

Local Law Filing

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~~County~~
~~City~~ of SHAWANGUNK
Town
~~Village~~

Local Law No. 3 of the year 2009.

A local law entitled "CODIFICATION OF THE ZONING LAW OF THE TOWN OF
(Insert Title)
SHAWANGUNK, ALSO KNOWN AS CHAPTER 177 OF THE CODE OF
THE TOWN OF SHAWANGUNK"

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

~~County~~
~~City~~ of SHAWANGUNK as follows:
Town
~~Village~~

I. PURPOSE and INTENT

The purpose and intent of this local law is to codify the former Zoning Ordinance of the Town of Shawangunk, including all amendments adopted to the date hereof, into a new local law known as Chapter 177 of the Code of the Town of Shawangunk which also shall be known as the Zoning Law of the Town of Shawangunk.

II. STATEMENT OF AUTHORITY

This local law is authorized by the New York State Constitution including Article IX Section 2, the relevant provisions of the New York Municipal Home Rule Law, the Statute of Local Governments, the Town Law, the General Municipal Law, the Zoning Ordinance and the local laws and other land-use regulations of the Town of Shawangunk and the general police power vested with the Town of Shawangunk to provide for the health, safety and welfare of the citizens of the Town.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

III. ZONING TEXT AMENDMENTS

The following shall become the new Zoning Law of the Town of Shawangunk, also known as new Chapter 177 of the Code of the Town of Shawangunk:

ZONING
Chapter 177
From the

CODE
of the
TOWN OF SHAWANGUNK
COUNTY OF ULSTER
STATE OF NEW YORK

Amended to 2009, including:

- LL 3 of 2007 - Illicit Discharges, Activities and Connections to the Municipal Separate Storm Sewer System
- LL 4 of 2007 - Stormwater Management & Erosion Control
- LL 1 of 2007 - Building Construction Administration
- LL 10 of 2004 - Incentive Zoning
- LL 9 of 2004 - Hamlet Zoning District
- LL 8 of 2004 - Calculation of Minimum Lot Sizes in All Zoning Districts and Grandfather Clause
- LL 7 of 2004 - Ridge Stewardship #2 and Addition to the R-Ag2 Zoning District
- LL 6 of 2004 - Ridge Stewardship Zoning District #1
- LL 5 of 2004 - Hamlet of Wallkill Gateway Zoning District
- LL 4 of 2004 - Cluster Subdivision
- LL 2 of 2001 - Wireless Communication Services Facilities

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Schedule I: Zoning District Bulk Requirements

[HISTORY: Adopted by the Town Board of the Town of Shawangunk 1/17/1972; amended in its entirety 12/22/1990, 12/18/1997, and 3/18/99. Subsequent amendments noted on the title page]

GENERAL REFERENCES

- Building Construction — See Ch. 66 – As amended by Local Law No. 1 of 2007
- Unsafe Buildings — See Ch. 70
- Flood damage prevention — See Ch. 91 – As amended by Local Law No. 1 of 2009
- Garbage, rubbish and refuse — See Ch. 99
- Junkyards — See Ch. 108
- Subdivision of land — See Ch. 152

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ARTICLE I
Zoning Districts; Map

§ 177-1. Designation of Districts

The Town of Shawangunk is made up of the following zoning districts:

Base Zoning Districts

LC	Land Conservation District
RS-1	Ridge Stewardship District #1 (7-acre minimum) ¹
RS-2	Ridge Stewardship District #2 (3-acre minimum)
R-Ag 1	Residential-Agricultural
R-Ag 2	Residential-Agricultural
R-Ag 3	Residential-Agricultural
R-Ag 4	Residential-Agricultural
H-1	Hamlet
SB	Small Business
HWG	Hamlet of Wallkill Gateway
MB-C	Mixed Use Business-Conservation
A-I	Airport Industrial

Overlay Districts

BH-O	Borden Home Farm Historic Overlay
AQ-O	Aquifer Protection Overlay

§ 177-2. Zoning Map

The location and boundaries of said districts are hereby established as shown on the Zoning Map of the Town of Shawangunk, which is attached hereto and is hereby made a part of this chapter. The Zoning Map includes the Aquifer Protection Overlay (as adopted on June 6, 1996) and the Borden Home Farm Overlay. Said maps and all notations, references and designations shown thereon shall be a part of this chapter as if the same were fully described and set forth herein.²

§ 177-3. Interpretation of boundaries

- A. The district boundary lines are intended generally to follow the center lines of rights-of-way, existing lot lines, the mean water levels of rivers, streams and other waterways or Town boundary lines, all as shown on the Zoning Map or by a specific dimension expressing its distance in feet from a street line or other boundary line as indicated.
- B. In cases of uncertainty as to the true location of a district boundary line in a particular instance, the Building Inspector shall request the Zoning Board of Appeals to render its determination with respect thereto.

¹ Minimum lot areas are based on the lot size without central water and sewer. See Schedule I at the end of this Chapter for the bulk requirements applicable to each district.

² A reduced scale Zoning Map is included at the end of this chapter and a full scale Zoning Map is on file in the office of the Town Clerk.

- C. Where a district boundary line, as appearing on the Zoning Map, divides a lot in single ownership as existing at the time such district boundary line is adopted, the regulations of either district shall extend not more than 50 feet into the more restricted portion of the lot.

§ 177-4. Reserved.

ARTICLE II
Use Regulations

§ 177-5. Application of use regulations.

Except as hereinafter otherwise provided, no building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be designed, used or intended to be used, for any purpose or in any manner other than specified among the uses hereinafter listed as allowed in the district in which such building or land is located.

§ 177-6. Purposes of zoning districts; use regulations.

The purpose of each zoning district, and the uses allowed within same, are set forth below.

A. Land Conservation District (LC)

(1) **Purpose.** Surplus lands associated with the Galeville Army Airport are a significant and important open space resource within Shawangunk and have the potential to provide for the present and future recreational needs of Town residents. The purpose of this district shall be to provide a location for the preservation of permanent open space and limited development by the Town of Shawangunk for a variety of indoor and outdoor recreational activities. This zoning district encompasses all surplus lands of the federal government, which have been transferred to the Town of Shawangunk and as identified on the Zoning Map.

(2) **Principal permitted uses shall be as follows:**

- Baseball
- Football
- Golf
- Playground
- Skating rinks
- Skiing
- Soccer
- Swimming pools
- Tennis courts
- Wildlife preserve
- Other compatible recreational and/or conservation management activities

B. Ridge Stewardship District 1 (RS-1)

(1) **Purpose.** The purpose of the RS-1 zoning district is to protect the fragile and rare environmental resources and scenic beauty of Shawangunk Ridge by restricting development that would mar the scenic landscapes of the Town's higher elevations and by establishing a density of development appropriate for the protection of the thin and fragile soil conditions and associated rare plant and animal habitats found there. To promote the health, safety and general welfare of the residents of the Town Board finds and determines:

- (a) That the natural, open character of the Shawangunk Ridge is a critical feature of the unique heritage of the Town whose preservation enriches and benefits both residents and visitors;
- (b) That it is desirable to protect panoramic views of the ridge as well as sensitive natural habitats on the Shawangunk Ridge;

- (c) That the Shawangunk Ridge forms the headwaters for a watershed covering large and developing region. Several tributaries of the Shawangunk Kill, the majority of which are classified “A” (drinkable) by the New York State Department of Environmental Conservation, flow off the eastern flank of the Ridge through the Town, and all individuals and families residing in the Ridge Stewardship District 1 rely on the bedrock aquifer found within the fractured rock as a source of water;
- (d) That recreational opportunities are to be protected including support of local and regional trail systems;
- (e) That preservation of these features while providing for appropriate development can only be achieved by encouraging flexibility in the design of land use and development projects;
- (f) That due to the significant and unique physical and natural attributes of the lands within this Ridge Stewardship District #1 including, without limitation, the extreme slopes, fragile soils and unique vegetation found therein, the future development of this important area of the Town shall be restricted as herein set forth;
- (g) That lands within this Ridge Stewardship District #1 are of extreme importance to the people of the Town of Shawangunk and that this area is among the most significant, unique and environmentally sensitive areas of the Town of Shawangunk and of the Hudson Valley.

(2) Principal permitted uses shall be as follows:

Agricultural uses
 Public Parks and recreation areas
 Single-family detached dwellings

(3) Permitted accessory uses shall be as follows:

Fowl: The keeping of fowl for noncommercial use shall be restricted to 20 per acre unless the property conforms to the definition of a farm as elsewhere defined in the NYS Agriculture and Markets Law. Such fowl shall be adequately housed, fed and confined so as to eliminate objectionable conditions for adjoining properties within the district.
 Home gardening and the raising and keeping of small animals for commercial and non-commercial purposes.
 Home occupations, professions and trades.
 Horses and cows: The keeping of horses and cows shall not be at a density greater than 1 animal per acre.
 Private garages and parking and loading areas.
 Other accessory uses and structures customarily appurtenant to a principal permitted use.

(4) Special uses shall be as follows:

Accessory dwelling
 Camps and campsites
 Cemeteries
 Community buildings, lodges and fraternal organizations
 Nurseries and greenhouses
 Mobile homes and mobile home courts, now known also as manufactured housing and manufactured housing courts, in accordance with §177-29 (b) and (c) of this Zoning Law

Multiple dwelling
Outdoor recreation and amusement uses
Seasonal resorts
Senior citizen development
Signs
Two-family detached dwellings
Note: For various logging restrictions, see (6)(i) below.

(5) The following uses/structures shall be regulated as follows:

- (a) Billboards or signs. Billboards or signs not on the premises of the business they advertise, and signs advertising or identifying a business or organization which is either no longer in business or no longer on the premises shall be prohibited. Exceptions may be made by the Planning Board if the sign is found to have artistic or historic merit.
- (b) Telecommunication Towers. Throughout the Shawangunk Ridge Stewardship District 1 telecommunication towers shall be discouraged. In all cases the Town shall encourage site plans having the least visual impact on the environment, shared use of towers rather than new construction, and reduced tower height to limit need for external lighting as specified in Section 177-22 of this Zoning Law which regulates wireless communication facilities.

(6) Additional standards applicable to RS districts.

- (a) **Applicability.** All applicants for development shall utilize the guidelines as set forth in the New York State Planning Federation Design Guidelines for Building and for Rural Development dated 1994 or as such guidelines may be hereinafter amended by further action of the Town Board of the Town of Shawangunk.
- (b) **Conditions of Approval.** Any condition of approval necessary to meet these regulations shall be clearly noted on the final plat or plan and filed with the County Clerk. Where appropriate, conditions shall also be noted on a filed deed or other recorded declaration.
- (c) **Visibility.** All structures shall be sited to avoid occupying or obstructing public views of land within the zoning district. Public views shall be considered to be from any location listed on the Visual Environmental Assessment Form (Appendix B of 6 NYCRR Part 617.20). These locations are frequented by the public and offer unobstructed views of the Shawangunk Ridge. Visibility shall be measured using a condition of no leaves on trees.
- (d) **Structure Screening.** As a condition of approval, an applicant may be required to preserve existing vegetation or provide new plantings of native vegetation to screen structures. Additionally, a Conservation Easement pursuant to Section 247 of General Municipal Law and Sections 49-0301 through 49-0311 of New York Environmental Conservation Law shall be the preferred means to protect or buffer views.
- (e) **Building Sites.** Building sites shall be clearly noted on any plat or plan. To the greatest extent possible, all structures shall be sited away from ridgetops and ridgelines. Whenever possible, structures shall be sited at lower elevations and close to existing roads.
- (f) **Structure Design.** All new structures shall blend in with natural surroundings through the preferred use of natural colors.

(g) **Lighting.** Outdoor lighting shall be of substantially minimum intensity needed for the particular purpose according to standards set forth in Design Guidelines adopted by the Town of Shawangunk. Mercury vapor lighting is prohibited. No light shall be mounted higher than twenty-five (25) feet above grade. Any outdoor lighting fixture (including refractors, reflectors or globes) shall be shielded from above in such a manner that:

[1] the edge of the shield is below the light source and shall be located on a fixed (non-moveable) arm;

[2] direct rays from the light source are confined to the property boundaries, so that the light level at any lot line shall not exceed 0.2 foot-candles, measured at ground level;

[3] direct rays are prevented from escaping toward the sky, except for the lighting of flags; and

[4] light is not visible from the locations included on the Visual Assessment Form per Appendix B of 6 NYCRR Part 617.20;

(h) **Existing Vegetation.** Existing vegetation shall be preserved to the maximum extent possible. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site so as to maintain native vegetation as a screen for structures as seen from public roads or parks and other public views.

(i) **Treecutting.** It is the intention of this section to promote the continued health and well being of the forest that covers the vast majority of this zone. Tree cutting and removal shall be categorized as follows:

[1] **Structures and driveways.** Not more than 20,000 square feet of area shall be cleared for the construction of any structure or improvement without site plan approval. Additionally, driveways longer than 250 feet that require tree removal shall submit a Driveway Plan to the Code Enforcement Officer showing the proposed plan of action prior to tree removal. Both the Site Plan or the Driveway Plan, as the case may be, shall reflect the least amount of impact to forest area as is practical. Any changes to the Site Plan must have written approval of the Planning Board and any changes to the Driveway Plan must have the written approval of the Code Enforcement Officer. The Code Enforcement Officer, in his or her sole discretion, may refer a Driveway Plan to the Planning Board for its approval.

[2] **Commercial logging and commercial firewood operation.** No commercial logging and/or commercial firewood operation shall be undertaken without the assistance of a professional forester and without a permit from the Town as herein prescribed. An application pursuant to a form prescribed by the Town, shall be completed by a professional forester (who shall also be on the NYSDEC Approved Registered Forester List) and shall be submitted to the Code Enforcement Officer together with an application fee as set by the Town Board. The plan shall indicate the parcel to be harvested, the approximate start date of the operation and estimated date of completion. The plan shall also list all of the adjoining property owners listed by owner name and address as contained in the records of the Assessor for the Town. The Code Enforcement Officer reserves the right to hire an independent professional forester to review the application and the reasonable cost of such review shall be a charge to the applicant in addition to the application fee.

The Code Enforcement Officer shall also send a copy of the permit application to the Town Highway Superintendent. The Town Highway Superintendent shall inspect the transportation access area for sight distance and to ensure that no damage to Town highways is likely. The Highway Superintendent retains complete jurisdiction on all Town highway matters, including the possible requirement of appropriate security in a form acceptable to the Town Attorney.

Following completion of the review and the issuance of the permit, the application and permit shall be filed with the Town Clerk with updated copies of appropriate State and Town permits as required. Where applicable, the following other items and permits must be included in the file of the Town Clerk:

- [a] Insurance certification from logger (including liability and workers compensation) required for commercial logging.
- [b] Stream crossing permits
- [c] DOT permits for State highways
- [d] Local/County Highway permits as needed
- [e] DEC logging permits
- [f] Federal and State wetland permits
- [g] List of adjacent property owners

Upon the issuance of a permit for commercial logging, the Code Enforcement Officer shall notify the Assessor who shall notify all adjoining property owners by regular mail within seven (7) business days of the Code Enforcement Officer's issuance of the permit. In the event of any subsequent erosion or drainage problem on the cleared parcel, the Code Enforcement Officer shall notify the property owner and the Planning Board in writing and at such time the property owner of the cleared parcel shall submit a plan to the Planning Board showing corrective action to be taken to mitigate said erosion and/or drainage issue. The Planning Board shall charge a reasonable fee to recover its expenses of review of such corrective/mitigation plan. The Planning Board shall have full jurisdiction regarding the approval or approval with modification of such plan corrective action and mitigation.

- [3] Agriculture. Forestland within the zoning district varies greatly from parcel to parcel. The intent of this provision is to ensure the continued vitality of residential forest areas where the owners use wood products for their own use including, without limitation, wood for fuel. Property owners should not remove a greater amount of wood or wood products than the land has the capability to regenerate annually. The exception to this practice is where trees are being removed for agricultural purposes where the ridge is not excessively steep that would lead to erosion. Where areas greater than 20,000 square feet are being cleared for this purpose, a plan showing the area to be cleared shall be submitted to and approved by the Code Enforcement Officer and shall be retained in a public file with the Town Clerk.

In the event of any subsequent erosion or drainage problem on the cleared parcel, the Code Enforcement Officer shall notify the property owner and the Planning Board and at such time the property owner of the cleared parcel promptly shall submit a plan to the Planning Board showing corrective action to be taken to mitigate said erosion and/or drainage issue. The Planning Board shall charge a reasonable fee to recover its expenses of review of such corrective or mitigation plan. The Planning Board shall have full jurisdiction regarding the approval or approval with modification of such corrective action and mitigation.

- (j) **Trail access and setback.** The Town shall seek trail corridor access and setback of development away from trails where documentation exists that the subject parcel includes an existing or potential public trail.
- (k) **Underground utilities.** All electric, telephone, television and other communication lines, both main and service connections, servicing new developments shall be provided by underground wiring, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.
- (l) **Recreation and open space.** As a condition of approval, the Town may require up to ten percent (10%) of any parcel within a RS district for parkland, recreation and open space purposes, so long as this condition does not reduce the number of units allowable under applicable zoning. Such land shall be dedicated pursuant to Section (n) below.
- (m) **Special development options.**

[1] **Conservation development option.** If prior to approval an applicant agrees to protect from development more than fifty percent (50%) of a parcel pursuant to these regulations and approval will not yield any lot less than five (5) times the minimum lot size in the underlying district, then the Planning Board shall have the authority to waive applicable standards of public road frontage and/or allow access by right-of-way or easement. Such access must allow for ingress and egress of emergency vehicles which must be at least fifteen (15) feet in width. Such access shall be set to minimally include twenty-five (25) feet of frontage on a public road for at least one of the lots, with the other lots having access by easement or right of way per a recorded Agreement.

[2] **Cluster subdivision option.** If an applicant meets all of the requirements of the applicable RS district, the Planning Board may require a subdivision creating smaller lots consistent with the cluster subdivision provisions found at Section 177-36. However, in no case shall the height limitations set forth in Schedule I of this Zoning Law be varied as a result of the use of the cluster tool.

- (n) **Dedication of open space.**

[1] Any land dedicated for open space purposes shall be used only for park, recreation, conservation or selective timbering and agricultural purposes. Such land shall be encumbered by appropriate covenants or Conservation Easements approved by the Planning Board and Town Board ensuring that the open space cannot be further subdivided; that the use of the open space will continue in perpetuity for the stated purpose and that appropriate provisions will be made for maintenance of such open space.

- [2] The ownership of land dedicated for park, recreation or open space use shall be determined by the property owner or applicant subject to approval by the Planning Board and Town Board. The person or entity having the right of ownership shall be responsible for its proper maintenance and continued upkeep. Ownership shall be with one of the following:
- [a] private ownership encumbered by a conservation easement pursuant to Section 247 of General Municipal Law or Sections 49-0301 through 49-0311 of Environmental Conservation Law;
 - [b] a homeowner, condominium, or cooperative association or organization;
 - [c] shared, common interest by all property owners in a subdivision;
 - [d] a private nonprofit organization incorporated with a purpose consistent with the use and management requirements of the dedicated land;
 - [e] another public jurisdiction or agency subject to that jurisdiction or agency's acceptance; or
 - [f] the Town of Shawangunk.
- [3] Any land dedication for the purposes of this section shall be recorded in the County Clerk's Office.
- [4] All lands dedicated for the purposes of this section shall be clearly identified on a final plat or plan. Such identification shall note use, ownership, and management as well as liber and page of relevant filings with the County Clerk's Office.

C. Ridge Stewardship District 2 (RS-2)

- (1) **Purpose.** The purpose of the RS-2 zoning district is to protect the fragile and rare environmental resources and scenic beauty of Shawangunk Ridge by restricting development that would mar the scenic landscapes of the Town's higher elevations and by establishing a density of development appropriate for the protection of the thin and fragile soil conditions and associated rare plant and animal habitats found there. To promote the health, safety and general welfare of the residents of the Town Board finds and determines:
- (a) That the natural, open character of the Shawangunk Ridge is a critical feature of the unique heritage of the Town whose preservation enriches and benefits both residents and visitors;
 - (b) That it is desirable to protect panoramic views of the ridge as well as sensitive natural habitats on the Shawangunk Ridge;
 - (c) That the Shawangunk Ridge forms the headwaters for a watershed covering large and developing region. Several tributaries of the Shawangunk Kill, the majority of which are classified "A" (drinkable) by the New York State Department of Environmental Conservation, flow off the eastern flank of the Ridge through the Town, and all individuals and families residing in the Ridge Stewardship District 2 rely on the bedrock aquifer found within the fractured rock as a source of water;

- (d). That recreational opportunities are to be protected including support of local and regional trail systems;
- (e) That preservation of these features while providing for appropriate development can be achieved only by encouraging flexibility in the design of land use and development projects.
- (f) That the significant and unique physical and natural attributes of the lands within this the RS-2 zoning district closely parallel those attributes of the RS-1 zoning district but are not completely identical. As such the future development of this important area of the Town shall be restricted as herein set forth;
- (g) That the lands within RS-2 zoning district are of major importance to the people of the Town of Shawangunk and that this area is a significant, unique and environmentally sensitive areas of the Town of Shawangunk.

(2) Principal permitted uses shall be as follows:

Agricultural uses
 Nurseries and Greenhouses
 Public Parks and recreation areas – exclusive of golf courses, downhill ski slopes and snowboarding areas
 Single-family detached dwellings

(3) Permitted accessory uses shall be as follows:

Fowl: The keeping of fowl for noncommercial use shall be restricted to 20 per acre unless the property conforms to the definition of a farm as elsewhere defined in the NYS Agriculture and Markets Law. Such fowl shall be adequately housed, fed and confined so as to eliminate objectionable conditions for adjoining properties within the district.
 Home gardening and the raising and keeping of small animals for commercial or non-commercial purposes.
 Home occupations, professions and trades.
 Horses and cows: The keeping of horses and cows shall not be at a density greater than 1 animal per acre.
 Private garages and parking and loading areas.
 Other accessory uses and structures customarily appurtenant to a principal permitted use.

(4) Special uses shall be as follows:

Accessory dwelling
 Camps and campsites
 Cemeteries
 Community buildings, lodges and fraternal organizations
 Mining and Excavation
 Mobile homes and mobile home courts, now known also as manufactured housing and manufactured housing courts as per §177-29 (b) and (c) of this Chapter
 Multiple dwelling
 Outdoor recreation and amusement uses, exclusive of gold courses, and downhill ski slopes and snowboarding areas
 Seasonal resorts
 Senior citizen development

Signs

Two-family detached dwellings

Note: For various logging restrictions, see (6) below, and also §177-6.B(6)(i).

- (5) The following uses/structures shall be regulated as follows:
- (a) Billboards or signs. Billboards or signs not on the premises of the business they advertise, and signs advertising or identifying a business or organization which is either no longer in business or no longer on the premises shall be prohibited. Exceptions may be made by the Planning Board if the sign is found to have artistic or historic merit.
 - (b) Telecommunication Towers. Throughout the Shawangunk Ridge Stewardship District 2 telecommunication towers shall be discouraged. In all cases the Town shall encourage site plans having the least visual impact on the environment, shared use of towers rather than new construction, and reduced tower height to limit need for external lighting as specified in Section 177-22 of this Zoning Law which regulated wireless communication facilities.
- (6) **Additional standards applicable to RS districts.** All standards set forth in Section 177-6.B(6) shall apply equally to the RS-2 zoning district.

D. Residential-Agricultural 1 (R-Ag 1)

- (1) **Purpose.** The purpose of this district is to provide for the orderly growth of established residential centers; to prevent overcrowding of the land; to regulate those uses which are not compatible with residential neighborhoods; and to create conditions which are otherwise conducive to carrying out the purposes of this chapter.
- (2) **Permitted principal uses** are as follows:
Houses of worship and related residences
Single family detached dwellings
Parks and playgrounds
Public schools
- (3) **Permitted accessory uses** are as follows:
Home gardening
Home occupations, professions and trades
Private garages and parking and loading areas
Signs
Other accessory uses and structures customarily appurtenant to a principal permitted use
- (4) **Special uses** are as follows:
Accessory dwelling
Agricultural uses
Boardinghouses, rooming houses and tourist homes
Community buildings, clubs, lodges and fraternal organizations
Essential services
Motels
Mobile homes and manufactured homes in accordance with §177-29(b)
Multiple dwellings
Nursery schools and home day-care facilities
Planned development groups

Private schools
Senior citizen development
Two-family detached dwellings

E. Residential-Agricultural 2 (R-Ag 2)

(1) **Purpose.** The purpose of this district is to provide reasonable standards for the development of residential areas in the vicinity of established residential centers; to encourage a greater variety of lot sizes and housing types; to control activities not compatible with moderate-density residential development; and otherwise to create conditions conducive to carrying out the purposes of this chapter.

(2) **Permitted principal uses** shall be as follows:

Agricultural uses
Houses of worship and related residences
Single-family detached dwellings
Parks and playgrounds
Public schools

(3) **Permitted accessory uses** shall be as follows:

Fowl: The keeping of fowl for noncommercial use shall be restricted to 20 per acre unless the property conforms to the definition of a farm as contained in this chapter. Such fowl shall be adequately housed, fed and confined so as to eliminate objectionable conditions being experienced by adjoining residential properties within the district.

Home gardening and the keeping of small domestic animals for noncommercial uses, but not including the keeping of goats, mink or other like fur-bearing animals

Home occupations, professions and trades

Horses and cows: The keeping of horses and cows shall not be at a density greater than 1 animal per acre.

Private garages and parking and loading areas

Other accessory uses and structures customarily appurtenant to a principal permitted use

(4) **Special uses** shall be as follows:

Accessory dwelling

Automotive service stations

Cemeteries

Commercial groups

Community buildings, clubs, lodges and fraternal organizations

Eating and drinking establishments

Essential services

Light industrial activities and businesses of a kindred nature

Mining and excavation

Mobile homes and manufactured homes in accordance with §177-29(b)

Multiple dwellings

Neighborhood stores

Nurseries and greenhouses

Nursery schools and home daycare facilities

Nursing and convalescent homes in accordance with all applicable state, county and local laws

- Planned development groups
- Kennels
- Private schools
- Recreation and amusement uses
- Senior citizen development
- Signs
- Two-family detached dwellings

F. Residential-Agricultural 3 (R-Ag 3)

(1) **Purpose.** The purpose of this district is to discourage the scattering of residential subdivision development and commercial, industrial and other urban-type uses in those areas of the town which, due to steep grades and inaccessibility to public services, are not suitable for intensive development; to provide for the regulation of housing densities in such areas; and to otherwise create conditions conducive to carrying out the purposes of this chapter.

(2) **Permitted principal uses** shall be as follows:

- Agricultural uses
- Nurseries and greenhouses
- Public parks and public recreation areas
- Single-family detached dwellings

(3) **Permitted accessory uses** shall be as follows:

Fowl: The keeping of fowl for noncommercial use shall be restricted to 20 per acre unless the property conforms to the definition of a farm as contained in this chapter. Such fowl shall be adequately housed, fed and confined so as to eliminate objectionable conditions being experienced by adjoining residential properties within the district.

Home gardening and the keeping of small domestic animals for noncommercial uses, but not including the keeping of goats, mink or other like fur-bearing animals

Home occupations, professions and trades

Horses and cows: The keeping of horses and cows shall not be at a density greater than 1 animal per acre.

Private garages and parking and loading areas

Other accessory uses and structures customarily appurtenant to a principal permitted use

(4) **Special uses** shall be as follows:

- Accessory dwelling

- Camps and campsites

- Cemeteries

- Community buildings, lodges and fraternal organizations

- Mining and excavation

- Mobile homes and mobile home courts, and manufactured homes and courts as per §177-29(b) and (c)

- Multiple dwelling

- Outdoor recreation and amusement uses

- Seasonal resorts

- Senior citizen development

- Signs

Two-family detached dwellings

G. Residential-Agricultural 4 (R-Ag 4)

(1) **Purpose.** The purpose of this district is to encourage the continuation of agriculture and low-density uses compatible with the soil, topography and location of this district; to control activities not compatible with agriculture and related low-density development; and otherwise to create conditions conducive to carrying out the broad purposes of this chapter.

(2) **Permitted principal uses** shall be as follows:

- Agricultural uses and structures
- Cemeteries
- Essential services
- Houses of worship and related residences
- Nurseries and greenhouses
- Parks and playgrounds
- Public correctional institutions
- Public schools
- Single-family detached dwellings

(3) **Permitted accessory uses** shall be as follows:

- Accessory farm buildings
- Farm labor housing in accordance with New York State Department of Health standards
- Home occupations, professions and trades
- Private garages and parking and loading areas
- Roadside stands for the sale of agricultural products produced primarily on the premises
- Signs
- Other accessory uses and structures customarily appurtenant to a principal permitted use

(4) **Special uses** shall be as follows:

- Accessory dwelling
- Community buildings, clubs, lodges and fraternal organizations
- Eating and drinking establishments
- Junkyards, outdoor storage of junk, automobile wrecking yards, etc.
- Kennels
- Light industrial activities and businesses of a kindred nature
- Mining and excavation
- Mobile homes and manufactured homes in accordance with §177-29(b)
- Multiple dwelling
- Planned development groups
- Private schools
- Refuse and garbage dumps in accordance with applicable town laws³
- Sanitary landfills per the requirements of the Department of Environmental Conservation
- Senior citizen development
- Signs
- Two-family detached dwellings

³ Editor's Note: See Ch. 99, Garbage, Rubbish and Refuse

H. Hamlet (H-1)

(1) **Purpose.** The purpose of the H-1 zoning district is to provide for the orderly growth of established mixed-use hamlet centers to maximize the benefit of municipal sewer and water systems; to promote a harmonious development of residential neighborhoods and non-residential uses in a way that enhances the values of all such uses; to attract new development to the hamlet areas and away from agricultural land and away from locations that could compromise or diminish important natural, cultural, historic and/or open space resources and to create conditions which are otherwise conducive to carrying out the purposes of this section.

(2) **Permitted principal uses** shall be as follows:

- Houses of worship and related residences
- Single-family detached dwelling
- Parks and playgrounds
- Public schools

(3) **Permitted accessory uses** shall be as follows:

- Home gardening
- Home occupations, professions and trades
- Private garages and parking and loading areas
- Signs
- Other accessory uses and structures customarily appurtenant to a principal permitted use

(4) **Special uses** shall be as follows:

- Accessory dwelling
- Agricultural uses
- Boardinghouses, rooming houses and tourist homes
- Community buildings, clubs, lodges and fraternal organizations
- Essential services
- Motels
- Multiple dwellings
- Nursery schools and home day-care facilities
- Planned development groups
- Private schools
- Senior citizen development
- Two-family detached dwellings

I. Small-Scale Business (SB)

(1) **Purpose.** The purpose of the SB district is to provide a location for a variety of retail, service, and other small businesses, where such businesses can reinforce each other and provide attractive places for residents, shopkeepers, and visitors to congregate and do business, while maintaining the traditional character of the hamlet of Wallkill and/or the rural landscape.

(2) **Permitted principal uses** shall be those located in existing structures or new structures with no more than a 5,000 square foot footprint as follows:

Apartment above ground-floor business
Civic meeting hall
Community building
Family Day care center
Eating and drinking establishment
Essential services
House of worship
Light industry subject to the performance standards found in § 177-44
Nursery school
Office
Park, playground
Public school
Retail business and personal service establishment
Training Center

(3) **Permitted accessory uses** shall be as follows:

Garage and parking and loading area
Home occupation
Living quarters for owner or caretaker of structure housing permitted use
Sign
Other accessory use customarily appurtenant to a permitted use

(4) **Special uses** shall be as follows:

Accessory dwelling
Auto maintenance and repair shop
Auto fuel station
Bus garage
Bus station
Cemetery
Child Day Care Center
Clubs, lodges, and fraternal organizations
Commercial group
Commercial recreation, indoor and outdoor
Farm
Fast food restaurant, if located within a building containing mixed uses
Funeral home
Furniture-refinishing establishment
Laundry and dry-cleaning establishment
Miscellaneous Commercial-Residences
Nursing home
Parking lot as principal use
Private school, limited to elementary and secondary education
Residential use: multi-family, senior citizen housing
Principal permitted uses when located within 50 feet of a residence on **one** side lot line or in new structures with a footprint greater than 5,000 square feet
Self-service Storage Facility
Single-family and two-family residential, subject to compliance with the special conditions found in §177-29

(5) **Design Guidelines**

All uses in the SB District should comply with applicable design guidelines. Until such time as specific design guidelines are adopted by the Town of Shawangunk, the New York Planning Federation’s “*Community Design Guidelines*” may be used as an example of acceptable design guidelines.

(6) **Protection of Residences**

New non-residential uses may be established only when single family detached or two family residences are located on no more than one side lot line but not both side lot lines.

(7) **Expansion of Existing Residences**

Existing single-family detached and two-family residences may be expanded, provided that such expansion complies with applicable lot, yard, and height requirements.

J. Hamlet of Wallkill Gateway (HWG)

(1) **Purpose.** The Town of Shawangunk recognizes the area north and east of the Hamlet of Wallkill, along State Routes 208 and 300, as a Gateway to the Hamlet and finds that development of this area in a visually attractive manner with a focus on architectural and landscaping design, enhancement of traffic and pedestrian safety along traveled routes, and provision of appropriately-scaled site lighting and signage is of public concern and is required for the protection of the general welfare of the community. The purpose of this zoning district is to allow for a variety of uses which can enhance and promote the aesthetic standards set forth for this district, ensure traffic safety for vehicles and pedestrians, and provide an appropriately designed visual transition between the rural areas of Town and the concentrated business area of the Hamlet.

(2) **Permitted principal uses** shall be those uses located in existing structures or new structures, with no more than a 5,000 square foot footprint, as follows:

- Apartment(s) above ground-floor business
- Civic meeting hall
- Community building
- Family day care center in an existing residence
- Restaurant and Retail Food Establishment
- Essential services
- House of worship
- Office
- Park, playground
- Retail business and personal service establishment

(3) **Permitted accessory uses** shall be as follows:

- Garage and parking and loading area
- Home occupation in existing residence
- Sign
- Art Features
- Outdoor storage or display area

Other accessory uses customarily appurtenant to a permitted use

(4) **Special uses** shall be as follows:

Accessory dwelling in an existing residence
Bus station
Child day care center
Clubs, lodges, and fraternal organizations
Buildings with permitted uses with a footprint greater than 5,000 SF
Fast food restaurant
Funeral home
Furniture-refinishing establishment
Laundry or drop-off dry-cleaning establishment
Light industry subject to the performance standards found in Section 155-15.J(6)
Miscellaneous Commercial-Residences
Nursery school
Residential business
Training Center

Principal permitted uses shall require special use permit when located within 50 feet of a lot line for a residence on one side lot line.

(5) **Expansion of Existing Residences.** Existing one-family and two-family residences may be enlarged, provided that such enlargement complies with applicable lot, yard, height requirements and the design guidelines set forth herein.

(6) **Bulk requirements.** Buildings shall be sited in clusters with screened parking provided wholly at the side and/or rear of the structures to preserve as much open space as possible and avoid a "sprawl" pattern. If parking is provided at the side of structures, at least a 10 foot wide landscaped area (exclusive of that required for sidewalks or utility easements) shall be provided between the right-of-way and the parking lot, to be planted with shade or ornamental trees and at least a three-foot-high evergreen hedge, wall or fence. In addition, at least one tree and three shrubs shall be provided for each eight parking spaces in interior areas of the parking lot, whether such lot is provided at the side or rear of structures. Impervious surface must meet standards of

(7) **Application procedures and submission requirements.**

(a) Required approval. All permitted uses and permitted accessory uses in the HWG district shall require site plan approval, and special uses also shall require special permit approval by the Planning Board, pursuant to §177-35 and §177-25, respectively.

(b) A pre-development survey, prepared by a NYS licensed Land Surveyor including property boundaries and indicating existing conditions and contours at a 2-foot interval based on USGS datum shall be provided.

(c) Architectural elevations prepared by a NYS registered architect shall be provided for all new development and building alterations. Such plans shall:

[1] Show the existing and proposed mass of building. Height and pitch of roof line shall be shown.

- [2] Show all facade openings
- [3] Sufficiently identify and detail all architectural features, including projections from the building and/or porch, ornamental details.
- [4] Indicate all proposed and or existing materials, including the type, color and texture.
- (d) Development plans must show all existing and proposed buildings and structures, the nature of open spaces around buildings and structures, all applicable setbacks, all roadway and parking lot surfaces, walkways, existing and proposed grading, landscaping, art features and signs.
- (e) A landscape plan is required to be provided for all development proposals. The landscape plan shall identify existing trees over 8" dbh, other mature plants, hedgerows, wooded areas and wetlands/watercourses/waterbodies, and shall indicate the location and type of proposed plantings and existing landscaping features to remain.

(8) Design standards.

- (a) Design review. All development within the HWG district shall comply with applicable design guidelines. Until such time as specific design guidelines are adopted by the Town of Shawangunk, and in the absence of specific guidance set forth below, the New York Planning Federation's "Community Design Guidelines" and "Building Form Guidelines" of 1993 may be used as an example of acceptable design guidelines.
- (b) Design standards. All new development within the HWG shall be in accordance with the design standards set forth below:
 - [1] 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). On a lot with multiple buildings, those located on 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.
 - [2] New construction affecting existing buildings of acceptable architectural design shall respect the existing 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.
 - [3] 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.

- [4] 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 into its design.
- [5] The architectural treatment of the front facade 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.
- [6] All 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, groundcovers and/or grasses. and annuals are encouraged.
- [7] Site landscaping shall maintain landscape continuity 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.
- [8] Plant suitability, maintenance and compatibility with site and construction features are critical factors which shall be considered, in particular for the following areas:
 - [a] Along the building foundation;
 - [b] Between the building and sidewalks and between the sidewalk and the roadways;
 - [c] Within and around parking areas; and
 - [d] Between the sidewalk and front of building (front of building is the side that faces the main road, street or route).

(c) Site access and sidewalks.

- [1] Driveway, sidewalk/walkway and curb materials shall be functional and compatible with the style, materials, colors and details of the surrounding buildings. The selection and use of pavement and curb materials shall consist of a stable material. Modular masonry materials such as brick blocks, slate and concrete pavers, or cast-in-place materials such as exposed aggregate concrete slabs shall be used, whenever possible, on sidewalks, pedestrian walkways and pathways. Granite, concrete or Belgian block shall be used for curbs. Asphalt shall not be permitted for sidewalks or curbs. Transitions in paving patterns or materials shall provide a smooth and continuous surface.
- [2] Site access is required to be located at the point closest to the side property line to provide for a shared entrance with the adjoining property. If an adjacent property is already developed with an existing appropriately located access, opportunities for the shared use of the existing access shall be exhausted prior to consideration of separate access to the property. The Planning Board may require the establishment of access easements as appropriate.

[3] For all properties, within the HWG district, sidewalks with a minimum width of 5 feet shall be provided along the property's street frontages and at least 8 feet shall be provided between the edge of the sidewalk and the back of curb or shoulder and shall be designed in accordance with applicable standards.

(d) **Parking and loading.** In addition to the parking standards associated with the underlying zoning, parking areas within the HWG district may be unpaved partially or wholly except for handicap accessible parking areas and travelways, but shall be of an appropriate material as set forth therein.

[1] Off-street parking and loading facilities shall only be placed to the rear and / or on one side and shall not be located between the front lot line and the buildings, except for necessary access drives. Corner parking lots shall not be permitted.

[2] At the time of change of use, or expansion, alteration or renovation of an existing use, existing parking at the front of the property of pre-existing buildings shall require, at minimum, a 10-foot wide landscape buffer consisting of a hedgerow, berm or combination to screen the parking area from the adjacent road.

[3] Parking lot layout, landscaping, buffering and screening shall prevent direct views of parked vehicles from streets and sidewalks, avoid spill-over light, glare, noise or exhaust fumes onto adjacent properties, in particular adjacent to residential properties.

[4] Parking areas shall be accessed by means of shared or common driveways, preferably from side streets or lanes. Off-street parking areas of less than 25 spaces shall, wherever possible, shall be interconnected with parking areas on adjacent properties. Cross-access easements for adjacent lots with interconnected parking areas shall be required.

[5] Parking areas shall be landscaped to provide shade and visual relief, and shall include planting islands and peninsulas within the perimeter of the parking areas. Plantings shall constitute a minimum of 10% of the total parking area and a minimum of one deciduous shade tree shall be planted for every six parking spaces, although parking lots with ten or less spaces may not require interior landscaping if the Planning Board determines that there is adequate perimeter landscaping. Curbs, wheel stops, planters and raised planting beds shall be utilized to organize and control parking areas.

(e) **Buffers, screening, and open space.**

[1] Buffer zone. A minimum buffer zone of at least 20 feet in width shall be provided on any commercial site, use or building which is located adjacent to any residential use, building or residential district. Such buffer shall be thickly planted with trees and native shrubs to provide adequate screening, in accordance with the landscaping design guidelines set forth herein.

[2] Open space. Open space is to be encouraged. Therefore, the maximum footprint of the principal structure shall not exceed 25% of the lot size and the structure may be required to be smaller if any of the other bulk and dimensional requirements so dictate.

[3] Noise.

- [a] Noise shall not exceed the standards set forth at §177-44 at the property line and shall not to interfere with use of adjacent property.
- [b] Fencing, walls, landscape buffers, setbacks, and building materials may be required to block noise.
- [c] All air conditioning units, HVAC systems, exhaust pipes or stacks and satellite dishes and other permitted telecommunications receiving devices shall be thoroughly screened from the public right-of-way and from adjacent properties by using walls, fences, roof elements, penthouse-type screening devices, or landscaping.

(f) Outdoor storage and service areas.

- [1] Outdoor storage and service areas may be permitted in required side or rear yard areas with a minimum setback of 10 feet.
- [2] Garbage collection, recycling areas and other utility areas shall be screened by wood enclosures, or by brick walls (capped) with a minimum height of seven feet, and shall extend on three sides of such area, with a gate or door on the fourth side.
- [3] Site placement, evergreen plantings and architectural elements shall be utilized to appropriately hide or screen such areas from the adjacent street and properties.

(g) Lighting. Adequate lighting which provides security and visual interest shall be provided, while minimizing adverse impacts, such as overhead skyglow and glare on adjacent properties and the public rights-of-way. The maximum height from the ground to top of any lighting fixture shall be sixteen (16) feet if not mounted on a building. Lighting shall be decorative and blend with the architectural style of the development and surrounding area. Lighting fixtures attached to the exterior of the building shall be architecturally compatible with the styles, materials, colors and details of the building. Any outdoor lighting fixture shall be shielded in such a manner that:

- [1] the edge of the shield is below the light source and shall be located on a fixed (non-moveable) arm
- [2] direct rays from the light source are confined to the property boundaries, except for access areas to commercial uses where additional lighting may be needed where such access intersects with a public road or walkway. In no instance shall site access lighting spill into the roadway of any public roads; and
- [3] direct rays are prevented from escaping toward the sky.
- [4] lighting on all externally lit signs shall be mounted above the sign and will focus on the sign from above the sign.

(h) Signs. Signs shall be compatible with building style in terms of location, scale, color and lettering, and in proportion with the size of the building and existing area signage. Signs shall fit within the existing facade features, shall be confined to signable areas, and shall not interfere with door and window openings, conceal architectural details or obscure the composition of the facade where they are located. Signs located along highway must be

integrated into site landscaping. New and alteration of signs shall be subject to Site Plan review. New signs shall be modified to comply with these provisions.

- [1] Not more than one (1) sign shall be permitted per establishment. Such sign shall be located on the establishment's principal facade.
 - [2] Wall signs (with or without borders) may be as large as 1 square foot per 3 linear feet of an establishment's front building wall length or a maximum of twenty-five (25) square feet, whichever is less.
 - [3] Projecting signs as large as four (4) square feet on each of two (2) sides; maximum projection of 4 feet from the building face; minimum clearance from the ground 8 feet and maximum clearance 10 feet.
 - [4] Window signs as large as fifteen percent (15%) of the total window area of the principal facade, with a maximum of four (4) square feet. Lettering up to eight (8) inches high.
 - [5] Awning signs projecting at least five (5) feet into the sidewalk but no more than seven (7) feet. Lettering is allowed up to six (6) inches in height and on the valance only. The extent of lettering may cover a maximum of eight (8) feet in width or fifty percent (50%) of the valance width, whichever is less.
 - [6] Neon signs and free-standing internally lit signs are prohibited from this district. Notwithstanding, a monument sign is permitted and shall not be deemed to be "free-standing" but shall not be lighted internally unless acceptable to the Planning Board.
 - [7] As indicated in the section on lighting, all externally illuminated signs must be lit from above so that the light shines down and does not shine up.
 - [8] A Master Sign Plan is required of establishments that share a lot, parcel or are part of a shopping center. The Plan is a sign system to create visual unity among the signs within the Plan area and to ensure compatibility with surrounding establishments and structures. The Plan shall include specifications to which all signs within the Plan area shall conform, including: sign size, height, shape, materials, lighting, and location on the establishment.
 - [9] Aside from individual establishments, the shopping center shall be allowed one free standing monument-style of no more than 5 feet in height above the existing finished grade level that contains the name of the center and/or its principal tenant. Directory signs are prohibited.
- (i) **Utilities.** Utilities for new projects must be installed underground if on same side of the road. When possible existing above grade utilities shall be placed underground.
 - (j) **Stormwater management.**
 - [1] Stormwater management provisions that result in a no net increase in rate of runoff shall be provided.
 - [2] Underground facilities for detention, retention and treatment shall be considered first over surface basins. Oil and grit separators shall be provided.

[3] Detention basins, headwalls, outlet structures, rip rap channels, and other drainage improvements shall be screened with plant materials and/or berms. Such drainage structures, as appropriate, shall be situated in the least visible location, or if visible, incorporated in to the natural curves of the land where appropriate.

[4] Stormwater management plans for development within the Aquifer Protection Overlay District (AQ-O) shall comply with the requirements of the AQ-O District.

(k) **Street furniture and art features.** The inclusion of street furniture and art features on a site must be shown to be appropriate to the historic, architectural and visual character of the site and adjacent areas and shall require Site Plan Approval. Art features may be located in a required yard if determined appropriate by the Planning Board and provided that said features do not impede sight lines for ingress/egress.

(l) **Site maintenance.** Sites shall be maintained in accordance with the approved plans and shall be free of litter. Landscaping shall be appropriately maintained; dead, dying or diseased landscaping shall be replaced as needed.

K. Mixed Use Business-Conservation (MB-C)

(1) **Purposes.** The Town of Shawangunk desires to balance the growth of commercial enterprises which provide employment and increase tax ratables with the need to preserve and integrate open space into the community, protect water resources (especially groundwater), and retain the historic character and commercial vitality of the hamlet of Wallkill. The purpose of the Mixed Use Business-Conservation District (MB-C) is to allow planned development in a business park setting that will help the town to achieve such a balance, while encouraging phased growth and efficient use of the hamlet of Wallkill's water and sewer infrastructure, complementary uses that reinforce one another and reduce automobile trips, prevention of strip commercial development on Routes 208 and 300, and flexibility of design and layout to protect environmental resources and create attractive places for people to work, live, and congregate.

The Town also desires to ensure that such development is compatible with adjoining land uses, with the hamlet of Wallkill especially its scenic Route 208/300 Gateway, and with the historic landscape and buildings in the Town, especially in the area of the Borden Home Farm. Any business park developed within the Borden Home Farm Historic Overlay District shall comply with the requirements of §177-6.M.

Mixed Use Business-Conservation Parks (hereinafter business parks) are subject to issuance of a special use permit only after compatibility with the community has been demonstrated on the basis of a business park master plan. A master plan is a plan for the overall future development of a business park. By creating a long term plan, some impacts may be prevented that would have occurred with uncoordinated piecemeal expansion. The development of a master plan is intended to provide the surrounding community and the Town with information about, and an opportunity to comment on, the business park's future development. The plan also allows the developer of the business park and the Town to address the effects of future development. Finally, an approved business park master plan is intended to ensure that the use will be allowed to develop in a manner consistent with the plan. Master plans may be completed at various levels of detail. Generally, the more specific the plan, the less review that will be required as the future permitted and specially permitted uses are built.

(2) **Permitted principal uses** shall be as follows:

Apartment located on upper floors of mixed use building
Bank
Conference center
Eating and drinking establishment
Essential services
Flex space building
Health/Recreation Facility
Light industry subject to the performance standards found in §177-44
Miscellaneous Commercial-Residences
Nursing and convalescent home
Office
Public park
Research and development facility
Retail business
Warehouse
Wholesale sales and storage

(3) **Permitted accessory uses** shall be as follows:

Cafeteria, clinic, and recreational facility for the use of employees
Communications equipment or antenna structure, including satellite earth station, necessary for the conduct of any principal permitted use on a lot
Family day care center
Directional signage, including shared sign facilities
Storage or garage structure that is architecturally consistent with, and does not exceed 25% of the floor area of, the principal building on the lot
Other uses customarily accessory to uses permitted by right or special permit

(4) **Special uses** shall be as follows:

Automotive sales or service facility
Child day care center
Fast food restaurant, if located within a building containing mixed uses
Mixed Use Business-Conservation Park
Nursery or private school
Senior citizen development
Single-family, two-family, and multi-family housing
Theater

(5) **Location and dimensional requirements:**

- (a) The minimum parcel size for a business park shall be 50 acres.
- (b) Maximum impervious surface coverage within a business park shall be 35 %.
- (c) The minimum amount of land set aside as permanent open space shall be 50 %.
- (d) No more than 10 % of the total floor area in a business park may consist of retail uses.

- (e) No more than 40 % of the total floor area in a business park may consist of residential uses incremental and total.
- (f) Residential special permit uses may be approved in accordance with the project phasing provisions of Section 177-6.K.(6)(a)[5][d].
- (g) Except where specified herein, all development standards and controls normally applicable to other commercial and residential uses shall also be applicable to business parks. In reviewing such standards and controls, the Town Board or Planning Board (as appropriate) shall take into consideration the need for visual privacy, the scale of building to ensure compatibility with natural and man-made surroundings, and the need for preserving existing neighborhood identity.

(6) Procedure for establishing a Mixed Use Business-Conservation Park.

- (a) **Mixed Use Business-Conservation Park Master Plan.** Establishing a Mixed Use Business Conservation Park within the Mixed Use Business-Conservation District requires Town Board approval of a proposed master plan ("plan") as an amendment to the Town's Comprehensive Plan. The Town Board may modify the proposal, especially those portions dealing with development standards and review procedures. The greater the level of detail in the plan, the less need for extensive reviews of subsequent phases. Conversely, the more general the details, the greater the level of review that will be required for subsequent phases. Applicants must submit a master plan with all of the following components:

[1] Objectives. A business park master plan shall include a narrative description of how the proposed plan will serve to implement the intent and purposes of this section as well as the specific objectives to be achieved by the plan including such factors as historic preservation, viewshed protection, pedestrian and vehicle interconnections with the hamlet of Wallkill and other adjoining sites, usability of open space and recreational areas, utilities and other common lands and facilities. The Town Board may approve a business park master plan and uses therein which include contiguous lands under the applicant's ownership and control, but that are situated outside the boundaries of the MB-C District to meet open space requirements, where it deems such inclusion will serve to protect open space and achieve the land preservation objectives of this Zoning Law.

[2] Boundaries and density. The master plan must show the current boundaries and possible future boundaries of the business park for the duration of the master plan. Contiguous lands that are owned by the applicant for a business park and that lie outside of the Mixed Use Business-Conservation District may be used to calculate overall business park density. For purposes of this section, single parent parcel ownership is required for such lands when said lands lie outside of the boundaries of the Mixed Use Business-Conservation District and no natural subdivisions of land will be recognized. Such lands shall be specifically identified and justification for their use must be demonstrated to the Town Board. Applicant's shall also demonstrate to the satisfaction of the Town Board how such lands, lying outside of the boundaries of the Mixed Use Business-Conservation District, will be left in permanent open space uses, thereby achieving the land preservation objectives of this Zoning Law.

[3] General Statement. The master plan must include a narrative that addresses the following items:

- [a] A description, in general terms, of the business park's expansion plans for the duration of the master plan.
 - [b] An explanation of how the proposed uses and possible future uses comply with the special use permit criteria.
 - [c] An explanation of how the business park use will limit impacts on any adjacent residentially zoned areas.
 - [d] A discussion of the business park master plan's consistency with the Town of Shawangunk Comprehensive Plan.
- [4] Uses and functions. The master plan must include a description of present uses, accessory uses, proposed uses, and possible future uses. The description must provide information as to the general amount and type of each use including, but not limited to office, retail, light industry, recreation area, open space, and housing. The likely hours of operation, and such things as the approximate number of employees, visitors, residents, and special events must be included. Other uses within the master plan boundary but not part of the special permit use (if any) must be shown.
- [5] Site plan. The master plan must include a site plan, showing at an appropriate level of detail, buildings and other structures, the pedestrian, bicycle, and vehicle circulation system, vehicle parking areas, open space areas, and other required items. This information must cover the following:
- [a] All existing improvements (if any) that will remain after development of the proposed uses;
 - [b] All improvements planned in conjunction with the proposed uses including general locations, layout, and dimensions of structures, parking areas, streets, utilities, recreation areas, conservation areas, and other information necessary to demonstrate compliance with the requirements of Subsection (4)(a)(3) above, including square footage of building floor area, numbers of residential units, and impervious surface coverage;
 - [c] Conceptual plans for possible future uses;
 - [d] Project phasing. Project phasing is a means to provide transportation, water supply, wastewater, emergency, school and other accommodations sufficient to meet the needs of proposed residential and commercial uses. It is also a means to ensure that there is a positive fiscal return to taxing jurisdictions during the life of the business-park. Therefore, the proposed sequence of phasing of the construction of infrastructure and buildings and the ratio of residential, retail, and other non-residential floor space to be built in each phase, estimated dates, and interim uses of property awaiting development, and its likely fiscal effects must be identified. A standard fiscal impact model, such as the one described in Rutgers University's Center for Urban Policy Research publication entitled *The Fiscal Impact Handbook*, may be used to describe such fiscal effects. In addition the plan should address any proposed temporary uses or locations of uses during construction periods.

- [e] Conservation analysis consisting of identification of all environmentally significant portions of the property including wetlands, streams, and water bodies, aquifers and aquifer recharge areas, steep slopes, mature forests, active farmlands, lands within a certified agricultural district and/or soils within soil group 1 through 4 of the NYS Land Classification System, historic resources, and scenic viewsheds. The applicant shall show which lands of conservation value, as defined in Section 177-36.A(6), will be protected by a permanent conservation easement in furtherance of the Town's open space, recreation, and conservation objectives, and how such protection will be coordinated with the phasing of the development components in the proposed business park.
- [f] Pedestrian, bicycle, and transit facilities including pedestrian and bicycle circulation between:
 - [i] Major buildings, activity areas, and transit stops within the master plan boundaries and adjacent streets and adjacent transit stops; and
 - [ii] Adjacent developments and the proposed development.
- [6] Transportation and parking. The master plan must include information on the following items for each phase:
 - [a] Projected transportation impacts. These include the expected number of trips (peak and daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, vanpools, and other alternatives to single occupancy vehicles.
 - [b] Projected parking impacts. These include projected peak parking demand, an analysis of this demand compared to proposed on-site and off-site supply, potential impacts to the on-street parking system and adjacent land uses, and mitigation measures. Appropriate off-street parking standards are determined with reference to a current parking generation publication in common use, such as the most recent edition of the Institute of Transportation Engineer's *Parking Generation Manual*.
- [7] Other discretionary reviews. When design review or other required reviews are also being requested, the master plan must specifically state which phases or proposals the reviews apply to. The required reviews for all phases may be done as part of the initial master plan review, or may be done separately at the time of each new phase of development. The plan must explain and provide enough detail on how the proposals comply with the approval criteria for the review.
- [8] Review procedures. The master plan must state the procedures for review of possible future uses if the plan does not contain adequate details for those uses to be allowed without a special use permit review.
- [9] Implementation.
 - [a] Conforming to the plan. Uses and development that are in conformance with detailed aspects of the plan must also undergo special use permit review by the Planning

Board. Uses and development subject to less detailed parts of the plan are subject to the level of special use permit review stated in the master plan. They will be approved if they are found to comply with the master plan, special use permit standards and site plan requirements of the Zoning Law.

[b] Not conforming to the plan. Uses and development that are not in conformance with the master plan require an amendment to the plan.

[10] Amendments to Master Plans. Amendments to the master plan are required for any use or development that is not in conformance with the plan. The thresholds and procedures for amendments are stated below.

[a] Unless the master plan specifically provides differently, amendments to a master plan which require a new review procedure and possibly new amendments to the Town's Comprehensive Plan are as follows:

[i] Any proposed changes to the business park boundaries;

[ii] Proposals that increase the amount, frequency, or scale of a use over 10 percent of what was approved. Examples include the number of employees, residents, students, or the number of vehicle trips;

[iii] Increases in the overall floor area of development on the site over 10 percent;

[iv] Increases or decreases greater than 10 percent in the amount of approved or required parking; and

[v] Proposed uses or development which were reviewed, but were disapproved because they were found to not be in conformance with the plan.

[b] Generic Environmental Impact Statement. The applicant shall prepare a Draft Generic Environmental Impact Statement (DGEIS) to accompany the proposed business park master plan. The DGEIS shall clearly state its underlying development assumptions, including but not limited to numbers of residential units of different sizes, square footage of different types of non-residential uses, estimated water supply and sewage flows, number and location of parking spaces, road layout, total impervious surface coverage, total building coverage, and preliminary grading and drainage plans, as well as the approximate locations of proposed uses. The DGEIS shall show estimated impacts of development using the above assumptions, shall indicate mitigation measures to be taken to reduce such impacts, and shall set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the DGEIS.

Site-specific projects, substantially similar to those analyzed in the DGEIS, shall not require a new environmental impact statement, provided that the proposed action will be carried out in conformance with the conditions and thresholds established for such action in the DGEIS, the Final GEIS, or its findings statement. A supplemental EIS shall be prepared if the subsequent proposed action was not addressed or was not

adequately addressed in the DGEIS and the subsequent action may have one or more significant adverse environmental impacts. A negative declaration shall be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the DGEIS and the subsequent action will not result in any significant environmental impacts. An amended findings statement shall be prepared if the subsequent proposed action was adequately addressed in the DGEIS but was not addressed or was not adequately addressed in the findings statement. For purposes of the SEQR review of the business park master plan, it is assumed that the Town Board will be the lead agency. However, until such time as an application is submitted, there can be no pre-determination as to the lead agency which shall be selected. The SEQR regulations shall control selection of lead agency.

- [c] Planning Board Review. If the Town Board receives a proposal for approval of a business park master plan, the Town Board shall refer such business park master plan to the Planning Board for its review and recommendation. The Planning Board shall review the business park master plan and shall discuss it with the applicant at a regular meeting. The Planning Board may invite informal public comment at such a meeting. The Planning Board shall report its recommendation to the Town Board within 60 days after its next regularly scheduled meeting following the date of such referral of the proposed master plan. The Planning Board's recommendation may be to adopt, adopt with modifications, or reject the proposed business park master plan. The Town Board and/or Planning Board may refer the proposal to mediation pursuant to §177-25.E with the applicant's consent. Such mediation may suspend the 60-day referral period if the applicant consents. If the Planning Board fails to report within 60 days, it shall be deemed to have no objections.

If, following the preparation of a Final Generic Environmental Impact Statement (FGEIS), the Town Board determines that the business park master plan has been amended to the extent that it is not in substantial agreement with the business park master plan considered in the DGEIS, the Town Board may refer the application to the Planning Board for an additional review and recommendation. Such additional review shall follow the same procedure as the business park master plan review, with the exception that the Planning Board shall render its report within 30 days of its next regularly scheduled meeting following the date of such referral.

- [d] Public Hearing. Prior to adopting a business park master plan as an amendment to the Town's Comprehensive Plan, the Town Board shall hold a public hearing on the master plan pursuant to Section 177-25 of this Zoning Law and Section 272-a of New York State Town Law. If the Planning Board provides a report recommendation to the Town Board, as provided for herein, said report shall become an official part of the minutes of the public hearing.
- [e] Special Use Permit. Once a business park master plan has been approved as an amendment to the Town's Comprehensive Plan, issuance of a special use permit by the Planning Board is required, based upon submission of complete site plan information as specified in § 177-35. Issuance of a business park special use permit is subject to the general standards found in § 177-25.C. as well as the compatibility standards found in § 177-30.A. Petitioners are encouraged to meet with the Planning Board, prior to submitting an application, to discuss development and conservation options for a proposed business park.

[f] Design Guidelines. The application for a special use permit shall include proposed design guidelines indicating the general building types to be used, illustrated design criteria for such buildings, and the relationships between buildings, streets, and parking areas. The business park design guidelines could establish lot sizes, setbacks, road standards, and other dimensional standards that may differ from other provisions of this Zoning Law or other Town laws or regulations, provided that the applicant shall propose and the Town Board shall approve such standards as part of the business park master plan. Once approved by the Town Board, such design guidelines shall control within the business park but may be amended where sufficient justification has been demonstrated. Within the Borden Farm Historic Overlay District, the design guidelines for that district shall control. An applicant may supplement those guidelines with additional detail, provided that such additional guidelines are consistent with any guidelines adopted as part of the Borden Farm Overlay District.

(7) **Approval of Specific Projects in a Business Park.** Approval of a business park master plan or approval with modifications, shall be deemed to authorize the applicant to proceed with the detailed design of the development and to submit an application for special use permit and site plan approval in accordance with Sections 177-25 and 177-35. Individual projects that are consistent with the approved master plan, the business park special use permit, and any design guidelines that are adopted shall be reviewed as follows:

(a) Permitted uses shall require only site plan approval by the Planning Board. Such review shall be limited to compliance with applicable design guidelines, development standards, use definitions, requirements of the business park master plan (including protection of open space land assigned to each phase of the development), and conditions of approval of the business park master plan and special use permit, as well as standard site plan approval requirements.

(b) Special uses shall be reviewed by the Planning Board and shall also require site plan review by the Planning Board. Such reviews shall include consideration of all relevant material submitted in connection with the business park master plan and special use permit.

L. A-I Airport Industrial (A-I)

(1) **Purpose.** The purpose of this district is to provide a location for light industrial uses where such uses can have access to a state highway, where practical, while being screened from view along such highway. Such uses are more compatible with general aviation operations than with most other types of uses and are, therefore, suitably located in proximity to a general aviation airport. Such proximity also offers special advantages for high-technology, communications, and other businesses that need convenient access to aircraft. This district offers a location that has competitive advantages in attracting high-technology industrial development, while minimizing visual and traffic impacts. All development in this district must comply with the requirements of the AQ-O Overlay District.

(2) **Permitted principal uses** shall be as follows:

Conference center
Essential services
Farm
General aviation airport
Heliport

Light industry subject to the performance standards found in § 177-44

Office

Research laboratory excluding medical or biological laboratories

Self-storage facility

Training Center

Wholesale sales and incidental storage, provided that all goods are stored in fully enclosed structures in conformance with the bulk regulations for buildings

Wholesale and accessory use storage establishment conducted in completely enclosed buildings, except that open storage is permitted when screened by vegetation, topography, or fencing

(3) **Permitted accessory uses** shall be as follows:

Residence for caretaker or watchman, owner or manager

Sign

Storage, service, and repair facility for aircraft

Outdoor storage of building supplies, raw materials, finished products, machinery, and equipment, not including junkyards, provided they are enclosed by proper screening

Other accessory use customarily appurtenant to a permitted use

(4) **Special permit uses** shall be as follows:

Eating and drinking establishment

Membership club

Mining and excavation

Miscellaneous Commercial-Residences

Private school, limited to elementary and secondary education

Recreation and amusement use, indoor and outdoor

Retail uses customarily associated with airport operations

(5) **Access restriction.** Primary vehicular access and access for all trucks over ten tons gross vehicle weight shall be from NYS Route 208, where practical, for site plan purposes.

M. Borden Home Farm Historic Overlay (BH-O)

- (1) **Findings.** The Town of Shawangunk finds that the area encompassed by the former Borden Home Farm is a unique cultural and scenic resource possessing historic significance and integrity, as documented in several reports and other documents, including the 1992 study, *Borden Properties: Home Farm and Condensory Historic and Field Research Project Report*, prepared for the Town by Landscapes, of Westport, Connecticut. Preservation of the historic and scenic character of this area of the Town emerged as an important priority in the public planning process conducted in 1993, including several public workshops, and a report based on those workshops entitled *Community Planning Report: East of the Wallkill River*. The Town, therefore, finds that preservation of the historic and scenic character of those portions of the Borden Home Farm that retain their integrity is important to maintaining the Town's rural character, sense of place, and historic landscape, which contribute to the Town's quality of life and its attractiveness for residential and commercial development, as well as for tourism. The Town further finds that development of the area covered by this overlay district is appropriate if such development is carefully planned and designed to maintain, preserve, and enhance to the extent practicable the scenic and historic features of the area and the views into the landscape from public roads.

- (2) **Purpose.** The purpose of the Borden Home Farm Historic Overlay District (hereafter the "BH-O District") is to establish clear guidelines for future development and preservation of portions of the Borden Home Farm area. On the "Core Farm," where there is an existing cluster of historic buildings, the goal is to maintain its integrity and character. In the surrounding area, where new development is likely to occur because of its proximity to state highways and water and sewer services, the objective is to protect the scenic and historic character of the landscape, which is the setting and context for the Core Farm, and to integrate new development sensitively into the rural landscape.
- (3) **Location.** The BH-O District consists of all of those lands shown on a map entitled "Borden Home Farm Historic Overlay District" (hereinafter "Historic Overlay Map") which is hereby made a part of the Town of Shawangunk zoning map. The District is divided into two sections, the "Core Farm" and the "Support Land". Since the primary reason for establishing this district is to provide guidelines for the development and preservation of presently undeveloped portions of the Home Farm properties, this district does not include those portions of the original Borden Home Farm that have either been fully developed as part of the hamlet of Wallkill or that have been extensively developed in a manner that is inconsistent with the historic character of the Farm landscape.
- (4) **Applicability.** The provisions of this Subsection (H) shall apply to any application for land subdivision, special use permit, site plan approval, rezoning, or variance on any parcel of land lying partially or wholly within the BH-O district. No approval of any such application shall be granted unless the board granting such approval finds that the development proposed will be consistent with the requirements of the BH-O district. Such board shall impose conditions which it deems necessary in order to make such a finding. The provisions of the underlying R-Ag 2 District (or any other district which may be created, including a Mixed Use Business-Conservation Park (business park) special use permit shall remain in effect except where otherwise specified herein. In case of any conflict between the provisions of this Subsection (H) and the requirements of the underlying District, other Sections of the Zoning Law, the Town Road Specifications, or the Land Subdivision Regulations, this Section shall control.
- (5) **Preservation and restoration of historic features.** In any application subject to this Subsection, historic features shall be preserved or restored to the greatest extent practicable. These features include stone piers, woven wire fences, allees of trees, individual healthy trees at least two feet in diameter at breast height (dbh), hedgerows, private unpaved country lanes, stone walls, lamps, ornamental building and landscape accessories, and other features documented in the historical reports. Where deemed appropriate by the reviewing board, trees at least six feet tall shall be planted in "allee" formation along new and existing roads on which subdivision or new construction is proposed. Such trees shall be properly maintained and replaced if they die within three years of planting.
- (6) **Illustrated design guidelines and design principles.** All development within the BH-O District should comply with applicable design guidelines. Until such time as specific design guidelines are adopted by the Town of Shawangunk, the New York Planning Federation's "*Community Design Guidelines*" may be used as an example of acceptable design guidelines.

The intent of the applicable design guidelines is to provide prospective applicants for land development with actual illustrations of the types of development that the Town wishes to achieve within the BH-O District. The guidelines are also intended to ensure that future development within the BH-O District creates no more than a minimal impact on the District and surrounding area, makes open space planning a central focus of any future development, requires

that new development follow traditional settlement patterns within the District and respects local historic styles, and provides general siting principles to help landowners and the Planning Board to plan projects that fit into the rural countryside found in the Borden Farm area.

The following principles shall apply to development within the BH-O District:

- (a) Buildings shall be sited in clusters with screened parking provided wholly at the side and/or rear of the structures to preserve as much open space as possible and avoid a "sprawl" pattern. If parking is provided at the side of structures, at least a 10 foot wide landscaped area (exclusive of that required for sidewalks or utility easements) shall be provided between the right-of-way and the parking lot, to be planted with shade or ornamental trees and at least a three-foot-high evergreen hedge, wall or fence. In addition, at least one tree and three shrubs shall be provided for each eight parking spaces in interior areas of the parking lot, whether such lot is provided at the side or rear of structures. This principle shall not apply to conservation density subdivisions.
- (b) Architecture shall be similar in character to that on the Core Farm, hamlet of Wallkill, or other traditional rural and hamlet architecture in the area. Non-residential uses shall be placed in structures similar in massing, proportion, and roof pitch to the large barns found on the Home Farm.
- (c) Street layouts shall be similar in pattern and design (i.e. grid) to the Core Farm and/or the Hamlet of Wallkill, except where the Planning Board determines that topography, geography, or wetlands preclude such pattern.
- (d) Conservation Density Subdivisions shall be encouraged as an alternative to maximum density development (see Section 177-37).
- (e) Wherever practical, vegetation and topography shall be used to buffer and screen buildings.
- (f) Clearing of existing vegetation at the edge of the road shall be minimized, except to open landscape views and as necessary to create road and driveway entrances with adequate sight distance. Curved driveways shall be used to increase the screening of buildings.
- (g) Buildings shall be sited so that they do not protrude above treetops and ridgelines of hills as seen from public places and roads. (This shall not be interpreted to mean that the buildings should not be seen, only that they should not protrude above the trees or hilltops.)

(7) Bulk regulations.

- (a) All subdivisions of land, other than conservation density subdivisions, shall be designed as cluster subdivisions, in accordance with §177-36. Exceptions to this requirement may be made on a case-by-case basis for two lot subdivisions only when a sketch-concept plan is submitted that demonstrates a future cluster subdivision design for the total property and that such future design will not be impeded by the two lot subdivision.
- (b) No building shall exceed 7,500 square feet in footprint, except in a business park, where the maximum square footage of a building footprint may be 15,000 square feet for an office or light industrial use, provided that the average square footage of all non-residential structures in the business park is no greater than 10,000 square feet.

- (c) The maximum allowable impervious surface coverage on any parcel proposed for subdivision or development shall be 35%. To implement this requirement, restrictions on impervious surface coverage for individual subdivided lots shall be shown on any subdivision plat.
 - (d) Maximum building height requirements found in Schedule I shall apply to the peak of the roof line except for cupolas or turrets, which may exceed the maximum building height.
- (8) **Uses.** Principal permitted uses and permitted accessory uses within the BH-O District shall include those permitted in the underlying R-Ag 2 District or business park.
- (9) **Core farm.** The Core Farm shall be developed in a manner that retains its historic integrity. Within the Core Farm:
- (a) The existing grid road layout, width, and surfacing shall be maintained, and new development shall follow the same road pattern.
 - (b) No structure designated as historically significant by the Town Board shall be demolished unless the Zoning Board of Appeals issues a variance allowing such demolition, upon a finding that maintaining such structure constitutes an unnecessary hardship to the owner.
 - (c) New construction or major alterations shall be architecturally compatible with existing historic structures as determined by the Planning Board during the site plan review process.
 - (d) Development of the Core Farm shall be allowed by cluster development on lots similar in size and character to existing ones, if water supply and sewage facilities permit. Densities shall be in conformance with Section 177-36.F.(1).

(10) Support land.

- (a) Development of the Support Land shall maintain the integrity of important views of the agricultural landscape, while designing and siting development according to the provisions of the illustrated Design Guidelines.
- (b) At least 50 percent of any support land parcel proposed for development shall be protected as open space by Conservation Easement. (Such open space land shall be counted for purposes of determining allowable density pursuant to §177-36.F.(1), and the Planning Board may not require more than 50 percent of the land to be set aside as open space.)
- (c) The preferred use of protected agricultural land shall be agriculture (in private ownership), but the land may also be used for other purposes that maintain its historic open and scenic character, including such recreational uses as golf courses, horseback riding, or cross-country ski trails. Protected land may be included in large estate parcels or large parcels that contain institutional, multi-family or commercial uses, provided that contiguous expanses of open land remain in agricultural or other appropriate open space uses.
- (d) The specific location of the protected land shall be determined by the Planning Board based upon an analysis of the scenic, historic, and environmental characteristics of the entire area proposed for development. In particular, land along existing roads and land identified by the Planning Board as "primary viewshed" in any Design Guidelines shall generally be included in the area set aside as protected open space. Land identified by the Planning Board as

"secondary viewshed" in the Design Guidelines shall be set aside as protected open space to the extent feasible.

- (e) No structure designated as historically significant by the Town Board shall be demolished unless the zoning board of appeals issues a variance allowing such demolition, upon a finding that maintaining such structure constitutes an unnecessary hardship to the owner.

N. Aquifer Protection Overlay (AQ-O)

- (1) **Purpose.** The Town of Shawangunk finds that protection of groundwater is essential to promoting the health, safety, and welfare of the Town. The purpose of the AQ-O district is to protect, preserve, and maintain the quality and quantity of the groundwater resources which the Town depends upon for its present and future public water supply, for the public water supply of the Village of Walden, and for numerous private wells in the Town of Shawangunk and the Town of Montgomery. As used herein, "present and future" means any wells or springs currently in use for public water supply purposes, any potential wellhead areas that have been identified and are under study or planned for future use as well as those wellhead areas identified for study from the time so designated.
- (2) **District boundaries.** The AQ-O District consists of aquifers and aquifer recharge areas shown as "Critical Environmental Area # 1 Walkkill Watershed and Aquifer" on the map dated June 6, 1996 (hereinafter the "aquifer map"), and hereby adopted as an amendment to the Town of Shawangunk Zoning Map. The aquifer map is an approximate delineation of the boundaries of the Tin Brook Aquifer, which includes the Walkkill Public Water Supply Watershed, as established in the Critical Environmental Area designation by the Town Board of the Town of Shawangunk, effective June 6, 1996. A landowner may challenge the inclusion of land in the AQ-O District by presenting expert evidence provided by a qualified professional based upon on-site investigation. Where such evidence shows, to the Planning Board's satisfaction, that groundwater on the property is not part of the Walkkill Public Water Supply Watershed or of the Tin Brook Aquifer or its recharge area, the regulations of this Subsection (I) shall not apply, provided an adjustment of the boundaries of the district shall be made on the official zoning map.
- (3) **Aquifer protection standards.** No approval of an application for a special use permit, site plan, subdivision, rezoning, or variance shall be granted for land lying within the AQ-O district unless the applicable board reviewing such application finds, based upon available information, analysis, and evidence, that the proposal will not:
 - (a) Reduce the availability of groundwater to private water supply wells and existing and potential public water supply wells.
 - (b) Degrade the quality of groundwater through the introduction of sewage wastes, stormwater runoff, liquid chemicals, petroleum products, dissolved metals, or other toxic substances.
 - (c) Increase the long-term risk of groundwater contamination through the siting, establishment, or expansion of uses which store, transport, or utilize significant quantities of material which is potentially harmful to groundwater quality.
 - (d) Increase the long-term risk of groundwater contamination through the introduction of relatively small quantities of hazardous or toxic substances which, over a period of time, may accumulate in groundwater.

- (e) Increase the risk of groundwater contamination through the removal of soil, sand, stone, or gravel which provides a protective mantle for groundwater or which is part of the geologic deposits making up the Town's aquifers.
 - (f) Reduce to less than five (5) feet the separation between the surface of the ground and the seasonal high water table.
 - (g) Result in more than 35% impervious surface coverage of a parcel. This Subsection (g) shall not apply to parcels of land that already have 35% or more impervious surface coverage, provided that no increase in impervious surface coverage shall be permitted on such parcels. The Town encourages owners of such parcels to reduce impervious surface coverage where practical.
- (4) **Use restrictions.** The following use restrictions and requirements shall apply to all land in the AQ-O District which lies within the A-I (Airport-Industrial) District or which is within one mile of the Town's present and future water supply well or springs. These use restrictions are not intended to supersede the New York State Agriculture and Markets Law or the New York State Environmental Conservation Law governing acceptable agricultural practices.
- (a) Disposal Wells. The installation or use of disposal wells is prohibited.
 - (b) Infiltration Basins. The installation or use of stormwater runoff infiltration basins is prohibited.
 - (c) Snow Disposal. The stockpiling or dumping of snow which has been transported to the restricted area is prohibited.
 - (d) Animal Wastes. Manure piles shall not be permitted unless provision has been made to prevent seepage into groundwater. Suitable storage facilities shall be required when it is not possible to spread or dispense of wastes on a daily basis. This shall not apply to extreme weather conditions when daily spreading may be impossible. Any storage combination in excess of 10 cubic yards total is prohibited.
 - (e) Industrial Sludge and Toxic Chemicals. No toxic or hazardous substances, defined as such by the United States Environmental Protection Agency or the New York Department of Environmental Conservation, shall be stored except under permit from those agencies.
 - (f) Wastewater Lagoons and Pits. Use of wastewater lagoons and pits for temporary storage of wastewater is prohibited. All storage facilities shall be water tight, located above ground, and under permit by the New York Department of Environmental Conservation.
 - (g) Disposal. Disposal of toxic chemicals, industrial sludge, or radioactive materials is prohibited.
 - (h) Fertilizer Storage. All bulk storage of fertilizers for agricultural or commercial use must be within a completely enclosed building or structure which will prevent any seepage or runoff.
 - (i) Pesticide and Herbicide Use. No pesticides or herbicides shall be stored or applied except in compliance with this Section. All storage of pesticides and herbicides within the AQ-O District shall be within a building. Application of pesticides and herbicides within Primary Recharge Areas, as shown on the aquifer map, shall be subject to issuance of a special use

permit as required by §177-25 of this Zoning Law with the exception of residential dwellings, which are exempted from this requirement. All such use, storage, or application shall be in accordance with the requirements of the New York State Environmental Conservation Law and its implementing regulations.

- (j) Storage Tanks and Pipelines. The installation, construction, placement, or replacement of new or existing underground storage tanks or containers of eleven hundred (1,100) gallons or less for petroleum products including their pipelines, or underground storage tanks, pipelines, or containers for any other toxic chemical is prohibited in connection with all uses including home fuel storage tanks for residential purposes. All above ground storage tanks of eleven hundred gallons (1,100) or less for petroleum products, pipelines, and transfer areas, shall to the maximum extent feasible, be designed to minimize the risk of groundwater contamination by incorporating backup containment structures, impervious surfaces, catchment areas, and other features. The Town reserves the right to prohibit installation or expansion of above ground storage tanks of eleven hundred gallons (1,100) or less for petroleum products or installation or expansion of above ground storage tanks, pipelines, or containers for any other toxic chemical, where consistent with the purpose and standards of this Section. This subsection is intended to be consistent with the requirements of the New York State Petroleum Bulk Storage Code found in 6 NYCRR 612, 613, and 614.
- (k) Salt and Coal Stockpiles. The storage of salts or coal is prohibited except in a completely enclosed building or structure which will prevent any seepage or runoff containing such materials.
- (l) Water Wells. All water supply wells shall be constructed in accordance with the requirements of the Ulster County Department of Health.
- (m) Abandoned Wells. All abandoned wells shall be sealed in accordance with the requirements of the Ulster County Department of Health.

§177-7 through 9. Reserved.

ARTICLE III
Supplementary Lot, Height and Yard Regulations

§ 177-10. General bulk requirements.

- A. The restrictions and controls intended to regulate development in each district are set forth in the attached Schedule I, which is supplemented by other sections of this chapter.
- B. No building shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the district in which such building is located.
- C. No building shall be erected and no existing building shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.
- D. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on one (1) lot shall be considered as providing a yard or open space for a building on any other lot.

§ 177-11. Minimum lot area.

Wherever the phrases “lot area”, “minimum lot area” or “minimum lot size” or similar term appears in the Zoning Law, such phrases shall be deemed to be based upon net acreage after the exclusion of the following lands:

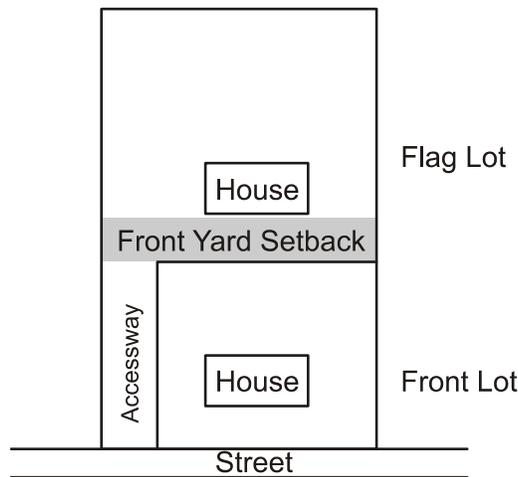
- A. 100-year floodplains as defined by the Federal Emergency Management Agency (FEMA) Flood Hazard Boundary maps as those maps now exist or as they may be amended from time to time;
- B. Wetlands, including New York State designated wetlands, excluding the 100 foot buffer, as well as those federal wetlands regulated by the US Army Corps of Engineers or any successor agency, all as those wetlands now exist or as may be found to exist subsequent to the enactment of this local law;
- C. Lands covered by natural and/or constructed water bodies including, without limitation, retention and detention basins.

§ 177-12. Lot regulations.

- A. **Lot frontage.** The minimum lot frontage of any lot shall be measured along the minimum building setback line as required for the district in which it is located.
- B. **Corner lots.** Subject to the following conditions, no obstruction to vision shall be permitted at street intersections within the imaginary triangle, two (2) of whose sides extend along the front lot lines of the streets forming the intersection, thirty (30) feet back from the point of intersection, and are joined by an imaginary line connecting the two (2) points established thirty (30) feet distant from the point of intersection.
 - (1) Other than an existing building, post, column or tree, no shrub or structure exceeding thirty (30) inches in height shall be permitted.

- (2) Occupants of the premises shall be responsible for maintaining the permitted height of shrubs.
- C. **Required area or space cannot be reduced.** The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter; said area or dimension may be continued and shall not be further reduced.
- D. **Minimum lot size for two family or multiple family dwellings.** Lots to be developed with private water supply and sewage disposal systems for two- or more family dwelling structures may require larger lot sizes and widths than are specified because of unusual subsoil or geological conditions found to exist on the particular location in question. In such cases, the minimum lot area otherwise required shall be increased, where necessary, to the extent required to allow the proposed water and/or sewerage installation to operate effectively in order to protect the public health, safety and welfare. Detailed plans for such water and/or sewerage systems shall be submitted to the Building Inspector and approved by him before a building permit shall be issued. The suitability of the proposed systems shall conform to the standards of New York State Department of Health. Notwithstanding anything contained herein, the average density of dwelling units per acre shall not exceed the densities set forth in §177-16.
- E. **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 chapter.
- F. **Dwellings on small lots.** Notwithstanding the limitations imposed by any other provisions of this chapter, the Zoning Board of Appeals may permit erection of a one-family dwelling on any lot in a residential district separately owned or under contract of sale and containing, at the time of the passage of this chapter, an area or a width smaller than that required for a one-family dwelling. No such permit shall be granted if the applicant is the owner of adjoining vacant property so that he or she could comply with the requirements of this chapter or if the applicant does not receive the approval of the Board of Health.
- G. **Lot frontage and traffic plan.** Where a building lot has frontage upon a street shown on the Official Map of the Town of Shawangunk that is designated for right-of-way widening, the required front yard area shall be measured from such proposed future right-of-way line.
- H. **Additional dwelling on lot.** An applicant seeking to place more than one (1) principal dwelling on a lot must establish to the satisfaction of the Zoning Board of Appeals that such dwelling or dwellings will be so located as to permit future subdivision in conformity with the regulations of the Town of Shawangunk or otherwise to meet density requirements of residential cluster development as set forth in §§ 177-16 and 177-36 in this chapter.
- I. **Flag lots.**
- (1) **Uses and districts permitted.** Flag lots are allowed in any residential-agricultural zone except where central water and sewer facilities are available or are planned to be available within five (5) years. Such lots may be approved only where the Planning Board finds that they will not endanger public health and safety, will not increase the otherwise allowable density of development, will provide an alternative to the development of new Town roads, will not conflict with existing residential or agricultural uses, and will result in the preservation of natural and scenic resources together with compliance with the following:

- (a) The minimum area of flag lots shall be twice the lot size otherwise required for the applicable zoning district. The area of the accessway may be included in the calculation of the required minimum lot area for the flag lot.
- (b) Each flag lot shall have a minimum frontage of twenty-five feet on a State, County, or Town road to provide for an accessway as required by these regulations. No portion of a flag lot shall be less than 25 feet in lot width, nor shall the required lot width of the original lot be reduced to less than the minimum required by this Zoning Law. The accessway shall not exceed 75 feet in width.
- (c) Except for subsections (a) and (b) herein, flag lots must meet all other requirements for a lot in the applicable zoning district and at no time shall a substandard lot be created by these flag lot regulations. For purposes of determining front yard setbacks, the front yard shall be the yard area lying between the flag lot's principal structure and the front lot's rear property boundary as shown on Sketch A below:



- (d) No more than two accessways to flag lots may abut, and abutting accessways must share one private drive over the accessways, subject to appropriate development and filing of a common use and maintenance agreement in accordance with Subsection (I)(1)(a)[12](d) below.
- (e) A minimum distance of twice the minimum lot frontage of the applicable district is required between non-abutting accessways at their intersection with the improved street.
- (f) The accessway shall be owned in fee simple by the owner of the flag lot.
- (g) For subdivisions of five or fewer lots, only one (1) flag lot shall be permitted. For subdivisions of more than five lots, one additional lot may constitute a flag lot.
- (h) The applicant shall demonstrate that the proposed interior lots will, through the use of conservation easements or other legally binding restrictions, preserve important natural resource and landscape features, including but not limited to wetlands, agricultural land, scenic views, and ridgelines.

- (i) When necessary to satisfy the criteria stated in subsection (I)(1)(a)[8] above, the subdivision plan shall show the limits, on the flag lot, of the area within which the house and driveway may be constructed. The Planning Board may require that such limitation of the building site be implemented through a conservation easement.
- (j) Flag lots shall be permitted only for single-family detached residential uses.
- (k) No subdivision plat that includes flag lots shall be approved unless the Planning Board finds that allowing such flag lot(s) will result in no more lots than could have been permitted using a hypothetical layout that includes a Town road and does not include flag lots. In making such determination, the Planning Board shall find that hypothetical Town road layout is physically and economically feasible, considering driveway locations, road grades and other Town road design standards, road construction costs, and sanitary sewer facilities required for each lot. The Town Highway Superintendent shall review the hypothetical Town road layout for compliance with Town road design standards. Any approved plat containing flag lots shall contain a note stating that no further subdivision of the flag lots (other than approved lot line changes which do not create the potential for new building lots) shall be permitted.
- (l) Driveway standards. The following standards shall be met to assure adequate access for emergency services:
 - [1] Grade. Grades along any portion of the driveway shall not be more than 12 %.
 - [2] Clear right-of-way. At all times a clear right-of-way of at least 15 feet in width shall be maintained to permit vehicular travel from the public road to the principal structure and the surface shall be sufficient to provide suitable access, ingress, and egress for emergency vehicles in the opinion of the Town of Shawangunk Superintendent of Highways.
 - [3] Certificate of Occupancy. No Certificate of Occupancy shall be issued until the driveway is installed in accordance with all applicable provisions herein set forth and to the satisfaction of the Town Highway Superintendent.
 - [4] Declaration of covenants, restrictions, and easements. Prior to issuance of a building permit or certificate of occupancy, the subdivider of any flag lot shall cause to be recorded in the County Clerk's office documentation in a form acceptable to the Attorney for the Town, which documentation shall at a minimum provide for:
 - [a] Reciprocal easements for use of the drive by each owner of lots sharing such drive.
 - [b] A maintenance agreement to be executed by all owners sharing such drive declaring that the Town of Shawangunk has no responsibility for maintenance of such drive, and further providing for maintenance and sharing of the costs of such maintenance, including normal upkeep, reconstruction, drainage, snowplowing, and any and all additional costs which may be associated with such drive. The agreement shall further provide that in the event that the drive is offered to the Town of Shawangunk for dedication as a public highway, such drive will first be improved according to Town of Shawangunk Highway specifications at the expense of the owners of the lots served by the drive. Notwithstanding, the Town Board shall not be obligated to accept such an offer of dedication.

§ 177-13. Height regulations.

- A. **General application.** No building or structure shall be higher than the height permitted in the district where such building is located.
- B. **Airport-industrial district.** The reference point of an airport is a point selected and marked as the approximate center of the airport landing area. An approach zone is that area at the end of each runway which has a width of two hundred (200) feet symmetrical about the runway center line at a distance of one hundred (100) feet beyond each end of the runway, widening thereafter uniformly to a width of five hundred (500) feet at a distance of three thousand one hundred (3,100) feet beyond the end of each runway. Within a radius of two thousand five hundred (2,500) feet of the reference point, except within approach zones, the topmost point of any structure, building, tower, pole, wire or portion thereof shall be no higher than one hundred fifty (150) feet above the level of the reference point. Within approach zones, the maximum height for any object described above shall be no more than one (1) foot in height for each twenty (20) feet horizontal, beginning at a point one hundred (100) feet from and at the center line elevation of the end of the runway and extending to a point three thousand one hundred (3,100) feet therefrom.
- C. **Permitted exceptions.** Except for the airport district, height limitations stipulated elsewhere in this chapter shall not apply to open amusement uses, church spires, belfries, cupolas and domes, monuments, water towers, chimneys, smokestacks, flagpoles, masts and aerials or to parapet walls, except that no parapet wall may extend more than four (4) feet above the limiting height of the building, or to farm buildings or structures on farms, provided that these farm buildings are at least two hundred (200) feet from every lot line.

§ 177-14. Yard regulations.

- A. **Side yard of corner lot.** The side yard of every corner lot shall be equal to the front yard requirement for structures fronting on the side street.
- B. **Additional yards required when nonresidential districts abut residential districts.** All uses permitted in nonresidential districts which abut at the lot line of or on the same street as a residential district shall provide yards where they abut of at least the minimum yard requirements in such residential districts.
- C. **Side yard width may be varied.** Where the side wall of a building is not parallel with the side lot line or is broken or otherwise irregular, the side yard may be varied. In such case the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than one-half (½) the otherwise required minimum width.
- D. **Front yard exception.** When an unimproved lot is situated between two (2) improved lots, each having a principal building within twenty-five (25) feet of any side lot line of such unimproved lot, the front yard may be reduced to the greatest depth of the front yard of the two (2) adjoining improved lots but shall be not less than ten (10) feet.
- E. **Front yard of corner lot.** The front yard of any corner lot shall be established on the wider of the two (2) streets abutting said lot, except that where the widths of the two (2) abutting streets are equal, then the front yard may be established on either street.

- F. **Provision of yard or other open space.** No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- G. **Front yards in R-Ag 1 District.** In those sections of the R-Ag 1 District which are presently outside a sewer district, the minimum front yard shall be seventy (70) feet where the topography permits drainage away from residential structures toward their access roads.

§ 177-15. Accessory structures.

- A. **Accessory building.** The location, limitation and coverage of an accessory building shall be as follows:
- (1) No accessory building permitted by this chapter shall be placed in any required side or front yard except as specified hereinafter in this Article.
 - (2) The aggregate ground area covered by accessory buildings in any rear yard shall not exceed twenty percent (20 %) of the rear yard area.
 - (3) An accessory structure which is not attached to a principal structure may be erected in accordance with the following restrictions:
 - (a) No accessory structure shall be located closer than ten (10) feet to the side and rear lot lines.
 - (b) No accessory structure shall be located closer to a principal structure than ten (10) feet.
 - (c) No accessory structure shall be located closer to the street than the street wall of the principal structure, except when the accessory structure is placed at least 150 feet from the front lot line or in the case of farm buildings where the provisions of § 177-20 apply.
 - (4) When an accessory structure is attached to a principal building, it shall comply in all respects with the requirements of this chapter applicable to principal buildings.
- B. **Swimming pool.** A private swimming pool intended for use by a single family shall, whether permanent or portable, be regulated as follows, except that these regulations shall not apply to portable swimming pools when they are not more than three (3) feet in height nor more than fifteen (15) feet in length. A pool:
- (a) May be erected only on the same lot as the principal structure.
 - (b) May be erected only in the rear yard of such structure and shall be distant not less than twenty (20) feet from a rear lot line nor less than ten (10) feet from any side lot line and from any principal structure or accessory structure attached thereto.
 - (c) Shall meet the requirements of the New York State Building Code as may be amended from time to time.
 - (d) See also Chapter 156 of the Code of the Town of Shawangunk and applicable sections of the Residential Code for New York State for additional regulations regarding swimming pools.

§ 177-16. Density regulations.

The following density restrictions shall be applicable to the lot, yard and height regulations herein set forth in Schedule I:⁴

- A. The net acreage that is determined to be available after exclusion of the types of lands set forth in §177-11 shall be calculated and the resultant permissible density based upon the net acreage shall be one dwelling unit per minimum lot size or one commercial, retail or service use per minimum lot size or one industrial use per minimum lot size, as the case may be. All density calculations shall be rounded to nearest whole number of dwelling units or principal buildings.

§ 177-17. Incentive zoning.

- A. **Purpose.** The purpose and intent of these provisions are to offer zoning incentives or bonuses to land development applicants to provide certain specified amenities or community benefits in certain areas of the Town that will assist the Town to implement specific physical, cultural and social policies as generally described in the Comprehensive Plan of the Town and as supplemented by the local laws and ordinances adopted by the Town Board. Incentive zoning may be pursued only in the sole discretion of the applicant but, if pursued, the final decision shall rest at all times with the Town Board in its sole discretion.

B. Amenities or Community Benefits for which incentives may be offered.

- (1) The following amenities or community benefits may be located either on or off the site of the subject application or may be both on and off the site.
- (a) Open space.
 - (b) Affordable housing for persons of median/moderate income.
 - (c) Central water and/or sewer facility construction, enhancements, improvements and/or extensions.
 - (d) Public highway construction or improvements, enhancements or extensions.
 - (e) Any combination of these specific amenities and/or cash in lieu thereof
- (2) These amenities or community benefits shall be in addition to and not in lieu of any other improvements or amenities otherwise required pursuant to any other provisions of the Zoning Law, the Subdivision Regulations and/or any other land-use regulations of the Town, the provisions of the New York State Environmental Quality Review Act (SEQRA) and the Regulations thereunder and the provisions of other applicable New York State laws including, without limitation, Article 16 of the Town Law, all as any of these provisions now exist or as they may be amended from time to time. Incentives shall be granted only when the community benefits or amenities offered would not otherwise be required or likely to result from the applicable regulatory permitting/approval process before the Planning Board and/or Town Board

⁴ Editor's Note: Schedule I is included at the end of this chapter.

and/or any other Federal, State and local regulatory agencies. Additionally, incentive zoning shall not be a substitute, in whole or in part, for any other conditions or requirements of a land use development that is "clustered" pursuant to other applicable laws and regulations. Notwithstanding, incentive zoning may apply in addition to any such cluster development conditions or requirements.

- (3) The amenities and community benefits set forth in subparagraph "A" above are not intended to be listed in any particular order of importance or priority. Nothing herein set forth shall prevent the Town Board from adopting and, from time to time, amending a resolution or statement of policy establishing a prioritized list of the amenities set forth above.

C. Incentives permitted. The following incentives, or any combination of these incentives, may be granted in the sole discretion of the Town Board to the applicant on a specific site for qualifying property specifically designated by the Town Board as set forth in Section §177-17.D. hereof:

- (1) decreases in required minimum lot sizes or increases in allowable density
- (2) decreases in setback and/or dimensional requirements
- (3) decreases in required public road frontage requirements

D. Zoning districts or areas where incentives may occur.

- (1) For the amenity of open space, all property within all zoning districts in the Town of Shawangunk may be eligible for incentive zoning with the exception of the RS-1 and RS-2 zoning districts.
- (2) For the amenity of affordable housing for persons of median/moderate income, all property within all of the residential Zoning Districts in the Town of Shawangunk may be eligible for incentive zoning with the exception of the RS-1 and RS-2 districts.
- (3) For the amenity of water and/or sewer infrastructure construction and/or improvements, all property within the following Zoning Districts may be eligible for incentive zoning: MB-C, SB, HWG, H-1, AQ-O, and Support Land section of the BH-O district..
- (4) For the amenity of public highway construction or improvements, all property within all zoning districts of the Town of Shawangunk.

E. Procedure for approval.

- (1) Applications for utilization of incentive zoning for a particular property shall be submitted simultaneously to the Town Board and to the Planning Board by any landowner or its duly authorized agent for one or more of the incentives set forth above for property located in the corresponding permissible areas of the Town. An applicant is encouraged to present its plans to the Town Board as early in the process as possible. In order to preliminarily evaluate the adequacy of the property and of the amenities to be accepted in exchange for the requested incentive(s), the following information shall be submitted as part of the application:
 - (a) A map drawn at a scale of one inch = 100 feet depicting the conventional lot/unit layout under existing zoning rules;

- (b) A map drawn at a scale of one inch = 100 feet depicting an alternative cluster plan, if applicable (see §177-36).
- (c) A map drawn at a scale of one inch = 100 feet depicting the proposed lot/unit layout with one or more of the proposed incentive(s) set forth in §177-17.C. above.
- (d) A Long Environmental Assessment Form (EAF) with completed Part 1.
- (e) A narrative statement containing at least the following items:
 - [1] a description of the incentive requested;
 - [2] a description of the benefit offered to the Town;
 - [3] a current estimate of the market value of the proposed benefit to the Town;
 - [4] a preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and the amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them if the district were developed to its fullest potential; and
 - [5] an explanation as to how the amenity helps implement the physical, social or cultural policies of the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.
- (2) Authorization of the utilization of incentive zoning to a specific property is subject to approval by the Town Board prior to the grant of preliminary plat or preliminary site plan approval by the Planning Board. Applicants may seek non-binding input from the Town Board as to whether the proposal is worthy of consideration prior to the application or at any stage of the application process prior to the formal referral of the application by the Planning Board pursuant to subdivision B(5) below.
- (3) For residential developments, applications for zoning incentives in exchange for community benefits shall be processed in accordance with the same procedures applicable to subdivisions and/or special use/site plan approvals as set forth in the Zoning Law and Subdivision Regulations of the Town.
- (4) For non-residential developments, applications for zoning incentives in exchange for community benefits shall be processed in accordance with the Special Use and/or Site Plan review procedures under Sections 177-25 and 177-35 and shall include sketch plan and preliminary site plan layouts for the proposed incentive development of the site.
- (5) All applicable requirements of the State Environmental Quality Review Act ("SEQRA") shall be complied with as part of the review and hearing process before the Planning Board.
- (6) Prior to granting approval of the preliminary plat or preliminary site plan based on an incentive proposal but after at least one hearing thereon has been held, the Planning Board shall refer the proposal to the Town Board. The Planning Board's report shall include the following: (a) The Planning Board's recommendations regarding the proposal, including an evaluation of the adequacy with which the benefit(s) and incentive(s) fit the site and how they relate to adjacent

uses and structures and that such benefit(s) would not otherwise result as provided in Section V-B above; (b) a SEQRA, Negative Declaration or Findings Statement establishing that the proposal will not have a significant impact on the environment;(c) an assessment that there is adequate sewer, water, transportation, waste disposal and fire protection facilities to serve the proposed incentive development and other impacted lands, and that such development will not substantially and deleteriously impact upon the development prerogatives of neighboring lands pursuant to the zoning and land-use regulations then in effect; and (d) a statement that the benefit would not otherwise result from the project without the granting of the incentive.

If an applicant before the Planning Board desires to utilize incentive zoning, the applicant may be required to grant the Planning Board extensions of the time in which to render its preliminary or final approval so as to avoid a default approval per Article 16 of the Town Law.

- (7) Within thirty-two (32) days of receipt of the Planning Board's referral, the Town Board shall hold a public hearing on the proposal. For Town Board public hearings on incentive zoning requests, notice of the hearing shall be published in the official newspaper of the Town at least ten (10) days prior to the date of the hearing and shall be posted on the official signboard at Town Hall. The Town Board may provide for such other and further notice as it deems necessary in its sole discretion.
 - (8) For approval of an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive.
 - (9) The Town Board shall render its determination within thirty-two (32) days of the closure of its public hearing. In no case, however, shall the Town Board be compelled to approve any aspect of the incentive zoning proposal as such an approval rests with the Town Board in its sole and absolute discretion. Failure to render a determination within said 32 day period shall be deemed to be a denial of the incentive zoning proposal.
 - (10) Upon Town Board approval or approval with modifications or upon Town Board denial, the application shall be referred back to the Planning Board for preliminary and/or final approval of the application with or without the incentives, as the case may be, as prescribed by the Town Board. If the Town Board resolves to permit incentive zoning to a particular property, no subsequent permit or approval by any official, board or agency of the Town shall materially alter any condition imposed by the Town Board and, in the event that any permit or approval by any agency within or without the Town materially alters any such condition, the project may not proceed until and unless the Town Board approves of the modification in its sole discretion.
 - (11) Prior to rendering an approval or approval with modifications of an incentive zoning proposal, the Town Board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the Town. Further, the Town Board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the Town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.
- F. **Standards for approval.** All incentive zoning proposals must promote one or more of the goals and objectives of the 2003 Comprehensive Plan of the Town of Shawangunk as amended in 2003. Additionally, particular incentive zoning proposals must include at least one of the following amenities or benefits:

- (1) Open Space Protection effected by an owner transferring to the Town either ownership of land that the Town has deemed desirable for protection as open space through the Town's officially adopted Open Space Plan or by granting a conservation easement on such land to the Town and/or to other entities qualified to hold such conservation easement in the sole discretion of the Town Board.
- (2) Affordable Housing Units for persons of moderate/median income pursuant to a formula to be prescribed by the Town Board or pursuant to any subsequent local law which the Town Board, in its sole discretion, may enact.
- (3) Water and/or Sewer and/or Public Highway Infrastructure Improvements, Enhancements and/or Extensions where the Town Board finds that such amenities will produce a clear and identified benefit to the Town.
- (4) Payment of cash in lieu of any of the above amenities or benefits provided that such cash shall be deposited per Section §177-17.G to a capital reserve or like trust fund created by the Town Board to be used solely for the particular benefit sought to be achieved as so designated by the Town Board at the time of the approval of the incentive zoning proposal.

G. Cash payment in lieu of amenity or other benefit. If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a capital reserve or like trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a final, approved Subdivision Plat, signed by the Chair of the Planning Board and/or prior to the issuance of a final, approved Site Plan signed by the Chair, as otherwise required under the relevant provisions of the other applicable land-use laws, ordinances and regulations of the Town of Shawangunk. Cash payments in lieu of amenities are not to be used to pay for general and ordinary Town expenses or for any other purposes unrelated to the amenities so specified.

§177-18, 19. Reserved.

ARTICLE IV
Supplementary Use Regulations

§177-20. Agricultural uses, livestock.

- A. Farm buildings housing animals shall be no closer than two hundred (200) feet to any property line. Accessory farm buildings not housing animals shall be no closer than fifty (50) feet to any property line.
- B. The keeping of livestock for commercial purposes shall be allowed on property of ten (10) acres or more.
- C. The keeping of horses and cows on properties of less than ten (10) acres shall be at a density not greater than one (1) animal per acre.
- D. Domestic game fowl for noncommercial use shall be limited to twenty (20) birds per acre unless kept on property conforming to the definition of a “farm” as stated elsewhere in this chapter. Such fowl shall be adequately housed, fed and confined so as to prevent objectionable conditions being experienced by neighboring residential properties within the zoning district.

§177-21. Home occupations.

- A. Home occupations are allowed as accessory uses to a residential use in accordance with the regulations set forth in Article II. A home occupation shall satisfy the following requirements:
 - (1) The home occupation shall be clearly accessory to and incidental to the principal use of the structure, and no more than one (1) such home occupation shall be conducted on the premises. Such use shall not exceed thirty-five percent (35 %) of the total living area of the dwelling within which the home occupation is conducted.
 - (2) The home occupation shall be conducted solely by the owner or tenant residing on the premises or members of his immediate family. No other person shall be permitted to share, let or sublet space for home occupation use.
 - (3) The use shall be conducted entirely within the principal structure, and there shall be no visible exterior display of goods or external evidence of such home occupation use except for one (1) sign not to exceed two (2) square feet or twelve by twenty-four (12 x 24) inches in area.
 - (4) There shall be no external structural alteration designed to accommodate the home occupation of the principal or accessory building or structure which is not customary in residential buildings. There shall be no production of offensive noise, odor, vibration, smoke, dust or other objectionable effects.
 - (5) No more than two (2) nonresident persons, other than the immediate family, may be employed in addition to the owner or tenant of the property.

§ 177-22. Wireless communication services facilities.

- A. Purpose and intent. The Town of Shawangunk (hereinafter the “Town”) recognizes the need to provide for the siting of wireless communication services facilities within the Town. At the same

time, the Town is concerned that such facilities will proliferate and will be sited in areas which detract from the significant visual, historic, economic and cultural resources of the Town.

The Town of Shawangunk wishes to ensure services and benefits to the community by accommodating the need for these services and facilities while at the same time minimizing their adverse impacts by regulating their location and number; protecting residential areas and land uses from potential physical damage; minimizing aesthetic and visual impacts through careful siting, design, landscaping, screening and innovative camouflaging techniques; and encouraging limited shared use/co-location of existing and new wireless communication services facilities as a primary option rather than the construction of additional, single-use structures and/or facilities.

The Telecommunications Act of 1996 preserves the authority of local governments to render reasonable, nondiscriminatory decisions regarding the placement, construction and modification of wireless communication services facilities. These regulations are designed to be in compliance with The Telecommunications Act of 1996.

The purpose of this section is to regulate the location, design, and use of wireless communication services facilities in order to:

- (1) Protect the health, safety, and general welfare of residents of the Town of Shawangunk.
- (2) Establish predictable and balanced regulations for the siting and screening of wireless communication services facilities in order to accommodate the growth of communications services within the Town.
- (3) Encourage the use of existing towers, tall buildings and other high structures to reduce the number of new telecommunication services facilities needed to serve the community while at the same time, limiting co-locations to avoid approving facilities that are or may be redundant or that may promote facilities that are in excess of those necessary to provide substantial coverage in the Town.
- (4) Avoid potential damage to adjacent properties from tower structural failure by imposing construction standards and setback requirements.
- (5) Ensure harmony and compatibility with surrounding land use patterns.
- (6) Protect the historic rural character, natural features and irreplaceable scenic qualities of the Town with special attention to open spaces, mountain ridges, recreation areas, scenic roads, view sheds and historic sites, through careful design, siting, landscaping, screening and innovation camouflaging techniques.
- (7) Limit the number of facilities to those necessary to provide coverage to substantial portions of the Town.
- (8) Preclude the installation and use of ground mount wireless communication services facilities regardless of height within the Small Business (SB) Zoning District in the Tow. The Small Business Zoning District, generally, encompasses the hamlet areas of the Town where small businesses and relatively high density residential uses now exist and where ground mounted wireless communication services facilities regardless of height, in the judgment of the Town, is not a compatible land use.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services, consistent with the provisions of the Telecommunications Act of 1996. These regulations are authorized by the Federal Telecommunications Act of 1996, New York State Constitution, Article IX, Section 2, the provisions of the New York Municipal Home Rule Law, the provisions of the Statute of Local Governments, the relevant provisions of the Town Law and the General Municipal Law of the State of New York, the provisions of the Code of the Town of Shawangunk and the general police power vested with the Town of Shawangunk.

- B. **Definitions.** For purposes of administering the provisions of this section, the following definitions shall apply:

Above Ground Level (AGL) – A measurement of height from the natural grade of a site to the highest point of a structure and related facilities. All references to height shall be measured AGL unless otherwise defined.

Adequate Coverage – Coverage is considered to be adequate within the service area of the Town of Shawangunk if the minimum standards set forth by the Federal Communications Commission are met to permit the applicant to operate a personal wireless communication service within the Town.

Antennas – A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, wireless and microwave communications.

Alternative Tower Structure – Man-made trees, clock towers, bell steeples, light poles, farm silos, tall buildings and other alternative designs, including structures that camouflage or conceal the presence of antennas or towers.

Camouflaged – Wireless communications services facilities that are disguised, hidden and/or made a part of an existing or proposed structure or are placed within an existing or proposed structure, or are completely or substantially hidden by surrounding vegetation is considered “camouflaged.” When facilities include a new tower or other tall structure, camouflage will conceal both the tall structure and the accompanying antennas and other equipment through the use of stealth technology, which gives these facilities the appearance of structure or vegetation compatible with the surrounding area.

Co-location – The siting and/or mounting of multiple communication services facilities on the same property and/or facilities mount or structure or communication tower or as a sole or additional wireless service provider on an alternative tower structure.

Fall Zone – The area on the ground within a prescribed radius from the base of wireless communications facilities. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Functionally Equivalent Services – Services include but are not limited to Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.

Guyed Tower – A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

Lattice Tower – A self-supporting mount constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

Monopole – A self-supporting mount or tower constructed of a single shaft of wood, steel or concrete with below grade foundations and a structure for antennas arrayed at the top.

Mount – The structure or surface upon which antennas are mounted, including the following four types of mounts:

- 1) Roof-mounted. Mounted on the roof of a building.
- 2) Side-mounted. Mounted on the side of a building.
- 3) Structure-mounted. Mounted on a structure other than a building.
- 4) Ground-mounted. Mounted on the ground and constructed as a new tower or other structure constructed or used primarily for the support of wireless communication facilities.

Wireless Communications Services – The provision of personal wireless communications services, including, but not limited to, these more commonly referred to as cellular telephone service, regulated by the Federal Communications Commission in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332(c) (7) (C), or as hereafter amended.

Wireless Communications Services Facilities – Any site containing equipment used in connection with the commercial operation of Wireless Communications Services, as defined herein, and as the term “personal wireless services facility” is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (c) (7) (C), or as hereinafter amended, to transmit and/or receive frequencies, including, but to limited to, antennas, structures, towers, equipment, appurtenances, access ways, landscaping, fences and power systems.

Wireless Communications Tower – Any free-standing ground mount tower or independent structure used primarily for wireless communications facilities. A roof-mounted, side-mounted or other structure mounted facility shall not be deemed to be a Wireless Communications Tower.

Minor Wireless Communications Services Facilities – Wireless Communications Services Facilities situated:

- 1) on the same property as existing wireless communication services facilities designed for co-location and previously approved under this Chapter; or
- 2) on or in an existing building or other structure, and where the equipment consists of a combination of antennas, or other transmitting/receiving device, necessary in number to facilitate the provision of Wireless Communication Services from such location, provided that such minor installation;
 - a) comprises antennas or transmitting and receiving devices which are no more than twelve (12) feet in height above the existing structure, including the antenna supports and related facilities affixed to an existing structure; and
 - b) operates with all significant equipment accessory thereto (other than the antennas and transmitting or receiving devices, supports and connecting cables and up to a 250 square foot equipment shelter that is camouflaged) installed in the interior space appurtenant to such existing building or structure; or

3) on a ground-mounted tower that is not in excess of fifty (50) feet in height including all accessories and antennas.

Major Wireless Communications Services Facilities – Wireless Communications Services Facilities that are not Minor Wireless Communications Services Facilities, including but not limited to, any facilities including a new wireless communications tower or other new structure in excess of fifty (50) feet in height devoted solely or primarily to the provision of wireless communications services.

C. Use regulations.

(1) General.

- (a) These regulations govern the installation and/or use of all wireless communication services facilities as defined herein. Wireless communication services facilities shall be allowed in all of the Zoning Districts of the Town of Shawangunk subject to the terms of this Chapter, with the exception of the SB (Small Business) zone District where ground-mount towers regardless of height are prohibited. Additionally, such facilities shall not be allowed within the Shawangunk Ridge Critical Environmental Area (CEA) in the Town of Shawangunk if the height of such facilities extends more than twenty (20) feet above the existing tree-line canopy. Additionally, all such facilities must utilize camouflage technology to the satisfaction of the Planning Board.
- (b) All proposed wireless communication services facilities shall be licensed by the FCC and must obtain Site Plan approval and if required elsewhere in this Section, a Special Use Permit, whether or not such user will install and own the services facilities. The construction and/or use of wireless communication services facilities shall require a Site Plan approval, a Building Permit and a final Certificate of Use/Occupancy in all cases.
- (c) It is the intent, purpose and goal of the Town to have new wireless communications services facilities located on existing structure, including but not limited to buildings, water towers, existing wireless communications facilities previously approved under this Chapter, or any amendment thereto, silos, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider the use of existing telephone and electric utility structures as sites for on or more wireless communication service facilities. The applicant shall have the burden of proving, upon due diligence and in writing, that there are no existing structures available for use and which would satisfy the requirements of the Telecommunications Act of 1996 and of the provisions of this Zoning Law.
- (d) If the applicant demonstrates after due diligence and in writing, that it cannot locate on an existing structure, the proposed new wireless communication services facilities shall be located and designed so as to be camouflaged to the greatest extent possible, including but not limited to: the use of compatible building materials and colors, screening, landscaping, placement within trees, placement on the sides of hills and ridges instead of on the tops of hills and ridges and the use of stealth technology to disguise the facilities as determined by the Planning Board.

(2) Permitted and special uses.

- (a) Permitted Uses: Existing Non-Utility Structures. Minor wireless communications services facilities may be permitted to locate on any existing radio or television transmission tower, guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo, or other innovation use of appropriate existing structures (as determined by the Planning Board) provided that there is no increase in excess of twelve (12) feet of the height of the existing structure as a result of the installation of the facilities. Such installations shall not require a Special Use Permit but shall require Site Plan approval by the Planning Board in accordance with §177-35 and other applicable laws.
- (b) Permitted Uses: Existing Buildings. Minor wireless communication services facilities may be permitted to locate on any existing building with the exception of a designated historic structure, provided that there is no increase in excess of twelve (12) feet of the height of the existing structure as a result of the installation of the facilities. Such installations shall not require a Special Use Permit but shall require Site Plan approval by the Planning Board in accordance with §177-35 and other applicable laws.
- (c) Permitted Uses: Existing Utility Structures. Minor wireless communication services facilities may be permitted to locate on any existing electric utility transmission and distribution tower, electric or telephone pole or similar existing utility structure provided that there is no increase in excess of twelve (12) feet of the height of the existing structure as a result of the installation of the facilities. Such installations shall not require a Special Use Permit but shall require Site Plan approval by the Planning Board in accordance with §177-35 and other applicable laws.
- (d) Permitted Uses. A ground mounted tower that is a Minor Wireless Communication Services facility outside of the Small Business (SB) zone District that is not in excess of fifty (50) feet in height including all accessories and antennas.
- (e) Special Use Permit. Wireless communication services facilities, other than minor wireless communication services facilities, involving construction of one or more ground-mounts or wireless communications towers in excess of fifty (50) feet in height including all accessories and antennas shall require a Special Use Permit as well as Site Plan approval and shall be allowed in all of the Zoning Districts of the Town except in the Small Business (SB) Zoning District. A minimum setback equal to the height of the ground mount tower (including antenna) shall be provided from any lot line and other accessory structures must meet the other normal setbacks from any lot line for that zone district. A Special Use Permit may be granted provided that the proposed use complies with the other requirements of this Chapter and of the general and special conditions for Special Use Permits as set forth in this Chapter, is placed to minimize visual and aesthetic impacts, and is placed on the side slope of terrain so that, as much as possible, the top of the structure, including all related facilities, does not protrude substantially into any significant viewshed within the Town as observed from any public highway within the Town. The Town of Shawangunk defines the placement, construction and modification of wireless communication services facilities requiring a Special Use Permit as a Type I action under the New York State Environmental Quality Review Act (SEQRA) and the regulations thereunder.

(3) **Regulations for all wireless services facilities regardless of whether they are permitted or specially permitted.**

- (a) The use of panel or dish antennas is not preferred and the applicant shall have the burden of proving to the Planning Board that utilizing a panel or dish antenna is necessary to comply with the standards of the Federal Telecommunications Act of 1996 and will not otherwise violate the standards of this Zoning Law.
- (b) Monopole structures are preferred in lieu of lattice-type structures. The applicant shall have the burden of proving to the Planning Board that a monopole structure will not satisfy the standards of the Federal Telecommunications Act of 1996 and this Zoning Law. Any variation from monopole technology may require incorporation of camouflage technology to the satisfaction of the Planning Board.
- (c) All wireless communication services facilities shall be designed, installed and maintained in accord with engineering specifications regarding wind/snow/ice loads and also regarding possible “fall zones”.
- (d) No service facilities shall generate noise in excess of 57 decibels (dbA) measured at any lot line between the hours of 7:00 AM to 10:00 PM and in excess of 47 decibels (dbA) between the hours of 10:00 PM and 7:00 AM.
- (e) No service facilities shall be of such a height or be located or designed whereby such facilities must be lighted.

(4) **Exemptions.** The provisions of this section shall not apply to wireless communications services facilities utilized exclusively by the Town’s fire, police and/or other governmental or not-for-profit emergency service providers nor shall the provisions of this section apply to private radio and television reception, private citizen’s bands, amateur radio systems or other similar private communications systems. Municipal property shall not be exempt from the provisions herein unless such facilities are used exclusively for governmental or not-for-profit emergency service providers.

D. Application procedures/jurisdiction. The applicant must submit documentation establishing its ownership of or leasehold interest in the property or other written authorization from the landowner at the time of application for Site Plan approval and/or Special Use Permit.

(1) **Planning Board has jurisdiction.** The Planning Board is authorized to review and approve, approved with modifications, or disapprove Site Plans and Special Use Permits for wireless communication services facilities pursuant to applicable laws. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed antenna, mount, equipment structure(s) and related facilities. Any decision by the Planning Board to deny a request to place, construct, or modify wireless communications services facilities shall be in writing and supported by substantial evidence.

(2) **Application filing requirements, site plan approval.** All applicants for wireless communication services facilities shall fulfill the site plan requirements of §177-35 and other applicable laws and shall, in addition, provide the following:

- (a) Proof that the applicant or co-applicant is an FCC licensed carrier.

- (b) A statement, certified by a professional engineer and approved by the Planning Board, that the installation of the proposed service facilities, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety communications.
 - (c) A statement, certified by a professional engineer and approved by the Planning Board, documenting the structural soundness of the wireless communications service facilities.
 - (d) Proof that the wireless communication service facilities shall be fully automated and require only occasional maintenance of the facilities and site.
 - (e) The fees per Section §177-22.E herein.
- (3) **Application Filing Requirements, Special Use Permit.** Applicants for a Special Use Permit for wireless communication services facilities shall fulfill the requirements of a Type 1 action under the SEQRA, and shall, in addition, provide the following:
- (a) A survey of all existing structures and buildings forty (40) feet or taller and all utility structures and ground mount towers within two and one-half (2-1/2) miles of the proposed site outlining the opportunities for the use of these existing structures and buildings 40 feet and taller as an alternative to the proposed site. The applicant, after due diligence, must demonstrate that the proposed wireless communication service facilities cannot be accommodated on an existing structure, building or utility structure and that the requirements of the Telecommunications Act of 1996 would not be met by such accommodation. In the event that location on an existing structure, building or utility structure cannot be accommodated, a written statement of the reasons for such conclusion shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency (RF) engineering to verify if location on an existing structure, building or utility structure is not feasible and also to evaluate the need for the proposed new facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the special use permit.
 - (b) A town-wide map showing the locations of all other existing wireless communication services facilities in the Town as well as a map reflecting existing and proposed services facilities within a five (5) mile area extending from the boundaries of the Town outward into all contiguous Towns. The applicant must analyze the co-location opportunities on these other sites as a alternative to the subject site. The applicant must demonstrate the need for the proposed service facilities showing the impracticality of upgrading or expanding an existing site, and must project long-range facility expansion needs with the Town based on market demand. The Planning Board may hire an independent technical expert in the field of RF engineering, to evaluate the impracticability of upgrading or expanding an existing site and/or to evaluate the need for the subject, proposed site. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to demonstrate the impracticality of upgrading or expanding an independent site may be grounds for denial of a special use permit.
 - (c) Proposed location of antenna, mount and equipment shelter(s) and other related facilities with total elevation dimensions above-ground level, including a measurement of height from the natural grade of a site to the highest point of the structure and related facilities.

- (d) Proposed security barrier, indicating type and extent as well as point of controlled entry.
- (e) Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless communication facilities at full buildout, including representations of the proposed mount, antennas, equipment shelters, power sources, including proposed generators, cable runs, access and driveways, parking areas and any other construction or development attendant to the wireless communication facilities. If the security barrier will block views of the wireless communication facilities, the barrier drawing shall be cut away to show the view behind the barrier.
- (f) Materials of the proposed facilities specified by generic type and specific treatment. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.
- (g) Colors of the proposed facilities represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables, cable runs, and security barrier.
- (h) Landscape plan including existing trees and shrubs, by dominant species and current height and those proposed to be added, identified by size of specimen at installation and species. The landscape plan shall analyze year-round conditions so as to provide adequate buffering and screening during the winter months.
- (i) The following material shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility.
 - [1] Existing (before condition) color photographs of views of the site from key viewpoints both inside and outside of the Town including but not limited to: public highways, state and local parks, other public lands, preserves and historic sites, scenic viewsheds identified in the Town of Shawangunk Comprehensive Plan, as amended from time to time, and from any other location where the site is visible to a significant number of residents or visitors. The Planning Board shall determine the appropriate key viewpoints from which the site shall be photographed.
 - [2] Proposed (after condition) simulations. Each of the existing condition photographs shall have the proposed wireless communication services facilities superimposed on it to show what would be seen from the key viewpoints if the proposed services facilities are built.
- (j) At the discretion of the Planning Board, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed services facilities. The date, time and location of such test may occur prior to or during the continuation of any public hearing convened under this Chapter.
- (k) A photometric plan of all lighting on the site.
- (l) Any proposed ground-mounted wireless communication service facility shall be designed, structurally, electrically, and in all other respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the mount is over 100 feet in height or for a least one additional user if the mount is over 60 feet in height. Mounts

must be designed to allow for future rearrangement of antennas upon the mount and to accept antennas mounted at varying heights.

The applicant shall submit to the Planning Board a letter of intent committing the applicant and its successors in interest, to negotiate in good faith for shared use of the proposed service facilities with any wireless service providers in the future. The issuance of a permit (assuming the service facilities are approved according to this section), shall commit the new services facilities owner and its successors in interest to:

- [1] Respond in a timely comprehensive manner 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 facilities by other wireless service providers.
 - [3] Allow shared use of the new facilities if another wireless communication service provider agrees in writing to pay charges as set forth below.
 - [4] Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. 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 of the costs of adapting the service facilities to accommodate a shared user without causing electromagnetic interference.
- (m) In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that existing wireless communication service facilities in a neighboring municipality be considered for shared use, the Planning Board shall require that:
- [1] An applicant who proposed new wireless communication services facilities shall notify in writing the legislative body of each municipality that borders the Town as well as the Ulster County Planning Board. Notification shall include the exact location of the proposed facilities, and the general description of the project including, but not limited to, the height of the facilities and the capacity for future shared use.
 - [2] Documentation of this notification shall be submitted to the Planning Board at the time of the application.
- (n) The fees per §177-22.E.
- (o) The Planning Board may waive one or more of the application filing requirements of this section if it finds in its sole discretion that such information is not needed for a thorough review of proposed wireless communication services facilities, based upon a specific request by the applicant with valid reasons for such waiver.

E. Application and other fees.

- (1) Application Fee. In addition to other relevant fees outlined in the Town of Shawangunk Fee Schedule, as amended from time to time, and in addition to the separate consultant's fees outlined above and below, the applicant shall pay an application fee of \$500 for wireless communication services facilities requiring Site Plan approval and an additional \$1,500 for wireless

communication services facilities requiring a Special Use Permit, in addition to such other amount for application fees as indicated in the Town of Shawangunk Fee Schedule, as amended from time to time, due upon submission of the application to the Planning Board, to defray the costs of review of the application by the Town.

- (2) Consultant fees. The Planning Board and/or Zoning Board of Appeals may retain consultants to assist in reviewing the application, its renewal, or an application for a variance related to a pending application, with consultant fees to be paid by the applicant. These consultants may include the Town Engineer, Town Planner, the Town's Attorney, one or more commercial communication facility consultants, or other consultants as determined by the Planning Board and/or Zoning Board of Appeals. At the beginning of the review process the applicable board may require the applicant to fund a separate escrow account from which the Town may draw to ensure reimbursement of consultant fees. During review of the application, the applicable board may require the applicant to add funds to the escrow account, as the applicable board deems necessary. If the required funds are not added to the escrow account, review of the application by the applicable board shall be suspended until such time, if any, as payment of said funds is made. Any remaining funds in the escrow account after payment of all consultant fees will be returned to the applicant without interest. The Town shall provide an account statement to the applicant at anytime upon written request. In no case, shall the consultant's fees be paid directly to the consultant. Fees shall be audited and paid only by the Town pursuant to the normal voucher or other applicable claims process.

F. **Modifications.** A modification of wireless communication services facilities shall be considered equivalent to an application for a new facilities and will require a new Special Use Permit and Site Plan approval when the following events apply:

- (1) The applicant proposes to increase the number of service facilities permitted on site, and/or
- (2) It is proposed that any aspect of the facilities is to be altered to the degree that such change is not in conformance with the approved Special Use Permit and/or Site Plan.

G. **Monitoring and maintenance.** The permittee shall maintain the wireless communication services facilities in good condition, including, but not limited to: structural integrity of the mount and security barrier, painting, maintenance of stealth technology camouflaging, and maintenance of the buffer areas and landscaping. The Building Inspector/Code Enforcement Official of the Town may require the permittee to submit such written documentation to the Town, upon demand, regarding the structural integrity inspection and maintenance of the service facility or of any of its accessories.

H. **Abandonment or discontinuation of use/change of use.**

- (1) Wireless communication services facilities that are not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the facilities, the owner of the underlying land, the permittee and the carrier shall have the joint and several obligation to physically remove the facilities within 90 days of a receipt of notice. "Physically remove" shall include, but not be limited to:
 - (a) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

(c) Restoring the location of the facilities to its natural condition, with the exception of landscaping and grading.

(2) Upon a failure to remove the facilities in accordance with this section, the Town will have the authority to enter the property and remove the facilities with the costs of removal and all related professional fees to be assessed against the property in the same fashion as other Town taxes.

(3) Any change of use shall trigger the requirements for a Special Use Permit and/or Site Plan approval as elsewhere set forth in this Chapter.

I. Term of special use permit. A special use permit issued for any wireless communication services facilities shall be valid for three (3) years. At the end of that time period, the wireless communication services facilities shall be removed as required in this Chapter or a Special Use Permit renewal shall be required. The obligations of removal shall be joint and several as set forth in this Chapter. In order to ensure that such Permit renewal can be obtained prior to the expiration of the original Permit, the person or entity seeking such renewal shall file such completed Permit renewal application not later than ninety (90) days prior to the expiration of the existing permit. In reviewing the application for a Special Use Permit renewal, the Planning Board shall review all aspects of the service facilities to determine whether the technology and/or regulatory authority in the provision of the service has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the permit should be modified or terminated as a result of any such change. Additionally, the Planning Board shall have the authority to analyze and modify all existing Permit and/or Site Plan conditions and to impose new Permit conditions where the particular facts of the renewal application so require in the judgment of the Planning Board. A Special Use Permit renewal application shall be the subject of the expedited review by the Planning Board and a public hearing may or may not be required, at the discretion of the Planning Board. Fees for Permit renewals shall be per the Town of Shawangunk Fee Schedule, as amended from time to time.

J. Insurance. Facilities shall be insured against damage to persons or property. The permittee of the facilities shall provide annually to the Town Clerk a Certificate of Insurance in the minimum amount of \$1,000,000. This insurance shall insure against damage or loss arising from all facilities on the property. The purpose of this clause is to establish that there exists an insurance carrier with risk if the facility is not maintained to a minimum acceptable standard. The Town need not be named as an additional insured unless the Town otherwise has an insurable interest in the facility.

K. Penalties. Any person, firm or entity erecting or using any wireless telecommunications services facilities in violation of the provisions of this Local Law will be subject to a fine of Two Hundred Fifty (\$250.00) Dollars for each day such violation exists after notice to cease and desist has been given; in addition, the Town shall have the right to seek injunctive relief and such other relief as it may deem appropriate and to take all actions available at law or in equity to remove any construction erected in violation of this Local Law. Each day such violation exists shall be deemed to be a separate and distinct violation hereunder. For the limited purposes of this §177-22, the provisions of §177-60 of this Chapter hereby are superseded.

§177-23. Reserved.

ARTICLE V
Planning Board

§177-24. Planning Board.

- A. Authorization/jurisdiction. The Town Board hereby creates a planning board consisting of five members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The Town Board may provide for the compensation of Planning Board members. The Planning Board shall have the authority to review and decide applications for subdivisions, special use permits, and site plans in addition to other powers conferred by law.
- B. Appropriation for Planning Board. The Town Board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. The Planning Board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefore by the Town Board for such Planning Board.
- C. Town board members ineligible. No person who is a member of the Town Board shall be eligible for membership on such Planning Board.
- D. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.
- E. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
- F. Training and attendance requirements.
 - (1) Each member of the Planning Board shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the Town Board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
 - (2) To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision F.
 - (3) The training required by this subdivision may be waived or modified by resolution of the Town Board when, in the judgment of the Town Board, it is in the best interest of the town to do so.

- (4) No decision of a planning board shall be voided or declared invalid because of a failure to comply with this subdivision.
- G. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.
- H. Removal of members. The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board.
- I. Chairperson duties. All meetings of the Planning Board 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.
- J. Appointment of agricultural member. A Town Board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such town, include on the Planning Board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.
- K. Service on other planning boards. No person shall be disqualified from serving as a member of the Planning Board by reason of serving as a member of a village or county planning board.
- L. Rules and regulations. The Planning Board may recommend to the Town Board regulations relating to any subject matter over which the Planning Board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the Town Board shall be by local law or ordinance.
- M. Report on referred matters; general reports.
- (1) The Town Board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision L. of this section, to the Planning Board before final action is taken thereon by the Town Board or other office or officer of said town having final authority over said matter. The Town Board may further stipulate that final action thereon shall not be taken until the Planning Board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.
 - (2) The Planning Board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the Planning Board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.
- N. Voting requirements. Every motion or resolution of a Planning Board shall require for its adoption the affirmative vote of a majority of all the members of the Planning Board. Where an action is the subject of a referral to the county planning agency, the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the General Municipal Law shall apply.

O. Chapter 34 of the Code of the Town of Shawangunk (Planning Board) adopted in 1965 is hereby repealed.

ARTICLE VI
Special Use Permits

§ 177-25. Special use permit review.

A. General provisions.

- (1) **Special use defined.** A use designated as a special use in this Zoning Law is hereby declared to possess characteristics of such unique and special form as to require that each specific one shall be considered as an individual case and as to further require conformance to additional standards as specified in this section.
- (2) **Special use as an allowable use.** A use designated as a special use may be considered to be an allowable use in the identified zoning districts, subject to the satisfaction of the requirements and standards set forth in this Article in addition to all other requirements of this Zoning Law. No special use listed in this Zoning Law may be permitted, enlarged or altered unless approved in accordance with the regulations set forth in this Article.
- (3) **Planning Board authority.** The Town Board authorizes the Planning Board to issue special use permits in accordance with the requirements of this section and Section 274-b of New York State Town Law, as amended.

B. Procedure.

- (1) Application.
 - (a) Each application for a special use permit shall be made to the Building Inspector for referral within ten (10) days of receipt of the completed application to the Planning Board for action.
 - (b) Application for a special use permit shall contain the same information as required for site plan review or as required by this section. No application shall be considered as officially submitted until such time as the Building Inspector has received all required information and documentation and all applicable fees have been paid.
- (2) **Planning Board action.**
 - (a) Public hearing. The Planning Board shall hold a public hearing on each application within sixty-two days (62) from the day a complete application is received, following due notice of not less than (5) days prior to the date of hearing by publication in the Town's Official Newspaper, and the following property owners will be notified by the Secretary of the Planning Board by regular mail as follows:
 - [1] All owners of property within five hundred (500) feet of all of the lot lines of the property for which the special use permit is sought.
 - [2] Such other property owners as the Chairperson of the Planning Board may direct.
 - [3] The clerk of any municipality with boundaries within 500 feet of the subject property.

- (b) Time. The Planning Board shall act on a special use permit application within sixty-two (62) days of the close of the public hearing. The review period may be extended by mutual agreement of the Planning Board and applicant.
- (c) Written report. The Planning Board's decision on a special use permit application must be filed in a written report to the Town Clerk and a copy mailed to the applicant and Building Inspector. Such report shall authorize the Building Inspector to grant or deny the application for a building permit or to grant the application subject to conditions.
- (d) Conditions and safeguards. The Planning Board shall attach such reasonable conditions and safeguards to any approved use and development plan as are, in its opinion, necessary to ensure initial and continual conformance with all applicable standards and requirements. In all cases, the Planning Board shall retain continuing jurisdiction.
- (e) Application of standards. No special use permit shall be granted except upon a finding by the Planning Board that the standards and requirements for such use set forth in this Article, in addition to all other applicable regulations, have been met. The Planning Board's written report authorizing the grant of such permit shall set forth such finding. The Planning Board shall file in the minutes of its meetings specific findings of fact upon denial of a special use.
- (f) Expiration.
 - [1] Any special use permit not exercised within one year of the date of issuance shall expire without further hearing by the Planning Board.
 - [2] A special use permit shall be deemed to authorize only one (1) particular special use and shall expire if the authorized special use shall cease for more than six (6) months for any reason.
 - [3] In those instances where a special use requires review by the County Planning Board in accordance with § 239-1 or 239-m of Article 12B of the New York State General Municipal Law, a copy of the special use application shall be referred to the County Planning Board in accordance with procedures set forth in that agency's General Municipal Law Referral Guide before approval may be granted by the Shawangunk Planning Board.
- (g) Findings for a special use permit. In its review of an application, the Planning Board may consider the public health, safety, morals and general welfare of the community, the comfort and convenience of the public and the residents of the immediate neighborhood and conformity with any Master Plan or portion thereof which may have been adopted by the Town Board. The Planning Board may attach reasonable conditions and safeguards as preconditions to its approval. The character and appearance of the proposed use, buildings and signs shall be so designed as to be in general harmony with the character and appearance of the surrounding neighborhood and shall not adversely affect the general welfare of the inhabitants of such neighborhood or the Town of Shawangunk. The Planning Board shall file in the minutes of its meetings specific findings of fact upon denial of a special use.

C. General standards. No special use permit shall be granted unless the following conditions are met:

- (1) In residence districts. In a residence district, the proposed use will serve a community need or convenience.

- (2) Harmony with zoning district objectives. The location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the zoning district in which it is located.
 - (3) Harmony with adjacent uses. The location, nature and height of buildings, walls and fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
 - (4) Absence of objectionable characteristics. Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted use not requiring a special permit.
 - (5) Off-street parking areas. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum and adequate safety.
 - (6) Safety and Accessibility. The proposed use will not cause undue traffic congestion, unduly impair pedestrian or vehicular safety, or overload existing roads, considering their current width, surfacing, and condition, and will be accessible to fire, police, and other emergency vehicles. Road access points will have sufficient sight distances to assure visibility of vehicles.
 - (7) Utilities and Natural Resources. The proposed use will not overload any public water, drainage, or sewer system, or any other municipal facility, or degrade any aquifer, natural resource, or ecosystem.
 - (8) Conditions on Layout and Design. The proposed use will be consistent with any applicable overlay zone requirements and design guidelines, and will be subject to such conditions on design and layout of structures, provision of buffer areas, and operation as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town. Where water and sewer services are available and where feasible, the board may require development to be clustered in the pattern of a traditional hamlet with visually or environmentally important open space preserved by a deed restriction or conservation easement. Where water and sewer utilities are not available, the board shall encourage such a pattern to the extent feasible.
 - (9) Comprehensive Plan. The proposed use will be consistent with the goals of the Comprehensive Plan, as amended.
- D. Specific standards for individual special uses. In addition to the general standards set forth above, the requirements set forth in §177-26 through 177-30 shall also apply to specific special uses.

- E. **Mediation.** At any point in the review process, any Town reviewing board including the Town Board, Planning Board, or Zoning Board of Appeals may, if it deems appropriate and the applicant consents, appoint a mediator to work informally with the applicant, neighboring property owners, and other interested parties to address concerns raised about the proposed use. Any party may request mediation. Such mediation may be subject to a mutually acceptable timetable and may be conducted by a community dispute resolution center or by any other qualified and impartial person acceptable to the parties and the applicable review board. The mediator shall have no power to impose a settlement or bind the parties or the applicable review board, and any settlement reached shall require approval by the applicable review board to assure compliance with all provisions of this Zoning Law. The cost, if any, of such mediation may be charged to the applicant as part of the cost of project review, with the applicant's written consent. Such cost may also be shared by other interested parties with their written consent.

§ 177-26. Commercial, industrial and transportation uses.

Specific special uses are as follows:

A. Automotive service stations and repair garages.

- (1) Location of exits and entrances. No automotive fuel station or automobile repair shop or any vehicular access thereto shall be located within two hundred (200) feet of schools, playgrounds and churches. Vehicular access to service stations and automobile repair garages shall not be closer to the intersection of any two (2) street lot lines than fifty (50) feet.
- (2) Location of appliances or pits. No automotive fuel station or repair garage shall be permitted where any fuel pump or oil-draining pit or visible appliance for any such purpose is located within twenty (20) feet of any street lot line.
- (3) Outside car storage. Cars stored outside must be stored in an orderly fashion and must be stored at least twenty (20) feet from any rights-of-way.

B. Bus/taxi station.

- (1) Clear identification by signs shall be provided.
- (2) Appropriate sight distances and absence of other traffic hazards shall be met.
- (3) New York State Department of Transportation regulations shall be adhered to.

C. Commercial group.

- (1) Principal buildings shall be set back a minimum of sixty (60) feet from the front lot line.
- (2) Off-street parking areas shall be paved in accordance with town specifications. Parking stalls shall be clearly identified in accordance with standards specified elsewhere in this Zoning Law.
- (3) Dumpsters or other waste collection facilities shall be placed in rear yards and screened.
- (4) The store group shall be served by a single sidewalk from entryway to the common parking area.
- (5) A landscaping plan is to be included as part of the site plan.

- C. **Commercial recreation, indoor.** Roller-skating rinks, bowling alleys, dance halls, video arcades and other indoor commercial recreation facilities with a capacity of twenty (20) or more patrons shall comply with all applicable off-street parking, health, building, fire, safety and other applicable state, county and local regulations.
- D. **Eating and drinking places.** Bars, restaurants, diners, luncheonettes, cafes and similar establishments serving food and beverages shall be subject to site plan and architectural review. In its review, the Planning Board shall take into account all applicable regulations. No eating and drinking place serving alcoholic beverages shall be located closer than five hundred (500) feet to a school or church.
- E. **Funeral home/mortuary.** Funeral homes shall be required to provide driveways and off-street parking areas sufficient to permit the off-street assembling of funeral processions so as to avoid congestion of adjoining streets.
- F. **Hotel/motel.** Such uses shall include hotels and motels and may be permitted upon special use permit approval, provided that:
- (1) There shall be filed with the application a map or plan of the entire property showing the proposed location and dimensions of all structures, recreation grounds and community facilities proposed to be constructed thereon.
 - (2) There shall be presented with the application for this permit a certificate of the State Department of Health approving of the source and method of treatment of the proposed supply of potable water.
 - (3) There shall be presented with the application for this permit two (2) copies of a map or plan of the system of sewage and waste disposal, which said copies shall bear the endorsement and approval of the State Department of Health.
 - (4) The total number of units to be accommodated in such use shall not exceed one (1) for each two thousand (2,000) square feet of area within such premises.
 - (5) Within the total area of the lot, each principal building used for overnight accommodations shall have the equivalent of lot area and width, yards and open spaces as follows: each principal building shall have appurtenant and adjacent thereto a portion of the total area of the lot to give it front and rear yards each not less than twenty-five (25) feet in depth and side yards each not less than fifteen (15) feet in width.
 - (6) Any building designed or used as a place for entertainment as a clubhouse, pavilion, casino or for a similar purpose or for bathhouses for guests of the premises shall have appurtenant and adjacent thereto a portion of the total area of the lot to give it front and rear yards each not less than fifty (50) feet in depth and side yards each not less than forty (40) feet in width.
 - (7) If swimming facilities are proposed to be provided in such use, plans showing the extent and location of such facilities and the proposed source of water and method of treatment, if any, shall be submitted with the application for the above permit, and such plans shall bear the approval of the State Department of Health.

- (8) No certificate of occupancy shall be issued for any such use until the Building Inspector has made a personal examination and is satisfied that all of the requirements herein set forth have been complied with. No such use shall be used or occupied until a certificate of occupancy has been issued. Such uses in existence and being operated as such at the time of the passage of this chapter shall not be subject to the above requirements. A nonconforming resort use abandoned for a period greater than two (2) years shall be deemed to be discontinued and the premises may not thereafter to be used as a resort except through issuance of a use variance from the Zoning Board of Appeals.

G. Junkyards.

- (1) Sites for junkyards shall be not less than ten (10) acres in area and located so that the site and any materials stored thereon are not visible from adjacent roads.
- (2) Screening shall be provided by a dense planting of evergreens set back not less than thirty (30) feet from any property line.
- (3) Maintenance of junkyards shall be in accordance with the provisions of Chapter 108 of the Code of the Town of Shawangunk.

H. Kennels.

- (1) Anyone maintaining a kennel as defined in this chapter shall be required to obtain a license for its operation. The license shall be issued for a period of one (1) year and shall be renewable unless a negative recommendation is received from the dog control officer.
- (2) The license fee shall be established by the Town Board of the Town of Shawangunk.
- (3) Each duly licensed kennel shall be inspected annually by the dog control officer.
- (4) All buildings housing said dogs, including the principal structure on the premises, shall not be closer than three hundred (300) feet from the nearest dwelling on any adjoining lot.

J. Light industrial uses.

- (1) All such uses shall be conducted entirely within an enclosed building.
- (2) Site plan approval shall be required. In its determinations, the Planning Board shall consider traffic access, on-site circulation and parking, disposition of usable open space, arrangements of buildings, landscaping and impact on adjacent uses.
- (3) No materials or wastes which can, in the opinion of the County Department of Health, the State Department of Environmental Conservation or other official agency competent to judge, contaminate surface or subsurface water bodies shall be deposited on any premises in such manner that they may be carried off such premises by natural causes.
- (4) Outdoor storage with conditions.
- (5) Light industrial uses shall be subject to performance standards set forth in §177-44 of this Zoning Law.

- K. Mining and excavation.** The Town Board hereby finds that mining operations could result in potential adverse effects on the Town's natural and cultural resources including aesthetics, community character, traffic, noise, air quality, open space, water quality, agriculture, and land forms. It is the intent of the Town Board to ensure that mine sites are properly reclaimed and that New York State Department of Environmental Conservation (NYS-DEC) permit conditions are properly enforced by granting authority to the Town of Shawangunk Planning Board to impose special use permit conditions on new mining activities.

The New York State Mined Land Reclamation Law establishes that the NYS-DEC is responsible for the regulation of both mining and reclamation for operations that extract 1000 tons or 750 cubic yards or more of a mineral during twelve successive calendar months. State regulation begins at 100 cubic yards for mining from a water body. The NYS-DEC is the entity responsible for administering the permits for mining applications of this magnitude. It is the Town's intent to provide input on the conditions that should be included in NYS-DEC mining permits issued for operations located within the Town of Shawangunk and to assist in the enforcement of any resulting NYS-DEC mining permit conditions, as permitted by the State's Mined Land Reclamation Law.

- (1) Mining operations, including the quarrying operations for sand, gravel or other aggregate but limited to the removal of the product from the earth and its washing, screening, crushing, processing, and loading for transportation, shall be permissible subject to special use permit approval in the Town's RS-2, R-Ag 2, R-Ag 3, R-Ag 4, and A-I zoning districts.
- (2) The following special permit procedures shall apply for all mining operations that require a NYS-DEC mining permit:
 - (a) The Town Supervisor of the Town of Shawangunk, upon receipt of a complete application for a mining permit from the NYS-DEC, shall determine whether mining is permitted within the involved zoning district and if it is permitted, shall forward said application to the Planning Board in a timely manner.
 - (b) The Planning Board may, within thirty days of the Town Supervisor's receipt of an application from the NYS-DEC, provide the Town Supervisor with recommendations on conditions to be included in the involved NYS-DEC mining permit, within the following categories:
 - [1] ingress, egress, and the routing of mineral transport vehicles on roadways controlled by the Town;
 - [2] appropriate setbacks from property boundaries or public road rights-of-way;
 - [3] the need for manmade or natural barriers designed to restrict access, and the type, length, height and location thereof;
 - [4] the control of dust;
 - [5] hours of operation;

Such recommendations shall be accompanied by documentation supporting the involved conditions on an individual basis. The Town Supervisor shall forward any comments that may be prepared by the Planning Board to the NYS-DEC within the 30 day period.

(c) Upon receipt of the resulting NYS-DEC mining permit, draft mining permit, or complete application for a mining permit, the applicant shall submit copies of all information, provided to the NYS-DEC in support of the State application, to the Planning Board. The Planning Board shall accept the involved information as a complete special use permit/site plan application, once the applicable Town application fees have been received. The Planning Board shall then incorporate into the involved Town special use permit any conditions contained in the involved NYS-DEC mining permit related to:

[1] ingress, egress, and the routing of mineral transport vehicles on roadways controlled by the Town;

[2] appropriate setbacks from property boundaries or public road right-of-ways;

[3] the need for manmade or natural barriers designed to restrict access, and the type, length, height and location thereof;

[4] the control of dust;

[5] hours of operation;

[6] reclamation requirements contained in the mine's approved reclamation plan.

(3) The following procedures shall apply for all mining operations that do not require a NYS-DEC mining permit:

(a) Mining and sale of shale, sand, clay, gravel, rock or other natural mineral deposit shall be allowed only by special permit subject to the following provisions. These provisions shall not be construed as prohibiting or limiting normal use of land for farming, gardening or similar horticultural uses, in any zoning district where such uses are permitted. A special permit is not required for the following uses:

[1] Landowners may utilize on their tax parcel gravel, stone or other materials excavated from the same tax parcel for fill or leveling, provided all exposed ground surfaces, except rock, are restored after excavation by erosion controls consisting of planting, seeding, haybales, and mulching as necessary until the area is stabilized and, provided that such on-site utilization conforms with the standards found in subsections [3](a), [3](b), [3](d), and [3](e) below.

[2] Minor improvements of property. For improvements of property, provided that such improvements shall not cover an area more than three (3) times that of the foundation of the new building or structure for which a building permit has been issued by the Building Inspector and which improvement conforms to the standards found in subsection [3](a), [3](b), [3](c), [3](d), and [3](e) below.

(b) The Planning Board shall base its decision as to whether a special use permit is required on the following conditions as applicable:

[1] Topsoil or other natural materials, which have been excavated to permit the improvement of property, may be removed from the property provided that the amount to be removed is not in excess of that to be reused on the site of the improvement, and provided that this amount is specified in the building permit for such improvement.

- [2] There is no processing of excavated materials by a rock crusher or any similar equipment on the premises.
- [3] Any regrading, removal, or excavation which is permitted under this subsection, subject to the issuance of a building permit, shall be completed within one (1) year of the date of the issuance of said permit.
- [4] Any lakes, ponds, or other water features that are created shall have sufficient depth and inflow of water to prevent their becoming stagnant in dry periods.
- [5] Final slopes shall be finished at a grade no greater than the natural angle of repose except where supported by a retaining wall or foundation.
- (c) Before a special permit is issued, the applicant shall submit to the Planning Board two (2) copies of a map, at the scale of one (1) inch equals no more than one hundred (100) feet, showing all land within two hundred (200) feet thereof, with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names of the land owners. Such map shall also show the present topography at ten-foot contour intervals. The map shall be signed by a licensed engineer or land surveyor for certification of its accuracy and source.
- (d) The applicant shall also submit to the Planning Board two (2) copies of the proposed plan of excavation, at the same scale as above, showing the proposed finished elevations, the proposed drainage plan, and the methods used to achieve reclamation of the mined area.
- (e) In its review of the proposed mining operation, the Planning Board shall take into consideration the scope of the proposal, its setting, and its distance from surrounding residential uses, if any, as well as the existence of any archaeological, historic, or scenic resources that may be adversely impacted. Evidence shall be presented to the Planning Board that ample safeguards, to minimize hazards, noise, and dust that could adversely affect surrounding residential uses, if any, will be assured at all times of operation.
- (f) The applicant may be required to furnish a performance bond, in an amount determined by the Town Board, to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released only upon certification by the Town Board that all requirements, including the finished grading and drainage, have been complied with.
- (g) No special permit for excavation operations or mining shall be granted for a period of more than five (5) years, to be in accord with NYS-DEC permit renewal requirements, if any, but such permit may be extended for additional two-year periods upon approval of the Planning Board.
- (h) Upon approval, one (1) copy of the approved excavation plan shall be returned to the applicant by the Town Clerk, together with the special permit, upon the payment of a fee of one hundred dollars (\$100). Applicants shall be responsible for payment of all reasonable engineering, planning, and other consultant costs incurred by the Town and directly attributable to the approval. Applicant's shall also be responsible for payment of all reasonable engineering, planning, and other costs incurred by the Town to ensure continued compliance with this Chapter including field checking of the soil mining operations. Enforcement shall be as provided for in Article VIII of this Zoning Law.

L. Neighborhood store.

- (1) If conducted in an existing residential building, the use shall not alter the residential appearance of that building.
- (2) Such use shall not be considered a home occupation.
- (3) Screening and increased setbacks may be required.

M. Nursing/convalescent home.

- (1) Applicants shall submit evidence of approval by State and County Health Departments.
- (2) Minimum lot area for facilities with more than ten (10) but fewer than twenty-five (25) beds shall be five (5) acres; those with twenty-five (25) or more beds shall require ten (10) or more acres.
- (3) Appropriate on-site circulation, parking and loading spaces shall be provided.

N. Retail uses and services not otherwise specified.

- (1) In an R-Ag District, the proposed use, in the judgment of the Planning Board, will serve a community need or convenience.
- (2) The location and size of the use, the nature and intensity of the operations conducted therewith, the size of the site in relation to the proposed use and the location of the site with respect to its adjacent roads shall be such as to be in harmony with the development of the zoning district in which it is located.
- (3) Parking areas will be of sufficient size and capacity, properly located and suitably screened from adjacent residential properties, with entrance and exit drives laid out so as to achieve maximum safety.

§ 177-27. Open space uses; agriculture and outdoor and seasonal recreation.

Specific special uses are as follows:

A. Camps.

- (1) Sites shall be a minimum of ten (10) acres.
- (2) Water supply and waste disposal systems shall receive approval of the County Health Department or the State Department of Environmental Conservation, whichever has jurisdiction.
- (3) The Planning Board shall review and approve a site plan for the use.

B. Campsites (including recreational vehicle campsites).

- (1) It shall be unlawful for any person, partnership or corporation to establish, maintain or operate, upon any property within the Town of Shawangunk, a recreational vehicle park without first securing a special use permit from the Planning Board and a license from the Town Clerk. Such license shall expire on January 1 following the date of issuance, but may be renewed under the provisions of this chapter for additional periods of one (1) year.

- (2) The following information shall be submitted in conjunction with a special use permit application:
 - (a) The name and address of the applicant and the nature and extent of his or her interest in the business for which a special use permit is desired.
 - (b) Proof of ownership of the premises for which the special use permit is sought or a lease in proper form for recording, with the term of the lease coinciding with the prospective license. In the event that the subject premises are leased, the applicant shall present a notarized statement from the owner of the property acknowledging the prospective use as a recreational vehicle campsite.
 - (c) A legal description of the premises.
 - (d) The application shall also state the number of units in said proposed campsite.
- (3) A site plan shall be submitted and shall include the following information, in addition to any information required as per §177-35:
 - (a) Proposed camp name.
 - (b) The extent and area used for camp purposes.
 - (c) Name, address and signature of the owner and licensed engineer or land surveyor.
 - (d) Locations and widths of existing or proposed roads.
 - (e) Location of sites or units with lot areas indicated in square feet.
 - (f) Lot lines with dimensions and bearings of angles, together with location of parking facilities.
 - (g) Location, material and approximate size of all monuments and the location and number of sanitary conveniences, including toilets, washrooms, laundries and utility rooms.
 - (h) Method and detailed engineer's plan for sewage disposal.
 - (i) Method and plan of garbage disposal or removal.
 - (j) Method and detailed engineer's plan for water supply.
 - (k) Plan for electrical services and lighting.
 - (l) An accurate outline of all recreational areas and open space.
- (4) Every recreational vehicle campsite shall have erected thereon, at a distance not greater than three hundred (300) feet from every unit it is designed to serve, a suitable service building of masonry construction for housing toilets, showers and laundry facilities. The plans for the service

buildings are to be approved with the special use permit and the construction of the buildings is to be completed before the first vehicle is installed.

- (5) No vehicle shall be used as a permanent residence.
- (6) Water supply hookups and sewage holding tanks. The camp proprietor shall provide facilities for water supply hookup to each vehicle to be located within the camp, together with a sewage holding tank to be utilized as a central dumping station with a capacity sufficient to accommodate the maximum number of units to be located therein, all of the foregoing requirements subject to approval of the Ulster County Department of Health prior to the issuance of a license.
- (7) Toilet rooms, showers and laundries.
 - (a) There shall be provided separate toilet rooms for each sex. Flush toilets provided with adequate water supply shall be enclosed in separate compartments having a minimum width of three (3) feet and shall be provided for each sex. Every male toilet room will have at least one (1) urinal. Toilet rooms shall contain lavatories with hot and cold water in the ratio of one (1) lavatory to every two (2) water closets. In no event shall any service building provide less than two (2) toilets for females, one (1) toilet for males, one (1) urinal for males and one (1) lavatory for each sex. All of the foregoing shall be approved by the Ulster County Department of Health before issuance of a license.
 - (b) Separate bathing facilities for each sex shall be provided with one (1) shower or bathtub. Shower compartments shall be at least three (3) feet square with an individual dressing compartment of at least sixteen (16) square feet. In no event shall any service building provide less than one (1) shower or bathtub and individual dressing compartment for each sex. All bathing facilities must comply with Ulster County Department of Health regulations.
 - (c) One (1) double laundry tray shall be provided to serve each fifteen (15) units or less or, in the alternative, other and at least equal laundry facilities may be provided.
 - (d) Floors of toilet rooms, showers and laundries shall be of concrete or tile or similar material impervious to water and pitched to a floor drain.
- (8) Water supply. A sufficient supply of pure drinking water shall be provided by a central water supply system approved by the Ulster County Department of Health and shall be provided in convenient locations. Drinking fountains shall not be placed in any toilet room or water closet compartment. An adequate supply of water shall be provided at all times for bathing, washing and laundry facilities.
- (9) Waste and garbage disposal. All waste for showers, toilets, laundries, faucets and lavatories shall be wasted into a properly constructed sewer system approved by the Ulster County Department of Health. The park management shall provide equipment sufficient to prevent littering of the ground and premises with rubbish, garbage, refuse and the like and shall provide approved fly-tight depositories with tight-fitting covers at conspicuous locations upon such premises. Such depositories shall be kept at all times in a sanitary condition. All garbage, refuse, rubbish and the like shall be collected at least twice every seven (7) days and more often if required to maintain sanitary conditions.

(10) Management office; duties of attendant. There shall be a building in which shall be located the office of the operator or person in charge of said camp. A copy of the camp license and of this chapter shall be posted therein, and the camp register shall at all times be kept in said office. It is hereby made the duty of the attendant or person in charge, together with the licensee, to keep at all times a register of all guests (which shall be open for inspection at all times for any state, federal, county or town officers having jurisdiction in the Town of Shawangunk) showing for each recreational vehicle site the following:

- (a) Name and address of each recreational vehicle owner or renter and others using campsite.
- (b) Date of arrival.
- (c) Make of recreational vehicle, license number or towing vehicle license number.
- (d) Date of departure.

(11) Inspection of premises. Before the camp or park commences operation and at least semiannually thereafter the Building Inspector shall examine the premises to ensure compliance with all requirements of this chapter.

(12) Revocation and suspension of licenses. None of the provisions of this chapter shall be construed as granting vested interests to anyone licensed under this chapter, and the Town of Shawangunk hereby reserves the right to withdraw all permission and to revoke all licenses granted under this chapter.

(13) Campsites for occupancy by other than recreational vehicles shall meet the conditions established for seasonal camps set forth in §177-27.A.

C. **Nurseries and greenhouses.** When for commercial purposes, minimum site area shall be five (5) acres.

D. **Outdoor recreation.**

- (1) Such uses shall include golf courses, swimming pools, tennis courts, ice-skating rinks, ski runs and ski trails.
- (2) No building or structure shall be located within one hundred (100) feet of any property line.
- (3) Unenclosed recreational facilities shall be located not less than one hundred fifty (150) feet from any property line, except where greater distances are otherwise required herein, and shall be effectively screened from adjoining uses.
- (4) Illuminated signs and other lights shall be directed away or shielded from adjoining properties.
- (5) No public address system is permitted except where such system will not be audible at any property line.

§ 177-28. Public, semipublic and educational uses.

Specific special uses shall be as follows:

A. **Cemetery.**

- (1) Minimum site area shall be ten (10) acres.

- (2) The applicant must receive site plan approval which will require, among other documentation, proof of valid state charter for this use.

B. Community building.

- (1) All buildings shall be a minimum of twenty (20) feet from any property line except where greater distances are required herein.
- (2) In the R-Ag 1 District, where permitted, there may be included retail sales for members and guests only.
- (3) All applications for such uses in the R-Ag 1 District shall demonstrate to the satisfaction of the Planning Board that the proposed use will serve primarily the residents of the locality and is not operated for gain.

C. Essential services. Such uses shall include electric substations, transformers, switches, sewage treatment plants, auxiliary apparatus serving a distribution area and water-pumping stations.

- (1) Such facility shall be so located as to draw a minimum of vehicular traffic to and through residential streets.
- (2) The location, design and operation of such facility shall not adversely affect the character of the surrounding residential area.
- (3) Adequate fences, barriers and other safety devices shall be provided and shall be landscaped.

D. Nursery school. Documentation for approval shall demonstrate adequate provision for health and safety, off-street parking and vehicular access and requisite approvals from state and local agencies.

E. Private school. Documentation for approval shall demonstrate adequate provision for health and safety, off-street parking and vehicular access and requisite approval, if needed from state and local agencies.

§ 177-29. Residential Uses.

Specific special uses shall be as follows:

A. Boardinghouse.

- (1) Lodging rooms shall be furnished with individual bathrooms.
- (2) Lodging rooms shall not be equipped with kitchens.
- (3) Common eating spaces and group kitchens shall conform to Department of Health regulations.
- (4) In calculating density, every one and one half (½) lodging rooms in excess of four (4) shall constitute the equivalent of one (1) dwelling unit.
- (5) There shall be a resident owner, manager or other agent of the owner.

B. Mobile home (manufactured home).

- (1) No special use permit shall be issued unless it is shown that the property upon which the mobile home is to be located is not in a 100-year floodplain.
- (2) A special use permit will be issued only when it is shown that the applicant owns the real property upon which the mobile home is to be located and also owns the mobile home.
- (3) The minimum size of a mobile home shall be seven hundred sixty-eight (768) square feet of habitable space, with a minimum mobile home width of twenty-four (24) feet. An existing single-width mobile home existing with eight hundred (800) square feet may be relocated within the town by special use permit if it was located within the town prior to the adoption of this Chapter.
- (4) The application shall be accompanied by a site plan indicating the proposed site's location, the location of the mobile home thereon and applicable measurements pertaining to lot size as well as other information required to conform to regulations contained in Schedule I of the Zoning Law.
- (5) Means of ingress and egress to all public roads shall be approved by the Highway Superintendent
- (6) Each home shall be accessible by an improved road, and the lots should be properly graded to eliminate collection of surface water during or immediately after rainstorms.
- (7) Every mobile home shall have a water supply, electricity and a sewerage system acceptable to the County Board of Health and constructed in compliance with the New York State Sanitary Code, New York Board of Fire Underwriters and New York State Energy Conservation Code. Each unit shall have a valid HUD seal of approval or its New York State equivalent.
- (8) All mobile homes erected outside of a mobile home park shall be placed on frost wall foundations which shall be continuous. Skirting shall be masonry-type and continuous with no opening greater than forty-eight (48) inches.
- (9) A landing platform shall be constructed under all doors of not less than four feet by eight (4' x 8') feet with permanent steps and railings after placement on the site. Failure to comply shall be cause for revocation of the permit.
- (10) The applicant shall install a tie-down system sufficient to withstand wind velocities to be anticipated within the geographical area, and the adequacy of such system shall be approved by the Building Inspector.
- (11) Additions to mobile homes shall be approved by the Planning Board.

C. Mobile (manufactured) home park or court.

- (1) License required; expiration and restrictions. It shall be unlawful for any person to establish, maintain or operate or permit to be established or maintained or operated upon any property owned or controlled by him a mobile home park within the Town of Shawangunk without having first secured special use and site plan approval and a license therefor in compliance herewith. Such

license shall expire on January 1, following the date of issuance, but must be renewed annually under the provisions herein. No license shall authorize the installation for not less than twenty-five (25) nor more than one hundred (100) mobile homes in the first year of operation and not more than fifty (50) additional mobile homes in each succeeding year.

- (2) Application. In addition to the requirements set forth in §177-25, the special use application shall include the following:
 - (a) The name and address of the applicant. In case of a corporation, the name and address of the principal of said corporation must be supplied.
 - (b) The nature and extent of the applicant's interest in the business for which a license is desired and whether he is the owner of the property (if the fee is vested in some other person other than the applicant, a duly verified statement by that person that the applicant is authorized by him to construct or maintain a park and make the application).
 - (c) Such a legal description (deed) of the premises upon which the trailer park is or will be located which will readily identify and definitely locate the entire property to be utilized for this purpose.
 - (d) The number of units in said proposed park and such other information as may be required.
 - (e) The application shall be accompanied by a site plan and providing such detailed information as set forth herein and in accordance with §177-35.
- (3) Site plan. A site plan is to be submitted together with the application herein and is to be drawn to scale on a survey map which shall show the following information:
 - (a) Proposed park name.
 - (b) The extent and area used for park purposes.
 - (c) Locations and widths of existing and proposed streets, roadways, driveways, walkways, easements, building lines, parks and other public properties.
 - (d) Location of sites or units for mobile homes with lot areas indicated in square feet.
 - (e) Lot lines with accurate dimensions and bearings of angles, together with location of parking facilities for automobiles and tow vehicles.
 - (f) Location, material and approximate size of all monuments and location and number of sanitary conveniences, including toilets, washrooms, laundries and utility rooms.
 - (g) Method of sewage disposal.
 - (h) Method and plan of garbage disposal or removal.
 - (i) Method for water supply.
 - (j) Plan for electrical lighting of units and park roadways and walkways.

- (j) An accurate outline of all recreational areas and open space.
 - (k) An accurate outline of all property which is offered or to be offered for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the owners or users of the park.
- (4) Requirements for approval.
- (a) A mobile home park shall be located on a well-drained site, properly graded to ensure rapid drainage and freedom from stagnant pools of water.
 - (b) Density in mobile home parks shall be no greater than four (4) single-width mobile homes or three (3) double-width mobile homes per acre.
 - (c) A hard surfaced walk and hard surfaced driveway sufficient to accommodate the parking of at least two (2) vehicles shall be provided on each site.
 - (d) The access from each site in the mobile home park must be limited to a common private drive or roadway of the park and never directly to a public highway. All mobile home spaces shall abut upon a road not less than fifty (50) feet in width, the hard surfaced portion of which shall not be less than thirty (30) feet in width, which shall have unobstructed access to a public street or highway. All driveways shall be hard surfaced, well marked in the daytime and adequately lighted at night.
 - (e) Access to the camp must be provided by at least two (2) means of entrance and exit to a public road or highway.
 - (f) A pad of at least eight by ten (8 x 10) feet, with permanent steps and walkways not less than three (3) feet in width, hard surfaced and well lighted at night, shall be provided from the mobile home to the driveway provided in Subsection D.
 - (g) An adequate electrical outlet supplying both one hundred ten/two hundred twenty (110/220) volts and sufficient kilowatts shall be provided for each mobile home site.
 - (h) Each mobile home is to be provided with an enclosed, solid, continuous foundation in conformity with mobile home industry standards. Mobile homes to be placed on these foundations shall be a minimum of twelve (12) feet wide with a minimum habitable area of seven hundred sixty-eight (768) square feet. Foundations shall be adequate to meet these minimum standards.
 - (i) Water supply. An adequate supply of pure drinking water from a central water supply system approved by the Ulster County Department of Health shall be provided.
 - (j) Waste and garbage disposal. All water waste shall be wasted into a properly constructed central sewer system which shall be approved by the Ulster County Department of Health. Each mobile home park shall provide equipment sufficient to prevent littering of the ground and premises with rubbish, garbage, refuse and the like and shall provide approved flytight depositories with tight-fitting covers at conspicuous locations upon such premises. Such depositories shall be kept at all times in a sanitary condition. All garbage, refuse, rubbish and the like shall be collected at least every seven (7) days and more often if required to maintain sanitary conditions.

- (5) Improvements and bonding. The applicant shall be required to complete, in accordance with the Board's decision and to the satisfaction of the appropriate town departments, all the street, sanitary and other improvements specified in the action approving the plan or, as an alternative, to file with the Town Board a bond in the amount estimated by the Planning Board to secure to the town the satisfactory construction and installation of the incompleting portion of the required improvements. A period of one (1) year, or such other period as the Planning Board may determine appropriate within which required improvements must be completed, shall be specified by the Planning Board and expressed in the bond. Such performance bond shall comply with the requirements of § 277 of the Town Law and shall be satisfactory to the Town Board as to form, sufficiency and manner of execution. The bond shall provide that the amount determined adequate by the Planning Board shall be retained for a period of one (1) year after the date of completion of the required improvements to ensure their satisfactory condition. All required improvements shall be made at the applicant's expense without reimbursement by the town or any district therein.
- (6) Inspection of improvements. The Building Inspector shall assure the satisfactory completion of improvements in accordance with the approved site plan. If the Building Inspector finds, upon inspection, that any of the required improvements have not been constructed in accordance with approved construction detail sheets, the applicant and bonding company will be severally and jointly liable for the costs of completing said improvements according to specifications.
- (7) Public sites and open spaces. The Planning Board may require reservation of such areas or sites of a character, extent and location suitable to the needs created by such development for open space and other neighborhood purposes equal to at least eight percent (8%) of the gross site area of the mobile home park.
- (8) Management; duties of attendant. In every mobile home park there shall be a building in which shall be located the office of the operator or person in charge of said park. A copy of the park license shall be posted therein, and the camp register shall at all times be kept in said office. It is hereby made the duty of the attendant or person in charge, together with the licensee, to:
 - (a) 24 Keep at all times a register of all guests or mobile home occupants (which shall be open at all times for inspection by state and federal officers and officers of the Town of Shawangunk, showing for each such mobile home the following:
 - [1] Name and address of each occupant.
 - [2] Date of arrival.
 - [3] Name of owner of mobile home.
 - [4] Make of mobile home.
 - [5] Manufacturer's identification.
 - [6] Date of departure.
 - (b) Maintain the camp in a clean, orderly and sanitary condition at all times.
 - (c) See that the provisions of this chapter are complied with and enforced.

(d) Prohibit the use of the park by more mobile homes than the park is licensed to accommodate.²⁵

- (9) Inspection of premises. Before the mobile home park commences operation and at least semiannually thereafter, the Building Inspector shall make an inspection of the premises to determine that all requirements of this chapter have been and are being complied with.
- (10) Revocation and suspension of licenses. None of the provisions of this chapter shall be construed as granting vested interests to anyone licensed herein, and the Town Board hereby reserves the right to withdraw all permission and to revoke all licenses granted under this chapter.
- (11) Applicability to existing parks and permits. This chapter shall apply to all existing mobile homes and mobile home parks located in the Town of Shawangunk on the date of its adoption except those which have been issued permits under Town of Shawangunk Local Law #3 of 1982 provided that the units for which the permit has been issued have not been relocated, and are not relocated, after the date of its adoption.
- (12) Restrictive covenants. The developer shall compile a list of restrictive covenants regulating the uses of the park by prospective occupants, such covenants to be approved by the Planning Board and filed with the County Clerk.
- (13) See the provisions of the New York State Real Property Law at Sections 233 and 233-a for additional requirements for a mobile or manufactured home park or court.
- (14) Chapter 115 of the Town of the Code of the Town of Shawangunk is hereby repealed as it has been restated in Section 177-27(B) and Section 177-29 (b) and (c).

D. Rooming house.

- (a) Sleeping rooms may be furnished with individual bathrooms.
- (b) Sleeping rooms shall not contain kitchens.
- (c) There shall be a resident owner, manager or other agent of the owner.

E. Accessory dwelling.

- (1) Purpose. It is the intent of this section to allow one accessory dwelling within a single-family detached dwelling to create a separate dwelling unit, only after issuance of a special use permit by the Planning Board. The following benefits to the community may result:
 - (a) Increase the supply of affordable rental housing in the Town;
 - (b) Encourage the provision of housing for the special needs of senior citizens, single persons, and persons of moderate income;
 - (c) Promote preservation of homes with historic, architectural, or cultural significance by providing a means to help maintain such homes;
 - (d) Encourage a more efficient use of existing housing stock; and
 - (e) Provide support for existing families with limited income.

- (2) Districts. Conversions of an existing single-family residential structure to accommodate an accessory dwelling, as defined in Article I, are permitted in all of the Town's residential and Small Business Zoning Districts, in conformance with this section and all other applicable sections of this chapter.
- (3) Eligibility. Any principally permitted residential structure may be converted under the provisions of this chapter, provided that the building:
 - (a) Must have been in existence on or before the effective date of this Zoning Law unless a variance shall have been granted by the Zoning Board of Appeals; and
 - (b) Is a conforming use; and
 - (c) Is occupied by the landowner seeking approval of the special use permit as his/her primary residence.
- (4) Standards for Special Use Permit Issuance. In order to ensure that a proposed conversion proceeds in an orderly manner and provides benefits to residents of the conversion and the Town of Shawangunk, the Planning Board shall require that conversion of an existing residential structure:
 - (a) Is in full compliance with the standards of the Ulster County Department of Health. The Planning Board shall require that an applicant seeking approval for a conversion obtain approval of all sanitary sewer and water systems from the Ulster County Department of Health. Lack of an approval from the Ulster County Department of Health shall constitute a basis for denial of a special use permit for conversion of an existing residential structure.
 - (b) Will meet all applicable building codes, including the New York State Uniform Fire Prevention and Building Code.
 - (c) Will not have an adverse effect on the environment, as defined in the State Environmental Quality Review Act (SEQR); Article 8 of the Environmental Conservation Law and 6 NYCRR 617 of the New York Code of Rules and Regulations, as amended.
 - (d) Has area available in which to provide adequate off-street parking for the proposed dwelling unit. The Planning Board may require landscaping, fences, or other appropriate measures to minimize the impact of parking areas on the streetscape and neighboring properties.
 - (e) Will not adversely impact residents on adjacent properties.
 - (f) Not more than one accessory dwelling shall be permitted within any single-family dwelling structure on any residential lot.
 - (g) Will not alter the residential character of the neighborhood in which the residential structure is located. Any changes to the exterior of the residential structure shall be compatible with the existing architecture of the building. In no case shall more than 30 percent of the total floor area of the principal dwelling be devoted to an accessory dwelling unit unless the Planning Board finds that the specific characteristics of the residential structure warrant an increase in such floor area. The accessory dwelling unit shall be at least 400 square feet in size but no more than 650 square feet in size.
 - (h) In the case of a residential structure of historic significance, where that building is listed or eligible for listing on the National or State Historic Registers or has been identified by the

Town Board as historically significant, no exterior modifications that would alter the historic importance of the building will take place.

- (i) Does not increase lot coverage of the residential structure by more than ten percent (10%).
 - (j) Is not located in a basement, except that below-grade space is permitted as habitable space only if it is in conformity with the New York State Uniform Fire Prevention and Building Code's requirements for habitable space.
 - (k) Must have its own kitchen and bathroom facilities.
 - (l) An accessory dwelling shall not contain more than one bedroom.
- (5) A special use permit shall be issued to individuals, not structures [see subsection (6)(g) below]. Materials to assist the Planning Board in reviewing an application for a special use permit shall include a floor plan of the existing residential structure and proposed accessory dwelling unit, a survey or other appropriate drawing or document showing the location and size of the existing and proposed septic system and well (if applicable), and the structures on the lot, both as they exist and as they would appear with the accessory dwelling(s).
- (6) An accessory dwelling shall comply with the provisions of §§ 177-56 and 57 of the Zoning Law, which requires issuance of a Building Permit for construction and a Certificate of Occupancy for occupancy.
- (7) Renewal and revocation of permit. The special use permit for an accessory dwelling shall be valid for the time period of the occupancy of the applicant/owner in the principal dwelling unit. The permit may be renewed at the time of transfer of a property after inspection of the accessory dwelling by the Town Building Inspector. The special use permit may be revoked by the Planning Board after due notice to the permittee and after a public hearing for cause which may include failure to comply with the above stated conditions or any special condition attached to an individual permit, or for reasons as cited by the Town Building Inspector.

F. Multiple dwellings (special use) and two-family dwellings.

- (1) Apartments within multiple dwellings and two family dwellings shall conform to the following minimum size limitations:

1 bedroom	550 square feet
2 bedroom	700 square feet
3 bedroom	850 square feet

- (2) The minimum lot area required for each dwelling unit in a multiple dwelling or two-family dwelling in the R-Ag 1, R-Ag 2, R-Ag 3, and R-Ag 4 zoning districts where central water and sewer is not provided is as follows, provided the minimum lot area requirements for the zoning district are met:

1 bedroom	1 acre
2 bedroom	2 acres
3 bedroom	2 acres

- (3) The minimum lot area required for each dwelling unit in a multiple dwelling or two-family dwelling in the R-Ag 1, R-Ag 2, R-Ag 3, and R-Ag 4 zoning districts, where central water and sewer is provided, is as follows, provided the minimum lot area requirements for the zoning district are met:

1 bedroom	5,000 square feet
2 bedroom	10,000 square feet
3 bedroom	10,000 square feet

- (4) Multiple dwellings or two-family dwellings shall be permitted in areas where central water and sewer are not available, provided there are no more than four (4) dwelling units in one structure and such structure must have the appearance of a single family dwelling, as determined by the Planning Board.

G. Senior citizen development. The Town of Shawangunk wishes to encourage a variety of housing types to serve the present and future owner-occupied and rental housing needs in the Town, including housing for older persons. Some older Americans choose to live together with fellow senior citizens in retirement-type communities and appreciate living in environments tailored to their specific needs. This section of the Zoning Law provides a means to develop housing in the Town for the special needs of this group.

- (1) The occupancy for a senior citizen development shall be limited to persons who are fifty-five (55) years of age or over, and providers of housing for such persons who are fifty-five (55) years of age or over must demonstrate an intent to provide housing for this age group in its marketing to the public and in its internal operations. Providers of housing for older persons shall not allow such housing to discriminate on the basis of race, color, religion, sex, handicap, or national origin. Persons under the age of 55 may be accommodated in a senior citizen development under the following circumstances:

- (a) A spouse or domestic partner under the age of fifty-five (55) years who is residing with his or her spouse or domestic partner, who is of the age of fifty-five (55) years or older.
- (b) A child under the age of fifty-five (years) but at least nineteen (19) years or older, who is residing with his or her parent(s) who is of the age of fifty-five (55) years or older.
- (c) Adults under the age of fifty-five (55) years will be admitted as permanent residents if it is established that the presence of such persons is essential for the physical care of the eligible older occupant or occupants.
- (d) Employees of the senior citizen development will be admitted as permanent residents provided these employees perform substantial duties directly related to the management or maintenance of the housing.
- (e) Qualified individuals with a disability shall not be subject to the age requirements of this section.
- (f) Certifying documentation of the age requirements of this section shall be filed for each unit occupied. Where the senior citizen development is subject to the age requirements of the State or Federal governments, certifying documentation that may be required to satisfy such governments may be used to satisfy these requirements. It shall be the duty of the owner, or his agent, to file a certificate of compliance with the Town Building Inspector indicating

compliance with the Town of Shawangunk Zoning Law, as amended, as to its requirements relating to the age of the occupants in each dwelling unit. The certificate shall be filed for each dwelling unit within thirty (30) days after its initial occupancy. A new certificate shall be filed within thirty (30) days after any change of occupancy. Furthermore, the applicant and/or owners of a senior citizen development shall file with the Building Inspector, before the first Monday in December of each calendar year of operation, a report on forms supplied by the Building Inspector, for compliance with all provisions of this Chapter.

(2) The following dwelling types are permissible in senior citizen developments:

- Single-family dwelling
- Two-family dwelling
- Multiple dwelling
- Congregate Dwelling
- Any combination of the above

(3) Specific amenities, designed to meet the physical or social needs of older persons, shall be permitted either in a separate building or in combination with dwelling units. If such amenities are provided, they shall be subordinate to the residential character of the development and shall be located out of public view with no outside advertising. Approval of a site development plan for dwelling units in a senior housing development in no way constitutes approval for installation of any type of related facility or service. The following amenities may be approved by the Planning Board, pursuant to §177-25 of the Town Zoning Law:

- Central food services
- Self-service laundry
- Lounge
- Game room
- Recreation room
- Exercise or multi-purpose room
- Workshop
- Library
- Sauna/spa whirlpool
- Doctors or Dentists office
- Personal services

(4) The design of the senior housing development shall be as compatible as possible with the design of the surrounding neighborhood.

(5) Senior citizen developments shall be located in an area suitable for residential purposes and shall be reasonably free of objectionable conditions such as industrial odors, noise, and dust.

(6) Senior citizen developments shall preserve, to the greatest extent possible, mature trees, rock outcrops, significant slopes, wetlands, stream corridors, and any other significant natural and/or cultural resources.

(7) Senior citizen development sites should provide residents with reasonable access to such conveniences and facilities as public transportation, hospital and medical services, shopping, religious, cultural, and recreational facilities, and personal services.

- (8) Senior citizen development site plans shall emphasize pedestrian circulation and shall provide a safe and reasonable system of drives, service access and parking conveniently accessible to all occupants. Sidewalks shall link parking lots, transit stops, and buildings on-site and with adjacent properties, as appropriate.
- (9) Parking at senior citizen sites can vary between weekdays and weekends. For occasional weekend use, it may be more appropriate to establish overflow parking using alternative pervious surfaces such as cellular concrete blocks where the interstices of the blocks are filled with earth and sown with grass. Overflow parking requirements may be fulfilled at senior citizen developments using such alternative. On-site facilities for vehicle parking shall be provided for each unit by the following formula:

Dwelling Unit Type	Bedrooms	Spaces/Unit
Multiple or Congregate	1	0.65
	2	0.85
Single-family or Two-family	1	1.00
	2	1.25
Overflow Parking	—	0.25
Employees (if applicable)	—	2.00

- (10) Landscaping shall be provided in accordance with the requirements of §177-42 of the Town Zoning Law. Additional requirements include planting of street trees along all streets and/or driveways at a maximum average spacing of 30 feet (but no closer than 15 feet to intersections) on center. Trees shall have a minimum caliper of two and one-half (2½) inches at the time of planting. When no lane of parking is provided along streets, trees shall be planted between the sidewalk and the travel lane at a minimum of two and one-half (2½) feet from the edge of the street. For all parking areas, landscaped areas shall comprise a minimum of twenty (20) percent of the total parking lot area. Use of native species and low maintenance plants are encouraged. Gardens where residents can participate in gardening activity is encouraged.
- (11) Exterior architectural features shall be of a quality, character, compatibility, and appearance that is in harmony with the surrounding neighborhood and the Town of Shawangunk and will not adversely affect the general welfare of the inhabitants of the Town of Shawangunk. The Planning Board will be responsible for providing a review of such exterior architectural features.
- (12) Each dwelling unit shall contain a minimum of 65 square feet of outdoor common area. Seating accommodations that allow for conversation shall be provided in such common areas. Outdoor common areas shall be well-defined by landscape plantings and shall be linked to the natural open space of the site.
- (13) The minimum lot area required for each dwelling unit in the R-Ag 1, R-Ag 2, R-Ag 3, R-Ag 4, and MB-C zoning districts where central water and sewer is not provided is as follows, provided the minimum lot area requirements for the zoning district are met:

1 bedroom	0.5 acre
2 bedroom	1 acre

- (14) The minimum lot area required for each dwelling unit in the R-Ag 1, R-Ag 2, R-Ag 3, R-Ag 4, and MB-C zoning districts, where central water and sewer is provided, is as follows, provided the minimum lot area requirements for the zoning district are met:

1 bedroom	2,500 square feet
2 bedroom	5,000 square feet

H. **Single-family and two-family residential uses in the SB zoning district.** The Town of Shawangunk wishes to encourage a variety of retail, service, and other small businesses within the Small Business (SB) zoning district while maintaining the traditional rural character of the Town. However, single-family and two-family residential dwellings have traditionally been mixed with commercial land uses within the hamlet area. The Town finds that certain new single-family or two-family residential uses may be compatible with commercial land uses if measures are taken to ensure that such residential uses do not become predominant in the hamlet and if constructed, follow the traditional forms of development found elsewhere in the hamlet. The Planning Board is authorized to review and approve Special Use Permits for Single-family and Two-family residential uses in the SB Zoning District in accordance with the following:

- (1) New single-family or two-family residential uses that do not require subdivision (excluding re-subdivisions) review by the Planning Board, may be approved by the Planning Board only when existing residences are located on both side lot lines. Such uses shall comply with the regulations found in Schedule I, applicable overlay district requirements, and with the General Standards for Special Use Permits.
- (2) New single-family and two-family residential uses, when proposed as part of a subdivision plan of a tract of land of 2 or more acres and consistent with the land use objectives of the Town, shall require special use permit approval, only where the Planning Board finds that all of the following conditions are met:
 - (a) The proposed single-family or two-family residential use will comply with §177-25.C, General Standards, applicable overlay district requirements, and other specific requirements of this and other Town regulations governing single-family or two-family residential uses, and will be consistent with the purposes of this Chapter and the Small Business Zoning District.
 - (b) The use will have no greater off-site impact than would full development of uses of the property permitted by right, considering relevant environmental, social, and economic impacts.
 - (c) The proposed single-family or two-family residential use is consistent with the Town of Shawangunk Comprehensive Plan, as it may be amended from time to time.
 - (d) The proposed single-family or two-family residential use is generally consistent with the Town of Shawangunk design guidelines. Until such time as specific design guidelines are adopted by the Town of Shawangunk, the New York Planning Federation's "*Community Design Guidelines*" may be used as an example of acceptable design guidelines.. Design objectives to be achieved when public sewer or public sewer and water are available include the following minimum measures:
 - [1] The placement of single-family or two-family residential buildings shall comply with the lot, yard, and height regulations for the SB Zoning District, with the exception of the minimum lot width which shall be 40 feet and the maximum lot width which shall be 75 feet with a minimum average lot area of 5,000 square feet with public water and sewer or 10,000 square feet with public sewer.

- [2] The placement of single-family or two-family residential buildings shall extend parallel along the front lot line.
- [3] Sidewalks, with a minimum width of five (5) feet, shall be provided along all subdivision streets.
- [4] Hedges, garden walls, or fences, between two and one-half (2½) and five (5) feet in height, shall be built on the front lot lines.
- [5] Balconies, open porches, stoops, and bay windows shall be permitted within the front yard setback provided that such architectural features maintain a minimum twelve foot (12') distance to the front lot line.
- [6] Off-street parking spaces shall be provided at the side or rear of the buildings and shall be provided with access to a street or alley.
- [7] Street trees shall be planted along all streets at a maximum average spacing of 30 feet on center. Trees shall have a clear trunk of 6 feet, a minimum spread of 7 feet, and a minimum caliper of 2½ feet at the time of planting.

§177-30. Mixed uses.

A. Mixed use business-conservation park. A Mixed Use Business-Conservation Park special use permit will be approved if the Planning Board finds that the applicant has shown that all of the following approval criteria are met:

- (1) The master plan contains the components required by § 177-6.K.;
- (2) The proposed uses and possible future uses in the master plan comply with the applicable special use permit criteria; and
- (3) The proposed uses and possible future uses will be able to comply with the applicable requirements of this section, except where variations are being approved as part of the master plan.

B. Planned development group. Under the standard provisions of this chapter, a separate ground area, referred to in the chapter as a "zone lot," must be designated, provided and continuously maintained for each structure or use. Pursuant to the procedure hereinafter set forth in this subsection, two (2) or more such structures may be erected and maintained on the same zone lot in any residential zone. Also, several zone lots in these districts may be combined into one (1) lot for planned development purposes. The procedure is intended to permit flexibility in the location of structures and to improve circulation, the efficient use of land and utilities and other site qualities while ensuring adequate standards relating to public health, safety, welfare and convenience in the use and occupancy of buildings and facilities in planned residential groups.

- (1) Review procedure.
 - (a) Application for development of a planned development group shall require the submission of a site plan. Said plan shall show all structures, roadways, sidewalks and paths, parking areas, recreation areas, utility installation and landscaping on the site and any other elements as may

be deemed essential by the Planning Board or as required by Chapter 152, Subdivision of Land.

- (b) In considering and reporting on the application, the Planning Board shall take into account the public health, safety and general welfare and the comfort and convenience of the general public. The Planning Board shall obtain input from the Town Engineer concerning the adequacy of proposed facilities for storm drainage and the County Department of Health concerning the water supply and sewage facilities. The Planning Board in its deliberations shall consider the following: deeding by the developer of water access rights to the Town of Shawangunk.

(2) Residential building groups. Spacing between buildings and orientation in multiple dwelling structures shall be as follows:

- (a) Walls containing main window exposure or main entrances shall be so oriented as to ensure adequate light and air exposure.
- (b) Such buildings shall be so arranged as to avoid undue exposure to concentrated loading and parking facilities and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
- (c) A building wall exposing both windows and an entranceway shall be located no closer to another building than a distance equal to the height of the taller building of the two (2), but in no case less than fifty (50) feet
- (d) A building wall exposing only windows or only an entranceway shall be located no closer to another building than a distance equal to one-half ($\frac{1}{2}$) the height of the taller building of the two (2), but in no case less than twenty-five (25) feet.
- (e) A building group may not be so arranged that any temporary or permanently inhabited building is inaccessible by emergency vehicle.

(3) Spacing and orientation of commercial groups. Spacing between buildings and orientation in commercial building groups shall be as follows:

- (a) Exterior walls of opposite buildings shall be located no closer than a distance equal to the height of the taller building.
- (b) A building group may not be so arranged that any permanently or temporarily occupied building is inaccessible to emergency vehicles.

(4) Circulation.

- (a) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways and off-street parking and loading space.
- (b) There shall be an adequate amount, in a suitable location, of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.

- (c) Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
- (5) Paving and drainage. There shall be adequate design of grades, paving, gutters, drainage and treatment of turf to handle stormwater and prevent erosion and formation of dust.
- (6) Signs and lighting. Signs and lighting devices shall be properly arranged with respect to traffic control devices and adjacent residential districts.
- (7) Usable open space. In residential building groups providing for permanent family occupancy, improved play areas for children and other recreational areas in safe locations and in an amount of not less than fifteen percent (15 %) of the gross land area of the development shall be provided.
- (8) Number of dwelling units. A minimum of fifty (50) dwelling units must be provided in any planned development group.
- (9) Average density. The average density of a planned development group shall be calculated by dividing the acreage of the site to be included within the proposed development exclusive of public rights-of-way, commercial areas and industrial locations, by the total number of dwelling units. The average density, expressed in dwelling units per acre, shall be not more than the lot area per family in the district in which the planned unit development is located. In the event that the planned unit development provides central water supply and distribution and central sewage treatment facilities, both suitable for year-round service and meeting the specifications of the Board of Health, the average density may then be equal to whichever of the following is greater:
 - (a) Twice the number of dwelling units per acre that would normally be required in that zone district for single-family dwellings having neither central water nor central sewage; or
 - (b) The same number of dwelling units per acre that would normally be required in that zone district for single-family dwellings having both central water and central sewage.
- (10) If approved or approved subject to certain changes, such approvals shall expire three (3) years after the date thereof if building permits have not been obtained.

§177-31 through 34. Reserved.

ARTICLE VII
Site Plan Review; Subdivision Design

§ 177-35. Site plan review.

- A. **Site plan approval required.** No building permit shall be issued for any principal permitted use, accessory use or special use other than a single or two family residential building on a lot containing no other principal buildings and no approval granted for off-street parking areas for four (4) or more vehicles or for off-street loading or unloading facilities or for essential services unless the Planning Board has reviewed and approved a site plan submitted by the applicant in accordance with procedures set forth in this section and authorized by § 274-a of the Town Law as amended. Subsequent to its review, the Planning Board may approve, with or without modifications, or disapprove the proposed site plan.
- B. **Site plan submission requirements.** The following information shall accompany a site plan application:
- (1) Area map showing the location of the proposal, including the following:
 - (a) An eight-and one-half-by-eleven-inch photocopy of the appropriate section of either a United States Geological Survey or New York State Department of Transportation Map - 1:24000 scale.
 - (b) An eight-and-one-half-by-eleven-inch photocopy of the appropriate section of the Municipal Zoning Map.
 - (c) An eight-and-one-half-by-eleven-inch photocopy of the appropriate section of the local Tax Map of the applicant's property.
 - (2) A complete written description of the proposal.
 - (3) A plan showing physical characteristics of property; existing and proposed layout of buildings, structures, additions, parking, road or highway access, drainage and availability of utilities (appropriate scale).
 - (4) Supporting material used in request, such as traffic generation, additional services, etc.
 - (5) Zoning district in which property is located.
 - (6) Zoning provision permitting such use, with required standards and conditions imposed by this chapter.
 - (7) A copy of an environmental assessment or impact statement if required under the State Environmental Quality Review Act (SEQR).
 - (8) After Ulster County Planning Board review, submission of final action report.
 - (9) Any other information required by the Planning Board which is reasonably necessary to ascertain compliance with the provisions of this chapter.
 - (10) Drawings. Drawings shall be at the following scales:

- (a) One (1) to five (5) acres: one (1) inch equals twenty (20) feet.
- (b) Five and one-tenth (5.1) to ten (10) acres: one (1) inch equals fifty (50) feet.
- (c) The scale for drawings of larger sites shall be adjusted accordingly.

(11) A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article XV, Stormwater Management & Erosion Control, shall be required for site plan approval. Whether a Stormwater Pollution Prevention Plan is required or not, the site plan will include GPS (Global Positioning System) reference data for stormwater outfalls and permanent structures built in accordance with New York State Management Design Manual, unless a metes and bounds location is accepted in lieu of a GPS location.

C. Planning Board review of site plan application.

- (1) In reviewing the site plan, the Planning Board shall consider the site plan's conformity with the Comprehensive Plan, as it may be amended, and the Town Code. Impact on stormwater drainage shall be considered to ensure against flooding. Conservation features, landscaping and impact on surrounding properties as well as on the entire town shall be part of the review.
- (2) In its review, the Planning Board may request recommendations from the Town Board, the Building Inspector, Highway Superintendent or any other local, county, state or federal official or agency which may have an interest in the particular development for which site plan approval is sought.
- (3) In the event that a determination cannot be made with respect to required data at the time of site plan submittal, the Planning Board may impose a particular condition as a requirement for approval of a certificate of occupancy but not require its fulfillment prior to issuance of a building permit.
- (4) Where a site plan application does not involve a special use, the Planning Board may waive the conducting of a public hearing in its sole discretion. If a public hearing is to be conducted, the procedures per Section 177-25(B)(2)(a) shall apply.

D. Building Inspector's action. Prior to the issuance of a building permit, the Planning Board shall approve a site plan as may be required by this Zoning Law. The Building Inspector shall not act to grant a building permit until the applicant has complied with the conditions set forth in any resolution adopted by the Planning Board regarding its decision on a site plan application.

E. Site plan binding.

- (1) 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.
- (2) In the event that a particular facility is to be constructed in stages, a site plan for each particular stage shall be required for the issuance of each building permit. The initial stage shall comprise at least thirty-five percent (35 %) of the total value of the entire project.

F. Performance guaranty. The Planning Board may require that public improvements, landscaping and buffer area requirements be secured by a performance guaranty in the same manner prescribed for

such improvements by L.L. No. 2-1971 of the Town of Shawangunk, Chapter 152, Subdivision of Land, as it may be amended.

- G. **Submission to County Planning Board.** In those instances where a site plan requires review by the County Planning Board in accordance with § 239-1 or 239-m of Article 12B of the New York State General Municipal Law, a copy of the site plan shall be referred to the County Planning Board in accordance with procedures set forth in that agency's General Municipal Law Referral Guide before approval may be granted by the Shawangunk Planning Board.
- H. **Relation to subdivision regulations.** Plats showing lots, blocks or sites which are subject to review under the subdivision regulations of the town as set forth in Chapter 152 of the Code of the Town of Shawangunk shall continue to be subject to such review procedures and shall not be subject to review under this section.
- I. **Grievances.** Any person aggrieved by any decision of the Planning Board in carrying out the procedures of this section or by the decision of any officer, board, department or bureau of the town in relation to this section may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules (CPLR).

§ 177-36. Cluster subdivision.

A. Purpose and intent.

- (1) The Town of Shawangunk wishes to preserve its open space, provide opportunities for affordable housing and develop according to the traditional compact pattern found in its hamlets, using flexible regulations for density and lot dimensions.
- (2) The provisions of this section shall apply throughout the Town of Shawangunk.
- (3) In order to increase design flexibility, two or more contiguous parcels of land, including parcels separated by a Town, County, State, or private road, may be grouped together as one cluster provided the parcels are in common ownership and are merged into one parent parcel.
- (4) Conventional Subdivisions are subdivisions that comply with the minimum lot, yard, and height regulations shown on Schedule I of the Zoning Law as amended, without setting aside land as permanently protected open space. The Town wishes to discourage this type of subdivision where it will have a negative impact on the Town's rural landscape and natural resources.
- (5) The Town wishes to encourage the use of Cluster Subdivisions as an alternative to conventional subdivisions. Cluster subdivisions allow for the preservation of contiguous open space and the protection of important environmental resources, while allowing more design flexibility than is allowed for conventional subdivisions. Cluster Subdivisions also provide an opportunity to reduce the extent of highway expansion and other infrastructure.
- (6) The application of these provisions shall be guided by the important physical, cultural and natural features of the particular property under review as listed below. In the event that the Town Board and/or the Planning Board determine not to pursue and/or approve a cluster subdivision for property containing one or more of the physical, cultural or natural features set forth below, such board shall make specific written findings as to why such cluster plan is to be rejected and such findings shall be filed with the Town Clerk, the Planning Board and a copy shall be provided to the applicant.

- (a) Slopes over 15 percent on twenty-five percent (25%) or more of the property.
- (b) Freshwater wetlands under the regulatory jurisdiction of the New York State Department of Environmental Conservation (DEC) and/or the U.S. Army Corps of Engineers.
- (c) 100-year floodplains as identified on Federal Emergency Management Agency (FEMA) maps.
- (d) Properties listed on the National and/or State Registers of Historic Places or eligible for listing by the New York State Office of Parks recreation and Historic Preservation for inclusion on such registers.
- (e) Lands containing a farm operation within a New York State Agricultural District or within 500 feet of lands containing a farm operation within a New York State Agricultural District.
- (f) Significant viewsheds as determined by the application of the State Environmental Quality Review Act.
- (g) Recreational resources including lakes, ponds, streams, or other potentially significant recreational resources.
- (h) Known habitats containing endangered, threatened, or special concern wildlife species, protected native plants, endangered, threatened, or rare plants, or State identified significant habitats.
- (i) Unique or unusual land forms or geological formations.
- (j) Existing or potential trails including bikeways, hiking trails or multi-use, non-motorized routes of local, county, state or national significance.
- (k) Lands within a Critical Environmental Area as defined in the State Environmental Quality Review Act.

B. Planning Board and Town concept plan review.

- (1) Unless excepted below, the Planning Board of the Town of Shawangunk shall require that an applicant for a residential subdivision or residential use permit present to the Planning Board a conceptual cluster plan simultaneously with the filing of the application for preliminary subdivision approval. The Planning Board shall review both the cluster plan and the conventional plan and shall require such other and further details for each plan that it reasonably believes necessary to evaluate each plan. Until all reasonably requested information is submitted, including the Town Board's concept review of a proposed cluster plan as set forth below, the application for preliminary approval of the conventional plan shall be deemed incomplete.
- (2) Upon receipt and review of all such necessary information to evaluate fully both the cluster proposal and the conventional subdivision plan, the Planning Board shall refer the conceptual cluster plan to the Town of Shawangunk Town Board so that the Town Board may exercise its authority to reject or modify the proposed cluster conceptual plan. If the Town Board is to reject or modify the cluster conceptual plan, it must so act by resolution within forty-five (45) days of such referral unless this time period is extended by mutual agreement of the Town Board and the

applicant. Failure to so act within such forty-five (45) day time period or within any mutually extended period, shall be deemed to be an authorization for the applicant and the Planning Board to proceed to a preliminary public hearing for both the cluster and the conventional plan unless both the Planning Board and the applicant agree to proceed to public hearing for only the conventional plan, subject to B(1)(f) above, or for only the cluster plan, as the case may be. Nothing herein set forth shall prevent the Town Board from authorizing the Planning Board to conduct the preliminary public hearing on the cluster plan prior to expiration of said forty-five (45) day period. However, no such resolution of the Town Board shall be deemed an approval of any aspect of the cluster plan as that approval shall remain within the sole discretion of the Planning Board as set forth in Section 177-36 and as set forth in the provisions of Section 278 of the Town Law of the State of New York and in accordance with the obligations of the Lead Agency pursuant to the State Environmental Quality Review Act (SEQRA) and the regulations thereunder. If the Town Board rejects the cluster concept, the Planning Board shall continue its review of only the conventional subdivision plan. If the Town Board modifies the conceptual cluster plan, the Planning Board shall continue its review of the conceptual cluster plan, as modified. If the Town Board rejects or modifies the cluster plan where the property meets one or more of the criteria set forth in 177-36.A.(6), the Town Board shall provide a written basis for such rejection or modification and shall file the same with the Town Clerk and with the Planning Board and shall provide a copy to the applicant.

C. **Planning Board waiver of cluster subdivision.** Notwithstanding anything set forth in this local law to the contrary, the Planning Board may waive, but shall not be obligated to waive, the requirement of a cluster plan for subdivisions of three (3) lots or less or for parcels of ten (10) acre or less.

D. **Planning Board Formal Review; Town Board Final Review**

- (1) Upon receipt by the Planning Board of the Town Board's concept review or upon failure of the Town Board to so review within said forty-five (45) day period or within any mutually extended period, the Planning Board shall schedule a combined preliminary public hearing on both the proposed cluster plan and on the proposed conventional plan in accordance with the requirements of Article 16 of the Town Law for the State of New York and, if applicable, in accordance with the SEQRA and the regulations thereunder, as those statutes and regulation now exist or as they may be amended. Notwithstanding, if the applicant, the Planning Board and the Town Board all agree that the conventional plan is not the favored plan, the Planning Board may waive, but is not obligated to waive, the requirement that the conventional plan proceed to preliminary public hearing. If the Town Board has rejected the proposed cluster conceptual plan, the Planning Board shall discontinue its review of the cluster plan and shall proceed to public hearing only with its review of the conventional plan.
- (2) The Planning Board shall render its decision on the preliminary subdivision application in accordance with the provisions of Town Law 276, as that statute now exists or as it may be amended.
- (3) If the Planning Board, in its sole discretion, elects to grant preliminary approval to a cluster plan, and upon the issuance of either a Negative Declaration or a Findings Statement pursuant to SEQRA, the Planning Board shall include in such preliminary decision and/or SEQRA determination a specific finding that the cluster plan will benefit the Town. As a condition of final subdivision approval, the applicant must obtain the approval of the Town Board as to the conditions for the ownership, use and maintenance of the open lands, including, without limitation, the terms of the Conservation Easement or other recorded restrictions or declarations.

E. **Applicability of siting or design guidelines.** The Town of Shawangunk encourages development that is compatible with the existing character of the Town. Cluster Subdivisions shall be designed in a manner consistent with this goal. Dimensional and other design requirements contained in this Zoning Law shall be applied in conformance with any Design Guidelines which may be adopted by the Town Board.

F. **Standards for cluster subdivisions.**

(1) **Density calculation.** Cluster subdivisions are intended to allow flexibility while preserving important natural attributes of the land. In order to determine the permissible number of dwelling units, it is necessary to subtract land that is unbuildable or that presents other development constraints through the preparation of a conventional subdivision plan. The permitted number of dwelling units in a cluster subdivision shall in no case exceed the number of units that, in the Planning Board's judgment, would be permitted as feasible if the land were subdivided into lots conforming to the minimum lot size and density requirements of this chapter, the Town Subdivision Regulations, the Ulster County Department of Health regulations, and all other applicable laws and standards. The basis for this determination will be a conventional subdivision plat for the subject parcel showing all environmental constraints on development as well as roads (including road grades), parks, and other information as may be required by the Planning Board. In making its determination of the permitted number of dwelling units under the cluster plan, the Planning Board shall seek the preservation of steep slopes, wetlands, floodplains, water bodies, and other environmentally sensitive or unique open space or natural resources.

(2) **Minimum lot area.** The minimum lot area for subdivided lots in a cluster subdivision shall be as follows:

With no public water or sewer*	20,000 square feet
With public sewer or water*	15,000 square feet
With public water and sewer	10,000 square feet

*Note: Ulster County Health Department approval is required for all lots in a cluster subdivision where public water or sewer or public water and sewer is not provided.

(3) **Front, side, and rear yards and lot widths.** Appropriate minimum yards and lot widths in a Cluster Subdivision depend upon the lot sizes, the type of road frontage (state, county, town or private) and the character of the subdivision (hamlet, suburban, rural). Accordingly, yard requirements for lots on interior roads shall be established at the time of plat approval and shall be shown in a chart on the plat.

(4) **Requirements for protected open space.** All cluster subdivisions shall protect the greatest amount of open space that, in the sole judgment of the Planning Board, provides the largest amount of benefit to the Town. The requirements for protecting such open space are described in Section (6) below.

(5) **Partial cluster subdivision.** In Shawangunk, many subdivisions do not involve full-scale development of land. In order to encourage small subdivisions to follow Cluster Subdivision principles, there is no minimum tract size or number of lots required for a Cluster Subdivision.

(a) The Planning Board may grant preliminary and final approval of a partial cluster subdivision in accord with the rest of the provisions of this Section 177-36 and upon such terms and conditions as it deems appropriate so as to encourage the present and future use of the cluster subdivision tool. Any residual parcel created by a partial cluster subdivision shall be

encumbered by Conservation Easement or deed restriction so as to ensure that the correlative permanent open space afforded by a partial cluster subdivision is protected in perpetuity.

(b) The Planning Board may waive submission of documentation of the full lot count where, in the Planning Board's judgment, the number of lots proposed is substantially less than the total allowable lot count, provided that the plat contains a notation clearly indicating the reduction in the total lot count for the remaining unsubdivided parcel.

(6) Open space land. Protected open space may be included as a portion of one or more large building lots, or may be contained in a separate open space lot. Such open space may be owned by a homeowners association, one or more private landowners, a non-profit organization, the Town or another governmental entity, or any other appropriate entity, as provided in Subsection (6)(d), as long as it is protected from development by a conservation easement. The required open space land may not include private yards located within 50 feet of a principal structure.

(7) Mixed uses.

(a) Residential and non-residential uses may be combined in a cluster subdivision provided that all required special use permits are obtained and that the applicant complies with all residential density, lot coverage, use, and minimum protected open space requirements.

(b) For every 5,000 square feet of industrial or warehouse floor space, or 2,000 square feet of other commercial floor space, the allowable residential density shall be reduced by one dwelling unit. Lot sizes and setbacks for non-residential development shall be established at the time of plan approval based upon the type of use proposed, its space needs, and its size, scale, and impact.

(c) An applicant for a mixed-use cluster subdivision may submit one application for both subdivision and special permit/site plan approval, which shall be reviewed as a comprehensive specific development plan by the Planning Board. A mixed use cluster subdivision shall not allow uses otherwise prohibited in the underlying zoning district.

(8) Arrangement of lots and dwelling units. Lots shall be arranged in a manner that protects land of conservation value and facilitates pedestrian and bicycle circulation. Dwelling units in a cluster development may be provided, at the discretion of the Planning Board, in one-family, two-family, or multiple dwelling structures consistent with the density limits in Subsection (5)(a). These dwelling units shall be arranged in a manner that creates coherent neighborhoods with attractive and useful public spaces, and that encourages pedestrian use of streets, sidewalks, public greens and parks. The Planning Board may recommend that an applicant follow specific published guidelines to achieve this objective. Notwithstanding anything herein set forth to the contrary, the Planning Board is not authorized to vary the applicable height limitation for any structures within a cluster subdivision.

(9) Parcels in more than one district. Density calculations shall be made separately for the portion of the parent parcel in each district. This density may then be combined and distributed anywhere within the parent parcel, provided that the layout and design are consistent with the purposes of each district and that dwelling units are generally clustered at higher densities in the higher density district.

G. Permanent open space in cluster subdivisions. Open space set aside in a cluster subdivision or as a condition of any special use permit or site plan approval shall be permanently protected as required

by this subsection. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land pursuant to Subsection (6)(c) below, and provided that the relevant board approves such configuration of the open space as part of its subdivision, special use permit, or site plan approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land.

(1) Conservation Value of Open Space

- (a) The open space protected pursuant to this Section shall have “conservation value” which may include historic, ecological, agricultural, water resource, scenic, or other natural resource value. Examples of lands with conservation value include view corridors along rural roads, agricultural land, aquifer or historic overlay districts, large areas or contiguous mature forest, ridgelines and hillsides visible from public roads or other public areas, wetlands, water bodies, and stream corridors. High quality agricultural land, even if suitable for development, shall be considered land of conservation value.
- (b) In order to determine the conservation value of open space on a specific parcel of land, the applicant shall prepare and the Town Board and/or Planning Board shall review a “conservation analysis” of such parcel, showing the conservation value of various portions of the parcel (see Rural Design Guidelines).

(2) Notations on plat or site plan. Protected open space land shall be clearly delineated and labeled on the final subdivision plat or Site Plan as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of other lots in the subdivision to such land. The plat or Site Plan shall clearly show that the open space land is permanently reserved for open space purposes, and shall contain a notation indicating the liber and page of any conservation easements or deed restrictions required to be filed to implement such restrictions.

(3) Permanent protection by conservation easement.

- (a) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation (including golf courses), protection of natural resources, or similar conservation purposes, pursuant to Section 247 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the reviewing board. Such conservation easement shall be approved by the reviewing board and shall be required as a condition of subdivision plat approval. The reviewing board may require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk’s office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk’s office. In the case of subdivisions of less than five lots, a deed restriction enforceable by the Town may be substituted for a conservation easement at the discretion of the Town Board.
- (b) The terms of the Conservation Easement, or, if applicable, the deed restriction or declaration, shall prohibit further residential, industrial or commercial development except that commercial development may be permitted if, in the discretion of the Planning Board and Town Board, such development is in furtherance of agricultural production, timber

harvesting, or recreational uses all of which must be described within the Conservation Easement to the satisfaction of the Town Board.

(4) Ownership of Open Space Land

- (a) Open space land may be owned in common by a homeowners association (HOA), dedicated to Town, County or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Town Board finds adequate to properly manage the open space land and to protect its conservation value.
- (b) If the land is owned in common by a HOA, such HOA shall be established in accordance with the following:
 - [1] The HOA documentation must be submitted to the Planning Board before the final subdivision plat is approved, and must comply with all applicable provisions of the General Business Law.
 - [2] Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, common driveways, and other common facilities.
 - [3] The open space restrictions must be in perpetuity.
 - [4] The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and common driveways.
 - [5] Property owners must pay their pro rata share of the costs in Subsection (d) above, and the assessment levied by the HOA must be able to become a lien on the property.
 - [6] The HOA must be able to adjust the assessment to meet changed needs.
 - [7] The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
 - [8] Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
 - [9] The attorney for the reviewing board shall find that the HOA documents presented satisfy the conditions Subsections (d)[2](a) through (d)[2](h) above, and such other conditions as the Planning Board shall deem necessary.

(5) Maintenance standards.

- (a) Ongoing maintenance standards shall be established, enforceable by the Town against an owner of open space land as a condition of subdivision approval, to ensure that open space

land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.

- (b) In the event that the maintenance, preservation, and/or use of the open space area(s) ceases to be in compliance with any of the requirements of the Zoning Law or any other requirements specified by the Planning Board when approving the cluster subdivision plat, the Town shall be granted the right to perform such maintenance as may be necessary or to otherwise assure compliance and to charge the cost to the responsible property owner or owners. Such charge, if unpaid for more than 60 days, shall become a lien on the open space area and on the lots of any lot owners who share ownership of the open space area. Notwithstanding, the Town is under no obligation to maintain such open space areas.

§ 177-37. Conservation density subdivision.

A. **Purpose.** Conservation density subdivisions encourage the preservation of large tracts of open space by affording flexibility to landowners in road layout and design. Such subdivisions preserve open space by creating lots that average at least five times the minimum size required in the Zoning District. This low density is maintained in perpetuity through the use of permanent conservation easements running with the land. To encourage the establishment of these permanent low densities, the Planning Board may reduce road frontage requirements and may allow common driveways built to the specifications shown in Subsection (10) below. In order to approve a conservation density subdivision, the Planning Board must find that the proposed subdivision will maintain or enhance the rural quality of the area and will meet all of the requirements and conditions of this Section and such other conditions as the Planning Board deems appropriate under the particular circumstances.

B. Standards.

- (1) The average size of the lots within the subdivision must be at least five times the minimum lot area required but not less than ten (10) acres. The minimum lot area for individual lots shall be the same as shown on Schedule I. The minimum road frontage shall be twenty-five feet and the minimum lot width shall be as shown on Schedule I.
- (2) The maximum number of lots using a proposed common driveway shall be five (5) if the common driveway has one entrance on a public road, and ten if the common driveway has two (2) entrances.
- (3) The applicant shall submit to the Planning Board as part of the application for preliminary plat approval, a professional engineer's drawings showing the exact location, dimensions and grade of the road, as well as the specifications setting forth the proposed composition of the common driveway.
- (4) Written comment from the Town Superintendent of Highways and the Town Engineer shall be secured before approval of any common driveway.
- (5) A homeowners' association ("HOA") shall be created to provide for the perpetual care and maintenance of the common driveway. Such HOA shall meet all requirements for an open space HOA contained in Subsection 177-36.G.(4) above. The HOA must have the power to assess the subdivision lot owners for their share of the maintenance costs of the common driveway. The HOA shall ensure that the road is properly maintained and kept open to permit emergency vehicle access. The Planning Board shall have discretion to determine whether the applicant should be required to establish a maintenance fund at the time of approval and, if so, how much of a deposit

should be required. The Planning Board shall also have discretion to determine whether a performance bond must be posted by the applicant to ensure the proper completion of the common driveway and, if so, how much the performance bond shall be and what form it shall take.

- (6) The common driveway may never be offered for dedication to the Town of Shawangunk unless it conforms to Town Highway specifications in effect on the date of the offer of dedication. However, the Town Board shall be under no obligation to accept such an offer of dedication, even if the road conforms to Town Highway specifications. In the event such dedication becomes necessary to ensure public safety, the cost of bringing the road up to Town Highway specifications shall be borne by the homeowners' association (or the lot owners if there is no HOA).
- (7) The HOA shall provide at regular intervals (to be determined by the Planning Board) a written certification from a licensed professional engineer that the physical integrity of the common driveway is adequate to meet its present needs and the needs which can reasonably be anticipated in the future.
- (8) The lots in the conservation density subdivision shall be restricted by conservation easement so that they may never be subdivided beyond the number of lots permitted in Subsections (1) and (2) above, regardless of whether the road remains a common driveway.
- (9) The subdivision plat shall show the road clearly labeled "common driveway."
- (10) Common driveway design standards. The following are minimum standards for construction of common driveways:
 - (a) All construction shall be in accordance with these regulations and shall be under the immediate inspection, supervision and approval of the Planning Board.
 - (b) The right-of-way for a common driveway shall be not less than fifty (50) feet in width with a wearing surface not less than eighteen feet in width.
 - (c) Whenever possible and as far as practicable streets shall follow natural contours.
 - (d) Minimum curve radius shall be one hundred (100) feet, minimum tangent distance between reverse curves shall be fifty (50) feet.
 - (e) Grade shall not exceed twelve percent (12%) nor be less than one percent (1%). Grade shall not be greater than three percent (3%) within fifty (50) feet of an intersection.
 - (f) The subgrade and foundation course shall be constructed as required by the Town Road Specifications for the Town of Shawangunk.
 - (g) The wearing surface shall consist of two inches of crushed gravel.
 - (h) The maximum length of the common portion of any common driveway shall be 1,000 feet from the access road unless there are two points of access.
 - (i) There shall be an adequate turnaround for emergency vehicles at the end of the common portion of the common driveway.

- (11) The Planning Board may waive the requirement of HOA ownership of a common driveway if it finds, after consulting with the attorney for the Planning Board or the Town Attorney, that a recorded maintenance agreement, executed by the applicant as a condition of subdivision approval, will provide sufficient protections to lot owners and the Town, and that all of the requirements and HOA functions described in Subsections (5) through (7) above will be properly fulfilled by such maintenance agreement.
- (12) The Planning Board may require an applicant for a conservation density subdivision to submit a conventional subdivision plan if the Planning Board has reason to believe that the proposed conservation density subdivision plan may not satisfy this Subsection.

§177-38, 39. Reserved.

ARTICLE VIII
Environmental Controls and Site Design Standards

§ 177-40. Signs.

Signs may be erected and maintained in the Town of Shawangunk only when in compliance with the following provisions:

- A. Signs advertising items sold or produced elsewhere than on the lot where such sign is located are prohibited. Signs advertising services or resorts not located on the lot where such sign is located are prohibited. This shall not apply to general directory or directional signs. General directory signs shall be no larger than twenty-four (24) square feet in area and shall include only the names of the establishments in letters no higher than five (5) inches. Such signs shall be permitted upon special approval by the Planning Board. The Planning Board shall encourage uniform directory signs.
- B. Signs indicating the name or address of the occupant or a permitted home occupation, provided that they shall not be larger than one (1) square foot in area are permitted. Only one (1) such sign per dwelling unit shall be permitted, except in the case of corner lots, where two (2) such signs [one (1) facing each street] shall be permitted for each dwelling unit.
- C. For buildings other than dwellings, one (1) identification sign not exceeding thirty-two (32) square feet in area may be displayed for each two hundred fifty (250) feet of road frontage.
- D. Signs advertising the sale or rental of the premises upon which they are erected by the owner or broker or any person interested in the sale or rental of such premises may be erected or maintained, provided that:
 - (1) The size of any such sign is not in excess of six (6) square feet.
 - (2) Not more than two (2) signs are placed upon any property, unless such property fronts upon more than one (1) street; in which event two (2) more signs may be erected on each additional frontage.
- E. The following general regulations shall apply to all permitted signs:
 - (1) Signs must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated.
 - (2) Attached signs shall not project from any building more than three (3) feet in the direction of the street, provided, further, that no such sign shall extend over the public street or public sidewalk area.
 - (3) No sign shall be higher than fifteen (15) feet above the ground.
 - (4) No exterior neon signs shall be permitted except on state highways. The size of such signs shall be subject to architectural review and approval by the Planning Board.
 - (5) No flashing signs shall be permitted nor signs causing objectionable glare at the lot line of the property in question.

F. Building permits shall be required for all signs except those described in Subsection B of this section. Building permits shall be issued by the Building Inspector, who shall review all sign applications for conformity with the requirements of this section.

§ 177-41. Off-street parking and loading.

A. Off-street parking. In all districts, in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking spaces for vehicles in accordance with the requirements set forth herein.

(1) Size, access and construction.

- (a) Each off-street parking space must have an area of not less than two hundred (200) square feet, exclusive of access drives or aisles, and shall be of usable shape and condition. Parking areas shall be suitably drained and shall be paved with an all-weather surface in accordance with the minimum specifications of the subdivision regulations.
- (b) There shall be adequate provisions for ingress and egress to all parking spaces. Access to off-street parking areas shall be limited to several well defined locations, and in no case shall there be permitted unrestricted access along the length of the street or alley upon which the parking area abuts.

(2) Number of parking spaces required.

- (a) The number of off-street parking spaces required shall be as set forth in Table I below. Except in the case of dwellings, no parking area provided hereunder shall be established for less than three (3) spaces.
- (b) In the case of any building, structure or premises the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is similar, in the opinion of the Planning Board, shall apply.

(3) Off-site facilities. All permitted and required accessory off-street parking spaces, open or enclosed, shall be located on the same lot as the use to which such spaces are accessory, except that such spaces may be provided elsewhere but shall be provided within a radius of no greater distance than two hundred fifty (250) feet from that lot as measured from property lines.

Table I	
Use	Minimum Required Parking Spaces: One parking space per:
Churches and schools	8.5 seats in an auditorium or 1 for each 17 classroom seats, whichever is greater
Community buildings and social halls	20 square feet of floor area
Country clubs and golf courses	200 square feet of floor area occupied by all principal and accessory structures, except those used for parking purposes
Motels	family or dwelling unit
Hospitals and nursing and convalescing homes	3 beds plus 1 for each employee
Hotels and rooming (boarding) houses	2 bedrooms

Table I	
Use	Minimum Required Parking Spaces: One parking space per:
Manufacturing plants and research or testing laboratories	1,000 square feet of floor area, plus 1 for each 2 employees in the maximum working shift; the total parking area shall be not less than 25 % of the building floor area
Medical clinics or offices	Each doctor
Dental clinics or offices	Each dentist
Restaurants, taverns and nightclubs	Each 3.0 seats
Retail stores, commercial uses and commercial groups (note: deleted another provision)	Each 200 square feet of customer service area
Wholesale establishments or warehouse	Each 2 employees in the maximum shift; the total parking area shall be not less than 25 % of the building floor area
Residential uses	Each dwelling unit
Bowling alleys	Each alley
Other uses not listed herein	Determined by the Planning Board

B. **Loading facilities.** Off-site loading berths shall be provided in accordance with Table II.

Table II		
Use	Square Feet of Floor Area	Minimum Loading Berths
Schools	or more	
Hospitals (in addition to space for ambulances)	From 10,000 to 30,000 For each additional 30,000 major fraction thereof	1 additional
Hotels and offices	or more	
Retail, commercial, wholesale, manufacturing, storage and miscellaneous	From 10,000 to 25,000	
	From 25,001 to 40,000	2
	From 40,001 to 60,000	3
	From 60,001 to 100,000	4
	For each additional 50,000 or major fraction thereof	1 additional

C. Joint facilities for parking or loading. Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use, and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one (1) use unless otherwise approved by the Planning Board in accordance with the purposes and procedures set forth herein.

§ 177-42. General landscaping regulations.

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

§ 177-43. Environmental considerations.

- A. Flood hazard areas.** Construction in those areas designated on the Flood Insurance Rate Map as areas of special flood hazard shall conform to the requirements of Chapter 91, Flood Damage Prevention, of the Code of the Town of Shawangunk, as amended (See Local Law No. 2 of 2009).
- B. Freshwater wetlands.** Applicants for building permits in those areas mapped by the New York State Department of Environmental Conservation as freshwater wetlands shall comply with Article 24 and Title 23 of Article 71 of the Environmental Conservation Law, as amended.
- C. Environmental quality review.** Prior to undertaking, funding, or approving an action authorized by this Zoning Local Law, the Planning Board, the Zoning Board of Appeals, and the Town Board shall comply with the New York State Environmental Quality Review Act and the regulations thereunder, as amended.
- D. Wild, scenic and recreational rivers.** Review of applications for building permits in the vicinity of Shawangunk Kill shall take into account the provisions of Part 666 of NYCRR and of Article 15 of the Environmental Conservation Law.
- E. Critical environmental areas.**
- (1) Declaration of policy. It is declared to be the policy of the Town Board of the Town of Shawangunk to assist in the protection of natural resources important to the community, which resources are set forth herein. Any future construction activities which might have an impact on the quality and quantity of such resources must be carefully considered. Of particular concern is possible limitation of the ability of the Town of Shawangunk to provide adequate water to the Wallkill Water District through its existing aquifer. Of additional concern is the Shawangunk Ridge, being the dominant topographic feature in the western portion of the Town of Shawangunk, which forms the headwaters of a watershed supplying said portion of the town. Said ridge is also recognized as being a major wilderness area, located within one hundred miles of New York City, containing important resources which contribute to a unique and fragile natural setting on the ridge.
 - (2) As set forth in Local Law 6 of 1989, and as amended by Local Law #3 of 1992, the Shawangunk Ridge and Wallkill Watershed and Aquifer are critical environmental areas as that term is defined in Section 617.2 of 6 NYCRR Part 617, State Environmental Quality Review. Upon initiating any action subject to review under the State Environmental Quality Review Act including property within or substantially contiguous to a critical environmental area, the owner or applicant shall document the effects of said action on the area by completing a long Environmental Assessment Form. The application and the action will be subject to all requirements as set forth in the State Environmental Quality Review Act and particularly Section 617.4 thereof.
 - (3) Critical Environmental Area No. 1, the Wallkill Watershed and Aquifer. The location and boundaries of Critical Environmental Area No. 1, Wallkill Watershed and Aquifer, are as illustrated on United States Geological Survey 1:24000 scale map entitled "Walden and Gardiner Quadrangle" and filed in Shawangunk Town Hall.
 - (4) Critical Environmental Area No. 2, Shawangunk Ridge. The location and boundaries of Critical Environmental Area No. 2, Shawangunk Ridge, are as illustrated on United States Geological

Survey 1:24000 scale map entitled "Napanoch and Ellenville Quadrangles" and filed in Shawangunk Town Hall.

- F. Chapter 84, Environmental Quality Review, of the Code of the Town of Shawangunk is hereby repealed in its entirety.
- G. Chapter 75, Critical Environmental Areas, of the Code of the Town of Shawangunk is hereby repealed in its entirety as it has been recodified in §177-43(E) above.

§ 177-44. Performance standards.

- A. **Performance standards for light industrial uses.** Light industrial uses shall not be used or occupied in any manner so as to create dangerous, injurious, noxious or otherwise objectionable fire, explosive or other hazard, noise or vibration, smoke, dust, electromagnetic or other disturbance, glare, liquid or solid refuse or wastes or other substance, condition or element in such a manner or in such amount as to adversely affect the reasonable use of the surrounding area or adjoining premises, provided that any use permitted or not expressly prohibited by this chapter may be undertaken and maintained if it conforms to the regulations found in this section limiting dangerous and objectionable elements at the point of the determination of their existence.
- B. **Uses requiring performance standard procedure.** Only manufacturing uses and accessory uses thereto shall be subject to performance standards procedures as specified in Subsection (d) of this section in obtaining a building permit, unless the Building Inspector has reasonable grounds to believe that another proposed use is likely to violate performance standards, in which event the applicant shall comply with performance standards procedures.
- C. **Enforcement provisions applicable to other uses.** Even though compliance with performance standards procedures in obtaining a building permit is not required for some particular uses, initial and continued compliance with the performance standards themselves is required of every use. The provisions for enforcement of continued compliance with performance standards shall be invoked by the Code Enforcement Officer against any use if there are reasonable grounds to believe that performance standards are being violated by such use.
- D. **Performance standard regulations.**
 - (1) Noise. Sound levels shall be determined at the property lines of the lot(s) from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter constructed in accordance with specifications of the American National Standards Institute (ANSI). Sound measurements shall not exceed sixty (60) decibels during the hours of 7:00 AM to 8:00 PM and not to exceed fifty (50) decibels during the hours of 8:00 PM to 7:00 AM. The following uses and activities shall be exempt from these noise regulations:
 - (a) Temporary construction noise between the hours of 8:00 AM and 6:00 PM.
 - (b) Transient noise from moving sources, such as trucks and automobiles, except that trucks and other vehicles used for the daily operation of the light industrial uses shall comply with the noise performance standards.
 - (c) Noise from safety signals, warning devices and emergency pressure relief valves.

- (2) Vibration. No vibration shall be permitted which is discernible without instruments at the property line by the Code Enforcement Officer or a duly designated Peace Officer.
- (3) Smoke. The density of smoke and other atmospheric pollutants, such as dirt, dust, or fly ash, shall be measured by the Ringelmann Smoke Chart as published by the United States Bureau of Mines. No person, firm, or corporation shall permit the emission of smoke or any other atmospheric pollutant which exceeds the density or the equivalent opacity of No. 1 on the Ringelmann Smoke Chart, as measured at the point of emission, for a period or periods aggregating more than four (4) minutes in any one (1) hour. The emission of smoke or any other atmospheric pollutants shall not be permitted if it is in any way detrimental to the public health or safety or is a source of damage to property.
- (4) Odor. No person, firm, or corporation, excluding farms and farm operations, shall permit the emission of any offensive odor at the property line of the lot(s) which the odor is emitted. No noxious, toxic, or corrosive fumes or gases shall be emitted into the air so as to endanger the public health or safety or create a reduction in the value or reasonable use of any other lot.
- (5) Particulate matter. No person, firm, or corporation shall permit the emission of any particulate matter from any source to exceed one (1) pound per hour per acre of lot area. The emission of particulate matter from all sources within any lot area containing more than ten percent (10%) of particles having a diameter larger than forty-four (44) microns is prohibited.
- (6) Explosive materials. The manufacture of detonable materials, flammable solids or flammable gases or liquids is prohibited.
- (7) Wastes. No offensive wastes shall be discharged or dumped into any surface water including rivers, streams, watercourses, storm drains, ponds, lakes or wetlands. No offensive wastes shall be discharged or dumped into or on any land unless legally authorized. No accumulation of solid wastes conducive to the breeding of rodents or insects shall be permitted.
- (8) Water resources. Uses which are harmful to surface or ground water resources shall be prohibited. No light industrial uses shall be permitted within a five hundred foot radius of a public water supply in order to protect surface and ground water quality.
- (9) Lights. Direct or sky reflected glare, whether from exterior lighting or from high temperature processes, shall be directed away from adjoining streets and properties and shall not cause any objectionable glare observable from these areas. No use shall produce glare so as to cause illumination beyond the property on which it is located in excess of one (1) foot-candle. Hours of lighting may be limited by the Planning Board in acting on any site plan for light industrial uses.
- (10) Landscaping. The required front yard areas shall not be used for storage or parking, but shall be left in their natural state, or planted in lawn or landscaping in accordance with Planning Board requirements. The side yards shall be left in their natural state, or planted in lawn or landscaping in accordance with Planning Board requirements, back to the rear building line. If applicable, the side and rear yards shall include a fifty-foot wide vegetated buffer of sufficient height at the time of planting to provide visual screening for adjacent residential properties. The Planning Board may waive such landscaping requirements where it finds that landscape buffering between adjoining industrial uses would be contrary to the need for orderly development within the district.

(11) Access. No access drive for any light industrial use shall be within 300 feet of any school, public library, theater, church or other public gathering place, park, playground, or fire station.

E. **Performance standards procedures.** An application for a building permit or certificate of occupancy for a use subject to performance standards procedures shall include a plan of the proposed construction and a description of the proposed machinery, operations and products, and specifications for the mechanisms and techniques to be used in restricting the emission of any dangerous and objectionable elements listed under this section. The applicant shall also file with such plans and specifications an affidavit acknowledging their understanding of the applicable performance standards and stating their agreement to conform with same at all times, including written evidence demonstrating that such proposed machinery, operations and products, and specifications for the mechanisms and techniques to be used can conform with the standards contained herein. No applicant will be required to reveal any secret processes, and any information submitted will be treated as confidential. Upon the satisfactory filing of required plans, specifications and affidavit, the Building Inspector shall proceed to issue a building permit and/or certificate of occupancy in accordance with the procedures set forth in §§ 177-56 and 177-57.

ARTICLE IX
Nonconforming Uses and Structures

§ 177-45. Continuation of use.

A use, building or structure lawfully in existence at the effective date of this chapter which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto may be continued except as otherwise provided in this Article.

§177-46. Regulation of nonconforming uses.

No existing building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered except when changed to a conforming use or when required to do so by law, except as follows:

- A. Restoration and reconstruction. Any nonconforming use or structure partially damaged by fire, casualty or act of God may be repaired and used as before, provided that the floor area of such use, building or structure shall not exceed the floor area or building volume which existed prior to such damage. All repairs shall be completed within one (1) year after damages occur or such use shall not be rebuilt except as a conforming use. In the event that total destruction occurs or the Building Inspector orders said use or structure completely rebuilt, then the provisions of § 177-48 shall apply.
- B. Repairs. Normal maintenance repair and incidental alteration of a structure containing a nonconforming use is permitted, provided that it does not extend the area of volume or space occupied by the nonconforming use. A building or other structure containing residential nonconforming uses may be altered in any way to improve interior livability. No structural alterations shall be made which would increase the number of dwelling units.

§ 177-47. Termination of nonconforming uses.

The discontinuation of a nonconforming use for a period of twenty-four (24) months and/or the change of use to a more restricted or conforming use for any period of time shall be considered as abandonment thereof and such nonconforming use shall not thereafter be revived.

§ 177-48. Reconstruction.

When a nonconforming use or structure is destroyed or damaged beyond repair or when the owner or tenant of said use or structure desires to rebuild for any reason, the Zoning Board of Appeals, after review and recommendation by the Planning Board, may authorize such rebuilding if the rebuilding would not constitute a substantial enlargement of the use and if the rebuilding would provide better aesthetics higher setback or assist in alleviating existing nuisance characteristics.

§ 177-49. Nonconforming residences.

Nothing under this Article shall prevent any residence from being rebuilt or reconstructed in the event of fire or other disaster. Nothing under this Article shall prevent expansion of the floor area of a residence, provided that all required setbacks have been met.

ARTICLE X
Zoning Board of Appeals

§ 177-50. Establishment; membership.

There is hereby established a Zoning Board of Appeals having the powers authorized under the Section 267-b of the New York State Town Law as amended. Said Board shall consist of five (5) members appointed by the Town Board. Appointments shall be in accordance with Section 267 of the New York State Town Law as amended. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.

§ 177-51. Organization; procedure.

The Zoning Board of Appeals shall determine rules of conduct and procedure as prescribed by Section 267-a of the New York State Town Law as amended.

§ 177-52. Powers and duties.

- A. **Action of the Zoning Board of Appeals.** In exercising its powers, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its judgment ought to be made in accordance with the provision of this chapter and pursuant to other applicable law.
- B. **Hear and decide appeals.** The Zoning Board of Appeals shall hear and decide appeals where it is alleged that error or misinterpretation in any order, requirement, decision, grant or refusal was made by the Building Inspector or other administrative official in the carrying out or enforcement of the provision of this chapter or any ordinance pursuant thereto.
- C. **Hold public hearings.** The Zoning Board of Appeals shall hold public hearings as required and as may be permitted by this chapter.
- D. **Grant use and area variances.**
 - (1) Zoning Board may grant use and area variances. Upon appeal and after public and personal notice and after hearing, and subject to appropriate safeguards and conditions for the protection of public and of neighboring properties, the Zoning Board may vary the strict application of any of the requirements of this Zoning Law, provided that said variance shall be granted in accordance with the required findings hereinafter set forth in this Zoning Law so that the spirit of the law shall be observed, public safety and welfare secured and substantial justice done, but in no other case.
 - (2) Definitions as used in this Article:
 - (a) Use Variance shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by this Zoning Law.
 - (b) Area Variance shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or topographical requirements of the applicable regulations set forth in this Zoning Law.

(3) Required Findings for Use Variances.

- (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of the Zoning Law, shall have the power to grant use variances, as defined herein.
- (b) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
 - [1] the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - [2] that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - [3] that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - [4] that the alleged hardship has not been self-created.
- (c) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship 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.

(4) Required Findings for Area Variances.

- (a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of the Zoning Law, to grant area variances as defined herein.
- (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
 - [1] 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;
 - [2] whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - [3] whether the requested area variance is substantial;
 - [4] whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

[5] 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.

(c) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(5) Imposition of conditions. The Zoning 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. Such conditions shall be consistent with the spirit and intent of the Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

E. **Permit building in bed of mapped streets.** After due notice and hearing as provided for in Section 280 of the New York State Town Law and in accordance with the provisions set forth therein, the Zoning Board may grant a permit for building in the bed of a mapped street or highway shown upon the Official Map or Plan of the Town of Shawangunk as it may be adopted and from time to time amended. Upon appeal from a decision by the Building Inspector to decide any questions involving the interpretation of any provision of this chapter and where uncertainty exists as to the boundaries of any zone district, the Zoning Board shall, upon written application or upon its own motion, determine the location of such boundaries of such districts as are established in Article I hereof and designated on the Zoning Map of the Town of Shawangunk.

F. **Authorize temporary uses.** The Zoning Board may grant, after due notice and hearing, the temporary occupancy and use of a structure in any district for a purpose that does not conform to the district requirements, provided that such occupancy and use is truly of a temporary nature and subject to any reasonable conditions and safeguards which the Zoning Board may impose to minimize any injurious effect upon the neighborhood or to protect any contiguous property. The approval of the Zoning Board and any permit based thereon for such temporary occupancy and use shall not be granted for a period of more than twelve (12) months and shall not be renewable more than once and then for a period of not more than twelve (12) months.

§177-53, 54. **Reserved.**

ARTICLE XI
Administration and Enforcement⁵

§ 177-55. Building Official/Code Enforcement Officer/Building Inspector

- A. The Town Board shall provide for the services of a Building Inspector and/or Code Enforcement Officer (hereinafter sometimes referred to as the “Building Official”) together with such assistants, deputies and staff as necessary in the sole judgment of the Town Board. The Building Official is hereby given the duty, power and authority to enforce the provisions of this chapter, the provisions of the Uniform Fire Prevention and Building Code and any other land-use local law, ordinance or regulation expressly delegating such power and authority to the Building Inspector, Code Enforcement Official or Building Official. He or she shall examine all applications for permits, issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the requirements of this chapter, of the “Uniform Code” and other applicable laws and regulations, record and file all applications for permits with accompanying plans and documents and make such reports, decisions and referrals as may be required.
- B. Building permits requiring variances from the requirements of this chapter, from the “Uniform Code” or from other applicable laws, shall be issued only upon written order of the board, agency or official with jurisdiction to grant such variance or appeal.
- C. Building permits for lands or uses that require a special use, site plan and/or subdivision approval shall be issued only in accordance with all of the notes, depictions and conditions of such approval as contained in the written record of that approval and as set forth on the final plans as signed by the Planning Board Chair or as signed by his or her designee.

§ 177-56. Building permits.

- A. **General requirements.** Building permits shall be required for work which must conform to the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”) and also must conform to the requirements of Chapter 177 of the Code of the Town of Shawangunk (Zoning) and any applicable order, approval or final plan of the Town of Shawangunk Planning Board and/or Zoning Board of Appeals. No person, firm, corporation or other entity shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure or cause the same to be done without first obtaining a separate building permit from the Building Department for each such building or structure or use of land.
- B. **Exemptions.** Chapter 66 of the Code of the Town of Shawangunk at Section 66-5 describes the types of uses or work that are exempt from the requirements for a building permit.
- C. **Application.** An application for a building permit shall include sufficient information to permit a determination that the intended work accords with the requirements of the Uniform Code, of Chapter 66 of the Code of the Town, of Chapter 177 of the Code of the Town and of any applicable order, approval and final plan of the Planning Board and the Zoning Board of Appeals of the Town of Shawangunk and shall require submission of at least the following information and documentation:

⁵ See entire Chapter 66, Building Construction Administration, of the Code of the Town of Shawangunk as amended by Local Law No. 1 of 2007.

- (1) A description of the proposed work together with an estimate of the total costs of such work and such other information as reasonably necessary to establish compliance with the Uniform Code and all applicable laws, regulations and prior administrative orders, approvals, and plans;
- (2) The tax map number and the street address;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) At least two sets of construction documents (drawings and/or specifications) that define the scope of the proposed work;
- (6) A completed Town of Shawangunk Building Permit application form together with all fees payable to the Town of Shawangunk in accordance with the then existing Fee Schedule of the Town;
- (7) If the applicant is other than the owner, an owner's endorsement shall be submitted;
- (8) A plot plan drawn to scale showing the location and size of all proposed new construction and all existing structures on the site, the nature and character of the work to be performed and the materials to be incorporated, distance from lot lines and, where required by the Building Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. Plans and specifications shall bear the signature of the person responsible for the design and drawings;
- (9) If the application involves any property that has been the subject of a Town of Shawangunk Planning Board and/or Zoning Board of Appeals final plan approval, a copy of such final plans, including all notes, depictions and detail sheets together with a copy of any final order or written determination of such board.

Chapter 66 of the Code of the Town of Shawangunk at Sections 66-5 and 66-6 describe the additional requirements relating to construction documents, contents of building permits, duration of building permits and construction inspections.

- D. **Denial of permits.** When the Building Inspector is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he or she shall refuse to issue a building permit and the applicant may appeal to the Zoning Board of Appeals for a reversal of the Inspector's decision within the time period provided by law.
- E. **Stop work order.** Stop work orders shall be used to halt work that is determined to be contrary to provisions of the Uniform Code or is being conducted in a dangerous or unsafe manner or is being performed without obtaining a required permit or is contrary to any local law, ordinance, resolution or is contrary to any applicable Planning Board and/or Zoning Board of Appeals' decision, order and/or approved final plan. A stop work order shall state the reason for its issuance and the conditions which must be satisfied before work will be permitted to resume. A copy of the stop order shall be posted at the site and a copy shall be mailed to the applicant or owner or personally served upon him or her.
- F. **Fees.** All fees shall be in accordance with the fee schedule adopted by the Town Board of the Town of Shawangunk.

§ 177-57. Certificates of occupancy.

- A. A certificate of occupancy or a certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, uses or portions thereof, which are converted from one use or occupancy classification or sub-classification to another. Permission to use or occupy a building or structure or portion thereof, for which a building permit was previously issued and permission to utilize lands for a use that is the subject of a final plan approval by the Planning Board and/or Zoning Board of Appeals of the Town of Shawangunk shall be granted only by issuance of a certificate of occupancy or a certificate of compliance.
- B. Chapter 66 of the Code of the Town of Shawangunk at Section 66-8 describes the additional requirements and procedures regarding the issuance of a Certificate of Occupancy or a Certificate of Compliance including temporary occupancies.

§ 177-58. Appeals

An appeal from the decision of the Building Inspector, Code Enforcement Official shall be as follows:

A. Procedure for appellant.

- (1) An appeal to the Zoning Board of Appeals from any ruling of the Building Inspector/Code Enforcement Official administering any portion of this chapter may be taken by any person aggrieved or by an officer, department, board or bureau of the town affected thereby. Such appeal shall be taken by filing with the officer from whose action the appeal is taken and with the Zoning Board of Appeals by filing with the Secretary thereof a notice of appeal specifying the grounds therefore and within the 60-day period as set forth in Subsection 5 of Section 267-a of the New York State Town Law, as amended.
- (2) All applications and appeals made to the Zoning Board of Appeals shall be in writing on forms prescribed by the Building Inspector. Every application or appeal shall refer to the specific provision of this chapter and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information:
 - (a) The name and address of the appellant.
 - (b) The name and address of the owner of the zone lot to be affected by such proposed change or appeal.
 - (c) A brief description and location of the zone lot to be affected by such proposed change or appeal.
 - (d) A statement of the present zoning classification of the zone lot in question, the improvements thereon and the present use thereof.
 - (e) A reasonable, accurate description of the present improvements and the additions or changes intended to be made under this application indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

B. Procedure for Building Inspector upon the filing of an appeal.

- (1) Upon the receipt of the notice of appeal and all supporting documents in any case where a permit has been granted or denied by the Building Inspector, the Building Inspector shall forthwith transmit to the Zoning Board of Appeals all papers constituting the appeal and also the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers.
- (2) It shall be incumbent upon the Building Inspector to recommend to the Zoning Board of Appeals a modification or reversal of his or her action in cases where he or she believes substantial justice requires the same but where he or she has not himself sufficient authority to grant the relief sought.

C. Procedure for the Zoning Board of Appeals. The Zoning Board of Appeals shall decide each appeal within the time prescribed by law. Upon the hearing, any party may appear in person or be represented by an agent or attorney. The Zoning Board's decision shall be filed and be a public record. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement or decision or determination appealed from or may make such order, requirement decision or determination in accordance with the provisions hereof.

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

§ 177-59. Public hearing and notice.

A. The Zoning Board of Appeals shall fix a reasonable time for the hearing on an appeal or an application by publishing a notice at least five (5) days in advance of such hearing in at least one (1) newspaper of general circulation in the Town of Shawangunk. Such notice shall state the date, time and place of such hearing and the general nature of the appeal or application, in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the appeal or application may be examined. The Zoning Board shall also give due notice to the following officials, persons and owners of property not less than five (5) days prior to the day of the hearing:

- (1) The following persons shall be notified where the appeal does not involve a variance application:
 - (a) The Building Inspector/Code Enforcement Official.
 - (b) The appellant.
 - (c) The property owner if different from the appellant.
- (2) The following persons shall be notified for an application for a variance:
 - (a) The Building Inspector/Code Enforcement Official.
 - (b) The appellant.
 - (c) The property owner if different from the appellant.
 - (d) All owners of property within five hundred (500) feet of the property for which the variance is sought.

(e) Such other property owners as the Chairman of the Zoning Board of Appeals may direct.

(f) The Clerk of any municipality with a boundary within 500 feet of the subject property.

B. **Adjournment of hearing.** Upon the day for hearing any application or appeal, the Zoning Board of Appeals may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

C. **Required interval for hearings on applications and appeals after denial.** Whenever the Zoning Board of Appeals, after hearing all the evidence presented upon an application or appeal, under the provisions of this chapter, denies the same, the Zoning Board shall refuse to hold further hearings on said or substantially similar application or appeal by the same applicant, a successor or assigns for a period of one (1) year, except and unless the Zoning Board shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Any such rehearing shall be subject to the unanimous vote requirement of Town Law 267-a.

§ 177-60. Penalties for offenses, abatement/enforcement.

A. **Complaints of violations.** Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaints and immediately investigate and report thereon to the Town Board.

B. **Procedure for abatement of violations.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or regulations made under authority conferred hereby, the Town Board or the Building Inspector, in addition to other remedies, may institute any 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. Unless a court of competent jurisdiction rules otherwise, all of the Town's reasonable expenses of enforcement, including court costs and reasonable attorney's fees, shall be paid by the property owner or shall become a lien on the subject property and shall be collected by the Town in the same fashion as other Town taxes.

C. **Penalties.** Any person, firm or corporation violating any provision of this chapter shall, upon conviction, be punished by a fine not to exceed three hundred-fifty dollars (\$350) for any offense. Each week that a violation is permitted shall constitute a separate offense.

D. **Town's expense of enforcement.** Unless a court of competent jurisdiction rules otherwise, all of the Town's reasonable expenses of enforcement, including court costs and reasonable attorney's fees, shall be paid by the landowner or shall become a lien on the subject property and shall be collected by the Town in the same fashion as other Town taxes.

ARTICLE XII
Amendments

§ 177-61. Town Board may amend.

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

§ 177-62. Planning Board review.

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for.

§ 177-63. Public notice; hearing.

A. The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendments and cause notice given as follows:

- (1) Public notice: by publishing a notice at least ten (10) days in advance of such hearing in at least one (1) newspaper of general circulation in the Town of Shawangunk. Such notice shall state the date, time and place of such hearing and the general nature of the proposed amendment, in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.
- (2) Personal notice: by mailing a copy of such notice to every association of residents of the town which has registered its name and address for this purpose with the Town Clerk.
- (3) A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundaries of any state park or parkway shall be given to the regional State Park Commission having jurisdiction over such state park or parkway at least ten (10) days prior to the date of such hearing.
- (4) A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundaries of any city, village, town or county shall be given to the Clerk of such municipality and to the Clerk of the Board of Supervisors or County Legislature at least ten (10) days prior to the date of such hearing.

B. Opportunity to be heard at hearing. At the public hearing, full opportunity to be heard shall be given to any citizen and all parties in interest.

§177-64. Reserved.

ARTICLE XIII
Definitions

§ 177-65. Definitions; word usage.

- A. **Words and phrases.** Words used in the present tense include the future, the singular number shall include the plural, and the plural the singular. The word “structure” shall include the word “building”; the word “used” shall include “arranged,” “designated,” “constructed,” “altered,” “converted,” “rented,” “leased” or “intended to be used”; and the word “shall” is mandatory and not optional.
- B. Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter. Notwithstanding, where a specific definition is provided within a separate section of this Chapter, such specific definition shall control.

ACCESSORY USE OR STRUCTURE — A structure or use that: 1) is clearly incidental to and customarily found in connection with a principal building or use; 2) is subordinate to and serves a principal building or a principal use; 3) is subordinate in area, extent, or purpose to the principal building or principal use served; 4) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or principal use served; and 5) is located on the same lot as the principal building or use served.

ACCESSWAY — A strip of land at least twenty-five feet in width, abutting an improved street or a County or State highway, providing access for a flag lot.

AGRICULTURE — The cultivation of the soil for food products or other useful or valuable growths of the field or garden and also dairying and the breeding and keeping of horses.

AQUIFER — A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

ART FEATURE: A structure or object with primarily an aesthetic function, including sculpture and decorative water fountains, and that is not a sign as defined herein.

AUTO MAINTENANCE AND REPAIR — Light maintenance activities, such as engine tune-ups, lubrication, minor repairs including incidental replacement of parts to passenger automobiles and trucks not exceeding two tons capacity. Such activities shall not include heavy automobile maintenance activities such as engine overhauls, automobile painting, body work, and frame straightening.

AUTOMOTIVE FUEL STATION — Buildings and equipment for the retail sale of liquid fuel to motor vehicles. Buildings may include lifts and other equipment for lubrication and oil change but not for body work, painting or other major repairs. Other retail merchandise may be sold, provided that the area of the building within which such products are offered for sale does not exceed seven hundred fifty (750) square feet.

BANK — An institution where money is deposited, kept, lent, or exchanged.

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

BED AND BREAKFAST — An owner occupied dwelling unit that contains no more than three (3) guest rooms where short-term lodging, with or without meals, is provided for compensation.

BOARDINGHOUSE — An establishment with lodging for at least three persons and not more than ten persons, exclusive of the proprietor and the proprietor's family and employees, where meals are regularly prepared and served for compensation and where food is placed upon the table family style, without service or ordering of individual portions from a menu.

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

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

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

BUS STATION — An area designated for the boarding of and debarking from vehicles used for intercity and interstate passenger transport with ticket sales and waiting facilities.

CAMP — A campground designed for seasonal use by organized groups, and including facilities such as a dining hall, barracks or tenting areas, crafts building, dispensary, office building and water and sanitary facilities in accordance with State Department of Health standards.

CAMPGROUND — An area with an organized layout having well-defined roads, parking spaces and campsites. Drinking water and bathing and sanitary facilities are furnished on a community basis. Designed capacity shall be based on the number of campsites.

CAMPSITE — An area designed for the temporary location of a tent or a recreation vehicle to be used for living or sleeping accommodations.

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

CEMETERY — A burial place for deceased persons maintained by a religious or other nonprofit organization pursuant to a state charter.

CHILD DAY CARE CENTER — A program or facility in which child day care is provided on a regular basis to at least seven children, including children of the adult provider, for more than three hours per day per child for compensation or otherwise. Child day care centers may be located in an individual building or within a building containing office, retail, or other commercial uses.

CLUBS, LODGES and FRATERNAL ORGANIZATIONS — Voluntary organizations not conducted for gain, with facilities catering principally to members and their guests for recreational, athletic or social purposes.

COMMERCIAL GROUP — Two or more retail establishments totaling 3,000 square feet or more of rentable commercial space and sharing certain facilities such as parking, public utilities, and open space.

COMMERCIAL INDOOR RECREATION — Activities such as bowling alleys, skating rinks, motion-picture theaters and similar activities where a fee is charged and when conducted without any noise, congestion or other negative impacts on neighboring properties.

COMMON DRIVEWAY — A driveway owned in common or created by reciprocal easements.

COMMUNITY BENEFITS or AMENITIES -- Open space, affordable housing for persons of median or moderate income and/or infrastructure improvements for water and sewer services, public highway improvements or cash in lieu thereof, of benefit to the residents of the community as authorized by the Town Board. Wherever in this local law the terms “amenities,” “benefits” or “community benefits” are used, all such terms shall have the same meaning.

COMMUNITY BUILDING — A facility used in common by a number of people, owned by a public or nonprofit agency and used for recreational, athletic or social purposes without membership restrictions.

CONFERENCE CENTER — An establishment used for the holding of conventions, seminars, workshops or similar activities, including dining and lodging facilities for the use of participants, as well as compatible accessory facilities.

DENSITY — The number of dwelling units per square foot or acre of lot area.

DISPOSAL — The deposit, injection, dumping, spilling, leaking, incineration, or placing of any material into or onto any land or water so that such material or any constituent thereof may enter the environment or any waters, including groundwater.

DWELLING — Any building or portion thereof designed or used exclusively as the residence or sleeping place of one (1) or more persons, except a mobile home or trailer.

- A. SINGLE-FAMILY — A detached building designated for or occupied exclusively by one (1) family and containing not more than one (1) dwelling unit, which shall contain a habitable area of at least eight hundred (800) square feet in all districts.
- B. TWO-FAMILY — An attached or semi-detached building where not more than two (2) individual families or dwelling units are entirely separated by vertical walls or horizontal floors unpierced except for access to the outside or to a common cellar or basement.
- C. MULTIPLE — A building or portion thereof used or designed as a residence for three (3) or more apartment or dwelling units.
- D. VACATION — A dwelling which is 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.
- E. ACCESSORY — A second dwelling unit either in or added to an existing single-family dwelling on the same lot as the principal dwelling for use as a complete, independent living facility, with provision within the “accessory dwelling” unit for cooking, eating, sanitation, and sleeping. An “accessory dwelling” unit is secondary to the principal dwelling unit and subordinate to it in size and appearance.

F. CONGREGATE — Shall mean housing where each resident has an individual, usually private, housing unit which contains a sitting space, kitchen and bathroom, in addition to a bedroom. A resident may share a common kitchen, dining room and living room with one or more residents. In congregate housing developments, services provided may include, but not be limited to central food service, social service and referral consultation, housekeeping assistance, and central laundry.

G. SENIOR CITIZEN — A dwelling unit in a senior citizen development designed as housing for older persons, as defined in the Federal Fair Housing Act.

EATING AND DRINKING ESTABLISHMENT — A restaurant, luncheonette or cafe which serves meals and beverages which may or may not be alcoholic and also a bar or other retail establishment which serves alcoholic beverages and food. An eating and drinking establishment does not include a fast food restaurant, as defined herein.

ESSENTIAL SERVICES — Equipment and accessories necessary for providing adequate service by public utilities or municipal or other governmental agencies for the purpose of public health, safety or general welfare, including 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 sewage treatment facilities. “Essential services” also shall include firehouses and first aid and emergency aid squads, whether provided by a municipal, private or nonprofit agency.

EXFILTRATE — The downward movement of water through soil.

FAMILY — One (1) or more persons living together as a single non-profit housekeeping unit, using all rooms and housekeeping facilities of a dwelling unit in common. Any such number of persons shall not be deemed to be part of one (1) family, but shall be considered a separate family if any one (1) of such persons does not have lawful access to common rooms and housekeeping facilities of said dwelling unit or if any one (1) or more of such persons leases or rents any separate portion of such dwelling unit from any other persons, except that up to two (2) additional persons may room or board with a family, as long as they share the use of all common rooms and housekeeping facilities.

FAMILY DAY CARE CENTER— A private residence where care, protection, and supervision are provided, for a fee, at least twice a week to no more than six children at a time, including children of the adult provider.

FARM — Any parcel of land of ten (10) or more acres used principally in the raising or production of agricultural products and the necessary or usual dwellings, farm structures, storage and equipment.

FAST FOOD RESTAURANT — A business primarily engaged in the rapid retail sale of pre-prepared or quickly prepared food and beverages generally served in disposable containers where a substantial portion of the sales is by customers ordering and picking up food at a counter with no table service. Fast-food establishments shall not include bakeries, food markets, delicatessens or non-restaurant businesses engaged in the sale of food that have a seating capacity, as defined by the Building Inspector in accordance with applicable codes, of not more than 10. An establishment that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service or prepared and cooked quickly. Orders are not generally taken at the customer’s table, and food is generally served in disposable wrapping or containers.

FLEX SPACE BUILDING — Two or more office, retail, or other permitted commercial establishments in the zone, in a building conceived and designed as a single environment, occupying separate, homogenous floor space areas and sharing certain amenities such as parking, public utilities, and open space.

FLOOD HAZARD AREA — The floodplain, consisting of the floodway and the flood-fringe area.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOODPLAIN — The same as “flood hazard area” as shown on the Flood Insurance Rate Map.

FLOOR AREA — The total area, in square feet, of all floors of a building measured from the exterior walls, excluding unfinished attics and unfinished cellars. In the case of a use which occupies a portion of a building, the floor area shall be measured from the interior of the walls which define the space.

FOOTPRINT — Area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered by roofing. Non-habitable structures, such as a corridor connecting buildings, are not considered a part of the structure’s footprint.

FROST WALL — A masonry foundation wall extending below finished grade of the adjacent ground surface and supported by footings installed below the frost line

FUNERAL HOME AND MORTUARY — A structure used and occupied by professional morticians for burial preparation and funeral services.

GARAGE — A building or structure used for the storage of one (1) or more vehicles. If maintained for the resident occupants of the premises and no service is rendered to the public nor any business conducted therein, it is a private garage. Any garage other than a private garage is a public garage.

GARAGE, REPAIR — Any building or premises within or upon which a business or service involving the maintenance, servicing, repair or painting of self-propelled or towed vehicles is conducted.

GLARE — The sensation produced by incandescence within the visual field that is sufficiently greater than the incandescence to which the eyes are adapted so as to cause annoyance, discomfort or loss of visual performance.

GREENHOUSE — An enclosed structure utilized for the growing of plants and horticultural products for transplanting, sale or personal use.

GROUNDWATER — All of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

HABITABLE SPACE — Space occupied by one or more persons for living, sleeping, eating, or cooking. Restaurants for employees and occupants, kitchens serving them, and kitchenettes shall not be deemed to be habitable space.

HEALTH/RECREATION FACILITY — An indoor facility including uses such as game courts, exercise equipment, locker rooms, whirlpool baths, steam room, and/or sauna, snack bar, and pro shop.

HOME OCCUPATION — An occupation or profession which is carried on within a dwelling by a resident or residents of that dwelling, subject to the requirements of Article IV of this chapter. Professions shall be those licensed by the State of New York including but not limited to a doctor, dentist, lawyer, architect, engineer or accountant. Occupations may include but are not limited to those such as tutoring, clerical services, crafts with low-volume production and similar activities which, in the judgment of the Planning Board, can be carried on without generating excessive traffic, noise, odor, glare or other characteristics unsuitable to a residential neighborhood.

HOUSE OF WORSHIP — An institution that people regularly attend to participate in or hold religious services, meetings, or other activities and normally referred to as churches, synagogues, mosques, or temples. A house of worship shall not carry a secular connotation.

IMPERVIOUS SURFACE — Any material covering the ground through which water does not readily penetrate, including but not limited to roofed structures and concrete, oil and stone, tar, or asphalt pavement.

IMPERVIOUS SURFACE COVERAGE — The ratio between impervious surface and total land area of a lot expressed as the percentage of land covered by impervious surfaces.

INFILTRATION BASIN — An impoundment made by excavation or embankment construction to contain and exfiltrate runoff into the soil layer.

INCENTIVES or BONUSES — Adjustments to the permissible population density, area, dimensional, lot coverage and/or public road frontage requirements of the Zoning Law of the Town of Shawangunk for a specific purpose authorized by the Town Board. Wherever in this local law the terms “incentives” or “bonuses” are used, such terms shall have the same meaning.

INCENTIVE ZONING — The system by which the provisions of this Article IV-A shall be affixed to qualifying property and to which incentives or bonuses are granted, pursuant to this section, on the condition that one or more of the specified amenities would inure to the community.

JUNKYARD — Consists of buildings, structures or premises where junk, waste or discarded or salvage materials are bought or sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards but not including the purchase or storage of used furniture and household equipment or used cars in operable condition, when enclosed within a building.

KENNEL — Any enclosure, premises, building, structure, lot or area in or on which more than four (4) dogs of at least six (6) months of age are kept, harbored, maintained or bred for commercial or noncommercial purposes for continuous periods of twenty-four (24) hours or more.

LIGHT INDUSTRIAL USE — The processing, fabrication, assembly and storage of materials when conducted without generation of excessive traffic or noise, odor, glare or other nuisance perceptible at the property line.

LIGHT INDUSTRY — A business engaged in the manufacture, assemblage, treatment, or packaging of products, from previously prepared materials, when conducted without public hazard, excluding those uses, which by reason of odor, noise, smoke, or dust, constitute a nuisance.

LODGES and FRATERNAL ORGANIZATIONS — See “clubs, lodges and fraternal organizations.”

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

- A. 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.
- B. LOT DEPTH — The mean horizontal distance between the front and rear lot lines.
- C. LOT LINES — The property lines bounding the lots.
 - (1) FRONT — The line separating the lot from a street.
 - (2) REAR — The lot line opposite and most distant from the front lot line.
 - (3) SIDE — Any lot line other than a front or rear lot line. A “side lot line” separating a lot from a street is called a “side street lot line.”
 - (4) STREET — A lot line separating the lot from a street or alley.
- D. LOT, FLAG — A lot characterized by a distinctive shape; i.e., narrow frontage on a public road connected by a narrow strip of land for access to the major portion of the lot. On a map the individual lot looks like a flag on a pole. [Added 8-13-1992]

MINERAL — Any naturally formed solid material of commercial value located on or below the surface of the earth. For the purposes of this Chapter, peat and topsoil shall be considered minerals.

MINING AND EXCAVATION — The extraction or removal of minerals from the ground for sale or exchange, or for commercial, industrial or municipal use. This definition shall not apply to:

- A. The excavation or grading of an area necessary to prepare a site for construction in accordance with an approved building permit, site plan, or subdivision plan, providing the excavation takes place within the project site, is an integral part of the involved project activities, and complies with the requirements of § 177-26K(1).
- B. Excavations or grading undertaken to enhance the agricultural use of lands or to provide for structures or other improvements that benefit or are necessary for on-going or imminent agricultural activities. This exemption applies only to excavations where the mineral removal and subsequent reclamation enhances the agricultural usability or productivity of the land.

MISCELLANEOUS COMMERCIAL-RESIDENCE — A facility offering transient lodging accommodations with or without meals on a daily or weekly rate to the general public and where occupancy does not exceed three months. Such uses are limited to hotels, motels, bed and breakfast inns, and boarding houses as defined herein.

MIXED USE BUILDING — A building containing residential and non-residential uses on separate floors and located in a zoning district permitting such uses.

MIXED USE BUSINESS-CONSERVATION PARK — A tract of land held in common ownership or unified control and developed for more than one commercial, industrial, residential, or office use permitted by the schedule of uses for the district, or allowed subject to such conditions as may be established for special permit uses in the district. Such development shall be in accordance with an approved master plan that is appropriate for the particular character of the tract, which generally provides

for some or all of certain infrastructure facilities to be shared in common, such as driveways, parking areas, drainage, utilities, or screening, and which provides appropriate covenants and restrictions to ensure compatibility of development within the park.

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

MOBILE/MANUFACTURED HOME PARK OR COURT— Any plot of ground upon which two (2) or more mobile homes occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations.

MOTELS and HOTELS — Buildings designed for occupancy as a temporary residence of one (1) or more persons who are lodged with or without meals.

NEIGHBORHOOD STORE — A retail business establishment of not more than one thousand five hundred (1,500) square feet in floor area offering consumer goods for sale and located in a separate building if one (1) story or on a separate floor of a multistory building.

NURSERY — A place where young trees or other plants are raised for transplanting or for sale.

NURSERY SCHOOL — A facility designed to provide daytime care or instruction for five (5) or more children from two (2) to five (5) years of age, inclusive, and operated on a regular basis.

NURSING AND CONVALESCENT HOME — A building providing shelter and/or supplemental health care for the elderly or infirm which meets the standards of and is licensed by the State of New York to operate as a nursing home.

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

OUTDOOR STORAGE AND SERVICE AREAS: Areas outside of buildings that are occupied by material / equipment storage incidental to business use, garbage and recycling facilities, above ground mechanicals, etc.

PERSONAL SERVICE ESTABLISHMENT — A business which is associated with the grooming or health of persons or the maintenance or repair of personal wardrobe articles and accessories, and may include a barber shop, beauty parlor, shoe repair shop, self-service laundry or dry cleaning distribution station.

PLANNED DEVELOPMENT GROUP — Also known as “planned unit development,” a structure or group of structures containing not fewer than fifty (50) dwelling units planned as a unit, with certain facilities in common such as yards, open space, recreation areas, garages or parking areas, which facilities are in single ownership or control by an individual, partnership, corporation or cooperative group.

PLANNING BOARD – Planning Board of the Town of Shawangunk.

PROFESSIONAL OFFICE — The office of an accountant, architect, attorney, dentist, engineer, physician or similar licensed activity, whether in a single-family house as a home occupation or in a professional office building.

PROFESSIONAL OFFICE BUILDING — A building occupied by professional offices.

PUBLIC WATER SUPPLY — A permanently installed system that provides water to the public for potable purposes. Such system includes source, collection, pumping, treatment, transmission, storage and distribution facilities, under the ownership of a municipal corporation, a district corporation, a public benefit corporation, or other public authority.

RECHARGE AREA — An area composed of porous sand and gravel, or other area that collects precipitation or surface water and carries it to aquifers within 180 days under conditions of no rain.

RECREATION, COMMERCIAL — Recreation services and activities organized primarily for profit and provided by business enterprises.

RECREATION, INDOOR — Recreation services and activities such as bowling alleys, skating rinks, video arcades, theaters and discotheques confined within buildings designed for such purpose and approved by the Planning Board.

RECREATION, OUTDOOR — Recreation services and activities such as golf, skiing, tennis courts, swimming pools and similar activities when conducted in accordance with performance standards as set forth elsewhere in this chapter.

REFUSE AND GARBAGE DUMPS — Public solid waste disposal sites in accordance with Chapter 99 of the Code of the Town of Shawangunk.

RESEARCH AND DEVELOPMENT FACILITY — A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the facility.

RESIDENTIAL BUSINESS: A business that is operated out of a residence requiring use of an accessory structure to house material and/or employees of the business. To be considered a residential business, such a business shall employ no more than three persons.

RESIDENTIAL CLUSTER DEVELOPMENT — An area to be developed as a single entity according to a plan which contains residential housing units at the density permitted within that zoning district, with common open space in lieu of otherwise required setbacks.

RESTAURANT: An enterprise primarily engaged in preparing and serving food and beverages intended to be consumed on the premises by patrons seated and served at tables and counters.

RETAIL BUSINESS OR SERVICE NOT OTHERWISE DESIGNATED:

A. Includes retail or personal service establishments such as:

- (1) Appliance sales and service.
- (2) Banks
- (3) Bakeries and food stores.
- (4) Barbershops and beauty parlors.
- (5) Book, card and stationery stores.
- (6) Candy and tobacco shops.
- (7) Dry goods and variety stores.
- (8) Florists and garden supplies.
- (9) Hardware stores.
- (10) Newspaper and periodical vendors.

- (11) Business and professional offices.
- (12) Package liquor stores.
- (13) Photographic supplies, services and equipment.
- (14) Shoe sale and repair services.
- (15) Tailors and dressmakers.
- (16) Video rental and equipment sales and service.
- (17) Wearing apparel stores.
- (18) Similar uses.

B. This definition shall not include such retail and personal service establishments as are otherwise specifically mentioned in the use table for any zoning district. It shall also not include such uses as may generate noise, traffic, glare, fumes or maintenance and storage problems different in kind or degree from the commonly experienced impact of the above included uses and by virtue of such characteristics considered special permit uses.

RETAIL FOOD ESTABLISHMENT — Establishments that are not fast-food restaurants as defined herein, such as bakeries, food markets, delicatessens or non-restaurant businesses engaged in the sale of food that have a seating capacity, as defined by the Building Inspector in accordance with applicable codes, of not more than 10.

RIDGE LINE — An edge or shelf formed below a ridge top by the intersection of a hillside that has an average slope of at least fifteen percent (15%) over an increase in elevation of at least 20 feet with land with a slope of less than ten percent (10%) or by land that slopes in the opposite direction.

RIDGE TOP — The crest of a long hill that has at least one side with an average slope of at least fifteen percent (15%) over an increase in elevation of at least 20 feet.

ROOMING HOUSE — A dwelling unit occupied by a resident owner or agent thereof and his family and from whom four (4) or more tenants rent sleeping space, without provisions for meals, over an extended period of time.

SCHOOLS, PRIVATE — Elementary and secondary schools duly licensed by the State of New York, attendance at which fulfills the compulsory education requirements of the state.

SELF-SERVICE STORAGE FACILITY — A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods and contractors supplies.

SENIOR CITIZEN DWELLING UNIT — A dwelling unit in a senior citizen development occupied by one or more persons at least fifty-five (55) years of age, which may also be occupied by one or more members of such person's immediate family.

SENIOR CITIZEN DEVELOPMENT — A building or group of buildings, whether detached or connected, containing dwellings that are intended and operated for use as senior citizen dwelling units, with common areas in multi-family or congregate dwellings owned and managed by a single management entity, together with normal and customary ancillary facilities or services for use by older persons. Senior citizen developments may also include single-family or two-family dwellings intended as housing for persons who are fifty-five (55) years of age or over.

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

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

B. SIGN, DIRECTORY — A sign which advertises more than one use or establishment. A sign containing multiple listings pertaining to sites of special interest.

SIGN, MONUMENT — A sign supported by the ground, not attached to the principal building or structure, where the bottom edge of the sign is on or in the ground.

SKIRTING, MASONRY-TYPE — A structure of concrete blocks arranged to resemble a foundation and used to enclose the vertical space between the ground and the underside of a mobile home at its perimeter.

SLUDGE — Residual materials produced by water or sewage treatment processes, industrial processes, or domestic septic tanks.

SOLID WASTE — Useless, unwanted, or discarded solid material with insufficient liquid content to be free-flowing. Includes, but is not limited to, rubbish, garbage, scrap materials, junk, and refuse.

STREET FURNITURE — Functional elements of the streetscape, including but not limited to benches, trash receptacles, planters, kiosks, gazebos, sign posts, bicycle racks, railings, fences, fountains, memorials and public telephones.

STREETSCAPE — The sum of man-made and planted features that create the character of the street as a public space. Streetscape features may be located within an adjacent to the right-of-way. They may include, but are not limited to, street trees, plantings, streetlights, street furniture, sidewalks, median strips and islands, public art, banners and flags, signs and awnings and similar publicly visible features.

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.

THEATER — A building or part of a building devoted to showing motion pictures, or for dramatic, musical, or live performances. A theater shall not include any building or part thereof, that is customarily not open to the public generally but excludes any minor by reason of age.

TOWN – Town of Shawangunk.

TOWN BOARD – Town Board of the Town of Shawangunk.

TRAINING CENTER — A building or part thereof, used for the training of persons in specialized skills and offering a course of study in a specified trade or vocation.

TRAVEL TRAILER — A movable unit, equipped with a chassis, designed for short term occupancy and frequent travel.

UNIT — A section of ground designated as a site to accommodate one (1) mobile home and conforms with Schedule I, except in a mobile home park.

USABLE LAND — Land on which development is proposed which is not restricted from development because of designation as a freshwater wetland, a right-of-way, an easement or other classification or use which prevents development.

USE — Any activity, occupation, business or operation carried on or intended to be carried on in a building or on a tract of land.

USE, PERMITTED — A use provided under this chapter as a permitted or accessory use. Any use not so designated is prohibited without a special use permit.

USE, SPECIAL — A use which because of its unique characteristics requires individual consideration in each case by the Planning Board, as specified in Article VI, before it may be permitted in the district enumerated in Article II. In accordance with the provisions of this chapter, the Planning Board may require certain conditions and safeguards before such a use is permitted or expanded.

WETLANDS — Those areas of any size that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetland boundaries shall be delineated using the methods described in the currently applicable Federal Manual for Identifying and Delineating Jurisdictional Wetlands, an interagency cooperative publication of the US Army Corps of Engineers, the US Environmental Protection Agency, the US Fish and Wildlife Service and the USDA Soil Conservation Service and/or as mapped by the New York State Department of Environmental Conservation.

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 principal 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 principal 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 principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

ZBA – Zoning Board of Appeals of the Town of Shawangunk. Also referred to as “Zoning Board”.

ARTICLE XIV

Illicit Discharges, Activities and Connections to the Municipal Separate Storm Sewer System

§177-66. Purpose and applicability.

A. **Purpose.** The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the Town of Shawangunk through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this Article are:

- (1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit no. GP-02-02 or as amended or revised;
- (2) To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge non-stormwater wastes;
- (3) To prohibit Illicit Connections, Activities and Discharges to the MS4;
- (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Article; and
- (5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

B. **Applicability.** This Article shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency. The provisions of this Article shall control wherever there may exist a contrary provision in any local law, ordinance rule or regulation of the Town of Shawangunk.

§177-67. Definitions.

Whenever used in this Article and only when used in this Article, the following terms will have meanings set forth below:

BEST MANAGEMENT PRACTICES (BMPS) -- Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT --The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY -- Activities requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended or revised. These activities

include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DESIGN PROFESSIONAL -- New York State licensed professional engineer or licensed architect.

HAZARDOUS MATERIALS -- Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT CONNECTIONS -- Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

1. Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
2. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLCIT DISCHARGE -- Any direct or indirect non-stormwater discharge to the MS4, except as exempted in §177-69.A of this Article.

INDIVIDUAL SEWAGE TREATMENT SYSTEM -- A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY -- Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

MS4 -- Municipal Separate Storm Sewer System.

MUNICIPAL SEPARATE STORM SEWER SYSTEM -- A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by the Town of Shawangunk;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40CFR 122.2

MUNICIPALITY -- The Town of Shawangunk.

NON-STORMWATER DISCHARGE -- Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON -- Any individual, association, organization, partnership, firm, corporation or other entity recognized by Article and acting as either the owner or as the owner's agent.

POLLUTANT -- Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES -- Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS --

1. Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
2. 303(d) Listed Waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
3. Total Maximum Daily Load (TMDL) Strategy. The condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
4. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six (6) months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT -- A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER -- Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO) -- An employee, the Town engineer or other public official(s) designated by the Town of Shawangunk to enforce this Article. The SMO also may be designated by the municipality to accept and review stormwater pollution prevention plans, forward the

plans to the applicable municipal board and to professional consultants hired by the Town Board and to inspect stormwater management practices.

303(d) LIST -- A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL -- Total Maximum Daily Load.

TOTAL MAXIMUM DAILY LOAD -- The maximum amount of a pollutant to be allowed to be released into a waterbody so as not to impair uses of the water, allocated among the sources of that pollutant.

WASTEWATER -- Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

§177-68. Responsibility for administration.

The Stormwater Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this Article. Such powers granted or duties imposed upon such official may be delegated in writing by the SMO as may be authorized by the municipality.

§177-69. Discharge prohibitions.

A. **Prohibition of illegal discharges.** No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in this subsection A. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this Article, unless the Department or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.
- (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Article.
- (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

- (4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. Prohibition of Illicit Connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this Article if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

§177-70. Prohibitions.

A. Prohibitions against failing individual sewage treatment systems. No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

- (1) The backup of sewage into a structure.
- (2) Discharges of treated or untreated sewage onto the ground surface.
- (3) A connection or connections to a separate stormwater sewer system.
- (4) Liquid level in the septic tank above the outlet invert.
- (5) Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
- (6) Contamination of off-site groundwater.

B. Prohibition against activities contaminating stormwater. Activities that are subject to the requirements of this section are those types of activities that:

- (1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.
- (2) Cause or contribute to the municipality being subject to the Special Conditions as defined in §177-67 of this Article.
- (3) Such activities include failing individual sewage treatment systems as defined in Subsection A above, improper management of pet waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§177-71. Best Management Practices.

A. **Best Management Practices.** Where the SMO has identified illicit discharges as defined in Section 2 or activities contaminating stormwater as defined in Section 8 the municipality may require implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

- (1) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.
- (2) Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge as defined in **Section 2** or an activity contaminating stormwater as defined in Section 8, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
- (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

B. **Individual sewage treatment systems - response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants.** Where individual sewage treatment systems are contributing to the municipality's being subject to the Special Conditions as defined in Section 2 of this Article, the owner or operator of such individual sewage treatment systems shall be required to:

- (1) Maintain and operate individual sewage treatment systems as follows:
 - (a) Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within ten inches of the bottom of the outlet baffle or sanitary tee.
 - (b) Avoid the use of septic tank additives.
 - (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and
 - (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items
 - (e) Most tanks should be pumped out every two to three years. However, pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.
- (2) Repair or replace individual sewage treatment systems as follows:

- (a) In accordance with 10NYCRR Appendix 75A to the maximum extent practicable.
- (b) A design professional licensed to practice in New York State shall prepare design plans for any type of absorption field that involves:
 - [1] Relocating or extending an absorption area to a location not previously approved for such.
 - [2] Installation of a new subsurface treatment system at the same location.
 - [3] Use of alternate system or innovative system design or technology.
- (c) A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system.

§177-72. Suspension of access to MS4. Illicit discharges in emergency situations.

- A. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this Article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefore. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the SMO.

§177-73. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the municipality prior to the allowing of discharges to the MS4.

§177-74. Access and monitoring of discharges.

- A. **Applicability.** This section applies to all facilities that the SMO must inspect to enforce any provision of this Article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article.

B. Access to facilities.

- (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Article as often as may be necessary to determine compliance with this Article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
- (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this Article.
- (3) The municipality shall have the right to set up on any facility subject to this Article such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The municipality has the right to require the facilities subject to this Article to install monitoring equipment as is reasonably necessary to determine compliance with this Article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) Unreasonable delays in allowing the municipality access to a facility subject to this Article is a violation of this Article. A person who is the operator of a facility subject to this Article commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Article.
- (6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§177-75. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§177-76. Enforcement.

A. Violations.

(1) Notice of violation. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this Article, he/she may order compliance by written notice of violation to the responsible person or persons. Such notice may require without limitation:

- (a) The elimination of illicit connections or discharges;
- (b) That violating discharges, practices, or operations shall cease and desist;
- (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (d) The performance of monitoring, analyses, and reporting;
- (e) Payment of a fine; and
- (f) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(2) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Article shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars (\$1000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

B. Appeal of notice of violation. Any person receiving a Notice of Violation may appeal the determination of the SMO to the Town Board of the Town of Shawangunk within 15 days of its issuance. The Town Board which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the municipal clerk and mail a copy of its decision by certified mail to the person named in the Notice of Violation. Any appeal shall not act as a stay of any enforcement and/or remediation orders which, in the sole discretion of the SMO, will threaten the public health, safety and welfare if deferred pending the resolution of the appeal.

C. **Corrective measures.**

- (1) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 5 business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- (2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether the violation has been abated. Upon determination that a violation has not been abated, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the violator and all of the Town's reasonable expenses, professional fees and remedial measures shall be a Town charge to be collected in the same manner as Town taxes.

D. **Injunctive relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. A Court of competent jurisdiction may award the Town of Shawangunk all of its reasonable attorney's fees, costs and disbursements of enforcement and abatement.

E. **Violations deemed a public nuisance.** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken and a Court of competent jurisdiction may award the Town of Shawangunk all of its reasonable attorneys fees, costs and disbursements of enforcement and abatement.

F. **Claims against the Town by other regulatory agencies, bodies and/or officials and/or private citizens or entities.** In the event that the Town of Shawangunk or any of its boards, departments or officials become the subject of a threatened or actual action or proceeding brought by any other regulatory agency, body or official and/or by private citizens or entities regarding an alleged violation of this Article and/or a violation of any other controlling federal, state, or local law, rule or regulation, and it is established that such alleged violation is caused in whole or in part by a person or persons violating any of the provisions of this Article, the Town may recover from the violator all of the Town's reasonable expenses of the investigation, defense and resolution of such separate action or proceeding.

G. **Remedies not exclusive.** The remedies listed in this Article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

ARTICLE XV
Stormwater Management and Erosion & Sediment Control

§177-77. Findings, purpose and applicability.

A. Findings. It is hereby determined that:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

B. Purpose. The purpose of this local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact hereof. This Article seeks to meet those purposes by achieving the following objectives:

- (a) Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;

- (b) Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
- (c) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (d) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (e) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- (f) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

D. Applicability.

- (1) This local law shall be applicable to all Land Development Activities as defined in §177-78.
- (2) The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may (1) review the plans, (2) upon approval by the Town Board of the Town of Shawangunk, engage the services of a licensed professional to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board, or (3) accept the certification of a licensed professional that the plans conform to the requirements of this law.
- (3) All Land Development Activities subject to review and approval by the applicable board of the Town of Shawangunk under subdivision, site plan, variance and/or special permit local laws and regulations shall be reviewed subject to the standards contained in this local law
- (4) All Land Development Activities not subject to review as stated in subsection §177-77.D(3) above shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this law.

E. Exemptions. The following activities may be exempt from review under this Article:

- (1) Agricultural activity as defined in this local law or as determined by the NYS Department of Agriculture and Markets.
- (2) Silvicultural activity except that landing areas and log haul roads are subject to this law or as determined by the NYS Department of Agriculture and Markets.
- (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

- (4) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- (5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Shawangunk Planning Board on or before the effective date of this law.
- (6) Land development activities for which a building permit has been approved on or before the effective date of this law.
- (7) Cemetery graves.
- (8) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- (9) Emergency activity immediately necessary to protect life, property or natural resources.
- (10) Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- (11) Landscaping and horticultural activities in connection with an existing structure provided there is no disturbance of the stabilized topsoil.

§177-78. Definitions.

Whenever used in this Article and only when used in this Article, the following terms will have meanings set forth below:

AGRICULTURAL ACTIVITY - the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities that, in the opinion of the SMO, will result in any adverse impacts that this local law is designed to prevent or mitigate. Notwithstanding, the Commissioner of the NYS Department of Agriculture and Markets shall have the final determination as to whether or not an activity is considered an Agricultural Activity.

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

BUILDING - any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CHANNEL - a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING - any activity that removes the vegetative surface cover.

DEDICATION - the deliberate appropriation of property by its owner for general public use.

DEPARTMENT - the New York State Department of Environmental Conservation

DESIGN MANUAL - the New York State Stormwater Management Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER - a person who undertakes land development activities.

EROSION CONTROL MANUAL - the most recent version of the “New York Standards and Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book”.

GRADING - excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER - those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

INDUSTRIAL STORMWATER PERMIT - a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION - the process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY - construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER - the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MAINTENANCE AGREEMENT - a legally recorded document that acts as a property restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION - pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN - sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT - land development activity

RECHARGE - the replenishment of underground water reserves.

SEDIMENT CONTROL - measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards

STABILIZATION - the use of practices that prevent exposed soil from eroding.

STOP WORK ORDER - an order issued which requires that all construction activity on a site be stopped.

STORMWATER - rainwater, surface runoff, snowmelt and drainage

STORMWATER HOTSPOT - a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT - the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO) - an employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices

STORMWATER MANAGEMENT PRACTICES (SMPs) - measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF - flow on the surface of the ground, resulting from precipitation

SURFACE WATERS OF THE STATE OF NEW YORK - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine

or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE - a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY - a channel that directs surface runoff to a watercourse or to the public storm drain.

§177-79. Stormwater Pollution Prevention Plans.

A.. Stormwater Pollution Prevention Plan Requirement No application for approval of a Land Development Activity shall be deemed complete until the appropriate board and the Stormwater Management Officer have received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law. The applicant also shall provide a copy of the SWPPP to the Ulster County Department of Planning and any other involved county agency.

B. Contents of Stormwater Pollution Prevention Plans

- (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including location, type and size of project;
 - (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s). Site map should be at a scale no smaller than 1"=100';
 - (c) Description of the soil(s) present at the site;
 - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;

- (f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill -prevention and response;
 - (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (j) Temporary practices that will be converted to permanent control measures;
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);
 - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable;
 - (p) Any existing data that describes the stormwater runoff at the site;
 - (q) All stormwater outfalls and permanent stormwater facilities shall be located via Global Positioning System (GPS). At the sole discretion of the SMO and applicable local reviewing board, a metes and bounds location may be provided in lieu of a GPS reference for smaller projects.
- (2) Land development activities as defined in §177-78 and meeting Condition “A”, “B” or “C” below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in §177-79.B.(3) below as applicable:

Condition A - Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department’s 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

Condition B - Stormwater runoff from land development activities disturbing five (5) or more acres.

Condition C - Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

(3) SWPPP Requirements for Condition A, B and C:

- (a) All information in §177-79.B(1);
- (b) Description of each post-construction stormwater management practice;
- (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
- (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
- (e) Comparison of post-development stormwater runoff conditions with pre-development conditions;
- (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
- (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
- (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
- (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this Article;
- (j) The SWPPP shall be prepared by a certified professional in erosion and sediment control or stormwater quality or professional engineer or registered landscape architect and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.

C. **Other environmental permits.** The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

D. **Contractor Certification.**

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity : “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

(2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

E. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§177-80. Performance and design criteria.

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

A. Technical standards. For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

(1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)

(2) New York State Standards and Specifications for Erosion and Sediment Control, August 2005, most current version or its successor, hereafter referred to as the Erosion Control Manual).

B. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state of New York.

§177-81. Maintenance, inspection and repair of stormwater facilities.

A. Maintenance and Inspection During Construction

(1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

(2) For land development activities as defined in this Article and meeting Condition A, B or C in §177-79.B(2), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in a site log book.

(3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall be responsible for ensuring compliance with the terms of the approved SWPPP.

B. Maintenance easement(s) and agreements. Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer may be

required to execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall include all reasonable terms to effect the purposes of this local law and shall provide for access to the facility at reasonable times for periodic inspection or for remedial work, at the owner's sole expense, by the person or entity responsible for the operation and maintenance and/or by the Town of Shawangunk, or its duly authorized designee, to ensure that the facility is maintained in proper working condition to meet the design standards and any other provisions established by this local law. The easement agreement shall be prepared and recorded by the grantor at its sole expense in the office of the County Clerk after approval by the counsel for the Town of Shawangunk.

C. Maintenance after Construction. The owner or operator of permanent stormwater management practices installed in accordance with this law shall ensure they are operated and maintained to achieve the goals of this law. Proper operation and maintenance also includes as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with §177-80.B..

§177-82. Administration and enforcement.

A. Construction inspection.

- (1) Erosion and Sediment Control Inspection. The Town of Shawangunk Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Shawangunk SMO at least 48 hours before any of the following as required by the Stormwater Management Officer:
 - (a) Start of construction
 - (b) Installation of sediment and erosion control measures
 - (c) Completion of site clearing
 - (d) Completion of rough grading
 - (e) Completion of final grading
 - (f) Close of the construction season
 - (g) Completion of final landscaping
 - (h) Successful establishment of landscaping in public areas.

- (i) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.
- (2) Stormwater Management Practice Inspections. The Town of Shawangunk Stormwater Management Officer, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a licensed professional.
- (3) Inspection of Stormwater Facilities After Project Completion. Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
- (4) Submission of Reports. The Town of Shawangunk Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law.
- (5) Right-of-Entry for Inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town of Shawangunk the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in §177-82.A(3). Likewise, the Maintenance Easement and Agreement (see §177-81.B) shall grant this right.

B. Performance guarantee.

- (1) Construction Completion Guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Shawangunk in its approval of the Stormwater Pollution Prevention Plan, the Town of Shawangunk may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Shawangunk as the beneficiary. The security shall be in an amount to be determined by the Town of Shawangunk based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Shawangunk, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the

Town of Shawangunk. Interest on cash escrow deposits shall not be required except in exceptional circumstances.

- (2) **Maintenance Guarantee.** Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Shawangunk with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and for a reasonable period thereafter. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Shawangunk may draw upon the account to cover the costs of proper operation and maintenance, including reasonable engineering, inspection and remediation costs.
- (3) **Recordkeeping.** The Town of Shawangunk may require entities subject to this law to maintain records demonstrating compliance with this law.

C. Enforcement and penalties.

- (1) **Notice of violation.** When the Town of Shawangunk SMO determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice of violation shall contain, without limitation, the following:
 - (a) the name and address of the landowner, developer or applicant;
 - (b) the address when available or a description of the building, structure or land upon which the violation is occurring;
 - (c) a statement specifying the nature of the violation;
 - (d) a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;
 - (e) a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (f) a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.
- (2) **Stop work orders.** The Town of Shawangunk SMO may issue a stop work order for alleged violations of this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Town of Shawangunk SMO confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.
- (3) **Violations.** Any land development activity that is commenced or is conducted contrary to this local law, may be restrained by injunction or otherwise abated in a manner provided by law.

(4) Penalties.

(a) In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law upon conviction shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350) and/or imprisonment for a period not to exceed fifteen (15) days. Additionally, a civil penalty of up to \$1,000 for each violation may be imposed. Each week's continued violation shall be deemed to be a separate violation.

(b) In addition to the above penalties, the Town Board or the Building Inspector or the Zoning Administrator, with advice and consent of the Town Attorney, shall have the right to seek equitable relief to restrain and/or remedy any violation of any provisions of this Article.

(c) The Building Inspector or the Zoning Administrator shall have the power to direct a violator to cease violation of this chapter and, with the consultation of the Conservation Advisory Council, satisfactorily restore the affected wetland, water body or watercourse to its condition prior to the violation, insofar as that is possible, within a reasonable time. The exercise of such power may be with or without the imposition of a fine or civil penalty under Subsection (a) hereof.

(5) Withholding of Certificate of Occupancy. If any building or land development activity is installed or conducted in violation of this local law the Stormwater Management Officer may prevent the occupancy of said building or land.

(6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Shawangunk may take necessary corrective action, the cost of which shall become a lien upon the property in the same manner as other town charges until paid.

D. Fees for services. The Town of Shawangunk may require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Shawangunk or performed by a third party for the Town of Shawangunk.

E. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the SMO to the Town Board of the Town of Shawangunk within 15 days of its issuance. The Town Board shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the municipal clerk and mail a copy of its decision by certified mail to the person named in the Notice of Violation. Any appeal shall not act as a stay of any enforcement and/or remediation orders which, in the sole discretion of the SMO, will threaten the public health, safety and welfare if deferred pending the resolution of the appeal.

F. Corrective Measures.

(1) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 5 business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

(2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether the violation has been abated. Upon determination that a violation has not been abated, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the violator and all of the Town's reasonable expenses, professional fees and remedial measures shall be a Town charge to be collected in the same manner as Town taxes.

- G. **Injunctive relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. A Court of competent jurisdiction may award the Town of Shawangunk all of its reasonable attorney's fees, costs and disbursements of enforcement and abatement.
- H. **Violations deemed a public nuisance.** In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken and a Court of competent jurisdiction may award the Town of Shawangunk all of its reasonable attorneys fees, costs and disbursements of enforcement and abatement.
- I. **Claims Against the Town by Other Regulatory Agencies, Bodies and/or officials and/or Private Citizens or Entities.** In the event that the Town of Shawangunk or any of its boards, departments or officials become the subject of a threatened or actual action or proceeding brought by any other regulatory agency, body or official and/or by private citizens or entities regarding an alleged violation of this Article and/or a violation of any other controlling federal, state, or local law, rule or regulation, and it is established that such alleged violation is caused in whole or in part by a person or persons violating any of the provisions of this Article, the Town may recover from the violator all of the Town's reasonable expenses and professional fees regarding the investigation, defense and resolution of such separate action or proceeding.
- J. **Remedies Not Exclusive.** The remedies listed in this law are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

ARTICLE XVI
Interpretation; Grandfathering; Enactment

§ 177-83. Minimum requirements.

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

§177-84. Grandfathering provisions.

The provisions of this Zoning Code as amended in December 1997, that otherwise modified the existing area and dimensional requirements for existing, legal residential lots in the Town of Shawangunk as of 1997 and thereby rendered such lots non-conforming as to area and dimension shall not be applicable at this time to such lots as are herein defined. Until such time as the Town of Shawangunk adopts further amendments to this section, the provisions of the law regarding lot area and dimensional requirements in effect just prior to the December 1997 amendments shall control for any such lots as herein defined. Notwithstanding, all amendments to the Code since 1997 shall apply to all such lots unless otherwise specifically excepted.

Legal Residential Lots: For the limited purpose of this section, are those parcels of land together with improvements thereon that were lawful under the pre-1997 Zoning requirements as to area and dimension but did not meet the new area and dimensional requirements contained in the 1997 Zoning amendments and provided that all such lots meet one of the following criteria: 1) placement on the official Tax Map of the Town of Shawangunk pursuant to the Zoning Law in effect at the time of placement, or 2) depicted on a Final Subdivision Plat filed with the Ulster County Clerk.

Notwithstanding, all of the other provisions of this amended Zoning Law other than lot area and dimensional requirements, shall apply to such grandfathered lots.

Notwithstanding, any future subdivision of such lots shall require the application at that time of all of the provisions of this modified Zoning Law to all proposed lots to be subdivided. For the limited purpose of this section, lot line changes involving grandfathered lots not creating new homesites shall be approvable by the Planning Board of the Town of Shawangunk without the need for area variances otherwise required under this amended Zoning Law.

2004 Zoning Ordinance and Code Amendments

The Town of Shawangunk hereby ratifies, reaffirms and re-enacts all of the provisions set forth in this Article XVI, as herein modified, so as to apply all of these provisions to the Town of Shawangunk Zoning Ordinance and Code Amendments of 2004, including both residential and non-residential land development applications, exclusive of those amendments imposing moratoria and exclusive of those amendments creating and establishing the requirements for the Hamlet of Wallkill Gateway Zoning District. Notwithstanding, any subsequent application for additional subdivision and/or development shall be bound by all of the Zoning Ordinance and Code provisions as revised by the local zoning laws enacted in 2004 and subsequent to 2004. Section IV of Local Law No. 8 of 2004 hereby is repealed (Grandfather Clause) as it is restated in this Section 177-84.

§177-85. Severability clause.

If any part of provision of this Chapter 177 or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision of application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Chapter 177 or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§177-86. Repealor.

This local law repeals Town of Shawangunk Chapter 34 (Planning Board), Chapter 75 (Critical Environmental Areas), Chapter 84 (Environmental Quality Review), and Chapter 115 (Mobile Homes and Recreational Vehicles) and former Chapter 177 (Zoning) as those chapters all have been restated or codified in this new Section 177 (Zoning).

Additionally, Section IV of Local Law No. 8 of 2004 (grandfather clause) also is repealed as it is restated at Section 177-84.

§ 177-87. Enactment.

This local law shall take effect immediately upon filing with the New York State Department of State in accordance with Municipal Home Rule Law of the State of New York.

Town of Shawangunk
Schedule I
Zoning District Bulk Requirements⁶

Bulk Regulation / District	RS-1	RS-2	R-Ag 1	R-Ag 2	R-Ag 3	R-Ag 4	H-1	SB	HGW	MB-C	A-I
Reference Subsection	§177-6.B.	§177-6.C.	§177-7.D.	§177-7.E.	§177-7.F.	§177-7.G.	§177-7.H	§177-7.I	§177-6.J.	§177-6.K.	§177-6.L.
Minimum lot area ⁷											
Without public water & sewer	7 ac.	3 ac.	2 ac.	2 ac.	2 ac.	2 ac.	3 ac.	1 ac.	1 ac.		1 ac.
With public sewer	7 ac.	3 ac.	15,000 sf	1 ac.	2 ac.	2 ac.	20,000 sf	10,000 sf	30,000 sf		1 ac.
With public water & sewer	7 ac.	3 ac.	10,000 sf	1 ac.	2 ac.	2 ac.	15,000 sf	5,000 sf	20,000 sf	50 ac.	1 ac.
Maximum yards											
Front (feet)							30		25		25
Minimum yards											
Front (feet)	50	50	35	35	50	75	20	30	5		50
Rear (feet)	100	100	50	50	100	100	25	50	20		30
Side											
One (feet)	50	50	35	35	50	50	10	25	10		25
Both (feet)	100	100	70	70	100	100	25	25	10		50
Minimum lot width (feet) ⁸	250	250	150	200	250	250	80	150	50		200
Minimum lot depth (feet)	200	200	150	200	200	200	100	150	100		200
Maximum impervious coverage (%) ⁹	15	15	15	15	15	15	30	30	60	35	50
Maximum height											
Stories	3	3	3	3	3	3	3	3	3		3 ¹⁰
Height (feet)	35	35	35	35	35	35	35	35	35		35

sf = Square feet; ac. = acre

⁶ See §177-84 regarding grandfathering provisions. See also applicable provisions for the BH-O and AQ-O districts which may vary from the requirements set forth in this Schedule I.

⁷ See subsection 177-36 for the minimum lot size applicable to cluster subdivisions.

⁸ Minimum lot width measured at setback line for zone district as specified by front yard dimensions on this schedule; minimum lot width of flag lots shall be measured between the side lot lines at the front line.

⁹ Within the aquifer protection overlay, the maximum impervious coverage is limited to 30%. Where the base zoning district impervious coverage limitation varies from the AQ-O district limitation, the more restrictive impervious coverage limitation shall apply.

¹⁰ See additional height limitations set forth in §177-13.B.