 feet by 200 feet in size may build a single-family house on that lot provided the owner possesses no adjoining property that could be used to enlarge the lot, the front and side yards are at least 12.5 feet in width, the rear yard is at least 25 feet in width and an on-lot

sewage disposal system can be installed.

- B. **Further subdivision prohibited.** A nonconforming lot of record shall not be further subdivided, regardless of its total acreage, but to the extent that the nonconformity remains unchanged or is reduced, its lot lines may be changed via a lot line adjustment or lot consolidation/merger pursuant to the Town of Fremont Subdivision Law.

**100.57. Unapproved Lots and Subdivisions.**

No permit or certificate of occupancy shall be issued for any use or structure on any lot which has been filed in the Office of the County Clerk after the effective date of the Town of Fremont Subdivision Regulations, unless such lot is included in a plat which has been approved by the Planning Board and filed with the Office of the County Clerk, or was exempt from said regulations at the time of filing

**ARTICLE VII – ADMINISTRATION AND ENFORCEMENT****100.58. Code Enforcement Officer.**

The Town Board shall provide for the services of a Code Enforcement Officer to enforce the provisions of this Law. Such Code Enforcement Officer shall examine all applications for permits, issue permits and/or certificates of occupancy for construction and uses which are in accordance with the requirements of this Law, record and file all applications for permits with accompanying plans and documents and make such reports as may be required. Permits requiring site plan review and Special Use approval, however, shall only be issued with approval of the Town of Fremont Planning Board. Likewise, permits requiring variances of this Law shall only be issued with approval of the Town of Fremont Zoning Board of Appeals.

**100.59. Permit Requirements.**

- A. No person shall construct, erect, alter, convert or use any building or structure, or part thereof, nor change the use of any land, subsequent to the adoption of this Law, until a building permit and/or Certificate of Occupancy has been issued by the Code Enforcement Officer. Applications for such permits shall be made to the Code Enforcement Officer prior to any construction activity and/or change in the use of land. The Officer shall review such applications and act upon them according to the requirements of this Law, taking no action, however, until the Planning Board and/or Zoning Board of Appeals has first taken action, should the approval of either Board be required. A building permit shall authorize the applicant to proceed with construction proposed.
- B. Prior to use of the structure or the change in use of the land, a Certificate of Occupancy shall be required and shall be issued by the Officer, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this Law. The Code Enforcement Officer shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this Law.
- C. The Town Board may permit, on a temporary basis and subject to such conditions and financial guarantees as it deems appropriate, any use which it determines will serve the public health, safety and welfare of the Town. Upon notice from the Town Board or the cessation of the activity or need which the use is intended to serve, any improvements shall be removed and the land restored to its original condition within thirty (30) days. The Town Board shall take such measures as are appropriate to ensure compliance with these conditions and upon notice to cease any temporary use, such use shall be immediately discontinued. Filing of a new application hereunder shall afford no rights to continue such use and the privilege of a temporary use shall at all times and under all circumstances be solely at the discretion of the

Town of Fremont Town Board and be granted only for good cause for such limited time as may be necessary to accomplish the intended public purpose.

- D. The Code Enforcement Officer shall ensure that all water supply and sewage disposal facilities proposed in connection with any building permit or Certificate of Occupancy application shall conform with New York State Department of Health guidelines.
- E. It shall be the duty of the Code Enforcement Officer to issue a building permit, provided that he is satisfied that the structure, building, sign and the proposed use conform with all requirements of this Law, and that all other reviews and actions, if any, called for in this Law have been complied with and all necessary approvals secured therefor.
- F. When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this Law, he shall refuse to issue a building permit or Certificate of Occupancy, as the case may be, and the applicant may appeal to the Zoning Board of Appeals.
- G. A building permit or Certificate of Occupancy may be revoked by the Code Enforcement Officer upon a finding that information provided in the application was inaccurate or invalid or that the construction or use has proceeded in a manner not consistent with the permit(s) granted.
- H. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this Law. Any person desiring to change the use of his premises shall apply to the Code Enforcement Officer for a Certificate of Occupancy. No owner, tenant or other person shall use or occupy any building or structure thereafter erected or altered, the use of which shall be changed after the passage of this Law, without first procuring a Certificate of Occupancy; provided, however, that a Certificate of Occupancy, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenants or occupants.
- I. Though compliance with the development and use standards of this Law will still be required, the following activities shall not demand permits, except as may be required by the New York State Uniform Fire Prevention and Building Code:
  - (1) Above-ground swimming pools of two (2) feet or less in depth.
  - (2) Portable structures of less than one-hundred (100) square feet in size which are unoccupied and intended for storage.
  - (3) Signs exempted from permit requirements by present or future regulations.
  - (4) Patios, fences and landscape improvements.

- (5) All non-structural accessory uses.
- J. All applications shall be made on forms as shall be developed and periodically updated by the Code Enforcement Officer. Applications shall include plot plans and such other information as is required to determine compliance with the requirements of this Law. This shall include percolation test data, copies of the land survey and required driveway permits.
- K. A zoning permit shall expire after eighteen (18) months if the applicant fails to complete the improvements as approved. An extension may be approved by the Code Enforcement Officer for good cause provided that any extension of more than twelve (12) months or subsequent extension of any length shall require approval of the Town Board.

**100.60. State Environmental Quality Review Act Compliance.**

All actions taken with respect to this Law shall comply with the New York State Environmental Quality Review Act ("SEQRA") and applicants shall be responsible for providing such data as may be required to determine the significance of any environmental impacts associated with such actions.

**100.61. Violations and Penalties.**

- A. **Violations are unlawful.** It shall be unlawful for any land, structure and/or use to be in violation of this Law, or fail in any manner to comply with any notice, directive or order of the Code Enforcement Officer.
- B. **Public Nuisance.** Any condition caused or permitted to exist in violation of any of this Law shall be deemed a public nuisance and shall be abated as such by the owner pursuant to law.
- C. **Notice of Violation.** A notice of violation shall be in accordance with all of the following:
  - (1) Be in writing;
  - (2) Include a description of the real estate sufficient for identification;
  - (3) Include a statement of the violation or violations and why the notice is being issued;
  - (4) Include a correction order allowing a reasonable time to take necessary actions to comply with the Law;
  - (5) Inform the owner of the right to appeal; and
  - (6) Include a statement of any applicable penalties and the right of the Town to

file a lien in accordance with this Law.

- D. **Method of Service.** A notice of violation shall be deemed to be properly served if a copy thereof is:
- (1) Delivered to the owner personally;
  - (2) Sent by certified mail addressed to the owner at the last known address with return receipt requested; or
  - (3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.
- E. **Complaint.** Whenever a violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. The Town Board shall be responsible for directing further enforcement.
- F. **Stop Work.** Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this Law, the Town Board or the Code Enforcement Officer, in addition to other remedies, may institute an appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- G. **Voluntary Compliance Agreement.** The Code Enforcement Officer has the authority to enter into a written voluntary compliance agreement with the owner in order to gain voluntary compliance in correcting a confirmed violation. The agreement shall include time limits for compliance and shall be binding on the owner. The Code Enforcement Officer shall abate further processing of a violation during the time allowed in the voluntary compliance agreement for the completion of the necessary corrective action. The failure to comply with any term of the voluntary compliance agreement constitutes a separate violation and shall be handled in accordance with the procedures established by this Law, except no further notice after the voluntary compliance agreement has been signed need be given before the Code Enforcement Officer may also proceed on the alleged violation that gave rise to the voluntary compliance agreement.
- H. **Abatement of Unlawful Acts.** An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin,

correct, or abate any violation of, or to enforce, any provision of this Law, or any term or condition of any Notice of Violation order or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Law. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board.

I. **Prosecution of a Violation.** If the Notice of Violation is not complied with within the period of time prescribed within such notice, the Code Enforcement Officer is authorized to request the Town Board to authorize the Town Attorney to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful structure and/or use in violation of the provisions of this Law or of the order or direction made pursuant thereto.

J. **Penalties and restoration.**

- (1) **Civil Penalty.** Unless otherwise stated in this Law, any person who undertakes any action regulated by this Law, or who violates, disobeys or disregards any provision of this Law, shall be liable to the Town for civil penalty not to exceed two hundred fifty dollars (\$250) for every such violation that is a first offense; not to exceed seven hundred dollars (\$700) for each offense that is a second offense; and not to exceed one-thousand dollars (\$1,000) for each offense that is a third or subsequent offense. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. All reoccurring offenses related to a specific property or use shall be considered repeat offenses. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- (2) **Criminal penalty.** Unless otherwise stated in the Law, any violation of any part of this Law shall constitute a "Violation" as defined in the Penal Law of NYS, and shall be punishable by a fine not to exceed two hundred fifty dollars (\$250), or fifteen (15) days' imprisonment, or both such fine and/or imprisonment. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. The criminal penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- (3) **Restoration.** A court of competent jurisdiction may order or direct a violator to restore the affected land, sign and/or structure to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time

for the completion of such restoration, which shall be effected under the supervision of the Code Enforcement Officer or his/her designate.

**100.62. Fees.**

The Town Board shall, by resolution, establish and periodically update a schedule of uniform fees, charges and expenses associated with the administration and enforcement of this Law. Such schedule may provide for the assessment to applicants of professional costs incurred in the processing and/or review of the applications made pursuant to this Law. Also, prior to the certification of any improvements or release of any guarantee provided in connection with a Special Use, the subdivider shall pay all inspection and related costs (for professional services, meetings, advertisements and expenses) associated with the improvements or guarantees. These costs will be assessed as a special fee apart from the regular fees provided for in this Law. Said payment shall be made to the Town of Fremont.

**ARTICLE VIII – ZONING BOARD OF APPEALS**

**100.63. Establishment and Membership.**

- A. There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of five (5) members, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.
- B. The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law and may appoint alternate members of the Zoning Board of Appeals to serve for terms of one (1) year each or until their successors are appointed. Such alternate members shall attend meetings and act in the capacity of full members whenever regular members cannot attend or must recuse themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

**100.64. Powers and Duties.**

- A. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official(s) charged with the enforcement of this law and to that end shall have all powers of the administrative official(s) from whose order, requirement, decision, interpretation or determination the appeal is taken.
- B. Use variances.
  - (1) The Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
  - (2) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restrictions of this law have caused unnecessary hardship. In order to prove such unnecessary hardship the applicable shall demonstrate to the Board of Appeals that:
    - (a) under this zoning law 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.
- (3) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Area variances.

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

health, safety and welfare of the community.

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

**100.65. Procedures.**

- A. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.
- B. Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record. Every decision of the Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.
- D. The Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.
- E. Except as otherwise provided herein, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative officials charged with the enforcement of this law. The concurring vote of three (3) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- F. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officials charged with the enforcement of this law by filing with such administrative official

and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

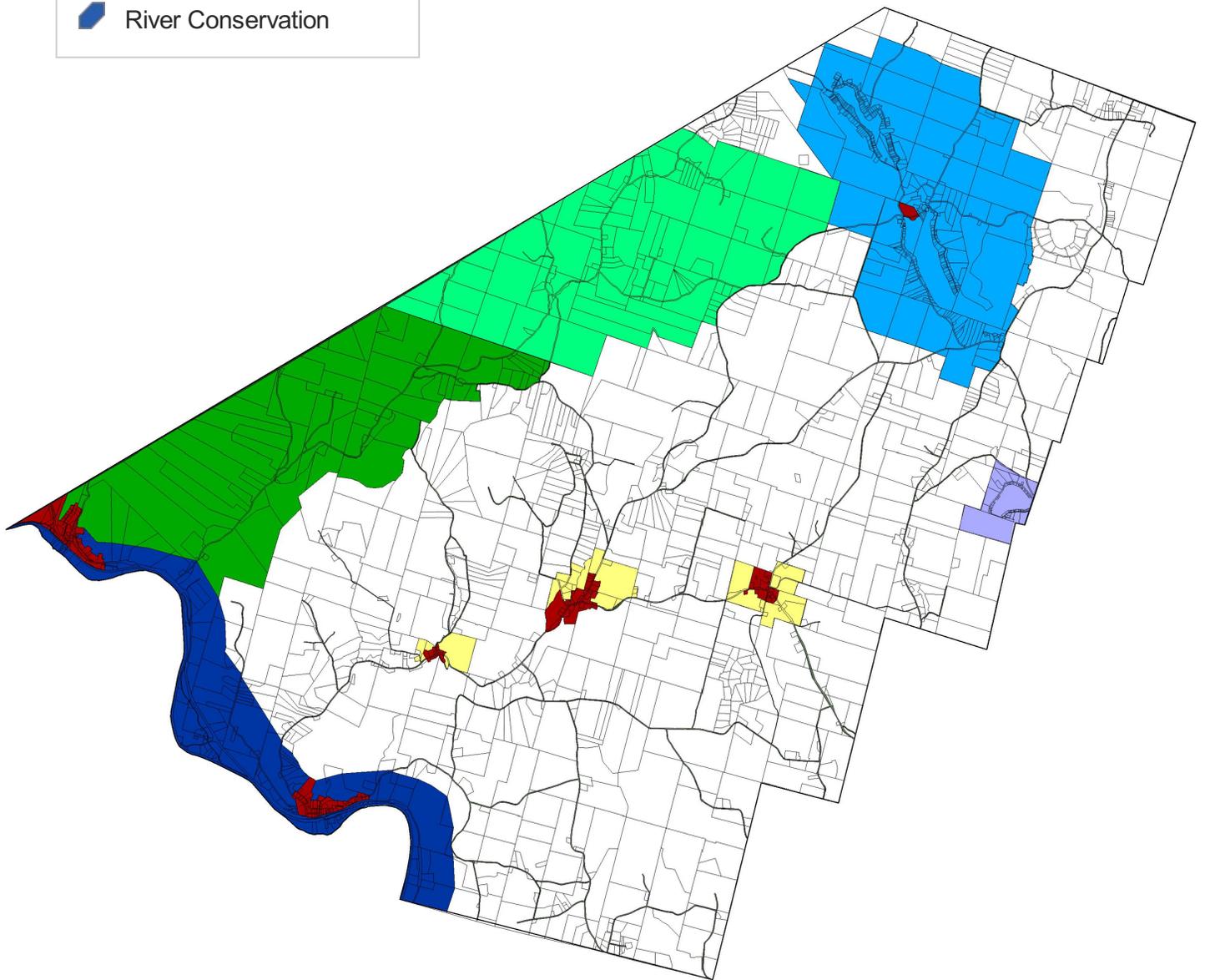
- G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- H. The Board of Appeals shall fix a reasonable time, no more than sixty-two (62) days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.
- I. The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
- J. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- K. The Board of Appeals shall, at least five (5) days before such hearing, mail notices thereof to:
  - (1) the affected parties;
  - (2) to the regional state park commission having jurisdiction over any state park or parkway within five- hundred (500) feet of the property affected by such appeal; and
  - (3) the Sullivan County Division of Planning and Community Development, as required by Section 239- m of the General Municipal Law.

- L. No Board of Appeals decision shall be made except in conformance with such 239-m procedures. This shall include the requirement for an affirmative vote of no less than four (4) members of the Board, if the Board of Appeals shall determine to approve an application which the County has recommended it disapprove or modify.

### Appendix 1 - Zoning District Map

**Legend**

- Hamlet
- Lake Conservation 1
- Lake Conservation 2
- Mountain Conservation 1
- Mountain Conservation 2
- Residential
- Residential Recreation
- River Conservation



### Appendix 2 - Schedule of District Regulations

#### RESIDENTIAL RECREATION DISTRICT (RR)

INTENT: This district is intended to provide areas for growth/development of the Town at a modest density. The district provides for certain uses which, though low in intensity, can demand larger land areas, and uses that are high in intensity that can be properly buffered. It also ensures that all such uses are subjected to site plan review with the objective of carefully limiting traffic and associated impacts and maintaining the residential and recreation character of the area.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES
Single Family Dwelling (Note 1) Two-Family Dwelling (Note 2) Agricultural Activities Animal Husbandry Cabins, Hunting and Fishing Forestry Activities Stream Improvement Structures	Agricultural Structures Camping, Residential Customary Residential Accesory Uses Decks, Patios and Porches Energy Generating System, Solar Small Scale Home Occupations Shoreline Improvements Shoreline Structures Signs	Adult Oriented Business Bed & Breakfast Camp, Campground Camp, Summer Camp Cemeteries Commercial, Heavy Commercial, Light Conference Center and Retreat Dormitory Energy Generating System, Solar Large Scale Energy Generating System, Wind Large Scale Energy Generating System, Wind Small Scale Essential Services Funeral Establishment Game Preserves Hospital Hotels and Motels Hunting and Sportsman's Clubs Industrial or Manufacturing, Heavy Industrial or Manufacturing, Light Junkyard Kennel Manufactured Home Park Mass Gatherings Multi-family Dwellings Nursing Homes and Adult Homes Professional Office, Health and General Public Uses Quarrying Recreational Facilities, Indoor Recreational Facilities, Outdoor Sawmill School, Day Care School, Proprietary School, Public or Private Telecommunication Facilities Worship, Place of

#### DEVELOPMENT STANDARDS

	(A) On-site Sewage & Water	(B) Central Water Only	(C) Central Sewage Only	(D) Central Sewage & Water
<b>Minimums:</b>				
Lot Area:	Table 1	Table 1	Table 1	30,000 sf
Lot Width:	150 ft	150 ft	150 ft	125 ft
Lot Depth:	150 ft	150 ft	150 ft	125 ft
Front Yard:	60 ft	60 ft	60 ft	50 ft
Side Yard:	25 ft	25 ft	25 ft	25 ft
Sides Combined:	60 ft	60 ft	60 ft	50 ft
Rear Yard:	50 ft	50 ft	50 ft	40 ft
<b>Maximums:</b>				
Lot Coverage:	15%	15%	15%	25%
Building Height:	40 ft	40 ft	40 ft	40 ft

Slope	Min. Lot Area (Note 4)
0-8%	40,000 sf
8-15%	80,000 sf
15-25%	120,000 sf
25% +	200,000 sf

#### NOTES

- (1) Single-family dwellings include mobile homes
- (2) Two-family dwellings require twice the minimum lot size.
- (3) Farm structures include roadside stands
- (4) Minimum lot area increased by 40,000 sq. feet if seasonal high water table or bedrock is 4 feet or less in depth or by 80,000 sq. feet if these are found at less than 2 feet. Additional lot size requirements may apply to non-residential or special uses.

## Appendix 2 - Schedule of District Regulations

RESIDENTIAL DISTRICT (R)				
<p>INTENT: This district is intended to encompass and protect existing single-family residential areas and provide affordable housing locations in these areas of the Town.</p>				
PRINCIPAL PERMITTED USES	ACCESSORY USES			SPECIAL USES
Single Family Dwelling (Note 1) Two-Family Dwelling (Note 2) Agricultural Activities Animal Husbandry Cabins, Hunting & Fishing Forestry Activities Stream Improvement Structures	Agricultural Structures Camping, Residential Customary Residential Accessory Uses Decks, Patios and Porches Energy Generating System, Solar Small Scale Home Occupations Shoreline Improvements Shoreline Structures Signs			Bed & Breakfast Essential Services Professional Office, Health and General School, Day Care Worship, Place of
DEVELOPMENT STANDARDS				
	(A) On-site Sewage & Water	(B) Central Water Only	(C) Central Sewage Only	(D) Central Sewage & Water
<b>Minimums:</b>				
Lot Area:	40,000 sf	40,000 sf	40,000 sf	30,000 sf
Lot Width:	150 ft	150 ft	150 ft	125 ft
Lot Depth:	150 ft	150 ft	150 ft	125 ft
Front Yard:	60 ft	60 ft	60 ft	50 ft
Side Yard:	25 ft	25 ft	25 ft	25 ft
Sides				
Combined:	60 ft	60 ft	60 ft	50 ft
Rear Yard:	50 ft	50 ft	50 ft	40 ft
<b>Maximums:</b>				
Lot Coverage:	25%	25%	25%	25%
Building Height:	40 ft	40 ft	40 ft	40 ft
NOTES				
(1) Single-family dwellings include mobile homes (2) Two-family dwellings require twice the minimum lot size. (3) Farm structures includes roadside stands				

## Appendix 2 - Schedule of District Regulations

HAMLET DISTRICT (H)				
<p>INTENT: This district is intended to provide for light commercial and moderate density residential neighborhoods which, with review and conditions, can accommodate some growth and redevelopment. Such site plan conditions will be imposed to ensure residences are protected.</p>				
PRINCIPAL PERMITTED USES	ACCESSORY USES (Note 4)			SPECIAL USES
Single Family Dwelling (Note 1 & 4) Two-Family Dwelling (Note 2 & 4) Agricultural Activities Animal Husbandry Forestry Activities Stream Improvement Structures (Note 4)	Agricultural Structures Camping, Residential Customary Residential Accesory Uses Decks, Patios and Porches Energy Generating System, Solar Small Scale Home Occupations Off Street Parking Facilities Shoreline Improvements Shoreline Structures Signs			Bed & Breakfast (Note 4) Commercial, Light (Note 4) Essential Services (Note 4) Hotels and Motels (Note 4) Multi-family Dwellings Professional Office, Health and General (Note 4) Recreational Facilities, Indoor (Note 4) Recreational Facilities, Outdoor Telecommunication Facilities Worship, Place of (Note 4)
DEVELOPMENT STANDARDS				
	(A) On-site Sewage & Water	(B) Central Water Only	(C) Central Sewage Only	(D) Central Sewage & Water
<b>Minimums:</b>				
Lot Area:	30,000 sf	30,000 sf	20,000 sf	12,000 sf
Lot Width:	125 ft	125 ft	100 ft	100 ft
Lot Depth:	125 ft	125 ft	100 ft	100 ft
Front Yard:	50 ft	50 ft	40 ft	40 ft
Side Yard:	25 ft	25 ft	20 ft	20 ft
Sides Combined:	50 ft	50 ft	50 ft	50 ft
Rear Yard:	40 ft	40 ft	20 ft	20 ft
<b>Maximums:</b>				
Lot Coverage:	15%	15%	25%	25%
Building Height:	40 ft	40 ft	40 ft	40 ft
NOTES				
(1) Single-family dwellings include mobile homes (2) Two-family dwellings require twice the minimum lot size. (3) Farm structures includes roadside stands (4) The Tennenah Lake Hamlet District is limited to these designated uses in order to offer standards similar to the LC-2.				

**Appendix 2 - Schedule of District Regulations**

<b>RIVER CONSERVATION DISTRICT (RC)</b>				
<p>INTENT: This district is intended to complement the designation of the Upper Delaware River as a National Scenic &amp; Recreational River and to implement the River Management Plan to which the Town is a party.</p>				
<b>PRINCIPAL PERMITTED USES</b>	<b>ACCESSORY USES</b>			<b>SPECIAL USES</b>
Single Family Dwelling (Note 1) Two-Family Dwelling (Note 2) Agricultural Activities Animal Husbandry Cabins, Hunting and Fishing Stream Improvement Structures	Agricultural Structures Camping, Residential Customary Residential Accesory Uses Decks, Patios and Porches Energy Generating System, Solar Small Scale Home Occupations Off Street Parking Facilities Shoreline Improvements Signs			Bed & Breakfast Commercial, Light Dormitory Essential Services Forestry Activities Hotels and Motels Hunting and Sportsman's Clubs Nursing Homes and Adult Homes Professional Office, Health and General Quarrying Recreational Facilities, Indoor Recreational Facilities, Outdoor School, Day Care School, Proprietary School, Public or Private Telecommunication Facilities Worship, Place of
<b>DEVELOPMENT STANDARDS</b>				
	(A) On-site Sewage & Water	(B) Central Water Only	(C) Central Sewage Only	(D) Central Sewage & Water
<b>Minimums:</b>				
Lot Area:			120,000 sf	
Lot Width:			150 ft	
Lot Depth:			150 ft	
Front Yard:			60 ft	
Side Yard:			50 ft	
Sides				
Combined:			100 ft	
Rear Yard:			50 ft	
<b>Maximums:</b>				
Lot Coverage:			10%	
Building Height:			40 ft	
<b>NOTES</b>				
(1) Single-family dwellings include mobile homes (2) Two-family dwellings require twice the minimum lot size. (3) Farm structures includes roadside stands				

### Appendix 2 - Schedule of District Regulations

ANAWANDA LAKE CONSERVATION DISTRICT (LC-1)																																																														
<p>INTENT: This district is intended to protect Anawanda Lake and environs by ensuring development is compatible with existing patterns, water quality is maintained at a high level, and the lake is not used beyond its capacity to accommodate recreational use.</p>																																																														
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## Appendix 2 - Schedule of District Regulations

<b>MUSKODAY-TENNANAH LAKE CONSERVATION DISTRICT (LC-2)</b>																																																																
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## Appendix 2 - Schedule of District Regulations

MOUNTAIN CONSERVATION DISTRICT (Basket Sub-District) (MC-1)																																																																
<p>INTENT: This zoning district is intended to protect agricultural, forested and other hilly conservation areas from incompatible land uses, while also allowing farmers and other large landowners flexibility to pursue activities that can earn a reasonable return. The District is also intended to protect the lower reaches of the Basket Creek that frequently flood.</p>																																																																
PRINCIPAL PERMITTED USES	ACCESSORY USES		SPECIAL USES																																																													
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**Appendix 2 - Schedule of District Regulations**

**MOUNTAIN CONSERVATION DISTRICT  
(Plateau Sub-District) (MC-2)**

INTENT: This zoning district is also intended to protect agricultural, forested and other hilly conservation areas from incompatible land uses, while also allowing farmers and other large landowners flexibility to pursue activities that can earn a reasonable return, but at a lower density.

PRINCIPAL PERMITTED USES	ACCESSORY USES	SPECIAL USES
Single Family Dwelling (Note 1) Two-Family Dwelling (Note 2) Agricultural Activities Animal Husbandry Cabins, Hunting and Fishing Forestry Activities Stream Improvement Structures	Agricultural Structures Camping, Residential Customary Residential Accesory Uses Decks, Patios and Porches Energy Generating System, Solar Small Home Occupations Off Street Parking Facilities Shoreline Improvements Signs	Bed & Breakfast Camp, Campground Camp, Summer Camp Commercial, Light Conference Center and Retreat Energy Generating System, Wind Large Scale Energy Generating System, Wind Small Scale Essential Services Game Preserves Hunting and Sportsman's Clubs Nursing Homes and Adult Homes Professional Office, Health and General Quarrying Recreational Facilities, Indoor Worship, Place of

**DEVELOPMENT STANDARDS**

	(A) On-site Sewage & Water	(B) Central Water Only	(C) Central Sewage Only	(D) Central Sewage & Water
<b>Minimums:</b>				
Lot Area:		120,000 sf		
Lot Width:		150 ft		
Lot Depth:		150 ft		
Front Yard:		60 ft		
Side Yard:		50 ft		
Sides Combined:		100 ft		
Rear Yard:		50 ft		
<b>Maximums:</b>				
Lot Coverage:		5%		
Building Height:		40 ft		

**NOTES**

- (1) Single-family dwellings include mobile homes
- (2) Two-family dwellings require twice the minimum lot size.
- (3) Farm structures includes roadside stands