

Zoning Ordinance

Town of Cherry Creek

Cherry Creek, N.Y.

Sept. 1, 1972

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ZONING ORDINANCE
Town of Cherry Creek
Chautauqua County
State of New York

An ordinance regulating and restricting the location, construction, and use of buildings, structures, and the use of land in the Town of Cherry Creek and for said purposes dividing the town into districts.

The Town Board of the Town of Cherry Creek in the County of Chautauqua, under the authority of the Town Law of the State of New York, hereby ordains, enacts and publishes as follows:

I PURPOSE

It is realized that uncontrolled growth results in many problems which can be alleviated by a zoning ordinance governing the best possible use of land and buildings. Whereas the present status of the Town of Cherry Creek must be maintained and the future health and economic growth developed, this ordinance involves the establishment of the following standards:

- 1 Protecting existing properties.
- 2 Establishing districts and naming them.
- 3 Regulating construction of buildings.
- 4 Regulating the use of land areas.

II DEFINITIONS

ACCESSORY USE--A use incidental to the principal use of a building. In buildings restricted to residence use, the office of a professional man, customary family occupations and workshops not conducted for compensation, shall be deemed accessory uses.

AGRICULTURAL USE--Land, including necessary buildings and structures, that has as its principal use the raising or keeping of livestock or the growing of crops in the open.

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.

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.

BUILDING, ACCESSORY--A supplemental building, the use of which is incidental to that of a main or principal building and located on the same lot therewith.

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.

BUILDING, HEIGHT--The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, the deck line of mansard roofs, and to the mean height between eaves and

ridge for gable, hip and gambrel roofs.

DEPENDANT MOBILE HOME--One which does not have direct sewer facilities-- is self contained.

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 automobile court, rooming house or tourist home.

FAMILY--One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

FARM--Any parcel of land which is used for gain in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.

FLOOD PLAIN--Area subject to periodic flooding due to location or topographic characteristics and may require emergency service by the public when flooding occurs.

GARAGE, PRIVATE--A garage used for storage purposes only and having a capacity of not more than four 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.

HOME OCCUPATION--Any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The conduction of a clinic, hospital, tea room, tourist home, animal hospital or any similar use shall not be deemed to be a home occupation.

HOME, MOBILE--Any portable or mobile vehicle used or designed to be used for living purposes.

LOT--A portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use, and the customary accessories and open spaces belonging to the same.

LOT, DEPTH OF--The mean distance from the street line of the lot to its opposite rear line measured in the general direction of its side lot lines.

LOT, WIDTH OF--The mean width measured at right angles to its depth.

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

MOBILE HOME PARK--A plot or parcel of ground which is manifestly arranged and furnished to provide the space, facilities, and access for mobile homes as required herein.

NONCONFORMING USE--A building, structure or use of land existing at the time of enactment of this ordinance, and which does not conform to the regulations of the district or zone in which it is situated.

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

YARD, FRONT--An open unoccupied space on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot.

YARD, REAR--An open unoccupied space on the same lot with the building between the rear line of the building and rear line of the lot and extending the full width of the lot.

YARD, SIDE--An open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

III ESTABLISHMENT OF DISTRICTS

For the purpose of promoting the public health, safety, morals, and general welfare of the Town of Cherry Creek, the town is hereby divided into the following types of districts as suitable for:

- A Agricultural & Commercial (I)
 - B Recreational, Commercial, & Residential (II)
 - *C Residential, Recreational, & Agricultural (III)
- *Not necessarily to include mobile homes.

Districts I & II are suitable for trailer courts.

Such districts are bounded as shown on a map entitled, ZONING MAP OF TOWN OF CHERRY CREEK, NEW YORK, and adopted September 1, 1972, and certified by the Town Clerk, which accompanies and which with all explanatory matter thereon, is hereby made a part of this ordinance.

IV REGULATIONS

A Application of Regulations

Except as hereinafter provided:

- 1 No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.
- 2 No building shall hereafter be erected or altered
 - a To accommodate or house a greater number of families,
 - b To occupy a greater percentage of lot area, or
 - c To have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.
- 3 No part of a yard or other open space about any building required for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.
- 4 Health Department Rules.
The regulations of the State and County Health Departments with respect to water supply and sewage disposal facilities will apply. The applicant for a building or zoning permit must obtain a copy of the required health department permits for attachment to his application, before the issuance of local approval by the building or zoning inspector.
- 5 Multiple Residence Law
For all dwellings with three or more dwelling units or any dwelling two or more stories in height with five or more roomers, the "Multiple Residence Law", Chapter 61B of the Consolidated Laws, sets forth certain requirements with regard to fire safety, size of rooms, and other minimum health and safety specifications.
- 6 Building Code
No building shall be erected or altered unless it complies

with State Building Codes.

B District Regulations

1 Agricultural (District I & District III)

The following regulations shall apply in any district suitable for agriculture or agricultural operations.

- a Principal uses--all uses of land of a farming nature.
- b There shall be no storage of manure or odor or dust producing substance permitted within one hundred feet of any property line.
- c No agricultural building shall be erected or extended to within 100 feet of any property line.
- d Special consideration may be granted upon application to the Zoning Board of Appeals.

2 Commercial

The following regulations shall apply in any district suitable for commercial use.

- a Principal uses (Retail Business)
 - (1) Stores or shops conducting retail business.
 - (2) Businesses conducting other community services such as banks, theaters, restaurants.
 - (3) Garages and filling stations or other upon approval of the Board of Appeals.
- b Principal uses (Industrial)
 - (1) All uses not otherwise prohibited by law and/or have approval of the Board of Appeals.
- c The following rules apply to all commercial use.
 - (1) Building heights--No restriction.
 - (2) Yards--100 feet side yards and 100 feet front yards.
 - (3) No building is to be erected within 100 feet of any line.
 - (4) The size of the lot is to be determined by the above rules and size of building and/or buildings.
- d Special consideration may be granted upon application to the Zoning Board of Appeals.

3 Residential

The following regulations shall apply in any district suitable for residential use.

- a Principal uses
 - (1) One-family dwelling.
 - (2) Churches and similar places of worship.
 - (3) Public elementary and high schools, public parks, and playgrounds.
 - (4) Customary agricultural operations, provided, however, that no storage of manure or odor or dust producing substance be permitted within one hundred feet of any property line.
 - (5) Hospital or sanitarium for the treatment of human ailments but excluding nursing or convalescent homes and institutions for the insane, feebleminded, epileptic, drug or liquor patients. Any buildings so used shall be not less than 50 feet from the lot line of any adjoining property.
 - (6) Cemetery and the necessary incidental structures, upon approval of the Board of Appeals and subject to such conditions and safeguards as deemed appropriate by such Board and upon the securing of a permit therefore.

- (7) Customary agricultural operations including a garden, nursery, greenhouse and usual farm buildings, subject to the following restrictions:
 - (a) No building in which farm animals are kept shall be closer than 100 feet to any adjoining lot line.
 - (b) No storage of manure or odor or dust-producing substance or use shall be permitted within 100 feet of any adjoining lot line.
 - (c) No greenhouse heating plant shall be operated within 100 feet of any adjoining lot line.
 - (8) Public utility structures necessary for the service of the area.
 - (9) Customary home occupations, provided that there shall be no external evidence of such occupations except a small announcement or professional sign not over four square feet in area.
 - (10) One sign advertising the sale and/or rent of the land or buildings upon which it is located, such sign not to exceed six square feet in area.
 - (11) Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building or use shall be located on the same lot with the principal building. Such permitted accessory uses shall include the following:
 - (a) Living quarters in an accessory garage for domestic employees of the resident of the principal building.
 - (b) Accommodations for not more than four non-transient roomers, provided that no sign is displayed.
 - (c) Parking space--For every dwelling unit intended to house one or more families there shall be provided in connection therewith garage space or parking space for two automobiles to the number of the dwelling units provided in such dwelling.
 - (d) No required front yard shall be used for the open air parking or storage of motor vehicles.
- b Permitted Accessory Uses, Located on the Same Lot with the Permitted Principal Use.
- (1) Private garage.
 - (2) Customary home occupations or professional offices conducted by the resident only, provided that there be no external evidence of such use except an announcement or professional sign not over four square feet in area.
 - (3) Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.
- c Uses Permitted Upon Issuance of a Special Permit.
- (1) Recreation buildings or areas operated by membership clubs for the benefit of their members and not for gain.
 - (2) Private elementary and high schools, institutions of higher education, public libraries, municipal office buildings.

- (3) Philanthropic or eleemosynary institutions.
- (4) Cemetery, airport, camp, hospital, sanitarium, correctional institution, and institution for the insane.
- (5) Private nursery schools.
- (6) Parish house, religious education building, convent, monastery.

d Living Area--600 square feet minimum.

e Building Height Limit

Two-and-one-half stories but not exceeding 35 feet in height; provided, however, that this height limit may be increased one foot for each additional foot that each yard exceeds the minimum required.

f Required Lot Area

Lot area shall be not less than 40,000 square feet and lot width not less than 150 feet.

Lot area must conform to County Board of Health regulations as relates to percolation rate.

g Percentage of Lot Coverage

All buildings, including accessory buildings, shall not cover more than 30 percent of the area of the lot.

h Yards Required

Each lot shall have front, side and rear yards with depths and widths of not less than the following:

(1) Front yard depth--75 feet.

When located on a corner, lot shall be required to comply with front yard requirements on both streets.

(2) Each side yard width--35 feet.

(3) Rear yard depth--50 feet.

i Special consideration may be granted upon application to the Zoning Board of Appeals.

4 Recreational

The following regulations shall apply in any district suitable for recreational use.

a Principal uses--country clubs, snowmobile clubs, rod and gun clubs, saddle clubs, swimming pools, or any other such recreational type organization.

b Any buildings or structures shall conform to commercial or residential requirements depending upon the category to which they pertain.

c Special consideration may be granted upon application to the Zoning Board of Appeals.

C Supplementary Regulations

The provisions of this ordinance shall be subject to such exceptions, additions, or modifications as herein provided by the following supplementary regulations.

1 Uses

a Accessory Uses, Garages

In residential districts, the number of motor vehicles for which space may be provided as accessory to an authorized use shall not exceed two motor vehicles for a one-family or a two-family dwelling. For multiple-family residences, garage space may be provided for one motor vehicle for each family for which such residence is arranged.

b Stripping of Top Soil

No person, firm, or corporation shall strip, excavate or otherwise remove top soil for sale, or for use other than

on the premises from which the same shall be taken except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

c Dwellings on Small Lots

Notwithstanding the limitations imposed by any other provisions of this ordinance, the Board of Appeals may permit erection of a dwelling on any lot (except a lot in an industrial district), separately owned or under contract of sale and containing, at the time of the passage of this ordinance, an area or a width smaller than that required for a one-family dwelling.

2 Height

a Height Exceptions (Other Than Those Specified For Airport Hazard Districts)

The height limitation of this ordinance shall not apply to church spires, belfries, cupolas, penthouses and domes, not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks, bulk heads, 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 percent of the ground floor area of the building.

b Height and Open Space

In any district (or just those specified) any main building may be erected to a height in excess of that specified for the district provided each required front, side, and rear yard is increased one foot for each one foot of such additional height.

c Exceptions, Airport Hazard Districts

Notwithstanding the regulations contained in any part of this ordinance, no exception to the height limit shall be permitted in any district within an airport hazard district, except to the extent that the maximum height limit specified in such airport hazard district exceeds the height limit specified in the use district.

3 Area

a Reduced Lot Area

No lot shall be so reduced in area that any required open space will be smaller than that prescribed in the regulations for the district in which said lot is located.

b Visibility at Intersections

On a corner lot in any residence district no fence, wall, hedge or other structure or planting more than three and one-half feet in height shall be erected, placed, or maintained within the triangular area formed by the intersecting right of way lines and a straight line joining said right of way lines at points which are 30 feet distant from the point of intersection, measured along said right of way.

4 Yards

a Terraces

A paved 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 form 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 from any lot line.

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 window sills, belt courses, cornices, eaves and other architectural features, provided, however, that such features shall not project more than two feet into any required yard.

5 Lots In Two Districts

a Where a district boundary line divides a lot in 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 thirty feet into the more restricted portion, provided the lot has frontage on a street in the less restricted district.

b Where a residential district is bounded by a portion of a business district, any side street extending through such residential district into such business district shall not be used for any business purpose, except as herein set forth. The business structure erected in said business district shall face and open upon the street set aside for business purposes, except that show-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 the 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 structures.

c Garage Entrances

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.

d Side Yard and Rear Yard Transition

Where a lot in a commercial district abuts a lot in a residential district there shall be provided along such abutting lines a yard equal in width or depth to that required in the residential district (or specified dimensions or percentage of lot width or depth).

e Corner Lot Transition

On every corner lot in a residential district there shall be provided on the side street a side yard equal in depth to the required front yard depth on said side street.

6 Off-Street Parking

a Dwelling---at least one parking space for each dwelling unit in the building or buildings.

b Auditorium, stadium, theatre, or other places of public assembly---at least one parking space for each eight seats provided for its patrons, based on maximum seating capacity.

c Hotel---at least one parking space for each three guest

sleeping rooms.

- d Restaurant or other eating place--- at least one parking space for each five seats, except when it is in a building which provides parking space, in which case the number of places already provided may be taken to be available for the restaurant or other eating place.
- e Hospital, sanitarium, or nursing home---at least one parking space for each five patients.
- f Stores---at least one parking space for each 60 square feet of store floor area.
- g Office buildings---at least one parking space for each 300 square feet of office floor area.
- h Industrial or manufacturing establishments---at least one parking space for each 400 square feet of gross floor area or for each two workers.
- i Private club or lodge---one for each ten members.
- j Golf course---six for each hole.
- k Bowling alley---five for each alley.
- l Public swimming pool---one for each forty square feet of pool area.
- m Mortuary or funeral home---one for each seventy-five square feet of floor area.

All parking spaces provided pursuant to this section shall be on the same lot with the building, except that the Board of Appeals may permit the parking spaces to be on a lot within 500 feet of the building, if it determines that it is impractical to provide parking on the same lot with the building.

7 Signs and Outdoor Advertising Structures

- a Signs of a permanent nature for industrial or commercial use shall not exceed thirty-two square feet in size.
- b Signs of a temporary nature, such as real estate, political campaigning, commercial advertising, shall not exceed twelve square feet.
- c The placement of signs when it may infringe on or near other property lines should be taken up with the Board of Appeals.
- d No building shall be used for the purpose of advertising by painting or otherwise. i.e. painting side of barn or building with advertising slogans.

8 Mobile Homes and Mobile Home Parks

a Mobile Homes

Mobile homes, trailers or other habitable vehicles shall be permitted within an approved mobile home park and except when so located in such a park, all mobile homes, trailers, and other habitable vehicles shall conform to the requirements set forth for single family dwellings, including a minimum living area of 600 square feet.

Exceptions:

- 1 The maintenance and use of mobile homes existing in the Town on the effective date of this ordinance may be continued providing the mobile home is not removed from the premises or altered through the addition of accessory structures, or ownership or occupancy transferred.
- 2 Dependent mobile homes, other than recreation or vacation trailers with a special permit, shall not be located within the Town.
- 3 Recreation or vacation trailers may be located and used

in the Town for a period not to exceed 30 consecutive days, providing a special permit has been obtained from the Building Inspector, except in approved campsite areas. Individual recreation trailers owned by the residents of the Town may be stored on the property of the owner provided that no residence is taken therein or business conducted therewith.

4 Exceptions to the above mentioned may be discussed with the Board of Appeals.

b Mobile Home Parks

A mobile home park shall conform to the following requirements:

- 1 Shall be located on a well-drained site properly graded to insure rapid drainage.
- 2 Mobile home spaces shall be provided consisting of a minimum of 40 feet by 100 feet of space which shall be clearly defined.
- 3 There shall be at least a 15 foot clearance between individual mobile homes housed, and between mobile homes and any permanent structure on or adjacent to the park.
- 4 All mobile homes shall abut upon a roadway of not less than 20 feet in width which shall have unobstructed access to a main access route.
- 5 An adequate and tested supply of pure water for drinking and domestic purposes shall be supplied to all mobile home spaces within the park.
- 6 A combined sewage treatment and disposal system shall be provided as recommended and approved by the County Health Department.
- 7 Adequate garbage disposal facilities, as approved by the County Health Department, shall be provided.
- 8 The service facilities and buildings as required by state and county health departments shall be included and maintained in the park.
- 9 Every park shall have a fire protection plan approved by the fire department having local jurisdiction.
- 10 Every park operator shall keep a complete register of occupants which shall be available for inspection at all times by law enforcement and health officials.

9 Flood Plain

a Area

That portion of Town outside of the Village of Cherry Creek located east of N.Y.S. Route 83.

b Restrictions

Building of dwellings or other buildings can be permitted only if applicant shows evidence that location is reasonably free from flood hazards due to: elevation, or the building or use are resistant to damage from flooding, or protection is provided to the main floor.

D Non-Conforming Buildings and Their Uses

The lawful use of any building or land existing at the time of the enactment of this ordinance may be continued although such use does not conform with the provisions of this ordinance.

1 Unsafe Structures

Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition.

2 Alterations

A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50 percent of the assessed full value of the building unless said building is changed to a conforming use.

3 Extension

A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a nonconforming building which existed prior to the enactment of this ordinance shall not be deemed the extension of such nonconforming use.

4 Construction Approved Prior to Adoption of or Amendment to Ordinance

Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit, and the ground story framework of which, including the second tier of beams, shall have been completed within six months of the date of the permit, and which entire building shall be completed according to such plans as filed within one year from date of this ordinance.

5 Restoration

No building damaged by fire or other causes to the extent of more than 50 percent of its assessed full value shall be repaired or rebuilt except in conformity with the regulations of this ordinance.

6. Discontinuance

Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this ordinance.

7 Changes

Once changed to a conforming use no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of the same or higher classification, and such use thereafter shall not be changed to a lower classification.

8 Displacement

No nonconforming use shall be extended to displace a conforming use.

9 District Changes

Whenever the boundaries of a 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.

V ADMINISTRATION

This ordinance shall be enforced by the Building Inspector, who shall be appointed by the Town Board. No building permit or certificate of occupancy shall be issued by him except where all the provisions of this ordinance have been complied with.

A Building Permits

- 1 No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued

by the building inspector. Except upon a written order of the Board of Appeals, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this ordinance.

- 2 There shall be submitted with all applications for building permits two copies of layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this ordinance.
- 3a One copy of such layout or plot plan shall be returned when approved by the building inspector together with such permit to the applicant upon the payment of a minimum fee of \$5.00 for any structure up to \$1000. Any structure over \$1000 to be prorated at \$5.00 per \$1000 up to \$10000. Each \$1000 in excess of \$10000 shall be at the rate of \$1.00 per \$1000 or any fraction thereof.
- b The building inspector shall act on all proper building applications within 15 days after receipt of same.
- c Each building permit shall be valid for a period of one year from date of issuance. For all intent and purposes, the building shall be completed within this period of time.

B Certificate of Occupancy

No land in use and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the building inspector in accordance with the provisions of the ordinance. Under such rules and regulations as may be established by the Zoning Board of Appeals, a temporary certificate of occupancy for not more than 30 days for a part of the building may be issued by the building inspector.

VI BOARD OF APPEALS

A Creation, Appointment, and Organization

The Board of Appeals shall consist of 5 members appointed by the Cherry Creek Town Board. The chairman is to be appointed by the Town Board, and the terms of office are to be for a period of 5 years. The first Board of Appeals members shall hold terms of 5,4,3,2, and 1 years with a new board member being appointed each year for a period of 5 years. It is recommended that one Zoning Board member be a member of the Board of Appeals.

B Powers and Duties

The Board of Appeals shall have all the power and duties prescribed by law and by this ordinance.

1. Interpretation

Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

2 Special Permits

To issue special permits for any of the uses for which this ordinance requires the obtaining of such permits from the Board of Appeals.

3 Variances

To vary or adapt the strict application of any of the requirements

of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance in the strict application of any provision of this ordinance shall be granted by the Board of Appeals unless it finds:

- a That there are special circumstances or conditions, fully described in the findings of the Board, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of such land or buildings.
- b That, for reasons fully set forth in the findings of the Board, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
- c That the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

C Procedure

The Board of Appeals shall act in strict accordance with the procedure specified by law and by this ordinance. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Each appeal application shall be accompanied by a fee of \$10.00. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. At least 10 days before the date of the hearing required by law on an application or appeal to the Board of Appeals, the secretary of said Board shall transmit to the Zoning Board a copy of said application or appeal, together with a copy of the notice of the aforesaid hearing and shall request that the Zoning Board submit to the Board of Appeals its opinion on said application or appeal, and the Zoning Board shall submit a report of such advisory opinion prior to the date of said hearing. Upon failure to submit such report, the Zoning Board shall be deemed to have approved the application or appeal. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

VII AMENDMENTS

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

Every such proposed amendment or change whether initiated by the Town Board or by petition shall be referred to the Zoning Board for report

theron before the public hearing hereinafter provided for. The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

- 1 By publishing a notice of the time and place of such hearing at least 10 days prior to the hearing in the Jamestown Post Journal.
- 2 A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the Public Housing Law, as such area is shown on an approved zoning map filed with the Building Inspector, shall be given to the housing authority erecting or owning the project and to the government providing financial aid for assistance thereto at least 10 days prior to the date of such hearing.
- 3 A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any state park or parkway shall be given to the regional State Park Commission having jurisdiction over such State park or parkway at least 10 days prior to the date of such public hearing.
- 4 A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any city, village, town, or county, shall be given to the clerk of such municipality and to the clerk of the Legislative Board at least 10 days prior to the date of such hearing.
- 5 In case, however, of a protest against such change signed by the owners of twenty percent or more of the area of land included in such proposed change or of that immediately adjacent extending 100 feet therefrom or of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least 4 members of the Town Board.

VIII SEPARABILITY

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof.

IX VIOLATIONS AND PENALTIES

- A Conflict With Other Laws
In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.
- B A violation of this ordinance is an offense punishable by a fine not exceeding \$50 or by imprisonment for a period not exceeding 60 days or by both such fine and imprisonment. Continued violation after a period of 5 days shall be punishable by a fine of \$10 per day until compliance.
- C Whenever a violation of this ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board.

X EFFECTIVE DATE

These regulations shall take effect on September 1, 1972.

ZONING MAP FOR TOWN OF CHERRY CREEK- COUNTY OF CHAUTAUQUA

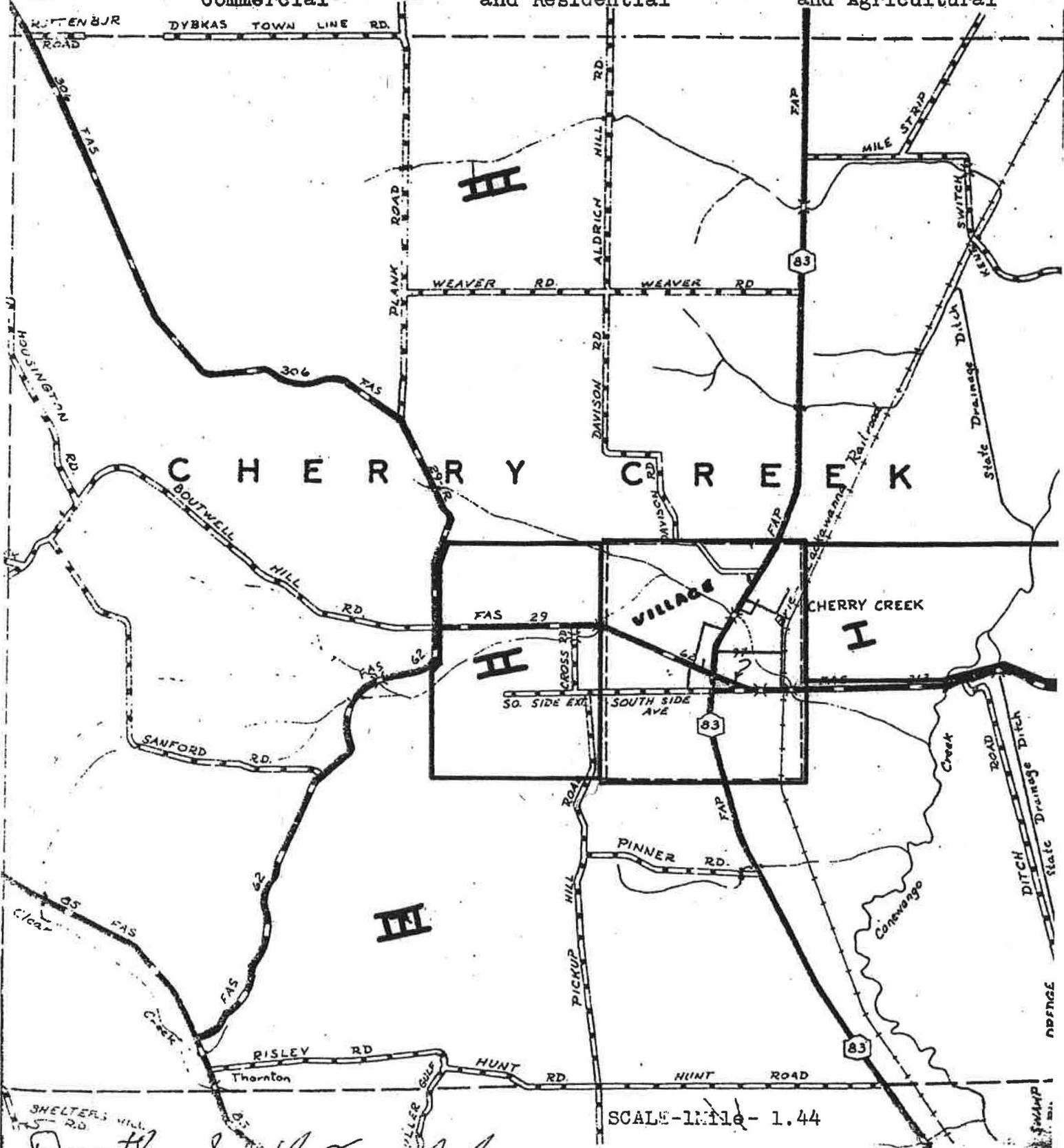
LEGEND

STATE HIGHWAY COUNTY ROAD TOWN ROAD

I Agricultural and Commercial

II Recreational, Commercial and Residential

III Residential, Recreational and Agricultural



SCALE-1 in. = 1.44

Dorothea Smith Town Clerk

PROCEDURE

Building and Zoning Permit (Form 1 & 4)

Application (Form 1)

(Four copies---keep one---three to Building Inspector)

Decision of Building Inspector

(Three copies---one each to Applicant, Town Clerk, Building Inspector)

Grant Permit
Issue permit placard

Refuse Permit

(To appeal, Applicant completes request for appeal (Form 4), keeps one and gives three to Town Clerk with \$10.)

Board of Appeals
(Public Hearing)

Decision of Board of Appeals
(Form 6)

(Four copies---
Board of Appeals
Applicant
Town Clerk
Building Inspector)

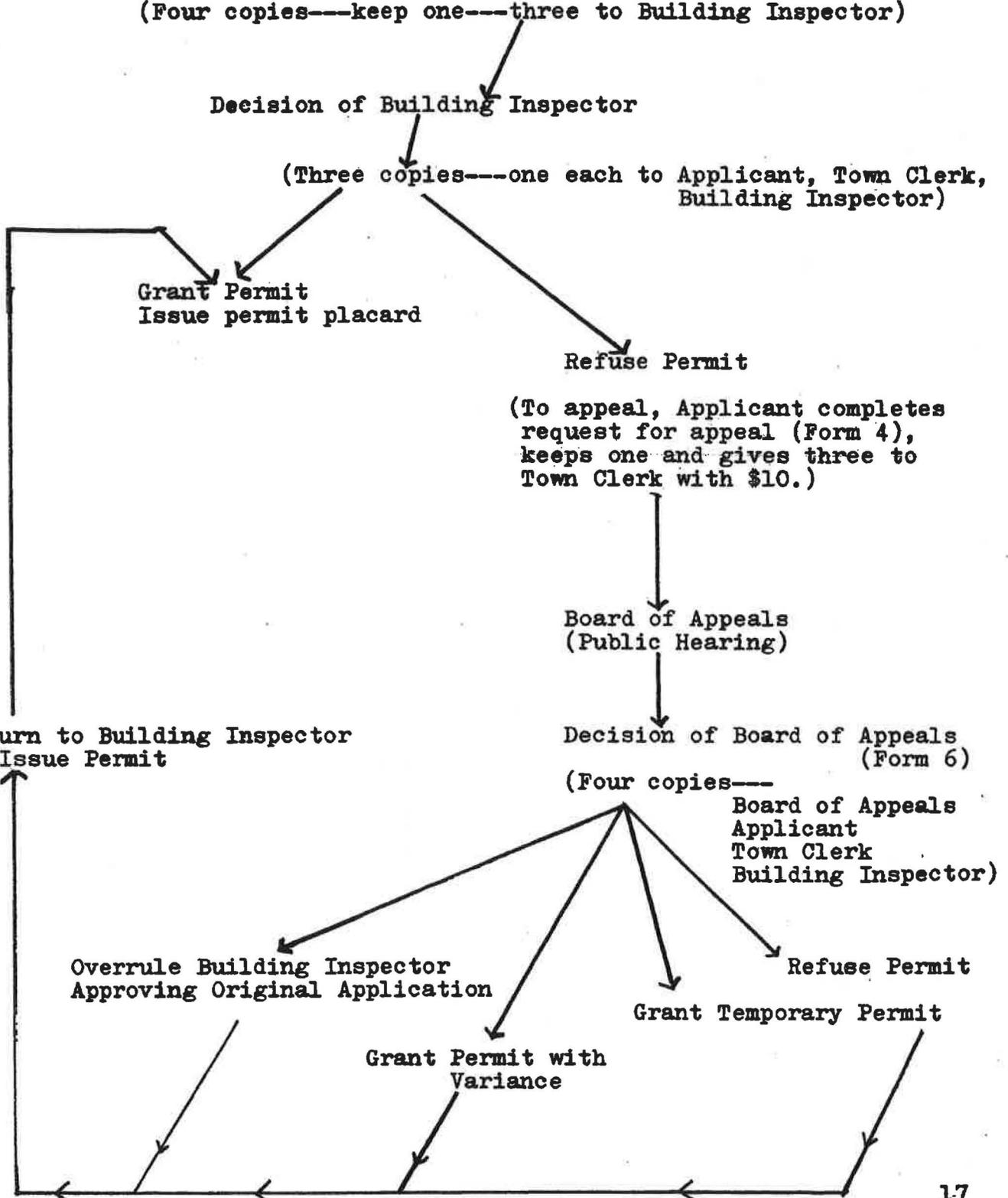
Overrule Building Inspector
Approving Original Application

Grant Permit with
Variance

Grant Temporary Permit

Refuse Permit

Return to Building Inspector
to Issue Permit





STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

December 20, 2012

Town Clerk
6914 Main Street
PO Box 98
Cherry Creek NY 14723

RE: Town of Cherry Creek, Local Law 1 2012, filed on December 3, 2012

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 474-2755



Chautauqua County

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

200 Harrison Street • Jamestown, New York 14701

Phone (716) 661-8900 • Planning Fax (716) 483-6679 • www.planningchautauqua.com

October 23, 2012

MR. KEVIN C. ANDERSON, Supervisor
TOWN of CHERRY CREEK
P.O. BOX 98
CHERRY CREEK, NY 14723

**RE: MUNICIPAL ZONING REFERRAL
AMEND/ADOPT LOCAL ZONING ORDINANCE - TOWN OF CHERRY CREEK
CREATE A RESORT DISTRICT IN SOUTHWESTERN QUADRANT OF TOWN**

Dear Mr. Anderson,

This letter is in response to your municipal zoning referral that was recently received by this office. A copy of the first page of your referral form is enclosed for your information and reference.

As one of the designated staff to the Chautauqua County Planning Board, I have reviewed the above noted referral. With regard to General Municipal Law 239-m, this proposal is subject to a referral to the county since it affects property within 500 feet of one or more of the following: a state or county road, a municipal boundary, a farm operation in a state agricultural district, an existing or proposed state or county park or recreation area, a public building on state or county owned land.

I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-l. Based on this review, I find that the proposed local law should have no significant county-wide or inter-community impact and that the proposal would be a matter of local concern.

As you know, the Chautauqua County Department of Planning & Economic Development has been working with the Town Board, Code Enforcement Officer and Town Attorney over the past several months to ensure that the proposed changes are consistent with the wishes of the Town and, at the same time, are not objectionable to the County Planning Department and Board. These considerations apply to the types of activities that will be allowed in the district, set backs, height restrictions and other considerations. This being the case, the County is in agreement with all of the proposed amendments as they are currently being proposed.

If you have any questions or concerns regarding this matter, please contact our office at 661-8912.

Respectfully,

Mark Geise
Chautauqua County Planning Department

cc: Kevin Okerland, Code Enforcement Officer; Mary Pullman, Town Clerk; Dana Lundberg, Town Attorney

Local Law No. 1 of 2012

A Local Law Governing Recreational Resort Facilities in the Town of Cherry Creek, New York

Be it hereby enacted by the Town Board of the Town of Cherry Creek as follows:

Section 1: Title

This Local Law shall be known as the "Recreational Resort District Law" of the Town of Cherry Creek, New York.

Section 2: Article II - Definitions

Article II of the Town of Cherry Creek Zoning Law – Definitions – is hereby amended by adding the following definitions:

- a. Equestrian Facilities, Commercial – Uncovered and covered facilities available to the public, with the capacity to handle more than ten (10) horses, providing one or more of the following services for compensation: boarding, training, teaching, breeding rental of horses, facilities for shows and competitive events, stables, corrals, barns, riding areas and riding trails.
- b. Equestrian Facilities, Limited - Uncovered and covered facilities (stables, corrals, barns and riding areas) providing boarding, training and teaching services for compensation, as an ancillary use, for a maximum of ten (10) horses.
- c. Lodging Facilities – Facilities design to provide overnight accommodations for clients of a "recreational resort." Such facilities may consist of Bed and Breakfasts, hotels, motels, cabins, country inns or lodges.
- d. Private Wildlife Preserve- property and facilities for hunting camps, wildlife preserves and conservation facilities.
- e. Ski Resort – A resort designed to cater to either downhill or cross-country skiers and snowboarders, snow tubing and sledding, mountain biking, and snowmobilers during the winter season. Such facilities may consist of lodges, lodging facilities, ski-related retail shops, restaurants, bars, maintenance facilities and other accessory uses related to the primary use.
- f. Tourist Resort - A resort designed to provide year-round recreational opportunities consisting of a combination of allowed recreational and recreational resort uses listed within the Residential, Recreational, Agricultural and Recreational Resort District of this Law.
- g. Water Recreation Facilities – Water parks, water slides, pools and related water facilities.

Section 3: Article III - Establishment of Districts

Article III of the Town of Cherry Creek Zoning Law – Establishment of Districts – is hereby amended as follows:

a. Add "D. Residential, Recreational, Agricultural & Recreational Resort (IV)" to the list of districts.

b. Article III, the second paragraph is hereby repealed and replaced with the following text:

"Such districts are bounded as shown on the map entitled, "Town of Cherry Creek Zoning map", and adopted on November 13, 2012, and certified by the Town Clerk, which accompanies and which with all explanatory matter thereon, is hereby made part of this ordinance."

Section 4: Article IV – Regulations

Article IV of the Town of Cherry Creek Zoning Law – Regulations - is hereby amended as follows:

a. The Title of Article IV (B) (1) shall be "Agricultural (Districts I, III & IV)."

Section 5: Article IV (B) (5)

Article IV (B) (5) is hereby added to the Town of Cherry Creek Zoning Law to read in its entirety as follows:

Article IV (B)

5. Recreational Resort (District IV)

The following regulations shall apply in any district suitable for recreational resort use.

a. Purpose.

The Residential, Recreational, Agricultural and Recreational Resort District is established to provide a mix of rural uses that will provide opportunities to diversify both the agricultural and recreational economy of the district, and the Town of Cherry Creek, by utilizing the area's abundant recreational opportunities and scenic and natural amenities in an environmentally sensitive manner consistent with the rural character of the Town.

b. General Development Standards.

i. All dimensional and use regulations for each respective residential, recreational and agricultural zoning category listed in Article IV(B) of this

Law shall apply equally in the Residential, Recreational, Agricultural and Recreational Resort District, unless otherwise specified below.

ii. A recreational resort development shall comply with the provisions of this section.

(1) Minimum Size. Development shall be located on a tract that contains a site of at least contiguous 20 acres.

(2) Parking. In accordance with Article IV (C) (6) of this Law.

(3) Setbacks. Front yard setbacks shall be 100 feet. Side and rear yard setbacks shall be 100 feet.

(4) Minimum Width. Each development shall have a lot width not less than 250 feet.

(5) Height. - Buildings and accessory structures located on-site in a recreational resort development that do not exceed 65 feet in height shall be allowed in accordance with the District regulations; buildings and accessory structures located on-site in a recreational resort development that are proposed to be greater than 65 feet in height may be allowed by special use permit; buildings and structures located off-site shall not exceed 35 feet in height and shall comply with the provisions of this law contained within Article IV(C) (2) of this Law.

(6) Signs. In accordance with Article IV (C) (7) of this Law.

(7) Character. Development shall be designed with an interior road(s), buffering mechanisms to protect adjoining uses and in a character complementary to the rural nature of the surrounding area.

(8) Commercial activities shall be accessory to and dependent upon the primary use.

c. Uses Permitted by Right.

Permitted principal uses and structures in the Residential, Recreational, Agricultural and Recreational Resort District shall be as follows:

i. Any principal use, facilities and structures permitted in any district suitable for agricultural, recreational or residential zoning.

ii. The following principal uses, facilities and structures suitable for recreational resort zoning:

(1) Equestrian Facility, Limited;

(2) Campgrounds and Camping Facilities;

(3) Ski Resort;

- (4) Golf Course;
- (5) Private Wildlife Preserve;
- (6) Condominiums, On-Site;
- (7) Multi-Family Dwelling, On-Site;
- (8) Cluster Development, On-Site;

- (9) Walkways, Bike paths, Jogging paths, Equestrian Trails, Nature Trails, Ski Trails and Snowmobile Trails;
- (10) Indoor and Outdoor Swimming Pools; and
- (11) Indoor and Outdoor tennis Courts;

d. Uses by Special Use Permit.

The following uses, facilities and structures are permitted in accordance with a special use permit:

i. Principal uses, facilities and structures permitted in any district suitable for agricultural, recreational or residential zoning in accordance with a special use permit.

ii. The following principal uses, facilities and structures suitable for recreational resort zoning in accordance with a special use permit:

- (1) Restaurants not located on the premises of a Recreational Resort;
- (2) Bars and taverns not located on the premises of a Recreational Resort;
- (3) Lodging Facilities not located on the premises of a Recreational Resort;
- (4) Miniature Golf;
- (5) Convention and Conference Center/Retreat Facilities;
- (6) Equestrian Facilities, Commercial;
- (7) Driving Range;
- (8) Water Recreation Facility;
- (9) Condominiums, Off-Site, 35 units or more;
- (10) Multi-Family Dwelling, Off-Site, 35 units or more;
- (11) Cluster Development, Off-Site, 35 Units or more; and
- (12) Tourist Resorts;

Section 6. Effective Date. This local law shall take effect immediately upon filing with the New York State Secretary of State.