

---

## **Chapter 164, ZONING**

---

[HISTORY: Adopted by the Town Board of the Town of Warwick 3-23-1989 by L.L. No. 1-1989; amended in its entirety 1-24-2002 by L.L. No. 1-2002. Subsequent amendments noted where applicable.]

### **GENERAL REFERENCES**

- Architectural Review Board -- See Ch. 5.**
- Adult bookstores and theaters -- See Ch. 52.**
- Agricultural and open space preservation and acquisition -- See Ch. 54.**
- Cabarets -- See Ch. 72.**
- Development fees -- See Ch. 75.**
- Fire Prevention and Building Code administration -- See Ch. 82.**
- Fissionable materials -- See Ch. 85.**
- Flood damage prevention -- See Ch. 89.**
- Parks -- See Ch. 106.**
- Subdivision of land -- See Ch. 137.**
- Tree and topsoil removal; grading and excavating -- See Ch. 150.**
- Street specifications -- See Ch. A168.**

---

## **ARTICLE I, Purpose**

---

### **§ 164-10. Statutory authority.**

This chapter is hereby adopted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, § 10, et seq. and for the purposes enumerated in Chapter 16, Article 16 of the Town Law of the State of New York.

### **§ 164-11. Purposes. [Amended 1-24-2002 by L.L. No. 2-2002]**

This chapter is enacted to promote and protect the public health, safety, convenience, aesthetics, natural, agricultural, and cultural resources, amenities, and general welfare of the people. This chapter is intended to be consistent with the Town of Warwick Agricultural and Open Space Preservation and Acquisition Local Law<sup>EN(1)</sup> and to implement the Town's planning goals and objectives as expressed in the Town of Warwick Comprehensive Plan<sup>EN(2)</sup> as follows:

- A. Protect and enhance the rural character and quality of life in the Town.
- B. Support the economic viability of farming.

- C. Preserve as many of the operating farms as possible.
- D. Preserve the agricultural heritage of the Town.
- E. Encourage new development that is compatible with farming activities.
- F. Concentrate denser residential development around the villages and the hamlets, and maintain rural densities in the remainder of the Town.
- G. Stimulate a diversity of housing types and increase the stock of affordable homes.
- H. Encourage a mixed-use pattern of development, where appropriate, in and around the hamlets and adjacent to the villages.
- I. Assure that the village and hamlet centers remain as the focus for retail and service industry development.
- J. Provide for commercial development next to existing commercial and industrial uses.
- K. Encourage alternatives to typical modern highway-oriented commercial development.
- L. Support small locally owned businesses and retail centers which are in character with the Town's largely rural environment.
- M. Create a commercial atmosphere friendly to small business and home occupations.
- N. Maintain and expand public access to Greenwood Lake and develop access to other water bodies.
- O. Support preservation of open space especially in environmentally sensitive areas.
- P. Reduce traffic congestion.
- Q. Promote public transit.
- R. Encourage alternatives to the automobile, such as walking, bicycling and commuter car/van pooling.
- S. Improve coordination between various means of transportation.
- T. Allow infrastructure development in areas targeted for growth while maintaining overall density in the Town.
- U. Protect the natural scenic quality of the Town and environmentally sensitive areas.
- V. Ensure that groundwater quality meets Safe Drinking Water Act quality standards and that an adequate amount of water will be available to provide for future needs.

- W. Protect surface and ground waters from point and nonpoint source pollution.
- X. Protect habitats for the diversity of existing flora and fauna in Warwick.
- Y. Protect wetlands as important environmental resources.
- Z. Use every available mechanism to maximize coordination between the Town and three villages with regard to land use planning, transportation infrastructure, economic development, provision of recreational facilities, expansion of water and sewer facilities, regulation of utility, communication and power franchises, solid waste disposal, and all other aspects of community life.

#### **§ 164-12. Use of chapter.**

This chapter divides Warwick into zoning districts and establishes rules for the use of land in each district. Information in this Zoning Law can be found as follows:

- A. Go to the Use Table in Article IV, Zoning Districts and Map,<sup>EN(3)</sup> to find out what uses are allowed in each district. The definitions found in Article II explain what the different use categories mean. The Table of Bulk Requirements in Article IV<sup>EN(4)</sup> contains lot size, setback, and other requirements relating to development of lots. [Amended 1-24-2002 by L.L. No. 2-2002]
- B. Article IV contains regulations that apply to specific types of uses and structures, special uses, and the procedures used to apply for and obtain approvals from the Town Planning Board.
- C. In Article V, you will find the procedures for applying for building permits and certificates of occupancy, responsibilities of the Town's Code Enforcement Officer, how to apply for variances from the Zoning Board of Appeals, and the consequences of not complying with this Zoning Law.

#### **§ 164-13. Title. [Amended 10-24-2002 by L.L. No. 6-2002]**

This chapter is officially titled "The 2002 Zoning Law of the Town of Warwick, New York," and shall be known as the "Zoning Law." The official map designating the various regulating districts shall be titled the "Town of Warwick Zoning Map," and shall be known as the "Zoning Map."

#### **§ 164-14. Jurisdiction.**

These regulations govern the use, development, and protection and of all land and structures

within the unincorporated areas of the Town of Warwick, New York, said territory being indicated on the Zoning Map as is on file at the Warwick Planning Department. This map and its boundaries shall be incorporated and made part of this chapter.

**§ 164-15. Severability. [Amended 1-24-2002 by L.L. No. 2-2002]**

If any section or specific part or provision or standard of this chapter 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 or 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 or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this chapter or the remainder thereof had the invalidity of such provision or application thereof been apparent. If any zoning district boundary that may exist in the future is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

**§ 164-16. Supersession of inconsistent laws.**

The Town Board hereby declares its legislative intent to supersede any provision of any local law, rule, or regulation or provision of the Town Law inconsistent with this chapter. The Town Law provisions intended to be superseded include all of Article 16 of Town Law, §§ 261 to 285 inclusive, and any other provision of law that the Town may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The courts are directed to take notice of this legislative intent and apply it in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this chapter and superseded such inconsistent provision had it been apparent.

**§ 164-17. When effective.**

These regulations shall become effective immediately.

---

**ARTICLE II, Definitions; Word Usage**

---

**§ 164-20. Intent.**

Except as defined herein, all words used in this chapter shall carry their everyday dictionary definition.

**§ 164-21. Word usage.**

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- D. The word "lot" includes the word "plot" or "parcel" or "tract."
- E. The word "shall" is always mandatory and not merely directory.
- F. The word "structure" shall include the word "building."
- G. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- H. The word "Zoning Map," or "Warwick Zoning Map," shall mean the Official Zoning Map of the Town of Warwick, New York.
- I. Unless the context requires a different interpretation, any word denoting gender includes the female and the male.
- J. The term "Town Board" shall mean the Town Board of the Town of Warwick, New York.
- K. The term "Planning Board" shall mean the Planning Board of the Town of Warwick, New York.
- L. The term "Zoning Board" shall mean the Zoning Board of Appeals of the Town of Warwick, New York.
- M. The term "Building Inspector" or "Zoning Enforcement Officer" shall mean the Code Enforcement Officer of the Town of Warwick, New York.
- N. The term "Planning Department" shall mean the Planning Department of the Town of Warwick, New York.

## **§ 164-22. Terms defined.**

When used in this chapter, unless otherwise expressly stated or unless the context or subject matter otherwise requires, the following definitions shall apply.

ACCESSORY USE -- See "use, accessory" definition below.

### **ACREAGE:**

- A. GROSS -- The total acreage of a parcel or parcels of land proposed for subdivision and/or development, as determined by a certified survey.
- B. NET -- The gross acreage less the acreage of lands rated as "severe" with reference to flooding, ponding, erosion or slope by the Soil Conservation Service, United States Department of Agriculture, in such a way so as to preclude conventional lot layout, each lot with a buildable portion; lands that are proposed to be occupied by public utility easements and/or central services (water and sewer facilities) in such a manner as to prevent their use and development; or lands that for any other reason are not suitable for building purposes, except that lakes with a medium depth of eight feet or more conducive to recreational usage shall not be discounted. It is this figure into which the minimum lot size per dwelling unit is to be divided to determine the maximum number of dwelling units that may be permitted in all developments of five or more dwelling units.

AFFORDABLE HOUSING UNIT -- A dwelling unit available at a cost of no more than 30% of the gross household income of households at or below 80% of the Orange County median income as reported by the U.S. Department of Housing and Urban Development. [Added 9-11-2003 by L.L. No. 4-2003]

ALTERATIONS -- As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

A.STRUCTURAL -- Any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

### **ANIMALS:**

- A. FUR-BEARING -- Animals raised primarily for their skins or pelts, including but not limited to mink and rabbit.
- B. LABORATORY -- Animals raised primarily for scientific experimentation, including but not limited to mice, rats and guinea pigs.
- C. EXOTIC -- Exotic animals consist of potentially lethal, vicious, venomous, or otherwise

dangerous animals, such as nonindigenous felines (except domestic cats), indigenous felines, such as cougar, bobcat, or lynx; nonhuman primates; bears; nonindigenous canines (except domestic dogs) and indigenous canines, such as wolves or coyotes; and venomous reptiles. Exotic animals have the potential to adversely affect the ecology of Warwick, and such animals in captivity, or if escaped, pose a substantial danger to humans, either from injury or disease. [Added 9-11-2003 by L.L. No. 4-2003]

**APARTMENT HOUSE** -- A building arranged, intended or designed to be occupied by three or more families living independently of each other in rental units.

**AREA:**

**A. BUILDING** -- The total of the areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

**B. NET SITE** -- The total area within the property lines, excluding external streets.

**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** -- A home occupation involving the rental of up to four rooms as transient accommodations, with breakfast served to guests but with no full-service restaurant facilities, and with no more than one nonresident employee.

**BEDROOM** -- All rooms in multifamily, row and group dwellings beyond one kitchen, living room and dining room or area per dwelling unit. For the purpose of determining the number of bedrooms in a proposed multifamily or townhouse dwelling, all dwelling units shall be rated as having at least one bedroom (example: studio apartment).

**BILLBOARD** -- An outdoor advertising sign available on lease for the display of a commercial or public service message and which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed, or only incidentally upon such lot.

**BOARDINGHOUSE** -- Any dwelling in which more than three persons, either individually or as families, are housed or lodged for hire, with or without meals, on a weekly or longer time basis. A rooming house or a furnished rooming house shall be deemed a boardinghouse.

**BOARDING OR LIVERY STABLE** -- An accessory building in which horses are kept for commercial use, including boarding, hire, or sale. [Added 10-24-2002 by L.L. No. 6-2002]

**BUILDING** -- Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

- A. BUILDING, ACCESSORY -- A detached subordinate building on a lot, the use of which is customarily incidental to that of the main or principal building.
- B. BUILDING, DETACHED -- A building surrounded by open space on the same lot.
- C. BUILDING, FRONT LINE OF -- The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.
- D. BUILDING HEIGHT -- The vertical distance measured from the mean elevation of the proposed finished grade at the front entrance of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to the median height between eaves and ridge for gable, hip and gambrel roofs.
- E. BUILDING, MAIN or PRINCIPAL -- A building in which is conducted the main or principal use of the lot on which said building is situated.

BUSINESS SERVICE -- An establishment primarily engaged in rendering services to businesses on a fee or contract basis, such as advertising and mailing, building maintenance, unemployment service, office equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services.

CALIPER, TREE -- The diameter of a tree as measured at a point six inches above the ground level (up to and including four-inch caliper size) and 12 inches above the ground level (for larger sizes).

CAMP -- Any one or more of the following, other than a hospital, place of detention or school offering general instruction:

- A. TYPE 1 -- Any area of land or water on which are located two or more cabins, tents, travel or camping trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise; or
- B. TYPE 2 -- Any land, including any building thereon, used for any assembly of persons for what is commonly known as "day camp" purposes, and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

CAMPING GROUND -- A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of tents, motor homes, travel or camping trailers, none of which may exceed 40 feet in length.

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.

**CERTIFIED WILDLIFE PROFESSIONAL** -- A person who meets the education and experience requirements of a certified wildlife biologist as defined by a professional organization that certifies wildlife professionals.

**CLUB MEMBERSHIP** -- An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

**CLUSTER DEVELOPMENT** -- A residential subdivision where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space condition in perpetuity. Cluster development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

**CONDOMINIUM** -- A mode of ownership wherein each dwelling unit may be owned in fee simple individually and separately from all others, but where all such owners have an indivisible interest in the common areas. Thus, they share ownership and attendant responsibilities for the provision, maintenance and/or repair of common internal facilities, utilities, services, exterior building surfaces, land, landscaping and other outdoor facilities.

**CONVENIENCE STORE** -- A one-story retail store containing less than 4,000 square feet of gross floor area that is designed and stocked primarily to sell food, beverages and household supplies to customers who purchase only a relatively few items. Such establishments may include the retail sale of gasoline, oil and other automotive fluids, although no repairs or servicing of vehicles is permitted.

**CONVERSION** -- A change in use or occupancy of a dwelling by alteration or by other reorganization as to increase the number of families or dwelling units in a structure.

**COOPERATIVE** -- A mode of ownership for which title is held jointly by a group of cooperators, each member owning a given number of shares in the corporation in proportion to the value of his individual dwelling units which he owns under an occupancy agreement. Each cooperator is assessed according to the number of shares owned for maintenance of common areas.

**COURT** -- An unoccupied open space, other than a yard, on the same lot with a building, which is bounded on two or more sides by the walls of such building.

**A. COURT, INNER** -- A court enclosed on all sides by exterior walls of a building or by

exterior walls and lot lines on which walls are allowable.

**B. COURT, OUTER:**

- (1) A court extending to a street line or opening upon any front, side or rear yard; or
- (2) A court enclosed on not more than three sides by exterior walls and lot lines, which walls are allowable, with one side or end open to a street, driveway, alley or yard.

**COURTYARD** -- Deep, formal spaces along sidewalks where buildings have been set back farther than usual from the road, creating an outdoor room bounded on three sides by structures. [Added 10-24-2002 by L.L. No. 6-2002]

**CURB LEVEL** -- The elevation of the curb opposite the center of the front of the building. If a building faces on more than one street, the curb level shall be the mean of the elevations of the curbs at the center of each side or front of the building. Where no curb level or equivalent has been established by the municipal authority, the mean elevation of the finished grade immediately adjacent to the front of the building shall be considered as the curb level. If a building faces on more than one street where no curb level has been established, the mean of the elevations of the finished grade on each street side of the building shall be considered as the curb level.

**DECK** -- An exterior floor system supported on at least two opposing sides by an adjoining structure and/or posts, piers, or other independent supports, but shall not include a dock. [Amended 10-24-2002 by L.L. No. 6-2002]

**DESIGNATED PROTECTION AREA:** [Amended 9-11-2003 by L.L. No. 4-2003]

A. Areas within which the changing of land contours and/or the removal of the natural vegetative cover and/or the erection of structures is automatically subject to approval of plans and authorization by the Planning Board, according to § 164-46, upon the advice of the Town Environmental Conservation Board and the Town Architectural Review Board, for purposes of protecting ecologically sensitive areas and scenic assets of the community, except that the interior alteration and minor exterior alteration of structures shall not require authorization by the Planning Board. Such interior alterations shall require only the approval of the Building Inspector and issuance of a building permit. Those areas so designated, except those portions that border or lie within portions of the Agricultural (black dirt) District are as follows:

- (1) The Appalachian Trail.
- (2) The Doublekill Stream from the Sussex County, New Jersey, line to its junction with the Wawayanda Creek in the New Milford area.
- (3) The Wawayanda Creek from its Wickham Lake outlet to the Sussex County, New

Jersey, line.

- (4) The Longhouse Creek from the Passaic County, New Jersey, line to its junction with the Wawayanda Creek in the Wisner Road area.
  - (5) The Pochuck Creek from the Sussex County, New Jersey, line to its junction with the Wallkill River.
  - (6) Trout Brook from its source [Warwick Quadrangle, United States Geological Survey Maps, longitude: seventy-four degrees fifteen minutes nineteen seconds (74° (degrees) 15' 19") west; latitude: forty-one degrees fifteen minutes thirteen seconds (41° 15' 13") north; elevation: 1,040 feet to the Chester Town line.
  - (7) Greenwood Lake, Glenmere Lake, Sterling Lake, Wickham Lake, Sterling Forest Lake, Little Cedar Pond, Ro-Lyn Lake, Cascade Lake, Sandy Beach Lake, Village of Warwick reservoirs and all streams feeding this reservoir system, and all other lakes and ponds, if any, over 10 acres in surface area.
- B. The 100 foot setback requirements identified in the Table of Bulk Requirements<sup>EN(5)</sup> as "designated protection areas" shall be interpreted to mean that measurement be made from the banks of streams or the mean high water mark of shorelines of lakes, and also from the center of the Appalachian Trail.
- C. For existing buildings within the areas identified in Subsections A(2) through (7) herein that are proposed for alteration, enlargement, extension, reconstruction, restoration or proposed to be placed on a different portion of the lot or parcel of land occupied by the use and that are subject to approval of plans and authorization by the Planning Board, a sanitary sewage disposal system dye test shall be conducted to the specifications of the Town Engineer.

DOCK -- An accessory structure not attached to the principal structure, extending from land into a body of water, for purposes of providing access to watercraft, which craft may be affixed thereto when not in use. [Amended 10-24-2002 by L.L. No. 6-2002]

DOG KENNEL -- A structure used for the harboring of more than three dogs that are more than six months old or more than 12 dogs that are under six months of age. Any dog owner whose dog(s) bear(s) more than one litter of puppies that are of registered pedigree and offered for sale shall, for the purposes of this chapter, be considered as maintaining a dog kennel and must adhere to all regulations governing the same.

DRIVE-IN RESTAURANT -- A building or portion thereof where food and/or beverages are sold in a form ready for consumption and where all or a significant portion of the consumption takes place or is designated to take place outside the confines of the building, often in a motor vehicle on the site.

DRIVE-IN USE -- An establishment which, by design, physical facilities, service or by

packaging procedures, encourages and permits customers to receive services and obtain goods while remaining in their motor vehicles.

DWELLING -- A building designed or used as the living quarters for one or more families. The terms "dwelling," "one-family dwelling," "two-family dwelling" or "dwelling group" shall not be deemed to include motel, boardinghouse, tourist home or guesthouse.

- A. DWELLING, ACCESSORY -- A second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure 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. Such a dwelling shall be clearly accessory and incidental to the principal dwelling.
- B. DWELLING, ONE-FAMILY -- A detached building designed for or occupied exclusively by one family.
- C. DWELLING, ONE-FAMILY DETACHED -- A house accommodating but a single family and having two side yards, with at least 750 square feet of living area, the shortest median dimension, longitudinally or transversely, of which must be at least 24 feet, erected on a permanent foundation with or without a basement and equipped for year-round occupancy.
- D. DWELLING, TWO-FAMILY -- A building designed for or occupied exclusively by two families living independently of each other.
- E. DWELLING, MULTIFAMILY -- A building or portion thereof containing three or more dwelling units, on one plot, but which may have joint services or joint facilities, or both. Also known as a "multiple dwelling."
- F. DWELLING, TOWNHOUSE -- A building divided vertically and consisting of three or more attached dwelling units, each of which has a separate entrance from an outside yard area. Townhouses are only permitted in cluster developments and in the Town's TN-O Zoning District. Regardless of the Zoning District involved, the building housing the townhouse dwelling units shall comply with the TN-O setback and other applicable bulk requirements of the Zoning District. The number of dwelling units shall be determined on the basis of the density determination found in § 164-41.1D. [Amended 9-11-2003 by L.L. No. 4-2003]
- G. DWELLING UNIT -- A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A trailer, motor home, travel or camping trailer, boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home, or other similar structure, shall not be deemed to constitute a dwelling

unit.

ECHO -- Elder Cottage Housing Option (ECHO) is a modular cottage allowed as a permitted use or by special permit for temporary installation on a single-family residential premises, designed as housing for older persons as defined in the Federal Fair Housing Act, and to be occupied by one or two people who will benefit from living in close proximity to the principal residents of the premises. [Added 10-24-2002 by L.L. No. 6-2002; amended 9-11-2003 by L.L. No. 4-2003]

ELEVATION -- The elevation, in feet, above mean sea level, as determined from the nearest United States Coastal and Geodetic Bench Mark, of the principal building to be sited on a lot.

ENTRY -- A roofed-over but unenclosed projection, not more than eight feet wide and extending not more than six feet out from the front wall of a building. [Added 10-24-2002 by L.L. No. 6-2002]

FAMILY -- One or more persons occupying the premises and living as a single not-for-profit housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house, club, fraternity or hotel.

FARM, COMMERCIAL AGRICULTURE -- Any parcel of land containing at least 10 acres which is used for gain in the raising of agricultural products or poultry, and any parcel of land containing at least 20 acres which is used for gain in the raising of livestock and/or the production of dairy products. Commercial agriculture includes necessary farm structures within the prescribed limits and the storage of equipment used. Commercial agriculture excludes the raising of fur-bearing and laboratory animals, riding academies, boarding or livery stables and dog kennels. [Amended 10-24-2002 by L.L. No. 6-2002]

FAST-FOOD RESTAURANT -- An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off the premises.

#### FLOOR AREA:

- A. FLOOR AREA, LIVABLE -- In accordance with the New York State Building Code, all spaces within the exterior walls of a dwelling unit, exclusive of garages, cellars, heater rooms, basement rooms having a window area of less than 20% of the square foot area of the room, unheated porches and breezeways, but shall include all spaces not otherwise excluded, such as principal rooms, utility rooms, bathrooms and all closets and hallways opening directly into and appurtenant to any rooms within the dwelling unit, and all attic spaces having a clear height of six feet from the finished floor level to the pitch of the roof rafter with a clear height of seven feet six inches from the finished floor level to the ceiling over 50% of the area of such attic space.
- B. FLOOR AREA OF A BUILDING -- The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and

basement floor areas not devoted to residential use, but including the areas of roofed porches and roofed terraces. All dimensions shall be measured between the exterior faces of walls.

C. FLOOR AREA RATIO OF A BUILDING -- The quotient of the floor area of a building divided by its lot area.

FOWL -- Includes but is not limited to domesticated birds, such as chickens, ducks, geese, ratites, turkeys and pheasants, raised in confinement.

GARAGE:

A. GARAGE, PRIVATE -- A garage used for storage purposes only and having a capacity of not more than three automobiles or not more than two automobiles per family housed in the building to which such garage is accessory, whichever is greater. Space therein may be used for not more than one commercial vehicle, and space may be rented for not more than two vehicles of others than occupants of the building to which such garage is accessory.

B. GARAGE, COMMERCIAL -- Any garage other than a private garage, available to the public, operated for gain and which is used for the storage of automobiles or other motor vehicles.

GARDEN APARTMENT -- An apartment house wherein the entrance of a dwelling unit is no more than one flight of stairs (one floor) above or below the ground (or main entrance) floor level.

GRADE:

A. GRADE, ESTABLISHED -- The elevation of the center line of the streets as officially established by the Town authorities.

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

GUESTHOUSE -- A detached, complete accessory structure subordinate to the principal dwelling and sharing a common lot.

HOME OCCUPATION -- An occupation or business activity operated for financial gain in, or directed from, a residential dwelling unit or accessory building by one or more family members residing within that dwelling unit, and is clearly an accessory or incidental use and subordinate to the residential use of the dwelling unit.

HOSPITAL -- Unless otherwise specified, includes sanitarium or sanatorium, preventorium, clinic, rest home, nursing home, convalescent home and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

- A. HOSPITAL, GENERAL MEDICAL AND SURGICAL ONLY -- A health care facility in which persons are given medical, surgical, diagnostic and therapeutic treatment on an in- and out-patient basis, together with all ancillary support services.
- B. HOSPITAL, ANIMAL -- An establishment for the medical and surgical care of sick or injured animals.

HOTEL -- A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests for no more than 30 days and where a kitchen and dining room are generally provided within the building or in an accessory building. Small service kitchens may be provided in individual rooms.

HOUSE TRAILER -- See "mobile home" definition below.

INDUSTRIAL PARK -- A highly restricted type of planned industrial environment for a variety of industrial and related activities in which special emphasis and attention are given to aesthetics and community compatibility. Subdivided and developed according to an enforceable Master Plan which includes detailed provisions for streets and all necessary utilities, the park provides serviced sites for a community of industrial and industry-oriented uses. Adequate control of the land, buildings and industrial operations is provided through zoning, private restrictions incorporated as legal requirements in deeds of sale or leases and the provision of continuing management, all for the purpose of assuring attractive and efficient uses within the park and the harmonious integration of the industrial area into the community in which it is located.

JUNKYARD - An area of land, with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as wastepaper, rags or scrap material or used building materials, house furnishings, machinery or parts thereof, with or without dismantling, processing, salvage, sale or other use or disposition of the same. One cubic yard or more of refuse located on a property for more than 30 days shall also be deemed to be a junkyard.

JUNKYARD, MOTOR VEHICLE -- An area of land, with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded motor vehicles or parts thereof, with or without the dismantling, wrecking, salvage, sale or other use or disposition of the same. A deposit, collection or storage on a lot of two or more motor vehicles no longer in condition for legal use on the public highways, or parts thereof, for one week or more in a residential district or for three weeks or more in a nonresidential district shall constitute a motor vehicle junkyard.

LAUNDERETTE -- A business premises equipped with individual clothes-washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

**LIVESTOCK** -- Animals, including but not limited to such animals as sheep, cattle, horses and goats. Such definition shall not encompass fur-bearing animals, animals raised for laboratory purposes, exotic animals or customary domestic pets. In computing allowable number of livestock animals, sheep, ponies, goats, and other similar sized livestock shall count as 1/2 livestock animal each. [Amended 9-11-2003 by L.L. No. 4-2003]

**LODGING HOUSE** -- A building in which three or more rooms are rented and in which no table board is furnished.

**LOT** -- Land occupied or to be occupied by a building and its accessory buildings or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of state law to be adequate as a condition of the issuance of a building permit for a building on such land.

- A. **LOT, CORNER** -- A lot which has an interior angle of less than 135° at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°.
- B. **LOT, COVERAGE** -- That percentage of the lot covered by the access drive, building footprint area, and parking areas. [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]
- C. **LOT, DEPTH OF** -- The mean horizontal distance between the front and the rear lot lines, measured in the general directions of its side lot lines.
- D. **LOT, HOUSE** -- In cluster subdivisions, that portion of the subdivision reserved as a development area for the location of dwelling units and constituting lands outside of the protected open space areas.
- E. **LOT, INTERIOR** -- A lot other than a corner lot.
- F. **LOT, MOBILE HOME** -- The space which shall be assigned or used and occupied by any one mobile home.
- G. **LOT, THROUGH** -- An interior lot having frontage on two parallel or approximately parallel streets.
- H. **LOT, WIDTH OF** -- The mean distance measured at the required minimum front yard depth along a line at right angles to the depth of lot line and parallel to the street right-of-way (ROW) line.



I. LOT LINES -- Any line dividing one lot from another.

J. LOT LINE, REAR -- The lot line generally opposite to the street line; if the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the rear lot line shall be deemed to be a line parallel to the front lot line not less than 10 feet long lying farthest from the front lot line.

MAIN FLOOR -- The largest area formed by the projection of a horizontal plane through the livable floor area which is enclosed by the exterior walls of the building.

MANUFACTURING -- Any process whereby the nature, size or shape of articles or raw materials are changed, or where articles are assembled or packaged in quantity.

MEAN -- A measure of central tendency. The mean of a set of numbers is the arithmetic average.

MEDIAN -- When data is arranged in order of magnitude, the middle item (i.e., half above and half below) is the median. If the number of items is even, the median is the average of the two middle items.

MOBILE HOME -- A transportable one-family dwelling equipped for year-round occupancy and containing the same water supply, waste disposal, heating and electrical conveniences as immobile housing and which must conform to the New York State Building Code pertaining to such structures. The term "mobile home" shall include vehicles mounted on temporary or permanent foundations, with or without wheels, collar or skids in place, but shall not include a camping trailer, travel trailer or office trailer. (See definitions below.) Any transportable dwelling in excess of 40 feet in length shall be deemed to be a mobile home.

MOBILE HOME COURT -- An area of land under single ownership which has been planned and improved for the placement of two or more mobile homes for nontransient dwelling purposes and approved as such by the Planning Board subsequent to the introduction of a zoning law in the Town of Warwick. The selling or servicing of trailers or mobile homes in the mobile home court is prohibited.

MODULAR HOUSING -- Two or more prefabricated units, built at a plant or factory and transported to a building site and there assembled, united and installed on a permanent foundation, comprising one or more dwelling units.

MOTEL -- A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses.

MOTOR VEHICLE LAUNDRY -- A building, portion of a building and/or area arranged,

intended or designed to be used for the washing, spraying, waxing, polishing and/or drying of motor vehicles and/or the vacuuming or dry cleaning of the same.

**MOTOR VEHICLE REPAIR SHOP** -- A building or portion of a building arranged, intended or designed to be used for making repairs to motor vehicles, their mechanical systems and their body structure, including painting.

**MOTOR VEHICLE SALES** -- A building and/or area arranged, intended or designed to be used for the rental, lease, sale and/or resale of motor vehicles, new or used.

**MOTOR VEHICLE SERVICE STATION** -- Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle minor accessories, and which may or may not include facilities for lubricating or otherwise servicing motor vehicles, but not including the painting thereof by any means.

**NATURAL MATERIALS** -- Any physical matter which is part of the earth.

**NURSERY** -- A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

**NURSERY SCHOOL** -- A school designed to provide daytime care or instruction for two or more children from two to five years of age, inclusive, and operated on a regular basis.

**NURSING, REST OR CONVALESCENT HOME** -- Any dwelling where persons are housed or lodged and furnished with meals and nursing care for hire.

**OFFICE:**

A. **BUSINESS** -- A place or establishment used for the organizational or administrative aspects of a trade or used in the conduct of a business and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of salesmen, sales representatives, insurance brokers, real estate brokers and persons with similar occupations.

B. **PROFESSIONAL** -- An office devoted to a professional service occupation, in which knowledge in some department of science or learning is applied to the affairs of others, either advising or guiding them, or otherwise serving their interest or welfare through the practice of a profession founded on such knowledge.

**OPEN DEVELOPMENT AREA** -- A district wherein lots in new subdivisions of land may have access via a common right-of-way or easement (in place of a public road), upon special application to and review and approval by the Planning Board, subject to such limitations and conditions as may be prescribed by general or special rule of the Planning Board, under authority

of § 280-a of the Town Law and resolution of the Town Board. The Mountain, Conservation and Rural Districts are the only districts so designated for this purpose. Parking for school bus pickups, mail delivery, and access for emergency services providers shall be made available in all open development areas. The Planning Board may consider the need for school bus shelters in open development areas. For conventional subdivisions of land, open development area designations are limited to minor subdivisions. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]

**OPEN SPACE** -- An unoccupied space open to the sky on the same lot with the building.

**OPEN SPACE, USABLE** -- An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, the minimum dimension of which is 40 feet and which is available and accessible to all occupants of the building or buildings on said lot for purposes of active or passive outdoor recreation. Accessory building roof space may be substituted for ground space, provided that such space is available and accessible to all said occupants by means of access other than stairs.

**OVERCOMING SEVERE LIMITATIONS OF SOIL** -- A plan prepared by a licensed professional engineer detailing means by which the severe limitations assigned to the specific soils mapped on the site by the Soil Conservation Service of the United States Department of Agriculture will be satisfactorily overcome for the buildable portion of a single-family lot or for the development area of attached houses and multifamily dwellings and commercial, service and industrial uses, such plans to respect and protect the ecology of the larger area. [Amended 10-24-2002 by L.L. No. 6-2002].

**OVERLAY DISTRICT** -- A district, with supplementary regulations, which is superimposed upon existing use districts. Such districts are mapped and on file with the Town Clerk.

**PARKING SPACE** -- An off-street space available for the parking of one motor vehicle and having an area of not less than nine feet by 18 feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PERFORMANCE STANDARDS** -- Measurable standards imposed by the Town of Warwick Zoning Law to ensure that a proposed use can operate or locate in a particular district without exceeding clearly defined standards of tolerance in areas such as noise, odor, smoke, lighting, glare, dust, vibration, and other potentially objectionable characteristics.

**PERSONAL SERVICE ESTABLISHMENT** -- An establishment primarily engaged in providing services involving the care of a person or personal apparel, such as a beauty parlor, barbershop, tailor or day spa. [Amended 9-11-2003 by L.L. No. 4-2003]

**PORCH** -- A roofed, open gallery attached to the exterior of a building, used as an outdoor living area. Porches may be enclosed by removable screens or storm sashes. [Added 10-24-2002 by

L.L. No. 6-2002]

PORTICO -- See "entry." [Added 10-24-2002 by L.L. No. 6-2002]

PRESUMED BASE DENSITY -- Applies to all single-family subdivisions of land identified in § 164-40M, Table of Use Requirements, as requiring a special use permit (S\*\*) and means the number of single-family dwelling units permitted using a standard method of development density determination that uses fully engineered subdivision plans, including percolation and deep tests for each lot and roadway and drainage designs if applicable. Such plans shall be designed so that no waivers from any provision of the Town of Warwick Code shall be necessary. Presumed base density applies to conventional subdivision plans as well as cluster subdivision plans developed in accordance with § 164-41.1 of the Zoning Law. [Added 9-11-2003 by L.L. No. 4-2003]

PRIVATE LANDING STRIP -- Land devoted to the storage, servicing, takeoff and landing of private, low-altitude aircraft and the storage of fuel for the same.

PROFESSIONAL FORESTER -- One who has a minimum of a Bachelor of Science degree in forestry from a four-year college accredited by the Society of American Foresters.

PROPERTY -- Any lot or parcel of land.

PUBLIC SEWER OR PUBLIC WATER -- Sewage disposal and water supply systems accepted by the Town Board as meeting the standards required for municipal operations.

QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER OR TENANT -- An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the United States Department of Housing and Urban Development (HUD). [Added 9-11-2003 by L.L. No. 4-2003]

QUARRY, SAND PIT OR GRAVEL BANK -- A lot or land or part thereof used for the purpose of extracting stone, sand or gravel as an industrial operation and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

RIDING ACADEMY -- Any establishment where horses are kept for riding, driving or stabling for compensation or incidental to the operation of any club, association, ranch or similar establishment.

ROW HOUSES -- See "dwelling, row" definition above.

SANITARIUM or SANATORIUM -- A private hospital, whether or not such facility is operated for profit.

SHOPPING CENTER -- A structure or structures and customary parking and loading areas providing for a variety of retail commercial establishments managed as a unit and having the

characteristics identified in § 164-46J(73).

**SIGN** - See definitions for signs in § 164-43.1.

**SITE PLAN** -- A rendering, drawing, or sketch prepared in accordance with the specifications of the Zoning Law, and which shows the arrangement, layout and design of a proposed use of a single parcel of land as shown on said plan.

**SKI AREA** -- A commercial establishment where snow skiing facilities are provided and may also include the sale, rental or repair of skis and related equipment, instruction, restaurants, eating and drinking places, nonmotorized recreational uses such as golf, foliage viewing, and mountain biking, together with necessary and accessory buildings and structures, but shall not include any facilities for sleeping accommodation.

**SLOPE OF SITE, MEANS OF MEASURING** -- The vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large in the judgment of the Planning Board and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

**SPECIAL EVENT** -- Regulated by Chapter 115 of the Town Code, Public Assemblies and Entertainment.

**SPECIAL PERMIT USE** -- A land use which is deemed permissible within a given zoning district or districts, but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district. The special use shall, therefore, be subject to approval by the Planning Board in accordance with conditions set forth for such use, as well as other applicable provisions of this chapter. Both general and specific conditions have been established for special uses to ensure that such use is in harmony with the Town Zoning Law and Town of Warwick Comprehensive Plan<sup>EN(6)</sup> and will not adversely affect the neighborhood if the requirements are met.

**STABLE:**

A. **STABLE, PRIVATE** -- An accessory building in which horses are kept for private use by the occupants of the premises and not for hire, remuneration or sale. [Amended 10-24-2002 by L.L. No. 6-2002]

B. **STABLE, PUBLIC** -- A building in which any horses are kept for remuneration, hire or sale.

**STORAGE** -- The holding or safekeeping of goods in a warehouse or other depository to await the happening of some future event or contingency which will call for the removal of the goods.

**STORAGE, BULK** -- The accumulation of wholesale quantities of raw or finished materials (solids, liquids and gases) preparatory to use in a manufacturing process or to retail sales, a permanent reserve being maintained. Junk and scrap materials do not qualify for inclusion in this category.

**STORY** -- That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between any floor and the ceiling next above it.

A. **STORY, HALF** -- Any space partially within the roof framing, where the clear height of not more than 50% of such space between the top of the floor beams and the structural ceiling level is seven feet six inches or more.

B. **STORY, HEIGHT OF** -- The vertical distance from the top surface of the floor to the top surface of the floor next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

**STREET** -- A strip of land, including the entire right-of-way, publicly or privately owned, serving primarily as a means of vehicular, pedestrian and bicycle travel, and furnishing access to abutting properties, which may also be used to provide space for sewers, public utilities, shade trees, sidewalks, and streetscape amenities.

A. **STREET GRADE** -- The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

B. **STREET LINE** -- The dividing line between the street and the lot.

C. **DEAD END OR CUL-DE-SAC** -- A street or portion of a street with only one vehicle traffic outlet. The length of the dead end or cul-de-sac shall be 1/2 of the distance measured from the point of traffic inlet, along the full length of the center line of the traveled way and returning to the point of outlet. [Added 9-11-2003 by L.L. No. 4-2003]

**STRUCTURAL CHANGE** -- See "alterations, structural" definition above.

**STRUCTURE** -- Anything constructed or erected, the use of which requires location on, in or under the ground or attached to something having location on the ground.

**SUMMER COLONIES** -- A group of buildings, which may be cabins or cottages, containing separate living accommodations for nontransient vacation or recreational purposes for families or adults, for hire on a seasonal basis during the nonwinter months.

**TERMINAL VISTA** -- The building or landscape element that is visible at the end of a street, or along the outside edge of a curve, where the view is focused or ends. [Added 10-24-2002 by L.L. No. 6-2002]

TERRACE -- An open, unroofed, and paved space adjacent to a building overlooking a lawn or garden. [Added 10-24-2002 by L.L. No. 6-2002]

THEATER, MOVING-PICTURE -- A building or part of a building devoted to the showing of moving pictures on a paid-admission basis.

A. THEATER, OUTDOOR DRIVE-IN -- An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical products, on a paid-admission basis, to patrons seated in automobiles or on outdoor seats.

THINNING AND CULL REMOVAL -- Forestry operations in commercial and noncommercial stands of trees, designed to provide more growing room for better trees. Involved is the removal of poor quality, low-vigor, injured, diseased or excessively crowded trees.

TIMBER HARVEST -- An operation in which a landowner is paid for trees to be cut down and taken away.

TIMBER STAND IMPROVEMENT OPERATIONS, NONCOMMERCIAL -- An operation which involves the removal of undesirable stems, for which there is no value, from the stand to improve the growth and vigor of remaining stems.

TOPSOIL -- The outer layer of the earth in which vegetable matter may take root and grow.

TOURIST ACCOMMODATIONS:

A. A group of buildings, including either separate cabins or a row of cabins which:

- (1) Contain living and sleeping accommodations for transient occupancy; and
- (2) Have individual entrances.

B. TOURIST HOME -- A dwelling in which no more than four rooms for overnight accommodations are provided or offered for transient guests for compensation, with no meals served on the premises and no more than one nonresident employee.

TOWNHOUSE -- See "dwelling, townhouse" definition above.

TRAILER:

A. TRAILER, CAMPING -- A folding structure mounted on wheels and designed for travel, recreation and vacation use.

B. TRAILER, TRAVEL -- A vehicular, portable structure built on a chassis, designed as a temporary one-family dwelling for travel, recreation and vacation, having a body length not exceeding 40 feet.

C. TRAILER, OFFICE -- A vehicular, portable structure built on a chassis designed as a

temporary facility for such uses as banking, on-site construction supervision, and other office or clerical uses.

**TRANSPORTATION TERMINAL** -- Any premises used for the garaging or parking of public transportation vehicles and the loading and unloading of passengers.

**TREE PLANTING** -- The planting of shade and ornamental trees, both deciduous and evergreen, of nursery stock guaranteed to survive one planting season, the caliper of all such trees to be at least one and one-half inches in diameter.

**USE** -- The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

- A. **USE, ACCESSORY** -- A use customarily incidental and subordinate to the principal use of a building and located at the same lot with such principal use of a building. Except for uses accessory to a dwelling unit, any use which is accessory to a special permit use shall also be a special permit use. Any use which is accessory to a permitted use shall also be a permitted use.
- B. **USE, NONCONFORMING** -- The lawful occupancy of a structure or land by a use or activity which was lawful at the time of enactment of this chapter or its predecessor ordinances and laws or any amendment to this chapter which does not conform to the regulations of the district or zone in which it is situated.
- C. **USE, PRINCIPAL** -- The main or principal use of the lot. Except for mixed uses and multiple retail uses permitted in the Town's Traditional Neighborhood and Designed Shopping Districts, only one principal use is permitted per lot, all other uses, except special uses and permitted accessory uses, being excluded.
- D. **USE, SPECIAL** -- A use which is deemed desirable for the public welfare within a given district or districts, but which is potentially incompatible with permitted and accessory uses provided therein. A special use shall be subject to authorization and plan approval by the Planning Board, pursuant to the provisions of § 164-46 of this chapter.

**WAREHOUSE** -- A building or part of a building for storing of goods, wares and merchandise, whether for the owner or for others, and whether it is a public or private warehouse.

**WAREHOUSE, SELF-STORAGE** -- A building consisting of individual, small, self-contained units that are leased or owned for the storage of business or household goods.

**WAY** -- A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

**YARD** -- An unoccupied space, open to the sky, on the same lot with a building or structure.



- A. YARD, FRONT -- An open, unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.
- B. YARD, REAR -- An open, unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot or the center line of the alley, if there be an alley, and the rear line of the building.
- C. YARD, SIDE -- An open, unoccupied space on the same lot with a main building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. If no front yard is required, the front boundary of the side yard shall be the front line of the lot, and if no rear is required, the rear boundary of the side yard shall be the rear line of the lot.

---

## **ARTICLE III, Zoning Districts and Map**

---

### **§ 164-30. Districts established.**

For the purposes of promoting the public health, safety, and general welfare of the Town of Warwick, the Town is hereby divided into the following types of districts:

<b>District Label</b>	<b>Zoning District</b>
AI	Agricultural Industry
RU	Rural
MT	Mountain
CO	Conservation
SL	Suburban Residential Low-Density
SM	Suburban Residential Medium-Density
LB	Local Hamlet Business
OI	Office and Industrial Park
DS	Designed Shopping
SH-F	Senior Housing Floating
TN-O	Traditional Neighborhood Overlay
AP-O	Agricultural Protection Overlay
AQ-O	Aquifer Protection Overlay
RL-O	Ridgeline Overlay

**§ 164-31. District purposes.**

- A. AI. The purpose of the Agricultural Industry District is to support agriculture and compatible industries on the black dirt and surrounding soils.
- B. RU. The purpose of the Rural District is to maintain the Town's historic pattern of rural and agricultural settlements, characterized by large expanses of open space and unspoiled views from the road, a scattering of residences, farms, and small businesses, and clustered development surrounded by open space.
- C. MT. The purpose of the Mountain District is to protect the scenic beauty of Warwick's mountainous lands by restricting development that would mar the scenic landscapes of the Town's higher elevations and by establishing a density of development appropriate to the thin and fragile soil conditions found there.
- D. CO. The purpose of the Conservation District is to recognize the environmental sensitivity associated with Mounts Adam and Eve, Warwick, Taylor and Bellvale Mountains, the Appalachian Trail, and significant freshwater wetlands and to restrict large-scale development affecting such areas.
- E. SL. The purpose of the Suburban Residential Low-Density District is to maintain the character of existing suburban density residential developments and to allow a limited extension of suburban growth patterns. The SL District is one of three districts designated to receive developments rights, transferred from the AP-O District.
- F. SM. The purpose of the Suburban Residential Medium-Density District is to allow for the development and redevelopment of residential parcels where central water and sewer services are available and to allow a limited extension of such suburban growth patterns, provided water and sewer services are constructed by developers. The SM District is one of three districts designated to receive developments rights, transferred from the AP-O District.
- G. LB. The purpose of the Local Hamlet Business District is to encourage increased pedestrian-oriented commercial and retail activity in the Town's hamlets and create a location where greater flexibility is provided for mixed use of commercial and residential uses within individual structures to provide a variety of housing options and lower business costs. The LB District is one of three districts designated to receive developments rights, transferred from the AP-O District.
- H. OI. The purpose of the Office and Industrial Park District is to allow for the continuation of viable agricultural uses and the development of planned office and light industrial uses, such as the airport and light industry, that might negatively affect residential areas and are best

segregated from other land uses.

- I. DS. The purpose of the Design Shopping District is to allow community-scale commercial uses that rely heavily on automobile and truck access and that would not be compatible with a traditional hamlet neighborhood area.
- J. SH-F. The purpose of the Senior Housing Floating District is to enable the Town Board to permit, on a case-by-case basis, senior housing that satisfies the special needs and habits of senior citizens in locations where they will not detract from surrounding land uses.  
[Amended 1-24-2002 by L.L. No. 2-2002]
- K. TN-O. The purpose of the Traditional Neighborhood Overlay District is to maintain the traditional scale, density and character of the areas surrounding the Town's villages and hamlets. The TN-O District encourages development of fully integrated, mixed-use pedestrian-oriented neighborhoods designed to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. Use of the overlay district in areas long ago designated for more compact development will allow for the creation of receiving zones for development rights transferred from the Town's AP-O District.
- L. RL-O. The purpose of the Ridgeline Overlay District is to establish clear guidelines for future development and protection of the Town's ridgelines, which are found at higher elevations and which comprise the most scenic and environmentally sensitive areas of the Town.
- M. AP-O. The purpose of the Agricultural Protection Overlay District is to protect and maintain the Town's farmland for present and future agricultural uses.
- N. AQ-O. The purpose of the Aquifer Protection Overlay District is to protect, preserve, and maintain the quality and quantity of the Town's irreplaceable groundwater resources.
- O. LC. The purpose of the Land Conservation District is to recognize and provide for the preservation of permanent open space and limited development on lands under the ownership or control of the Palisades Interstate Park Commission and the National Park Service. Use of the remaining private lands within the LC District are subject to the requirements of the OI and CO Districts and all other applicable regulations. [Amended 10-24-2002 by L.L. No. 6-2002]

#### **§ 164-32. Zoning Map.**

- A. Designation. The above-cited districts are bounded as shown on a map entitled "Zoning Map of the Town of Warwick," adopted herewith and certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of this chapter.<sup>EN(7)</sup>

- B. Official copy. Said map, indicating the latest amendments, shall be kept up-to-date in the office of the Town Clerk for the use and benefit of the public.

**§ 164-33. Interpretation of district boundaries.**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Following center lines. Where district boundaries are indicated as approximately following the center lines of streets, parkways, waterways or railroad right-of-way lines, the district boundaries shall be construed to coincide with the center lines of streets, parkways, waterways or railroad right-of-way lines, or such lines extended.
- B. Following lot lines. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Parallel to center lines. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.
- D. Water bodies. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the Town of Warwick, unless otherwise indicated.
- E. Lots in two districts. Where a district boundary line divides a lot in a single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided that the lot has frontage on the street in the less restricted district. For the purposes of this section, the more restricted district shall be deemed that district subject to regulations which:
  - (1) Prohibit the use intended to be made of said lot; or
  - (2) Require higher standards with respect to setbacks, coverage, yards, screening, landscaping and similar requirements.
- F. District lines within 30 feet of lot lines. In all cases where a district boundary line is located not farther than 30 feet away from a lot line of record, such boundary line shall be construed to coincide with such lot lines.

### **§ 164-34. Overlay and other district regulations.**

In addition to the zoning districts, this chapter also establishes overlay districts which add additional requirements to protect identified natural and cultural resources. These districts are described in Article IV. In addition, housing for senior citizens has been addressed by this chapter through a floating zone. The Senior Housing Floating Zone has not been mapped. This district is established through the zoning amendment process enumerated in Article VI and as further described in § 164-49.1.

---

## **ARTICLE IV, Regulations**

---

### **§ 164-40. General regulations.**

Following the effective date of this chapter:

- A. Building and use requirements. No building shall be erected, moved, altered, rebuilt or enlarged nor shall any land or building be used, designed or arranged to be used for any purpose or in any manner except in conformity with all regulations, requirements and/or restrictions specified in this chapter for the district in which such building or land is located. Unless specifically permitted in its own right, permitted as an accessory use or permitted upon special application to the Planning Board, a use is prohibited.
- B. Yard requirements. No yard or open space required in connection with a building or use shall be considered as providing a required open space for any other building on the same or any other lot.
- C. Lot requirements. No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the remaining lot comply with all requirements prescribed by this chapter for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this chapter.
- D. Previously issued permits. Nothing contained in this chapter shall require any changes in the plans, construction or designated use of a building complying with existing law, a permit for which shall have been duly issued prior to the date of this chapter and the ground-story framework of which, including the second tier of beams, shall have been completed, in accordance with such plans as have been filed, within two years from the date of the passage of this chapter.
- E. Referral to Orange County. Should any proposed zoning amendment, site plan, special use

permit or zoning variance application consist of or include any of the following thresholds, the appropriate agency (Planning Board, Town Board or Zoning Board of Appeals) shall, prior to final action by said agency, refer the proposal to the Orange County Planning Department in accordance with §§ 239-1, 239-m and 239-n of Article 12-B of the General Municipal Law, and the agreement between Orange County and the Town of Warwick, on the form entitled "County Zoning Referral." Said thresholds include the following items:

- (1) Adoption of a municipal land use plan or zoning regulation.
- (2) Changes in the allowable uses and densities within any land use category or zoning district affecting 25 or more acres of land.
- (3) Granting of use variances.
- (4) Site plans of 50 or more residential units.
- (5) Site plans of nonresidential facilities with more than 100,000 square feet of gross floor area.
- (6) Structure exceeding 100 feet above original ground level.
- (7) Placement of nonfarm development on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located in an agricultural district which would require the preparation of an agricultural data statement and which would involve one or more of the other referral thresholds listed in this subsection.
- (8) Actions (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site that has been proposed by the Committee on Registers for consideration by the New York State Board on Historic Preservation for a recommendation to the State Historic Officer for nomination for inclusion in said National Register.
- (9) Subdivisions of 50 or more lots.
- (10) Actions which take place wholly or partially within or substantially contiguous to any critical environmental area designated by the state, county or by the Town of Warwick pursuant to the implementing of regulations of the Environmental Conservation Law found at 6 NYCRR 617.

F. Zoning schedules. The general requirements affecting the use of buildings, structures and land use for each of the zoning districts established by § 164-30 are hereby established and set forth in the Table of Use Requirements and the Table of Bulk Requirements,<sup>EN(8)</sup> which together compose the zoning schedules which follow as Subsections M and N respectively.

- G. Utilization of Table of Use Requirements. The Table of Use Requirements<sup>EN(9)</sup> that follows indicates allowable uses in the districts shown. See Article II for definitions of use categories. Uses that are not listed are prohibited. The meaning of the symbols in the Table of Use Requirements is as follows:
- P Designates a use permitted by right. Usually requires a building permit and/or a certificate of occupancy from the Code Enforcement Officer. It may require a special use permit and/or site plan approval by the Planning Board under specific circumstances.
  - S Designates a use allowed by special use permit, granted by the Planning Board unless otherwise indicated.
  - A Designates a use accessory to a use, whether permitted by right or as a special permit use, and is permitted only in conjunction with the use identified in the Table.
- H. Reference to Bulk Table.<sup>EN(10)</sup> In the Table of Use Requirements there appears a lower case letter or letters designating a use group for reference to the Table of Bulk Requirements. Accessory uses do not necessarily have respective bulk requirements; and the requirements pertaining to the principal use shall apply.
- I. Prohibited uses. Any use not identified in the Table of Use Requirements shall be deemed prohibited. Any use indicated as a special permit use by an "S" shall be deemed prohibited unless approved in a manner specified by this chapter. [Amended 9-11-2003 by L.L. No. 4-2003]
- J. Generic descriptions. Where permitted or special permit uses are identified by generic words or descriptions, the Planning Board shall determine whether a specific use shall be construed to be part of such generic class. In making such determination, the Planning Board shall consider to what extent the proposed use is similar to the class of use indicated in the Table of Use Requirements. If a use is specifically listed elsewhere in the Table of Use Requirements, it is excluded from a generic classification. [Amended 9-11-2003 by L.L. No. 4-2003]
- K. Bulk Tables. The general requirements relating to the arrangement of buildings, structures and uses occupying a lot for the zoning districts established in § 164-30 are hereby established. The accompanying table, entitled "Table of Bulk Requirements," shall be part of this chapter, is referred to herein as the "Bulk Table" and shall set forth the minimum requirements relating to density and other dimensionable requirements of this chapter.
- L. Supplemental requirements. Other sections herein contain supplemental requirements applying to bulk, setback and coverage of specified uses. Readers are encouraged to consult all sections of the chapter to determine applicable requirements.

- M. Table of Use Requirements. The Table of Use Requirements is found at the end of this chapter.
- N. Table of Bulk Requirements. The Table of Bulk Requirements is found at the end of this chapter.

**§ 164-41. Supplementary regulations for residence districts.**

The provisions of this chapter applying to residence districts shall be subject to such exceptions, additions or modifications as are herein provided by the following supplementary regulations:

A. Accessory buildings.

- (1) Location. An accessory building or structure such as a deck, pool, or dock, shall be located within and/or outside the parameters of the required side yard or rear yard, provided that: [Amended 10-24-2002 by L.L. No. 6-2002]
  - (a) Such building or garage shall not exceed 1,200 square feet in floor area nor be more than 48 feet in greatest median dimension, longitudinally or transversely.
  - (b) Such building or garage shall be set back five feet from any lot line and, if separated, shall not be located less than 10 feet from the principal building. However, in those cases where the edge of a lake forms a yard lot line, accessory buildings located in such yards need not conform to the required five-foot setback.
  - (c) All such buildings or garages, in the aggregate, shall not occupy more than 30% of the area of the required rear or side yard.
- (2) Pairing. Accessory buildings constructed at the same time may be located in pairs or groups in the required rear or side yard along the common side lot line or rear lot line of contiguous lots.
- (3) Height. An accessory building shall conform to the height regulations for principal buildings. Agricultural buildings may exceed height regulations of other buildings, but in no case shall exceed 80 feet in height.
- (4) Front yard. No accessory building or structure, such as a deck, pool, or dock, shall be located within the minimum required front yard. [Amended 10-24-2002 by L.L. No. 6-2002]
- (5) Temporary sales office. For each subdivision that has received final plat approval by the Planning Board, there may be located a temporary office restricted to the sales of the dwellings within said approved subdivision plat. Said office may be situated within a



model home or within a separate temporary office meeting the bulk regulations specified for the dwellings in said subdivision. Said office shall be permitted only during the period of active sales, but in no case longer than one year. The Planning Board may extend this period up to one additional year whenever it deems that the circumstances warrant such extension.

B. Corner lots.

- (1) Visibility. Visibility at intersections shall be in accordance with § 137-19I of Chapter 137, Subdivision of Land.
- (2) Yard designation. On a corner lot, front yards are required on both street frontages, and one yard other than the front yards shall be deemed to be a rear yard and the other or others shall be deemed to be side yards. The minimum district requirements for each shall be complied with.

C. Exceptions to bulk requirements.

- (1) Depth. The required lot depth at any point may be decreased by 25% if the median lot depth conforms to the minimum depth requirement.
- (2) Width. The required lot width along the public road frontage may be decreased by 25% if the median lot width conforms to the minimum width requirement.
- (3) Height.
  - (a) Height exceptions. The height limitation of this chapter shall not apply to church spires, belfries, cupolas, penthouses and domes not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks, bulkheads and similar features and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area 20% of the ground floor area of the building.
  - (b) Ornamental features. The provisions of this chapter shall not apply to prevent the erection, above the building height limit, of a parapet wall or cornice for ornament (and without a window) extending above such height limit not more than five feet.
- (4) Yards.
  - (a) Terraces. A terrace shall not be considered in the determination of yard sizes or lot coverages; provided, however, that such terrace is unroofed and without walls, parapets or other forms of enclosure. Such terrace, however, may have an open guard railing not over three feet high and shall not project into any yard to a point closer than four feet to any lot line. [Amended 10-24-2002 by L.L. No. 6-2002]

- (b) Porches. Any open or enclosed porch shall be considered a part of the building in the determination of the size of yard or lot coverage.
- (c) Projecting architectural features. The space in any required yard shall be open and unobstructed except for the ordinary projection of windowsills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than three feet into any required yard.
- (d) Bay windows. Bay windows, including their cornices and eaves, may project into any required yard not more than three feet; provided, however, that the sum of such projections on any wall does not exceed 1/3 of the length of said wall.
- (e) Fire escapes. Open fire escapes may extend into any required yard not more than four feet six inches.
- (f) Fences or walls not over four feet in height may be erected anywhere on the lot, except as set forth in § 164-41B(1) of this section, which limits visibility at intersections. Fences or walls with a height in excess of four feet shall conform to the requirements set forth herein for buildings. Fences or walls not over six feet in height may be erected, provided that the fence is beyond the required front yard setback. Paved terraces, steps and walks (other than such as are needed for access to the buildings on the lot) shall not project within 15 feet of a street line or four feet of a property line. [Amended 10-24-2002 by L.L. No. 6-2002]
- (g) Entries and porticos. A roofed-over but unenclosed projection in the nature of an entry or portico not more than eight feet wide and extending not more than six feet out from the front wall of the building shall be permitted to encroach on a required front yard. In computing the median setback in § 164-41C(4)(h) of this section, the presence of such entries and porticos shall be ignored.
- (h) Existing setback. If two or more existing dwellings are located within 200 feet on each side of a proposed dwelling, on the same side of the street and within the same block and same district, said proposed dwelling need not have a front yard greater than the median setback of all existing dwellings so located.
- (i) Abutting a lake. No side or rear yard is required where such abuts a lake. (However, the required minimum lot area shall not be decreased.) In the event that a yard abutting a lake is provided, it shall be at least five feet.

D. Residential development of lands within 2,000 feet of a New York State certified Agricultural District. Recognizing the potential incompatibility of certain agricultural procedures (namely, chemical spraying and dusting) and residential development, the following provisions shall be adhered to:

- (1) All deeds of new residential units shall contain references to notes that shall be placed

on the subdivision plat relative to the hazards and nuisances (noise, odors, hazardous chemical use, etc.) to which residents of such dwelling unit willingly subject themselves.

- (2) Unrestricted flow of stormwater runoff from such developed property will not be allowed to drain directly into black-dirt agricultural operations. Site plans and subdivision plats must include provisions for retention/detention ponds or infiltration basins to contain such runoff.
- (3) Buffers adjacent to actively farmed land shall be established in residential subdivisions. Said buffer strips, when required shall be no less than 30 feet in width and may be required up to a width of 100 feet, depending upon the type of agriculture or farm use, the topography and the proposed design and planting of such buffer. It shall be the responsibility of the applicant, subject to approval by the Planning Board, to provide an effective buffer that will reasonably protect adjacent residential living areas from agricultural procedures.

#### **§ 164-41.1. Cluster subdivisions.**

A. Purposes. A subdivision is considered a cluster subdivision when lots and dwelling units are clustered closer together than otherwise possible in a conventional subdivision and where open space is created on the remainder of the property without increasing density for the tract as a whole. Cluster subdivisions are authorized under § 278 of the New York State Town Law, are also referred to as conservation subdivisions or open space subdivisions, and are encouraged herein. In conformance with the Town's Comprehensive Plan,<sup>EN(11)</sup> the purposes of cluster subdivision are as follows:

- (1) To provide greater economy, efficiency and convenience in the siting of services and infrastructure, including the opportunity to reduce road lengths, utility runs, and the amount of paving required;
- (2) To conserve important open lands, including those areas containing unique and sensitive natural features, such as steep slopes, floodplains, stream corridors, and wetlands by permanently setting them aside from development;
- (3) To protect areas of the Town with productive agricultural soils for continued or future agricultural use, by conserving blocks of land large enough to allow for efficient farm operations;
- (4) To provide multiple options for landowners to minimize impacts on environmental resources and natural or cultural features such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings and sites, and fieldstone walls;
- (5) To create neighborhoods with direct visual access to open land, with amenities in the

form of neighborhood open space, with a strong neighborhood identity;

- (6) To provide for a balanced range of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups and residential preferences, so that Warwick's population diversity may be maintained;
- (7) To provide a reasonable setback for new development adjacent to lands in active farming due to potential incompatibility with nonfarm uses;
- (8) To implement policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Town's Comprehensive Plan, including provisions to create a greenway trail system and other areas for active or passive recreational use for the benefit of present and future residents;
- (9) To conserve scenic views and elements of the Town's rural character, and to minimize perceived density, by limiting views of new development from existing roads; and
- (10) To promote development in harmony with the goals and objectives of the Town's Comprehensive Plan;<sup>EN(12)</sup>
- (11) To mitigate identified environmental impacts under the State Environmental Quality Review Act (SEQR).

B. Authorization. [Amended 1-24-2002 by L.L. No. 2-2002]

- (1) Authorization is hereby granted to the Planning Board to modify applicable provisions of this Zoning Law as to lot size, lot width, depth, yard, and other applicable requirements of this chapter, Chapter 137, Subdivision of Land, and Chapter A168, Street Specifications, (in consultation with the Commissioner of Public Works), as well as type of residential use, subject to the purposes, standards and procedures contained herein, so as to accommodate cluster subdivisions. At the request of the applicant, an optional preapplication conference for application information may be scheduled with the Town Planning Board Chairperson or a representative of the Planning Board. If sufficiently complex, it may be desirable for the applicant to request placement on the agenda of a Planning Board meeting for an informational conference. The applicant shall make a deposit, in accordance with the Town's Fee Schedule,<sup>EN(13)</sup> sufficient to cover the preapplication expenses required for review by the Town's professional engineer, planner and attorney. Neither the applicant nor the Planning Board shall be bound by the exchange of ideas during the preapplication conference. [Amended 10-24-2002 by L.L. No. 6-2002]
- (2) The Planning Board may require cluster subdivision where it finds any one of the following elements present, as determined through review of an Existing Resources Map and Site Analysis Plan as described herein, justifying conservation of natural, cultural or

historic resources, scenic features, or preservation of neighborhood character.

- (a) Slopes: slopes of 15% or greater on 25% or more of the property.
- (b) Water resources: wetlands, aquifer and aquifer recharge areas, municipal water supply watershed areas, floodprone areas as shown on Federal Emergency Management Agency maps, New York State protected streams, or a Town-designated protection area.
- (c) Agricultural lands: active farmland within a New York State certified agricultural district, lands within 2,000 feet of a New York State certified agricultural district, or soils classified in Groups 1 to 4 of the New York State Soil Classification System.
- (d) Community water and/or sewer: sites where community sewer, community water, or community water and sewer are available or planned.
- (e) Critical environmental areas: lands within or contiguous to a critical environmental area designated pursuant to Article 8 of the Environmental Conservation Law.
- (f) Designated open space areas: lands contiguous to publicly owned or designated open space areas, privately owned designated natural areas, or areas identified on the Town of Warwick Open Space Index.
- (g) Historic structures and sites: historic structures or areas of national, state or local importance.
- (h) Scenic viewsheds and special features: sites bordering designated state, county or Town scenic roads, or special features identified in the Town's Comprehensive Plan.
- (i) Significant natural areas and features: areas with rare vegetation, significant habitats, or habitats of endangered, threatened or special concern species as determined by the New York Department of Environmental Conservation (Natural Heritage Program) or the Town Conservation Board, mature forests over 100 years old, locally important vegetation (such as trees over 24 inches in diameter at breast height), or unique natural or geological formations.
- (j) Trails: existing and potential trails, bikeways, and pedestrian routes of Town, state or county significance.
- (k) Recreation: lakes, ponds or other significant recreational areas, or opportunities or sites designated in the Town's Comprehensive Plan.
- (l) Applicant request: on lands where the applicant has requested approval of a cluster subdivision.

C. Permitted, accessory and special permit uses.

- (1) Permitted, accessory and special permit uses within a cluster subdivision shall be the same as those otherwise allowed in the zoning district in which the development is located. As an alternative to single-family detached dwellings, townhouse style architecture is also permitted in cluster subdivisions, provided common areas are in condominium or cooperative ownership and subject to review by the Town Attorney or Deputy Town Attorney.
- (2) Open space land, comprising a portion of the cluster subdivision, as defined in § 164-41.1J.

D. Density. The permitted number of dwelling units shall not exceed the number of units that, in the Planning Board's judgment, would be permitted if the land were subdivided into lots fully conforming to the minimum lot size and density requirements of this chapter applicable to the district or districts in which such land is situated and conforming to all other requirements of the Town of Warwick Code. Exceptions to the density requirements will be made in the TN-O District under the Town of Warwick transfer of development rights (TDR) and zoning incentives for open space preservation programs described in §§ 164-47.4 and 164-47.6. To determine density, the applicant shall submit a yield plan, designed so that no waivers from any provision of the Town of Warwick Code shall be necessary and meeting the following requirements: [Amended 9-11-2003 by L.L. No. 4-2003]

- (1) Yield plans shall be prepared as a conceptual sketch plan in accordance with the minimum lot sizes and other development standards for the zoning district involved.
- (2) Yield plans shall show proposed lots, streets, rights-of-way, and other pertinent features.
- (3) Yield plan density shall be based upon an analysis conducted in accordance with the Town's Environmental Control Formula contained in § 164-41.3. (See Table ECF.)<sup>EN(14)</sup>
- (4) Nothing herein shall preclude an applicant from submitting a fully engineered yield subdivision plan that meets all of the requirements of this chapter, Chapter 137, Subdivision of Land, and Ch. A168, Street Specifications, to determine lot yield.
  - (a) Fully engineered yield subdivision plans shall include percolation and deep tests for each lot, conceptual drainage designs, and shall be designed so that no waivers from any provision of the Town of Warwick Code shall be necessary.
  - (b) Where active agricultural lands are proposed for continuation within the open space lands, soils testing may be reduced for homogeneous soils that are classified within Soil Group 1 - 4 of the New York State Land Classification System.
  - (c) Fully engineered and environmental control formula derived yield subdivision plans

shall be realistic and must not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional subdivision. If necessary, the Planning Board may require the applicant to provide an analysis of potential compatibility or incompatibility of the yield plan with the Standards for Issuance of Permits and Letters of Permission found in 6 NYCRR 663.5 when sites involve state protected freshwater wetlands or other resources for which discretionary permits would be required.

- E. Cluster subdivision design process. Once the maximum permissible number of lots in a cluster subdivision has been established, the next step is to create a cluster design layout. This layout shall include an identification of primary and secondary conservation lands within a parcel(s), which includes those elements most highly valued by the community. Illustrations of the design process are provided herein to assist applicants and landowners.
- (1) Sketch plan. A sketch plan shall be submitted by the applicant as a diagrammatic basis for informal discussions with the Planning Board regarding the design of a proposed subdivision or land development. The purpose of a sketch plan is to facilitate an expedient review of proposed new subdivisions in conformance with this chapter and the Comprehensive Plan.<sup>EN(15)</sup> Sketch plan submission is a way to help applicants and Planning Board members develop a better understanding of the property and to help establish an overall design approach that respects its special or noteworthy features, while providing for the density permitted under this chapter. To provide a full understanding of the site's potential and to facilitate the most effective exchange with the Planning Board, the sketch plan shall include the information listed below. Many of these items can be taken from the existing resources and site analysis plan, a document that must in any case be prepared and submitted no later than the date of the site inspection, which precedes the preliminary plan.
- (a) The information required by § 137-26A of Chapter 137, Subdivision of Land;
  - (b) One-hundred-year floodplain limits, and approximate location of state and/or federal wetlands, if any;
  - (c) Topographical and physical features, including existing structures, wooded areas, hedgerows and other significant vegetation, steep slopes (over 15%), soil types, ponds, streams within 200 feet of the tract, and existing rights-of-way and easements;
  - (d) Schematic layout indicating a general concept for land conservation and development (bubble format is acceptable for this delineation of conservation areas); and
  - (e) In the case of land development plans, proposed general layout, including building

locations, parking lots, and open spaces.

- (f) Site Context Map. A map showing the location of the proposed subdivision within its neighborhood context shall be submitted. For all sites, such maps shall be at a scale not less than one inch equals 1,000 feet, and shall show the relationship of the subject property to natural and man-made features existing within 2,000 feet of the site. The features that shall be shown on Site Context Maps include topography and streams (from USGS maps), state and/or federal wetlands, woodlands over 1/2 acre in area (from aerial photographs), ridge lines, public roads and trails, utility easements and rights-of-way, public land, and land protected under conservation easements. [Amended 1-24-2002 by L.L. No. 2-2002; 10-24-2002 by L.L. No. 6-2002]
- (2) Preliminary plan documents. A preliminary cluster subdivision plan shall consist of and be prepared in accordance with the following requirements, which are designed to supplement and, where appropriate, replace the requirements of Chapter 137 of the Warwick Code:
  - (a) Preliminary plan. The submission requirements for a preliminary plan include the requirements for sketch plans listed in § 164-41.1E(1) above; and
  - (b) The submission requirements of § 137-27 or 137-28 of Chapter 137, Subdivision of Land; and
  - (c) Existing Resources and Site Analysis Plan. [Amended 1-24-2002 by L.L. No. 2-2002]
    - [1] For all cluster subdivisions (except those in which all proposed lots are to be ten or more acres in area), an Existing Resources and Site Analysis Plan shall be prepared to provide the developer and the Planning Board with a comprehensive analysis of existing conditions, both on the proposed development site and within 500 feet of the site. The Existing Resources and Site Analysis Plan becomes the basis for the four-step design process. Conditions beyond the parcel boundaries may be described on the basis of existing published data available from governmental agencies, and from aerial photographs. [Amended 9-11-2003 by L.L. No. 4-2003]
    - [2] The Planning Board shall review the Plan to assess its accuracy and thoroughness. Unless otherwise specified by the Planning Board, such plans shall be prepared at the scale of one inch equals 100 feet or one inch equals 200 feet, whichever would fit best on a single standard size sheet. The following information shall be included in this plan: [Amended 10-24-2002 by L.L. No. 6-2002]



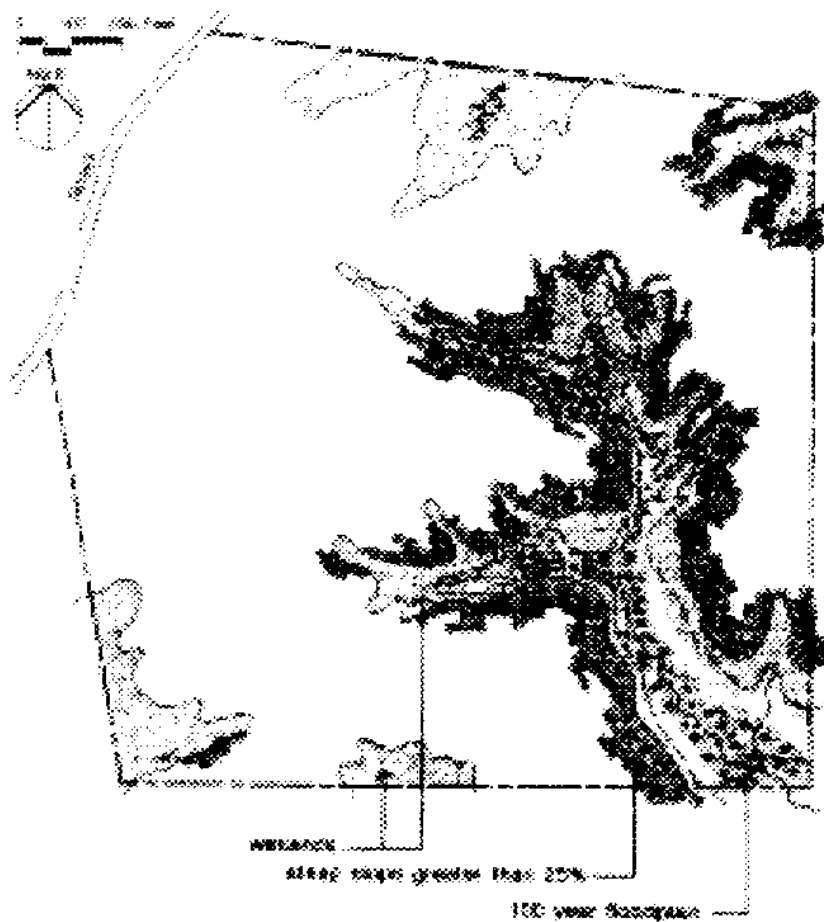
- [a] Topography, the contour lines of which shall be at two-foot intervals, determined by photogrammetry (although ten-foot intervals are permissible beyond the parcel boundaries, interpolated from published USGS maps). The determination of appropriate contour intervals shall be made by the Planning Board, which may specify greater or lesser intervals on exceptionally steep or flat sites. Slopes between 15% and 25% and exceeding 25% shall be clearly indicated. Topography for major subdivisions shall be prepared by a professional land surveyor or professional engineer from an actual field survey of the site or from stereoscopic aerial photography and shall be coordinated with official USGS benchmarks.
- [b] The location and delineation of ponds, streams, and natural drainage swales as well as the one-hundred-year floodplains and wetlands, as defined by the State of New York and the US Army Corps of Engineers.
- [c] Vegetative cover conditions on the property according to general cover type, including cultivated land, permanent grass land, old field, hedgerow, woodland and wetland, isolated trees with a caliper in excess of 12 inches, the actual canopy line of existing trees and woodlands. Vegetative types shall be described by plant community, relative age and condition.
- [d] Soil series, types and phases, as mapped by the U.S. Department of Agriculture, Natural Resources Conservation Service in the Orange County Soil Survey, and accompanying data published for each soil relating to its suitability for construction (and, in unsewered areas, for septic suitability). Classify soils into the soil groups identified in the Environmental Control Formula found in § 164-41.3. [Amended 9-11-2003 by L.L. No. 4-2003]
- [e] Ridgelines and watershed boundaries shall be identified.
- [f] A viewshed analysis showing the location and extent of views into the property from public roads and from public parks, public forests, and state game lands.
- [g] Geologic formations on the proposed development parcel, based on available published information or more detailed data obtained by the applicant.
- [h] The location and dimensions of all existing streets, roads, buildings, utilities and other man-made improvements.
- [i] Locations of all historically significant sites or structures on the tract and on any abutting tract.

[j] Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.) or proposed on the Town of Warwick Greenway Trail map.

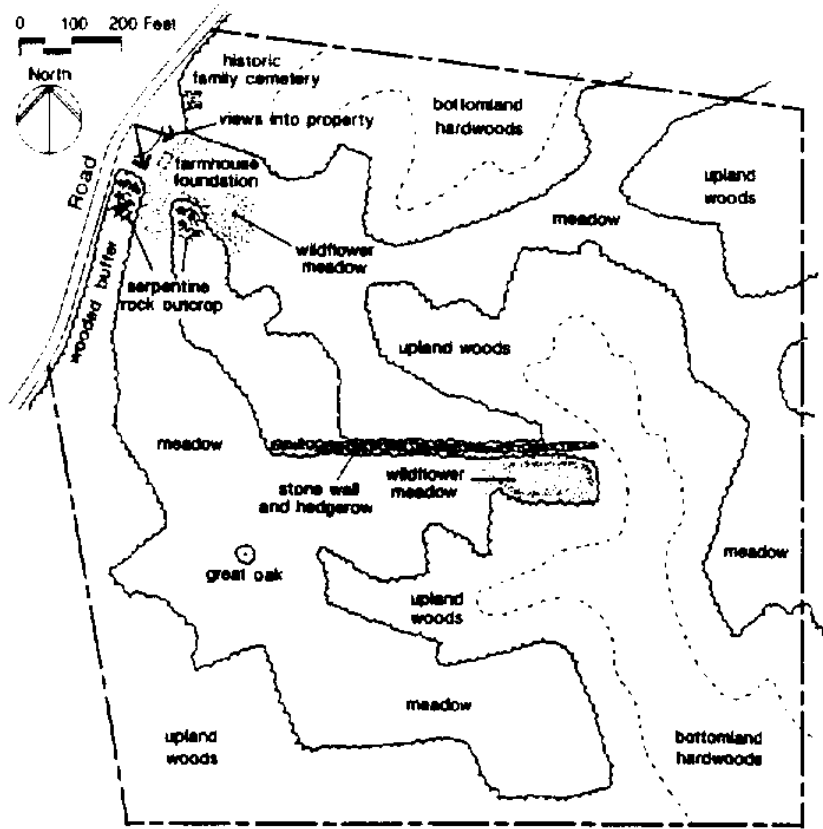
[k] All easements and other encumbrances of property which are or have been filed of record with the Orange County Clerk's Office shall be shown on the plan.

(3) Four-step design process for cluster subdivisions. All sketch plans shall include Step 1 of the four-step design process. All preliminary plans shall include documentation of a four-step design process in determining the layout of proposed open space lands, house sites, streets and lot lines, as described below. [Amended 1-24-2002 by L.L. No. 2-2002]

(a) Step 1: Delineation of open space lands. Proposed open space lands shall be designated using the Existing Resources and Site Analysis Plan as a base map and complying with § 164-41.1E(2)(c) and Chapter 137 of the Town Code, dealing with resource conservation and greenway delineation standards. The Town's Comprehensive Plan<sup>EN(16)</sup> and Open Space Index shall also be considered. Primary conservation areas shall be delineated comprising floodplains, wetlands and slopes over 25% as shown by example on Figure 1a. Secondary conservation areas shall be delineated comprising the resources listed in § 164-41.1E(2)(c) and as shown by example on Figure 1b. The applicant shall prioritize natural and cultural resources on the tract in terms of their highest to least suitability for inclusion in the proposed open space, in consultation with the Planning Board to create a prioritized list of resources to be conserved. On the basis of those priorities and practical considerations given to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, secondary conservation areas shall be delineated (See Figure 1b.) to meet at least the minimum area percentage requirements for open space lands and in a manner clearly indicating their boundaries as well as the types of resources included within them. Calculations shall be provided indicating the applicant's compliance with the acreage requirements for open space areas on the tract. The result is shown on Figure 1c, Potential Development Areas.<sup>EN(17)</sup> [Amended 10-24-2002 by L.L. No. 6-2002]



1a. Primary Conservation Areas

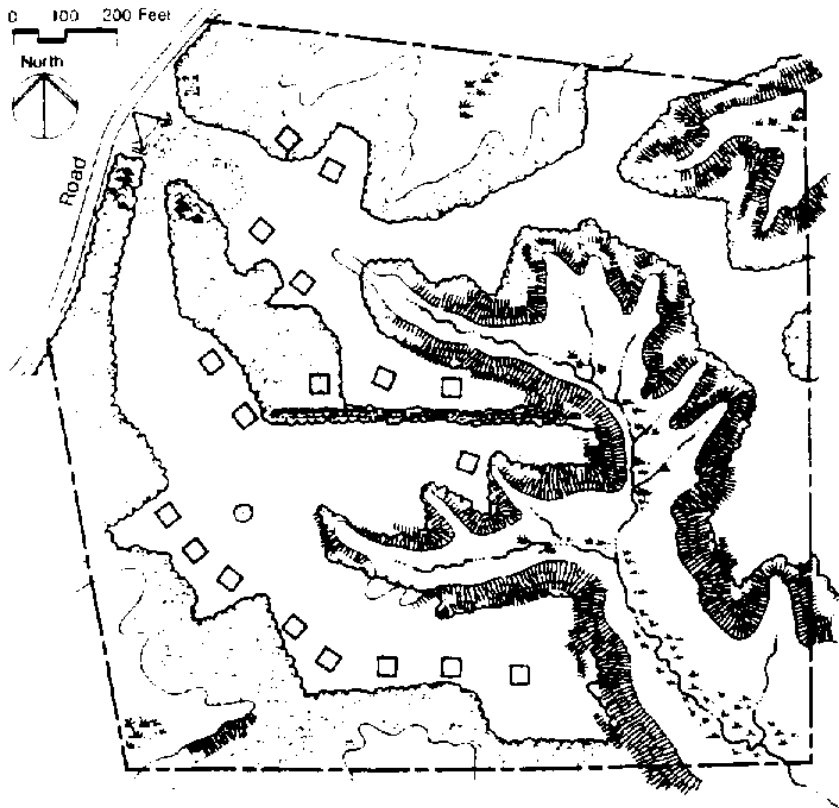


1b. Secondary Conservation Areas



### 1c. Potential Development Areas

- (b) Step 2: Location of house sites. Potential house sites shall be tentatively located, using the proposed open space lands as a base map as well as other relevant data on the Existing Resources and Site Analysis Plan such as topography and soils. House sites should generally be located not closer than 100 feet from primary conservation areas and 50 feet from secondary conservation areas, taking into consideration the potential negative impacts of residential development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences.



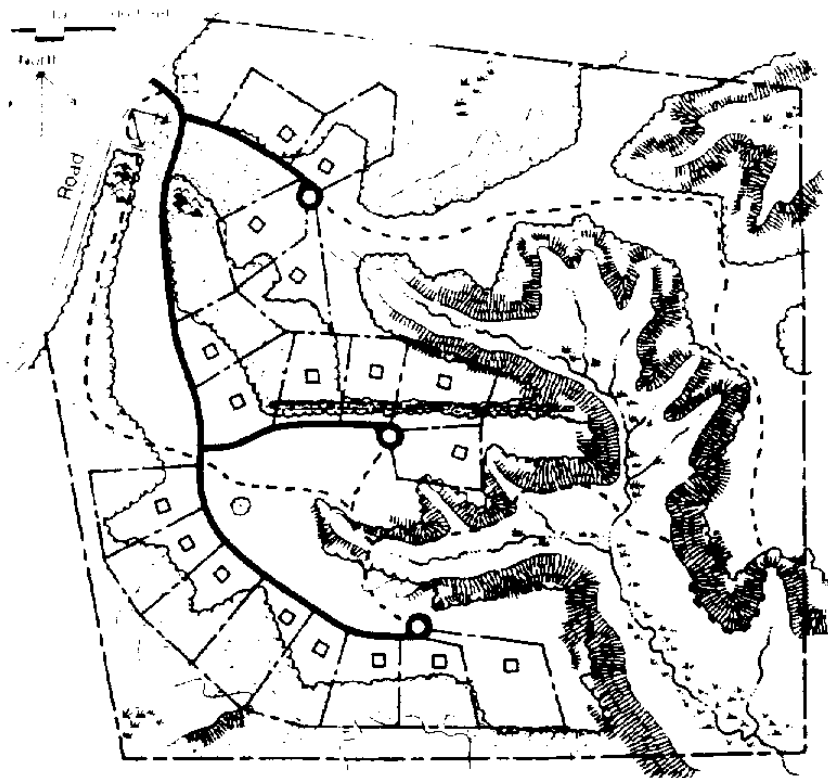
## 2. House Sites

- (c) Step 3: Alignment of streets and trails. Upon designating the house sites, a street plan shall be designed to provide vehicular access to each house, complying with the standards identified herein and bearing a logical relationship to topographic conditions. Impacts of the street plan on proposed open space lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and traversing slopes exceeding 15%. Existing and future street connections are encouraged to eliminate the number of new culs-de-sac to be maintained by the Town and to facilitate access to and from homes in different parts of the tract and adjoining parcels. Cul-de-sacs are appropriate when they support greater open space conservation or provide extensive pedestrian linkages.



### 3. Aligning Streets and Trails

- (d) Step 4: Drawing in the lot lines. Upon completion of the preceding three steps, lot lines are drawn as required to delineate the boundaries of individual residential lots.



#### 4. Drawing in the Lot Lines

- (e) Note on the four-step site design process for hamlets and adjoining villages. The design process for developing cluster subdivisions in or adjacent to hamlets and villages shall be a variation on the four-step process for conservation subdivisions, as described herein. In hamlets and near villages, where traditional streetscape and terminal vistas are of greater importance, Steps 2 and 3 may be reversed, so that streets and squares are located during the second step, and house sites are located immediately thereafter. The first step is to identify open space lands, including both primary and secondary conservation areas.
- F. Dimensional standards. Except as specified herein, all dimensional standards normally applicable to other subdivisions and uses shall also be applicable to cluster subdivision.
- (1) Minimum required open space. In all zoning districts, a cluster subdivision must preserve at least 50% of the tract's developed acreage as open space land. Parking areas and roads shall not be included in the calculation of the minimum required open space. [Amended 1-24-2002 by L.L. No. 2-2002]
  - (2) Minimum lot width at building line: 80 feet.



- (3) Minimum street frontage: 20 feet
- (4) Yard regulations. The builder or developer is urged to consider variations in the principal building position and orientation, but shall observe the following minimum standards:
  - (a) Front yard: 20 feet.
  - (b) Rear yard: 40 feet.
  - (c) Side yard: 30 feet of separation for principal buildings, with no side yard less than 10 feet
- (5) Maximum impervious coverage. No more than 35% of any given acre shall be covered with impervious surface in the form of access drives, parking areas or structures.
- (6) Minimum lot size. The minimum lot size for developments with individual sanitary sewage disposal systems shall be 12,500 square feet per single-family unit. When community water and/or sewerage systems are involved, the bulk standards found in § 164-47C(2) shall be used as guidelines. Attached or townhouse style units shall be in condominium, cooperative, or other acceptable ownership options. [Amended 9-11-2003 by L.L. No. 4-2003]

G. Open space standards.

- (1) The required open space land consists of a combination of primary conservation areas and secondary conservation areas. Primary conservation areas include freshwater wetlands and ponds with a 100 foot surrounding buffer area where practical, streams, lands within the one-hundred-year floodplain, unbuildable lands in Soil Groups IX, X, XII, XIII, XIV, XV from § 164-41.3, Table ECF, and lands having slopes of 25% or more. The proposed subdivision design shall strictly minimize disturbance of these environmentally sensitive areas. Primary conservation areas shall be included in the required open space area to the greatest extent practical. The applicant shall also demonstrate that such features will be protected by the proposed subdivision plan. Secondary conservation areas include special features of the property that would ordinarily be overlooked or ignored during the design process, such as agricultural lands, woodlands, significant natural areas and features, stone walls, hedgerows, meadows, historic structures and sites, historic rural corridors, scenic viewsheds, and trails. Secondary conservation areas shall be included in the required open space area to the greatest extent practical such that protecting these resources will, in the judgment of the Planning Board, achieve the purposes of this section. [Amended 9-11-2003 by L.L. No. 4-2003]
- (2) Open space lands shall be laid out in general accordance with the Town's

Comprehensive Plan<sup>EN(18)</sup> to better enable an interconnected network of open space.

- (3) A recreational fee in lieu of land, as set forth in the Town's Fee Schedule,<sup>EN(19)</sup> shall be imposed to accommodate the foreseeable recreational needs of the proposed subdivision's residents. Upon the recommendation of the Planning Board and where the Town Board deems it appropriate for land to be deeded to the Town for recreational purposes, up to 10% of the total acreage may be subject to the Town's recreational land dedication requirement. Typically, this acreage will be used to provide potential connections within the Town's long-range trail network.
  - (4) Active agricultural land with farm buildings may be used to meet the minimum required open space land. Access to open space land used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations. Land used for agricultural purposes shall be buffered from residential uses, either bordering or within the tract, by a minimum setback of at least 100 feet and, if practical, 200 feet deep. No clearing of trees or understory growth shall be permitted in this setback (except as may be necessary for street or trail construction). Where this buffer is unwooded, the Planning Board may require vegetative screening to be planted, or that it be managed to encourage natural forest succession through no-mow policies and the periodic removal of invasive alien plant and tree species. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (5) Open space land should generally remain undivided. No individual parcel of common open space shall be less than one acre except as to roadway median strips, traffic islands, walkways, trails, courtyards, play areas, recreation facilities, drainageways leading directly to streams, historic sites or unique natural features requiring common ownership protection.
  - (6) No portion of any house lot may be used for meeting the minimum required open space land unless encumbered with a restriction.
- H. House lot standards. Development areas for the location of house lots include the necessary building envelope for each dwelling unit, constituting the remaining lands of the tract outside of the designated open space areas. House lots shall be designed in accordance with the following standards:
- (1) House lots shall not encroach upon primary conservation areas and their layout shall respect secondary conservation areas.
  - (2) All new dwellings shall meet the following setback requirements to the greatest extent practicable:
    - (a) From all external road ultimate right-of-ways: 100 feet.

- (b) From all other tract boundaries: 50 feet.
  - (c) From agricultural lands, as defined in Subsection G(4), either bordering or within the tract: 200 feet. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (d) From buildings or barnyards housing livestock: 300 feet.
  - (e) From active recreation areas, such as courts or playing fields (not including tot lots): 150 feet.
- (3) Views of house lots from exterior roads and abutting properties shall be minimized by the use of changes in topography, existing vegetation, or additional landscaping which meets the landscaping requirements of this chapter and Chapter 137, Subdivision of Land.
  - (4) House lots shall generally be accessed from interior streets, rather than from roads bordering the tract. New intersections with existing public roads shall be minimized. Although two accessways into and out of subdivisions containing 20 or more dwellings are generally required for safety, proposals for more than two entrances onto public roads shall be discouraged if they would unnecessarily disrupt traffic flow or unduly impact the environment.
  - (5) At least 3/4 of the lots shall directly abut or face conserved open space, if practical.
  - (6) Setbacks for wells. If active agricultural lands constitute the open space, as defined in § 164-41.1G(4), the minimum setback for wells from such active agricultural lands shall be 100 feet. [Added 9-11-2003 by L.L. No. 4-2003]
  - (7) For cluster subdivision of lands in the AP-O District qualifying area, house lots shall be designed in accordance with the following guidelines: [Added 9-11-2003 by L.L. No. 4-2003]
    - (a) All surficial soils classified as prime farmland soils (Class 1 and 2) or soils of statewide significance (Class 3 and 4) or black dirt soils should be avoided by subdivision development to the greatest extent practical. Other existing features, whose preservation would benefit the Town and the subdivision, should be avoided through sensitive design of the cluster subdivision. Such features include but are not limited to:
      - [1] Groves of mature trees.
      - [2] Large individual trees.
      - [3] Hedgerows.

- [4] Woodlands along roadways, property lines, and streams.
  - [5] Scenic vistas.
  - [6] Water features, such as streams, ponds, floodplains, lakes and wetlands.
  - [7] Stone walls.
  - [8] Steep slopes in excess of 15%.
  - [9] Habitats of endangered or threatened species.
  - [10] Visually prominent agricultural landscape features, such as fields, pastures and meadows on knolls and hilltop.
  - [11] Historic structures or sites.
  - [12] Similar irreplaceable assets.
- (b) Residential structures in the AP-O District should be located according to the following guidelines, which are listed in order of significance (some of which may conflict with each other on a particular site, in which case, the Planning Board may use its discretion to resolve such conflicts):
- [1] On the least fertile agricultural soils and in a manner which maximizes the usable area remaining for agricultural use;
  - [2] Away from the boundaries of any preserved farm, to reduce conflicting uses in areas where farmers have made long-term commitments to continue to farm;
  - [3] In such a manner that the boundaries between house lots and active farmland are well buffered by vegetation, topography, roads or other barriers to minimize potential conflict between residential and agricultural uses;
  - [4] To avoid disturbance to the existing environmental, cultural and scenic features noted in Subsection H(1) above;
  - [5] To be as visually inconspicuous as practical when seen from state, county and local roads, and particularly from designated scenic routes;
  - [6] Next to other residences or building lots on adjacent properties;
  - [7] To minimize the perimeter of the built area by encouraging compact development and discouraging strip development along roads;
  - [8] On suitable soils for subsurface sewage disposal (where applicable);
  - [9] Within woodlands, or along the far edges of open agricultural fields adjacent to

any woodland, to reduce encroachment upon agricultural soils, provide shade in summer and shelter in winter, and to enable new residential development to be visually absorbed by the natural landscape;

[10] In locations where the greatest number of dwelling units could be designed to take advantage of solar heating and solar electric opportunities; and

[11] Any other mitigation measure imposed under SEQR.

#### I. Streets and driveways.

- (1) Common driveway access may be provided to serve up to six dwellings. Common driveways shall be 16 feet wide. A pedestrian circulation and/or trail system shall be designated and installed sufficient for the needs of residents, as deemed practical by the Planning Board. [Amended 9-11-2003 by L.L. No. 4-2003]
- (2) Cluster subdivision streets shall meet the Town Street Specifications,<sup>EN(20)</sup> unless access arrangements have been made in accordance with § 280-a of New York State Town Law. Where appropriate, the Planning Board shall work with the Commissioner of Public Works to ensure that the Town of Warwick's Street Specifications, normally applicable to conventional subdivisions, do not impact or detract from the rural and environmental character of a cluster subdivision. The Commissioner of Public Works has the ability to make a recommendation as to the interpretation of any part of the street specification requirements and to modify such requirements under § A168-22 of the Town Code. Cluster subdivisions containing 20 lots or more shall have at least two connections with existing streets, streets on an approved subdivision plat for which a bond has been filed, or access to an existing private road. Regardless of the street design employed, the applicant shall demonstrate and the Planning Board shall find that emergency services access is adequate for the number of dwellings proposed. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]
- (3) From an aesthetic and speed control perspective, curving roads are preferred in an informal rural cluster to avoid long straight segments. Shorter straight segments connected by ninety-degree and one-hundred-thirty-five-degree bends are preferred in a more formal or traditional arrangement.
- (4) Whenever appropriate, street systems should produce terminal vistas of open space in accordance with the conservation emphasis of the cluster subdivision design and to positively contribute to the Town's open space goals.
- (5) The use of reverse curves should be considered for local access streets in cluster subdivisions in conjunction with long horizontal curve radii (at least 250 feet) and where traffic speeds will not exceed 30 miles per hour.

- (6) Single-loaded streets are encouraged alongside conservation areas to provide views of the conservation lands for residents and visitors.
- (7) Street trees may be required, depending upon the open or wooded character of the parcel, in accordance with § 137-19 of the Town Code, and survivability shall be assured in accordance with § 164-46G(3)(n)[3]. [Added 9-11-2003 by L.L. No. 4-2003]
- (8) The Planning Board shall consider the potential fiscal impacts on the Town's resources for all streets, including required drainage facilities, landscaping and other access related features. If the Planning Board identifies a potential fiscal impact, as a condition of subdivision approval the Planning Board may require the formation or extension of a special improvement district(s) pursuant to Articles 12 and 12-a of New York State Town Law or other mechanism acceptable to the Deputy Town Attorney, such as formation of a homeowners' association. [Added 9-11-2003 by L.L. No. 4-2003]

J. Permanent protection of open space. Conservation easements are the preferred method to protect open space under New York State law. Other instruments, such as deed restrictions acceptable to the Town Attorney, may also be used to protect open space at the option of the applicant. Regardless of the method chosen, the permanent preservation of such open space shall be legally assured to the satisfaction of the Planning Board and Town Attorney. In all cases, the Town Board shall be granted third party enforcement rights to enforce the terms of the easement or other legally binding instrument. The following regulations shall apply: [Amended 1-24-2002 by L.L. No. 2-2002]

- (1) Conservation easements shall be titled to a private conservation organization or to the Town of Warwick, provided that:
  - (a) The conservation organization is acceptable to the Town and is a bona fide conservation organization as defined in Article 49 of the New York State Environmental Conservation Law;
  - (b) The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the conservation organization or Town of Warwick becomes unwilling or unable to continue carrying out its functions; and
  - (c) A maintenance agreement acceptable to the Town is established between the owner and the conservation organization or Town of Warwick to insure perpetual maintenance of the open space.
- (2) The conservation easement or other legally binding instrument shall permanently restrict the open space from future subdivision, shall define the range of permitted activities, and, if held by a conservation organization, shall give the Town the ability to enforce these restrictions. Under no circumstances shall any development be permitted in the open space at any time, except for the following uses:

- (a) Conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow). The clearing of woodland shall generally be prohibited, except as necessary to create trails, active recreation facilities, and to install subsurface sewage disposal systems. The determination of necessity shall lie with the Planning Board.
- (b) Agricultural and horticultural uses, including raising crops or livestock, wholesale nurseries, and associated buildings, that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are concentrated animal feeding operations (CAFO's) as defined by the US Environmental Protection Agency, or commercial livestock operations involving swine, poultry, mink, ratites, and other animals likely to produce highly offensive odors.
- (c) Game preserve, wildlife sanctuary, or other similar conservation use.
- (d) Woodlots, arboreta, and silviculture in keeping with established standards for selective harvesting and sustained-yield forestry.
- (e) Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Planning Board.
- (f) Active noncommercial recreation areas, such as playing fields, playgrounds, and courts, provided such areas do not consume more than half of the minimum required open space land or five acres, whichever is less. Playing fields, playgrounds, and courts shall not be located within 150 feet of abutting properties nor shall such facilities be equipped with lighting. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than 10 parking spaces. Such recreation uses may be a public park or recreation area owned and operated by a public or private nonprofit agency, but shall not include storage of materials, trucking or repair facilities, or private or municipal sanitary landfills.
- (g) Golf courses may comprise the required open space land, but shall not include miniature golf. Their parking areas and any associated structures shall not be included within the open space requirement; their parking and accessways may be paved and lighted.
- (h) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the open space area.
- (i) Easements for drainage, access, sewer or water lines, or other public purposes.
- (j) Underground utility rights-of-way. Above ground utility and street rights-of-way

may traverse conservation areas but shall not count toward the minimum required open space land.

K. Ownership of open space land and common facilities. The following methods may be used, either individually or in combination, for ownership of open space land (exclusive of its conservation easement) and common facilities. Open space trails may be initially offered for dedication to the Town. Open space land and common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section. Ownership methods shall conform to the following:

- (1) Fee simple dedication to the Town. The Town may, but shall not be required to, accept any portion of the open space land and common facilities, provided that:
  - (a) There is no substantial cost of acquisition to the Town; and
  - (b) The Town agrees to and has access to maintain such facilities; and
  - (c) Such facilities for public use shall be accessible to residents of the Town.
- (2) Homeowners' association. Open space land and common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in New York State regulations. In addition, the following regulations shall be met:
  - (a) The applicant shall provide the Town with a description of the organization of the proposed association, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for common facilities.
  - (b) The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development.
  - (c) Membership in the association shall be mandatory for each property owner within the subdivision and successive owners in title with voting of one vote per lot or unit, and the subdivider's control, therefore, passing to the individual lot/unit owners on sale of the majority of the lots or units.
  - (d) The association shall be responsible for liability insurance, local taxes and maintenance of open space land, recreational facilities and other commonly held facilities.
  - (e) The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his or her dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
  - (f) Written notice of any proposed transfer of common facilities by the association or



the assumption of maintenance for common facilities must be given to all members of the association and to the Town no less than 30 days prior to such event.

- (g) The association shall have adequate resources to administer, maintain, and operate such common facilities.
- (3) Noncommon private ownership. The required open space land may be included within one or more large conservancy lots, provided the open space is permanently restricted from future development, except for those uses listed in § 164-41.1J(2). This option may be preferable for open space land that is intended for agricultural, horticultural, or silvicultural use.
- L. Maintenance. Unless otherwise agreed to by the Planning Board, the cost and responsibility of maintaining common open space and facilities shall be borne by the homeowners' association, conservation organization, private owner, or, in the case of open space and facilities deeded to the Town, the municipality.
- M. Sewage treatment systems. The Town of Warwick encourages shared or community sanitary sewage disposal systems for cluster developments. Such systems may be located in the required open space lands such as on conservation meadows, village greens, and active or passive recreations areas, provided such areas are not paved or covered with other impervious surfaces. Sanitary sewage disposal systems of an individual nature may also be located within or extend into required open space areas. Regardless of the type of subsurface sewage disposal methods employed, all required separation distances shall be observed and the ownership and maintenance responsibilities associated therewith shall be clearly defined in agreements submitted for approval as part of the subdivision application. No application shall be approved that does not provide lot buyers with both the legal authority and the responsibility, individually or collectively, to maintain all sewer facilities on a continuing basis. This may include the creation of a special district under Articles 12 and 12-a of New York State Town Law. [Amended 9-11-2003 by L.L. No. 4-2003]

#### **§ 164-41.2. Conservation density subdivisions.**

- 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 two times the minimum size required in the zoning district. This lower density is maintained in perpetuity through the use of permanent conservation easements and other legally binding instruments, as described in § 164-41.1J, and 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 K 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. Conservation density subdivisions are subject to the open development area requirements of § 280-a of the New York State Town Law.

- B. The average size of the lots within the subdivision must be at least two times the conventional minimum lot area required. The minimum common driveway frontage shall be 15 feet and the minimum lot width shall be as shown on the Table of Bulk Requirements.<sup>EN(21)</sup> [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]

<b>Zoning District</b>	<b>Conservation Density Average Lot Size (acres)</b>
RU	8
MT	10
CO	12

- C. The maximum number of lots using a proposed common driveway shall be six if the common driveway has one entrance on a public road, and 12 if the common driveway has two entrances. All lots shall have their access on the common driveway, regardless of the potential for access onto an existing Town, county or state road.
- D. The boundary of each lot served by a common driveway shall extend to the center line of the common driveway with the right-of-way for ingress and egress across the common driveway granted to each lot served by such common driveway.
- E. 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 common driveway, as well as the specifications setting forth the proposed composition of the common driveway.
- F. Written comment from the Town Commissioner of Public Works and the Town's engineer shall be secured before approval of any common driveway, unless 30 days has passed from the time the Planning Board refers the matter to the Commissioner of Public Works.
- G. A homeowners' association may 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 § 164-41.1K. 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 common driveway is properly maintained and kept open to permit emergency vehicle access. 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. If an HOA is not created for perpetual care and maintenance, all lot owners served by the common driveway shall enter into a maintenance and repair agreement with all other lot owners served by such common driveway. Such agreement shall be approved by the Town Attorney.

- H. The common driveway may never be offered for dedication to the Town of Warwick unless it conforms to the Town Street 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 common driveway conforms to Town Street Specifications. In the event such dedication becomes necessary to ensure public safety, the cost of bringing the common driveway up to Town Street Specifications shall be borne by the homeowners' association (or the lot owners if there is no HOA).
- I. 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 B and C above, regardless of whether the road remains a common driveway.
- J. The subdivision plat shall show the road clearly labeled "common driveway."
- K. Design standards. The following are minimum standards for construction of common driveways:
  - (1) All construction shall be in accordance with these regulations and shall be under the immediate inspection, supervision and approval of the Town Engineer.
  - (2) The right-of-way for a common driveway shall be not less than 50 feet in width with a wearing surface not less than 16 feet in width. Curbs shall be avoided unless deemed necessary by the Commissioner of Public Works or the Town Engineer. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (3) Whenever possible common driveways shall follow natural contours. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (4) Minimum curve radius shall be 100 feet, minimum tangent distance between reverse curves shall be 50 feet. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (5) Grade shall not exceed 12% nor be less than 1%. Grade shall not be greater than three percent within 50 feet of an intersection. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (6) The foundation course shall be constructed of eight inches of New York State Department of Transportation Item 304.02.
  - (7) The wearing surface shall consist of two inches of asphalt. [Amended 9-11-2003 by L.L.

No. 4-2003]

- (8) The maximum length of the common portion of any common driveway shall be 2,000 feet from the access road unless there are two points of access.
- (9) There shall be an adequate turnaround for emergency vehicles at the end of the common portion of the common driveway.
- L. 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 § 164-41.2G and H above will be properly fulfilled by such maintenance agreement.

### **§ 164-41.3. Environmental control formula**

#### **A. Procedure for determining maximum number of lots in a cluster subdivision.**

- (1) Prepare a base map containing the parcel boundaries, topography at two-foot contour intervals, and soils based upon the Soil Survey of Orange County, New York, as prepared by the United States Department of Agriculture, Soil Conservation Service, or a detailed soils survey of the site as may be prepared by the Soil Conservation Service or a qualified soil scientist. Where both the Orange County Soil Survey and a detailed soils survey are available, the latter shall control. The Town of Warwick Soil Classification Map, available for review in the Town Building Department, illustrates the Soil Conservation Service's soils and soil groups. [Amended 1-24-2002 by L.L. No. 2-2002]
- (2) Prepare a conforming yield plan based on the Table of Bulk Requirements<sup>EN(22)</sup> for cluster and other applicable subdivision criteria for the district(s) in which the parcel lies. [Amended 9-11-2003 by L.L. No. 4-2003]
- (3) Adjust required lot area for each individual lot based on the environmental factor listed in Table ECF below. Adjusted lot acreage shall meet the required minimum acreage for cluster bulk requirements within the district(s) computed as: [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]

Lot Area ÷ Environmental Factor = Adjusted Individual Lot Area

- (4) The total lots established is the maximum number of lots permitted.

**Table ECF**  
**[Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003**  
**by L.L. No. 4-2003]**

Group	Soil Type	Environ- mental Factor	Cluster Subdivision Minimum Lot Size				
			SL 2-acre	RU 3-acre	MT 4-acre	CO 5-acre	Septic Allowed
I	OtB, OtC, OkA, OkB, HoA, HoB, HoC, CnA, CnB, CnC, RhA, RhB, RhC	1.0	2.00	3.00	4.00	5.00	Yes
II	UnB, AdA, AdB	1.0	2.00	3.00	4.00	5.00	Yes
III	PtB, PtC, ChB, ChC	1.0	2.00	3.00	4.00	5.00	Yes
IV	CgA, CgB, SwB, SwC, WuB, WuC, MdB, MdC	0.71	2.82	4.23	5.63	7.04	Yes
V	ScA, ScB, CoB	0.67	2.99	4.48	5.97	7.46	Yes
VI	CLC, BnB, BnC, SXC	0.67	2.99	4.48	5.97	7.46	Yes
VII	Fd, ErA, ErB, Ra, RbA, RbB, ESB	0.33	6.06	9.09	12.12	15.15	Yes
VIII	FAC, LdB, LdC, HLC, ROC, RMC, RSB, ANC, RKC	0.33	6.06	9.09	12.12	15.15	Yes
IX	Ha, Ab, Ca, Ma, Sb, AC, AD	0.17	11.76	17.65	23.53	29.41	No*
X	Tg, My, Wd, Wa, Be, UF, Ba, Su, UH	0.10	20.00	30.00	40.00	50.00	No*
XI	UnC, CoC	0.17	11.76	17.65	23.53	29.41	Yes
XII	OtD, HoD, RhD, SwD, CLD, PtD, MdD, NaD, SXD, HLD, ROD, RMD, AND, RKD, RSD	0.33	6.06	9.09	12.12	15.15	No*
XIII	OVE, MnE, CoD, SXF, ROF, RKF, ANF, RSF	0.17	11.76	17.65	23.53	29.41	No*
XIV	Ce, Pa, Cd, Cf, Pb	0.10	20.00	30.00	40.00	50.00	No*
XV	HH	0.10	20.00	30.00	40.00	50.00	No*

NOTES:

\*See the Town of Warwick Subdivision Regulations, Chapter 137 of the Town Code, Appendix A, Table of Soil Groups for

requirements governing septic systems and buildings.

**§ 164-42. Supplementary regulations for nonresidential districts.**

The provisions of this chapter applying to nonresidential uses shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations:

- A. Height. Penthouses, domes, chimneys, ventilators, skylights, water tanks, bulkheads, cooling equipment, and similar features and necessary mechanical appurtenances usually carried above the roof level shall be erected only to such height as is necessary to accomplish their purpose and shall not exceed in cross-sectional area 20% of the ground floor area of the building. All penthouses, domes, bulkheads, etc., must be 10 feet back from the side walls, except that walls of elevators and stair enclosures may be built on the side wall when required by the plan of the building.
- B. Courts.
  - (1) Inner courts. No inner court shall have a minimum dimension less than 1/2 of the mean height of all surrounding walls.
  - (2) Outer courts. The minimum width of outer courts shall be 20 feet, and its depth shall not exceed its width.
- C. Garage entrance. No public or private garage for more than five motor vehicles shall have an entrance or exit for motor vehicles within 50 feet of a residential district boundary.
- D. Business entrances on residential streets. Where a residence district is bounded by a portion of a business district, any side street extending through such a residence district into such business district shall not be used for any business purpose, except as herein set forth. The business structure erected in such business district shall face and open upon the street set aside for business purposes, except that windows in such business structure may be built and exposed upon said side street within the area set aside as a part of such business district and an entrance may be made at a corner of such business and residential streets, and all other entrances thereto must face on the business street, except that entrances may be made from such residential street to the upper stories of such business structure.
- E. Special uses in nonresidential structures in Agricultural Districts.
  - (1) Intent. The intent of this section is to assist in the preservation and adaptive reuse of nonresidential structures within Agricultural Districts by providing for expanded use of these structures.
  - (2) Applicability. This section shall apply to the initial adaptive re-use of any nonresidential structure within Agricultural Districts, provided that such structure is located on a lot

with a minimum area of two acres and was in existence on the effective date of this section.

- (3) Uses permitted by special use permit. In addition to the provisions of the Table of Use Requirements,<sup>EN(23)</sup> the following uses may be permitted in nonresidential structures by special use permit granted by the Planning Board pursuant to § 164-46 of this chapter:
  - (a) Warehousing of supplies and equipment.
  - (b) Manufacturing, assembling, altering, finishing, converting, fabricating, cleaning or any other processing; packing, packaging or repackaging of products or materials.
  - (c) Sale or storage of lumber and building materials and equipment.
  - (d) Maintenance, repair, and storage of machinery, equipment and fuel.
  - (e) Business and professional offices.
  - (f) Indoor recreation establishments and/or sports. [Added 9-11-2003 by L.L. No. 4-2003]
- (4) Requirements of special use permit. The Planning Board shall receive, review and approve a site plan pursuant to the provisions of § 164-46 of this chapter. Prior to granting a special use permit, the Planning Board shall find that:
  - (a) Traffic generation of the proposed use is within the capacity of the existing roadway system.
  - (b) The proposed use will not involve hazardous activities or toxic materials.
  - (c) The proposed use is appropriate to the structure and will aid in its maintenance and preservation.
- (5) Subsequent use of structure.
  - (a) The provisions of § 164-42E(3) and (4) above shall apply to the initial areas of an agricultural structure or the expansion of the floor area of such structure by 20% or more. Once the special use permit has been granted, it shall be valid for all uses cited above without further application to the Planning Board, upon review and approval of the Building Inspector and Town Engineer.
  - (b) Nothing contained herein shall avoid the applicability of approval of plans by the Building Inspector or of the need for issuance of a certificate of occupancy for an improvement or for a new use.

#### F. Marginal access road

- (1) Intent. The intent of this section is to apply highway safety concerns to the development of nonresidential uses which most benefit from frontage on or convenient access to major state and county roads, such uses themselves being generators of large volumes of traffic. Location of a property within the designated zoning districts and having frontage on the designated highways shall subject any and all nonresidential development proposals to the procedures and requirements of this section and those of § 164-46. The Planning Board may waive any and all of the requirements for a marginal access road in § 164-42F if future interconnection with adjoining parcels is provided and offered for dedication to the Town of Warwick. Marginal access roads are encouraged in high traffic areas and are attainable pursuant to New York State Town Law § 200. [Amended 9-11-2003 by L.L. No. 4-2003]
- (2) Permitted uses. All permitted uses and special uses permitted upon authorization and plan approval by the Planning Board in accordance with § 164-46 and their accessory uses allowed according to the zoning district in which the use is proposed may be permitted, subject to the further requirements specified herein and elsewhere in this chapter.
- (3) Standards. Any nonresidential development proposal within the described area shall conform to the following standards, which shall be considered as minimum requirements, and all other applicable standards of this chapter.
  - (a) Applicable districts. This provision shall only apply to lands in the Designed Shopping Center and Office and Industrial Park Zoning Districts with frontage on New York State Route 94 and County Route 13 (Kings Highway).
  - (b) Area and bulk requirements. The minimum bulk and area requirements shall be as follows:
    - [1] Minimum land area. The minimum land area shall be the same as required by the applicable zoning districts.
    - [2] Lot frontage. The minimum frontage shall be 400 feet unless access is via a marginal access road or a local road, in which case the lot frontage shall be that which ordinarily would be required in the applicable zoning district.
    - [3] Setback requirements.
      - [a] Side and rear yard setback.
        - [i] A buffer area shall be provided for those parcels abutting existing residential uses as follows: A setback equal to twice the minimum rear and side yard requirement for the district in which the parcel is located shall be maintained. This setback shall be landscaped so as to act as a buffer and visual screen as required by the Planning Board in



conformance with buffer and landscaping requirements. No principal or accessory use or structure, including parking and loading areas, shall be permitted within the required buffer area.

- [ii] For all other parcels, the minimum rear and side yard requirement shall be as required for the district in which the parcel is located.

[b] Front setback.

- [i] All development proposals shall have set aside a sixty-foot right-of-way which shall extend the entire width of the parcel adjacent to the highway right-of-way and which shall be dedicated to the Town.
- [ii] All principal buildings, structures and uses shall be set back a minimum of 100 feet from the dedicated sixty-foot right-of-way.
- [iii] Accessory uses, such as parking and loading areas, may be located within this required one-hundred-foot setback upon approval of the Planning Board, except that in no instance shall accessory uses be located closer than 25 feet to the dedicated right-of-way.
- [iv] Distance between principal buildings on the same lot. The minimum distance between principal buildings, other than those containing common party walls, shall be equal to the average of the building heights.
- [v] Except as provided herein and in other applicable provisions of this chapter, bulk regulations shall be specified in the schedule for the district in which the lands are located.

(c) Marginal access road development. New York State Route 94 and County Route 13 (Kings Highway) are major highways servicing the Town of Warwick and surrounding communities; they carry high volumes of traffic at relatively high rates of speed over mainly two lanes of road width. In preserving the health, safety and welfare of the Town, it is necessary to limit the location and number of access points on these routes. To this end, all nonresidential development proposals shall meet the following minimum requirements:

- [1] No outlet of an access drive onto a designated state or county highway shall be permitted within 300 feet of any other existing intersection of an access drive with a state or county highway or of any other existing intersection of a public right-of-way with a state or county highway.
- [2] A marginal access road shall be constructed within the sixty-foot dedicated right-of-way as required in Subsection F(3)(b)[3][b][i] above. Such marginal

access road shall be built in conformance with Town of Warwick Street Specifications and shall be dedicated to the Town upon certification by the Town Engineer and Highway Superintendent. A buffer landscaping strip a minimum of 30 feet in width shall be maintained between such roadway and the highway right-of-way.

- (d) Other applicable standards. Uses as proposed within the areas described by this section shall conform to the requirements set forth herein and elsewhere in this chapter. In all cases, the most restrictive requirements shall apply.
- (4) Special provisions.
- (a) In order to carry out the purpose of this section, a development shall achieve the following objectives:
    - [1] A maximum choice in the types of environment, occupancy, tenure, types of uses and community facilities.
    - [2] The preservation of outstanding natural features.
    - [3] A creative use of land and related physical development.
    - [4] An efficient use of land resulting in smaller networks of utilities and streets and thereby lower development costs.
    - [5] Conform to all applicable standards set forth in this section and other sections of this chapter of the Code of the Town of Warwick.
  - (b) The tract of land for a project may be owned, leased or controlled either by a single person or corporation or a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.
  - (c) When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvements, operation and maintenance of common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas, in accordance with applicable provisions of § 164-41.1.
  - (d) Architectural review. Prior to final site plan approval, the applicant shall submit plans illustrative of the overall architectural theme of the development. These plans shall contain all elevations for each typical building proposed for the site, exterior hardware and accessories. A compatible architectural theme shall be created and carried out throughout the development. These plans shall be reviewed by the

Architectural Review Board prior to the Planning Board's final approval.

- (e) In the event that the organization established to own and maintain common property or any successor organization fails to maintain such property in reasonable order, the Town Board may cause such property to be maintained in accordance with the following procedure: The Town of Warwick may serve written notice upon such organization or upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common property in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice. At such a hearing, the Town may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within 30 days or any extension thereof, the Town, in order to preserve the taxable values of the properties within the development and to prevent the common property from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the common space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common property, call a public hearing, upon notice to such organization or to the residents and owners of the development, to be held by the Town, at which hearing such organization or the residents and owners of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year. If the Town shall determine such organization is ready and able to maintain said common property in reasonable condition, it shall cease to maintain said common property at the end of said year. If the Town shall determine such organization is not ready and able to maintain said common property in a reasonable condition, the Town may, in its discretion, continue to maintain said common property during the next succeeding year thereafter. The cost of such maintenance by the Town shall be assessed at the same proportion as each unit's assessed value bears to the total assessment of the development.
- (f) For the purpose of regulating the development use of property after initial construction and occupancy, any changes shall be subject to site plan approval by the Planning Board. Properties lying in the area served by marginal access roads are unique and shall be so considered by the Planning Board when evaluating those requests, and maintenance of the intent and function of the planned unit shall be of primary importance.

- (g) Approval procedures. The Planning Board may approve developments utilizing marginal access roads subject to the procedures and requirements set forth herein.<sup>EN(24)</sup>

**§ 164-43. Supplementary regulations for all districts.**

The provisions of this chapter applying to all districts shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations:

- A. Front yards on narrow streets. Except in the Traditional Neighborhood District, on streets with less than a fifty-foot right-of-way, the front yard requirement shall be measured from the center line of the existing roadway, and 25 feet shall be added to the front yard requirement.
- B. Rights-of-way. In calculating the required lot area, lot width, depth or yards as part of the required area (including those measured according to § 164-43.2), rights-of-way shown, if any, shall not be considered as part of the required area.
- C. Underground storage tanks (UST). The installation, construction, or placement of new underground storage tanks or containers of 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 1,100 or less for petroleum products, pipelines, and transfer areas, shall be subject to issuance of a building permit from the Town Building Department and 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. Any UST which does not conform to the provisions herein shall be deemed a nonconforming UST and shall be removed by the owner on or before the expiration of five years from the effective date of this chapter, and such lapse of time shall be deemed sufficient to amortize the cost thereof. Nonconforming UST's that are the subject of subdivision, special use permit and/or site plan applications, certificates of occupancy, no-violation letters, or other permit, approval, entitlement, or authorization from the Town of Warwick shall comply with the terms and conditions of this (§ 164-43C) 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 which regulates storage tanks holding 1,100 gallons or more. [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]
- D. Temporary trailer office. A temporary trailer office may be allowed as a special permit use for a time period as specified by the Planning Board in any district where the form of such use would be permitted, and in all cases as an office for the supervision of construction trades on a site where a building permit has been duly issued. Prior to subdivision, special

use permit, and/or site plan approval, the applicant shall file with the Town Board a performance bond to insure the proper removal of said temporary trailer office. The amount and period of said bonds shall be determined by the Planning Board, and the form, sufficiency, manner of execution, and surety shall be approved by the Town Attorney and Town Board. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]

- E. Required setbacks from cemeteries. In all zoning districts, all buildings, structures and uses of the property shall be in conformance with Chapter 74 of the Town Code, the Burial Ground and Cemetery Protection Law. [Added 9-11-2003 by L.L. No. 4-2003]
- F. Erosion control. All building site development activities within the Town of Warwick shall have erosion and sediment controls that meet the standards of the most current version of the New York Guidelines for Urban Erosion and Sediment Control, printed by the Empire State Chapter of the Soil and Water Conservation Society. [Added 9-11-2003 by L.L. No. 4-2003]

#### **§ 164-43.1. Signs.**

The purpose of this section is to promote and protect the public health, safety, and welfare by regulating signs of all types. It is intended to encourage the use of signs as a means of communication, protect pedestrian and vehicular safety, protect property values, protect and enhance the aesthetic environment, and enhance the Town's ability to attract sources of economic development and growth.

- A. Permit required. A sign, as defined herein, may be erected, constructed, painted, altered, relocated, enlarged, reconstructed, displayed, lit or maintained only as expressly permitted in this chapter and only upon issuance of a sign permit by the Building Inspector.
- B. Permit procedures. Any person desiring to procure a permit for a sign shall file with the Building Inspector a written application for approval, including payment of a fee as outlined in Chapter 75, Fees, which application shall contain:
  - (1) Name, address, and telephone number of applicant and property owner.
  - (2) Location of the building, structure or land upon which the sign now exists or is to be erected.
  - (3) A full description of the appearance of the proposed sign, including:
    - (a) Type of sign and size.
    - (b) Graphic design, including pictorial matter, letters, materials and colors.
    - (c) The visual message, text, copy or content of the sign.
    - (d) The method of illumination, if any, including type of lamp and wattage, the position

of lighting or other extraneous devices.

- (e) Landscaping, if any, including types of vegetation, location of plantings, and planting and maintenance schedule.
- (4) If a new sign is to be erected, or an existing sign is to be altered in size or elevation, a plan drawn to scale shall be submitted showing the following: [Amended 1-24-2002 by L.L. No. 2-2002]
  - (a) If a freestanding sign, a full description of the placement of the proposed sign, specifically its location on the premises, and its position in relation to adjacent buildings, structures, roads, driveways, property lines, other signs, lighting fixtures, walls, and fences.
  - (b) If an awning, window, wall, or projecting sign, a full description of the placement of the proposed sign, which shall cover: location on the awning, window, wall or building; the size of the awning, total window area of the principal facade, or the building; projection from the building, if relevant; and the proposed sign's position in relation to adjacent signs and lighting fixtures.
  - (c) For all signs, written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.

C. Exempt signs. The following signs are exempt from the permit requirements of this chapter:

- (1) Memorial signs or tablets denoting names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.
- (2) Nonilluminated secondary window signs communicating accessory information such as hours of operation, no more than 0.5 square foot in size.
- (3) Nonilluminated real estate "for sale" or "for rent" signs used for the purpose of selling or leasing land or buildings for which subdivision approval is not required, and displayed on the premises for sale or lease, provided such sign is located on the front wall of a building or, if freestanding, does not exceed 10 feet in height and is located not nearer than 15 feet to the edge of pavement or side lot line. All such signs shall not exceed four square feet in sign area per side, shall be limited to one per premise, and shall be removed immediately upon sale or lease of the premises.
- (4) Works of art that do not include a commercial message.
- (5) Traffic or other municipal signs, legal notices, railroad crossing signs, danger and similar temporary emergency signs, signs which are solely devoted to prohibiting trespassing, hunting or fishing, or sign, banner, or insignia of any political, educational,

charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event, and the sign, poster, flag, pennant or insignia of any government, or any sign reasonably necessary for the exercise of First Amendment rights.

- (6) A sign advertising the sale of agricultural produce, grown primarily on land that is considered part of the same farming operation and available seasonally, provided such sign does not exceed four square feet per side and is located not nearer than 15 feet from the edge of the pavement.

D. Prohibited signs. All signs not specifically permitted are prohibited. Prohibited signs include but are not limited to:

- (1) Off-premise signs (not on the premises of the business they advertise) or billboards, except those advertising seasonal rural outdoor recreational facilities, 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 if the sign is found to have historic merit.
- (2) Roof signs
- (3) Portable signs
- (4) Internally illuminated signs
- (5) Signs with flashing, blinking, intermittent, or moving lights, or any artificial light which is not maintained stationary and constant in intensity and color at all times when in use, except signs displaying time and/or temperature.
- (6) Signs that contain or consist of banners, pennants, ribbons, balloons, streamers, spinners or similar moving, fluttering or revolving devices
- (7) Rotating signs, including all signs and devices which are not permanent in their orientation.
- (8) Signs that advertise by brand name or insignia any particular brands of products except for those establishments which deal exclusively in one brand or make.
- (9) Signs and obstructions which may be confused with or obstruct the view of any authorized traffic sign or signal, obstruct the sight distance triangle at any street intersection, or extend into the public right-of-way.

E. Temporary signs. All signs of a temporary nature must receive permits before being displayed, except those specified under the exempt signs section of this chapter.<sup>EN(25)</sup> The permit shall note the date of the first day the sign may be displayed and the date it must be removed. A security deposit shall be deposited with the Building Inspector to insure removal of the sign(s) upon expiration of the permit period. If any temporary sign is not removed by

the expiration of the time limit noted on the application, the Building Inspector, after seven days' written notice to the permit holder to remove such sign(s) (computed from the date of mailing), and after failure of the permit holder to do so, will cause said signs to be removed, and the cash deposit will be forfeited to help defray the cost of removal. The schedule of security deposit fees shall be: \$50 per sign up to a maximum of \$500 for 10 or more signs. Temporary signs are allowed for:

- (1) Activities or events. Temporary signs shall be permitted for a period not exceeding six weeks prior to the activity or event nor exceeding four days after the activity or event. Such signs shall not exceed 16 square feet in area in business or industrial districts nor eight square feet in area in residential districts.
- (2) Temporary real estate signs. Temporary real estate signs are permitted for each subdivision receiving final plat approval by the Planning Board.
  - (a) One such sign may be located on each existing Town, county or state highway or street on which the subdivision fronts. Said sign(s) shall be permitted only during the period of active sales and in no case longer than one year from the date of final approval. Upon written application from the subdivider, the Building Inspector may extend this period for one additional year, subject to additional one-year extensions, whenever it deems that the circumstances warrant such extension. The applicant shall post a reasonable bond, as determined by the Town Engineer, as a condition for removal. [Amended 10-24-2002 by L.L. No. 6-2002]
  - (b) Each such sign shall not exceed 10 feet in height, measured from the ground level to the top of the sign, and shall not be located nearer than 15 feet to any street or lot line or any building, unless attached directly to said building. The total area of each sign shall not exceed 12 square feet.
- (3) Nonilluminated "garage sale," "yard sale," "barn sale," "tag sale," or similarly descriptive sign is allowed by permit from the Town Clerk. Said sign is allowed up to four square feet per face in area, located fully on the property on which such sale is being conducted. Such sign shall not to exceed one per premise and may be displayed for a period of up to 48 hours in advance of the sale and up to 12 hours after its completion. Any such sign displayed for more than three days out of any month shall be considered a permanent sign and shall require a permit from the Building Inspector.
- (4) A sign advertising seasonal rural outdoor recreational facilities (e.g., skiing, equestrian, aquatic activities or sale of farm products) shall meet the standards for permanent signs, but may be located, upon a permit from the Building Inspector, on one off-site location fronting on county or state roads, if the recreational facility itself is located not on a county or state road, but on a Town road. Such permit shall specify the months of the year said sign may be displayed; however, the standards or frame on which said sign is



hung may be permanently installed.

F. Permanent signs within residential districts. Within the Mountain, Rural, Suburban Residence, and the Conservation Zoning Districts of the Town, the following signs are permitted:

- (1) For each dwelling unit, one nonilluminated nameplate, professional sign, or sign indicating a permitted home occupation, with an area of not over three square feet per face, not nearer than 15 feet to the edge of pavement for the front yard, 15 feet from the side or rear yard property line, and if freestanding, not exceeding four feet in height measured from ground level to the top of the sign. When two home occupations are housed within the dwelling unit and/or accessory building, two signs are permitted provided the combined area of the two signs does not exceed three square feet per face. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]
- (2) On-site signs.
  - (a) Signs advertising the sale of agricultural produce available seasonally, and seasonal rural outdoor recreational facilities (e.g., skiing, equestrian and aquatic activities) shall obtain a temporary sign permit, but shall meet the standards for permanent signs. Such permit shall specify the months of the year said signboard may be displayed; however, the standards or frame on which said sign is hung may be permanently installed. Such signs may be located on a maximum of two off-site locations fronting on county or state roads, if the farm or the recreational facility itself is located not on a county or state road, but on a Town road.
  - (b) Permits for each temporary or seasonal sign may be renewed annually by the Building Inspector if it is found that said sign is in satisfactory condition and otherwise conforms to all zoning requirements.
- (3) Signs for special permit uses in residential zoning districts. [Added 9-11-2003 by L.L. No. 4-2003]
  - (a) Wall signs (with or without borders) may be as large as one square foot per two linear feet of an establishment's front building wall length or a maximum of 25 square feet, whichever is less. Such sign shall be located on the establishment's principal facade, fascia, or eve.
  - (b) One landscaped monument sign shall be permitted in lieu of a wall sign on each road frontage with a principal facade. Said sign may be erected within the required front yard but must be set back 15 feet or more from the edge of pavement, may be no larger than 24 square feet in area consisting of a maximum of 12 square feet in area per face with a maximum height of four feet from the ground (including the base) to the top of the sign.

- (4) Off-site signs. Signs advertising the sale of agricultural produce available seasonally or approved adaptive reuse of agricultural buildings may obtain a permit for up to two off-site signs, provided that such signs conform with the Town of Warwick's directional sign program. Such signs may be located on a maximum of two off-site locations fronting on county or state roads, if the farm or the adaptive reuse facility itself is located not on a county or state road, but on a Town road. Warwick's directional sign program requires that all off-site signs conform with the following standards: [Added 9-11-2003 by L.L. No. 4-2003]
- (a) The sign area shall be 18 inches high by 24 inches wide and shall consist of one face.
  - (b) The sign materials shall be metal, as approved by the Town of Warwick Highway Department.
  - (c) The sign shall be located within the highway right-of-way, and a valid sign permit shall be obtained from state or county agencies prior to issuance of the Town of Warwick sign permit.
  - (d) The sign shall be six feet from the ground surface to the top of the sign.
  - (e) Sign lettering shall consist of san serif lettering no more than four inches high on one to two lines and shall include a directional arrow.
  - (f) The sign colors shall consist of yellow lettering and yellow outline on a brown background as shown on the illustration.<sup>EN(26)</sup>

G. Permanent signs within other districts.

- (1) Local Hamlet Business and Traditional Neighborhood Districts.
- (a) Not more than one sign shall be permitted per establishment. [Amended 10-24-2002 by L.L. No. 6-2002]
  - (b) Wall signs (with or without borders) may be as large as one square foot per two linear feet of an establishment's front building wall length or a maximum of 25 square feet, whichever is less. Such sign shall be located on the establishment's principal facade, fascia, or eve. [Amended 10-24-2002 by L.L. No. 6-2002]
  - (c) Projecting signs as large as four square feet on each of two sides; maximum projection of four feet from the building face; minimum clearance from the ground eight feet and maximum clearance 10 feet.
  - (d) Window signs as large as 15% of the total window area of the principal facade, with a maximum of four square feet; lettering up to eight inches high.

- (e) Awning signs projecting at least five feet into the sidewalk but no more than seven feet; lettering up to six inches in height and on the valance only. The extent of lettering may cover a maximum of eight feet in width or 50% of the valance width, whichever is less.
  - (f) In the LB District only, one additional freestanding sign shall be located no closer than 15 feet to the edge of pavement, shall not exceed 10 feet in height, and shall be no larger than 12 square feet in area. [Added 10-24-2002 by L.L. No. 6-2002]
- (2) Office and Industrial Park District. [Amended 9-11-2003 by L.L. No. 4-2003]
- (a) Not more than one sign shall be permitted per building, announcing the name or insignia, or both, of the company or companies housed in the development of the lot. Such sign shall be located on the establishment's principal facade. Such sign shall be a wall sign or a monument sign and shall not exceed an area of 20 square feet per face.
  - (b) One sign at each point of access to the lot, and internal directional signs shall be permitted, provided that the individual signs are no more than two square feet on each of two sides and are limited to generic text such as "entrance," "exit," "office," and "parking." Permits will be granted only if the applicant can clearly demonstrate necessity based on motorist safety and that any such directional sign will be set back at least 15 feet from the edge of pavement.
  - (c) One landscaped monument sign identifying the office and industrial park shall be permitted. Said sign may be erected within the required front yard but must be set back 15 feet or more from the edge of pavement, may be no larger than 40 square feet in area consisting of a maximum of 20 square feet in area per face, with a height maximum of four feet from the ground (including the base) to the top of the sign.
- (3) Agricultural Industry District.
- (a) Same as Office and Industrial Park District above.
  - (b) Same as residential districts above, as they apply to the residential, agricultural and recreational uses.
- (4) Designed Shopping Center District.
- (a) Not more than one sign shall be permitted per establishment. Such sign shall be located on the establishment's principal facade.
  - (b) Such sign shall be a wall sign. Freestanding signs may not be displayed by individual establishments located within a center. Wall signs may be no larger than 40 square feet per establishment.

- (c) 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. Within these standards, variety of graphic design is encouraged, subject to the design criteria of § 164-43.1H(3). [Amended 1-24-2002 by L.L. No. 2-2002]
  - (d) One common freestanding sign, monument, post-and-arm, or pole style, identifying the shopping center shall be permitted as follows:
    - [1] Monument signs no larger than 40 square feet in area consisting of a maximum of 20 square feet in area per face, with a height maximum of four feet from the ground (including the base) to the top of the sign. The sign must be set back 15 feet or more from the edge of the pavement.
    - [2] Post-and-arm signs may be as large as 18 square feet in area per face, with a height maximum of 15 feet from the ground (including the post) to the top of the sign. The sign must be set back a minimum of 15 feet from the edge of the pavement.
    - [3] Pole signs may be as large as 20 square feet per face, with a height maximum of 15 feet from the ground (including the post) to the top of the sign. The sign must be set back a minimum of 15 feet from the edge of the pavement.
  - (e) One sign at each point of access to the lot, for internal direction, shall be permitted, provided that the individual signs are no more than two square feet on each of two sides and are limited to generic text such as "entrance," "exit," "office," and "parking." Permits will be granted only if the applicant can clearly demonstrate necessity based on motorist safety and that any such directional sign will be set back at least five feet from any public right-of-way or property line.
- (5) Special usage.
- (a) Club or fraternal lodge. No sign shall be displayed advertising any such activity.
  - (b) Mobile home courts. One nonilluminated sign, containing an area of not more than 24 square feet and located not more than 10 feet above ground level at its highest point, may be displayed. Such sign shall be set back at least 20 feet from any public road and at least 50 feet from all other property lines.
- H. Design criteria. In reviewing sign applications, the Building Inspector shall determine that the sign will meet the following criteria. If in the judgment of the Building Inspector, sufficient doubt exists as to whether the applicant can comply with the criteria, referral shall

be made to the Planning Board within five days of receipt of the application. The Planning Board, within 30 days of its receipt of the application, shall then consider the design criteria and approve, approve with modifications, or deny the application for a sign permit and notify the Building Inspector of its decision on this matter.

(1) General criteria.

- (a) Signs should be a subordinate part of the streetscape;
- (b) Signs in a particular area or district should create a unifying element and exhibit visual continuity;
- (c) Whenever feasible, multiple signs should be combined into one to avoid clutter;
- (d) Signs should be as close to the ground as practical, consistent with legibility considerations;
- (e) A sign's design should be compatible with the architectural character of the building on which it is placed and not cover any architectural features on the building.

(2) General rules by sign type.

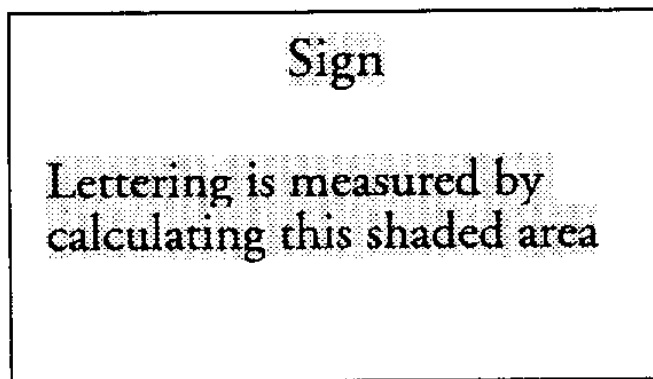
- (a) Awning signs. Awning graphics may be painted or affixed flat to the surface of the valance and shall indicate only the name and/or address of the enterprise or premises.
- (b) Freestanding signs. No more than one freestanding pole sign may be located on a lot.
- (c) Monument sign. Monument signs shall not be placed so as to impair visibility for motorists.
- (d) Projecting signs. Projecting signs may not extend above the height of the roofline and shall have no more than two faces. They shall be securely anchored and shall not swing or move in any manner.
- (e) Wall signs. The visible edge or border of a wall sign may extend up to nine inches from the face of the wall, fascia, or eave to which it is attached, and may not extend any distance beyond or above the building in any direction. [Amended 10-24-2002 by L.L. No. 6-2002]
- (f) Window signs. Permanent window signs must be painted on or attached directly and permanently to the window.

(3) Specific criteria.

- (a) All signs, with the exception of window signs, shall be constructed of wood, metal

or other durable material as approved by the Building Inspector.

- (b) The lettering on any sign may not exceed 60% of the sign area of any one side of the sign, with the exception of signs with no background. The area for lettering shall be computed in accordance with the illustration provided.



- (c) A primary sign may contain up to six words. Any symbol or logo is counted as a word.
- (d) The color contrast on all signs must consist of light lettering on a dark background. Each sign may contain a maximum of three colors; black and white are each considered a color. Fluorescent colors are prohibited. Artwork that is an integral part of a business logo is exempted from the color restriction.
- (e) The Building Inspector may require that landscaping be used at the base of a freestanding sign if such landscaping will make the sign more compatible with the surrounding area. Required landscaping may include one or more of the following types of vegetation: ivies, grasses, flowers, bushes, small trees. The Building Inspector need not approve a sign application if landscaping is deemed insufficient.
- (f) Signs may only be externally illuminated as per the provisions of § 164-43.4 of this chapter.
- (g) Existing signs meeting all design criteria at the time of adoption of this 2002 Zoning Law, with the exception of color, shall not be required to comply with the color requirements of § 164-43.1H(3)(d) above. [Added 9-11-2003 by L.L. No. 4-2003]

#### I. Removal of signs.

- (1) Abandoned signs. Any sign, existing on or after the effective date of this chapter, which becomes abandoned, shall be removed. The Building Inspector shall immediately give written notice to the named owner of the building on which the sign is mounted or, if the sign is freestanding, to the named owner of the land upon which the sign is located, who shall, unless good cause is shown, remove the sign within 30 days from the date of the

written notice. If no action is taken by the owner within said time period, the Building Inspector may cause the sign to be removed and request the Town Board to assess the owner for all costs incurred for such service.

- (2) Unsafe signs. The Building Inspector may cause any sign which is a source of immediate peril to persons or property to be removed immediately and without notice.

J. Nonconforming signs. Any sign which does not conform to the provisions herein shall be deemed a nonconforming sign and shall be taken down and removed by the owner on or before the expiration of five years from the effective date of this chapter, and such lapse of time shall be deemed sufficient to amortize the cost thereof. Nonconforming signs that are the subject of subdivision, special use permit and/or site plan applications, certificates of occupancy, no-violation letters, or other permit, approval, entitlement, or authorization from the Town of Warwick shall comply with the terms and conditions of this section (§ 164-43.1). [Amended 10-24-2002 by L.L. No. 6-2002]

K. Definitions. The following definitions apply to terms used in this section:

AWNING -- Any nonrigid material, such as fabric or flexible plastic, that is supported by a frame that is attached to an exterior wall.

PRINCIPAL FACADE -- The face of a building which contains the primary entrance to the establishment.

SIGN -- Any material, structure or device, or part thereof, composed of lettered or pictorial matter displaying an advertisement, announcement, notice or name, and including any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any person or business or cause when such is placed in view of the general public.

- (1) SIGN, AWNING -- Any visual message on an awning.
- (2) SIGN, FREESTANDING -- Any sign not attached to or part of any building but permanently affixed, by any other means, to the ground. Included are pole, post-and-arm, and monument signs.
- (3) SIGN, HEIGHT -- The height of a freestanding sign shall be measured vertically from the established average grade directly below the sign or entry level of the building or structure, whichever is lower, to the highest point of the sign, including support structures.
- (4) SIGN, INTERNALLY ILLUMINATED -- A sign lighted by or exposed to artificial lighting that shines through a plastic or other translucent or transparent covering. Use of neon and other similar signs are considered internally illuminated.

- (5) SIGN, LIGHTING -- External white light used to illuminate a sign.
- (6) SIGN, MONUMENT -- A freestanding sign, either with a base affixed to the ground or mounted on short poles no greater than two feet high.
- (7) SIGN, OFF-PREmise, OR BILLBOARD -- A sign which does not identify a business or a profession conducted, or a commodity or service sold or offered, upon the premises where such sign is located.
- (8) SIGN, POLE -- A freestanding sign with the base of the actual sign area at least five feet above the ground, supported by vertical pole(s).
- (9) SIGN, PORTABLE -- A sign, whether on its own trailer, wheels or otherwise, designed to be movable and not permanently affixed to the ground, a building, structure or another sign. Included are signs and advertising devices which appear on permanent delivery/pickup containers, and commercial vehicles consistently parked in highly visible locations which are obviously positioned to constitute advertising.
- (10) SIGN, POST-AND-ARM -- A freestanding sign comprised of a vertical post to which a perpendicular arm is attached and from which the sign hangs.
- (11) SIGN, POSTER -- A sign affixed to trees, other natural vegetation, rocks, or utility poles.
- (12) SIGN, PRIMARY -- An establishment's principal sign, i.e., the sign which identifies the business to passersby, communicating the most pertinent information.
- (13) SIGN, PROJECTING -- A sign attached to a building wall or structure that projects horizontally or at a right angle more than nine inches from the face of the building.
- (14) SIGN, ROOF -- A sign erected on a roof or extending in height above the roofline of the building on which the sign is erected.
- (15) SIGN, SECONDARY -- A sign which communicates accessory information, e.g., hours of operation, different products sold.
- (16) SIGN, TEMPORARY -- Any sign that is displayed only for a specified period of time and is not permanently mounted.
- (17) SIGN, WALL -- A sign that is painted on or attached directly to the outside wall of a building, with the face of the sign parallel to the wall and having a visible edge or border extending not more than nine inches from the face of the wall, fascia, or eave to which it is attached. [Amended 10-24-2002 by L.L. No. 6-2002]
- (18) SIGN, WINDOW -- A sign visible from a sidewalk, street or other public place, affixed or painted on glass or other window material, or located inside within four feet of the



window, but not including graphics in connection with customary window display of products.

SIGN, AREA -- Includes all faces of a sign measured as follows:

- (1) When any sign is framed or outlined, all of the area of the frame or outline shall be included.
- (2) Sign measurement shall be based upon the entire area of the sign with a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including structural supports if they are not used for advertising purposes.
- (3) The area of a sign consisting of an insignia or other device, but without background, shall be calculated as the smallest polygon or circle possible enclosing the insignia.

SIGN SETBACK -- The distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly from the property line.

#### **§ 164-43.2. Off-street parking and loading requirements.**

A. Purpose. The purpose of the off-street parking and loading regulations is to ensure that such uses are treated as accessory uses, that they do not predominate the site, are placed to the side and rear of buildings to minimize their visibility, and feature quality landscaping to reduce the visual impact of glare, headlights, and parking lot lights from roadways and neighboring properties. Off-street parking areas should complement the buildings on a site, improve the appearance of the Town of Warwick, protect the character of residential, business, institutional, and industrial areas, and conserve the value of land and buildings on surrounding properties.

- (1) Permitted accessory uses. Off-street parking spaces, open or enclosed, are permitted accessory to any use, subject to the provisions of this section. Off-street loading berths, open or enclosed, are permitted accessory to any use except residences for one or two families. No off-street loading berth shall be located in a front yard.
- (2) Schedule of requirements.
  - (a) Accessory off-street parking and loading spaces, open or enclosed, shall be provided for any lot as specified below. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these regulations.

#### **Table of Uses and Parking Space Requirements**

<b>Use</b>	<b>Parking Spaces Required</b>	<b>Loading Spaces Required</b>
------------	------------------------------------	------------------------------------

Residential		
Accessory/secondary dwelling	1/dwelling unit	None
Class 1 home occupation	1/500 square feet of GFA devoted to the home occupation	None
Class 2 home occupation	1/500 square feet of GFA devoted to the home occupation	None
Convalescent or rest homes	0.33/resident	None
Senior apartment dwelling unit	0.65/1-bedroom unit, plus 0.85/2-bedroom unit	None
Senior congregate dwelling unit	0.65/1-bedroom unit, plus 0.85/2-bedroom unit	None
Senior townhouse dwelling unit	1/1-bedroom unit, plus 1.25/2-bedroom unit	None
Senior two-family dwelling unit	1/1-bedroom unit, plus 1.25/2-bedroom unit	None
Single-family dwelling unit	2/dwelling unit	None
Summer colonies	1/2 dwelling units	None
Tourist, boarding and lodging houses	1 per sleeping room or unit, plus any spaces required for meeting rooms, plus 1 for each 4 employees on the peak activity shift	As required for restaurant and meeting rooms
Two-family dwelling unit <sup>1</sup>	1.5/1-bedroom unit plus 2 spaces/2-bedroom unit	None required for the first 25 units; thereafter 1 for every 100 units per

building

Retail

Convenience retail	4/1,000 square feet GFA	Same as general retail
Farm markets	4/1,000 square feet GFA	Same as general retail
Farm stands selling agricultural and nursery products	4/1,000 square feet GFA	None
General retail	3.3/1,000 square feet of GFA	None for the first 10,000 square feet GFA, then 1/30,000 square feet up to 65,000 square feet
Hard goods retail	2.5/1,000 square feet GFA interior sales space plus 1.5/1,000 square feet interior storage	Same as general retail
Motor vehicle sales and service	2.5/1,000 square feet GFA interior sales space plus 1.5/1,000 square feet of external display (does not include stock areas closed to the public) plus 3/service bay	Same as industrial
Other retail/ service uses	As determined by the Planning Board	Same as general
Personal service	2/treatment station, but not less than 4/1,000 square feet GFA	None
Service retail	2.4/1,000 square feet GFA	Same as general retail

Food and Beverage

Eating and drinking	12/1,000 square feet	1/30,000
---------------------	----------------------	----------

places	GLA plus any spaces required for banquet and meeting rooms	square feet GLA
Eating and drinking places, drive-in restaurants and fast-food	16/1,000 square feet GLA for kitchen, serving counter and waiting area plus 0.5 seat provided	With indoor seating area 1; with no seating area, none
Office/Business Services		
Business and professional offices	3.6/1,000 square feet GFA for GFA up to 30,000 square feet; 3/1,000 square feet GLA for buildings with GFA over 30,000 square feet	None for the first 30,000 square feet GFA then 1 thereafter
Funeral homes	1/3 persons accommodated at capacity 1 per 2 plus employees	1/chapel which shall be 10 feet wide, 20 feet long, and 7 1/2 feet high
Medical offices	6/1,000 square feet GFA for GFA up to 5,000 square feet; 5.5/1,000 square feet GLA for buildings with GFA over 5,000 square feet	None for the first 30,000 square feet GFA then 1 thereafter
Industrial		
Manufacturing	2/1,000 square feet GFA plus any required spaces for offices, sales, or similar use or as special conditions may require	1 / 10,000 square feet up to 50,000 square feet GFA plus one for each 50,000 square feet thereafter
Warehouse, self-storage	3 at the office; access to individual storage units shall provide for loading of vehicles without impeding traffic flow through the facility	None

Wholesale sales/storage, warehouses	0.5/1,000 square feet GFA plus any required spaces for offices, sales, or similar use or as special conditions may require	1 / 50,000 square feet GFA
-------------------------------------	--	----------------------------

#### Institutional/Recreational

Bowling alleys	0.33/person in permitted capacity	None
Campgrounds	1/camp site	None
Camps	1/2 members or accommodations (whichever is greater)	None
Clubs and fraternal lodges	1/1,000 square feet GFA but not less than 1/5 seats	None
Hospitals or sanitariums	0.4/employee plus 1/3 beds plus 1/5 average daily outpatient treatments plus 1/4 members of medical staff	1/100,000 square feet GFA
Institutions of higher learning, public libraries, museums, state-accredited private schools	To be established the Planning Board based on a study of parking needs prepared specifically for the subject institution	To be established by the Planning Board based on a study of load-space needs prepared specifically for the subject institution
Nursery school	1/employee plus 0.1/person of capacity enrollment plus drop-off spaces equal to one for each 8 enrollees permitted	None
Place of public assembly	0.25/person in permitted capacity	1/100,000 square feet GFA

Recreational  
facility

0.33/person in permitted  
capacity

1/100,000  
square feet GFA

NOTES:

<sup>1</sup> Includes two-family and townhouse style dwellings.

- (b) Reasonable and appropriate off-street parking and loading requirements for structures and uses which do not fall within the categories listed above shall be determined by the Planning Board upon consideration of all factors entering into the parking needs of each such use.
- (c) Definitions. As used in this chapter, the following definitions shall govern the interpretation of the parking regulations. The uses enumerated and similar uses not specifically defined may be located as stand-alone facilities (in separate buildings), combined in buildings generally housing a number of similar uses or located in mixed-use facilities where a wide range of nonrelated uses may be combined in a single building, or development complex.

EMPLOYEE -- The regular working staff, (paid, volunteer or otherwise) at maximum strength and in full time equivalent numbers necessary to operate, maintain or service any given facility or use under normal levels of service.

GARAGE, PRIVATE -- An accessory building housing motor vehicles (not more than one of which may be a commercial vehicle of not more than three tons gross vehicle weight) which are the property of and for the private use of the occupants of the parcel on which the private garage is located.

GARAGE, PUBLIC -- Any building or premise (except those used as a private garage or off-street parking facility) used for equipping, repairing, hiring, selling or storing motor vehicles.

GROSS FLOOR AREA (GFA) -- The gross floor area, including the exterior building walls, of all floors of a building or structure. GFA shall include all occupiable areas minus the following deductions:

- [1] Vehicular parking and loading areas within the structure.
- [2] Floor area occupied by HVAC (heating, ventilating and air conditioning), mechanical, electrical, communications and security equipment or apparatus.

GROSS LEASABLE AREA (GLA) -- The gross floor area minus the following floor area deductions:

- [1] Elevator shafts and stairways.

- [2] Public restrooms.
- [3] Public lobbies, common mall areas, atriums and courtyards provided solely for pedestrian access to the building from the exterior, and/or for aesthetic enhancement or natural lighting purposes.
- [4] Permanently designated corridors (i.e., not subject to relocation by the requirements of a specific lease).

OCCUPIED SPACE -- An area enclosed or covered providing a ceiling height of seven feet, zero inches or more, intended for normal use by people on an occasional or more frequent basis. Occupied space may include basements, cellars, penthouses, attic space and interior balconies or mezzanines if the space is intended for use or habitation.

OFF-STREET PARKING FACILITY -- Parking spaces located in an area other than on a street or public right-of-way and limited in use to vehicles not exceeding a gross vehicle weight of three tons or not parked continuously for periods of more than 48 hours, except in facilities designated for special uses such as airport parking. Parking facilities include the following subclasses:

- [1] SURFACE PARKING LOT -- A parking facility constructed on prepared grade and without a covering roof or structure.
- [2] OPEN PARKING STRUCTURE -- A parking area or facility, comprising one or more floors as a part or whole of a building, that meets the requirements for natural ventilation as specified by the New York State Building Code.
- [3] ENCLOSED PARKING STRUCTURE. -- A parking area or facility comprising one or more floors as a part or whole of a building, that does not meet adopted Building Code requirements for openness.

(d) Use categories. For the purpose of calculating parking and loading requirements, uses are defined as follows:

- [1] Cultural/recreational and entertainment.
  - [a] Public assembly, including art galleries; auditoriums; community and recreational centers; convention rooms; ballrooms; meeting rooms and exhibit halls; libraries; museums; movie and performing arts centers; stadiums and arenas; funeral homes; churches, synagogues and mosques; outdoor theaters/festival/drama; and mausoleums.
  - [b] Public recreation, including bowling alleys, gymnasiums, health clubs, roller and ice skating rinks, tennis, racquetball, swimming and other

recreational facilities.

- [c] Educational, including grade and secondary schools, colleges, special education facilities, trade schools, adult education facilities or testing/research facilities used for or in conjunction with educational purposes.

[2] Food and beverage services.

- [a] Quality restaurant, including restaurants, lounges, and bars with or without dancing and entertainment facilities, which provide only seated table service.
- [b] Family restaurant, without a bar or lounge area which provides food delivered to tables or dining counters, and only incidental carry-out service.
- [c] Alcoholic beverages may be served with meals only.
- [d] Fast food, including delicatessens, carry-out, etc., which provides quickly or previously prepared foods from a serving counter. The patron carries the food out or to a separated indoor or outdoor seating area, if provided.

[3] Governmental. Federal, state, county, Town and municipal buildings of all types and facilities used by public or quasi-public agencies that serve or assist the public or provide an accepted public purpose.

[4] Industrial. Manufacturing, processing, assembly, and/or packaging plants of all types.

[5] Office and business services.

- [a] General business offices, including accounting; advertising; architectural/engineering/planning; bookkeeping; business and management consulting; charitable; consumer protection; corporate credit reporting; data processing; detective services; interior decorating (without furniture showrooms); legal offices; newspaper and newspaper distribution; philanthropic or professional membership business associations; publishing houses (without printing plants); public relations; religious services; research labs; stenographic services; syndicator offices; title abstracting; travel agencies and window cleaning services.
- [b] Financial services offices, including collection services; commodity or security broker/dealer; currency exchange; employment agencies; employment services; financial institutions including banks, savings and loans, credit unions, with or without drive-in facilities; general business



offices; financial counseling; income tax preparation; insurance agencies/brokers/service offices; loan companies; labor unions; public relations; real estate offices; etc.

[c] Medical offices; dentists; physicians; chiropractors, psychiatrist/psychologist; nonresidential psychiatric, alcoholic and narcotic treatment centers; dental and medical laboratories; medical clinics and outpatient surgery/treatment centers; offices for the fitting and repair of hearing aids, prosthetic appliances, etc.

[d] Home occupation offices, including such services, provided solely by the owner or tenant, as accounting, insurance, public relations, tax preparation, legal, stenographic, planning and design and similar activities.

[6] Residential uses.

[a] Single-family dwellings, including detached houses and duplexes, townhouses, and clustered dwelling units that may be attached but have separate entrances and/or parking areas for each unit or common parking areas serving two or more units.

[b] Multifamily dwellings, including condominium and apartment buildings with common entranceways and/or parking areas, for two or more dwelling units.

[c] Elderly housing, any multifamily dwelling occupied 90% or more by persons 60 years of age or older.

[d] Accessory dwelling units, above, below or on the same floor level as the primary nonresidential use within the same building, as well as separate dwelling units attached or adjacent to the primary dwelling unit and on the same parcel of land and intended for use by dependents, household providers or relatives of the occupants of the primary residential unit.

[e] Sleeping rooms, including boarding, lodging, and bed-and-breakfast in houses, rectories and convents, and rooms that are rented or used on an individual basis by nonfamily members.

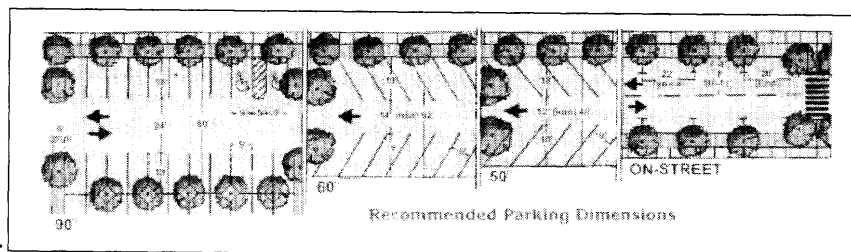
[f] Commercial lodging, including hotels, motels, motor lodges and motor courts.

[g] Group, convalescent and nursing homes, where unrelated persons reside under supervision for special care, treatment, training or other purposes, on a temporary or permanent basis.

- [h] Day-care centers, where unrelated persons are cared for during limited periods each day in a supervised facility.
  - [i] Hospitals, including teaching and specialized medical centers, sanitariums, and residential alcoholic, psychiatric and narcotic treatment facilities that provide for temporary or long-term resident patient care.
- [7] Retail/service uses.
- [a] General retail, including generally the sale of items such as antiques; art; art supplies; bicycles; books; camera and photographic supplies; china and glassware; clothing; coin and stamp; crafts/needlework; discount/mass merchandising; drapery/curtain/window coverings; dry goods; fabrics and sewing accessories; floor coverings; furriers and fur apparel; gifts/novelty/souvenirs; hobby; jewelry; linens/sheets/towels; leather/luggage/suitcases; musical instruments; optical shops; newspapers and magazines; retail florist (no greenhouse); paint and wall coverings; pet shops; records/audio/stereo/TV; school and office supplies; secondhand and resale; shoes; small electrical appliances; specialty; stationary; tobacco; toys.
  - [b] Convenience retail, including bakeries and confectioneries (nonmanufacturing); butchers/meat shops; dairy products; eggs and poultry; fish and seafood; fruit and vegetables; frozen desserts (without customer seating tables); grocery/supermarkets; liquor; laundry/dry cleaning (pickup station only); pharmacy/drug; film/video rentals.
  - [c] Service retail, including drapery services; direct selling; appliance repair, tool and appliance rentals; mail order; merchandise vending; printing/copy; shoe repair; pawn shops; photographic studios; tailoring and dressmaking; upholstery.
  - [d] Hard goods retail, automotive parts and supplies (without repair facilities); furniture; key and lock; hardware; wholesale florists; garden supply; greenhouse; nurseries; truck gardens and orchards; lumber and building supplies; household appliances; lighting and electrical supplies; pool and patio furniture; and sales display and showrooms for any building product (including millwork, cabinets, plumbing, glass and mirror, fencing, swimming pools/spas/hot tubs, etc.).
  - [e] Shopping centers, with two or more individual stores, provided in the same building or attached buildings, and GLA totaling more than 10,000 square feet.

- [f] Personal care services, including barber and beauty shops, cosmetology and cosmetic salons; diet counseling centers; electrolysis/hair removal salons; and fingernail salons.
  - [g] Coin-operated laundry and coin-operated dry cleaning facilities, with or without attendant services and/or a pickup station for outside dry cleaning service.
  - [h] Other retail/service uses, including animal clinics/hospitals/veterinarian offices; kennels and pounds.
  - [i] Temporary retail, including roadside stands and outdoor markets.
  - [j] Motor vehicle sales and service, including automotive sales; gasoline and/or diesel fuel stations; automotive rental agency; marine craft sales and service; engine and motor repair shops; automotive glass/muffler/painting/tire/upholstery/repair shops, recreational and sports vehicle sales and service.
  - [k] Motor vehicle laundries and washing facilities, including facilities for washing, waxing and cleaning of vehicles and vehicle components but expressly prohibiting facilities or equipment for the repair, overhaul or storage of motor vehicles or vehicle components.
- [8] Storage/wholesale/utility. Self-storage warehouse, with secured, individual storage units which are leased for a fee to individual companies or persons.
- (3) Areas computed as parking spaces. Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than street or a driveway except in the Traditional Neighborhood District. A driveway for a one-family or two-family residence may count as one parking space, other than on a corner lot, where the visibility at intersections is to be safeguarded as provided in § 164-41B.
- (4) Size and location of parking spaces. All off-street parking should be located behind or to the side of the principal building(s) but in no case within 50 feet of the designated front lot line or right-of-way. Parking spaces shall be screened from public view to the maximum extent practicable, provided such screening does not interfere with safety standards for sight distance. Within the LB and TN-O Zoning Districts the Planning Board is authorized to reduce applicable front yard setbacks to allow placement of buildings nearer to the street, when parking is provided wholly at the rear of buildings and to link the site to the street front and sidewalk systems, whether existing or planned. Two hundred fifty square feet shall be considered one parking space, to provide room for standing area and aisles for maneuvering. Entrance and exit roadways shall not be

computed as parking space except for one-family and two-family residences as in Subsection A(3) herein. The minimum stall width shall be nine feet (9'), the minimum length eighteen feet (18'). Provision shall be made at convenience retail facilities for shopping cart collection areas. Recommended parking dimensions are shown in the illustration below: [Amended 9-11-2003 by L.L. No. 4-2003]



- (5) Access. Unobstructed access to and from a street shall be provided. Such access shall consist of at least one ten-foot lane for parking areas with fewer than 20 spaces and at least two ten-foot lanes for parking areas with 20 spaces or more.
- (6) Drainage and surfacing. All open parking areas shall be properly drained, and all such areas of over 10 spaces shall be provided with a suitable surface as specified by the Town Engineer.
- (7) Landscaping. Parking lot landscaping is in addition to all other landscaping requirements of this chapter. See § 164-46G(3)(n) for landscaping requirements of all uses requiring special use permits and/or site plan approval. In parking lots of one acre or more, at least 15% of the area between the inside perimeter of the parking surface of the parking area shall be landscaped and maintained with trees, shrubs and other plant materials, as determined necessary by the Planning Board. Natural landscaping can count as part of the fifteen-percent requirement. In all parking lots providing eight or more off-street parking spaces, a minimum of one canopy tree having a caliper of at least three inches and 10 shrubs shall be planted for each eight parking spaces and any additional portion thereof, said tree(s) to be planted in median dividers, landscape islands or such other locations as may be determined by the Planning Board to relieve the monotonous expanse of asphalt and provide shade for parked vehicles. The following principles of off-street parking lot design shall be considered in developing a landscape plan. It is recognized that each site is different due to topography, the presence of surface water resources, and other factors, such as snow removal. Therefore, while the use of all principals is encouraged in parking lot design, each may not be attainable on every site. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]
  - (a) Use of native species is highly encouraged since such species are tolerant of

Southeastern New York's climate, are generally disease resistant, do not create unusual maintenance problems, and are readily available from local nurseries. Use a variety of tree species to provide visual interest, to protect against same species die-out or disease, and be tolerant of road salt. Large leafed and/or fruiting trees should be avoided.

- (b) To reduce the visual impact of the parking lot, provide a ten-foot wide landscape strip around the perimeter of the lot, to be planted with shade trees and low shrubs. Provide a minimum of one shade tree every 35 feet of lot perimeter but not necessarily at 35 feet on-center. In the judgment of the Planning Board, additional shade trees and sufficient shrubs may be necessary to effectively shade/screen the parking lot.
- (c) Break up the blacktop and reduce stormwater runoff by using bricks, pavers, or textured surfaces for crosswalks. For uses subject to seasonal fluctuations, establish overflow parking using pervious surfaces such as cellular concrete blocks where the interstices of the blocks are filled with earth and planted with grass. The Planning Board remains responsible for determination of the adequacy of parking supply demand.
- (d) Divide the rows of parking with planting strips and trees, averaging a tree every six to 10 spaces. Planting strips should be a minimum of eight feet in width.
- (e) Provide diamond-shaped tree islands six feet wide for every four to six parking stalls.
- (f) Reduce visual impacts by breaking up large parking lots into smaller parking groves and parking courts with a significant number of shade trees and surrounded by low hedges, stone walls, or attractive fencing. Avoid more than 15 parking spaces in a continuous row and more than 60 spaces in any single parking area defined by landscaping.
- (g) Create large planting islands (over 500 square feet) to be located throughout the lot and planted with shade trees, low shrubs, and/or ground cover. These should preferably be located at the ends of parking rows.
- (h) Provide planting islands between every 15 spaces to avoid long rows of parked cars. Each of these planting islands should provide at least one shade tree.
- (i) Landscaping should be used to delineate vehicular and pedestrian patterns. Clear and legible signs, different color and texture paving materials, raised or inverted areas, and other techniques should be used to further direct the flow of both vehicular and pedestrian traffic within the lot.
- (j) Use existing woodlands, if located on the site, by preserving as much as possible

along the perimeter of the lot. Provide additional evergreen shrubs if needed.

- (k) At least 25% of the shade trees should be evergreen type.
  - (l) The use of nonplant materials as part of the landscape plan is encouraged, especially where such materials exist on the subject site. These materials may include the following: large landscape quality boulders, water features, wood or concrete soil retaining devices, gravels, concrete garden amenities, and approved mulch materials.
  - (m) Lighting should complement the landscaping and architectural features on the site, should be distinctive and human-scale, and should avoid excessive glare or wasted light. See § 164-43.4 for lighting standards.
  - (n) In large parking lots, separate pedestrian walkways should be provided to allow safe movement within the lots. These facilities should generally be oriented perpendicular to and between parking bays. Adjacent to the walks, trees should be planted. Coordinate pedestrian walkways with access for public transit if available or planned. The following walkway guidelines also apply:
    - [1] One walkway can serve as a collector for up to four bays of parked cars.
    - [2] The walkway should be a minimum of four feet wide, allowing an additional 30 inches on each side for overhanging of automobiles.
    - [3] All walkways should be raised to a standard sidewalk height and should be constructed of different paving material than the parking lot.
    - [4] Provide pedestrian and bicycle amenities, such as benches, shade, human-scale lighting, and bicycle racks.
  - (o) All plant material used to landscape parking lots is to be maintained at all times in a living and growing condition. Assurance shall be in accordance with the landscape requirements found in § 164-46G(3)(n)[3].
- (8) Joint facilities. Required parking spaces, open or enclosed, may be provided in spaces designed to serve jointly two or more establishments whether or not located on the same lot, provided that the number of required spaces in such joint facilities shall not be less than the total required for all such establishments.
- (9) Design standards.
- (a) Parking facilities shall be designed with regard for orderly management, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.
  - (b) Parking spaces shall have wheel stops or curbs to prevent injury to trees and shrubs

planted in landscaped islands.

- (c) Bicycle parking spaces and racks shall be provided in an area that does not conflict with vehicular traffic. Designated van/car pool parking, and other facilities for transportation alternatives to single occupancy vehicle use shall be provided wherever practical.
- (d) All above-ground loading facilities shall be oriented to preserve auditory privacy between adjacent buildings, and shall be screened from public view to the extent necessary to eliminate unsightliness.

(10) Screening from residential uses.

- (a) Whenever a parking lot of five spaces or more abuts the side or rear lot line of a lot in a residence district, or any land in residential use, said parking lot shall be effectively screened from such adjoining lot by a substantial wall, fence, or berm, or a thick evergreen hedge, with a height of not less than six feet at the time of planting and pruned to a height of not less than 6 1/2 feet. In order to break the visual monotony of a wall when walls are used, at least one shrub or vine shall be planted abutting the wall within each 10 feet but not necessarily evenly spaced 10 feet apart. In lieu of the vine or shrub requirement, the Planning Board may approve a wall having a significant design variation spaced at intervals of not more than 20 feet.
- (b) Whenever a parking lot is located across the street from land in any residence district, or any land in residential use, it shall be screened from the view of such land by a thick hedge located along a line drawn parallel to the street and a distance of five feet therefrom, such hedge to be interrupted only at points of ingress and egress. The open area between such hedge and the street shall be landscaped in harmony with the landscaping prevailing on neighboring properties fronting on the same street.
- (c) Identification and directional signs located on the street side of such screening as provided in § 164-43.2A(10)(a) and (b) herein shall not exceed an area of two square feet each and shall be limited to such number as are essential for the particular use.

(11) Trailers (camping or travel), motor boats, and commercial vehicles. [Amended 9-11-2003 by L.L. No. 4-2003]

- (a) The outdoor storage, parking or use of camping or travel trailers, motor boats, and commercial vehicles are hereby prohibited in all districts, except that:
  - [1] One camping or travel trailer may be stored but not used for any purpose on an occupied lot (or on an adjacent unoccupied lot, if both lots are under common ownership). Said camping or travel trailer shall not exceed 40 feet in length. Said camping or travel trailer shall not be located between the street line and the

principal building and shall conform to side and rear yard requirements governing accessory uses.

- [2] Camping or travel trailers and other recreational vehicles may be used only in a duly established camping or travel trailer camp or park or similar facility.
- [3] One commercial vehicle not exceeding 26 feet in length may be parked on an occupied lot in any residence district, but not within the required yards of such lot and in no case between the street line and the principal building.
- [4] One commercial vehicle not exceeding 26 feet in length may be parked within a private garage in any residence district.
- [5] Commercial farm vehicles are permitted as accessory to a commercial farm use in any district where commercial agriculture is permitted

(b) Not more than one motor boat may be stored in the open on a lot (or on an adjacent lot, if both lots are under common ownership) in a residence district and such storage shall conform to side and rear yard requirements governing accessory uses.

(12) Driveways. No driveway shall provide access to a lot located in another district, which lot is used for any use prohibited in the district in which such driveway is located.

**B. Additional requirements for off-street loading berths.**

- (1) Accessory open or enclosed off-street loading berths shall be provided for any lot or any use as specified herein. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of such requirements.
- (2) Size, location and access. Each required loading berth shall be at least 12 feet wide, 33 feet long and 14 feet high, unless specified elsewhere for a particular use. Unobstructed access, at least 10 feet wide, to and from a street shall be provided. Such access may be combined with access to a parking lot. The berth may be located either within a building or in the open, but not within required yards. If such berths are not enclosed, they shall be located not less than 300 feet from any residence district boundary and an effective visual and noise buffer shall be provided as in the case of parking areas as set forth in § 164-43.2A(10).

**C. Regulations affecting both parking and loading facilities.**

- (1) Access near street corners. No entrance or exit for any accessory off-street parking area with over 10 parking spaces, nor any loading berth, shall be located within 50 feet of the intersection of any two street lines.
- (2) On lots divided by district boundaries. When a lot is located partly in one district and partly in another district, the regulations for the district requiring the greater number of



parking spaces or loading berths shall apply to all of the lot. Parking spaces or loading berths on such a lot may be located without regard to district lines, provided that no such parking spaces or loading berths shall be located in any residence district, unless the use to which they are accessory is permitted in such district.

**§ 164-43.3. Special uses in historic structures.**

- A. Intent. The intent of this section is to assist in the preservation of the cultural heritage of the Town of Warwick by allowing specialized uses in structures of historic merit.
- B. Applicability. This subsection shall apply to any building listed on the National Register of Historic Places or that is eligible for the National Register or that is designated an historic structure by the Town Board upon recommendation of the Architectural Review Board within any zoning district or that has been surveyed as an historic resource by the New York State Office of Parks Recreation and Historic Preservation, (NOTE: See Appendix B of the Town of Warwick Comprehensive Plan,<sup>EN(27)</sup> adopted August 19, 1999.) subject to the approval of a special use permit by the Planning Board. A building or structure shall be eligible for designation as an historic structure upon application to the Town Board and upon recommendation of the Architectural Review Board. When considering its recommendation to designate an historic structure, the Architectural Review Board shall consider the following factors:
  - (1) Its character, interest or value as part of the heritage or culture of the Town.
  - (2) Its location as the site of a significant historic event.
  - (3) Its identification with a person or persons who significantly contributed to the Town's culture and development.
  - (4) Its exemplification of a distinctive architectural style, type or specimen.
  - (5) Its identification as the work of an outstanding architect or master builder.
  - (6) Its relationship to distinctive areas, buildings or structures that are eligible for preservation.
- C. Uses permitted by special use permit. The following uses may be permitted by special use permit granted by the Planning Board pursuant to § 164-46 of this chapter:
  - (1) Art and craft studios.
  - (2) Art galleries.
  - (3) Antique shops, rare book and coin or stamp shops.

- (4) Multifamily residential use in single-family districts, but not to exceed four units within one structure, contingent on the continuing residency of the owner of the building within one of the dwelling units.
- (5) A combination of two or more of the above uses in the same structure.

D. Requirements of special use permit.

- (1) The Planning Board shall receive, review and approve a site plan pursuant to the provisions of § 164-46 prior to action on an application for a special use permit for an historic structure. The site plan shall be accompanied by schematic architectural drawings which show the existing conditions of the structure and the proposed restoration of proposed exterior changes in the structure. The Planning Board may request a report, to be paid for by the applicant, from an historic preservation specialist as to appropriateness of the proposed restoration and its compliance with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Upon receipt of the specialist's report, the Planning Board shall find that:
  - (a) The exterior restoration maintains the architectural and historic integrity of the structure.
  - (b) The proposed use is compatible with the neighborhood, and activities permitted within the structure can adequately be buffered from any surrounding residential use.
  - (c) The resulting traffic generation will not overburden existing roads, and adequate parking can be provided without unduly destroying the landscape or the setting of the structure.
  - (d) The proposed use is appropriate to the structure and will aid in the preservation of the structure.
- (2) The Planning Board may limit the number of employees or persons working on the site on a part-time or full-time basis.

**§ 164-43.4 Lighting.**

- A. Purpose. The purpose of this section is to provide standards for outdoor lighting to encourage lighting that conserves energy and resources while providing safety, utility and security; minimize glare; protect the privacy of residences; reduce atmospheric light pollution; and enhance the Town's nighttime character.
- B. Definitions. The following definitions apply to terms used in this section:
  - FOOTCANDLE (fc) -- A unit of illuminance amounting to one lumen per square foot.

**FULLY-SHIELDED FIXTURE** -- An outdoor lighting fixture that, by design of the housing, does not allow any light dispersion or direct glare to shine above a ninety-degree, horizontal plane from the base of the fixture. Fully shielded fixtures must be installed in a horizontal position as designed, or the purpose of the design is defeated, and direct glare will result.

**GLARE** -- The eye's line-of-sight contact with a direct light source that causes annoyance, discomfort, or loss in visual performance and ability.

**HEIGHT OF THE LUMINAIRE** -- The height of the luminaire shall be the vertical distance from the ground directly below the center line of the luminaire to the lowest direct-light-emitting part of the luminaire.

**ILLUMINANCE** -- Density of luminous flux incident on a surface. Unit is footcandle or lux.

**LIGHT TRESPASS** -- Light from an artificial light source that intrudes into an area where it is not wanted or does not belong. Light trespass includes glare from direct light as well as unwanted spill light.

**LUX** -- One lumen per square meter. Unit of illuminance.

**OUTDOOR LIGHTING** -- The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

**OUTDOOR LIGHTING FIXTURE** -- An electrically powered illuminating device or other outdoor lighting fixture, including all parts used to distribute the light and/or protect the lamp, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to, search, spot, flood, and area lighting for buildings and structures; recreational areas; parking lot lighting; landscape lighting; signs (advertising and other); streetlighting; product display area lighting; building overhangs, and open canopies.

**RECESSED CANOPY FIXTURE** -- An outdoor lighting fixture recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling.

**UPLIGHTING** -- Any light source that distributes illumination above a ninety-degree horizontal plane.

**WALLPACK FIXTURES** -- A lighting unit designed for direct mounting on building walls whose primary function is to light building exteriors.

C. Submission of plans and outdoor lighting compliance.

- (1) An applicant for any work involving outdoor lighting fixtures that requires site plan approval shall submit, as part of the application, evidence that the proposed work shall comply with this section. In addition, the applicant for any work involving outdoor lighting fixtures governed by this section occurring in areas of the Town covered by the Ridgeline Overlay District shall submit, as part of the application for a building permit,

evidence that the proposed work will comply with this section. The submission shall contain the following:

- (a) Plans indicating the location, height, orientation, type of illuminating device, and wattage of each outdoor lighting fixture;
  - (b) Description of the illuminating fixtures, lamps, supports, reflectors, and other devices, including, but not limited to, catalog cuts by manufacturers and drawings (including sections where required);
  - (c) Photometric data, such as that furnished by manufacturers or similar showing the angle of cutoff or light emissions;
  - (d) Additional information that the Planning Board or Building Inspector determines is necessary, including, but not limited to, an isolux plan indicating levels of illumination in footcandles, at ground level.
- (2) Lamp or fixture substitution. Should any outdoor lighting fixture or the type of light source therein be changed after the permit has been issued, a change request must be submitted to the Building Inspector for revised approval. The Building Inspector, in consultation with the Town Engineer and Town Planner, shall review the change request to assure compliance with this section. If the change request is not substantial, the Building Inspector may approve it. If the change request is substantial, the Building Inspector shall forward such request to the Planning Board for an amended approval, which must be received prior to substitution.

D. Approved materials and methods of construction or installation/operation. The provisions of this section are not intended to prevent the use of any design, material, or methods of installation or operation not specifically prescribed by this section, provided any such alternate has been approved. The Planning Board may approve such proposed alternative, provided it:

- (1) Provides at least approximate equivalence to the applicable specific requirement of this section; and
- (2) Is otherwise satisfactory and complies with the purpose of this section.

E. General requirements. [Amended 10-24-2002 by L.L. No. 6-2002]

- (1) General standards. All outdoor lights and illuminated signs shall be designed, located, installed, and directed in such manner as to prevent objectionable light at and across the property lines, and to prevent direct glare at any location on or off the property. The latest recommended levels for outdoor lighting set by the Illuminating Engineering Society of North America (IES) shall be observed. See sign regulations in § 164-43.1 for

additional requirements.

(2) Prohibitions.

(a) Uplighting is prohibited. Externally lit signs, displays, buildings, structures, streets, parking areas, recreational areas, landscaping, and other objects lit for aesthetic or other purposes must be lit from the top and shine downward.

(b) Roof-mounted area lighting is prohibited.

(c) The use of laser lighting for outdoor advertising or entertainment, and the operation of search lights for advertising purposes are prohibited.

(d) The use of mercury vapor lamps is prohibited.

(e) Unshielded wallpack-type fixtures are prohibited.

(3) Shielding. All outdoor fixtures, with the exception of those using lamps not requiring shielding cited in Subsection F, shall be fully shielded and installed in such a way that no light is emitted above a horizontal plane running through the lowest part of the fixture. The lighting shall also be shielded to prevent direct glare and/or light trespass, and shall be, as much as physically practical, contained to the target area. All light fixtures that are required to be fully shielded shall be installed and maintained so that the shielding is effective as described in the definition of a fully shielded fixture in this section of this chapter. Floodlighting is discouraged and, if used, must be shielded to prevent direct glare for drivers and pedestrians; light trespass beyond the property line; light above a ninety-degree, horizontal plane.

(4) Light trespass. Light trespass from a property shall be designed not to exceed 0.25 footcandle at the property line. Adjacent to residential property, no direct light source shall be visible at the property line at ground level or above.

(5) Height. Unless specified elsewhere herein and except for recreational facilities, such as baseball and other field sports, the maximum allowable height of a freestanding luminaire shall be 16 feet above the average finished grade. Exceptions to the maximum height limitations up to 25 feet above the average finished grade may be made when it can be demonstrated that glare to off-site locations will not occur with such higher fixture. The maximum allowable height of a building- or structure-mounted luminaire shall be 35 feet.

(6) Spacing. Space between fixtures should be approximately four times the height.

(7) Time controls. All nonessential lighting shall be turned off after business hours, leaving only the necessary lighting for site security, which shall be reduced to the minimum level necessary. Nonessential can apply to display, aesthetic, parking and sign lighting.

Motion-sensor security lighting is recommended to promote safety and reduce the amount of night-lighting in the Town.

- (8) Auto/truck filling stations. Island canopy ceiling fixtures shall be recessed.
- (9) Recreational facilities, public or private. Lighting for outdoor recreational facilities shall be fully shielded, as defined in this section.

F. Table of shielding requirements.

<b>Fixture Lamp Type</b>	<b>Shielded</b>
Low-/high-pressure sodium, metal halide, quartz, and fluorescent over 50 watts	Fully
Incandescent	
Greater than 160 watts	Fully
160 watts or less	None
Any light source of 50 watts or less	None
Fossil fuel	None
Other sources	As approved by § 164-43.4C

- G. Illuminance and uniformity. Light levels shall be designed not to exceed the latest recommended levels for outdoor lighting set by the Illuminating Engineering Society of North America (IES) for the type of activity/area being lighted, except light levels for ATM machines shall be in accordance with the New York State ATM Safety Act. Where no standard is available from the IES, the applicable standard shall be determined taking into account the levels for the closest IES activity. The uniformity ratio (average to minimum) shall not exceed 3/1 for parking and traffic areas, nor 4/1 for pedestrian areas. Maximum to average light levels shall be kept within a ratio of 6/1. Design should establish a hierarchy of lighting to assure a smooth transition from bright areas to those with subdued lighting. Light levels shall be maintained at design levels with lamp or luminaire replacement as needed. Lighting in conformance with this section is required for all parking lots having five or more cars. The following current IES recommendations are to be observed:

**Roadway Lighting, If Provided**

<b>Type of Road</b>	<b>Average Maintained Illuminance (fc)</b>	<b>Uniformity Ratio (average to minimum)</b>
Major road	0.6 - 1.6	3/1

Collector road	0.4 - 1.1	4/1
Local road	0.3 - 0.8	6/1

### **Parking Lots**

<b>Level of Activity</b>	<b>Horizontal Illuminance</b>		
	<b>Average (fc)</b>	<b>Minimum (fc)</b>	<b>Uniformity Ratio</b>
High: Major league athletic events Major cultural or civic events Large shopping centers Fast-food facilities Automotive dealerships Entertainment theaters	3.6	0.9	4/1
Medium: Community shopping centers Cultural, civic, or recreational events Office parking Hospital parking Airports, commuter lots, etc. Residential complex parking	2.4	0.6	4/1
Low: Neighborhood shopping with > 5,000 sq. ft. Industrial employee parking Educational facility parking Recreational facilities Church parking  Wherever there is a requirement to maintain security at any time in areas where there is a low level of nighttime activity	0.8	0.2	4/1

### **Other Outdoor Lighting Levels** [Amended 1-24-2002 by L.L. No. 2-2002]

**Building Exteriors      Footcandles**

Entrances		
Active (pedestrian and/or conveyance)	5	
Inactive (normally locked, infrequently used)	1	
	<b>Dark Surroundings</b>	<b>Bright Surroundings</b>
Loading platforms	20	
Service stations		
Approach	1.5	3
Driveway	1.5	5
Pump island	20	30
Service areas	3	7
Storage yards		
Active (during hours)	20	
Inactive (after hours)	1	
Retail outdoor lighting	5	10
Auto sales lots	5	10

H. Exemptions. The following uses shall be exempt from the provisions of this section:

- (1) Roadway and airport lighting and lighting activated by motion-sensor devices.
- (2) Temporary circus, fair, carnival, religious, historic, or civic use.
- (3) Construction or emergency lighting, provided such lighting is temporary and is discontinued immediately upon completion of the construction work or abatement of the emergency necessitating said lighting.
- (4) Temporary lighting, including holiday lighting for no more than two months per year.
- (5) Lighting associated with agricultural pursuits, including harvest activities, unless such lighting is permanent and/or creates a safety hazard.
- (6) Lighting that is considered a landscape design element and is integral to the aesthetic value of the design, as determined by the Planning Board.
- (7) All outdoor light fixtures producing light directly by the combustion of natural gas or other fossil fuels.
- (8) Outdoor light fixtures installed on and in connection with those facilities and land owned or operated by the federal government, the State of New York, or the County of Orange, or any department, division, agency or instrumentality thereof. Voluntary compliance with the intent of this section at those facilities is encouraged.



- I. Nonconforming outdoor lighting. All outdoor lighting fixtures already installed prior to March 24, 1989, shall be brought into compliance with the provisions of this section within five years from date of adoption of this chapter. No replacement or installation of new luminaires shall be permitted unless in conformance with this section. Nonconforming outdoor lighting that is the subject of subdivision, special use permit and/or site plan applications, certificates of occupancy, no-violation letters, or other permit, approval, entitlement, or authorization from the Town of Warwick shall be subject to all of the terms and conditions of this section (§ 164-43.4). [Amended 10-24-2002 by L.L. No. 6-2002]

#### **§ 164-43.5. Home occupations.**

- A. Authorization. In any district where a dwelling exists, a home occupation, as defined in § 164-22, may be established in conformance with the following use limitations: [Amended 10-24-2002 by L.L. No. 6-2002]
  - (1) A home occupation may only be conducted within a dwelling which is a bona fide residence of the owner, lessee or other persons who have a legal right to occupy or reside in the dwelling or in an accessory building thereto which is normally associated with the residential use. For purposes of this chapter, a home occupation occurring fully within the dwelling shall be considered a Class 1 home occupation. Those home occupations occurring wholly or partially in an accessory building or home occupations which exceed the thresholds identified in § 164-43.5A(10) shall be considered Class 2 home occupations which may only be authorized by a special use permit in accordance with § 164-46.
  - (2) Not more than two such home occupations, whether Class 1 or Class 2, shall occur on a single residential premises.
  - (3) Class 1 home occupations shall not occupy more than 500 square feet of the total floor area or 25% of the total floor area of the dwelling on the premises, whichever shall be the more restrictive. This floor area requirement refers only to heated and habitable rooms within the dwelling unit. This maximum floor area percentage shall not apply to a home occupation operated entirely within an accessory structure, which are Class 2 home occupations subject to issuance of a special use permit. Class 2 home occupations shall not occupy more than 25% of the total floor area of the dwelling and accessory structure used in the home occupation.
  - (4) Except for articles produced on the premises and other articles customarily associated with the product made or the service provided on the premises, such as antiques or gunsmithing, no stock-in-trade shall be displayed or sold on the premises nor shall any item be available for rental.
  - (5) No alteration to the exterior of the principal residential building or accessory building

used for the home occupation activity shall be made which changes the character thereof as a residential premises, except that a single sign, not exceeding two square feet in area shall be permitted, subject to all other applicable sign regulations of this chapter. Any new construction undertaken to accommodate the home occupation activity shall also be wholly consistent with the character of a residential premises.

- (6) There shall be no outdoor display of goods, outdoor storage of materials, or outdoor storage of equipment used in conjunction with a home occupation.
- (7) Not more than one person, outside the members of the household occupying the dwelling, shall be employed on the residential premises in the conduct of the home occupation. Off-street parking shall be provided for the additional employed person and shall conform to all applicable regulations of § 164-43.2. Any use requiring, in accordance with § 164-43.2, more than three off-street parking spaces shall be deemed a Class 2 home occupation under this chapter.
- (8) A use permit, to be issued by the Town Building Inspector, shall be required for all home occupations.
- (9) In no case shall a home occupation be open to the public at times earlier than 8:00 a.m. nor later than 8:00 p.m.
- (10) Classification of home occupations.
  - (a) Class 1 home occupations shall be compatible with the residential use of the property and the neighborhood and shall not be classified as a Class 2 home occupation requiring a special use permit, provided that:
    - [1] The volume of invitees or guests who visit the home occupation premises is less than six per day; and
    - [2] The volume of deliveries or truck traffic is less than an average of one per day; and
    - [3] The home occupation requires three or more parking spaces in addition to those required under § 164-43.2A(2)(a).
  - (b) If any threshold in Subsection A(10)(a)[1] or [2] or [3] above is reached, the Class 1 home occupation shall be classified as a Class 2 home occupation requiring the issuance of a special use permit from the Planning Board.
- (11) The following uses are specifically prohibited from consideration as permitted home occupations under this chapter, because of parking requirements and other issues of land use compatibility. Uses that have been identified with a "\*" or uses that do not exceed the thresholds provided, may be permitted as Class 2 home occupations, subject to the

special use permit requirements of § 164-46.

- (a) Ambulance, limousine, taxi, or similar service with any employees or more than one vehicle used in the home occupation.\*
  - (b) Automobile-related businesses, including repair, painting, parts, sales, upholstery, detailing, or washing services.
  - (c) Bed-and-breakfast establishments with more than three bedrooms for rent.\*
  - (d) Churches and other places of public assembly accommodating more than 50 persons.
  - (e) Commercial stables, kennels, or animal hospitals.
  - (f) Construction companies, building contractors, home builders, or general contractors with any employees or more than one vehicle used in the business.\*
  - (g) Convalescent homes or clinics.
  - (h) Dancing, art, martial arts, and similar group instruction activity when serving more than six students per day.\*
  - (i) Family day-care centers exceeding the requirements of the New York Codes of Rules and Regulations.\*
  - (j) Landscape contractors with any employees or more than one vehicle used in the landscape business.\*
  - (k) Mortuary establishments.
  - (l) Motor boat sales and/or service.
  - (m) Personal service establishments, licensed by the NY State Education Department, serving more than one customer at a time.
  - (n) Restaurants, taverns, and tea rooms.
  - (o) Tourist homes with more than three bedrooms for rent.
- (12) The special use permit granted for a Class 2 home occupation shall expire when the occupation changes or the property is sold.

#### **§ 164-44. Trees, topsoil, grading and excavations.**

Removal of trees and topsoil, grading, excavation, mining and exploratory and production drilling shall be regulated in accordance with Chapter 150, Tree and Topsoil Removal; Grading

and Excavating.

**§ 164-45. Nonconforming buildings and uses.**

The following provisions shall apply to all buildings and uses legally existing on the effective date of this chapter (which buildings and uses do not conform to the requirements set forth in this chapter), to all buildings and uses that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof and to all conforming buildings housing nonconforming uses.

**A. Regulations.**

- (1) Any nonconforming use may be continued indefinitely, but:
  - (a) Alterations. Shall not be enlarged, extended, reconstructed, restored [except in accordance with § 164-45B(3) herein] or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever, except that the Planning Board may permit an expansion not to exceed 15% of the existing ground area of said nonconforming use, provided that the most restrictive bulk requirements specified in the district in which said nonconforming use is located shall apply to any such extension.
  - (b) Displacement. No nonconforming use shall be extended to displace a conforming use.
  - (c) Changes. Shall not be changed to another nonconforming use without a special permit from the Board of Appeals, and then only to a use which, in the opinion of said Board, is of the same or a more restrictive nature. Such changes shall conform, to the extent practical, to current design standards and are also subject to site plan approval by the Planning Board.
  - (d) Discontinuance. Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- (2) District changing. Whenever the boundaries of the district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

**B. Alterations.** Except as provided in Subsection D below, no nonconforming building or a building which houses a nonconforming use shall be:

- (1) Altered. Structurally altered or enlarged, except that the Planning Board may permit an expansion not to exceed 15% of the existing ground floor area of said nonconforming building, provided that the most restrictive bulk requirements shall apply to any such extension;
  - (2) Removed. Moved to another location where such use would be nonconforming; or
  - (3) Restored after damage. Restored for other than a conforming use after damage of less than 50% from any cause, unless the nonconforming use is reinstated within one year of such damage; if the restoration of such building is not completed within said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.
- C. Restoration. No building damaged by fire or other causes to the extent of more than 50% of its assessed value shall be repaired or rebuilt except in conformity with the regulations of this chapter. Residential buildings are exempt, but shall comply with current design standards and bulk requirements to the greatest extent practical.
- D. Nonconformity in areas other than structure or use. Normal maintenance and repair, structural alteration in and moving, reconstruction or enlargement of a building which does not house a nonconforming use, but is nonconforming as to the district regulations for lot area, lot width, lot depth, front yard, side yard, rear yard, minimum height, maximum lot coverage or minimum livable floor area per dwelling is permitted if the same does not increase the degree of or create any new nonconformity.
- E. Normal maintenance. Nothing in this chapter shall be deemed to prevent normal maintenance and repair of any building or the carrying out, upon the issuance of a building permit, of major structural alterations or demolitions necessary in the interest of public safety. In granting such a permit, the Building Inspector shall state the precise reason why such alterations were deemed necessary.
- F. Cessation. Each of the nonconforming uses specified below is deemed sufficiently objectionable, undesirable and out of character in the district in which such use is located as to depreciate the value of other property and uses permitted in the district and blight the proper and orderly development and general welfare of such district and the Town to the point that each of such nonconforming uses shall be terminated on or before the expiration of the specified period of time after the effective date of this chapter, which period of time is specified for the purpose of permitting the amortization of the remaining value, if any, of such use:
- (1) In any district, any nonconforming use of open land, including such uses as parking lot, junkyard, fuel tank or open storage yard for materials or equipment may be continued for three years after the effective date of this chapter, provided that after the expiration

of that period, such nonconforming use shall be terminated.

- (2) In any district, any nonconforming use of a mobile home may be continued after the effective date of this chapter, provided that no replacement is made of one mobile home for another.

**§ 164-45.1. Existing small residential lots. [Amended 1-24-2002 by L.L. No. 2-2002; 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]**

- A. Approved plat. Any lot in a subdivision approved after March 23, 1989, may be built upon in accordance with the approved plat.
- B. Existing lots in excess of 43,560 square feet. A dwelling may be erected as a permitted use on any lot which is in excess of 43,560 square feet, but does not conform to the lot area requirements of the Table of Bulk Requirements,<sup>EN(28)</sup> provided that:
  - (1) Such lot was lawfully in existence on March 23, 1989.
  - (2) All other applicable provisions of this chapter are complied with.
  - (3) Lots over one acre in size do not need to be combined, provided that such lot shall be developed in conformity with all applicable district regulations, other than the minimum lot area.
- C. Exceptions to yard and area requirements. If the lot complies with the conditions found in § 164-45.1C(1) through (6), an area variance is not necessary provided the following requirements are met:
  - (1) The minimum lot area shall be 12,500 square feet.
  - (2) The minimum livable floor area shall be no less than required by the applicable zoning district.
  - (3) There shall be a minimum of two off-street parking spaces per dwelling unit.
  - (4) The maximum coverage shall be 35%; the maximum height shall be three stories or 35 feet.
  - (5) A lot which does not have a septic disposal system approved after January 1, 1991, shall obtain a septic disposal permit as set forth in Chapter 124, Article III, of the Warwick Code.
  - (6) For each lot owned individually and separately and separated in ownership from any adjoining tracts of land and in existence on March 23, 1989, which has a total area or width less than prescribed herein may be used for a one-family residence, provided that

such lot shall be developed in conformity with all applicable district regulations, other than the minimum lot area and lot width requirements, and with the minimum yards subject to the following conditions:

!BEGIN TABLE!

#### Side Yards

For Lot Widths		Minimum Side Yard (feet)	Total of Both Side Yards (feet)	
Equal to or Greater Than (feet)	Less Than (feet)			
250		300	75	150
200		250	50	100
150		200	35	80
135		150	30	60
100		135	20	50
80		100	12	30
60		80	10	27
49		60	7 1/2	1/3 of lot width

#### Rear Yards

For Lot Depths		Rear Yard Minimum (feet)
Equal to or Greater Than (feet)	Less Than (feet)	
150	200	30
125	150	25
100	125	20

- D. Existing lots in the Agricultural Protection Overlay District. Lots within the AP-O District qualifying area that were in existence on January 1, 2002, may be subdivided for one additional residential lot in accordance with the Table of Bulk Requirements of the 1989 Zoning Law for the underlying zoning district.

#### § 164-46. Site plan and special permit approval.

- A. Purpose. The purpose of this section is to provide regulations governing the applicability, submission requirements, standards for review and design, and due process for site plan and special use permit review and approval. The intent is to ensure that the development and use of individual parcels of land do not have an adverse effect on adjacent lands or on the character of the community. Such regulations are designed to protect the community from traffic congestion and conflicts, noise, odor and other forms of pollution, inappropriate

design, flooding, and excessive soil erosion, to ensure that the proposed use will be in harmony with the appropriate and orderly development of the district in which it is proposed, and that its impacts can be mitigated by compliance with reasonable conditions. The regulations are also designed to ensure that new development conforms with the Town's planning goals and objectives as expressed in its Comprehensive Plan.<sup>EN(29)</sup>

B. Applicability of site plans and special permit uses.

- (1) All special uses cited in the Table of Use Requirements<sup>EN(30)</sup> or identified herein shall be subject to review and approval of a special use permit by the Planning Board in accordance with the standards and procedures set forth in this chapter.
- (2) All special uses and accessory uses thereto shall be subject to site plan review and approval.
- (3) Site plan approval may be required, with the exception of commercial agricultural operations, for excavation and construction activities associated with permitted uses and accessory uses thereto within areas of environmental sensitivity as identified herein, such determination to be made by the Building Inspector in consultation with the Town Engineer and Town Planner. To determine the necessity of site plan approval from the Planning Board, the Building Inspector, in consultation with the Town Engineer and/or the Town Planner, will review all applications for building permits within the areas identified herein and apply the criteria found in the standards for design and review under § 164-46H. If the application complies with the standards for design and review and is otherwise in compliance with the Town Code, the building permit may be issued. If sufficient doubt exists as to whether the application complies with the standards for design and review, the Building Inspector shall require that an application for site plan approval be made and shall then refer such application to the Planning Board for site plan review and approval. Applications for building permits within the following areas shall be reviewed by the Building Inspector against the criteria identified in § 164-46H: [Amended 10-24-2002 by L.L. No. 6-2002]
  - (a) For lands lying within a Town of Warwick flood hazard area or within flood hazard zone areas as defined by the Federal Emergency Management Agency (FEMA);
  - (b) For lands lying within the Ridgeline Overlay Districts;
  - (c) For lands lying within a local, state, or federal designated historic district, building, structure, or site or within sites that are contiguous with such historic resources;
  - (d) For lands lying within a scenic viewshed or scenic road corridor as officially designated by the Town of Warwick and/or a county, state or federal agency.
  - (e) For lands lying within the proposed Town of Warwick greenway trail corridor, as



designated on the Official Town Map or in the Town of Warwick Comprehensive Plan.

- (4) Site plan review and approval shall be required for excavation and construction activities associated with permitted uses and accessory uses thereto for lands lying within a Town of Warwick designated protection area.
- (5) Expansion and change of uses. Site plan review and special use permit approval shall be required for an expansion, exceeding 15% of the ground area of the use, or involving a change of use to a more intensive use on the basis of increased water supply, sewage disposal, stormwater runoff management, parking needs, traffic generation, or zoning compliance, such determination to be made by the Town Engineer. A building permit and certificate of occupancy shall not be issued for such uses or buildings without first obtaining approval from the Planning Board. [Amended 9-11-2003 by L.L. No. 4-2003]

C. Application submission.

- (1) Pursuant to New York State Town Law §§ 274-a and 274-b, in all cases where this chapter requires site plan and/or special permit authorization by the Planning Board, an application shall initially be submitted to the Planning Department prior to commencement of any development or use of the site. The applicant shall file the following:
  - (a) Fifteen copies of the completed site plan and/or special use permit application on forms prescribed by the Planning Board at least 21 days prior to a scheduled regular meeting of the Planning Board; [Amended 9-11-2003 by L.L. No. 4-2003]
  - (b) All required submissions for site plan review and approval as set forth in §164-46G of this chapter; and
  - (c) Required fees.
- (2) Upon receipt of such application materials, the Planning Board Secretary shall, within five days of its receipt, forward the application to the Planning Board for its consideration. No building permit or certificate of occupancy shall be issued by the Building Inspector except upon authorization of and in full conformity with the plans approved and conditions imposed by the Planning Board.

D. Required fees. A complete application for site plan and/or special permit review and approval shall be accompanied by the applicable fees and escrow deposits in accordance with the fee schedule of Chapter 75, Development Fees. The Planning Board requires professional review of the application by its designated private planning, engineering, legal or other consultants, and such reviews are paid for by the escrow deposits. These fees shall be in accordance with the fee schedule established and annually reviewed by the Town Board.

[Amended 9-11-2003 by L.L. No. 4-2003]

- E. General considerations for special permits. In permitting any special use, the Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general in the Town and of the immediate neighborhood in particular. The Planning Board shall also take into strict account the standards for review and design set forth in §164-46H as well as the special conditions set forth in §164-46J and elsewhere in this chapter. The Planning Board may require modifications to development proposals, submission of alternative design and layout proposals, and may attach reasonable conditions and safeguards to eliminate or minimize potential impacts as a precondition of its approval. Before making a decision on whether to approve, approve with modifications, or disapprove a special use permit, the Planning Board shall give specific consideration to the following:
- (1) Traffic access. All proposed traffic accessways shall be adequate but not excessive in number, adequate in width, grade and alignment and visibility, and sufficiently separated from street intersections and other places of public assembly, and shall meet other similar safety considerations.
  - (2) Parking. Adequate off-street parking and loading spaces shall be provided in accordance with § 164-43.2, to prevent parking in public streets of the vehicles of any persons connected with or visiting the use, except in the Traditional Neighborhood District where on-street parking is permitted. Shared parking is encouraged where the peak parking demands of different uses occur at various times of the day. Use of a widely accepted means of projecting demand for shared use, such as the Urban Land Institute's Shared Parking report, shall be employed to demonstrate shared parking effects.
  - (3) Circulation. The interior circulation system shall be adequate to provide safe accessibility to all required off-street parking, and to provide for the convenience and safety of vehicular, pedestrian, and bicycle movement within the site and in relation to adjacent areas or roads.
  - (4) Landscaping and screening. All parking and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and the general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Existing trees 12 inches or more in diameter at breast height (dbh) shall be preserved to the maximum extent practical. Roadside plantings shall be in conformance with the recommendations of the Town Shade Tree Commission and/or consistent with the Town of Warwick Design Guidelines.<sup>EN(31)</sup>
  - (5) Character and appearance. The character and appearance of the proposed use, buildings, structures, outdoor signs and lighting shall be in general harmony with the character and appearance of the surrounding neighborhood and that of the Town of Warwick, and shall

not adversely affect the general welfare of the inhabitants of the Town of Warwick, such recommendation to be made by the Town's Architectural Review Board with reference to the Town of Warwick Design Guidelines, and the signage and lighting regulations of §§ 164-43.1 and 164-43.4 respectively.

- (6) Historic and natural resources. The proposed use shall be designed and shall be carried out in a manner that protects historic and natural environmental features on the site under review and in adjacent areas, such recommendation to be made by the Town's Architectural Review Board and Conservation Board.
- (7) Level of service. The level of services required to support the proposed activity or use is or will be available to meet the needs of the proposed activity or use. This consideration shall include the suitability of water supply and sanitary sewage facilities to accommodate the intended use, and protection from pollution of surface or groundwater.
- (8) Emergency services. All proposed buildings , structures, equipment and/or material shall be readily accessible for fire, police, and other emergency service protection.
- (9) Nuisances. The proposed use shall not be more objectionable to nearby property owners or occupants by reason of noise, fumes, vibration or lighting than would the operations of a permitted principal use. The performance standards found in this chapter shall represent the minimum requirements to be achieved by any proposed use.
- (10) Additional safeguards and conditions. The Planning Board shall impose additional conditions and safeguards upon the special permit as may be reasonably necessary to assure continual conformance to all applicable standards and requirements, including reasonable assurance that these conditions and safeguards can be responsibly monitored and enforced.
- (11) Environmental consideration. The proposed use shall not have a significant adverse environmental impact as defined by the New York State Environmental Quality Review Act (SEQR). Such determination shall be made by the Town Planning Board or other designated lead agency.
- (12) In or adjacent to a residence district. In addition to the above criteria, in the case of any use located in or directly adjacent to a residence district:
  - (a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, the size of the site in relation to the use, its site layout and its relation to existing and future access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said residence district or conflict with the normal traffic of the neighborhood; and
  - (b) The location and height of buildings, the location, nature and height of walls and

fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

F. Sketch plan conference with applicant. A preapplication conference is encouraged during the conceptual design process to reduce the review time of formal consideration of proposed site plans. Upon receipt of a complete application, the Planning Board shall notify the applicant of the place, date, and time of the meeting of the Planning Board at which the application is to be considered. The applicant or applicant's representatives shall be present to discuss the application. The first meeting shall consist of a conference between the Planning Board and the applicant to review the conceptual site design (sketch) plan. The Planning Board's preliminary consultation shall be limited to a review of the basic concept of the proposal to resolve problems with meeting requirements which might occur during formal consideration. Any preliminary review and consultation shall be nonbinding. If the Planning Board determines that the proposed site plan is of a minor nature, the sketch plan conference can be waived and the applicant can proceed directly to site plan review. The applicant, at his/her option, may bypass a sketch plan conference. The sketch plan, if prepared, shall show the following: [Amended 10-24-2002 by L.L. No. 6-2002]

- (1) An area map or high resolution aerial photograph keyed to the real property maps, showing the parcel under consideration and all properties, subdivisions, roads, and easements within 300 feet of the boundaries thereof.
- (2) A map of the site showing approximate location of:
  - (a) Lot lines;
  - (b) Approximate lot measurements;
  - (c) Existing and proposed streets or other accessways;
  - (d) Proposed location of future roadway connections between the subject parcel and adjacent parcels;
  - (e) Location and dimensions of existing and proposed structures and paved areas;
  - (f) Proposed ingress and egress of the site;
  - (g) Site topography;
  - (h) Significant natural and historic features as specified in § 164-46G(3)(h) and (i);
  - (i) Photographs of the site and buildings thereon; and
  - (j) Any other similar descriptive data to clarify the proposed project.

G. Required site plans. A complete application for site plan approval shall be made in writing to the Planning Board and shall be accompanied by 12 copies of plans and any descriptive matter as determined necessary by the Planning Board at the time of the sketch plan conference. Only complete applications for site plan review shall be considered for approval. For proposals that are expected to have a minimal impact on surrounding properties, the Planning Board may, at its discretion, waive any of the requirements of this subsection for specific applications upon request of the applicant. Site plans shall be prepared by a licensed professional engineer, architect, or landscape architect, shall refer to specific data sources, and shall include the following information: [Amended 1-24-2002 by L.L. No. 2-2002; 10-24-2002 by L.L. No. 6-2002]

- (1) Application form. A completed application on forms prescribed by the Planning Board.
- (2) Vicinity maps. A vicinity map drawn at a scale of 2,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities that will serve or influence the layout, such as roads, trails, shopping areas, schools, parks, employment centers, churches, firehouses, structures or areas of historic or scenic importance as identified in official Town documents or by the local historical society, and such other facilities that the Planning Board determines are appropriate. Such a sketch may be superimposed on the most recent United States Geological Survey's topographic map of the area. A Town tax map shall also show all properties, subdivisions, streets, power lines, and easements within 500 feet of all property lines of the subject parcel under consideration for site plan review.
- (3) Site plan. A site plan or set of plans of the entire parcel(s) under consideration drawn at a scale of 40 feet to the inch (one inch equals 40 feet) or other appropriate scale as determined by the Planning Board on standard twenty-four-inch-by-thirty-six-inch sheets, showing the following:
  - (a) Title of drawing, including the name and address of the owner of record, applicant, and licensed professional(s) responsible for the preparation of such drawing, including seal and signature.
  - (b) North arrow, scale and date.
  - (c) Boundaries of the property with surveyed dimensions.
  - (d) Names of all owners of record adjacent to the applicant's property.
  - (e) Existing school district (if applicable), zoning district, and overlay district boundaries, and any special features as indicated on Figure 10 of the Town of Warwick Comprehensive Plan<sup>EN(32)</sup> within 500 feet of the site's perimeter.
  - (f) Acreage of each distinct existing and proposed land use on the applicant's property,

and the proposed density of each if residential uses are proposed.

- (g) Grading and drainage plan showing existing and proposed contours with intervals of two feet extending 50 feet beyond the tract. If any portion of the parcel is within a one-hundred-year floodplain as determined by the Federal Emergency Management Agency (FEMA), the area will be shown, and base flood elevations given.
- (h) Location and boundaries of all existing natural land features on the property, including rock outcrops, isolated trees 12 inches or more in diameter at breast height (dbh) and all trees over 24 inches in dbh (whether isolated or in a forested area), existing vegetative and forest cover, orchards, hedgerows and other ornamental landscaping, stone walls, soil types and boundaries, active farmlands and prime agricultural soils, visually prominent agricultural landscape features, such as fields, pastures, and meadows on knolls and hilltops, woodlands along roadways, property lines, and streams, scenic vistas, steep slopes in excess of 15%, and water sources. Water sources include ponds, lakes, wetlands and watercourses, aquifers, aquifer recharge areas, floodplains, and drainage retention/detention areas. Locally significant trees include, but are not limited to, rare or unusual species, trees associated with historic events or persons, or trees that contribute to an identified scenic viewshed.
- (i) Location of all existing buildings, structures, signs, and agricultural lands, on adjacent property within 100 feet of the subject lot lines.
- (j) Location, proposed use, height, and setback measurements of all existing and proposed buildings, structures and signs on the applicant's property, including floor plans, and plans for exterior elevations at a scale of one-quarter inch equals one foot showing the structure's mass and architectural features, and indicating the type and color of materials to be used. A table indicating square footage of building areas to be used for a particular use, such as retail operation, office use, warehousing, or other commercial activity; maximum number of employees; maximum seating capacity, where applicable; and number of parking spaces existing and required for the intended use. In a development of two or more lots, the elevation shall be understood to be the median elevation of all principal buildings to be sited.
- (k) Traffic flow patterns within the site, entrances and exits, truck/commercial vehicle loading and service areas, curb cuts on the site and within 100 feet of the site, and all streets which are either proposed, mapped or built.
- (l) The location, design and construction materials of all off-street parking areas (open and enclosed, if any), including the number of parking spaces required and to be provided. The Planning Board shall encourage the provision of parking areas using alternative paving materials, such as paving blocks where the interstices are filled

with sod, or through parking reserve areas which may not be constructed until and unless demand is evident.

(m) The location, design and construction materials of all present and proposed walkways, bicycle paths and racks, benches, ramps, outdoor storage or display areas, retaining and/or landscaping walls and fences.

(n) A landscape plan showing all proposed changes to existing natural land features, including size and type of plant material, and the number, size, types and locations of all trees, shrubs and ground covers to be added. A planting schedule and a landscape maintenance plan shall be included. Trees to be saved shall be noted on site plans, and appropriate measures shall be outlined to protect the tree stock from damage during construction. Open space and recreational areas shall be identified. The location and proposed development of all buffer areas between the proposed site and adjacent properties, including existing vegetative cover and that portion that will be preserved or enhanced, shall be also indicated. The applicant's site plans shall show all live plant materials and nonplant materials, such as those described herein, to be installed on the site in order to meet the landscape requirement. The landscape plan shall also include an analysis of how the site is to be prepared for plant material installation with an emphasis on soil quality and available depth. All playground, parking, storage, waste, and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets, and the general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Existing trees should be retained and protected during construction. Isolated trees over 12 inches in caliper shall be identified as to caliper and species, located on the landscape plan, and shall be preserved to the maximum extent practical. Parking lot landscaping shall comply with § 164-43.2A(7) in addition to the requirements of this section. Where conflicts exist, the more restrictive provisions apply. Commercial agriculture is generally exempt from the landscaping requirements of the chapter, except as specifically identified herein.

[1] In all zoning districts allowing nonresidential uses, and in the case of all nonresidential uses in residential zoning districts, a landscaped strip shall be provided on the property adjacent to the right-of-way. Where parking lots are immediately adjacent to the public right-of-way, the provisions of § 164-43.2A(7) apply. The landscaped strip may not include any paved area except pedestrian sidewalks or trails which cross the landscaped strip. Any of the following landscaped strip treatments may be used singly or in combination:

[a] Provide a minimum ten-foot wide landscaped strip to be planted with a minimum of one shade tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings.

[b] Maintain existing mature woodlands.

[c] Where the plantings required in Subsection G(3)(n)[1][a] or [b] above would result in an inappropriate or impractical design due to underground utilities, overhead wires, or other factors, the following will apply: two ornamental trees may be substituted for one shade tree; two evergreen trees may be substituted for one shade tree; one evergreen tree may be substituted for five shrubs.

[2] Site plans shall specify the location, type, and size of major existing plant materials, including trees, with information and justification as to which such materials shall be removed and which shall be retained or relocated. Such plans shall also specify the location, size, type, quantity, and planting spacing of all proposed plant and other landscape materials, including irrigation systems.

[3] Landscaping shall be installed with adequate precautions to ensure survival, as shown on the approved landscape plan, prior to issuance of a certificate of occupancy for the building or use.

[a] Landowners shall be responsible for proper maintenance and care of all landscape treatments approved by the Planning Board. The Town's Code Enforcement Officer is authorized to inspect periodically all landscape treatments, including screening, as approved by the Planning Board or to investigate complaints made by any official or private citizen concerning the maintenance of such landscape treatments. If completion of required landscape work is not practical due to seasonal or weather conditions, the applicant shall submit assurances to the Town Building Inspector for the completion of landscaping. The acceptable assurance guaranteeing the completion of landscaping shall be an irrevocable letter of credit, certified check, performance bond, or other acceptable assurance, equal to the cost of the landscaping work accompanied by written assurance that such landscaping shall be completed in accordance with an approved site plan within a specified period of time not exceeding six months from the date of occupancy.

[b] Required landscaping shall be maintained in a healthy, growing condition at all times. The property owner or lessee is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning, and other maintenance of all planting as needed. Any plant that dies shall be replaced with another living plant that complies with the approved site plan within 90 days, or as soon as practical given weather conditions, after notification by the Town Building Inspector.



[c] A three-year maintenance bond shall be provided to ensure successful planting. [Amended 9-11-2003 by L.L. No. 4-2003]

- (o) The location, design and construction materials of all existing and proposed utility systems including:
    - [1] Water supply system.
    - [2] Sewage disposal.
    - [3] Telephone, cable and energy systems, including electric, oil, gas, solar or other energy system.
    - [4] Storm drainage system, including but not limited to existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, manholes, and drainage swales.
  - (p) The location of fire and emergency accessways and zones, including the location of fire hydrants or of the nearest alternative water supply for fire emergencies.
  - (q) The location, type, and screening details for solid waste disposal facilities and containers.
  - (r) The proposed location, height, orientation, type of illuminating device, bulb type and wattage, and photometric data of all outdoor lighting fixtures, as required in § 164-43.4 of this chapter.
  - (s) The location, height, size, materials, design, and illumination of all present and proposed signs and other advertising or instructional devices, as required in § 164-43.1 of this chapter.
  - (t) Estimates of noise generation.
  - (u) Inventory and quantity of hazardous materials anticipated for on-site storage and/or use, if applicable.
  - (v) Plans for the disposal of construction and demolition waste, whether on-site or at a New York State approved solid waste management facility.
  - (w) In the case of residential development, payment of a recreation fee is required as provided by Chapter 75 of the Town Code.
  - (x) For projects involving more than one phase, a site plan indicating the ultimate development of the entire property.
- (4) Supporting materials. The following materials shall be submitted:

- (a) A copy of the deed to the property as most recently filed and/or a copy of the executed contract of sale.
  - (b) A copy of each covenant, easement or deed restriction in effect or intended to cover all or part of the tract.
  - (c) Written offers of easement to the Town of Warwick or other public agencies for purposes of stormwater drainage, utility rights-of-way, etc.
  - (d) Identification of all necessary permits from federal, state, county or local agencies, approvals required from said agencies for the project's execution, and proof of special permit and/or variance approvals if applicable.
  - (e) As applicable, soil logs from on-site borings or test pits, percolation test results, and stormwater runoff calculations
  - (f) As applicable, plans to prevent:
    - [1] The pollution of surface or groundwater;
    - [2] Erosion of soil both during and after construction;
    - [3] Excessive runoff;
    - [4] Excessive raising or lowering of the water table; and
    - [5] Flooding of other properties.
- (5) Additional supporting materials. The Planning Board may require the following additional supporting materials to be submitted, depending on the size and potential degree of impact on the Town:
- (a) Analysis of fiscal impacts to the Town including projected tax revenues and cost of community services using a methodology in common use, such as that described in the most recent versions of Rutgers University's Center for Urban Affairs publications entitled "The Fiscal Impact Handbook" and "The New Practitioner's Guide to Fiscal Impact Analysis."
  - (b) A traffic impact study and analysis due to the proposal's location in heavy traffic areas or traffic generating characteristics. Such study and analysis shall be funded by the applicant, shall be consistent with the Traffic Study Methodology Guidelines published by the New York State Department of Transportation, and shall include:
    - [1] The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
    - [2] The projected traffic flow pattern, including vehicular movements at all major

intersections likely to be affected by the proposed use of the site;

[3] The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall be given.

[4] Such other supporting materials as deemed necessary by the Planning Board.

H. Standards for review and design. The purpose of good site design is to create a functional and attractive development, to minimize adverse impacts, and to ensure that a development project will be an asset to the community. To promote this purpose, the Planning Board, in reviewing site plans, shall consider the standards set forth below and the Town of Warwick Design Guidelines.<sup>EN(33)</sup> Such standards are intended to provide a framework within which the designer of the development is free to exercise creativity, invention and innovation while recognizing the Town's rural, scenic and historic qualities. The Planning Board may require submission of alternative design and layout proposals based on the standards in this section and the Design Guidelines.

- (1) Site layout and design considerations. To the maximum extent practicable, development shall be located to preserve the natural features of the site and to avoid wetland areas, steep slopes, significant wildlife habitats and other areas of environmental sensitivity. The placement and design of buildings and parking facilities shall take advantage of the site's topography, existing vegetation and other pertinent natural features.
  - (a) The site shall be planned to create a desirable relationship to the streetscape, and to provide for adequate landscape plantings, safe pedestrian movement, and adequate parking areas.
  - (b) All buildings in the plan shall be integrated with each other and with adjacent buildings and shall have convenient access to and from adjacent uses.
  - (c) Parking areas should be placed at the rear and/or side of principal buildings so they are not visible from public roads. Where site limitations necessitate that parking areas be located adjacent to a public road, a berm, masonry wall, solid fence or evergreen hedge at least 30 inches in height above grade at the time of planting shall be installed to screen the view of parking areas from the road or street. Existing vegetation, which is proposed for preservation, may also be used to screen the view of parking areas.
  - (d) Newly installed utility service systems, and service revisions necessitated by exterior alterations, shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.
- (2) Relationship of buildings and site to adjoining areas. Site plans involving nonresidential

uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use. The Planning Board shall encourage the use of a combination of landscaping, buffers, berms, screens, visual interruptions, and common building materials to create attractive transitions between buildings of different architectural styles and uses.

(3) Building design.

- (a) Individual buildings shall relate to each other and to traditional structures in the surrounding area in lot placement, scale, height, and connections to harmonize visually and physically with the traditional character of the area.
- (b) New architecture shall relate to the traditional historic building standards of the Town of Warwick in regard to design, mass, scale, proportion, materials, texture, and color. Building components such as windows, rooflines and pitch, doors, eaves and parapets shall be compatible with historic structures in the Town. Vertical, double-hung windows, and steeply pitched roofs are encouraged.
- (c) Treatment of the sides and rear of all buildings shall be comparable in amenity and appearance to the treatment given to street frontages of these same buildings.
- (d) Rooftop and ground level mechanical equipment shall be screened from public view by the use of materials harmonious with the building, or shall be located so as not to be visible from any public ways.

(4) Parking and loading facilities. Parking and loading facilities shall be planned and developed in accordance with § 164-43.2.

(5) Access.

- (a) All entrance and exit driveways shall be located with due consideration for traffic flow so as to afford maximum safety to traffic on public streets and shall be reviewed and approved by the appropriate state, county, or local authority prior to the granting of site plan approval.
- (b) Similar land uses shall provide, wherever practical, cross access between properties to reduce the number of curb cuts and limit the amount of traffic on the main arterial or collector street fronting the development. The Planning Board may require individual developers to construct a site layout that facilitates future cross access in anticipation of future adjacent development.
- (c) Similar land uses shall provide, wherever practical, joint access to arterials or collector streets fronting the development to minimize disruption of traffic flow, reduce potential points of conflict between through and turning traffic, and facilitate the control and separation of vehicles and pedestrian movement. The Planning Board

may require individual developers to construct a site layout that facilitates future joint access in anticipation of future adjacent development.

- (d) All buildings shall be accessible to emergency vehicles. If the Planning Board deems it necessary, it shall refer the application to the applicable emergency services providers for comment on the proposed access arrangements.
- (6) On-site circulation.
- (a) On-site roadways, pedestrian walks and bicycle paths shall properly relate to existing and proposed buildings. They shall be designed to permit the safe, efficient and convenient movement of vehicles, pedestrians, and bicyclists on site, and the safe connections with adjoining properties where appropriate.
  - (b) Landscaped, paved, and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings, and shall be separated from motor vehicle circulation.
  - (c) For any use to which the public is expected to visit, the plan shall make proper provision for buildings and site developments that are accessible to and functional for physically disabled persons, such as by provisions of walks and ramps of suitable width and grade, curb cuts, identified wide parking spaces and ground level building entrances, as required in the New York State Uniform Fire Prevention and Building Code and other applicable state and federal laws.
- (7) Drainage.
- (a) The proposed development shall be designed to provide for proper surface water management through a system of controlled drainage that preserves existing drainage patterns, protects other properties and public roadways, and mitigates water quality impacts to the greatest extent practical. Drainage plans shall be reviewed by the Town Engineer prior to approval. To the greatest extent practical, drainage systems shall be designed to avoid an increase in peak stormwater volume and velocity.
- (8) Landscaping and screening.
- (a) Landscaping should dominate the site plan and integrate the various elements of site design, preserving and enhancing the particular identity of the site, and creating a pleasing site character.
  - (b) Landscape plantings of shrubs, ground cover, and shade trees, as well as perennials and annuals and other materials, such as rocks, water, sculpture, art, walls, fences, paving materials and street furniture, shall be encouraged to create pedestrian scale

spaces and to maintain a landscape continuity within the community. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of community aesthetic character. This shall be accomplished through the use of native plant material and the retention of existing natural vegetation, thereby reducing or eliminating the need for irrigation, pesticides, herbicides, and fertilizers.

- (c) The preservation of mature plant species, hedge rows, wetlands and woodlots shall be encouraged and included as a design element in the development of the site.
  - (d) Existing isolated tree stock 12 or more inches in diameter at breast height and trees 24 or more inches in diameter at breast height shall be protected and preserved to the maximum extent practical to retain valuable community natural resources and promote energy conservation by maximizing the cooling and shading effects of trees.
  - (e) Landscaping shall be used to create boundaries and transitions between areas of differing development intensities as well as to separate areas of incompatible land uses. A buffer zone thickly planted with native trees and shrubs of sufficient width to entirely screen a nonresidential use from a neighboring residential use shall be required. A buffer zone, as determined by the Planning Board, shall be provided on the subject parcel of any residential development occurring adjacent to a farm.
  - (f) Open space shall be designed as an integral part of the overall site design and shall be appropriately landscaped.
  - (g) Parking facilities shall be landscaped and screened from public view, to the extent necessary to eliminate the unsightliness of parked cars, and shall comply with the requirements of § 164-43.2.
  - (h) Solid waste facilities and containers, outdoor service areas, and loading docks shall be screened around their perimeter from the street and from other adjacent residential areas through the addition of conifer plantings or architectural elements. Outdoor storage shall be prohibited.
- (9) Signs. All signs shall comply with the sign regulations of § 164-43.1 of this chapter.
- (10) Lighting. All outdoor lighting shall comply with the lighting regulations of § 164-43.4 of this chapter.
- (11) Trails.
- (a) In developments where the Town of Warwick Greenway Trail System is proposed to cross the subject parcel, as indicated on the Official Town Map or the Town of Warwick Comprehensive Plan,<sup>EN(34)</sup> such trail location shall be shown on the site plan. In accordance with §§ 274-a(6) and 277-4 of New York State Town Law, such

land required for the Town of Warwick Greenway Trail shall be provided upon a finding by the Planning Board that a proper case exists for requiring such recreational land. The type of construction of trails shall be compatible with the anticipated use.

- (b) In developments where a link to schools, churches, shopping areas, trails, greenbelts and other public facilities is feasible, a trail system shall be provided. The type of construction of trails shall be compatible with the anticipated use.

(12) Noise.

- (a) Structures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties. Similarly, buildings shall be situated to prevent off-site noise from intruding on new development. In no case shall off-site noise exceed the standards contained in § 164-48 of this chapter. Procedures for evaluating noise in common usage, such as the U.S. Department of Housing and Urban Development's The Noise Guidebook (HUD-953-CPD) shall be used to determine impacts and mitigation.
- (b) Methods for reducing noise shall be used where appropriate, and shall include fencing, walls, and natural buffers, such as berms and landscape planting with deciduous and coniferous trees and large shrubs.

I. Agency, consultant, and public review.

- (1) Agency and consultant review. In its review, the Planning Board may consult with the Town Building Inspector, the Commissioner of Public Works, the Architectural Review Board, Conservation Board, Shade Tree Commission, appropriate emergency services providers, other local and county officials and boards, and its designated private planning, engineering, legal, and other consultants, in addition to representatives of federal and state agencies, including, but not limited to, the State Department of Transportation, the State Health Department, the State Office of Parks, Recreation and Historic Preservation, the Secretary of State, the State Department of Environmental Conservation, the Palisades Interstate Park Commission, the U.S. Army Corps of Engineers, US Fish and Wildlife Service, and the U.S. Department of Agriculture's Natural Resources Conservation Service.
- (2) Public hearing and notice.
  - (a) The Planning Board shall not authorize any use requiring special permit approval without first holding a public hearing at which interested parties and citizens shall have an opportunity to be heard. The public hearing shall be conducted within 62 calendar days of the Planning Board's determination that the application is complete. The Planning Board, by resolution at a stated meeting, shall fix the place, date, and

time of the public hearing.

- (b) The Planning Board shall be responsible for publication of the public hearing notice in a newspaper of general circulation in the Town at least five days before the date of such hearing. This notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. Notice shall also be posted on the bulletin board of the Town Hall at least five days prior to the date of the hearing.
- (c) The Planning Board shall mail copies of the public hearing notice at least five days prior to the public hearing, or as otherwise required to by state law to the applicant, involved agencies, and as otherwise required by SEQRA, and to all owners of land within 500 feet of a farm operation located in a New York State Agricultural District; such owners shall, in addition, be sent an Agricultural Data Statement on forms supplied by the Town of Warwick and prepared by the applicant. In addition, the Planning Board shall cause notice to be given of the substance of the application, together with notice of the hearing thereon, by causing notices thereof to be mailed at least five days before the date of the hearing to the owners of the property abutting that held by the applicant in the immediate area, whether or not involved in such application, and all other owners within 300 feet, or such additional distance as the Planning Board may deem advisable, from the exterior boundaries of the land involved in such application, as the names of said owners appear on the last completed assessment roll of the Town. Such notice shall be by ordinary mail, and, at the discretion of the Planning Board, the Secretary of the Planning Board or the applicant, shall furnish proof of compliance with the notification procedure, all costs required and fees assessed by the Secretary of the Planning Board to be borne by the applicant.
- (d) Any or all of the notices required by this subsection shall be issued by the Secretary of the Planning Board on order of the Planning Board or upon order of the Chairman of the Board if the application is received when the Board is not in session and the Chairman deems it necessary or desirable to expedite the public hearing on such application. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of the subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate any action taken by the Planning Board.
- (e) If the land involved in any application lies within 500 feet of the boundary of any other municipality, the Town Clerk shall also transmit to the Municipal Clerk of such other municipality a copy of the official notice of public hearing thereon not later than the day after such notice appears in the official newspaper of the Town. Reports from the Orange County Planning Department shall be made part of the



record of the hearing.

J. Special conditions. (See the Table of Use Requirements for uses where one or more of these conditions are applicable.)<sup>EN(35)</sup>

- (1) No greenhouse heating plant shall be operated within 50 feet of any adjoining residential lot line.
- (2) No dog kennel, runway or exercise pen shall be located within 300 feet of any lot line.
- (3) A buffer strip of 200 feet is required separating a building used for warehousing and wholesaling of farm products, and for retail sale or production of farm and food processing supplies from any residence.
- (4) Open development area road specifications will be required for residential subdivisions in the Mountain District pursuant to the provisions of Chapter 137, Subdivision of Land.
- (5) No building permit shall be issued and no lot shall be sold or conveyed in an open development area unless the purchaser of such lot shall file a statement with the Town Clerk that he/she fully understands that the lot has frontage on a private right-of-way or easement which shall not be accepted by the Town or maintenance as a public street unless fully improved by abutting property owners to the minimum width and construction standards required for public streets by the Town of Warwick. The final plat shall be endorsed to this effect prior to being signed.
- (6) The home occupation strictly conforms with the use limitations specified within § 164-43.5A(10), the general considerations found in § 164-46E, and to the definition found in § 164-20 of this chapter. The special use permit granted expires when the occupation changes or the property is sold.
- (7) The lot on which the home occupation is proposed meets the minimum lot area and setback requirements set forth in the Table of Bulk Requirements<sup>EN(36)</sup> for the district and the accessory structure proposed to house the home occupation similarly meets all setback and related bulk requirements set forth in this chapter.
- (8) The activity shall be compatible with the residential use of the property and the neighborhood and shall not require a use variance, provided that:
  - (a) The volume of invitees or guests who visit the home occupation premises is not in excess of six per day.
  - (b) The volume of deliveries or truck traffic is not in excess of an average of one per day.
  - (c) The activity does not generate any solid waste or sewage discharge, in volume or

type, which is not normally associated with residential use in the neighborhood.

- (9) Only customary household appliances and equipment shall be used, and no offensive noise, vibration, glare, dust, odors, heat, fumes, smoke, or electrical interference, shall be detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
- (10) Townhouse style units are only permitted within a cluster subdivision, only if such units are in condominium, cooperative or other similar ownership, and only if community water and sewer are provided. The applicable zoning district(s) bulk requirements shall be used to calculate permissible density. [Amended 10-24-2002 by L.L. No. 6-2002; 9-11-2003 by L.L. No. 4-2003]
- (11) One accessory residence to a single-family dwelling may be located on a lot as a guest home, not to exceed the size of the principal residential structure and not to be erected within the required front, side or rear yards of the principal building. Together, the principal residential structure and the accessory residence must occupy an area that could be legally subdivided, resulting in two conforming lots, each with a principal residential structure.
- (12)<sup>EN(37)</sup> Elder cottage housing option in the AI and AP-O Districts provided: [Added 10-24-2002 by L.L. No. 6-2002; amended 9-11-2003 by L.L. No. 4-2003]
  - (a) The principal dwelling on the premises is owner-occupied.
  - (b) The principal dwelling is located on a single lot with a lot area of not less than 1 1/2 acres.
  - (c) The ECHO unit shall be located no closer to any front property line than the principal dwelling on the lot or on that lot directly adjacent.
  - (d) A reasonable determination can be made that the existing water supply and sewage disposal facilities are adequate or will be suitably improved to accommodate the ECHO unit.
  - (e) All further requirements of the Town of Warwick are acknowledged in writing by the applicant, including a requirement that the special use permit will be annually reviewed for renewal by the Building Department and the further requirement that the structure be properly removed from the premises and its site restored to lawn area within six months of its discontinuance of use as an eligible elder cottage housing (ECHO) unit.
- (13) (Reserved)<sup>EN(38)</sup>

- (14) The keeping or boarding of any dogs by a veterinarian shall require approval by the Planning Board.
- (15) Swimming pools accessory to residential uses shall be regulated in accordance with Chapter 140, Swimming Pools.
- (16) Accessory to a residential use, not more than one bitch and two other dogs over six months old nor more than one litter under six months of age; livestock [according to the limitations and requirements of Subsection J(101) of this section] and not more than 10 fowl, rabbits, or other small domesticated animals shall be permitted; and no animals or fowl shall be housed within 100 feet of any lot line, except where livestock animals are housed, then such housing shall be set back 150 feet from any lot line. Any penning area less than one acre in size shall be set back 50 feet from any lot line. No storage of manure or other odor- or dust-producing substance or use shall be within 150 feet of any lot line. See also special condition in Subsection J(101) for large animals. [Amended 9-11-2003 by L.L. No. 4-2003]
- (17) A structure being converted from a one-family to a two-family dwelling shall have contained on the effective date of this chapter 2,000 square feet of livable floor area with 1,000 square feet for each additional dwelling unit created.
- (18) Accessory commercial agricultural buildings shall conform to the yard requirements for principal buildings.
- (19) Within 150 feet of any lot line of a commercial agricultural operation, boarding or livery stable, riding academy, place for the rental of horses or public stable, there shall be no stable or similar animal housing, no penning area smaller than one acre in size nor storage of manure or other odor- or dust-producing substance or use, except spraying or dusting to protect vegetation.
- (20) Accessory tenant housing and mobile homes to house tenant and migrant farm laborers shall be located no closer than 100 feet from any public road, shall be suitably landscaped in accordance with § 164-46H(8), shall be operated in conformance with Orange County Health Department regulations, and shall be located only on land that is considered a part of the same farming operation in which the tenant/migrant labor is employed. Employment documentation shall be provided annually to the Town Code Enforcement Officer. [Amended 10-24-2002 by L.L. No. 6-2002]
- (21) Dormitory accommodations for housing migratory agricultural workers shall be constructed in conformance with the New York State Multiple Residence Law and Orange County Health Department regulations and shall be located only on land that is considered a part of the same farming operation in which the dormitory accommodations is located.

- (22) Farm stands selling agricultural and nursery products shall not exceed 500 square feet of retail display floor area and shall be located only on land that is considered a part of the same farming operation in which the farm stand is located. [Amended 9-11-2003 by L.L. No. 4-2003]
- (23) No building permit for a new residence shall be issued and no lot shall be sold or conveyed in the Agricultural Industry (AI) and Agricultural Protection Overlay (AP-O) Zoning Districts unless the applicant/purchaser of such residence/lot shall file a statement with the Town Clerk that he/she fully understands that the lot lies within the Agricultural Zoning District within which the primary activity is farming. Certain aspects of customary agricultural procedures (namely, spraying and dusting of hazardous chemicals, noise and odors, hours of operation, as well as airborne soil erosion) constitute ongoing hazards and nuisances to which the residents of such dwelling unit willingly subject themselves. Also, the final plat shall be endorsed to this effect and the recording information for a deed declaration placed on the map prior to being signed. [Amended 10-24-2002 by L.L. No. 6-2002]
- (24) Cemeteries shall be subject to approval by the Town Board.
- (25) A state-accredited private school, except nursery schools, shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such hereunder.
- (26) Philanthropic and eleemosynary institutions, convalescent or rest homes, hospitals or sanatoriums for general medical care shall have frontage on a state or county road, and only on a Town road if approved by the Town Highway Superintendent.
- (27)<sup>EN(39)</sup> Townhouse-style dwellings are permissible in cluster developments only if they comply with the dimensional standards and neighborhood and architectural design standards found in § 164-47C and D, the Traditional Neighborhood Overlay (TN-O) Zoning District. [Added 9-11-2003 by L.L. No. 4-2003]
- (28) A special use permit is required for all Class 2 home occupations subject to the limitations of § 164-43.5.
- (29) The use of outdoor public-address systems for any purpose shall be prohibited by an annual outdoor recreation membership club. Annual outdoor recreation membership clubs shall cater exclusively to members and their guests. [Amended 1-24-2002 by L.L. No. 2-2002]
- (30) Exterior lighting, other than that essential for the safety and convenience of the users of the annual outdoor recreation membership club, shall be prohibited.
- (31) Public utility, transportation and communication uses shall be subject to such conditions

as the Planning Board may impose in order to protect and promote the health, safety and general welfare of the community and the character of the neighborhood in which the proposed structure is to be constructed.

- (32) Cabins or cottages, designed for one-family occupancy only, shall be permitted in summer colonies and camps.
- (33) In summer colonies, accessory recreational facilities shall be set back 200 feet from all lot lines and shall be effectively screened along lot lines as required by the Planning Board.
- (34) If floodlighting is used in a summer colony, it shall be arranged so as to eliminate the glare of the lights toward nearby residential areas.
- (35) No public address system for outdoor use shall be permitted in a summer colony. Only unidirectional speakers shall be permitted in a ski area. The Planning Board may impose additional regulations to minimize any noise disturbance affecting nearby residential areas.
- (36) All structures and uses in a camp shall be effectively screened along lot lines, as required by the Planning Board.
- (37) All provisions of the Sanitary Code or such other regulations of the County Health Department pertaining to camps and their sanitary facilities must be complied with.
- (38) Any areas to be used by aircraft under its own power on the ground shall be provided with a dustless surface.
- (39) The hours of operation of an airport shall be limited by the Town Board to prevent disturbance to nearby residences.
- (40) No area to be used by aircraft under its own power on the ground shall be less than 200 feet from any lot line. Evidence shall be presented to the Board that ample safeguards to minimize hazards and disturbances from noise of aircraft affecting residences and properties in the vicinity will be assured at all times of operation.
- (41) The application for a permit shall be accompanied by evidence that the proposed airport facility will meet the standards and requirements of the Federal Aviation Administration.
- (42) Access to areas used by aircraft in motion shall be controlled by fences and gates.
- (43) Any outdoor amusement establishment use or drive-in theater located within 100 feet of a lot line shall be effectively screened along the lot lines. Screening shall consist of a type of fencing or a hedge of such type and spacing as may be required by the Planning Board, of an initial height of not less than six feet at the time of planting and pruned to a

height of not less than 6 1/2 feet to adequately screen all operations on the lot from the view of neighboring properties.

- (44) Appropriate sections of Chapter 150, Tree and Topsoil Removal; Grading and Excavation, shall apply to commercial lumbering, sawmill and stump grinding/mulch processing operations. [Amended 5-13-2004 by L.L. No. 2-2004]
- (45) Appropriate sections of Chapter 150, Tree and Topsoil Removal; Grading and Excavation, shall apply to extractive operations.
- (46) Open development area road specifications will be required for recreational vehicle campgrounds pursuant to the provisions of Chapter 137, Subdivision of Land.
- (47) Provisions of § 164-49.2 of this chapter shall apply to recreational vehicle campgrounds. [Amended 9-11-2003 by L.L. No. 4-2003]
- (48) Individual retail uses shall not exceed 60,000 square feet of gross floor area, whether in one building or more than one building.
- (49) A group of retail business uses shall not exceed a total of 80,000 square feet of gross floor area, in all buildings on the lot. [Amended 1-24-2002 by L.L. No. 2-2002]
- (50) A permit is required from the Town Building Inspector for all Class 1 home occupations in accordance with § 164-43.5A(8).
- (51) Owner-occupancy of the principal dwelling, on lands in which an accessory apartment is to be added to such dwelling or other structure, shall be required. Accessory dwelling units shall also comply with the following: [Amended 10-24-2002 by L.L. No. 6-2002]
  - (a) Accessory apartments require issuance of a permit by the Building Inspector. Permits shall be issued to individuals, not structures. Materials to assist the Building Inspector in reviewing an application for an accessory apartment 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).
  - (b) An accessory dwelling shall comply with the provisions of §§ 164-50 and 164-51 of this chapter, which requires issuance of a building permit for construction and a certificate of occupancy for occupancy.
  - (c) Renewal and revocation of permit. The accessory apartment permit 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 apartment by the 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 Building Inspector.

- (52) Retail and service uses shall comply with § 164-47D(3)(d).
- (53) Use of the Town of Warwick Design Guidelines is mandatory.<sup>EN(40)</sup>
- (54) A mobile home court shall be in full accordance with the provisions of § 164-49, but not more than one such mobile home court shall be permitted in the Town of Warwick.
- (55) An area fully concealed from any street and equal to not more than 20% of the area devoted to retail sales shall be used for the processing of products.
- (56) Not more than three employees may be employed in such establishment engaged in the production or processing of goods.
- (57) Entrance and exit driveways of motor vehicle service stations shall have an unrestricted width of not less than 12 feet and not more than 25 feet and shall be located not nearer than 10 feet from any property line and shall be laid out so as to avoid the necessity of any vehicle backing out across any public right-of-way.
- (58) Motor vehicle lifts or pits, dismantled automobiles and all parts or supplies shall be located within a building, unless fully screened from view from all sides.
- (59) All service or repair of motor vehicles, other than such minor servicing as change of tires or sale of gasoline or oil, shall be conducted within a building.
- (60) The storage of gasoline or flammable oils in bulk shall be located fully underground and not nearer than 35 feet from any property line other than the street line.
- (61) No gasoline pumps shall be located nearer than 20 feet to any street line right-of-way.
- (62) No building permit for a motor vehicle service station shall be issued within a distance of 200 feet of any school, church, hospital or other place of public assembly designed for occupancy by more than 50 persons or within 500 feet of another motor vehicle sales, service station or repair garage, said distance to be measured in a straight line between the nearest points of each of the lots or premises, regardless of the district where either premises is located.
- (63) No motor vehicle sales, major repairing or wrecking and dismantling operations shall take place in a motor vehicle service station.
- (64) Not more than five other vehicles shall be stored or parked outdoors for more than 48

hours in a motor vehicle service station.

- (65) No motor vehicle shall be stored or parked in any required front yard of a motor-vehicle-related use, except a motor vehicle sales use.
- (66) No motor vehicle sales or the storage and sale of motor vehicle fuel shall take place in a motor vehicle repair shop.
- (67) Not more than 10 motor vehicles requiring servicing or repairs at a motor vehicle repair shop shall be stored or parked outdoors for more than 48 hours, and these shall be effectively screened from all property lines as prescribed in Subsection J(84) of this section and all other applicable regulations.
- (68) No major motor vehicle servicing, repairing or wrecking and dismantling operations or the storage and sale of motor vehicle fuel shall take place at a motor vehicle sales establishment.
- (69) No motor vehicle sales, service, repair or storage and sale of motor vehicle fuel shall take place at a motor vehicle laundry.
- (70) The most restrictive requirements for all uses contained shall prevail when two or more motor-vehicle-related uses are combined.
- (71) Total ground or floor area used for wholesale sales or storage shall not exceed 10,000 square feet.
- (72) All goods in a wholesale sales or storage establishment shall be stored in conformance with the bulk regulations for buildings.
- (73) All buildings and land in a designed shopping center shall be under unified ownership and management, shall have a unified architectural treatment relating each of the commercial establishments within, and shall have a common interrelated parking and site circulation system with consolidated access to public roads. The minimum initial commercial rental space per designed shopping center within enclosed buildings, including all component parts, shall be 15,000 square feet.
- (74) Entrance and exit driveways for a designed shopping center shall be located not nearer than 10 feet from any side property line, not less than 50 feet from the nearest intersection of a public right-of-way and shall be laid out so as to avoid the necessity of any vehicle backing out across any public right-of-way.
- (75) All special uses in a designed shopping center and all display sales and storage accessory thereto, other than off-street parking, shall be carried on in buildings fully enclosed on all sides.
- (76) Any designed shopping center use located on a lot, any lot line of which lies within 100



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

- (77) No motor vehicle wrecking or dismantling operation or the sale of motor fuel shall take place at a motor vehicle sales and service operation.
- (78) The Planning Board may reduce the minimum square footage of the proposed building to a minimum of 7,000 square feet for motor vehicle sales, in a designed shopping center.
- (79) For stump grinding/mulch processing uses in the Agricultural Industry and Office and Industrial Park Zoning Districts, direct ingress and egress to a state or county highway is required for all operations. No stump grinding/mulch processing operation will be permitted within 1,000 feet of any residence property line, residence district, or within 200 feet of any designated protection area. If requested, the Planning Board may reduce the 1,000-foot distance to a residence property line or residence district up to 500 feet, under the following circumstances: [Added 5-13-2004 by L.L. No. 2-2004]
  - (a) A noise impact assessment shall be conducted using the guidelines of the New York State Department of Environmental Conservation's (DEC) publication entitled "Assessing and Mitigating Noise Impacts;" or
  - (b) The procedures outlined in the United States Department of Housing and Urban Development Noise Assessment Guidelines (Office of Policy Development and Research, 1980) and the noise abatement and control policies of the United States Department of Housing and Urban Development, as published in 24 CFR Subtitle A Subpart B §§ 51.100 through 51.106, are complied with.<sup>EN(41)</sup>
- (80) Certification of the landowners participation in the AP-O Zoning District is required as a condition of all farm markets. [Added 9-11-2003 by L.L. No. 4-2003]
- (81) The performance standards called for in § 164-48 shall apply to the specified use.
- (82) No operation will be permitted within 1,000 feet of any residence, residence district, or within 200 feet of any designated protection area.
- (83)<sup>EN(42)</sup> Traffic generated by bowling alleys, dance halls, physical fitness studios and similar commercial recreation facilities and background traffic shall be no greater than 1.25 peak hour trips per 1,000 gross square feet. [Added 9-11-2003 by L.L. No. 4-2003]
- (84) Accessory storage in an orderly manner is permitted in any area other than the required front, rear or side yards, provided that such outdoor storage does not exceed 15 feet in

height or occupy more than 10% of the area of the lot, and such storage area is effectively screened from view from all sides. Screening shall consist of an eight-foot high solid wall or fence uniform in finish and appearance, or an effective living screen of evergreen type. In no case shall materials be stored so as to be visible from the public right-of-way or boundaries of the lot. [Amended 9-11-2003 by L.L. No. 4-2003]

- (85) Only oil, gas or electricity may be used for fuel in manufacturing uses. Such requirements are not intended to prohibit the use of renewable resources, such as solar, wind power, or other innovative technologies which are encouraged.
- (86) A manufacturing use must not create any dangerous, injurious, noxious or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor, disturbance to radio and television reception, glare, harmful discharge or storage or dispersal of liquid or solid waste, or other forms of nuisance in a manner or amount as to adversely affect the surrounding area.
- (87) Commercial recreation uses shall not exceed 60,000 square feet of gross floor area, whether in one building or more than one building. [Added 9-11-2003 by L.L. No. 4-2003]
- (88) All bulk storage shall be enclosed. [Amended 10-24-2002 by L.L. No. 6-2002]
- (89) Storage of vehicles in a bus, truck or railroad freight terminal shall not be located nearer than 200 feet to a residence district.
- (90) Shipping and receiving docks in a bus, truck or railroad freight terminal shall have adequate access to and from a public street without using said street for maneuvering purposes and shall not be located nearer than 200 feet to a residence district.
- (91) In a bus, truck or railroad freight terminal, no repair of motor vehicles, or shipping and receiving, shall be permitted within 600 feet of a residence district or between the hours of 8:00 p.m. and 6:00 a.m.
- (92) No burning or incineration of materials shall take place in the storing, sorting or baling of scrap materials.
- (93) A site used for storing, sorting or baling of scrap materials shall be kept in such condition as not to attract or harbor pests, rodents or other vermin.
- (94) No parking or display of merchandise in outdoor sales lots may take place within a required yard.
- (95) Dwelling unit sites require a ten-thousand-square-foot buildable area with less than a fifteen-percent slope.

- (96) Two-family dwellings may not exceed one such building on each lot.
- (97) In addition to the landscaping required as a screen against adjacent residential districts, and in addition to that required in parking areas, a minimum area equal to 1/3 of the first 50,000 square feet of building coverage, plus 20% of the square footage in excess of 50,000 square feet, shall be devoted to aesthetic landscaping enhancing such areas as outer courtyards, building perimeters and major vehicular entrances and exits. Such landscaping and planting plan shall be consistent with the Town's Design Guidelines.<sup>EN(43)</sup>
- (98) A commercial greenhouse, whether an accessory or a principal use, shall adhere to the minimum lot size of a commercial agriculture farm (10 acres when livestock is not involved).
- (99) Self-storage warehouse buildings must be screened by an eight-foot-high solid wall or fence uniform in finish and appearances, or an effective living screen of evergreen type. Storage buildings shall be effectively screened from the public right-of-way or boundaries of the lot.
- (100) In order to provide a choice of housing opportunities for a variety of income groups within the Town of Warwick, in accordance with the purposes of this chapter and the policies of the Comprehensive Plan, the Planning Board shall deny any application for a special use permit for a subdivision where affordable housing units are mandatory if the applicant does not comply, at a minimum, with the following requirements for affordable housing units: [Added 9-11-2003 by L.L. No. 4-2003]
- (a) Subdivisions of land into 10 or more lots for single-family dwellings are required to include 10 percent of the total number of dwelling units within the subdivision as affordable housing units. As an incentive, a density bonus of 10 percent will be granted. For example, in a subdivision containing 10 lots, one lot must contain an affordable housing unit while in a subdivision containing 20 lots, two lots must contain an affordable housing unit; in the ten-lot example, one bonus lot would be approved for a total of 11 lots, while in the twenty-lot example, two bonus lots would be approved for a total of 22 lots. The Planning Board shall review the resources and public facilities available to the subdivision, including transportation, water supply, waste disposal and fire protection, during the mandatory SEQR review, to ensure the additional density being proposed will not create significant environmentally damaging consequences.
  - (b) The requirement for affordable housing units shall be established by constructing new dwelling units or rehabilitating existing dwelling units on the site proposed for subdivision approval, subject to the special permit.
  - (c) Siting of affordable units. All affordable units constructed or rehabilitated under this

chapter shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

- (d) Minimum design and construction standards for affordable units. Affordable housing units within market-rate developments shall be integrated with the rest of the development and shall be compatible in both interior and exterior design, appearance, construction and quality of materials with other units.
- (e) Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<b>Market-Rate Unit</b>	<b>Affordable Housing Unit</b>
Up to 30%	None required
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

- (f) Local preference. First preference for affordable housing units shall be given to existing residents of the Town of Warwick, second preference to residents of other towns but who work as municipal or school district employees in Warwick, third preference to other residents of Orange County, and fourth preference to all others as permitted by law. Proof of residency, such as a driver's license or voter registration card, will be accepted to determine residency.
- (g) Marketing plan for affordable units. Applicants under this chapter shall submit a marketing plan or other method approved by the Town, to the Planning Board for its approval, which describes how the affordable units will be marketed to potential homebuyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.
- (h) Maximum incomes and selling prices; initial sale. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax

returns and to certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within 30 days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Town of Warwick, and as may be revised from time to time.

- (i) Preservation of affordability; restrictions on resale. Each affordable unit created in accordance with this chapter shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction on the property and shall be in force for a period of 40 years. All deeds of affordable housing units shall contain references to the restrictions on resale enumerated herein, and such restrictions shall be placed on the subdivision plat as a condition of approval.

[1] Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in § 164-46J(100)(i) above. For example, if a unit appraised for \$100,000 is sold for \$75,000 as a result of this chapter, it has sold for 75 percent of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$150,000, the unit may be sold for no more than \$112,500, 75% of the appraised value of \$150,000.

[2] The Planning Board shall require, as a condition for a special use permit under this Zoning Law, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in § 164-46J(100)(i), above. The Building Inspector shall not issue a certificate of occupancy for any affordable unit until the deed restriction is recorded.

(101) Keeping of livestock accessory to a residence requires three acres for the first large livestock animal, such as horses, cattle, or bison, and one acre for each additional large livestock animal. Keeping of livestock accessory to a residence requires three acres for the first two medium livestock animals, such as goats, sheep, ponies, or llamas, and one acre for each two additional medium livestock animals. [Amended 9-11-2003 by L.L. No. 4-2003]

(102) The maximum building length of buildings at an animal hospital or veterinary kennel is 140 feet, and the minimum distance between buildings is 30 feet.

- (103) Hotels, motels, tourist cabins, health spas and health resorts require a minimum lot size of five acres plus one acre for each 15 rooms beyond the first 50.
- (104) Public schools, nursery schools, and institutions of higher learning, public libraries, museums and state-accredited private schools require a minimum lot size of five acres plus one acre for each 100 pupils, or the requirements of the State Board of Regents.
- (105) Where the outdoor shooting of firearms is involved, a minimum lot size of 50 acres is required.
- (106) Camps shall provide 10,000 square feet of lot area for each tent, cabin or other principal building and 3,000 square feet per person accommodated.
- (107) Buildings and sleeping quarters, except tents, in a camp shall be set back 30 feet distance from each other, and tents shall be set a minimum of 10 feet apart.
- (108) The height of buildings/structures shall be no more than six inches per foot of distance to the nearest lot line.
- (109) Hunting preserves and outdoor amusement establishments involving motorized vehicles, such as snowmobiles, shall have a minimum lot size of 100 acres. [Amended 10-24-2002 by L.L. No. 6-2002]
- (110) The height of buildings/structures shall be no more than three inches per foot of distance to the nearest lot line.
- (111) Bulk standards for community recreational facilities and buildings, clubhouses, etc., shall be set by the Planning Board from standards determining the most similar uses.
- (112) Provision of both community sewer and water is required.
- (113) (Reserved)
- (114) One-family detached dwellings shall not exceed one such building on each lot.
- (115) Clubs and fraternal lodges for which the chief activity is a service customarily carried on as a business, or primarily for gain, shall not be permitted.
- (116) A dining room is allowed, provided that it is incidental to the activities of a club or fraternal lodge and is conducted for the benefit of the members thereof only.
- (117) No development shall take place within 200 feet of the periphery of the entire mobile court nor within 200 feet of any public road frontage on which the mobile home court bounds, except that properly landscaped public parking areas and recreational areas may intrude into such undeveloped areas by 100 feet.
- (118) Mobile homes within a mobile home court shall each have a minimum road frontage of

20 feet.

(119) Mobile homes within a mobile home court shall each have 5,000 square feet of usable open space.

(120) Provisions of § 164-42E shall apply to the adaptive reuse of nonresidential agricultural structures.

(121) No side or rear yards are required for selected Local Hamlet Business and Traditional Neighborhood Overlay District uses, but, if provided, a ten-foot minimum is required.

(122) Parking is restricted from the front yard of Local Hamlet Business District uses.

(123) Any building in a Local Hamlet Business District used for residence on the first floor shall have a lot area and lot width, side and rear yards as specified for such dwellings in the Bulk Table<sup>EN(44)</sup> and shall not cover more than 40% of the area of the lot. If such building is for residential use above the first floor only, there shall be a rear yard of at least 30 feet in depth. [Amended 1-24-2002 by L.L. No. 2-2002]

(124) In Office and Industrial Park Districts, no side or rear yard shall be required where such yard abuts an operating railroad right-of-way.

(125) Hotels, motels, residential hotels and tourist homes require one acre for every 15 rooms or fraction thereof.

(126) Outdoor storage, sales, and display is not permitted in a designed shopping center.

(127) Within the Office and Industrial Park District, the following setback requirements shall prevail for parking, loading and fences:

(a) Wall of building: 10 feet.

(b) Residential district: 200 feet.

(c) Designated protection area: 100 feet.

(d) Commercial districts: 50 feet.

(e) Side lot line: 15 feet.

(f) Rear lot line: 15 feet.

(g) Limited access highway: 100 feet.

(h) Other public roads: 40 feet.

(i) Internal roads: 30 feet.

(128) A one hundred-foot front yard setback for parking is required for a designed shopping center use.

(129) The following uses are specifically prohibited in the Designed Shopping Center, Traditional Neighborhood, and Local Business Zoning Districts:

(a) Amusement parks and circuses, except for those operated by bona fide not-for-profit organizations on a temporary special permit of the Town Board and issued for a period not to exceed four days.

(b) Any use which is noxious or offensive by reason of emission of odor, dust, noise, glare, smoke, gas, fumes or radiation or which presents a hazard to public health or safety.

(c) Mobile home sales.

(d) Bulk storage of any kind, including lumberyards, warehouses, oil and gas storage, junkyards or similar uses, except gasoline as accessory to a motor vehicle service station and bulk storage of materials for on-site usage.

(130) Eating and drinking places in the Local Hamlet Business Zoning District shall be limited to a capacity of 40 seats.

(131) The minimum floor area for uses in the Office and Industrial Park District shall be 2,000 square feet for the first floor of each principal building.

(132) The minimum distance between buildings in the Office/Research/Industrial Park District is 30 feet or equal to the height of the tallest building, whichever is greater.

(133) Manufacturing uses involving primary production of the following products from raw materials are prohibited:

Alcohol, industrial

Ammonia

Aniline dyes

Animal size

Asphalt

Bone black

Carbides

Carbon black



Caustic soda  
Cellulose  
Cement  
Charcoal  
Chlorine  
Coal  
Coke  
Creosote  
Explosives  
Fat rendering  
Fertilizers  
Gas manufacturing  
Gelatin  
Glue  
Hydrochloric acid  
Hydrogen  
Linoleum  
Matches  
Nitrates of an explosive nature  
Nitric acid  
Oilcloth  
Oxygen  
Paint  
Phosphoric acid  
Picric acid

Plastic materials

Potash

Pyroxylin

Rayon yarn

Rubber

Soaps

Starch

Sulfuric acid

Synthetic resins

Tar products

Turpentine

Varnish

(134) Manufacturing uses involving the following processes are prohibited:

- (a) Alloying of metal or metal ores.
- (b) Distillation of wood or bones.
- (c) Magnesium foundry.
- (d) Milling or processing of flour or grain.
- (e) Nitrating of cotton or other materials.
- (f) Reduction and processing of wood pulp and fiber, including paper mill operations.
- (g) Refining petroleum products, such as gasoline, kerosene, naphtha and lubricating oils.
- (h) Refining secondary aluminum.

(135) Operations involving slag piles, stockyards and slaughterhouses are prohibited in the Office and Industrial Park District.

(136) Solid waste management facilities, except those owned and operated by the Town, are prohibited.

(137) For the purposes of the Office and Industrial Park District, a "lot" shall be defined as land

which is leased, as well as land which is conveyed in fee.

(138) (Reserved)

(139) (Reserved)<sup>EN(45)</sup>

(140) Mining for fissionable materials is prohibited in all districts. (See Chapter 85, Fissionable Materials, Ordinance No. 80-3.)

(141) The use of mobile homes on farms to house tenant and migrant farm laborers shall be subject to the approval of the Orange County Department of Health. Town permits shall be granted by the Building Inspector for one year; annual renewals shall require an inspection report by the Building Inspector prior to issuance. There will be a fee for the original permit to cover each mobile home so located (as set forth in Chapter 75, Development Fees).  
STRING LeftCorner="§ 164-46" STRING RightCorner="§ 164-46"

(142) (Reserved)

(143) (Reserved)

(144) Same as §164-46J(129)(a) and (b).

(145) Multiple commercial occupancy is permitted in buildings under unified ownership and control.

(146) No self-storage warehouses or other self-service facilities are permitted.

(147) Such personal service stores shall exclude off-track betting (OTB), video/electric arcades, pool halls or similar uses.

(148) Such businesses, offices and services shall exclude a crematorium.

(149) Self-propelled garden tractors and lawn mowers are deemed not to be motor vehicles for the purposes of the Table of Use Requirements for Local Hamlet Business Districts.<sup>EN(46)</sup>

(150) Rear and side setbacks of 40 feet are required.

(151) (Reserved)

(152) Farm markets less than 4,000 square feet in gross floor area may be operated as an accessory use to the principal use of agricultural production and/or the practice of animal husbandry on a commercial agricultural operation in the AI Zoning District or which has been certified for participation in the AP-O Zoning District. Farm markets of 4,000 square feet of gross floor area or greater require a special use permit from the Planning Board either in the AI Zoning District or on lands which have been certified for participation in the AP-O Zoning District. The following additional requirements apply whether the farm

market is an accessory or special permit use: [Amended 9-11-2003 by L.L. No. 4-2003]

- (a) The farm market structure shall consist of a single story and shall not exceed 2,000 square feet for each 10 acres of farm area, to a maximum of 10,000 square feet. Nothing herein shall preclude the use of an existing agricultural outbuilding on a farm for this use, provided that no greater area than the foregoing is used as a farm market;
- (b) At least 25% of the total amount of the annual retail sale of agricultural, horticultural, floricultural, vegetable and fruit products, soil, livestock and meats, poultry, eggs, dairy products, nuts, honey, wool and hides and other agricultural or farm products shall be grown, raised or produced on the farm on which the farm market is located. Processed food, where the majority of the ingredients are grown on the farm, shall be considered part of the twenty-five-percent minimum; these include but are not limited to baked goods and mixes, eggs, dairy products, juice, preserves, syrups, vinegars and salad dressings. The farm market may sell farm products grown or processed regionally (i.e., within the State of New York) , provided that said products do not exceed 75% of the total annual retail sales of the farm market. A maximum of 25% of the total annual retail sales may be in agricultural products grown or processed outside the State of New York. No other grocery items or products not listed here may be sold. Receipts and records of product purchases must be kept by the farmer-applicant;
- (c) The farm market may sell food prepared on premises, using primarily agricultural and farm products sold at the farm market;
- (d) The farm market may sponsor and conduct farm and harvest festivals on-site, provided that the number of festivals each year is not greater than 12, no carnival-type rides are utilized, the festivals are designed to provide agricultural marketing and promotional opportunities for the farm and/or the region's agricultural producers, and if the festival involves 250 or more attendees, a temporary outdoor public gathering permit pursuant to Chapter 115 of the Town Code is secured prior to the event(s); and
- (e) On-site public gatherings of up to 249 attendees for arts, entertainment, weddings, craft shows, and other special occasions are allowed up to 24 times per year, provided that adequate parking is provided and a sewage disposal permit is secured from the Town Building Department prior to holding any public gathering. Attendance by 250 or more attendees requires a temporary outdoor public gathering permit from the Town Board.
- (f) A farm market may be operated on a year-round basis and may contain bathrooms and/or an area for food preparation occupying no more than 20% of the gross floor area of the farm market.

(153) Wireless telecommunications facilities shall comply with Article VIII of this chapter.

K. Disposition of application by Planning Board. [Amended 1-24-2002 by L.L. No. 2-2002]

- (1) Within 62 days of the close of the public hearing, unless this time is extended by mutual consent of the applicant and Planning Board, the Planning Board shall act by resolution to approve, approve with modifications, or disapprove such site plan and/or special permit use. The decision of the Planning Board shall be certified by the Chairman of the Planning Board, filed in the Town Clerk's and Building Inspector's offices, and mailed to the applicant at the address indicated on the application within five days of the Planning Board's decision.
  - (2) A resolution of either approval or approval with modifications includes authorization to the Planning Board Chair to sign the site plan and/or special permit application upon the applicant's compliance with the submission requirements stated therein. If the Planning Board's resolution includes a requirement that modifications be incorporated in the site plan and/or special permit, conformance with these modifications shall be considered a condition of approval. If the site plan and/or special permit is disapproved, the Planning Board's resolution shall be accompanied by a statement in writing giving the grounds for denial. In such a case, the Planning Board may recommend without prejudice further study of the site plan and/or special permit application and resubmission to the Planning Board after it has been revised or redesigned.
- L. Preliminary approval. If a particular application is, in the opinion of the Planning Board, of sufficient complexity to warrant review in stages, the Planning Board may defer the submission of certain required detailed engineering work at the time of public hearing, rendering a preliminary decision on the basis of a less than complete submission, and a final decision only on the basis of a complete submission similar to the review of a major subdivision according to Chapter 137, Subdivision of Land.
- M. Simultaneous approvals. The Planning Board is empowered (but not required) to grant site plan approval and special use permit approval simultaneously. [Amended 1-24-2002 by L.L. No. 2-2002]
- N. Renewal of special permit. The Planning Board may require that a special use permit be periodically renewed, provided such condition is directly related to and incidental to the proposed use. In this case, the special use permit renewal shall be withheld only upon a determination that the conditions prescribed by the Planning Board, in conjunction with issuance of the original permit, have not been or are no longer being complied with. In such cases, a period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit. Any use authorized by the Planning Board shall be deemed to be a conforming use in the district in which such use is located, provided that:
- (1) The provision in this chapter under which such permit was issued is still in effect;
  - (2) Such permit was issued in conformity with the provisions of this chapter; and

- (3) Such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.
- O. Expiration of approval. In cases of a site plan and/or special use permit approval or conditional approval, the approval shall be deemed terminated if construction is not commenced within 60 months of such action, unless the applicant demonstrates there are no changed circumstances and the approval is reviewed and extended by the Planning Board.
- P. Inspection of improvements. The Town Engineer shall be responsible for the overall inspection of site improvements, including coordination with the Building Inspector and other local officials and agencies, as may be appropriate. Reasonable expenses incurred by the Town for inspections by the designated Town Engineer, or other appropriate professionals, shall be reimbursed to the Town by the applicant in accordance with the fee schedule established and annually reviewed by the Town Board.
- Q. Performance bond. No certificate of occupancy shall be issued for a site plan unless the installation of required infrastructure and improvements is complete. As an alternative, a performance bond or other security sufficient to cover the cost of completing the installation, as estimated by the Town Engineer, shall be furnished to the Town by the applicant. Such security shall be provided to the Town pursuant to the provisions of New York State law. Such performance bond or equivalent security shall be delivered to the Town Board to guarantee thereby to the Town that the applicant shall faithfully cause to be constructed and completed within a reasonable time the required improvements to the Town, free and clear of all encumbrances.
- (1) Procedure. Before the Building Inspector grants a certificate of occupancy, the applicant shall provide a detailed engineer's cost estimate for all required improvements for review and concurrence by the Town Engineer following the procedure set forth below:
- (a) The applicant shall complete all required improvements to the satisfaction of the Town Engineer, who shall file with the Town Board a letter specifying the satisfactory completion of all improvements required by the Planning Board. For any required improvements not so completed, the applicant shall file with the Town Clerk a bond or certified check covering the costs of such improvements, in addition to the cost of satisfactorily installing any improvements not approved by the Town Engineer. Any such bond shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. The applicant shall additionally file a copy of said certified check or other performance guarantee with the Building Department.
- (2) As-built drawing required. No required improvements shall be considered to be completed until the installation of the improvements has been approved by the Town Engineer and a map, certified by the applicant's engineer and satisfactory to the Town

Engineer, has been submitted indicating the specific location of all underground utilities as actually installed. However, if the applicant chooses to provide a performance guarantee for required improvements as specified in § 164-46Q(1)(a) above, such bond or equivalent security shall not be released until the required as-built drawing is submitted and deemed satisfactory by the Town Engineer.

**§ 164-47. Traditional Neighborhood Overlay (TN-O) District.**

A. Purposes. In conformance with the Town of Warwick Comprehensive Plan,<sup>EN(47)</sup> the purposes of the Traditional Neighborhood Overlay District are as follows:

- (1) To extend greater opportunities for traditional community living, working, housing, and recreation to all residents of the Town.
- (2) To encourage a more efficient use of land and public services by promoting compact development in appropriate locations.
- (3) To reduce traffic congestion and promote citizen security and social interaction by providing compact, pedestrian-oriented residential development in close proximity to shops, services, offices, civic buildings, and open space.
- (4) To encourage a diversity of housing styles, types and sizes to accommodate households of all ages, sizes, and incomes.
- (5) To provide a mix of uses, including residential, commercial, civic and open space uses, in a traditional configuration typical of historic hamlets and villages in the Town.
- (6) To incorporate a system of relatively narrow interconnected streets with sidewalks and bikeways that offer multiple routes for motorists, pedestrians and bicyclists and to provide for the connections of those streets to existing and future developments.
- (7) To ensure that new development in the district will be compatible with historic hamlet and village building patterns in the Town and will create a strong sense of community identity and neighborhood feeling experienced in traditional rural settlements.
- (8) To promote developments where the physical, visual and spatial characteristics are established and reinforced through the consistent use of compatible neighborhood design and architectural design elements. Such elements shall relate the design characteristics of an individual structure or development in a harmonious manner, resulting in a coherent overall development pattern and streetscape.
- (9) To retain existing buildings with historical and/or architectural features which enhance the visual character of the community.

- (10) To enhance the function of the district as the focus of commercial and civic activities within the surrounding neighborhood, and as a desired alternative to conventional, modern use-segregated developments such as large lot suburban subdivisions and strip commercial developments.
- (11) To preserve the rural, historic and agricultural character of the Town by directing new development to existing hamlet locations and village environs, thereby creating distinct settlements surrounded by a greenbelt of conserved lands.
- (12) To create receiving areas in the Town where development rights can be transferred from the Agricultural Protection Overlay District and such other areas specifically mapped by the Town Board in accordance with § 164-47.4. Maximum permitted density in the TN-O District, that exceeds the underlying Zoning District density, is only achievable when such development rights have been transferred.

B. Uses and general requirements.

- (1) General. The TN-O District is an overlay district covering lands within the LB and SL Zoning Districts and is intended to provide for a range of complementary uses. TN-O Districts, when authorized in accordance with § 164-47.4, consist of two areas: neighborhood residential and main street areas. These areas are intended to provide for the diversity necessary for traditional neighborhood life, while maximizing the interactions among related uses and minimizing the adverse impacts of different uses upon each other. The minimum size of each neighborhood (excluding greenbelts and other open green periphery areas) shall be 40 acres, and the maximum size shall not exceed 200 acres. Larger parcels shall be developed as multiple traditional neighborhoods, each individually subject to the provisions herein. The Planning Board may reduce to 20 acres the minimum size of a neighborhood where it finds that the purposes of the TN-O District will be achieved and where existing public services are available. Traditional neighborhoods may be located adjacent to, but shall not be bisected by an arterial street. These areas are specified by street hierarchy as defined in § 164-47E(4), and provide for the following: [Amended 1-24-2002 by L.L. No. 2-2002]
  - (a) Neighborhood residential areas provide locations for a broad range of housing types, including one-family detached, two-family attached, and secondary dwelling units.
  - (b) The main street area is intended primarily to meet the retail and service needs of the immediate neighborhood within two- and three-story buildings, and may contain other compatible uses, such as civic and institutional uses of community-wide importance. It also provides for upper-story residential uses. All residences should be within approximately 1/4 mile from the main street area.
  - (c) Community water and sewer facilities are required.



- (d) Base dwelling unit count is to be determined by the underlying zoning district density. Overall unit count may be increased up to the design standards described in § 164-47C and in accordance with the formula and procedures of § 164-47.4, the Town transfer of development rights program.
  - (e) A minimum of 5% of the gross area of the neighborhood shall be designated for open space uses, such as neighborhood greens, central squares or commons, courtyards, parks, playgrounds, greenways and trails, and protected natural areas.
  - (f) A minimum of 2% of the gross area of the neighborhood shall be designated for civic uses.
  - (g) A minimum of 5% and a maximum of 15% of the gross area of the neighborhood shall be designated for workplaces.
  - (h) A minimum of 2% and a maximum of 30% of the gross area of the neighborhood shall be designated for retail uses.
  - (i) A maximum of 15% of the gross area of the neighborhood shall be designated for attached houses and small-lot (50 feet or less in width) detached houses.
  - (j) A maximum of 45% of the gross area of the neighborhood shall be designated for large-lot (50 feet or more in width) detached houses.
- (2) Uses permitted in all areas.
- (a) Open space uses, such as neighborhood greens, central squares or commons, courtyards, parks, playgrounds, greenways and trails, protected natural areas, and stormwater detention/retention facilities.
- (3) Uses permitted in neighborhood residential areas.
- (a) One-family detached dwellings.
  - (b) Two-family attached dwellings, including duplexes and townhouses, provided that all dwellings have pedestrian access to the rear yard through means other than the principal structure.
  - (c) Class 1 home occupations.
- (4) Special uses permitted in neighborhood residential areas. The following uses are permitted as special uses subject to demonstrated compatibility with surrounding land uses and the purposes of the Traditional Neighborhood District:
- (a) Accessory apartments. One accessory apartment unit per lot may be placed on a one-family detached residential lot within the principal building or an accessory

building, and on a two-family attached residential lot within an accessory building, provided that:

- [1] The accessory dwelling unit shall not exceed 800 square feet.
  - [2] The accessory dwelling unit shall comply with the Table of Bulk Requirements,<sup>EN(48)</sup> except that a detached accessory dwelling shall be limited to a maximum building height of 25 feet, shall be clearly incidental to the principal dwelling, and shall be located a minimum of 20 feet behind the front facade of the principal dwelling.
  - [3] Total building coverage for all principal and accessory uses shall not exceed 60%.
  - [4] One additional off-street parking space with unrestricted ingress and egress shall be provided for the accessory unit.
  - [5] The requirements of § 164-46J(51) are observed.
- (b) Class 2 home occupations.
  - (c) Special needs housing designed to serve senior citizens, such as community living arrangements and assisted living facilities.
  - (d) Civic uses, such as municipal offices, fire stations, and post offices.
  - (e) Places of worship, churches and related uses.
  - (f) Public and private schools and other educational facilities.
  - (g) Nursery schools.
  - (h) Railroad, public utility, rights-of-way and structures necessary to serve areas within the Town.
- (5) Uses permitted in main street area.
    - (a) Residential uses.
      - [1] Residential uses located on upper floors above commercial uses
    - (b) Business uses.
      - [1] Retail uses serving the day-to-day needs of the immediate neighborhood.
      - [2] Neighborhood grocery stores with a building footprint not exceeding 10,000 square feet.

- [3] Eating and drinking places including outdoor cafes subject to the provisions of § 164-46, and excluding drive-in restaurants, fast-food restaurants, and franchise architecture.
- [4] Personal services, such as barbershops, hair salons, tailors, shoe repair and other similar small-scale service uses, serving the immediate neighborhood.
- [5] Laundries and cleaning establishments, but excluding washing of wearing apparel on the premises, except in the case of self-service and hand laundries. On-premises cleaning of wearing apparel or household effects shall be permitted only if noncombustible solvent is used except for the incidental removal of spots with combustible solvent.
- [6] Offices, including business, professional and medical offices.
- [7] Banks, excluding drive-throughs unless they are located to the rear of the building.
- [8] Accommodations, including bed-and-breakfast establishments, small hotels or inns.
- [9] Theaters, excluding drive-ins.

(c) General uses.

- [1] Civic uses, such as municipal offices, fire stations, and post offices.
- [2] Institutional uses, such as libraries, museums, art galleries, and community meeting facilities.
- [3] Clubs and fraternal lodges.
- [4] Places of worship, churches and related uses.
- [5] Mortuaries and funeral parlors.
- [6] Public and private schools and other educational facilities.
- [7] Indoor recreation facilities in fully enclosed structures.

(d) Accessory uses.

- [1] Commercial or business buildings and structures for a use accessory to the principal use but not exceeding 30% of the gross floor area of the principal use.
- [2] Off-street parking as determined by § 164-43.2 of this chapter, but not including semitrailer trucks.

- [3] Off-street loading as regulated by § 164-43.2 of this chapter.
  - [4] Fencing, screening and landscaping as permitted and regulated by §§ 164-43.2 and 164-46J of this chapter.
  - [5] Signs as regulated by § 164-43.1 of this chapter.
- (6) Special uses permitted in main street area. The following uses are permitted as special uses subject to demonstrated compatibility with surrounding land uses and the purposes of the Traditional Neighborhood District:
- (a) Neighborhood motor vehicle service stations or garages, provided that:
    - [1] Such uses shall be located in excess of 500 feet from the main intersection of the main street area.
    - [2] Fuel dispensers shall be located to the rear of the principal building.
    - [3] Gas station canopies shall have pitched roofs, and lighting shall be from luminaries completely recessed into the ceilings of said canopies, so that the lighting elements themselves are not visible from or beyond the lot lines.
  - (b) Commercial garages or parking lots for shared or community use.
  - (c) Other commercial, civic or entertainment uses considered, in the judgment of the Planning Board, to be similar in character and intensity to permitted uses.
- (7) Special cases in the main street area.
- (a) Outdoor cafes. Restaurant uses shall be permitted to operate outdoor cafes on sidewalks, including areas within the public right-of-way, and in courtyards, provided pedestrian circulation or access to store entrances shall not be impaired. The following standards and guidelines are applicable:
    - [1] To allow for pedestrian circulation, a minimum of five feet of sidewalk along the curb and leading to the entrance of the establishment shall be maintained free of tables or other encumbrances.
    - [2] Planters, posts with ropes or other removable enclosures are encouraged and shall be used as a way of defining the area occupied by the cafe.
    - [3] Extended awnings, canopies or large umbrellas shall be permitted and located to provide shade. Colors shall complement building colors.
    - [4] Outdoor cafes shall be required to provide additional outdoor trash receptacles.
    - [5] Tables, chairs, planters, trash receptacles and other elements of street furniture

shall be compatible with the architectural character of the building where the establishment is located.

- [6] Outdoor cafes shall not be entitled to additional signage over and beyond what is permitted for this type of establishment.
- [7] The operators of outdoor cafes shall be responsible for maintaining a clean, litter-free and well-kept appearance within the area of their activities.



- (b) Sidewalk displays. Commercial uses shall be permitted to have sidewalk displays of retail merchandise. The following standards and guidelines are applicable:
  - [1] Sidewalk displays are permitted directly in front of an establishment, provided at least five feet of clearance is maintained at the storefront entrance, or wider if needed for adequate and uncluttered pedestrian access, provided the display cases are located against the building wall and not more than two feet deep, and provided the display area does not exceed 50% of the length of the storefront.
  - [2] Display cases shall be permitted only during normal business hours, and shall be removed at the end of the business day. Cardboard boxes shall not be used for sidewalk displays.
  - [3] Sidewalk displays shall maintain a clean, litter-free and well-kept appearance at all times and shall be compatible with the colors and character of the storefront

from which the business operates.

- (8) Performance standards in the main street area. Consistent with the general purposes of the Traditional Neighborhood District, performance standards shall apply to control potentially objectionable external aspects of business uses. No use shall be maintained, established, altered, moved or expanded in the main street area unless it complies with the performance standards set forth below. Continued conformance with such standards shall be a requirement for the continuation of any certificate of occupancy.
  - (a) The proposed use shall not constitute a nuisance to the neighborhood due to hours of operation, noise or loitering.
  - (b) The emission of smoke, gas, dust, odor, or other atmospheric pollutant shall be reasonably minimized outside the building in which the use is conducted.
  - (c) Untreated or insufficiently treated wastes shall be prevented from discharge into any watercourse.
  - (d) Vibration, heat or electromagnetic interference shall not be disseminated beyond the immediate site on which the use is located.
  - (e) No use shall be permitted that presents a physical hazard by reason of fire, explosion, radiation or any similar cause.
  - (f) No use shall be permitted where it is determined by the Planning Board that the type and number of vehicle trips it is estimated to generate would be expected to produce unusual traffic hazards or congestion or cause or induce emissions which may be expected to interfere with the maintenance of air quality standards established by the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or other regulatory agency having jurisdiction due to the design or capacity of the street system, the relationship of such proposed use to surrounding or nearby commercial or residential uses or other factors affecting air pollution arising from mobile source activity.
  - (g) Vehicular-oriented commercial land uses, such as car washes, and drive-through businesses that would have a disruptive effect on the pedestrian orientation of the district shall be prohibited.
  - (h) No loading or unloading shall take place nearer than 35 feet from any residence zone boundary.

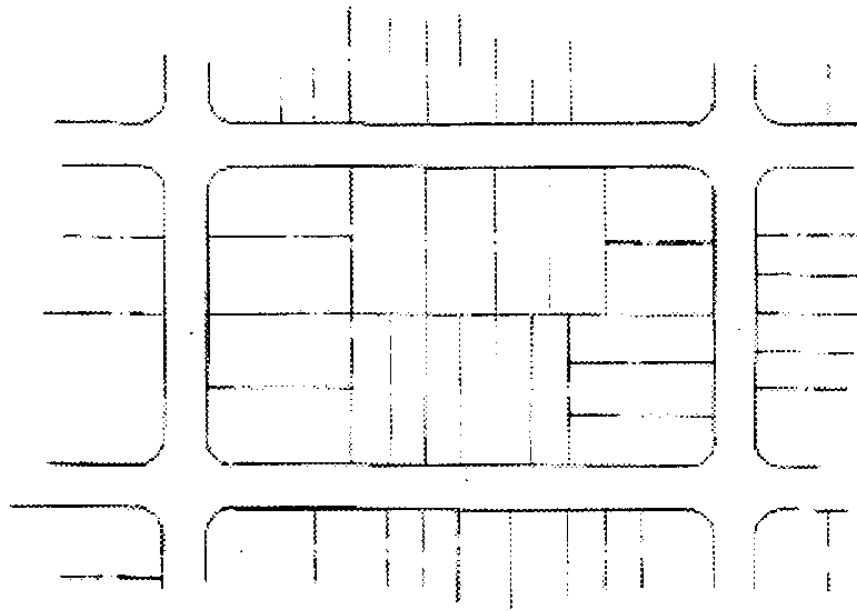
C. Density determination and dimensional standards.

- (1) Neighborhood residential areas.
  - (a) One accessory apartment per dwelling unit shall be considered a special use in

addition to the number of dwelling units authorized under this section. As a condition of the granting of a special use permit, the adequacy of water and/or sewer shall be determined by the Planning Board.

(2) Bulk standards in neighborhood residential areas.

- (a) Block layout. The block layout shall be designed to create blocks that are generally rectilinear in shape, with variations as needed for topographic, environmental, and other design considerations. Street layouts should provide for perimeter blocks that are generally in the range of 200 to 400 feet deep and 400 to 800 feet long. Alleys shall be permitted to bisect blocks, and a continuous network of alleys providing through access to the rear of lots is encouraged.



Suggested Street Grid

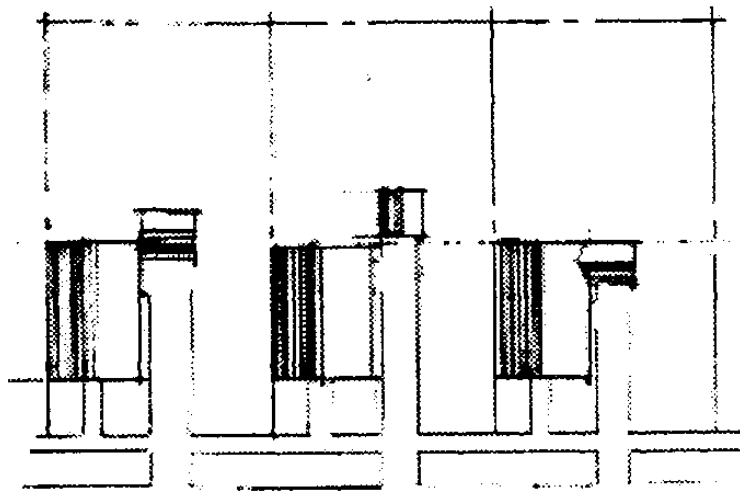
- (b) Lot size diversity. A variety of lot sizes should be provided to eliminate the appearance of a standardized subdivision and to facilitate housing diversity and choice that meets the projected requirements of people with different housing needs. Lot widths should create a relatively symmetrical street cross section that reinforces the public space of the street as a simple, unified public space.

[1] One-family detached lots shall have a minimum lot area of 5,000 square feet and a maximum lot area of 15,000 square feet. Two-family attached lots shall

have a minimum lot area of 3,000 square feet per unit and a maximum lot area of 6,000 square feet per unit.

[2] Lot widths shall range from 20 to 80 feet.

- (c) Build-to line. Each block shall be designed with a uniform build-to line that shall establish the front yard setback for the lots on the block. The function of the build-to line is to form a distinct street edge and define the border between the public space of the street and the private space of the individual lot. The build-to line shall fall between the minimum and maximum front yard setbacks. In areas of existing development where existing buildings fall within the minimum and maximum front yard setbacks, the build-to line shall be designed to create the greatest uniformity on the block. In areas of existing development where existing buildings do not fall within the minimum and maximum front yard setbacks, the build-to line shall be designed as the closest line within the minimum and maximum front yard setbacks so as to create as much uniformity on the block as possible.



The "zero-lot line concept. A large side-yard on each parcel is created by uniformly eliminating one of the side-yard setbacks.

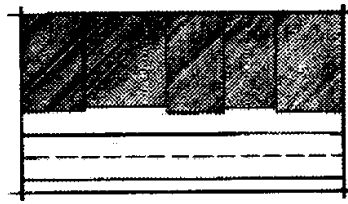
- (d) Building setback, front.

- [1] Principal building: minimum of zero feet, maximum of 25 feet. Structures with a front setback of five to 15 feet must provide a front porch or stoop on the front facade of the structure.
- [2] Garages, carports and secondary dwelling units. A minimum of 20 feet behind



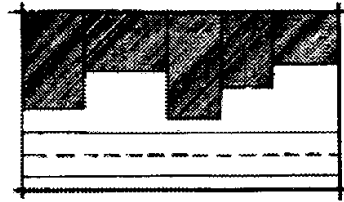
the front facade of the principal building shall be provided.

- (e) Building setback, rear.
    - [1] Principal building: minimum of 30 feet.
    - [2] Accessory buildings (excluding rear-loaded garages and carports): minimum of five feet.
    - [3] Rear-loaded garages and carports: minimum of 20 feet from the paved edge of alley or nine feet to the alley right-of-way.
  - (f) Building setback, side: 20% of the lot width; side setbacks may be allocated to one side only, with zero feet on the other side.
  - (g) Minimum lot depth: 100 feet.
  - (h) Maximum coverage: 60%.
  - (i) Maximum building height: 35 feet (except for civic building cupolas and towers, which can be up to 50 feet in height, and church steeples, which can be up to 75 feet in height).
  - (j) Number of stories: minimum of two stories, maximum of three stories.
  - (k) Units per acre. Central water and sewer services are required. For design purposes, the minimum number of dwelling units shall be four units per acre and the maximum number of dwelling units shall be eight units per acre.
- (3) Dimensional standards in the main street area.
- (a) Lot area: The minimum lot area shall be determined by adding 20% to the land area needed for the structure, on-lot parking, ingress/egress, and any on-site infrastructure that is required. The additional 20% shall constitute setbacks and landscaped buffers.
  - (b) Lot width at front yard setback line: minimum of 25 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Build-to line: zero feet; buildings should abut the sidewalk. The build-to line may be increased to 10 feet if additional space is landscaped as a garden, courtyard, or outdoor seating or dining area. Entries may be recessed up to five feet.



a.

b.



Diagrams showing two alternatives for building setbacks from the street right-of-way in the Main Street Area. Relatively uniform setbacks (a) are preferable to widely varying building setbacks (b).

- (e) Side yard (each side): minimum of zero feet if attached to an adjacent building, or a minimum of five feet if not attached to an adjacent building but used as a courtyard or pedestrianway; maximum of 20 feet if used as a courtyard or a drive to parking in rear of the building.
- (f) Rear yard: minimum of 55 feet to accommodate a sixteen-foot alley abutting the rear lot line and one or two rows of perpendicular parking
- (g) Grade: First finished floor level must be level with the sidewalk grade.<sup>EN(49)</sup>
- (h) Maximum building coverage: 70%.
- (i) Maximum building height: 35 feet. To create a visually unified street wall, buildings should be no more than 30% taller or 30% shorter than the average building height on the block, except for civic building cupolas and towers, which can be up to 50 feet in height, and church steeples, which can be up to 75 feet in height.
- (j) Number of stories: minimum of two stories, maximum of three stories.

#### D. Neighborhood and architectural design standards.

- (1) Standards for all areas. The standards established in this section are for the purpose of promoting quality development that is attractive, convenient and compatible with surrounding uses and historic buildings in the Town. These standards are intended to be general in nature and not to restrict creativity, variety or innovation.
  - (a) Standards for existing buildings.

[1] Existing buildings, if determined to be historic or architecturally significant,

shall be protected from demolition or encroachment by incompatible structures or landscape development.

- [2] The U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Properties shall be used as the criteria for renovating historic/architecturally significant buildings.

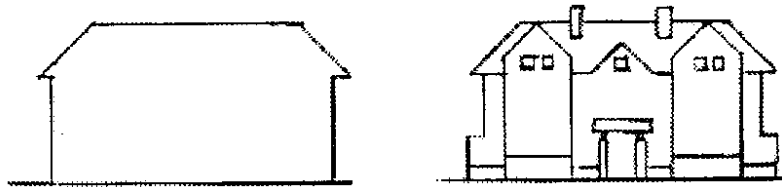
(b) Standards for new buildings. All new buildings and remodeling or expansions of existing buildings, exclusive of buildings determined to be historic/architecturally significant, shall meet the following minimum structural and architectural design standards:

- [1] Building placement. Buildings shall define the streetscape through the use of uniform setbacks along the build-to line for each block. The build-to line shall be generally continued across side yard setback areas between buildings by using landscaping. The streetscape shall also be reinforced by lines of closely planted shade trees, and may be further reinforced by walls, hedges or fences which define front yards



- [2] Architectural character. Buildings may be either traditional in their architectural character, or be a contemporary expression of traditional styles and forms respecting the scale, proportion, character and materials of historic village and hamlet structures.
- [3] Architectural variety. A variety of architectural features and building materials is encouraged to give each building or group of buildings a distinct character.
- [4] Scale. The scale of new construction, including the arrangement of windows, doors and other openings within the building facade, shall be compatible with historic buildings in the Town.
- [5] Building mass. Buildings of 40 feet or more in width shall be visually divided

into smaller increments to reduce their apparent size and contribute to a human-scale development. The mass of these buildings shall be deemphasized in a variety of ways through architectural details such as divisions or breaks in materials, window bays, separate entrances and entry treatments, variation in rooflines, awnings, or the use of sections that may project or be recessed up to 10 feet.



Elevations of two multi-storied buildings with equal heights and widths. Architectural details such as porches, window, and roof dormers "articulate" a building's façade (right), which enhances the visual quality and contributes to human-scaled development

- [6] Articulation of stories. Buildings shall clearly delineate the boundary between each floor of the structure through belt courses, cornice lines, canopies, balconies, or similar architectural detailing.
- [7] Consistent cornice lines. Attached buildings within the same block shall maintain consistent cornice lines in buildings of the same height within two-family attached, nonresidential, or mixed use structures.
- [8] Fenestration. Windows and other openings shall have proportions and a rhythm of solids to voids similar to historic buildings in the Town.
- [9] Front facade. The front facade of the principal building on any lot shall face onto a public street. The front facade shall not be oriented to face directly toward a parking lot.
- [10] Roof materials. Desired roof materials include slate (either natural or man-made), shingle (either wood or asphalt composition) and metal formed to resemble standing seams. Roof color should be traditional, meaning that it should be within the range of colors found on historic buildings in the Town. Specifically excluded are white, tan or blue shingles, red clay tiles, and corrugated metal. The use of fascias, dormers and gables is encouraged to provide visual interest. All gables shall be functional.
- [11] Exterior wall materials. Exterior wall materials may include stucco, wood

clapboard, wood shingle, native stone, or brick of a shape, color and texture similar to that found in the historic buildings in the Town. Concrete block and metal structures shall be prohibited. No buildings shall be sided with sheet aluminum, asbestos, corrugated metal, plastic or fiberglass siding.

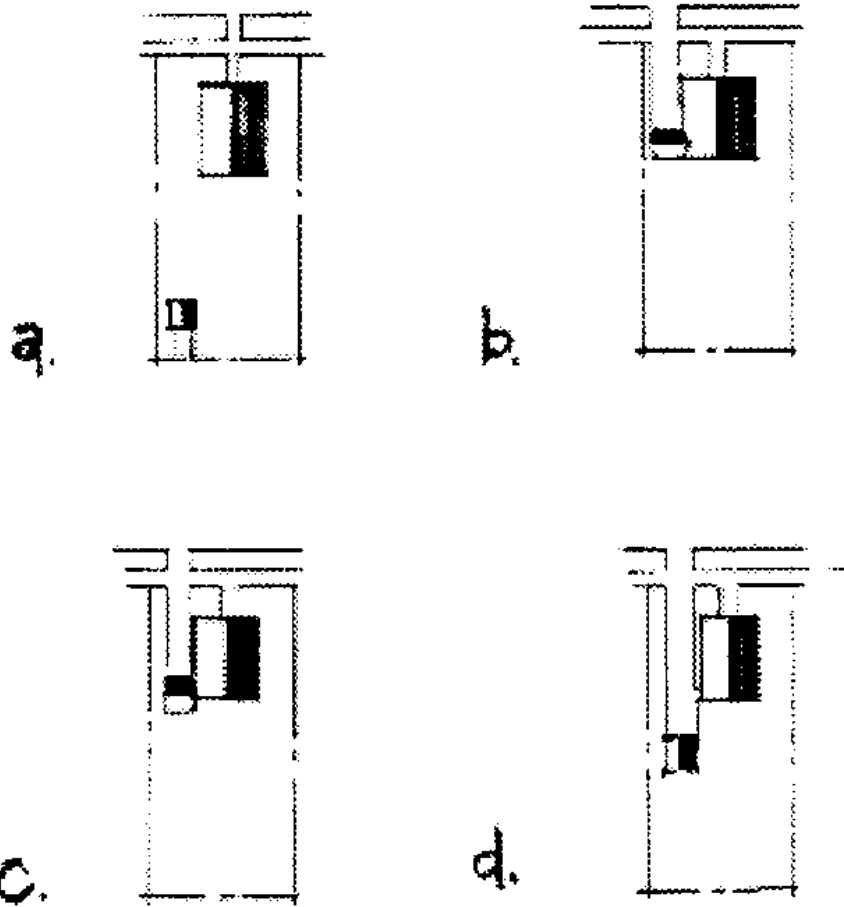
[12] Colors. Colors used for exterior surfaces shall be harmonious with surrounding development and shall visually reflect the traditional colors of historic structures in the Town. Examples of incompatible colors include metallic, neon, and primary colors, which shall be limited to accents. When accent colors are proposed, the number of colors should be limited to prevent a gaudy appearance. Specifically prohibited shall be brick that is white, tan or painted; color shall be integral to the masonry materials.

[13] Fire escapes. Fire escapes shall be located to the rear of buildings.

[14] Accessory structures. All accessory structures, screen walls, and exposed areas of retaining walls shall be of a similar type, quality, and appearance as the principal structure.

(2) Additional standards for neighborhood residential areas.

- (a) In order to be consistent with the scale of buildings in traditional villages and hamlets, no single building shall contain more than 3,500 square feet.
- (b) Buildings shall have traditional sloping roofs with a minimum pitch of 9:12, and with overhanging eaves. Horizontal eaves shall face the street, with the exception of civic and institutional buildings and places of worship, which may have the gable end facing the street.
- (c) Porches, pent roofs, roof overhangs, hooded front doors or other similar architectural elements shall define the front entrance to all residences.
- (d) Porches must be at least four feet wide.
- (e) Garages, carports and secondary units shall be located a minimum of 20 feet behind the front facade of the principal building.



(3) Additional standards for main street area.

- (a) Multiple uses. Buildings shall be designed for multiple uses, with offices and/or residential units on upper stories.
- (b) Building placement. Buildings shall generally be located close together with minimal side yard areas in order to form a fairly continuous row of shop fronts. Buildings shall be located as close to the front lot line as allowed by the zoning to reinforce the street wall and facilitate pedestrian access and circulation.
- (c) Exterior public and semipublic spaces. Exterior public and semipublic spaces, such as courtyards or central squares, shall be designed to enhance surrounding buildings and provide amenities for users, in the form of textured paving, landscaping, lighting, street trees, benches, trash receptacles and other items of street furniture, as appropriate. Courtyards shall have recognizable edges defined on at least three sides by buildings, walls, landscaping, and street furniture, in order to create an outdoor

room with a strong sense of enclosure.

- (d) **Building footprint.** In order to be consistent with the scale of buildings in traditional villages and hamlets, no single building shall have a building footprint exceeding 5,000 square feet. Exceptions may be made only if the facades of larger buildings are articulated to appear as multiple buildings, each with a maximum building footprint of 5,000 square feet.
- (e) **Building roof.** Flat roofs with articulated parapets and cornices may be allowed. Sloping roofs shall have a minimum pitch of 9:12, and with overhanging eaves.
- (f) **Building facades.** Building facades shall provide architectural detail, and such detail, including eaves, columns, pilasters, cornices, windows and window surrounds, canopies, fascia, and roofs, shall be proportionate with the building and compatible with historic buildings in the Town. The architectural features, materials, and the articulation of a facade of a building shall be continued on all sides visible from a public street. Concrete block shall be permitted on rear walls only.



- (g) **Shopfront design.** Shopfront design shall be based upon historic examples in the area. A minimum of 50% of the front facade on the ground level shall be transparent, consisting of display windows or door openings allowing views into and out of the interior to create visual interest at the street level. Windows shall be distributed in a more or less even manner consistent with the rhythm of voids and solids of historic buildings, and shall have low sills and high lintels consistent with the window proportions of historic buildings. Doorways, windows and other openings in the facade shall be proportioned to reflect pedestrian scale and movement. Traditional canvas awnings without interior illumination are encouraged.



- (h) Entries. Primary entries to shopfronts shall be emphasized through the use of architectural features such as roofs, recessions into the facade, pilasters or other details that express the importance of the entrance.
  - (i) Mechanical equipment. All mechanical equipment, such as furnaces, air conditioners, elevators, transformers, and utility equipment, whether roof- or ground-mounted, shall be completely screened from contiguous properties and adjacent streets in a manner that is compatible with the architectural treatment of the principal structure.
  - (j) Landscaping. Landscaping shall be in accordance with the requirements of § 164-46H(8)
  - (k) Loading and service areas. Loading and service areas must be completely screened with a one-hundred-percent visually impervious buffer, except at access points, from the ground level view from contiguous property and adjacent streets.
  - (l) Outdoor storage. There shall be no outdoor storage of either materials or products.
  - (m) Trash storage. Trash storage and recycling areas shall be completely enclosed and screened from public view and adjoining buildings in a manner compatible with the architectural treatment of the principal structure.
- E. Circulation system. The circulation system shall allow for different modes of transportation and shall include streets, sidewalks, bicycle paths and routes, and pedestrianways. It shall provide adequate traffic capacity, connected pedestrian and bicycle routes (especially off-street bicycle or multi-use paths or bicycle lanes on the streets), control through traffic, limit lot access to streets of lower traffic volumes, and promote safe and efficient mobility through the neighborhood. The street system shall provide functional and visual links within the residential neighborhoods and adjoining mixed-use, civic, commercial, and open space uses, and shall be connected to existing and proposed external development. The following circulation standards shall apply, except as such standards may be changed from time to time by nationwide organizations, such as the Institute of Traffic Engineers:
- (1) Pedestrian circulation. Convenient and pleasant pedestrian circulation systems shall be provided continuously throughout the district. Where feasible, any existing pedestrian routes through the site shall be preserved and enhanced. All streets, except for alleys, shall be provided with continuous sidewalks in accordance with the specifications listed



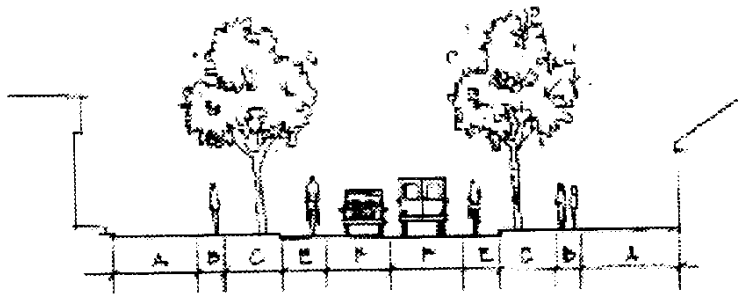
in Table 1.<sup>EN(50)</sup> The following provisions also apply:

- (a) Sidewalks shall be made of modular masonry materials, such as brick, slate, and concrete pavers, or concrete with brick borders or cast-in-place materials, such as exposed aggregate concrete slabs. In order to ensure consistency, the final decision on sidewalk material shall rest with the Planning Board. Asphalt sidewalks are specifically prohibited.
  - (b) In the main street area, clear and well-lighted walkways shall connect building entrances to the adjacent public sidewalk and to any parking areas. Such walkways shall be a minimum of six feet in width, and shall be landscaped where feasible with trees, shrubs and other plant materials meeting the requirements of § 164-46H(8).
  - (c) Intersections of sidewalks with streets shall be designed with clearly defined edges. In the main street area, crosswalks shall be provided at all street intersections and shall be well lit and clearly marked with contrasting paving materials at the edges or with striping.
  - (d) Sidewalks shall comply with the applicable requirements of the Americans with Disabilities Act.
- (2) Bicycle circulation. Bicycle circulation shall be accommodated on streets and/or on dedicated bicycle paths. Where feasible, any existing bicycle routes through the site shall be preserved and enhanced. Facilities for bicycle travel may include off-street bicycle paths (generally shared with pedestrians and other nonmotorized users) and separate, striped, four-foot bicycle lanes on streets. In the main street area, if a bicycle lane is combined with a lane for parking, the combined width should be 14 feet.
  - (3) Public transit access. Where public transit service is available or planned, convenient access to transit stops shall be provided. Where transit shelters are provided, they shall be placed in highly visible locations that promote security through surveillance and shall be well-lighted.
  - (4) Motor vehicle circulation. Motor vehicle circulation shall be designed to minimize conflicts with pedestrians and bicycles. Traffic calming features, such as queuing lanes, curb extensions, roundabouts, and medians may be used to encourage slow traffic speeds. The street system shall act as a functional and visual link between neighborhoods, civic and commercial areas, and open space.
- (a) District street hierarchy. Each street shall be classified according to the following criteria. Arterial streets are considered interregional roads that convey traffic between hamlets and villages. Arterials should not bisect residential areas including traditional neighborhood districts.

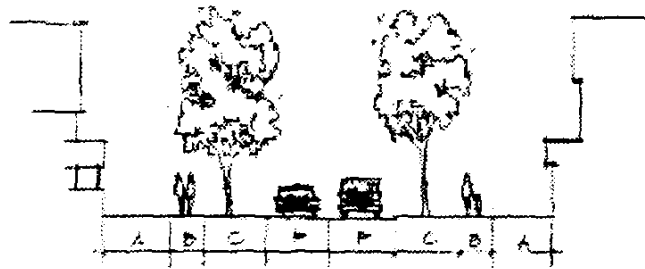
- [1] Main street. This street acts as a collector and provides access to commercial or mixed-use buildings, but it is also part of the Town's major street network. Parallel on-street parking helps to slow traffic. Additional parking is provided in lots to the rear or side of buildings.
- [2] Medium-volume residential street. This street provides primary access to individual residential properties and connects streets of lower and higher function.
- [3] Low-volume residential street. This street provides primary access to individual residential properties. Traffic volumes are relatively low.
- [4] Alley. These streets provide secondary access to residential properties where street frontages are narrow, where the street is designed with a narrow width to provide limited on-street parking, or where alley access development is desired to increase residential densities. Alleys may also provide delivery access or alternate parking access to commercial or mixed-use properties. Utilities shall run along alleys wherever practical.



Cross-section of a typical Main Street with the recommended dimensions of each component: A) building setback from street right-of-way; B) sidewalk;



Cross-section of a typical medium volume residential street with the recommended dimensions of each component: A) building setback from street right-of-way; B) sidewalk; C) planting strip; E) bicycle lane; F) travel lane



Cross-section of a typical low volume residential street with the recommended dimensions of each component: A) building setback from street right-of-way; B) sidewalk; C) planting strip; F) travel lane

**Attributes of Streets in the Traditional Neighborhood District**  
[Amended 1-24-2002 by L.L. No. 2-2002]

	Medium-Volume Residential Street	Main Street	Low-Volume Residential Street	Residential Access Lane	Alley
Average daily trips	750-1,500	750 or more	250-750	Less than 250	Not applicable
Right-of-way (feet)	48 - 72	70 - 88	35 - 55	40 - 55	12 - 16
Design speed (mph)	25	30	20	20	10
Auto	2 10-foot	2 or 3	2 10-foot	1 14-foot	2 8-foot

travel	lanes	12-foot lanes	lanes, or 1 14-foot (queuing) lane	travel (queuing) lane	lanes for 2-way traffic, or 1 12-foot lane for 1-way traffic
Bicycle	4-foot lanes with no parking, or 6-foot lanes com- bined with parking lanes	2 6-foot lanes combined with parking lanes	None	None	None
Parking	None, one or both sides, 8 feet	Both sides, 8 feet	None or one side, 8 feet	1 side or both sides	None (access to individual drives and garages outside right-of-way)
Curb and gutter	Required; granite block curbing recom- mended, asphalt curbing prohibited	Required; granite block curbing recom- mended, asphalt curbing pro- hibited	Not required; inverted curb permitted under certain conditions	Not required inverted curb permitted under certain conditions	At corners of intersections with other street types only
Planting strips (feet)	Minimum 6	Minimum 6	Minimum 6	Minimum 6	None
Sidewalks	Both sides, 3 - 5 feet	Both sides, 6 - 10 feet	Both sides, 3 - 5 feet	One or both sides 3 - 5 feet	None

(b) Street layout.

[1] The street layout shall form an interconnected system of streets primarily in a

rectilinear grid pattern. New development should maintain the existing street grid, where present, and restore any disrupted street grid where feasible.

- [2] The orientation of streets should enhance the visual impact of common open spaces and prominent buildings, create lots that facilitate passive solar design, and minimize street gradients.
- [3] All streets shall terminate at other streets or at public land, except low-volume residential streets may terminate in stub streets when such streets act as connections to future phases of development. Low-volume residential streets may terminate other than at other streets or public land when there is a connection to the pedestrian and bicycle path network at the terminus.
- [4] To the greatest extent practical, streets shall either continue through an intersection, or terminate with a "T" intersection directly opposite the center of a building, or a view into an open space area.
- [5] The use of culs-de-sac and other roadways with a single point of access shall be used only where no other alternatives exist. Where culs-de-sac are deemed to be unavoidable, continuous pedestrian circulation shall be provided for by connecting sidewalks that link the end of the cul-de-sac with the next street or open space.
- [6] A minimum of two interconnections with the existing public street system shall be provided where practical. Linkages to adjacent developments and neighborhoods with pedestrian and bicycle paths are recommended where practical.
- [7] Intersections shall be at right angles whenever practical, but in no case less than 75°. Low volume streets may form three-way intersections creating an inherent right-of-way assignment (The through street receives precedence.) that significantly reduces accidents without the use of traffic controls.
- [8] To slow turning vehicle traffic and shorten pedestrian crosswalks, the roadway edge at street intersections shall be rounded by a tangential arc with a maximum radius of 15 feet for local streets and 20 feet for intersections involving collector or arterial streets. The intersection of a local street and an access lane or alley shall be rounded by a tangential arc with a maximum radius of 10 feet.

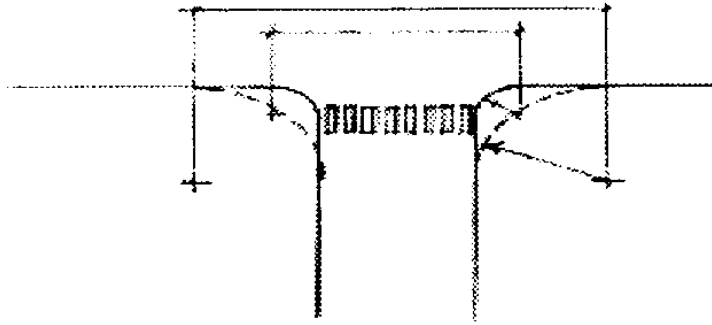


Diagram of a street intersection. Reducing the radius of street corners slows turning vehicle traffic and shortens pedestrian crosswalks

- [9] Curb cuts for driveways to individual residential lots shall be prohibited along arterial streets. Curb cuts in the neighborhood residential area shall be limited to intersections with other streets or access drives to parking areas located to the rear or side of buildings. Clear sight triangles shall be maintained at intersections, as specified below, unless controlled by traffic signal devices:

Intersection of	Minimum Clear Sight Distance (feet)
Local street and collector	120
Collector and collector	130
Collector and arterial	50

- [10] Alleys shall be permitted to bisect blocks and to provide secondary access to adjoining properties. The following provisions apply:
- [a] Alleys shall be treated as private streets and shall not be dedicated to the Town. Alleys may be dedicated to the property owners' association or may be dedicated as common easements across the rear portions of lots.
  - [b] Any lot having access from an alley shall additionally front upon a public street.
  - [c] Curbing shall not be required except at corners of intersections with other street types. At such corner locations, curbing shall be required for the entire corner radius and five feet preceding same. Such curbing shall not extend more than six inches above the finished pavement.
  - [d] Alley lighting shall be provided on all garages or on utility poles or lighting

poles adjacent to parking areas. Lighting fixtures and lighting poles shall be of consistent architectural style and shall complement the predominant architectural theme.

[e] Design speed shall not exceed 10 miles per hour.

F. Streetscape standards. Streets shall be designed to serve as a public space that encourages social interaction and that balances the needs of all users, including pedestrians, bicyclists and automotive traffic. To create the appropriate character of the street as a public space, the following streetscape specifications shall apply:

- (1) Planting strips. Sidewalks shall be separated from street curbs by a planting strip not less than six feet wide, planted with shade trees. In the main street area, the six-foot-wide planting strip may be paved from the curb to the sidewalk, with street trees planted in tree wells of a sufficient size to allow for mature tree growth. [Amended 1-24-2002 by L.L. No. 2-2002]
- (2) Shade trees.
  - (a) Shade trees shall be provided along each side of all streets, public or private, existing or proposed, but not including alleys. In locations where healthy and mature shade trees currently exist, the requirements for new trees may be waived or modified.



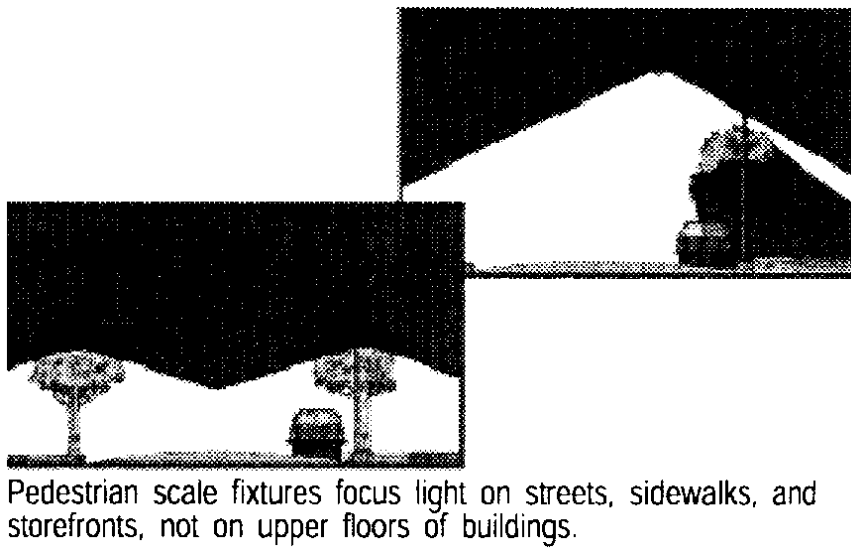
Narrower streets lined with trees provide a pedestrian scale and sense of enclosure to help slow traffic

- (b) Shade trees shall be located in the planting strip between the street curb and the sidewalk.
- (c) Shade trees shall have a minimum caliper of two inches measured at chest height at time of planting, and shall be spaced a maximum of 30 feet on center, with exact spacing to be evaluated on a site-specific basis.
- (d) No more than 40% of the street trees shall be of one species. The particular species of shade trees shall be determined upon specific locational requirements. Species shall be selected to cast moderate to dense shade in summer, survive more than 60 years, have a mature height of at least 50 feet, be tolerant of pollution, heat, and salt, require little maintenance by being mechanically strong (not brittle), and be insect- and disease-resistant. Care should be taken to avoid species that suffer from limb drop and splitting, heavy fruit or nut crops, invasive root systems, or allergen production. In the main street area, the street treescape shall consist of deciduous species that branch above eight feet to facilitate viewing of storefronts and signage. The following urban tolerant street trees are recommended:

Ginkgo (male trees only)  
Green ash  
Hackberry  
Little-leaf linden  
London plane tree  
Pin oak  
Red oak  
Regent scholartree  
Thornless honey locust  
Village green zelkova

- (e) Street trees shall be grown to at least American Nursery Association Standards, shall be balled and burlaped or crated nursery stock, and shall be irrigated and fertilized for a minimum of two years after installation. Any tree that dies within two years of planting, or any tree that is removed shall be replaced with the same species and size.
- (3) Streetlighting.
- (a) Streetlighting shall be provided on both sides of all streets at intervals of no greater than 75 feet on center and at intersections.
  - (b) Streetlighting shall utilize cast-iron posts not exceeding 12 feet in height. Lighting posts and fixtures shall be of consistent architectural style throughout the district and shall complement the predominant architectural theme.
  - (c) Streetlighting shall be located between the street curb or pavement and the sidewalk.

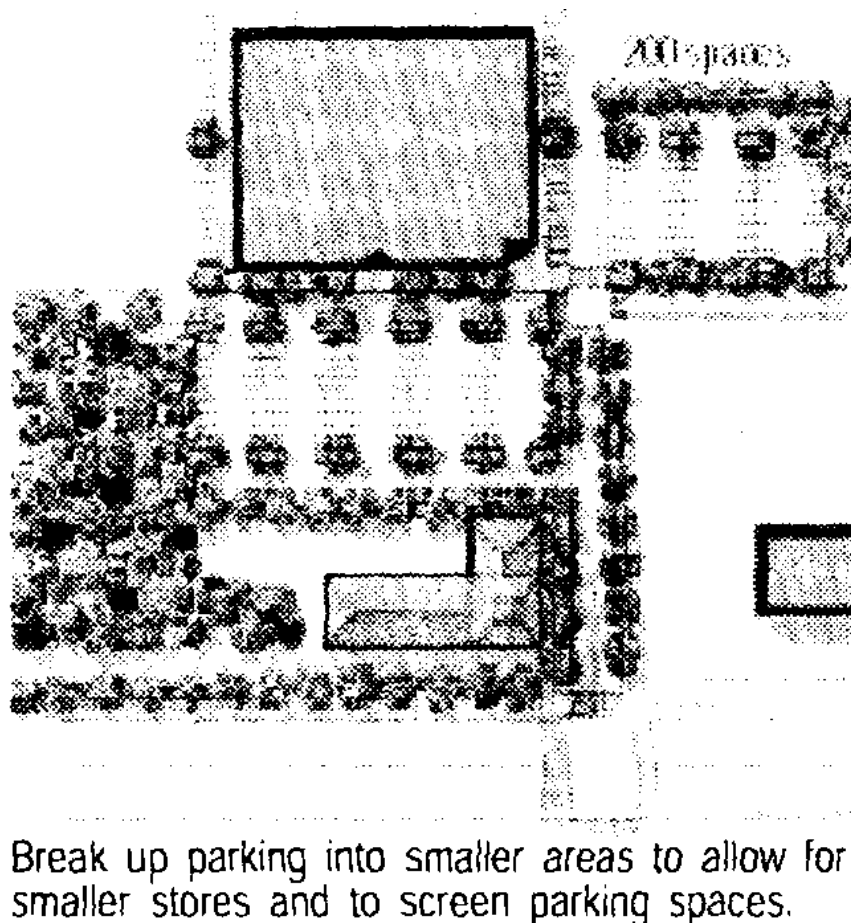




- (4) Street furniture. Street furniture shall be permitted and shall be located so as not to obstruct site lines of vehicles or pedestrianways. Benches, when provided, shall be placed to face sidewalks and other pedestrianways.
- G. Parking standards. Parking shall meet the standards specified in § 164-43.2. In addition, the following standards shall apply. In the event the TN-O parking standards conflict with § 164-43.2, the TN-O standards shall apply.
- (1) On-street parking shall be provided in parking lanes parallel to street curbs along all public streets. In the main street area, on-street parking along the front property line shall count toward fulfilling the minimum parking requirement for the use on that lot.
  - (2) On-street parking shall be supplemented, wherever necessary as specified in § 164-43.2, by off-street parking areas located to the rear or side of buildings. Ideally, off-street parking shall be provided in the rear yard perpendicular to the building, between the building and an alley that abuts the rear property line and provides access to the parking area.
  - (3) Buffering of parking lots in the main street area from adjacent residences shall be accomplished through generous landscaping.
  - (4) Parking lots shall be accessed either through an alley or through internal connections to parking lots on adjacent properties. Cross-access easements for adjacent properties with interconnected parking lots shall be required, in language acceptable to the Town Attorney.
  - (5) No off-street parking shall be permitted in the front yards of buildings, nor shall

off-street parking be permitted on corner lots except when screened.

- (6) Any off-street parking space or parking lot in the main street area that abuts a sidewalk shall be buffered from the sidewalk by a landscaped area no less than four feet wide in which is located a continuous row of shrubs no less than 3.5 feet high, or by a wall or fence no less than four feet high and no more than six feet high, in addition to the required shade trees.
- (7) Reduction of impervious surfaces through the use of interlocking pavers is strongly encouraged for areas that serve low-impact parking needs, such as remote parking lots, parking areas for periodic use, and parking in natural amenity areas.
- (8) The Planning Board may recommend and the Town Board may require a contribution toward community parking facilities in lieu of off-street parking facilities.



- H. Lighting and signage standards. Lighting and signage shall meet the standards specified in §§ 164-43.4 and 164-43.1, respectively. In the event the TN-O lighting and signage standards conflict, the TN-O standards shall apply.

I. Definitions. Words used in § 164-47 carry the following meanings:

ADT -- Average daily traffic volumes on a street.

ALLEY -- A public or private way located through the interior of blocks and permanently reserved as a secondary means of access to abutting property.

ANTIQUE STORE -- A building used for the sale of old and authentic objects of personal property that were made, fabricated, or manufactured 50 years or more earlier and which have a unique appeal and enhanced value because of their age.

BAKERY -- A shop where baked goods are sold or offered for sale by retail, including incidental baking of products for retail sale on the premises.

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

BAR OR TAVERN -- A retail business licensed by the New York State Liquor Authority for the sale of on-premises consumption of alcoholic beverages.

BLOCK -- A unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity of development.

BUILDING, FOOTPRINT -- The ground floor area of any building measured from the outside of the exterior walls.

BUILDING, MASS -- The three-dimensional bulk of a structure: height, width, and depth.

BUILDING, SCALE -- The relationship between the mass of a building and its surroundings, including the width of street, open space, and mass of surrounding buildings.

BUILD-TO LINE -- A line within a lot parallel to the street curblin along which at least 50% of a building's outside wall must be built. Lots fronting on more than one street shall contain a build-to line along each of the streets on which the lot fronts.

CENTER SQUARE -- A tract of land devoted to municipal, civic, or public purpose that serves as a central focus for surrounding properties. The center square may consist of a wide intersection of streets, an open space surrounded by streets, a plaza or forecourt of a public building, the site of a municipal or civic building, or an area adjacent to a through street which is devoted to similar purposes. The term "center square" does not imply that the tract is located in the geographic center of the addition, but rather is located in relation to the existing community extension. Center squares may consist entirely of public road rights-of-way, landscaped green areas within the right-of-way, properties occupied by municipal or civic buildings or structures, or adjacent open space bounded by public streets on two or more sides.

COURTYARD -- A deep formal space located between buildings and abutting a sidewalk.

Courtyards shall have recognizable edges defined on at least three sides by buildings, walls, landscaping, and street furniture, in order to create an outdoor room with a strong sense of enclosure.

**CURB RADIUS** -- The curved edge of streets at an intersection measured at the outer edge of the street curb or of the parking lane.

**DRUGSTORE** -- A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices, and supplies and nonprescription medicines.

**FASCIA** -- A projecting flat horizontal member or molding on a building; also part of a classical entablature.

**FENESTRATION** -- Window and other openings on a building facade.

**GABLE** -- The part of the end wall of a building between the eaves and a pitched or gambrel roof.

**GREENS** -- Spatially defined and distributed open spaces within the traditional neighborhood designed to serve a variety of outdoor leisure and assembly needs of neighborhood residents and to enhance the form and appearance of the development. They may consist of a central green or of smaller neighborhood greens.

**GRID STREET PATTERN** -- An interconnected system of streets that is primarily a rectilinear grid in pattern.

**GROCERY STORE** -- A retail establishment primarily selling food as well as other convenience and household goods.

**GROUP OF BUSINESSES** -- Two or more retail establishments or offices sharing certain facilities such as buildings, parking, public utilities, and open space.

**HUMAN SCALE** -- The relationship between the dimensions of a building, structure, street, open space, or streetscape element and the average dimensions of the human body.

**LIBRARY** -- A building containing printed, pictorial and electronic material for public use for purposes of study, reference, recreation and relaxation.

**MAIN STREET AREA** -- Streets containing a mix of uses, including a variety of retail shops and services that support the day-to-day needs of neighborhood residents, complemented by other compatible business, civic, and residential uses in commercial-type buildings in a manner consistent with the downtowns of historic hamlets and villages of the region.

**MODIFIED GRID STREET PATTERN** -- An interconnected system of streets which is primarily a rectilinear grid in pattern, however, modified in street layout and block shape as

to accommodate the existing street pattern.

**NEIGHBORHOOD MOTOR VEHICLE SERVICE STATION OR GARAGE** -- A motor vehicle service station or garage that is limited in the intensity of use to serve primarily the immediately surrounding neighborhood. Such facilities shall be limited to two fuel dispensers serving no greater than four motor vehicles at any one time and/or two indoor service bays servicing no greater than two motor vehicles at any one time.

**PEDESTRIANWAY** -- A right-of-way, publicly or privately owned, intended for human movement by walking.

**PILASTER** -- A column partially embedded in a wall, usually nonstructural.

**PITCH** -- The angle of slope of a roof.

**PORTICO** -- An open-sided structure attached to a building sheltering an entrance or serving as a semienclosed space.

**PROPORTION** -- The relationship or ratio between two dimensions, i.e., width of street to height of building wall, or width to height of window.

**QUEUEING** -- The use of one travel lane on local streets with parking (usually an intermittent parking pattern) on one or both sides.

**RESTAURANT** -- A place where food and drink is prepared and served to the public on the premises, primarily for consumption within the principal building, but which may offer seasonal outside seating.

**RETAIL STORE OR SHOP** -- Traditional small-scale retail establishments, such as florists, hardware stores, convenience stores, stationary stores, book stores, video rental stores, clothing stores, shoe stores, antique stores, etc., that sell goods or merchandise to the general public for personal or household consumption.

**RHYTHM** -- The effect obtained through repetition of architectural elements, such as building height, rooflines, or side yard setbacks; of streetscape elements, such as decorative lampposts; or of natural elements, such as street trees.

**RHYTHM OF SOLIDS TO VOIDS** -- The relationship between the solid portion of a building facade and the voids formed by doors, windows, other openings and recesses. May also refer to the relationship between building mass (solids) and side yard setbacks (voids) along a street.

**SECONDARY DWELLING UNIT** -- An additional rental dwelling unit located within the principal dwelling on the lot, in a freestanding building, or above a residential garage.

**SIDEWALK** -- A paved path provided for pedestrian use and usually located at the side of a

road within a right-of-way.

**SIDEWALK DISPLAY** -- The outdoor display of merchandise for sale by a commercial establishment. The displayed merchandise must be similar to the merchandise sold within the establishment.

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

**STREETSCAPE** -- The sum of the man-made and planted features that create the character of the street as a public space. Streetscape features may be located within and adjacent to the right-of-way. Streetscape features include street trees and plantings, streetlights, street furniture, sidewalks, median strips and island, public art, banners and flags, signs and awnings, and similar publicly visible features.

**TRADITIONAL NEIGHBORHOOD** -- A pedestrian-oriented neighborhood, with variable lot sizes, a variety of dwelling unit types, on-street parking, and a main street area encompassing a mixture of compatible land uses.

**VISUALLY IMPERVIOUS** -- A buffering or screening device that partially or totally blocks the view to or from adjacent sites by a discernible factor ranging up to 100%.

#### **§ 164-47.1. Ridgeline Overlay District.**

- A. Findings. The Town of Warwick finds that the natural open character of the Town's ridgelines is a critical feature whose conservation enriches and benefits both residents and visitors, as documented in the Town's 1999 Comprehensive Plan.<sup>EN(51)</sup> Conservation of the scenic character of these areas of the Town emerged as an important priority in the public planning process, conducted from 1994 to 1999. The Town, therefore, finds that protection of the scenic character of the Town's ridgelines is important to maintaining rural character, a sense of place, and scenic landscapes, all of which contribute to the Town's quality of life and its attractiveness for 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, conserve, and enhance to the extent practicable the scenic features of the area and the views into the landscape from public roads. Ridgeline conservation will also have the effect of protecting Warwick's important wildlife habitats and environmentally fragile areas as well as preserving open space.
- B. Purpose. The purpose of the Ridgeline Overlay District (hereafter the "RL-O District") is to establish clear guidelines for future development and protection of the Town's ridgelines, which are found largely at higher elevations and which comprise the most scenic and

environmentally sensitive areas of the Town. [Amended 10-24-2002 by L.L. No. 6-2002]

- C. Location. The RL-O District consists of two parts, labeled "RL-O1" and "RL-O2," encompassing those lands shown on a map entitled "Town of Warwick Ridgeline Overlay" which is hereby made a part of the Town of Warwick Zoning Map. This area encompasses those lands identified in the Town of Warwick Comprehensive Plan as "important views" and "scenic roads." RL-O1 areas constitute elevations of the Town 600 feet or more above mean sea level west of the Wawayanda Valley, as identified on the U.S. Geological Survey's topographic maps, and RL-O2 areas constitute elevations of the Town 700 feet or more above mean sea level east of the Wawayanda Valley, as identified on the U.S. Geological Survey's topographic maps. [Amended 10-24-2002 by L.L. No. 6-2002]
- D. Applicability.
- (1) Land subdivision, special use permit, and site plan approval. The provisions of this section shall apply to all applications for land use development including subdivision, special use permits, site plan approval, zoning variances, zoning amendments, building permits for new residential dwellings, dwelling additions exceeding 300 square feet, and accessory structures exceeding 300 square feet, on any parcel of land lying fully or partially within the mapped RL-O District. However, the RL-O District requirements shall not be used to lessen the underlying zoning district density. Except as provided herein, no land shall be developed and no building or structure erected, expanded, or developed unless the Board or Building Inspector granting such approval finds that the development proposed will be consistent with the requirements of the RL-O District. Such Board or Building Inspector shall impose reasonable conditions, which it deems necessary in order to make such a finding. The provisions of the underlying zoning district shall remain in effect except where otherwise specified herein. [Amended 1-24-2002 by L.L. No. 2-2002; 10-24-2002 by L.L. No. 6-2002]
  - (2) Conflict. In case of any conflict between the provisions of this section and the requirements of the underlying district, other sections of this chapter, the Town Road Specifications, or Chapter 137, Subdivision of Land, this section shall control.
  - (3) Approval conditions. Any condition of approval necessary to meet these regulations shall be clearly noted on the final plat or plan and filed with the Orange County Clerk. All deeds of new residential units within the RL-O District shall contain references to the ridgeline design requirements, enumerated in § 164-47.1F herein, that shall be placed on the subdivision plat as a condition of approval. [Amended 10-24-2002 by L.L. No. 6-2002]
- E. Preservation of scenic features. In any application subject to this section, features that provide scenic importance to ridgeline areas should be preserved to a reasonable extent. These features include but are not limited to individual healthy trees within open fields that

are at least 18 inches in diameter at breast height (dbh), historic structures, hedgerows, public or private unpaved country roads, and stone walls.

- F. Design requirements. All development within the RL-O District shall comply with the design standards and principles provided herein. The intent of the design requirements is to provide prospective applicants for land development with the types of development that the Town wishes to achieve within the RL-O District. The requirements are also intended to ensure that future development within the RL-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 provides general siting principles to help landowners and the Planning Board plan projects that fit into the scenic and rural countryside found in the higher elevations of the Town. [Amended 1-24-2002 by L.L. No. 2-2002; 10-24-2002 by L.L. No. 6-2002]
- (1) Placement of structures. To ensure the placement of structures outside of the exposed ridgeline area on proposed building lots, building sites, including areas of cleared vegetation, shall be clearly designated on the applicable subdivision plat and/or site plan. Constructed structures shall not differ more than 20 feet in any direction from building site locations shown on approved subdivision and/or site plans at the time of building permit application. Wherever practical, structures shall be sited at the lowest elevation possible to be as visually inconspicuous as possible when seen from a distance and from lower elevations. In no case shall development occur along and/or project above ridgelines when viewed from the locations identified in § 164-47.1F(3)(a) below. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (2) Restrictions on height. Within the R-O District, no principal or accessory structure with a building height of greater than 25 feet shall be constructed unless visual cross sections or other appropriate methods demonstrate that the subject structure could be constructed with a building height greater than 25 feet, in conformance with Table of Bulk Requirements, without unduly impacting ridgelines and scenic viewsheds.<sup>EN(52)</sup>
  - (3) Mitigation of impacts. All principal and accessory structures shall comply with the following measures, designed to mitigate the impact of the structure, including clearing of vegetation and regrading, unless explicitly exempted elsewhere in this section.
    - (a) Visibility. All structures shall be sited to avoid, to the greatest extent practical, occupying or obstructing public views of land within the RL-O District. Public views shall be considered to be from any location listed on the SEQR Visual Environmental Assessment Form Addendum (V-EAF) pursuant to 6 NYCRR 617.20 Appendix B. These locations are frequented by the public and offer unobstructed views of the Town's ridgeline landscapes. Visibility shall be measured using a condition of no leaves on trees.



(b) Colors.

[1] Structures should blend in with natural surroundings through preferred use of stone and/or natural wood siding. In all cases, structures shall be constructed and maintained so that predominate exterior wall colors (including the colors of basement walls on the downhill side of the structure) and roof surfacing materials:

[a] Repeat the colors found most commonly in the land and vegetation around the building (earth tone); and

[b] Have a light reflective value of no more than 60%.

[2] Reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them shall not be used as predominate colors on any wall or roof surface.

(c) Vegetation. Existing vegetation within ridgeline areas shall be preserved to the maximum extent practical. 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 or other public views. This section is not intended to limit forest management in ridgeline areas when practiced in accordance with environmentally sound and sustainable silvicultural principles. Forest management constitutes a beneficial and desirable use of the Town's forest resources and makes vital contributions to the economy, environment and aesthetic features of Warwick. The tradition of using Warwick's forest resources for the production of forest products and related commercial activities, for recreation, and for sustenance of the Town's wildlife is essential to a favorable quality of life.

[1] Landscaping. As a condition of approval, the area around each principal and accessory structure shall include at least one tree of a species with a mature height of at least 35 feet for each 2,500 square feet of lot or parcel area; provided, however, that this requirement shall not require any single-family residential lot to contain more than eight trees unless growing naturally on the site. Trees installed to meet the requirements of this subsection are preferably to be of coniferous species, shall be a minimum of six feet tall when planted, and shall be planted before a certificate of occupancy is issued for the principal structure, or if that is not possible due to planting season or weather conditions, then within one month of the planting season for the species. Landscaping survivability shall be assured in accordance with § 164-46G(3)(n)[3]. Any existing trees that meet the height requirement are counted towards satisfaction of the tree requirements, regardless of whether they are coniferous or deciduous.

Concurrently with the review and approval process, the applicant submitting such plan may request approval of a landscape plan in which the vegetation requirements for certain lots or tracts may be increased, decreased or deleted, to reflect the degree of visibility of structures located in various portions of the subdivision or site. Additionally, such applicant may request alternative placement of landscaping on certain lots and tracts if such placement provides adequate mitigation of the visual impact of the roofline of the principal structure. Landscaping required by this section shall be credited against the landscaping requirements imposed by any other section of this chapter.

- [2] Tree cutting. All timber harvesting in the Ridgeline Overlay District shall comply with the most recent versions of Timber Harvesting Guidelines for New York and Best Management Practices, as promulgated by the New York State Department of Environmental Conservation (DEC) and available from the Town's Planning Department. There may be situations where strict adherence to certain provisions of the Timber Harvesting Guidelines for New York and Best Management Practices are impossible or impractical to attain. Alternate measures exist that can be substituted for such guidelines in appropriate circumstances. In such cases, the Town of Warwick Code Enforcement Officer may grant a waiver from the strict application of the guidelines where reasonable and necessary.
  - [a] Timber harvests and tree removal in excess of 1/4 acre are allowed by permit from the Planning Board in accordance with Chapter 150 of the Town Code. If the regulations of the RL-O District conflict with Chapter 150, the RL-O regulations shall apply.
  - [b] Clear-cutting of all trees in a single contiguous area in excess of 1/4 acre in area shall be prohibited. This Subsection F(3)(c)[2][b] shall not apply to:  
[Amended 9-11-2003 by L.L. No. 4-2003]
    - [i] Christmas tree culture or other existing tree plantation;
    - [ii] Harvests conducted in accordance with a timber harvesting plan prepared pursuant to § 480-a of the New York State Real Property Tax Law;
    - [iii] Tree clearing for farm purposes within agricultural districts established pursuant to New York State Agriculture and Markets Law;
    - [iv] Severe natural disturbances, which include fire, insect infestation, disease, ice and wind;
    - [v] Removal of timber stands that, if partially harvested according to

accepted silvicultural practice, are at high risk for windthrow due to factors such as soils, rooting depth, crown ratio, or stem quality;

[vi] Ecologically appropriate improvement or creation of wildlife habitat, with accompanying prescription and justification from a certified wildlife professional, a New York State Department of Environmental Conservation Forester, a member of the New York Institute of Consulting Foresters, or a Cooperating Consultant Forester.

- (4) View preservation. A conservation easement, pursuant to § 247 of New York State General Municipal Law and §§ 49-0301 through 49-0311 of the New York State Environmental Conservation Law, is the preferred means to protect or buffer views. Other legal instruments, such as deed restrictions as described in § 164-41.1J, and acceptable to the Town Attorney, may be used to protect or buffer views.
- (5) Lighting. Exterior lighting in the RL-O District shall be controlled in both height and intensity and shall be in conformance with the requirements established herein. Under no circumstances shall the light level at any lot line exceed 0.2 footcandle, measured at ground level. Floodlights shall not be used to light any portion of a principal or accessory structure facade (except for the temporary lighting allowed under § 164-43.4), and all outdoor light sources mounted on poles or buildings or trees to illuminate driveways, sidewalks, walkways, parking lots, or other outdoor areas shall use fully shielded light fixtures. For purposes of this section, a "full cutoff light fixture" is one in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond the property boundaries.
- (6) Design principles. To meet the purposes of the RL-O District, the following design principles shall apply:
  - (a) Parking. Parking lots for nonresidential and multifamily residential uses shall be provided with screened parking wholly at the side and/or rear of the structures, provided such an arrangement does not create a significant visual effect. If parking is provided at the side of structures, at least a ten-foot-wide landscaped area (exclusive of that required for sidewalks or utility easements) shall be provided between the road 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. Parking for single-family dwellings shall also be provided at the side and/or rear of the principal structure, provided such an arrangement does not create a significant visual effect. This principle shall not apply to conservation density subdivisions.

- (b) Conservation density subdivisions within the RL-O District shall be encouraged as an alternative to maximum density development.
  - (c) Wherever practical, vegetation and topography shall be used to buffer and screen buildings.
  - (d) 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.
  - (e) Buildings shall be sited so that they do not protrude above tree tops 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.
  - (f) All electric, telephone, television, and other communication lines, both main and service connections, servicing new development, shall be provided by underground wiring within easements of dedicated public rights-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.
- (7) Dimensional regulations. The following dimensional regulations shall apply to development within the RL-O District:
- (a) All subdivisions of land, other than conservation density subdivisions, should be considered for cluster subdivision in accordance with this chapter and New York State Town Law.
  - (b) Nonresidential and multifamily residential buildings shall be sited in clusters.
  - (c) No building shall exceed 7,500 square feet in footprint unless the structure is to be used exclusively for agricultural purposes.
  - (d) The maximum allowable impervious surface coverage on any parcel proposed for subdivision or development shall be 20%. To implement this requirement, restrictions on impervious surface coverage for individual subdivided lots shall be shown on any subdivision plat.
  - (e) Maximum building height requirements shall apply to the peak of the roofline except for cupolas or turrets as well as silos or barns when used in conjunction with agricultural operations, which may exceed the maximum building height.
- (8) Prevention of soil erosion. No site plan or subdivision plat shall be approved unless it includes soil erosion and sediment control measures, prepared in accordance with the

standards described in manuals in common usage, such as the New York State Department of Environmental Conservation's Reducing the Impacts of Stormwater Runoff from New Development or the New York State Soil and Water Conservation Committee's New York Guidelines for Urban Erosion and Sediment Control. Landowners shall bear full responsibility for the installation, construction, and maintenance of all erosion control measures required as a condition of approval.

- (9) Referral. The Town of Warwick's ridgeline areas contain significant wildlife habitats, including those frequented by endangered and threatened species. To receive assistance in its review of applications, the applicable board may refer the proposed plan to the New York State Department of Environmental Conservation and/or the New York Natural Heritage Program for its review and recommendations. To receive further assistance, such reviewing board may refer the proposed plans to any such agencies or officials of the Town, county, state, or federal government as the board may deem appropriate.
- (10) The applicable reviewing board or Building Department may waive some or all of the regulatory requirements of this section in the RL-O District under any of the following circumstances:
  - (a) The structure or area within the RL-O District is situated so that it does not create a significant visual impact that cannot be mitigated, when viewed from visually sensitive areas, including public view locations identified in § 164-47.1F(3)(a), scenic roads or important views identified in the Town of Warwick Comprehensive Plan;<sup>EN(53)</sup>
  - (b) The reviewing board or Building Department finds that the work to be done is of a minor nature and is consistent with the design standards set forth herein.
  - (c) The use involves commercial agricultural operations.

#### **§ 164-47.2. Aquifer Overlay District.**

- A. Findings and purpose. The Town of Warwick finds that protection of groundwater is essential to promoting the health, safety, and welfare of the Town. The purpose of this Aquifer Protection Overlay District (hereafter 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 its existing public water supplies that depend on groundwater, and for numerous private wells in the Town of Warwick. 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.

- B. Definition of district. The AQ-O District consists of aquifers and aquifer recharge areas shown on the Zoning Map of the Town of Warwick. The Aquifer Map is an approximate delineation of the boundaries of the unconsolidated sand and gravel deposits, recharge areas with sand and gravel at the surface, and probable high-yield bedrock well locations as identified in Figure 8 of the Town of Warwick Comprehensive Plan.<sup>EN(54)</sup> 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 such aquifers and aquifer recharge areas, the regulations of this section shall not apply, provided an adjustment of the boundaries of the district shall be made on the official Zoning Map.
- C. Applicability.
- (1) An applicant for any proposed action requiring subdivision approval, special use permit, site plan approval, zoning amendment, or zoning variance, under this chapter or Chapter 137, Subdivision of Land, shall be subject to the use restrictions in § 164-47.2E. Applicants for a special use permit or a major subdivision shall additionally be subject to the aquifer impact assessment provisions of § 164-47.2D below. Compliance shall be required as a condition of approval of any action within the AQ-O District. The applicant shall show, on any required submissions, the location of any portion of the subject property which lies within the AQ-O District as identified on the Town of Warwick Aquifer Overlay District Map.
  - (2) Existing development, uses or activities located within the AQ-O District are not subject to the requirements of § 164-47.2 and are considered permitted or specially permitted nonconforming uses or activities. Any change in a permitted nonconforming use or activity shall be subject to the requirements of the AQ-O District regulations. Notwithstanding the foregoing, if any permitted nonconforming uses or activities are found to pose a potential or imminent hazard to health, they shall be deemed violations of this chapter.
- D. Aquifer impact assessment. All applications for subdivision, site plan, or special use permit approval, pursuant to Chapter 137 and § 164-46 shall include an aquifer impact assessment, based upon the methodology developed by the Town of Warwick Building Department. Said assessment shall be prepared by a qualified professional. [Amended 9-11-2003 by L.L. No. 4-2003]
- E. Use restrictions. The following use restrictions and requirements shall apply to all land in the AQ-O District and which is within one mile of community water supply wells 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. [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]

- (1) Disposal wells. The installation or use of disposal wells is prohibited.
- (2) Infiltration basins. The installation or use of stormwater runoff infiltration basins is prohibited unless surface water quality flowing into the infiltration basin is of sufficient quality that groundwater shall be protected.
- (3) Snow disposal. The stockpiling or dumping of snow which has been transported to the restricted area is prohibited.
- (4) 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.
- (5) 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.
- (6) Wastewater lagoons and pits. Use of wastewater lagoons and pits for temporary storage of wastewater is prohibited. All storage facilities shall be watertight, located above ground, and under permit by the New York Department of Environmental Conservation.
- (7) Disposal. Disposal of toxic chemicals, industrial sludge, or radioactive materials is prohibited.
- (8) Fertilizer storage. All bulk storage of fertilizers for agricultural or commercial use must be within a building or structure which will prevent any seepage or runoff.
- (9) 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 aquifer recharge areas or probable high-yield bedrock wells, as identified on the Aquifer Overlay Map, shall be subject to issuance of a special use permit as required by § 164-46 of this chapter with the exception of commercial agricultural uses, 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.
- (10) Storage tanks and pipelines. The installation, construction, placement, or replacement of new or existing underground storage tanks or containers of 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 1,100 gallons 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 1,100 gallons 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 which regulates storage tanks holding 1,100 gallons or more.

- (11) 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.
- (12) Water wells. All water supply wells shall be constructed in accordance with the requirements of the Orange County Department of Health.
- (13) Abandoned wells. All abandoned wells shall be sealed in accordance with the requirements of the Orange County Department of Health.

### **§ 164-47.3. Agricultural Protection Overlay District.**

A. Findings and purpose. The Town of Warwick finds that protection of agriculture is essential to implementing the goals of the Town of Warwick Comprehensive Plan.<sup>EN(55)</sup> Protection of land for agricultural purposes is a legitimate zoning objective under New York State's statutes, which the regulations set forth in this section seek to achieve. It is also a policy of the New York State Constitution to preserve agriculture. The purposes of the Agricultural Protection Overlay District (hereafter the AP-O District), among others, are as follows:

- (1) To protect and maintain the Town's farmland for continued or future agricultural use, including operating farms, lands that contain prime agricultural soils, soils of statewide significance or black dirt soils and lands within Agricultural Districts;
- (2) To implement the Town Comprehensive Plan, which contains the goals of protecting rural and agricultural lands, discouraging incompatible nearby land uses, and promoting agriculture as a component of the local economy;
- (3) To support and protect farming by stabilizing the agricultural land base;
- (4) To maintain a viable agricultural base to support agricultural processing and service industries;
- (5) To encourage the voluntary transfer of development rights from farms within the AP-O



District to suitable nonfarm receiving areas of the Town as identified in § 164-47.4;

- (6) To separate agricultural land uses and activities from incompatible residential, commercial, industrial development, and public facility development;
- (7) To prevent fragmentation of the Town's existing farming community by nonfarm development; and
- (8) To reserve the Town's most productive soils for agriculture.

B. Applicability.

- (1) The AP-O District qualifying area is hereby established as an overlay district as shown on the Town of Warwick Agricultural Protection Overlay District Qualifying Area Map, and containing a critical mass of lands meeting the following criteria:
  - (a) Contiguous land in single ownership as of the effective date of this chapter on which at least 50% of the surficial soils are classified as prime farmland soils (Class 1 and 2), soils of statewide significance (Class 3 and 4) or black dirt soils as established by criteria of the Natural Resources Conservation Service, United States Department of Agriculture (hereinafter "agricultural soils"); or
  - (b) Parcels of land included in Agricultural District 2 established pursuant to the New York State Agriculture and Markets Law, Article 25-AA, §§ 303 and 304, both as of the effective date of this chapter and as may thereafter be added to the District; or
  - (c) Parcels of land receiving farm tax assessment as of the effective date of this chapter and as may thereafter receive such assessment; or
  - (d) Parcels of land that are part of operating farms as of the effective date of this chapter; and
  - (e) Other parcels of land, which because of their location within or adjacent to lands described in Subsection B(1)(a), (b), (c) and/or (d) above and their undeveloped nature, large size or siting amidst farmlands are necessary to include in the AP-O District to prevent the proliferation of conflicting adjacent uses that could jeopardize the future survival of farming within the District.
- (2) The Town Board hereby adopts the map entitled "Town of Warwick Agriculture Protection Overlay District Qualifying Area Map", reflecting lands included within the AP-O District as described in Subsection B(1) above. Said map shall be the basis for administration of the regulations contained in this District.
- (3) Any landowner whose land has not been mapped on the Town of Warwick Agriculture Protection Overlay District Qualifying Area Map may request to be covered by the regulations of this District. If the Town Board finds that such land satisfies the criteria

for AP-O designation in § 164-47.3B(1) above, it may amend the AP-O Map to include such land.

- (4) Should any provisions of the AP-O District differ with any other provisions of this chapter, the provisions of the AP-O District shall control.
- (5) Landowners who are within the AP-O Qualifying Area may voluntarily choose to participate in the provisions of this Overlay District and thereby afford themselves of its benefits as discussed below. The benefits of the AP-O District shall not apply until a landowner files a statement with the Town Clerk. To participate, landowners shall file a statement with the Town Clerk, on forms available from the Clerk's Office, advising the Town Board that they wish to participate. The Town Clerk shall certify a landowner's statement and shall refer the statement to the Town Board within 14 days. The Town Board shall then amend the AP-O District Qualifying Area Map to indicate participation by the subject landowner. [Amended 9-11-2003 by L.L. No. 4-2003]

C. Special benefits. In addition to the permitted uses and special uses allowed in the underlying zoning districts, there are a number of benefits available to farmers who participate in the AP-O District's provisions. These include the following:

- (1) A transfer of development rights/purchase of development rights density bonus that affords a lot yield based on the minimum acreage requirements established in the 1989 Zoning Law of the Town of Warwick. This density bonus is illustrated in the following table:

<b>Zoning District</b>	<b>2001 Zoning Law Minimum Lot Size (acres)</b>	<b>1989 Zoning Law Minimum Lot Size (acres)</b>
SL (old SR-.7)	3	11/2
RU (old RR-.5)	4	2
MT (old MR-.3)	5	3
CO (old CR-.25)	6	4

- (2) Qualified participation in the Town of Warwick Open Space Leasing Program;
- (3) Farm market development as an accessory use involving less than 4,000 square feet of gross floor area. Farm markets more than 4,000 square feet shall require a special use permit in accordance with § 164-46;
- (4) Subdivision of one additional residential lot under the 1989 Zoning Law is permissible in accordance with § 164-45.1F. [Added 1-24-2002 by L.L. No. 2-2002]

D. Siting guidelines for residential development. Residential subdivision within the AP-O District shall conform to the additional standards set forth in Subsection D(2)(a) and (b) below for all new residential development on parcels that have been certified for

participation in the AP-O District.

- (1) Cluster subdivision is encouraged in the AP-O District to allow flexibility while preserving the agricultural viability and rural character of the land. All surficial soils classified as prime farmland soils (Class 1 and 2) or soils of statewide significance (Class 3 and 4) or black dirt soils should be avoided by subdivision development to the greatest extent practical. Other existing features, whose preservation would benefit the Town and the subdivision, should be avoided through sensitive design of the cluster subdivision. Such features include, but are not limited to:
  - (a) Groves of mature trees.
  - (b) Large individual trees.
  - (c) Hedgerows.
  - (d) Woodlands along roadways, property lines, and streams.
  - (e) Scenic vistas.
  - (f) Water features, such as streams, ponds, floodplains, lakes and wetlands.
  - (g) Stone walls.
  - (h) Steep slopes in excess of 15%.
  - (i) Habitats of endangered or threatened species.
  - (j) Visually prominent agricultural landscape features, such as fields, pastures and meadows on knolls and hilltops.
  - (k) Historic structures or sites.
  - (l) Similar irreplaceable assets.
- (2) Residential structures in the AP-O District should be located according to the following guidelines, which are listed in order of significance (some of which may conflict with each other on a particular site, in which case, the Planning Board may use its discretion to resolve such conflicts):
  - (a) On the least fertile agricultural soils and in a manner which maximizes the usable area remaining for agricultural use;
  - (b) Away from the boundaries of any preserved farm, to reduce conflicting uses in areas where farmers have made long-term commitments to continue to farm;
  - (c) In such a manner that the boundaries between house lots and active farmland are well buffered by vegetation, topography, roads or other barriers to minimize

potential conflict between residential and agricultural uses;

- (d) To avoid disturbance to the existing environmental, cultural and scenic features noted in Subsection D(1) above;
- (e) To be as visually inconspicuous as practical when seen from state, county and local roads, and particularly from designated scenic routes;
- (f) Next to other residences or building lots on adjacent properties;
- (g) To minimize the perimeter of the built area by encouraging compact development and discouraging strip development along roads;
- (h) On suitable soils for subsurface sewage disposal (where applicable);
- (i) Within woodlands, or along the far edges of open agricultural fields adjacent to any woodland, to reduce encroachment upon agricultural soils, provide shade in summer and shelter in winter, and to enable new residential development to be visually absorbed by the natural landscape; [Amended 1-24-2002 by L.L. No. 2-2002]
- (j) In locations where the greatest number of dwelling units could be designed to take advantage of solar heating and solar electric opportunities; and [Amended 1-24-2002 by L.L. No. 2-2002]
- (k) Any other mitigation measure imposed under SEQR.

#### **§ 164-47.4. Transfer of development rights (TDR).**

- A. Purpose and intent. The purpose and intent of this section, consistent with § 261-a of New York State Town Law and the Town of Warwick Comprehensive Plan,<sup>EN(56)</sup> is to enable the voluntary transfer of development potential from one parcel to another. The transfer of development rights (TDR) makes it possible to limit development in one area (called the "sending district") where there is an important resource, such as active farmland or significant open space, and transfer those development rights to another area (called the "receiving district") where there are little or no impediments to higher density, such as areas adjacent to the Town's three village centers, where public water and sewer are available or planned, or in the Town's five hamlets, where central services are available or have the potential to become available. The density is transferred from a sending parcel to a receiving parcel. By creating receiving parcels as markets for the sale of unused development rights in the sending parcels, Warwick's TDR program encourages the maintenance of agriculture, low-density land use, open space, historic features, critical environmental areas, and other sensitive features of the designated sending parcels. When the owner of a sending parcel sells development rights to the owner of a receiving parcel, the purchaser increases the development rights beyond otherwise permissible limits. In this manner, the Town of

Warwick can protect resources of critical importance to its citizens while providing a mechanism to compensate sending area landowners for any diminution in land development potential. The Town of Warwick's TDR program is consistent with the purposes of this chapter and Comprehensive Plan to further the conservation and preservation of agriculture as an important industry; natural and undeveloped areas, wildlife, flora and habitats for endangered species; protection of groundwater, surface water quality, as well as other natural resources; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and sanitary waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of affordable housing; and the preservation of historical, cultural, archaeological, architectural and recreational values.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**DEVELOPMENT RIGHTS** -- The rights allocated to a lot, parcel or area of land under this chapter respecting permissible density allowed thereon. The rights to develop are expressed as the maximum number of dwelling units per acre for residential parcels that could be permitted on a designated sending parcel under Warwick's applicable Zoning Law and Chapter 137, Subdivision of Land, in effect on the date of the transfer of development rights. Determination of the maximum number of development rights available for transfer shall be made by the Planning Board as described in § 164-47.4E(2).

**RECEIVING DISTRICT** -- One or more designated districts to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

**RECEIVING PARCEL(S)** -- Parcel(s) of land within a receiving district to which development rights may be transferred.

**SENDING DISTRICT** -- A designated overlay zoning district in which development rights are designated for use in one or more receiving districts.

**SENDING PARCEL(S)** -- Parcel(s) of land within a sending district from which development rights may be transferred.

**TRANSFER OF DEVELOPMENT RIGHTS (TDR)** -- The process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts.

C. Development rights bank. The Town of Warwick hereby establishes a development rights bank, to be known as the "TDR Bank," in which development rights may be retained and sold in the best interests of the Town. The Town is authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the Town shall be deposited in a special municipal

account to be applied against expenditures necessitated by the Town's development rights program. Development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts.

D. Restrictions on development in sending districts.

- (1) Land owners who desire to protect sensitive environmental areas may voluntarily sell development rights from sending parcels and enter into permanent development restrictions on those parcels. If located within a sending district, a landowner may either:
  - (a) Existing density controls. Develop the parcel(s) in compliance with existing density limitations imposed by the zoning regulations as well as those that may be imposed as a condition of a special use permit; or
  - (b) Permanent development restrictions. Permanently restrict the development rights of the land area equivalent to the percentage of the rights transferred.
- (2) Upon receipt of a special permit for development within a sending district, where such special use permit is conditional upon the voluntary, permanent restriction of development rights set forth in § 164-47.4I, the land owner may sell or otherwise transfer those development rights affected by such restrictions to a receiving district according to the guidelines of §164-47.4E.

E. Guidelines for transfer of development rights.

- (1) Schedule of development rights. Subject to approval by the Planning Board, development rights from sending parcel(s) may be transferred to receiving parcel(s) proposed by the applicant and identified by the Town Tax Map and approved by the Planning Board.
- (2) Determination of development rights to be transferred. To establish the development rights available for transfer, the Planning Board shall require the applicant for residentially zoned land to determine density based on the formula that follows. As an alternative, landowners may prepare a yield subdivision plan meeting the requirements of this chapter and Chapter 137, Subdivision of Land. [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]
  - (a) The total number of permitted units will be determined by the following formula:
$$\text{Net Area/TDR Bulk Requirements} = \text{Total Number of Units Permitted}$$
  - (b) Net area calculation:
    - [1] Calculate the gross soil group area (GSA) in acres for each soil group (Groups I-XV).

- [2] Subtract 100% of land encumbered by the one-hundred-year floodplain (FP) as determined by FEMA maps from each soil group.
- [3] Subtract 100% of permanent easements (E) that restrict buildability from each soil group.
- [4] Reduce each soil group area by 5% to adjust for land necessary for rights-of-way (ROW).
- [5] Multiply each remaining soil group area by the environmental control factor (ECF) found in § 164-41.3, Table ECF.
- [6] Sum the environmental acreage products. This is the net area.

Net Area =  $\Sigma [(GSA - FP - E - ROW) \times ECF]$  where:

GSA = Gross soil group area in acres.

FP = 100% of land encumbered by the one-hundred-year floodplain as determined by FEMA maps.

E = 100% of permanent easements that restrict buildability.

ROW = 5% of the (GSA - FP - E).

ECF = Environmental control factor.

#### F. Districts.

- (1) Sending districts. Sending districts include the Agricultural Protection Overlay District.
- (2) Receiving districts. Receiving districts consist of the Town of Warwick's SL, SM, and LB Districts, as shown on the Zoning Map, and defined as future settlement areas in the Town of Warwick Comprehensive Plan<sup>EN(57)</sup> and/or this chapter. Development of receiving parcels shall comply with the TN-O District requirements in § 164-47.

#### G. Special use permit review. The Planning Board shall be designated for special use permit review and approval under this section. In reviewing a proposed development under this section, the Planning Board shall apply this criterion to applications for a special permit under § 164-46 in addition to other relevant special use permit conditions provided for in this chapter.

- (1) The Planning Board shall require, as a condition for special use permit approval under this section, where the land owner opts to permanently restrict development, that the record owner of sending parcel(s) in the sending district record at the Orange County Clerk's Office a conservation easement running in favor of the Town or such other legal instrument acceptable to the Town Attorney as identified herein.

#### H. Intergovernmental transfer of development rights.

- (1) Required Town action. The Town Board may, by local law and consistent with § 284 of New York State Town Law and § 7-741 of New York State Village Law, approve a joint program for TDR including transfers from sending parcel(s) in the Town of Warwick to receiving parcel(s) in the villages within the Town. Such local law shall designate which portions of the villages will be designated as receiving districts for TDR originating from outside the respective municipality's corporate boundaries. A village may designate receiving districts for intermunicipal transfers that are the same as, or different from, those designated for intratown transfers.
- (2) Satisfaction of transfers of development rights. If authorized by the recipient village(s), the TDR authorized by § 164-47.4 may be satisfied by the restriction and transfer of development rights in more than one municipality.
- (3) Recipient approval. Intermunicipal TDRs require approval from the village with receiving parcel(s). The village receiving TDRs shall notify the Town from which the development rights are being transferred of the date of the public hearing required by New York State Village Law, in a manner and time coincident with notification of parties in interest to the public hearing.

#### I. Title recording, tax assessment and restriction of development rights.

- (1) All instruments implementing the transfer of development rights shall be recorded in the manner of a deed in the Office of the Town Clerk and the Office of the Orange County Clerk for both sending and receiving parcels. The instrument evidencing such TDRs shall specify the section, lot, and block number of the sending parcel(s) and the section, lot and block number of the receiving parcel(s).
- (2) The Office of the Orange County Clerk shall transmit to the applicable municipal assessor(s) for both the sending parcel(s) and receiving parcel(s) all pertinent information required by such assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDRs.
- (3) The record owner of the sending parcel(s) shall, as a condition of a special permit authorizing TDRs, record at the Office of the Orange County Clerk a conservation easement as defined by Article 49 of the New York State Environmental Conservation Law, running in favor of the Town prohibiting, or such other legal instrument as approved by the Town Attorney in accordance with § 164-41.1, in perpetuity, the construction, placement or expansion of any new or existing structure or other development on said sending parcel(s). Evidence of said recording shall be transmitted to the Planning Board of the Town, indicating the date of recording and liber and page number at which the recording can be located. The grant of the special use permit to



transfer development rights shall be conditioned upon such restriction, and no special permit for a transfer of development rights shall be effective until the restriction noted above has been recorded at the Office of the Orange County Clerk.

**§ 164-47.5. Land use mediation.**

- A. Purposes. The Town Board of the Town of Warwick recognizes that disputes between developers, home owners, and other interested parties may occur in connection with decisions made by the Town of Warwick. Often these disputes result in litigation that is contentious, costly, and time consuming for all concerned. In an effort to provide an alternative to litigation for resolving such disputes, the Town of Warwick encourages the use of voluntary mediation as set forth herein. Nothing herein shall be construed to abridge the powers of decisionmaking authority of the Town Board or any other board, office, committee, or official to which the Town Board has delegated the responsibility for issuing permits, granting approvals, or otherwise advising the Town Board.
- B. Costs. All costs associated with voluntary mediation conducted pursuant to this section shall be allocated among the parties of interest in a manner to be determined by the parties of interest by agreement. The Town Board is hereby authorized to enter into agreements for sharing the costs of mediation.
- C. Procedures. Mediation shall supplement, not replace, planning and zoning practices (including public hearings) otherwise applicable in the Town of Warwick. The use of mediation shall be voluntary and shall be available in any dispute in which two or more parties of interest agree to voluntary mediation. Any party of interest whose request(s) for permit(s) or approval(s) from the Town of Warwick are the subject of voluntary mediation under this chapter may seek consent from the Town Board for the suspension of time limits found in New York State Town Law or the local law of the Town of Warwick, relevant to such permit(s) or approval(s). The Town Board's decision to consent to the suspension of time limits is entirely within the discretion of the Town Board. The Town Board's consent, if given, shall be conditioned, at a minimum, on the following:
  - (1) Public notice of the proposed voluntary mediation shall be given in the official newspaper, by one or more parties of interest, at least 10 days and not more than 60 days prior to the granting of such consent by the Town Board. An affidavit of service of public notice shall be filed with the Town Clerk. Such notice shall include at a minimum, the basis of the dispute and the permit(s) and/or approval(s) being sought; the name of the interested party seeking the permit(s) and/or approval(s); and directions for contacting someone who will be responsible for providing information regarding the mediation and the procedure for joining the mediation.
  - (2) The suspension of time limits shall not exceed 60 days. Upon expiration of the 60 days,

the party of interest originally requesting the suspension of time limits may request an additional suspension period, not to exceed 60 days. There is no limit to the number of additional suspension periods to which the Town Board may consent. The Town Board may receive evidence at a public hearing from any interested party with regard to the progress of the mediation to determine whether the consent to an extension of the suspension of time limits would be appropriate. Public notice of the hearing shall be published at least 10 days prior to the hearing in the official newspaper.

- (3) Nothing in this section shall be construed to limit the Town Board's authority to impose additional or more restrictive conditions upon its consent to the suspension of time limits.
- D. Confidentiality. Unless otherwise required by law, the parties of interest may agree that the proceedings of the mediation shall remain confidential.
- E. Accepted practices. Any mediation undertaken pursuant to the provisions of this chapter shall be conducted in accordance with accepted mediation practices including, but not limited to, those developed by the New York State Dispute Resolution Association, Inc. for use by community dispute centers established pursuant to Article 21-A of the Judiciary Law or by any other qualified and impartial person acceptable to the parties and the applicable review board.
- F. Effect of agreement. The mediator shall have no power to impose a settlement or bind the Town of Warwick to the terms or conditions of any agreement resulting from voluntary mediation conducted pursuant to this chapter, and any settlement reached shall require approval by the applicable review board to assure compliance with all provisions of this chapter. Terms or conditions of such an agreement may be presented at a public hearing on the requested permit(s) and/or approval(s) or appeal of their denial. The Town Board, Zoning Board of Appeals, Planning Board, or other reviewing authority may refuse to consider such terms or conditions presented if the parties of interest fail to provide justification for them on the record.

#### **§ 164-47.6. Incentive zoning for open space preservation.**

- A. Intent. The Town Board of the Town of Warwick, consistent with § 261-b of New York State Town Law and the Town of Warwick Comprehensive Plan,<sup>EN(58)</sup> has determined that it is appropriate to make adjustments to permissible density and area requirements for the specific purpose of preserving open space at a minimum cost to the residents and taxpayers of the Town. To achieve this intent, an application for an open space preservation project shall address the following objectives:
  - (1) The preservation and enhancement of natural and cultural features of a site.

- (2) The accommodation of land uses and physical site arrangements which are not contemplated under conventional zoning but which would further the land use conservation and development goals of the Town.
- (3) The creation of usable open space and recreation lands.
- (4) The preservation of scenic viewsheds, scenic roads, greenway corridors, water resources, forests, meadows, geologic features, environmentally sensitive areas, significant plant and animal habitats, biodiversity, and important ecological resources.
- (5) The provision of a more desirable environment than what would be possible through the strict application of existing zoning regulations.
- (6) The promotion of the general health, safety, and welfare of the Town.

B. Open Space Preservation District. Where open space preservation is deemed appropriate, through the rezoning of land to an Open Space Preservation District by the Town Board, the use and dimensional specifications elsewhere in the Zoning regulations are herein replaced by an approval process in which an approved open space preservation plan becomes the basis for continuing land use controls.

C. Definitions. For the purpose of this article, the terms used are defined as follows:

**COMMUNITY BENEFITS OR AMENITIES** -- Open space which has physical, social or cultural benefit to the residents of the community.

**INCENTIVES** -- Adjustments to the permissible density and other area requirements and open spaces of this chapter of the Town of Warwick and any amendments thereto in exchange for a specific community benefit or amenity that provides for the significant preservation of open space in a manner not otherwise allowed by this chapter; these adjustments may incorporate two or more noncontiguous parcels of land.

**OPEN SPACE PRESERVATION ZONING** -- The system by which specific incentives are granted to applicants pursuant to this section on condition that specific physical, social or cultural benefits or amenities inure to the community.

D. Application procedure.

- (1) An application in the form of a letter of intent and two concept plans, one showing conventional development of the tract(s) and one showing the proposed open space preservation development, should be submitted to the Town Board. Not fewer than 15 copies shall be provided for distribution and review. The Town Board, upon receipt of an application, and as part of its review, shall refer the application to the Planning Board and to the Conservation Board for their review and recommendations.
- (2) The Planning Board's report and recommendations to the Town Board should consider

the following:

- (a) The suitability of the tract(s) for the general type of open space preservation proposed, the physical characteristics of the land and the relation of the proposed development to surrounding existing and probable future development.
  - (b) The adequacy of major roads, utilities and other facilities and services to serve the development.
  - (c) That the proposal is conceptually sound, is consistent with the Town of Warwick Comprehensive Plan, meets local and area-wide needs, and conforms to the Town of Warwick Design Guidelines.<sup>EN(59)</sup>
- (3) The Conservation Board's report and recommendations should consider all pertinent environmental issues.
- (4) When required by § 239 of the General Municipal Law, the application shall be copied to the Orange County Planning Department for its review. The Town Board and/or Planning Board may also refer the application to the Town Engineer and Town Planner as well as other local and county officials, representatives of federal and state agencies and consultants as deemed appropriate.
- (5) The application shall explain and show the following information:
  - (a) Location and extent of all proposed land uses, including development areas and open spaces, with areas shown in acres.
  - (b) All interior streets, roads, access easements and their planned private or public ownership, as well as all points of access and egress from existing public rights-of-way.
  - (c) An area map showing adjacent parcels; that portion of the applicant's property under consideration; all properties, zoning districts, subdivisions, streets, access easements, watercourses and other significant natural and built features within 300 feet of the applicant's property, and all uses of abutting lands.
  - (d) Area water, sanitary and storm sewer systems with proposed points of connection and their impact on existing systems.
  - (e) A description of the manner in which any common areas that are not to become publicly owned are to be maintained, including open space, streets, lighting and other considerations relevant to the proposal.
  - (f) A narrative description of any covenants, grants of easement or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including

proposed easements for public utilities.

- (g) A written statement by the applicant setting forth the reasons why, in his or her opinion, the proposal would be in the public interest and would be consistent with the Town's goals and objectives, as expressed in its Comprehensive Plan.<sup>EN(60)</sup>
  - (h) A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 (to be paid for by the applicant) which addresses at least the following
    - [1] The impact on community resources, including roads, traffic, sewers, water supply, public utilities, schools, emergency services, waste disposal and fire protection.
    - [2] The impact on the natural environment, stormwater management (including quantity and quality), groundwater, streams, wetlands, significant filling and grading and aesthetics.
- (6) The Town Board shall then hold a public hearing to consider the application for open space preservation.
- (a) The Town Board may grant incentive zoning for open space preservation only after finding that the open space has community value and that the development area has adequate resources and public facilities, including transportation, water supply, waste disposal and fire protection, to accommodate the density being proposed. The Town Board must also determine that there will be no significant environmentally damaging consequences and that the development area incentives or bonuses are compatible. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (b) If the Town Board grants incentive zoning for open space preservation, the Zoning Map shall be so revised. The Town Board may, if it feels it necessary, in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. If the applicant refuses to accept the conditions outlined, the Town Board shall be deemed to have denied approval. The Town Board shall also determine in each case the appropriate density and area requirements for the individual projects and shall consider any recommendation on the same from the Planning Board. Factors to be considered in determining density will also include consistency with the Town Comprehensive Plan including the provision of affordable housing. The determination of land use density shall be documented, including all facts, opinions and judgments justifying the proposed project. [Amended 9-11-2003 by L.L. No. 4-2003]
  - (c) Public hearings shall be held on any application submitted pursuant to this article, and public notice shall thereby be given thereof by the publication in the official

newspaper of such hearing at least five days prior to the date thereof.

- (7) Once Town Board approval is given for incentive zoning for open space preservation, the applicant shall submit his or her application to the Planning Board for preliminary and final subdivision and/or site plan approval pursuant to this chapter and Chapter 137, Subdivision of Land, of the Warwick Town Code.
- (8) Required modifications during subdivision approval. If, in the subdivision or site plan review process, it becomes apparent that certain elements of the application, as it has been approved by the Town Board, are not feasible and in need of modification, the applicant shall present a proposed solution. The Town Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution.

#### **§ 164-47.7. Conservation easements.**

- A. Purpose and intent. The Town of Warwick may acquire Conservation Easements over real property in accordance with § 247 of the General Municipal Law and Article 49, Title 3 of the Environmental Conservation Law. This section establishes guidelines and criteria for the evaluation of such easements in order to clearly establish the public benefit associated with any offer to donate or sell such easements. The proposed easement shall have a definite public purpose, which benefits the Town and the community as a whole.
- B. Term of easement. Any conservation easement offered to the Town shall be perpetual.
- C. Evaluation. The proposed easement should be further evaluated according to the following criteria:
  - (1) The proposed easement shall conserve, preserve and protect one or more of the following:
    - (a) An area which is significant because of its value as agricultural or forest land.
    - (b) An area which is significant because of its unique scenic or natural beauty.
    - (c) An area which is significant because of its value as a watercourse, water body, freshwater wetland or aquifer recharge area.
    - (d) An area which is significant because of its unique geological or ecological character.
    - (e) An area which is significant because of its historical, archaeological, architectural or cultural amenities.
    - (f) An area which is significant because of its value as a community recreational area,

greenway corridor, or its relationship to an adjacent recreational area.

- (g) An area which is significant because of its value as a wildlife habitat or its relationship to an adjacent wildlife preserve or wildlife corridor.
  - (h) An area which is significant because of its intrinsic value as open space necessary to preserve scenic vistas or otherwise enhance community character and attractiveness.
  - (i) An area which is significant because of its intrinsic value as open space in determining future land use development patterns within the Town.
- (3) Although conservation easements are not required to confer public use of the property, in certain cases, public use may be considered a factor in determining the significance of an area.
- D. Enforcement. Responsibility for enforcement shall reside with the Town. The easement should contain the necessary terms and restrictions to ensure that the original character of the area is maintained and to provide sufficient detail that the Town can effectively enforce all the terms and conditions of the easement. It shall be clearly stated that the owner of the property is responsible for the maintenance of the area.
- E. Additional structures. The fundamental purpose of the conservation easement is to conserve, preserve and protect open space. In the case of the reserved open space, limited structures or other improvements may be permitted to be constructed on the property under terms of the easement. Any structures or other improvements permitted under the easement must be strictly limited, must not encroach on the character of the area, and shall be fully defined in a manner satisfactory to the Town and consistent with zoning and other regulations prior to Town Board acceptance of the easement donation.
- F. Donor donations. The Town Board may request an initial donation for costs relating to acceptance and ongoing monitoring of the conservation easement.
- G. Review by other agencies. The Town is responsible for annual review of each conservation easement to verify the continued integrity of the easement. The Town Board may request advisory opinions from the Town Conservation Board, the Town Planning Board and the Town Recreation Commission, and other appropriate agencies prior to acquisition of such an easement.
- H. Public hearing. In accordance with law, the Town Board is required to hold a public hearing on the proposed acquisition prior to any action.
- I. Recording. The approved conservation easement shall be recorded with the Town Clerk, Town Tax Assessor, and the Orange County Clerk.

**§ 164-47.8. Agricultural Advancement Districts. [Added 9-11-2003 by L.L. No. 4-2003]**

**A. Purposes.**

- (1) Agricultural Advancement Districts (AAD) are intended to advance the business of farming in the Town of Warwick. Agriculture is an eighty-million-dollar industry that maintains over 15,000 acres of Warwick as open space. Its importance to the economic base and as a creator of working landscapes that provide the Town with much of its rural, rustic character and charm has been recognized in several programs and zoning provisions. The Town Board also finds that regulatory protection of farmland must be accompanied by economic encouragement if farmland preservation is to achieve its intended goals. Regulations cannot be allowed to reduce farm owners' equity if the economic vitality of the industry is to be maintained.
- (2) Preserving farm owners' equity can be accomplished using a number of techniques, including public purchase of development rights (PDR) and transfer of density rights (TDR). The Town offers some programs of this nature but is not equipped to enter the real estate marketplace and compete with others for land. It needs to be in a position to match private offers and return equity to farmers based on the market if farmland protection programs are to work effectively.
- (3) It is the intent of these regulations to provide a system of zoning and other incentives that provide substantial community benefits or amenities in accordance with § 261-b of the Town Law of the State of New York and § 247 of the General Municipal Law of the State of New York.
- (4) Under AAD Agricultural Advancement District rezoning, the farm owner and the Town will enter into an agreement that provides the Town with a right of first refusal to purchase the property outright or to purchase development rights for a minimum of 10 years. This right of first refusal shall provide the Town with the option to acquire the property on matching terms in any case where a sale for nonfarm use is proposed. During this period while the agreement remains in effect, the landowner will be granted specific density rights. While the agreement remains in place, the Town and the landowner can explore a number of preservation options, including purchase of development rights, transfer of development rights, fee simple acquisition and conservation subdivision. The agreement will further provide for a mandatory Town offer to purchase developments rights or fee title, based on the density rights granted under the agreement, prior to the expiration of the agreement.

**B. Requirements and incentives.**

- (1) Eligibility for inclusion in an AAD Agricultural Advancement District shall be limited to the following:
  - (a) Parcels of 10 acres minimum lot area, located within existing Conservation (CO), Mountain (MT), Rural (RU) and Suburban Districts (SL). A parcel may, for purposes of AAD eligibility, consist of a lot designated as a single tax number, or of two or more contiguous lots with separate Tax Map numbers.
  - (b) Parcels used for agricultural production, as defined in § 301 of the Agriculture and Markets Law.
  - (c) Parcels on which the owner has, under an agreement with the Town, granted a right of first



refusal to the Town of Warwick to purchase the property outright or to purchase development rights for a minimum of 10 years. This right of first refusal shall provide the Town with the option to acquire the property on matching terms in any case where a sale for use other than bona fide agricultural production, as defined in § 301 of the New York State Agriculture and Markets Law, is proposed. Such right-of-first-refusal agreement shall be recorded with the Orange County Clerk's office. During this period while the agreement remains in effect, the landowner will be granted density rights as provided below. The agreement shall further provide for a mandatory Town offer to purchase developments rights or fee title, based on the density rights granted under the agreement, prior to the expiration of the agreement.

- (2) Early termination. A landowner may petition the Town Board for termination of the right of first refusal agreement and rezoning of the property during the initial ten-year period after the AAD Agricultural Advancement District is granted, but not until after the AAD Agricultural Advancement District has been in effect for five years. The Town Board may, in its discretion, grant such a petition after a public hearing upon a finding of undue hardship or extraordinary circumstances, including but not limited to death, illness or catastrophic economic loss. The property owner may also request development according to the restrictions set forth in the AAD Agricultural Advancement District, the regulations of which shall be enacted by amendment of this chapter simultaneously with approval of the landowner's application. The Town Board may, at its own discretion, grant such a request.
- (3) Right of first refusal prior to termination. At least 150 days prior to the termination of the right-of-first-refusal agreement, the Town shall make an offer to purchase the development rights or fee title for all or part of the parcel if it has not already done so. The Town shall make an offer on the basis of fair market value of the property in accordance with the zoning regulations defined in the agreement. If an agreement on the price is not reached within 30 days of the offer or the time to negotiate a fair price is not extended by mutual consent by the parties, the landowner may develop the property in accordance with the AAD Agricultural Advancement District zoning regulations. The landowner will then have two years to submit an application to the Planning Board that will be reviewed by the Planning Board according to the AAD Agricultural Advancement District and the zoning regulations defined in the agreement. This two-year limitation can be extended only by a resolution by the Town Board.
- (4) Solicitation of offer during agreement period. During the first 10 years of the agreement, the landowner may also seek an offer from the Town for purchase of development rights or fee title, subject to the following procedures:
  - (a) Submission of a letter of interest and request for an appraisal to the Town Clerk.
  - (b) Appraisal by the Town based on the density yields defined in the AAD Agricultural Advancement District or the highest and best use of the property.
  - (c) The Town will make an offer within 120 days of receiving the landowner's request.
  - (d) The landowner has the option to accept or refuse the offer without any violation or amendment of the conditions of the AAD Agricultural Advancement District.
- (5) Negotiation of farmland incentive options. The Town Board shall, while the agreement is in place, negotiate with farmland owners to find the best methods of continuing agricultural use of the land and preserving farm owners' equity. Options that may be employed include, but are not

limited to, the following:

- (a) Purchase of the development rights on all or a part of the property, employing conservation easements provided for in § 164-47.7.
  - (b) Purchase of all or part of the property in fee title for continued agricultural use on a leaseback or resale basis with conservation easements in place.
  - (c) Incentive zoning for open space preservation, as provided in § 164-47.6, where a portion of the property is developed, but the active farmland is placed under a conservation easement.
  - (d) Transfer of development rights, as provided in § 164-47.4, where development rights are transferred to either a TDR bank or a sending district. Also, the Town Board and landowners may, independent of the provisions of § 164-47.4, agree to a private transfer of development rights from AAD farmland parcels to other parcels outside of AAD Districts, in conjunction with development plan approvals. This shall be accomplished by placing a conservation easement on affected farmland and rezoning the development parcel(s) concurrently with creation of the AAD District.
  - (e) Cluster subdivision, as provided in § 164-41.1, where residences are clustered on a portion of a property to preserve farmland or other open spaces on the remainder.
  - (f) Village annexation, as provided in the Town and Village of Warwick Intermunicipal Annexation Policy, where increased density is permitted for traditional neighborhood development in areas appropriate for annexation to the Village, subject to cash payments for agricultural preservation in other areas. Other options shall, within those areas of the Town covered by the Annexation Policy, be designed to complement such Policy.
- (6) Density yield.
- (a) In consideration for not developing a parcel for 10 years, the landowner will be guaranteed the density established as of January 24, 2002, for the underlying zoning district in which it is located as of that date and while the AAD Agricultural Advancement District remains in effect. Minimum density yield shall be determined by applying the Environmental Control Formula specified in § 164-41.3 of this chapter.
  - (b) The Town shall, within six months, assist the landowner in hiring an independent consultant to verify yield. Upon further written agreement between the parties, this shall become the guaranteed density for purposes of the agreement. A landowner who does not agree with the verified density yield may submit additional evidence from qualified land development professionals for consideration by the Town Board and the parties may also agree to arbitrate the matter. Should the parties not be able to agree, either party may withdraw from the agreement, which shall then become null and void, causing zoning standards to revert to those then in effect for the underlying zoning district.
- (7) Economic assistance in advancing agriculture. The Town shall assist landowners of parcels zoned as AAD Agricultural Advancement Districts in obtaining federal, state, county and local grant monies to advance agricultural economic development initiatives. These programs may include, but are not limited to those designed to promote product diversity, marketing or otherwise encourage economic development of agriculture within the Town of Warwick.

#### **§ 164-48. Performance standards.**

No land or building shall be used or occupied in any manner so as to create any 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 (referred to herein as "dangerous or objectionable elements"), provided that any use permitted or not expressly prohibited by this chapter may be undertaken and maintained if it conforms to the regulation of this section limiting dangerous and objectionable elements at the point of the determination of their existence.

- A. Uses requiring performance standard procedure. Only manufacturing uses and uses accessory 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.
- B. 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 Building Inspector against any use if there are reasonable grounds to believe that performance standards are being violated by such use.
- C. Performance standard regulations.
  - (1) Fire and explosive hazards. All activities involving and all storage of inflammable and explosive materials shall be provided at any point with adequate safety devices against the hazard of fire and explosion, adequate fire-fighting, fire-suppression equipment and devices standards in the industry. Burning of waste material in open fires is prohibited at any point. The relevant provisions of state and local laws, ordinances and regulations shall also apply.
  - (2) Radioactivity or electromagnetic disturbance. No activities shall be permitted which emit dangerous radioactivity at any point beyond the property line, or electromagnetic disturbance adversely affecting the operation at any point of any equipment other than that of the creator of the disturbance.
  - (3) Noise. The maximum sound pressure level radiated by any use or facility (other than transportation facilities) at the property line shall not exceed the values in the designated octave bands given in Table I, after applying the corrections shown in Table II below. The sound pressure level shall be measured with a sound-level meter and associated octave band analyzer conforming to standards prescribed by the American Standards

Association. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, Z24, 3-1944, American Standards Association, Inc., New York, New York, and American Standard Specifications for an Octave Band Filter Set for the Analysis of Noise and Other Sounds, Z24, 10-1953, American Standards Association, Inc., New York, New York, shall be used.)

**Table I**

<b>Octave Band Range (cycles per second)</b>	<b>Sound Pressure Level (decibels re 0.0002 dyne/cm<sup>2</sup>)</b>
20 to 300	60
300 to 2,400	40
Above 2,400	30

If the noise is not smooth and continuous and is not radiated between the hours of 10:00 p.m. and 7:00 a.m., one or more of the corrections in Table II shall be applied to the decibel levels given in Table I.

**Table II**

<b>Type or Location of Operation or Character of Noise</b>	<b>Correction (decibels)</b>
Daytime operation only	5
Noise source operates less than 20% of any one-hour period	5
Noise source operates less than 5% of any one-hour period	10
Noise of impulsive character (hammering, etc.)	-5
Noise of periodic character (hum, screech, etc.)	-5
Property is not within 500 feet of any residence district	5

- (4) Vibration. No vibration shall be permitted which is discernible without instruments at the property line.
- (5) Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 on the Poer's Micro-Ringelmann Chart, published by McGraw-Hill Publishing Company, Inc., and copyrighted 1954 (being a direct facsimile reduction of the standard Ringelmann Chart as issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 2 on said chart may be emitted for four minutes in any 30 minutes.

These provisions applicable to gray smoke shall also apply to visible smoke of different color but with an apparently equivalent opacity.

- (6) Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable when diluted with the ratio of one volume of odorous air emitted to four volumes of clean air. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. (As a guide in determining such quantities of offensive odors, see Table III, Odor Thresholds, in Chapter 5, Air Pollution Abatement Manual, copyright 1951 by Manufacturing Chemists' Association, Inc., Washington D.C., and said manual and/or table as subsequently amended is to be used.)
  - (7) Fly ash, dust, fumes, vapors, gases other forms of air pollution. No emission shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling at any point on the property of others and, in no event, any emission from any chimney, or otherwise, of any solid or liquid particles in concentrations exceeding 0.3 grain per cubic foot of the conveying gas. For measurements of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500°F. and 50% excess air.
  - (8) Glare. No direct or sky-reflected glare, whether from floodlights, buildings, or structural surfaces, or from high-temperature processes, such as combustion or welding or otherwise, shall be permitted. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter, nor to security lighting, lighting of a road system or parking lot lighting not otherwise prohibited.
  - (9) Liquid or solid waste. No discharge shall be permitted at any point into any public sewer, private sewage disposal system or stream, or into the ground, except in accord with standards approved by the County Department of Health or similarly empowered agency, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements.
- D. Performance standards procedure. An application for a site plan, special use permit, building permit or a 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 his understanding of the applicable performance standards and stating his agreement to conform with same at all times. No applicant will be required to reveal any secret processes, and any information submitted will be treated as confidential. Upon the satisfactory filing of the 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 §§164-50 and 164-51.

**§ 164-49. Mobile homes. [Amended 10-24-2002 by L.L. No. 6-2002]**

Except as provided herein and in § 164-40M, Table of Use Requirements, Agricultural Use, No. 23,<sup>EN(61)</sup> the storage or use of mobile homes in the Town of Warwick is prohibited.

**A. Use as temporary residence.**

(1) Temporary certificate of occupancy. Where a building permit has been issued for the erection, alteration or extension of a single-family residential building, the Building Inspector may issue a temporary certificate of occupancy for one mobile home for a period not to exceed six months. Said temporary certificate of occupancy may be extended for one additional period of six months if the Building Inspector finds that construction has been diligently pursued and that justifiable circumstances require, such an extension such as an emergency where the Building Inspector has deemed an existing building uninhabitable. Said mobile home may be occupied during the term of the temporary certificate of occupancy and must be situated upon the lot for which the building permit has been issued. Prior to the issuance of a certificate of occupancy by the Building Inspector and the location of said mobile home on the lot, the matter may be referred to the Planning Board for approval. If Planning Board review and approval is required, said Board may attach to the approval whatever reasonable conditions it deems necessary to carry out the intent of this chapter. Such conditions shall include:  
[Amended 9-11-2003 by L.L. No. 4-2003]

- (a) The temporary certificate of occupancy for one mobile home shall be valid for a period of six months, with one extension granted for a period of an additional six months provided the applicant has demonstrated due diligence in the erection, alteration, or extension of the single-family residential building.
  - (b) The mobile home shall be connected to the on-site well and septic disposal system or to community water and/or sewer facilities if such services are available to serve the residential building.
  - (c) A performance bond in the amount of \$1,000 shall be provided to ensure the proper removal of the mobile home after expiration of the temporary certificate of occupancy.
- (2) The fee for a temporary certificate of occupancy for a mobile home shall be paid upon application in an amount as determined in Chapter 75, Development Fees. In the event that the mobile home is not removed from the premises by the expiration date of the temporary certificate of occupancy, there shall be a fine levied against the owner in an

amount per month as set in Chapter 75, Development Fees, for as long as the situation continues.

B. Mobile home court permit.

- (1) Requirement. No person, firm or corporation shall own or operate a mobile home court without a permit, obtained as herein provided, and failure to have such a permit shall constitute a violation of this chapter.
- (2) Authorization and approval of plans by the Planning Board. A mobile home court shall be allowed only upon authorization and approval of plans by the Planning Board and only in those zoning districts where such use is permitted.
- (3) Nontransferability. Mobile home court permits shall not be transferable or assignable.
- (4) Procedure. Application for a mobile home court permit shall be filed with the Building Inspector who shall submit the same to the Planning Board for appropriate action. After proper review under the terms of § 164-46 and Subsection C of this section, the Planning Board may grant authorization and approval of plans. Following such authorization, the Building Inspector shall issue a permit for a mobile home court upon receipt of the required fee.
- (5) Application. Application for a mobile home court permit shall be made in triplicate on forms to be provided by the Building Inspector, shall be signed by the applicant and shall state:
  - (a) The name and address of the applicant or applicants, if a partnership.
  - (b) The names and addresses of each officer and director, if a corporation.
  - (c) The interest of the applicant in the property, if not the owner of record.
  - (d) The name and address of the property owner.
- (6) Site plan. Each application shall be accompanied by a site plan drawn to scale by a qualified surveyor, engineer or land planner, said plan to include the following information:
  - (a) The location of the proposed mobile home court, showing the boundaries and measurements of the premises.
  - (b) The location and number of mobile homes to be situated therein.
  - (c) The means of egress and ingress to all public roads.
  - (d) Watercourses and drainage ditches.

- (e) Internal roads and off-street parking facilities.
- (f) Water supply and sewage disposal facilities.
- (g) The location of fire extinguishers.
- (h) The location, nature and extent of fences and screening.
- (i) The location of outdoor lights, signs and other structures.
- (j) The names of the owners of adjoining properties.

C. Mobile home court development standards. Notwithstanding the applicable provisions of this Code or other ordinances, each mobile home court shall comply with the following conditions:

- (1) No mobile home court shall adjoin or be closer than 1,000 feet to any existing mobile home court.
- (2) The site shall be well drained and have such grades and soil as to make it suitable for the purpose intended.
- (3) Central sewage disposal and water supply systems shall have the approval of the Orange County Department of Health and/or similar municipal approval, whichever is more restrictive, and each mobile home site shall be suitably connected to these systems.
- (4) Garbage shall be collected once every day, and a waste collection station shall be provided for every 20 mobile home sites. No such collection station shall be farther than 300 feet from the site so served. Waste collection stations shall be emptied at least three times each week.
- (5) The outside burning of garbage, trash or rubbish is prohibited.
- (6) A mobile home court shall have at least 100 feet of frontage on an improved public (state, county or Town) road. No individual mobile home shall have frontage or direct access to a public road.
- (7) The mobile home court site shall be designed with all mobile home lots fronting on loop or cul-de-sac streets, no more than 10 lots fronting on each such non-through-traffic street.
- (8) Access to a mobile home court and circulation within shall be by roads paved with tar and stone or blacktop, as approved by the Town Highway Superintendent, and shall be kept in good repair. Roadways shall be at least 30 feet wide. Two exits to each mobile home court shall be provided, at least 125 feet apart. The Planning Board shall require a bond for the construction of said roads.



- (9) Of the two off-street parking spaces required for each mobile home site, one such space shall be adjacent to or within each mobile home lot; the second may be contained within one or more group parking areas.
  - (10) All means of ingress and egress, drives, lanes and public spaces shall be adequately lighted. Exits, entrances, drives and lanes shall have at least one shielded fifty-watt bulb for each 50 feet of drive.
  - (11) Each mobile home site without a basement shall be provided with a four-inch concrete slab at least 10 feet by 18 feet in size, placed on a stable surface, for use as a terrace, and so located as to be adjacent and parallel to the mobile home. The base of each mobile home shall be enclosed. Each mobile home lot shall contain an underground electrical outlet and weatherproof service connection to which the electrical system of the mobile home can be connected.
  - (12) A fire alarm box or public telephone shall be provided for each mobile home park, and fire extinguishers, approved by the local fire district officers, shall be furnished so that no mobile home shall be more distant than 150 feet from such extinguisher.
  - (13) One public telephone shall be provided for each mobile home court.
  - (14) All mobile home courts shall be screened from the view of adjacent properties and public streets by peripheral landscaping containing hedges, evergreens, shrubbery, fencing or other suitable screening as approved by the Planning Board or deemed appropriate for the purpose.
  - (15) All open portions of the site shall have adequate grading and drainage and shall be continuously maintained in a dust-free condition by suitable landscaping with trees, shrubs or planted ground cover or by paving with asphalt, concrete, rock or by other suitable material as shall be approved by the Planning Board.
  - (16) Required front yard areas shall be planted and maintained in such a manner as to provide a park-like setting for all buildings.
- D. Inspection. The Building Inspector or any other duly authorized agent of the Town of Warwick shall have the right at any reasonable time to enter any mobile home court to inspect all parts thereof and to inspect the records required to be kept in any mobile home court.
- E. Register. The operator of a mobile home court shall keep a register wherein there shall be noted the name and permanent address of the occupants of every mobile home situated in the court, the registration number of the same, the date it was admitted and the date of its removal. Such register shall be signed by the owner of the mobile home or the person bringing the same into the court.

F. Revocation of permit.

- (1) If the Building Inspector or any other authorized agent of the Town of Warwick finds that any mobile home court is not conducted in accordance with the provisions of this chapter, such person shall serve an order in writing upon the holder of the mobile home court permit, or the person in charge of said court, directing that the conditions therein specified be remedied within 10 days after the date of service of such order.
- (2) If such conditions are not corrected by the close of said ten-day period, said conditions shall constitute a violation of this chapter.

G. Fees. The fees for a mobile home court permit shall be in an amount as determined by Chapter 75, Development Fees, and shall be paid by the applicant upon issuance of the permit.

H. Renewal applications.

- (1) Renewal applications shall be filed with the Building Inspector before the first day of December next preceding the expiration of the original permit.
- (2) Upon approval of the Building Inspector or Planning Board, as the case may be, and payment of the required annual fee, a renewal permit shall be issued.
- (3) Prior to the issuance of a renewal permit, the Building Inspector shall inspect the mobile home court premises for compliance with these regulations. Any deviation from the application as originally approved by the Planning Board shall require a new application before the Planning Board and shall be in conformance with these regulations.
- (4) After issuance of the permit, the same shall be valid until the end of the calendar year and shall be renewable annually.

I. Application to existing mobile home courts. This chapter, except for Subsections C(5) and (12) and E of this section, shall not apply to mobile homes existing in mobile home courts on the effective date of this chapter, and such existing mobile homes shall be considered nonconforming uses. Any enlargement, extension or alteration of an existing mobile home court may be made only in compliance with all the terms of this chapter.

**§ 164-49.1. Senior Housing Districts.**

A. Purpose. The Town Board of the Town of Warwick hereby finds and declares:

- (1) There is a need in the Town of Warwick for housing developments located and designed to meet the special needs and habits of senior citizens, to be known as "senior housing." Such housing can contribute to the dignity, independence and meaningful activity of

senior citizens in their retirement years. It is recognized that housing for the elderly, if not properly located, constructed and maintained, may be detrimental to the general welfare, health and dignity of the occupants of such developments and to the Town of Warwick at large.

- (2) Senior citizens have different needs than the population as a whole. These needs often include support services, such as central food service, social services and referral consultation, medical services, housekeeping assistance and central laundry. Senior citizens also need to be provided with a comfortable, independent and supportive setting where they can move when a private residence is no longer appropriate.
- (3) Senior housing developments can be integrated into existing residential neighborhoods if properly planned, constructed and maintained. A senior housing development that blends into the existing fabric of the community has a much higher degree of acceptance by neighbors, and the senior citizens who live there find it much easier to become a part of the community as a whole.
- (4) The Town of Warwick has determined that the most appropriate means to fulfill the purposes of this section is to establish Senior Housing (SH) Floating Districts by zoning amendment.
- (5) The purpose of the Senior Housing (SH) Floating District is to enable the Town Board to permit, on a case-by-case basis, senior housing that satisfies the need for such developments in locations where it will not detract from surrounding land uses. Any use, other than the uses specifically enumerated herein, shall be prohibited in an SH Zone.
- (6) The granting of authority to establish a senior housing development shall be subject to the conditions set forth below, the site plan review requirements of § 164-46 of this chapter, and such other reasonable conditions as the Town Board, in its discretion, deems appropriate. The Town Board, prior to reaching a decision on a Senior Housing Floating Zone, shall provide written findings that the application meets all provisions of this section. If any provision is not met by the application, the Town Board shall state in writing its reasons for granting a waiver from the requirements of this section.

#### B. Application procedure.

- (1) Application for the establishment of an SH District shall be made to the Town Board pursuant to the zoning amendment provisions of § 164-60 of this chapter. The application for SH District designation shall include a sketch plan showing the approximate location of proposed buildings and other structures, parking areas, pedestrian circulation, roads, open space, recreation areas and other proposed facilities. The Town Board may, in its sole discretion, reject an application for an SH District at any time prior to final adoption of a zoning amendment.

- (2) Within one year of the date of the Town Board adopts a zoning amendment creating an SH District, the applicant shall apply to the Planning Board for site plan approval in accordance with § 164-46 of this chapter. The Planning Board shall grant site plan approval or site plan approval with conditions if it finds that the site plan satisfies the standards and criteria in this section and § 164-46 of this chapter and that the site plan is substantially similar to the sketch plan approved by the Town Board. If a period of more than one year passes between Town Board approval of the SH District and submission of a site plan application, the SH designation shall lapse, and the property shall revert to its prior zoning classification unless the SH designation is extended by the Town Board.
- (3) In addition to the application requirements of § 164-60 of this chapter, applications must be accompanied by a completed full environmental assessment form (EAF) or a draft environmental impact statement (DEIS) pursuant to the State Environmental Quality Review Act (SEQR).<sup>EN(62)</sup> The Town Board need not undertake a SEQR review if it determines that it will not entertain the zoning petition. A DEIS, pursuant to 6 NYCRR 617, shall be prepared for all senior housing (SH) zoning applications in which it has been determined that there may be a significant effect on the environment.
- (4) A fee of \$500 shall accompany each application under this section. In addition, in the event that an application requires the Town to incur additional expenses for technical assistance in the review of an application, this section shall require the applicant to pay the reasonable expenses incurred by the Town and to deposit said necessary covering funds prior to the cost being incurred. Technical assistance shall be defined as, but not limited to, those services provided by the Town Engineer, Town Planner, Town Attorney and other professional planners, licensed engineers, licensed landscape architects, licensed attorneys, licensed land surveyors and licensed property appraisers.
- (5) A certified copy of the corporation papers of an applicant, requesting a senior housing designation under this section, shall be supplied to the Town Attorney's office for the purpose of review and comment on compliance with the purposes and intent of this section.
- (6) Upon the granting of a senior housing (SH) zoning designation and all other approvals from regulatory agencies, including Planning Board approval, the applicant may obtain a building permit and commence construction.
- (7) The occupancy for a senior citizen housing development shall be limited to persons who are 55 years of age or older, with the following exceptions:
  - (a) A husband or wife under the age of 55 years who is residing with his or her spouse who is of the age of 55 years.
  - (b) Adults under the age of 55 years will be admitted as permanent residents if it is established that the presence of such persons is essential for the physical care or

economic support of the eligible older occupant or occupants.

(c) Certifying documentation of the requirements of this section shall be provided in the following forms:

[1] A certificate of occupancy shall be required for each dwelling unit in a senior citizen housing development, and said certificate shall only permit occupancy in accordance with the floor area and other requirements as stated herein.

[2] A certificate of compliance shall be filed for each unit occupied. 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 this section and this chapter, as amended, as to its requirements relating to the number of occupants and the age of the occupants in each dwelling unit. The certificate shall be filed for each dwelling unit within 30 days after its initial occupancy. A new certificate shall be filed within 30 days after any change of occupancy.

[3] The applicant and/or owners of a development under this section 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 section.

(d) Violations of this section are subject to the penalty provisions of § 164-54 of this chapter.

(8) First preference for dwelling units in a senior citizen housing development shall be given to existing residents of the Town of Warwick, second preference to other residents of Orange County, as permitted by law. Proof of residency, such as a driver's license or voter registration card, will be accepted to determine residency.

C. Uses. Senior housing needs vary depending upon an individual's age and health. A common prerequisite is a comfortable, independent and supportive setting to which one can move when one's private residence is no longer appropriate. Senior housing developments shall provide a variety of dwelling types in accordance with Subsection C(1) of this section. In reaching its decision to approve or deny a Senior Housing Floating Zone, the Town Board shall base its findings, in part, on the degree to which the senior housing development provides for a variety of the enumerated dwelling types.

(1) The following dwelling types are allowable in an SH District: [Amended 10-24-2002 by L.L. No. 6-2002]

(a) Two-family dwellings.

(b) Townhouses.

- (c) Apartments.
  - (d) Congregate housing.
  - (e) Any combination of the above.
- (2) Certain related ancillary facilities may be permitted, either in a separate building or in combination with dwelling units. Such ancillary facilities are deemed essential to the success of a senior housing development but 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 citizen housing development in no way constitutes approval for installation of any type of related facility. In reaching its decision to approve or deny a Senior Housing Floating Zone, the Town Board shall base its findings, in part, on the degree to which the senior housing development provides for a variety of the enumerated ancillary facilities. The following facilities may be approved by the Planning Board pursuant to § 164-46 of this chapter:
- (a) Cafeteria.
  - (b) Self-service laundry.
  - (c) Lounge.
  - (d) Game room.
  - (e) Recreation room.
  - (f) Exercise or multipurpose room.
  - (g) Workshop.
  - (h) Library.
  - (i) Sauna/spa whirlpool.
  - (j) First-aid clinic. (NOTE: First-aid clinics may include an office for a part-time doctor, dentist or podiatrist to visit once or twice a week.)
  - (k) Social services office. (NOTE: Such office shall be for use by social service providers or others offering direct assistance to residents only to the extent that they meet the needs of the residents of the development.)
  - (l) Twenty-four-hour security.
  - (m) Guest accommodations.

D. Design standards. In considering an application for designation of an SH District, the Town

Board shall follow the standards set forth in § 164-46J(15), (23), (53) and (112) of this chapter, as well as the following additional standards:

- (1) The design of the senior housing development shall be as compatible as practical with the design of the surrounding neighborhood.
- (2) The following dimensional requirements are applicable to all SH Districts created by this section; provided, however, that the Town Board may vary the requirements where appropriate (except for lot size, maximum building coverage and maximum site development) so that the senior housing development will follow more traditional neighborhood development patterns commonplace in the United States until the 1940's:
  - (a) Minimum lot size: 40 acres.
  - (b) Maximum lot size: 200 acres.
  - (c) Minimum lot width: 400 feet.
  - (d) Minimum road frontage: 400 feet.
  - (e) Minimum front yard setback from adjoining roads:
    - [1] State: 80 feet.
    - [2] County: 60 feet.
    - [3] Town: 40 feet.
  - (f) Minimum building setbacks from adjoining properties:
    - [1] Side: 200 feet.
    - [2] Rear: 200 feet.
  - (g) Maximum building height: 35 feet.
  - (h) Maximum building coverage: 20%.
  - (i) Maximum site development: 40%. (NOTE: This includes all buildings, structures, walks, parking areas, landscaped areas, driveways and roads.)
  - (j) Minimum distance between buildings: as determined at the time of site plan approval by the Planning Board. Consideration shall be given to fire access, solar orientation, building massing and other relevant factors in determining an appropriate distance between buildings.
- (3) The maximum number of units per building shall not exceed 16 unless otherwise

approved by the Town of Warwick.

- (4) Sites 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.
- (5) Senior housing developments shall preserve, to the greatest extent practical, mature trees, rock outcrops, slopes, wetlands and stream corridors.
- (6) All senior housing shall be located so that adequate resources, environmental quality and public facilities, including water supply, waste disposal and fire protection, are available.
- (7) Senior housing sites shall provide residents with reasonable access to such conveniences and facilities as public transportation, hospital and medical services, shopping, check-cashing facilities, drugstores, religious, cultural and recreational facilities and personal services.
- (8) Sites 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.
- (9) Parking.
  - (a) Parking at senior housing sites can vary between weekdays and weekends. Typically, in senior housing developments, many elderly no longer own their own automobile. Therefore, parking needs in senior housing are substantially less than for residential housing in general. However, senior housing developments experience a greater need for parking on Saturdays and especially Sundays when families come to visit relatives. For this occasional weekend use, it is more appropriate to establish overflow parking using previous surfaces, such as cellular concrete blocks where the interstices of the blocks are filled with earth and sown with grass. Such overflow parking shall be provided at each senior housing development. On-site facilities for vehicle parking shall be provided in accordance with the requirements of § 164-43.2.
  - (b) Overflow parking area specifications shall be designated by the Town Engineer of the Town of Warwick or its agents. All other parking areas shall be curbed, striped and have direction of travel lanes painted over blacktop. Minimum paving specifications shall be designated by the Town Engineer of the Town of Warwick or its agents. Parking areas shall be separated by a planted or landscaped strip between such areas and sidewalks. No vehicles, other than passenger vehicles or vans, and no more than two cars per household shall be permitted to park overnight except with the express authorization of the Town Board. Where garages are provided, they may be substituted for such off-street parking areas and shall conform architecturally to



the principal buildings.

(10) Each parking space shall be a minimum of 10 feet wide and 20 feet deep with 24 feet of aisle space. Five percent of the total number of parking spaces shall be 12 feet wide and designated for handicapped residents. Properly located short-term parking shall be provided for residents dropping off groceries or passengers. All parking shall be placed at the side and rear of buildings.

(11) Lighting requirements shall conform to the following:

(a) Exterior lighting shall comply with the lighting requirements in § 164-43.3.

(b) The following minimum illumination guidelines should be followed for interior lighting:

[1] Kitchen: 150 watts.

[2] Over sinks: 100 watts.

[3] Dining areas: 150 watts.

[4] Bathroom: 150 watts.

[5] Private halls: 75 watts.

[6] Passageways and stairs: 100 watts.

[7] Fixtures for other building spaces should occur at a minimum of every 200 square feet.

(12) Landscaping shall be provided in accordance with the requirements of § 164-46 of this chapter. Additional requirements include planting of street trees along all streets 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 three 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 21/2 feet from the edge of the street. For all parking areas, landscaped areas shall comprise a minimum of 20% of the total parking lot area. Use of native species and low maintenance plants is encouraged. Gardens where residents can participate in gardening activity is also encouraged.

(13) The minimum floor area for all units is as follows:

Type of Unit	Minimum Floor Area (square feet)
Apartment or congregate unit	
1-bedroom	
1-person	665

2-person	715
2-bedroom	865
Two-family or townhouse unit	
1-bedroom	675
2-bedroom	885

- (14) No more than 40% of the dwelling units shall be two-bedroom units. No dwelling unit shall contain more than two bedrooms, except that one dwelling unit for each superintendent may contain up to three bedrooms. A minimum of 5% of the dwelling units shall be set aside for permanently handicapped persons and shall be designed for their occupancy.
- (15) In Senior Housing (SH) Districts, all construction must conform to the New York State Multiple Dwellings Law as appropriate, the New York State Energy Conservation Construction Code and the New York State Uniform Fire Prevention and Building Code, as may be amended from time to time.
- (16) Exterior architectural features shall be of a quality, character, compatibility and appearance that is in harmony with the surrounding neighborhood and the Town of Warwick and will not adversely affect the general welfare of the inhabitants of the Town of Warwick. The Architectural Review Board shall be responsible for the review and recommendations of such exterior architectural features.
- (17) Exterior areas shall be attractive and encourage outdoor activities and social interaction. Each dwelling unit shall contain a minimum of 65 square feet of outdoor common area. Seating accommodations that call for conversation shall be provided in such common areas. All outdoor tables must allow a minimum of 29 inches from the ground to the underside of the top of the table to accommodate the arms of wheelchairs. Outdoor common areas shall be well defined by landscape plantings and shall be linked to the natural open space of the site.
- (18) Measures shall be taken to reduce the transmission of noise, such as the use of suitable materials (i.e., carpeting and acoustic baffling) and methods of construction, the location of buildings and the arrangement of dwelling units within the buildings.
- (19) Senior housing developments should avoid the use of numerous long corridors which can disorient residents and are reminiscent of institutions. Color coding of walls and floors in interior common areas, graphics and plant placements are the preferred means to help residents easily distinguish one area from another.
- (20) Additional design and construction requirements shall include the following:
- (a) Entryways should not open directly into a bathroom or bedroom but should be directly accessible to the kitchen, living room and storage.

- (b) Living areas should be designed to allow for a variety of furniture arrangements. Windows should be carefully placed to expand furniture options and to permit interesting views outside from reclining and standing positions. Living areas should be directly accessible to dining areas.
  - (c) Dining areas should be spatially separated from the kitchen area. Each dining area should contain sufficient space to accommodate four people. Dining areas should be open to natural light and have views of the outside.
  - (d) Bedrooms should be designed to afford outside views from a reclining position. Every bedroom should be designed to accommodate two twin beds or one double bed, one dresser, one chair and two nightstands.
  - (e) Kitchens should be screened from entry and living areas. Either L- or U-shaped kitchens are preferred with a minimum width of 60 inches. Kitchen faucets should have one-handed control of water taps.
  - (f) Bathroom safety is a key design consideration. All bathrooms shall avoid sharp surfaces and slippery floor surfaces; shall provide backing for full grab-bar installation (but remain uninstalled unless necessary); have doors that open out; and have one-handed control of water taps. Each bathroom shall have a toilet, lavatory and a bathtub or stall shower with a built-in bench or room for a bath stool. Bathrooms should have direct access to bedrooms and direct or indirect access between the bathroom and living room. Bathroom thresholds shall be flush with the floor.
  - (g) All plumbing fixtures, accessories and trim shall be selected for and provide the maximum features of design to contribute to the safety, convenience and aid to older persons.
  - (h) At least 10% of the floor area of each multifamily building shall be set aside for community space, including lounges, workshops, game rooms and other facilities designed for the residents.
- (21) Signs shall be permitted in accordance with § 164-43.1 of this chapter with the following exceptions:
- (a) A maximum of two on-premises signs, identifying the senior housing development, shall be permitted. The signs can be either freestanding or attached to a structure.
  - (b) The total combined area of both senior housing development signs shall not exceed 20 square feet. Such signs shall not exceed six feet in height and must be set back at least 15 feet from the edge of pavement.
- (22) Each dwelling unit shall be equipped with a fire alarm system that provides an exterior

light designating the unit initiating the alarm. The system shall have an exterior alarm and shall be approved by the Town Board or its agents. A fire alarm system shall also be provided for all common areas (i.e., halls, recreation areas, service areas and so on). An external fire warning light should be on the face of the building that is visible from the street for each building.

(23) The Town Board shall have the right to require the applicant to dedicate to the Town all new water supply and wastewater systems, streets and recreational areas.

- E. Density. The maximum number of dwelling units per acre (gross density) shall not exceed the number of dwelling units that would otherwise be permitted in the existing residential zoning district, except as provided for in § 261-b of the Town Law or as described below. In designating an SH District, the Town Board shall first determine that there will be no significant environmentally damaging consequences and that any increase in density is compatible with the development otherwise permitted.
- (1) A density bonus shall be granted to senior housing developments meeting all of the requirements of this section. In granting the density bonus, a multiplier of five times the number of allowable building lots that could be obtained in a conventional layout shall be used to compute density. The conventional layout shall be based on the allowable density of the existing zoning district and shall exclude easements, roads and streets, slopes of 25% and greater, water bodies, floodplains, wetlands or other significant natural and cultural features identified on the site.
- (2) An additional density bonus may be granted, subject to all provisions of § 261-b of the Town Law, if the Town Board determines that the applicant has provided additional community benefits, such as affordable senior housing or other suitable amenity.
- F. Severability. If any section, subsection, paragraph, clause, phrase or provision of this section shall be judged invalid or unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this section as a whole or any part thereof other than the part or provision so judged to be invalid or unconstitutional.
- G. Exclusions. This section does not permit nursing homes, convalescent homes, private proprietary homes, homes for the aged or any other facilities regulated and licensed by the New York State Department of Health under the Public Health Law of the State of New York.
- H. Responsible party. In senior housing developments, one person shall be designated as a responsible party and shall be the informational center for the complex. The designated responsible party shall be on duty a minimum of four hours per day and shall have an emergency number posted 24 hours per day.
- I. Definitions. As used in this section, the following terms shall have the meanings indicated:

APARTMENT -- A suite of rooms in a one- or two-story building where the rooms are rented.

APPLICANT -- Any person, corporation or other entity applying for a senior housing (SH) zoning designation.

CONGREGATE HOUSING -- 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 shall include but not be limited to central food service, social service and referral consultation, housekeeping assistance and central laundry.

CONVENTIONAL LAYOUT -- A plan illustrating the total number of residential dwellings that could be developed on a site using the zoning requirements of the existing zoning district and excluding unbuildable areas.

DENSITY -- The permitted number of dwelling units per gross acre of land to be developed.

OPEN SPACE -- Any area of land or water essentially unimproved and set aside, dedicated, designated or reserved for recreation or conservation or left in its natural state.

PARKING AREA -- The minimum area required for meeting the parking requirements of the senior housing development plus landscaping.

PARKING LANE -- A lane usually located on the sides of streets, designed to provide on-street parking for vehicular traffic.

PARKING SPACE -- An area provided for the parking of a motor vehicle.

PERVIOUS SURFACE -- A surface that permits full or partial absorption of stormwater.

SETBACK -- The distance between the front line of a building (or any projection thereof) and a street right-of-way line or property boundary. Automobile parking or other structures, other than a permitted fence, are excluded from setback areas.

SIDEWALK -- A paved path provided for pedestrian use.

#### **§ 164-49.2. Campgrounds.**

- A. Special permit use. Campgrounds are a special permit use consisting of a tract of land designed exclusively for overnight and short-duration vacation camping, providing facilities for tents, camp trailers, motor homes, recreation activities, administration, public health and safety. [Amended 9-11-2003 by L.L. No. 4-2003]

- B. Density. Density shall be four to eight campsites per acre as approved by the Planning Board.
- C. Minimum lot size. The minimum lot size shall be 10 acres.
- D. Minimum campsite area. The minimum campsite area shall be 3,000 square feet in area with a minimum average width of 30 feet.
- E. Minimum lot frontage. The minimum lot frontage shall consist of 200 feet of frontage on a state or county highway. Where a parcel of land does not have 200 feet of frontage on a state or county highway, a minimum frontage of 50 feet may be permitted for use as an easement for gaining access to a larger parcel that would otherwise meet the requirements of the special permit use. The front yard of such a parcel shall begin at the point where a line running parallel to the state and county highway equals 200 feet.
- F. Yard and space requirements are as follows:
  - (1) Yard requirements, campground.
    - (a) Front yard: 100 feet.
    - (b) Side yard: 50 feet.
    - (c) Rear yard: 100 feet.
    - (d) No camping space shall be within 50 feet of any property line or within 100 feet of any watercourse which is part of any public water supply system.
  - (2) Minimum spacing between campsite pads: 80 feet (extremity to extremity).
- G. Water supply. The site shall be serviced by a municipal or private water system. A minimum rate of 200 gallons per day per site shall be provided at a minimum pressure of 20 pounds per square inch at peak demand. An adequate supply of potable water shall be provided within 250 feet of all campsites. One water spigot with a soakage pit or other disposal facilities shall be provided for each 10 campsites without water facilities. Other water sources supplied to toilets and urinals shall not be physically connected with the drinking supply or be available for public use.
- H. Sewage disposal. The site shall be provided with a municipal or approved private sanitary sewage disposal system.
  - (1) Toilets. Only flush toilets shall be provided.
    - (a) One toilet for each sex for each 10 sites shall be provided within 300 feet of each camping space. A minimum of two toilets for each sex shall be provided.
    - (b) Urinals shall be provided. Up to 1/2 the male toilets may be urinals.

- (2) Lavatories or other hand washing facilities shall be provided at a ratio of one for each 15 sites (without water and sewage hookups) for each sex.
  - (3) Showers. Showers shall be provided and must be served with hot and cold or tempered water between 90°F. and 110°F. and be available at a ratio of two showers for each 50 units for each sex.
  - (4) Dishwater disposal. One dishwasher facility shall be provided for each five campsites or provided in connection with each toilet facility.
  - (5) Slop sinks with flushing rims, or basins and laundry tubs with water supply, shall be provided to serve each 50 units.
  - (6) Each toilet and shower for which provision is made in the subsections above shall be in a private compartment or stall.
  - (7) The toilet and other sanitation facilities for males and females shall be either in separate buildings or shall be separated, if in the same building, by a soundproof wall. The sanitation facilities for males and females shall be distinctly marked to denote the sex for which they are intended.
  - (8) Where individual water hookups and sewage disposal facilities are provided, the ratio shall be one toilet and lavatory for each sex for every 40 units within 500 feet of each unit.
  - (9) At least one travel trailer sanitary dumping station shall be provided for every 100 campsites or fewer.
  - (10) Sewage treatment facility. The design shall be based on the water supply design flow, plus infiltration, and approved by the Town Engineer. The location of septic tanks, distribution lines and disposal fields shall be as approved by the Town Engineer. Furthermore, all water and sewer facility plans shall be submitted to the Orange County Department of Health for approval prior to final site plan approval and issuance of building permits.
- I. Service buildings. Service buildings housing sanitation facilities shall be constructed and maintained in accordance with the following specification:
- (1) They shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems.
  - (2) The service buildings shall be well-lighted at all times of the day and night, shall be well-ventilated with screened openings, shall be constructed of moisture-proof materials such as may be painted, woodwork, such as shall permit repeated cleaning and washing

and shall be maintained at a temperature of at least 68° F. during the period from October 1 to December 15 and from March 15 to May 1. The floors of the service buildings shall be concrete or similar materials, elevated not less than four inches above grade and shall slope to a floor drain located in each room.

- (3) All service buildings and the ground of the site shall be maintained in a clean, slightly condition and kept free of any condition that will menace the health of any occupant or the public or constitute a nuisance.
- J. Electrical service. Each camping space shall be provided with at least a twenty-ampere, one-hundred-ten-volt electrical service. [Amended 9-11-2003 by L.L. No. 4-2003]
- K. Solid waste disposal. The owner of a campground shall provide for the collection of refuse and garbage daily and shall also conveniently locate fly-tight refuse containers on each campsite. Refuse containers shall be cleaned, covered and maintained as often as may be necessary to promote a wholesome and nonodorous condition to prevent the breeding of insects therein.
- L. Vehicular access. Each campground area shall be provided with two means of access from county and state roads. Sight distances at the entrance and exit must be in compliance with all appropriate Town, county and state regulations. In the event that two separate means of access cannot be provided due to a lack of adequate sight distance at the point of access or egress or due to limited frontage on a state or county highway, the Planning Board may approve an alternate design that will ensure adequate safety.
- M. Streets. Each campground area shall provide a collector street with a minimum width of 18 feet for two-way traffic and 10 feet for one-way traffic. As a minimum, the street shall be constructed with a gravel base with adequate drainage and a water-bound macadam surface as approved by the Town Engineer. Radius of curvature shall be 50 feet minimum. Grades shall not exceed 12%.
- N. Parking. Parking spaces for automobiles shall be 30 feet long and 12 feet wide with an eight-foot-wide strip of washed crushed stone or shale or two-inch blacktop slabs over gravel on a stabilized surface. Parking spaces for automobiles with trailers shall be 50 feet long and 14 feet wide with a ten-foot-wide strip of washed crushed stone or shale or two-inch blacktop slabs over gravel on a stabilized surface.
- O. Illumination. Sufficient exterior illumination of the site shall be required to provide convenience and safety. All such illumination shall be shielded from the view of all surrounding properties and streets.
- P. Campground stores. Campground stores are permitted to be located within the campground site and may be part of the office.
- Q. Ancillary facilities. Plans for ancillary facilities, such as stores, offices, swimming pools,



service buildings, etc., shall be submitted to the Planning Board for site plan approval along with the overall development.

- R. Landscaping. The entire site except for areas covered by structures, service or parking areas shall be suitably landscaped. All landscaping shall be approved by the Planning Board and properly maintained after planting.
- S. Screening. All campground sites shall be screened from the view of adjacent properties and adjoining public highways by means of an opaque screen of plant materials and/or fencing. All screening shall be approved by the Planning Board, properly maintained after placement and located within the required front, rear and side yards.
- T. Playfields. All campground sites shall provide a playfield at least one acre in area. At least one acre of playfield for every 25 campsites shall be provided, and may include a suitably improved, fenced and equipped children's play area.
- U. Resident manager. No permanent structures shall be permitted for use as living quarters, with the exception of those of the resident manager or property owner. The resident manager or a caretaker shall be on the premises on a regular basis, as determined by the Building Inspector, to guard against vandalism during the off-season.
- V. Annual period of closing. The campground must close annually from December 15 to March 15. Any habitable structures or vehicles, other than those of the owner/caretaker, must be locked and made unavailable for occupancy during that time period. Furthermore, occupancy by an individual or group of individuals in any form of permitted temporary, movable or portable shelter shall be for a period of not longer than 120 days in any twelve-month period.
- W. Recreational facilities. Recreational facilities, such as golf courses, tennis courts, swimming pools and camp recreational facilities, shall be for campsite guests only.

(1) Swimming pools shall be classified and located as follows:

Type of Class	Square Feet	Maximum Area
		Maximum Setback From Any Property Line (feet)
A	Over 3,500	175
B	2,501 to 3,500	150
C	1,501 to 2,500	125
D	1,500 or less	100

(2) All recreational facilities shall comply with the following minimum setback requirements:

**Minimum Setback From  
Any Property Line**

<b>Type of Facility</b>	<b>(feet)</b>
Handball courts	100
Basketball courts	100
Baseball diamond (not outfield)	100
Volleyball courts	100
Concession stands	100
Casino buildings	100
Concentrated picnic area (tables, barbecue pits, etc.)	100
Outfield relative to baseball or softball	50
Parking areas	50
Picnic grounds (not improved)	50
Games normally involving fewer than 10 people, such as horseshoe pits, nature trails, etc.	50
Golf course fairways	50

- (3) Lighting. If outdoor lighting is provided for any of the foregoing recreational facilities, including swimming pools, which permits the use of facilities after 10:00 p.m., the applicable setback requirements for such facility shall be doubled. All lighting shall be located so that its source shall not be visible from any adjoining property. Floodlights on poles not less than 75 feet from the property line directed toward the center of the property and shielded from any nearby residential areas shall be deemed to comply with the latter regulations.
  - (4) Noise. Public address systems or any other amplified noises are prohibited.
  - (5) Use of pool. The maximum number of families permitted to use any swimming pool shall be the area in square feet of the swimming pool divided by 10. Any portion of a pool designed to hold less than two feet of water in depth shall not be included in total pool area set forth in Subsection W(1) above.
  - (6) Buildings. All structures shall be of a permanent nature.
- X. Fire protection. The property owner shall ensure that adequate fire protection equipment is on the premises at all times, as recommended by the Building Inspector and appropriate officials of the fire district in which the campground is situated.
- Y. Public phone. Each campground shall have at least one public telephone.
- Z. Renewal of permit. Each permit issued for a campground shall be valid for a period of 12 months from the date of use. Renewal applications shall be filed with the Building Inspector not more than 60 days prior to the expiration of the twelve-month period. Prior to the issuance of a renewal permit, the Building Inspector shall inspect the campground premises for compliance with all application regulations. Thereafter and within 30 days of the

expiration of the twelve-month period, the Building Inspector shall submit a report in writing to the Planning Board. The Board shall automatically renew the permit unless it finds a substantial failure to comply with these regulations as reported by the Building Inspector. In the event that the Board finds there has been a substantial violation of these regulations, then it shall hold a public hearing to determine the renewal of the permit.

- AA. Fees. An application fee as stipulated in Chapter 75, Development Fees, shall be paid prior to site plan approval. The same fee shall be due upon expiration of the annual campground permit.
- BB. Performance bond. A performance bond, as determined by the Town Board, shall be provided to ensure the proper installation of public improvements.

---

## **ARTICLE V, Administration**

---

### **§ 164-50. Building permits.**

The issuance of building permits shall be regulated in accordance with Chapter 82, Fire Prevention and Building Code Administration.

### **§ 164-51. Certificates of occupancy.**

The issuance of certificates of occupancy shall be regulated in accordance with Chapter 82, Fire Prevention and Building Code Administration.

### **§ 164-52. Office of the Building Inspector.**

The functioning of the office of the Building Inspector shall be regulated in accordance with Chapter 82, Fire Prevention and Building Code Administration.

### **§ 164-53. Zoning Board of Appeals.**

A. Creation, appointment and organization.

- (1) There shall be a Board of Appeals of five members, pursuant to the provisions of § 267 of the Town Law.
- (2) Appointment of members. The Town Board of Warwick shall appoint members to the Zoning Board of Appeals and shall designate a Chairperson. The Town Board may

provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the Town Board for such purpose.

- (3) Town Board members ineligible. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.
- (4) Terms of members first appointed. In the creation of a new Board of Appeals, or the reestablishment of terms of an existing Board, the appointment of members to the Board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the Board.
- (5) Terms of Zoning Board of Appeals members now in office. Zoning Board of Appeals members now holding office for terms which do not expire at the end of a calendar year shall leave office on the expiration date of their term. Successors to their offices shall then be appointed for terms of office for the remainder of the calendar year, plus one year less than the number of years equal to the number of members of the Board. Terms of successors of members of the Board whose terms expire at the end of a calendar year shall be for the number of years equal to the number of members of the Board. This subsection supersedes New York State Town Law § 267, Subdivision 5.
- (6) Increasing membership. The Town Board may, by resolution, increase a three-member Board of Appeals to five members. Additional members shall be first appointed for a single term as provided in such resolution in order that the terms of members shall expire in each of five successive years, and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the Board of Appeals at the time of his or her appointment.
- (7) Decreasing membership. The Town Board which has increased the number of members of the Board of Appeals to five may, by resolution, decrease the number of members of the Board of Appeals to three to take effect upon the next two expirations of terms. Any Board of Appeals which, upon the effective date of this section, has seven members, may continue to act as a duly constituted Zoning Board of Appeals until the Town Board, by resolution, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.
- (8) 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.

- (9) Removal of members. The Town Board shall have the power to remove any member of the Board of Appeals for cause and after public hearing.
- (10) Chairperson duties. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson or, in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

B. Procedure for Board of Appeals.

- (1) Meetings, minutes and records. Meetings of such Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. Such Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- (2) Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.
- (3) Assistance to Board of Appeals. Such Board shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.
- (4) Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by an administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of the Town Law. Such Board shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.
- (5) Time of appeal. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the

record upon which the action appealed from was taken. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal.

- (6) Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from which the appeal is taken, certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- (7) Hearing on appeal. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by the publication in a paper of general circulation in the Town of a notice of such hearing, at least five days prior to the date thereof. In addition to same published notice, the applicant shall cause notice to be given of the substance of every appeal for an interpretation or variance, together with the notice of hearing thereof, by causing notice thereof to be mailed at least five days before the date of said hearing to the owners of all property abutting that held by the applicant in the immediate area, whether or not involved in such appeal or application, and all other owners within 300 feet, or such additional distance as the Board may deem advisable, from the exterior boundaries of the land involved in such appeal or application, as the names of said owners appear on the last completed assessment roll of the Town. Such notice shall be by certified mail, and the applicant shall furnish proof of compliance with the notification procedure. Any or all of the notices required by this subsection shall be issued by the Secretary of the Board of Appeals on order of the Board of Appeals or upon order of the Chairman of said Board, if the appeal or application is received when the Board is not in session and the Chairman deems it necessary or desirable to expedite the public hearing on such appeal or application. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of this subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate any action taken by the Board of Appeals.
- (8) Time of decision. The Board of Appeals shall decide upon the appeal within 62 days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
- (9) Filing of decision and notice. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days after the day such

decision is rendered and a copy thereof mailed to the applicant.

- (10) Notice to Park Commission or planning agency. At least five days before such hearing, the Board of Appeals shall mail notices thereof to the parties; to the Regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the county, metropolitan or regional planning agency, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in Subdivision 1 of § 239-m of the General Municipal Law.
- (11) Compliance with State Environmental Quality Review Act. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617, of the New York Codes, Rules and Regulations.
- (12) Expiration. Unless construction is commenced and diligently prosecuted within 24 months of the date of the granting of a variance, such variance shall become null and void.

C. Permitted action by Board of Appeals.

- (1) Interpretations, requirements, decisions and determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement or decision the appeal is taken.
- (2) Use variances.
  - (a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the ordinance or local law.
  - (b) No such use variance shall be granted by the 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 Board of Appeals that:
    - [1] Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be

established by competent financial evidence;

[2] 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] The requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] The alleged hardship has not been self-created.

(c) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(3) Area variances.

(a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of such ordinance or local law, to grant area variances from the area or dimensional requirements of such ordinance or local law.

(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 Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and



protect the character of the neighborhood and the health, safety and welfare of the community.

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

#### **§ 164-54. Penalties for offenses.**

- A. Violations. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$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 \$350 nor more than \$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 \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter 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. Appropriate Town actions. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used or any land is divided into lots, blocks or sites in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land; 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; and upon the failure or refusal of the proper local officer, board or body of the Town to institute any such appropriate action or proceeding for a period of 10 days after written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the Town is authorized to do.

## **§ 164-55. Schedule of fees.**

A schedule of applicable fees is contained in Chapter 75, Development Fees.

---

## **ARTICLE VI, Amendments**

---

### **§ 164-60. Procedure for amendments.**

This chapter or any part thereof may be amended, supplemented or repealed from time to time by the Town Board, on its own motion, on petition or upon recommendation by the Planning Board as provided in § 274 of the Town Law. Every such proposed amendment shall be referred by the Town Board to the Planning Board for a report before the public hearing. Unless the Planning Board fails to render such report within 60 days after its next regularly scheduled meeting following the date of such referral, the Town Board shall not take action on any such amendment without recommendation from the Planning Board. If said report is received by the Town Board, it shall become an official part of the minutes and said public hearing.

A. Report of the Planning Board. In making such report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below:

- (1) Text: concerning a proposed amendment to or change in text of this chapter:
  - (a) Whether such change is consistent with the aims and principles embodied in this chapter to the particular districts concerned.
  - (b) Which areas and establishments in the Town will be directly affected by such change and in what way they will be affected.
  - (c) The indirect effect of such change on other regulations.
  - (d) Whether such proposed amendment is consistent with and furthers the goals and objectives of the Town of Warwick Comprehensive Plan.<sup>EN(63)</sup>
- (2) Map: concerning a proposed amendment involving a change in the Zoning Map:
  - (a) Whether the use permitted by the proposed change would be appropriate in the area concerned.
  - (b) Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such change.

- (c) Whether the proposed change is in accord with any existing or proposed plans in the vicinity.
  - (d) The effect of the proposed amendment upon the growth of the Town as envisaged by the Town of Warwick Comprehensive Plan.
  - (e) Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the Town and the probable effect thereof.
- B. Fee. Each petition to amend this chapter shall be accompanied by a fee payable to the Town Clerk upon the filing thereof in an amount as determined by Chapter 75, Development Fees.
- C. Notice of public hearing. By resolution adopted at a stated meeting, the Town Board shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given in accordance with provisions of §§ 264 and 265 of the Town Law.
- D. Notification of adjacent municipalities and other agencies. Should any proposed amendment consist of or include any of the conditions prescribed in Town Law § 264, the Town Clerk shall transmit to the municipality or municipalities or agencies a written notice of the public hearing at least 10 days prior to the date of public hearing as prescribed by Town Law § 264.
- E. Referral to county. See § 164-40E.
- F. Contents of notice. All notices of public hearing shall specify:
  - (1) The nature of any proposed amendment;
  - (2) The land or district affected; and
  - (3) The date when, and the place where, the public hearing will be held.
- G. Protest. In the case of a protest against any amendment, such amendment shall not become effective except in accordance with the provisions of § 265 of the Town Law.

---

## **ARTICLE VII, Miscellaneous Provisions**

---

### **§ 164-70. Conflict with other laws.**

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except where specifically provided to the contrary, it is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued

pursuant to law relating to the use of buildings, structures, shelters or premises, nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or requires larger open spaces than are imposed or required by any other statute, ordinance, rule, regulation or permit, or by any easement or agreement, the provisions of this chapter shall control. In the event of any conflict between any provisions of this chapter, the more restrictive provisions shall control.

**§ 164-71. Short title.**

This chapter shall be known and may be cited by the short title of the "2001 Zoning Law of the Town of Warwick, New York."

**§ 164-72. Conflict with other Code provisions.**

In each instance in which a provision of this chapter shall contradict or be inconsistent with a provision of the Town of Warwick Municipal Code, the provisions contained in this chapter shall govern and prevail.

**§ 164-73. Applications submitted and permits issued before adoption of chapter.**

- A. Eligibility. The Planning Board shall be empowered to continue its consideration and determination of subdivision applications now before the Board under the current Zoning Law known as the "1989 Zoning Law of the Town of Warwick, New York," and as thereafter amended, in the following circumstances:
  - (1) On the effective date of this chapter, the Deputy Town Attorney shall certify a list of all subdivision applications which have previously been made to the Board prior to January 2001, and accepted as substantially complete, and appeared before the Board within the three-month period prior to December 31, 2000, or have obtained preliminary subdivision approval and filed an application for final subdivision approval.
  - (2) For the purpose of this section, an application shall be deemed to be complete if it, together with all supporting documents and materials, was filed with the Planning Board prior to January 2001 and substantially meets the requirements of this chapter and Planning Board rules and regulations in effect at the time of the submission.
- B. Due diligence.
  - (1) The Planning Board and the applicant shall confer within 45 days of the effective date of this chapter and make a written determination of actions that are required to be

completed, in order to allow the Board to make its determination on the matters pending before the Board, and a schedule for undertaking and completing such actions.

- (2) It shall be the responsibility of each applicant whose application is pending before the Board to appear at each meeting or workshop of the Planning Board as scheduled.
- (3) In the event that action is not scheduled to be undertaken upon an application at a Planning Board meeting, or if the applicant does not appear to report upon the status of the application, the applicant shall submit to the Planning Board a written statement prior to the meeting, indicating the current status of all items related to the application pending before the Board and the reason, if any, that no action could be taken at that Board meeting.
- (4) Failure to appear before the Board at any regularly scheduled meeting, or in lieu of appearance, to submit a written status report in a timely manner that reasonably explains the applicant's failure to appear, shall be presumed to be a withdrawal of the pending application, and the application shall be deemed withdrawn at the conclusion of such meeting, with prejudice to its submission under the provision of this section.
- (5) The Planning Board may waive the provisions of Subsection B(4) immediately above upon presentation by the applicant of sufficient evidence of due diligence or excuse at the next meeting of the Board.

C. Filing deadline. The terms of the "1989 Zoning Law of the Town of Warwick, New York," in effect at the time of acceptance of any application that is still pending before the Board under the provision of this section must receive complete approval by the Planning Board and have a map filed in the Orange County Clerk's office by January 1, 2004. After such time, all such applications shall be subject to the Zoning Law then in effect, unless the Planning Board shall find:

- (1) That the application would have been approved but for the inability of the applicant to obtain one or more necessary permits or approvals from any other governmental entity;  
or
- (2) That the applicant has acted in good faith and with due diligence to obtain such permit.

D. Construction deadline. All permits issued under the "1989 Zoning Law of the Town of Warwick, New York," shall expire unless construction shall have been diligently prosecuted within two years of the date of the adoption of this chapter. Any extensions may be granted on approval of the Building Inspector for an additional eighteen-month period. After such time, all such permits shall be subject to the Zoning Law then in effect, unless the Planning Board finds just cause for additional extensions.

**§ 164-74. Fees in lieu of park land.**

- A. Purpose. The Town of Warwick finds that each residential unit developed in the Town contributes to the need for parks, playgrounds, and recreational facilities. The Town has chosen to develop an overall recreational plan on a Town-wide basis to better serve the need for park or recreational needs in all neighborhoods of the Town. Therefore, the Town shall require fees in lieu of land in all cases, either for new residential lots or new residential units approved in site plans. Such fees, as may be set from time to time by resolution of the Town Board, shall be due at the time of approval.
- B. Nothing herein shall prevent the Town Board from accepting land in lieu of fees, or waiving or partially waiving such fees in appropriate cases.

**§ 164-74.1. Waivers.**

- A. Where the Board finds that compliance with the subdivision or site design standards or guidelines herein would cause unusual hardship or extraordinary difficulties due to exceptional conditions of topography, access, location, shape, or other physical features of the site, the minimum requirements of these regulations may be waived or modified in order to mitigate the hardship, provided that the public interest is protected, the subdivision or site plan is in keeping with the general spirit and intent of these regulations and full compliance with SEQR is still provided.
- B. No such waiver or modification may be granted if it would have the effect of nullifying the intent and purpose of this chapter, the Comprehensive Plan<sup>EN(64)</sup> or these regulations. No waiver or modification may be granted of a bulk or use regulation, a special use permit condition, a regulation of general applicability or any matter a waiver of which is specifically prohibited in these regulations or other provisions of the Town of Warwick Code. [Amended 1-24-2002 by L.L. No. 2-2002]
- C. The Board may, in granting waivers of modifications to these subdivision or site design standards or guidelines herein, incorporate such reasonable conditions as will, in its judgment, substantially secure the objectives of the requirements so waived.
- D. No waiver or modification may be deemed approved or granted by implication. All waivers and modifications must be expressly set forth in the minutes of the Board.

**§ 164-74.2. Temporary uses following disasters. [Added 1-24-2002 by L.L. No. 2-2002; amended 9-11-2003 by L.L. No. 4-2003]**

- A. Purpose. Ordinary Town review processes may cause significant delay and may even

preclude existing businesses and residences from continuing to function when unexpected and sudden disasters require relocation or other immediate changes in operations. These rules are intended to allow for the continuation of lawfully existing businesses and residences following disasters, while providing interim standards for protecting the health, safety, and general welfare of the people.

B. Permit requirements. A temporary six-month permit may be issued by the Town of Warwick Building Department for lawfully existing business or residential uses and/or facilities following a disaster in accordance with the rules and conditions stated herein. Any such permit shall be revocable in the event of any imminent danger or following notice and a hearing.

- (1) The use must be a lawfully existing use in the zoning district.
- (2) The need for temporary use of facilities must be occasioned by fire, flood, wind, or similar catastrophic forces.
- (3) The temporary use must have reasonable facilities for parking, access, safety, and other regulatory requirements as determined by the Building Department upon consultation with professional staff.
- (4) No new permanent buildings or structures shall be constructed pursuant to a temporary permit.
- (5) No such use shall continue for a period in excess of six months unless formal application is made within three months of the commencement of such uses.
- (6) No rights shall accrue to the temporary use of facilities as a result of the issuance of a temporary permit.

---

## **ARTICLE VIII, Wireless Telecommunications**

---

### **§ 164-75. Purpose; consistency with federal regulations.**

A. Purpose. The purpose of this article is to establish predictable and balanced regulations for the siting and screening of wireless telecommunications facilities in order to accommodate the growth of telecommunications services within the Town. Said regulations are intended to maximize the use of existing towers, tall buildings and other high structures to reduce the number of new towers needed to serve the community; avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and protect the natural features and aesthetic character of the Town, with special attention to

open space, mountain ridges, recreation areas, scenic roads, viewsheds and historic sites, through careful design, siting, landscaping, screening and innovative camouflaging techniques.

- B. Consistency with federal regulations. These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, (PWS) nor shall they be used to discriminate among providers of functionally equivalent services, consistent with federal regulations.

### **§ 164-76. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**ABOVE GROUND LEVEL (AGL)** -- A measurement of height from the natural grade of a site to the highest point of a structure.

**CAMOUFLAGED** -- A wireless telecommunications facility that is disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure or completely hidden by surrounding vegetation is considered camouflaged.

**CARRIER** -- A company, licensed by the Federal Communications Commission (FCC), that provides personal wireless services.

**COLLOCATION** -- The use of a single wireless telecommunications facility, either on the ground or on an existing building or structure, by more than one wireless communications carrier.

**EQUIPMENT SHELTER** -- An enclosed structure, cabinet, shed or box at the base of the mount within which is housed the electronic receiving and relay equipment for a wireless telecommunications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage or broadcast studios.

**FALL ZONES** -- The area on the ground within a prescribed radius from the base of a wireless telecommunications facility. 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.

**LICENSED CARRIER** -- A company authorized by the FCC to construct and operate a commercial mobile radio services system.

**MONOPOLE** -- A self-supporting mount constructed of a single shaft of wood, steel or concrete with below-grade foundations and a platform (or racks) for panel antennas arrayed at the top.

**MOUNT** -- The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. **ROOF-MOUNTED** -- Mounted on the roof of a building.
- B. **SIDE-MOUNTED** -- Mounted on the side of a building.
- C. **STRUCTURE-MOUNTED** -- Mounted on a structure other than a building.
- D. **GROUND-MOUNTED** -- Mounted on the ground.

**PROFESSIONAL ENGINEER** -- New York State licensed professional engineer. [Amended 1-24-2002 by L.L. No. 2-2002]

**RADIO FREQUENCY RADIATION** -- The emissions from wireless telecommunications facilities.

**RADIO FREQUENCY TECHNICAL EXPERT** -- A certified or licensed radio frequency engineer specializing in electrical or microwave engineering, especially the study of radio frequencies. [Added 1-24-2002 by L.L. No. 2-2002]

**REPEATER** -- A small receiver/relay transmitter of not more than 20 watts' output designed to provide service to areas which are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless telecommunications network.

**SECURITY BARRIER** -- A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

**SEPARATION** -- The distance between one carrier's array of antennas and another carrier's array.

**WIRELESS TELECOMMUNICATIONS ANTENNA** -- An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission, including but not limited to whip, panel and dish telecommunications antennas.

**WIRELESS TELECOMMUNICATIONS FACILITY** -- A facility for the provision of wireless telecommunications services, as defined by the Telecommunications Act of 1996, and usually consisting of an equipment shelter, a mount and/or antenna(s). Repeaters shall be included in the

definition of wireless telecommunications facilities.

**WIRELESS TELECOMMUNICATIONS SERVICES** -- The three types of services regulated by this article: commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services. These services include cellular, personal communication services (PCS), enhanced specialized mobile radio, specialized mobile radio and paging. Excluded from this definition are services used for fire, police and other dispatch communications or exclusively for private radio and television reception and private citizens bands, amateur radio and other similar private, residential communications.

**§ 164-77. District regulations.**

- A. Use regulations. A wireless telecommunications facility shall require a building permit in all cases.
- (1) Permitted uses, existing structures. A wireless telecommunications facility may be permitted to locate on any existing guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo or other innovative use of appropriate existing structures (as determined by the Planning Board), provided that there is no increase in the height of the existing structure as a result of the installation of the facility. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in accordance with § 164-46 of this chapter.
  - (2) Permitted uses, existing buildings. A wireless telecommunications facility may be permitted to locate on any existing building, with the exception of a designated historic structure, provided that the installation of the new facility does not increase the height of the existing building by more than 10 feet. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in accordance with § 164-46.
  - (3) Permitted uses, existing utility structures. A wireless telecommunications facility may be permitted to locate on any existing electric utility transmission and distribution tower, telephone pole and similar existing utility structure, provided that the installation of the new facility does not increase the height of the existing structure by more than 20 feet. These facilities may locate in all areas of the Town, where they are permitted by zoning, except within 250 feet of a designated historic structure or within 150 feet of the right-of-way of any scenic road as identified in the Town of Warwick Comprehensive Plan.<sup>EN(65)</sup> Such facilities may locate within 150 feet of the right-of-way of any scenic road, as identified in the Town of Warwick Comprehensive Plan, provided that the new facility does not increase the height of the existing structure. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in

accordance with § 164-46.

- (4) Special use permit. A wireless telecommunications facility involving construction of one or more ground mounts shall require a special use permit. A special use permit may be granted, provided that the proposed use complies with the height and setback requirements of § 164-77C and the special use permit regulations set forth in § 164-79, 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 tower does not protrude over the ridgeline. The Town of Warwick defines the placement, construction and modification of a wireless telecommunications facility requiring a special use permit as a Type 1 action under the New York State Environmental Quality Review Act (SEQR).

B. Location. Wireless telecommunications facilities shall only be located, upon the grant of site plan approval and, as applicable, a special use permit, on property which allows public utility, radio and television transmission antennas, as set forth in Article IV of this chapter. Applicants seeking approval for wireless telecommunications facilities shall comply with the following:

- (1) New wireless telecommunications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, 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 use of existing telephone and electric utility structures as sites for one or more wireless telecommunications facilities. If an existing tower is not feasible, the applicant shall have the burden of proving that there are no feasible existing structures on which to locate. [Amended 1-24-2002 by L.L. No. 2-2002]
- (2) If the applicant clearly proves that it is not feasible to locate on an existing structure, wireless telecommunications facilities shall be 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 and the use of stealth technology to disguise the facility as specified in § 164-79A and as determined by the Planning Board. [Amended 1-24-2002 by L.L. No. 2-2002]
- (3) The applicant must submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or special use permit.

C. Dimensional requirements. Wireless telecommunications facilities shall comply with the following requirements:

- (1) Height. Maximum height of a wireless telecommunications facility is limited to 120 feet above ground level (AGL). The Zoning Board of Appeals may allow wireless telecommunications facilities up to 199 feet if an independent radio frequency

consultant determines that adequate coverage would not be provided by a tower up to 120 feet and if the applicant can demonstrate that, based upon topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be minimized. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely camouflaged or is located on an existing utility structure.

- (2) Setbacks. All wireless telecommunications facilities and their equipment shelters shall comply with the following requirements: [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]
  - (a) To ensure public safety, the minimum distance from the base of any ground-mounted wireless telecommunications facility to any property line, road, habitable dwelling, business or institutional use, accessory structure or public recreation area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the fall zone. Additional setbacks may be required by the Planning Board to provide for the public safety.
  - (b) In the event that an existing structure or building is proposed as a mount for a wireless telecommunications facility, a fall zone shall be required unless the Planning Board finds that a substantially better design will result from a reduced setback. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

#### **§ 164-78. Performance standards.**

All wireless telecommunications facilities shall comply with the performance standards set forth in this section.

##### **A. Camouflage.**

- (1) All wireless telecommunications facilities shall be designed to blend into the surrounding environment through the use of design and color except in such instances where color is dictated by federal or state authorities, such as the Federal Aviation Administration.
- (2) A wireless telecommunications facility which is roof-mounted on a building shall be concealed within or behind existing architectural features to limit its visibility from public ways and shall be stepped back from the front facade in order to limit its impact on the building's silhouette.
- (3) A wireless telecommunications facility which is side-mounted on a building shall be

painted or constructed of materials to match the color of the building material directly behind it.

- (4) The use of stealth technology to camouflage new ground mounts is required as specified in § 164-79A. [Amended 1-24-2002 by L.L. No. 2-2002]

- B. Lighting. Wireless telecommunications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority.
- C. Noise. Roof-mounted or side-mounted equipment for wireless telecommunications facilities shall not generate noise in excess of 50 dB at ground level at the base of the building closest to the antenna, including standby power generation equipment. [Amended 1-24-2002 by L.L. No. 2-2002]
- D. Radio frequency radiation (RFR) standards. All equipment proposed for a wireless telecommunications facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines). The owner of the facility shall submit evidence of compliance with the FCC standards on a yearly basis to the Planning Board. If new, more restrictive standards are adopted by any appropriate federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and/or operator of the facility.

#### **§ 164-79. Special use permit regulations.**

All wireless telecommunications facilities requiring a special use permit shall comply with the regulations set forth in this section, in addition to those found in § 164-46.

##### **A. Design standards.**

- (1) Camouflage. The wireless telecommunications facility shall be designed to eliminate, to the greatest extent possible, the visibility of the proposed facility as viewed from a residence, public road or pathway, or public area by means of concealment, camouflage, disguise, or placement. The applicant shall make every available effort to ensure that the visibility of the proposed wireless telecommunications facility is slight or nonexistent. Wireless telecommunications facilities shall be camouflaged by vegetation and/or design as follows: [Amended 1-24-2002 by L.L. No. 2-2002]
  - (a) Camouflage by vegetation. If wireless telecommunications facilities are not camouflaged from public viewing by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted wireless

telecommunications facilities shall provide a vegetative buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility, or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

- (b) Camouflage by design. In open areas, wireless telecommunications facilities shall be camouflaged to resemble or mimic a native coniferous species of tree or by other means, such as new construction of a silo, flagpole, clock tower, bell tower, cross tower, steeple or other innovative replication of a structure that would be consistent with the character of the community as determined by the Planning Board.
- (2) Lighting. Wireless telecommunications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority. Security lighting of equipment structures and other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.25 initial footcandles when measured at grade. [Amended 1-24-2002 by L.L. No. 2-2002]
- (3) Signs.
  - (a) Signs shall be limited to those needed to identify the property and the owner and to warn of any danger. No advertising is permitted anywhere on the facility, with the exception of the identification signage. All signs shall comply with the requirements of the Town's sign regulations.
  - (b) All ground-mounted wireless telecommunications facilities shall be surrounded by a security barrier which shall be posted with "no trespassing" signs. A twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. If high voltage is necessary for the operation of equipment within the facility, signs shall be posted stating "Danger-High Voltage."
- (4) Equipment shelters. Equipment shelters for wireless telecommunications facilities shall be designed consistent with one of the following design standards:
  - (a) Equipment shelters shall be located in underground vaults; or
  - (b) Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Planning Board; or
  - (c) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Planning Board shall determine the types of plant materials and depth of the needed buffer based on site

conditions.

- (5) Accessory structures. Accessory structures for wireless telecommunications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the telecommunications facility and meet the following requirements:
  - (a) Accessory structures may not include office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless telecommunications transmissions.
  - (b) Accessory structures must be less than 500 square feet and 15 feet in height.
  - (c) Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height to the proposed structure.
  - (d) In residential zones, the use of compatible building materials, such as wood, brick or stucco, is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Planning Board. In no case will metal exteriors be allowed for accessory structures.
- (6) Scenic landscapes and vistas. Wireless telecommunications facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. As required in § 164-75D(1)(a)[2], all ground-mounted wireless telecommunications facilities shall be surrounded by a buffer of dense tree growth or shall be camouflaged by design to minimize the adverse visual and aesthetic impact.

B. Environmental standards.

- (1) Wireless telecommunications facilities shall not be located in wetlands or in regulated wetland buffer areas, in endangered, threatened, or special concern species habitats, water bodies, historic, or archaeological sites.
- (2) No hazardous waste shall be discharged on the site of any wireless telecommunications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- (3) Any increase in stormwater runoff shall be contained on site. [Amended 1-24-2002 by L.L. No. 2-2002]
- (4) Ground-mounted equipment for wireless telecommunications facilities shall not generate noise in excess of 50 dB at the property line, including standby power generation equipment. [Amended 1-24-2002 by L.L. No. 2-2002]

C. Safety standards.

- (1) Radio frequency radiation (RFR) standards. All equipment proposed for a wireless telecommunications facility shall be authorized per the FCC Guidelines. The owner of the facility shall submit evidence of compliance with the FCC Guidelines on a yearly basis to the Planning Board. If new, more restrictive standards are adopted by any appropriate federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and operator of the facility.
- (2) Security barrier. All wireless telecommunications facilities shall be provided with security measures, such as fencing, anti-climbing devices, electronic monitoring and other methods, sufficient to prevent unauthorized entry and vandalism. Fencing shall be solid wood and shall include a locking security gate. Electrified fence, barbed or razor wire shall be prohibited.
- (3) Structural soundness and fall zone. Wireless telecommunications facilities shall be designed by a licensed professional engineer to withstand overturning and failure. In the event of failure, facilities shall be designed so that they will fall within the setback area of the site and/or away from adjacent residential properties. The Planning Board shall require a foundation design and certificate of safety from the carrier to document structural soundness.

**§ 164-80. Application procedures.**

- A. Procedures. The Planning Board is authorized to review and approve, approve with modifications or disapprove site plans and special use permits pursuant to § 164-46 of this chapter. 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 or equipment structure(s). Any decision by the Planning Board to deny or approve a request to place, construct or modify wireless telecommunications facilities shall be in writing and supported by substantial evidence. The Planning Board may seek the advice and recommendations of the Town of Warwick Wireless Facilities Advisory Committee on any application involving the construction or expansion of a wireless facility within the Town. [Amended 1-24-2002 by L.L. No. 2-2002]
- B. Application filing requirements, site plan approval. All applicants for a wireless telecommunications facility shall fulfill the site plan requirements for § 164-46 of this chapter and shall, in addition, provide the following:
  - (1) Proof that the applicant or coapplicant is a licensed carrier or public utility. [Amended 1-24-2002 by L.L. No. 2-2002]



- (2) A statement, certified by a radio frequency technical expert and approved by the Planning Board, that the installation of the proposed antenna, 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 telecommunications, in accordance with FCC standards. [Amended 1-24-2002 by L.L. No. 2-2002]
  - (3) A statement, certified by a professional engineer and approved by the Planning Board, documenting the structural soundness of the wireless telecommunications facility.
  - (4) Proof that the wireless telecommunications facility shall be fully automated and require only occasional maintenance of the facility and site.
  - (5) A report shall be submitted documenting what existing structures, buildings, and utility structures were considered for use as possible sites, the reason and supporting scientific analysis documenting why these existing facilities are inadequate, and what considerations and analysis were made to ensure the minimizing of potential aesthetic impacts when choosing the proposed site. [Added 1-24-2002 by L.L. No. 2-2002]
- C. Application filing requirements, special use permit. Applicants for a special use permit for a wireless telecommunications facility shall fulfill the requirements of a Type 1 action under SEQR and shall, in addition, provide the following:
- (1) A survey of all existing structures, buildings and utility structures within the Town outlining the opportunities for the use of these existing structures and buildings as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless telecommunications facility cannot be accommodated on an existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency engineering to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed 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 collocate may be grounds for denial of the special use permit.
  - (2) The applicant must demonstrate the need for the proposed facility showing the impracticality of upgrading or expanding an existing site and must project facility expansion needs within the Town for a minimum of five years. [Amended 1-24-2002 by L.L. No. 2-2002]
  - (3) Proposed location of antenna, mount (include latitude and longitude) and equipment shelter(s), with total elevation dimensions and AGL of the highest point. [Amended

1-24-2002 by L.L. No. 2-2002]

- (4) Proposed security barrier, indicating type and extent as well as point of controlled entry.
- (5) Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless telecommunications facility at full buildout, including representations of the proposed mount, antennas, equipment shelters, cable runs, driveways, parking areas and any other construction or development attendant to the wireless telecommunications facility. If the security barrier will block views of the wireless telecommunications facility, the barrier drawing shall be cut away to show the view behind the barrier.
- (6) Materials of the proposed facility 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.
- (7) Colors of the proposed facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables, as well as cable runs, and security barrier.
- (8) 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.
- (9) The following material shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility:
  - (a) 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 state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, scenic roads and scenic viewsheds identified in the Town of Warwick Comprehensive Plan<sup>EN(66)</sup> and from any other location where the site is visible to residents or visitors. The Planning Board shall determine the key viewpoints from which the site shall be photographed. [Amended 1-24-2002 by L.L. No. 2-2002]
  - (b) Proposed (after condition) simulations. Each of the existing condition photographs shall have the proposed wireless telecommunications facility superimposed on to it to show what would be seen from the key viewpoints if the proposed facility is built.
- (10) Within 21 days of filing an application for a special use permit, the applicant shall arrange to fly, or raise upon a temporary crane, a six-foot brightly colored balloon at the subject site to illustrate the height of the proposed facility. The dates, (including a second date in case of poor visibility or unfavorable wind conditions), times, and location of such tests shall be advertised in the official newspaper of the Town at seven

and 14 days prior to the tests. The applicant shall meet with the Planning Board prior to arranging for the balloon tests to review and agree upon acceptable dates, times and locations from which the photographs shall be taken.

- D. Waivers. The Planning Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed wireless telecommunications facility.

#### **§ 164-81. Collocation requirements.**

All wireless telecommunications facilities requiring a special use permit shall comply with the following requirements:

- A. Location of other facilities. Applicants shall provide a Town-wide map showing the location of other existing, approved, or proposed wireless telecommunications facilities within the Town of Warwick and all bordering municipalities inside and outside New York State outlining opportunities for collocation use as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless telecommunications facility cannot be accommodated on an existing, approved, or proposed telecommunications tower, structure or facility due to one or more of the following reasons:
- (1) The antenna would exceed the structural capacity of the existing, approved, or proposed wireless telecommunications facility, as documented by a qualified professional engineer, and the existing, approved, or proposed facility cannot be reinforced, modified or replaced to accommodate the planned or equivalent antenna at a reasonable cost.
  - (2) The antenna would exceed the structural capacity of the existing, approved, or proposed wireless telecommunications facility, as documented by a qualified radio frequency expert, and the existing, approved, or proposed facility cannot be reinforced, modified or replaced to accommodate the planned or equivalent antenna at a reasonable cost.  
[Amended 1-24-2002 by L.L. No. 2-2002]
  - (3) Existing, approved, or proposed wireless telecommunications facilities cannot accommodate the antenna at a height necessary to function as documented by a qualified radio frequency expert. [Amended 1-24-2002 by L.L. No. 2-2002]
  - (4) Other foreseen reasons that make it not feasible to locate the antenna upon an existing, approved, or proposed wireless telecommunications facility. In the event that collocation is not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of RF engineering to verify if collocation is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the

expense of the applicant.

- B. Provision for new facilities. Any proposed ground-mounted wireless telecommunications facility shall be designed, structurally, electrically and in all 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 at 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 height. The applicant shall submit to the Planning Board a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed facility by any wireless service providers in the future. The issuance of a permit (assuming the facility is approved according to this section) shall commit the new facility owner and his/her successors in interest to:
- (1) Respect 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 facility by other wireless service providers.
  - (3) Allow shared use of the new facility if another wireless service provider agrees in writing to pay charges.
  - (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 depreciation and all of the costs of adapting the facility to accommodate a shared user without causing electromagnetic interference.
- C. Intermunicipal cooperation. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing wireless telecommunications facility in a neighboring municipality be considered for shared use, the Planning Board shall require that:
- (1) An applicant who proposes a new wireless telecommunications facility shall notify in writing the legislative body of each municipality that borders the Town and the County Planning Board. Notification shall include the exact location of the proposed facility and the general description of the project, including, but not limited to, the height of the facility and its capacity for future shared use.
  - (2) Documentation of this notification shall be submitted to the Planning Board at the time of application.

## **§ 164-82. Modifications.**

A modification of a wireless telecommunications facility may be considered equivalent to an application for a new facility and will require a special use permit when the following events apply:

- A. Alterations. The applicant intends to alter the terms of the special use permit by changing the number of facilities permitted on site or by changing the technology used for the facility.
- B. Additions. The applicant intends to add any equipment or additional height not specified in the original design filing.

**§ 164-83. Monitoring and maintenance.**

- A. Monitoring. After the wireless telecommunications facility is operational, the applicant shall submit, within 90 days of beginning operations and at annual intervals from the date of issuance of the special use permit, the following:
  - (1) Existing measurements of RFR from the wireless telecommunications facility.  
[Amended 1-24-2002 by L.L. No. 2-2002]
  - (2) Existing measurements of noise from the wireless telecommunications facility. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards section of this article.
- B. Maintenance. Wireless telecommunications facilities shall be structurally inspected annually and certified by a professional engineer. The scope of the inspection shall be approved by the Planning Board, and a copy of the resulting inspection report shall be submitted to the Town of Warwick Building Inspector annually. [Amended 1-24-2002 by L.L. No. 2-2002; 9-11-2003 by L.L. No. 4-2003]

**§ 164-84. Abandonment or discontinuation of use.**

- A. Abandonment. Any wireless telecommunications facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the facility shall physically remove it within 90 days of a receipt of notice. Physically remove shall include, but not be limited to:
  - (1) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - (3) Restoring the location of the facility to its natural condition, with the exception of

landscaping and grading.

- B. If the carrier fails to remove the facility in accordance with this section of this chapter, the Town will have the authority to enter the property and remove the facility, with the costs of removal assessed against the property.

**§ 164-85. Reconstruction or replacement of existing towers and monopoles. [Amended 1-24-2002 by L.L. No. 2-2002]**

No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility.

**§ 164-86. Term of special use permit. [Amended 1-24-2002 by L.L. No. 2-2002]**

A special use permit issued for any wireless telecommunications facility shall be valid for five years. At the end of that time period, the wireless telecommunications facility shall be removed by the carrier or a new special use permit shall be required. In reviewing the new application for a special use permit, the Planning Board shall determine whether the technology in the provision of the facility 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. Upon initial issuance of a special use permit for a wireless telecommunications facility, the new facility shall be put into operation within two years of approval of the special use permit. If the facility is not in operation within this time frame, the special use permit shall expire. The project will be reviewed as a new application if the special use permit is allowed to expire.

## **Endnotes**

### **1 (Popup - Popup)**

Editor's Note: See Ch. 54, Agricultural and Open Space Preservation and Acquisition.

### **2 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **3 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

### **4 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **5 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **6 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **7 (Popup - Popup)**

Editor's Note: The Zoning Map is on file in the office of the Town Clerk.

### **8 (Popup - Popup)**

Editor's Note: The Table of Use Requirements and the Table of Bulk Requirements are included at the end of this chapter.

### **9 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

### **10 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **11 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **12 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **13 (Popup - Popup)**

Editor's Note: See Ch. 175, Development Fees.

### **14 (Popup - Popup)**

Editor's Note: Table ECF is included in § 164-41.3.

### **15 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **16 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **17 (Popup - Popup)**

Editor's Note: Figure 1c, Potential Development Areas, is included at the end of this chapter.

### **18 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

### **19 (Popup - Popup)**

Editor's Note: See Ch. 75, Development Fees.

### **20 (Popup - Popup)**

Editor's Note: See Ch. A168, Street Specifications.

### **21 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **22 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **23 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

### **24 (Popup - Popup)**

Editor's Note: Former Subsection G, Required setbacks from cemeteries, which immediately followed, was repealed 9-11-2003 by L.L. No. 4-2003.

### **25 (Popup - Popup)**



Editor's Note: See Subsection C, Exempt signs, of this section.

**26 (Popup - Popup)**

Editor's Note: The illustration is included at the end of the chapter.

**27 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**28 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

**29 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**30 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

**31 (Popup - Popup)**

Editor's Note: The Design Guidelines are on file in the office of the Town Clerk.

**32 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**33 (Popup - Popup)**

Editor's Note: The Design Guidelines are on file in the office of the Town Clerk.

**34 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**35 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

**36 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

**37 (Popup - Popup)**

Editor's Note: Former Subsection J(12), which provided that an accessory professional office or studio must be incidental to the residential use of the premises and be carried on by the resident

therein, was repealed 1-24-2002 by L.L. No. 2-2002.

### **38 (Popup - Popup)**

Editor's Note: Former Subsection J(13), which provided that an accessory professional office or studio shall not occupy more than 40% of the area of the ground floor of the main building, was repealed 1-24-2002 by L.L. No. 2-2002.

### **39 (Popup - Popup)**

Editor's Note: Former Subsection J(27), which provided that an annual outdoor recreation membership club must be incorporated pursuant to statute and cater exclusively to members and their guests, was repealed 1-24-2002 by L.L. No. 2-2002.

### **40 (Popup - Popup)**

Editor's Note: The Design Guidelines are on file in the office of the Town Clerk.

### **41 (Popup - Popup)**

Editor's Note: Former Subsection J(79), as amended 1-24-2002 by L.L. No. 2-2002, which provided that a special permit shall be required for accessory apartments in the TN-O and LB Zones, was repealed 9-11-2003 by L.L. No. 4-2003.

### **42 (Popup - Popup)**

Editor's Note: Former Subsection J(83), which provided that one-family detached dwellings shall not exceed one such dwelling on each lot, was repealed 1-24-2002 by L.L. No. 2-2002.

### **43 (Popup - Popup)**

Editor's Note: The Design Guidelines are on file in the office of the Town Clerk.

### **44 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

### **45 (Popup - Popup)**

Editor's Note: Former Subsection J(139), which provided that all applicable portions of §164-48, Performance standards, shall pertain, was repealed 1-24-2002 by L.L. No. 2-2002.

### **46 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

### **47 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**48 (Popup - Popup)**

Editor's Note: The Table of Bulk Requirements is included at the end of this chapter.

**49 (Popup - Popup)**

Editor's Note: The three subsections which immediately follow were originally designated as Subsection C(3)(g), (h) and (i). They were redesignated as Subsection C(3)(h), (i) and (j) 10-24-2002 by L.L. No. 6-2002.

**50 (Popup - Popup)**

Editor's Note: Table 1, Attributes of Streets in the Traditional Neighborhood District, follows Subsection E(4)(a)[4].

**51 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**52 (Popup - Popup)**

Editor's Note: See the Table of Bulk Requirements included at the end of this chapter.

**53 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**54 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**55 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**56 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**57 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**58 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**59 (Popup - Popup)**

Editor's Note: The Design Guidelines are on file in the office of the Town Clerk.

**60 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**61 (Popup - Popup)**

Editor's Note: The Table of Use Requirements is included at the end of this chapter.

**62 (Popup - Popup)**

Editor's Note: See Environmental Conservation Law § 8-0101 et seq.

**63 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**64 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**65 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.

**66 (Popup - Popup)**

Editor's Note: The Comprehensive Plan is on file in the office of the Town Clerk.