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§ 75-3.1.¹ Delivery or pickup. [Added 8-21-2006 by L.L. No. 2-2006]

Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highway from which such vehicles are otherwise excluded.

ARTICLE II

**Overnight Parking Certain Months
[Adopted 10-23-1978 by L.L. No. 4-1978]**

§ 75-4. Parking restricted during certain months.

It shall be unlawful for the owner or operator of any type vehicle to cause or permit any said vehicle to stand upon any portion of any public highway within the Township of Kingsbury during the hours of 12:00 midnight to 6:00 a.m., commencing on November 15 of each and every year and continuing through the months of December, January, February and March, except at such locations where signs permitting such parking have been erected by the Highway Department by order of the Town Board of the Town of Kingsbury.

§ 75-5. Exceptions.

The provisions of this article shall not apply to:

- A. Vehicles of the Township of Kingsbury, fire apparatus, ambulances or vehicles engaged in the work of a public utility.
- B. Vehicles actually engaged in the course of construction or repair of streets or while actually engaged in making deliveries or rendering services in or upon any property adjacent to the highway where said vehicle is parked.

¹ Editor's Note: This section was originally adopted as § 75-4, but was renumbered as § 75-3.1 as the Code already contained a § 75-4.

- C. Disabled motor vehicles, subject to the provisions of New York State Vehicle and Traffic Laws.

§ 75-6. Penalties for offenses.

Any person violating any of the provisions of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$25, together with costs of prosecution.

Chapter 80

ZONING

ARTICLE I Introductory Provisions

- § 80-1. Short title.
- § 80-2. Statutory authorization.
- § 80-3. General intent.
- § 80-4. Purpose.
- § 80-5. Applicability.
- § 80-6. Word usage.
- § 80-7. Definitions.

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- § 80-8. Planning Board.
- § 80-8.1. Alternate members of Planning Board.
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- § 80-11. Construction permits.
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- § 80-13. **Certificates of occupancy.**
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- § 80-15. **Variances.**
- § 80-16. **(Reserved)**

ARTICLE IV Districts and Map

- § 80-17. **Enumeration of districts.**
- § 80-18. **(Reserved)**

ARTICLE V General Regulations

- § 80-19. **Provisions applicable in all districts.**

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- § 80-20. **RF-5A Residential-Forestry District.**
- § 80-21. **RA-1A and RA-M-1A Residential-Agricultural Districts.**
- § 80-22. **LDR-25 and LDR-15 Low-Density Residential Districts.**
- § 80-23. **Com-1A Commercial District.**
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- § 80-24.1. **PIC-75 Park Industrial/Commercial District.**
- § 80-25. **(Reserved).**

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- § 80-26. **Transitional zoning.**

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- § 80-28. Nonconforming buildings and uses.**

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- § 80-28.1. Purpose and findings.**
- § 80-28.2. Definitions.**
- § 80-28.3. Classification.**
- § 80-28.4. License required; application.**
- § 80-28.5. Issuance of license.**
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- § 80-28.8. Expiration of license.**
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- § 80-28.13. Location of sexually oriented businesses.**
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- § 80-28.16. Public nudity.**
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- § 80-28.20. Injunction.**

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ARTICLE VIII
Site Plan Review

- § 80-29. Purpose.
- § 80-30. Applicability of article.
- § 80-31. Authorization to approve or disapprove site plan.
- § 80-32. Application for review.
- § 80-33. Sketch plan.
- § 80-34. Procedure.
- § 80-35. Requirements for approval.
- § 80-36. Development considerations.

ARTICLE IX
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ARTICLE X
Amendments

- § 80-38. Amendment procedure.

ARTICLE XI
Interpretation

- § 80-39. Provisions held to be minimum requirements.

ARTICLE XII
Fees

- § 80-40. Schedule of fees.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-29-1985 by L.L. No. 2-1985.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.
Environmental quality review — See Ch. 43.
Flood hazard areas — See Ch. 48.
Mobile homes — See Ch. 58.
Subdivision enforcement — See Ch. 69.
Subdivision regulations — See Ch. A84.
Election districts — See Ch. A85.
Zoning district boundaries — See Ch. A86.

ARTICLE I Introductory Provisions

§ 80-1. Short title.

This chapter shall be known and be cited as the "Zoning Local Law of the Town of Kingsbury, New York."

§ 80-2. Statutory authorization.

Enactment of this chapter by the Town of Kingsbury is pursuant to Article 16 of the Town Law of the State of New York and Article 27 of the Executive Law of the State of New York.

§ 80-3. General intent.

The intent of this chapter is to establish a precise and detailed plan for the use of land in the Town of Kingsbury, to promote and to protect the health, safety, comfort, convenience and general welfare of the community and to protect the property values and aesthetics of the community. This shall be accomplished by channeling and directing growth and by regulating and restricting the height, number of stories and

1. Editor's Note: This local law superseded former Ch. 80, Zoning, adopted 8-6-1958, as amended.

size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, manufacturing, residence and other purposes. This chapter shall establish districts and the boundaries thereof for said purposes and provide for the administration and enforcement of this chapter in accordance with the Consolidated Laws of the State of New York.

§ 80-4. Purpose.

This chapter is hereby adopted to provide the Town of Kingsbury with all the protection authorized by the Consolidated Laws of the State of New York, and amendments thereof and is designed to:

- A. Promote the health, safety and general welfare of the community.
- B. Lessen congestion in streets, roads and highways.
- C. Provide adequate light and air.
- D. Secure safety from fire, flood, panic and other dangers.
- E. Prevent the overcrowding of land.
- F. Avoid undue concentration of population.
- G. Facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.
- H. Conserve the value of property and encourage the most appropriate use of land in the Town with reasonable consideration for the character of each district and its peculiar suitability for particular uses.

§ 80-5. Applicability.

No land use or development shall be undertaken or maintained except in conformity with all provisions contained in this chapter relating to the zoning district in which the land, water, site, structure or use is located or is proposed to be located. Where this chapter is more restrictive than covenants or agreements between parties or other plans or other rules or regulations or ordinances, the provisions of this chapter shall control.

§ 80-6. Word usage.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter. Words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used"; the word "shall" is always mandatory; the word "abut" shall include the words "directly across from"; and words of the masculine gender shall include the feminine. Unless otherwise specified, all distances and areas shall be measured in accordance with accepted surveying practices.

§ 80-7. Definitions.

The following terms, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

ACCESSORY STRUCTURE — A structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. Swimming pools on or in the ground shall be considered accessory use structures. [Amended 3-21-2005 by L.L. No. 1-2005]

ACCESSORY USE — Any use of a structure, lot or portion thereof, that is customarily incidental and subordinate to and

does not change the character of a principal land use or development.

ADDITION — Extension or increase in area, height or equipment of a building.

ADMINISTRATIVE AGENCY — Any person, board or commission charged with the responsibility of executing or enforcing the provisions of this chapter.

AGENT OF OWNER — Any person who can show written proof that he is acting for the property owner.

ALTERATION — As applied to a building or structure, means a change or rearrangement of the structural parts, or an enlargement or relocation.²

AUTOMOBILE SALES AREA AND SERVICES — An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

AUTOMOBILE SERVICE STATION OR FILLING STATION — A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor and major repairs are rendered.

BUILDING — Any structure permanently affixed to the land, having a roof supported by columns or walls, used or intended to be used for the shelter, housing or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate "building," except as regards minimum side yard requirements.

BUILDING AREA — The maximum area of a building at ground level, not including terraces or uncovered porches and accessory buildings or structures located on any lot.

2. Editor's Note: The definition of "auto court," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

BUILDING HEIGHT — The vertical distance measured from the average level of the highest and lowest portion of the building site covered by the building, to the uppermost portion of the structure, but not including chimneys, spires, towers, tanks and similar projections.

BUILDING LINE — The line which extends the width of the lot parallel to the front line and which is the minimum distance back from a specified base point or line. The minimum distance is known as the "setback." This line determines the point nearest the front lot line upon which buildings and/or other specified objects or uses may be placed.

CAMP — Any land, including any permanent buildings thereon used for seasonal group accommodations and/or recreational purposes. The use of the land may be, but need not be, for a profit. It may be used by children and/or adults as individuals, families or groups. This definition does not include private hunting. **[Added 3-21-2005 by L.L. No. 1-2005]**

CLUSTER DEVELOPMENT — A planned development in which lots are plotted with less than the minimum lot size and dimension requirements, but which have access to common open space which is part of the overall development plan approved by the Planning Board as per § 281 of the Town Law.

COMMERCIAL SAND AND GRAVEL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of sale or use by persons other than the owner of the land or for the purpose of use by any municipality.

COMMERCIAL USE — Any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale.

CONDOMINIUM — A multifamily project of one-family dwelling units which may consist of one, a part or more than one building, including one building per dwelling unit, where the real property title and ownership are vested in an owner who has an undivided interest with others in the common usage areas and facilities which serve the development. A

"condominium" which effects a division of land into sites (i.e., involves more than one building) shall be reviewed as a subdivision.³

DENSITY (MINIMUM AREA PER FAMILY OR DWELLING UNIT) — This area is the total usable area of any parcel of land, lot or plot to be developed or subdivided which is devoted to residential use or residentially related uses, such as parks, playgrounds, open spaces or residential streets. The Planning Board shall have the responsibility of determining what is usable land for purposes of this computation.

DEVELOPMENT — The introduction of a new use or primary structure (excepting one- and two-family dwellings) to a premises. Expansion of an existing facility for the existing use shall not be considered development for site plan review purposes unless such expansion increases the existing area of the structure or facility in excess of 25%. **[Added 2-9-1998 by L.L. No. 3-1998]**

DWELLING, MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers.

DWELLING, MULTIFAMILY — A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

3. Editor's Note: The definition of "day camp," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005. See now the definition of "camp."

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DWELLING, MULTIPLE —

- A. A building containing living, sanitary and sleeping facilities occupied by one or two families and more than four lodgers residing with either one of such families.
- B. A building with one or more sleeping rooms, other than a one- or two-family dwelling, used or occupied by permanent or transient paying guests or tenants.
- C. A building with sleeping accommodations for more than five persons used or occupied as a club, dormitory, fraternity or sorority house, or for similar uses.
- D. A building used or occupied as an old-age home.
- E. A community residence.

DWELLING, SINGLE-FAMILY — A detached building designated for or occupied exclusively by one family and containing not more than one dwelling unit.

DWELLING, TWO-FAMILY — A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

DWELLING UNIT — One or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family.

ESSENTIAL SERVICES — The construction, alteration or maintenance by public utilities or governmental agencies of underground or overhead gas, electrical, steam, communication, or water transmission or distribution systems, including poles, wires, police call boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings unless granted by special permit and reasonably necessary for the furnishing of adequate service by public utilities or governmental agencies. **[Amended 3-21-2005 by L.L. No. 1-2005]**

ESTABLISHED GRADE — The elevation of the center line of a road as established by the Town authorities. In the absence of an "established grade," the elevation of the center line of the road concerned shall be taken in lieu thereof.⁴

FARM, ALL CLASSES — Land of not less than 10 acres being used for customary farming purpose, including, but not limited to, the raising and production of crops, livestock, horses, poultry, dairy products, trees, maple syrup products, and horticultural operations as a principal source of income, including any structure, building or residence which is incidental or accessory to the permitted use. The selling of farm products on the premises shall be considered agricultural operations. The term "farm" shall not include hog farms or fur farms. **[Amended 3-21-2005 by L.L. No. 1-2005]**

FENCE — A barrier utilized for screening, confinement, protection, separation or aesthetics composed of materials designed specifically for fencing or of braced wooden boards of uniform size and color. Retaining walls, building walls, structural walls or cultivated or natural growth of shrubs and trees are not intended as fences. **[Added 3-21-2005 by L.L. No. 1-2005]**

FENCE, SOLID — A fence with openings not to exceed one inch. **[Added 3-21-2005 by L.L. No. 1-2005]**

FLEA MARKET — A sale of items of tangible personal property, wherein, on one location, there are multiple vendors who have paid a fee for the privilege of occupying the space allotted to each such vendor for the purpose of displaying and selling, buying or exchanging, generally, used goods of any sort. **[Added 3-21-2005 by L.L. No. 1-2005]**

4. Editor's Note: The definition of "family" which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

FLOOR AREA — The gross floor area of a building or structure.

- A. RESIDENTIAL — The area in square feet within the exterior walls of a dwelling unit, not including attached garages, porches, decks, etc.
- B. PROFESSIONAL COMMERCIAL, INDUSTRIAL — The total area in square feet within the exterior walls of a building or structure and, when applicable, the sum total of all floor areas of the principal and accessory buildings or structures under a single ownership or business.

FORESTRY — Any management, including logging, of a forest or woodland, including the construction, alteration or maintenance of accessory structures, wood roads, skidways, landing fences and forest drainage systems. Forestry uses shall include tree farming and processing of timber into usable products. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOBBY FARM — Land of no less than five acres used for the raising of agricultural products or keeping of horses or other large mammals, poultry or fowl for personal use or pleasure and being incidental to residential use. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOME INDUSTRY — Any undertaking conducted as an accessory use for gain entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees. It may include but need not be limited to such enterprises as the refinishing of antiques, repair of furniture, ceramic manufacturing and decoration, repair of household articles or motor vehicles, rug weaving, manufacture of various articles, and home baking. All storage of materials and equipment shall be indoors. Maintenance of an inventory of goods, other than goods produced on the premises primarily for retail sale on the premises, and the public display of goods for sale are to be a minimum of 10 feet back from the edge of the highway right-of-way.

HOME OCCUPATION — Any use of a service nature customarily conducted entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees, such use being incidental to the use of the building as a dwelling and not changing the character thereof.⁵

JUNK — Junk motor vehicles and junk appliances as defined in this chapter, as well as scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc, ferrous or nonferrous scrap, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, boxes or crates, used pipe or used pipe fittings, used tires, other discarded materials and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled or recycled. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNK MOTOR VEHICLE — Any motor vehicle or used parts or waste materials from motor vehicles which, taken together, equals in bulk one or more such vehicle, which is unlicensed or unregistered; or abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or not in a condition for legal use upon the public highways. The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in a condition for legal use upon the highways. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNKYARD — [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

A. Any place of storage or deposit, whether in connection with another business or not, where two or more junk motor vehicles are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some

5. Editor's Note: The definition of "Homeowners' Association," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose or any place of storage or deposit, for any such purposes, of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles.

- B. Any place of storage or deposit for recycling or reclamation of any household appliance, including, but not limited to, a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, computer, or television, which is stored outside of any residence or enclosed structure.
- C. An establishment having facilities for processing iron, steel, or ferrous or nonferrous scrap and whose principal product is scrap iron, steel, or ferrous or nonferrous scrap for remelting purposes.
- D. Any business required to be licensed as a junkyard pursuant to § 136 of the General Municipal Law.
- E. Any business required to be licensed as a junk dealer pursuant to Article 6 of the General Business Law.
- F. Any business required to be licensed as a scrap processor pursuant to Article 6-C of the General Business Law.
- G. The following shall not be considered a junkyard and shall not be regulated under this law:⁶
 - (1) Storage and/or warehousing of used motor vehicle parts in a fully enclosed building(s) associated with a business engaged in selling the same for use in motor vehicles and temporary storage of five or fewer inoperative motor vehicles only in conjunction with the same.
 - (2) Unregistered, old or secondhand motor vehicles. The outdoor storage or deposit of one unregistered, old or

6. Editor's Note: The term "this law" refers to L.L. No. 5-2008.

secondhand motor vehicle, except as part of a legally licensed junkyard or legally licensed car sales business.

KENNEL — An establishment providing a service for the breeding, boarding and/or care of dogs, but not necessarily a veterinary or animal hospital.

LANDSCAPING — The act of changing or enhancing the natural features of a plot, buffer zone, public open space or other area or a portion of a lot so as to make said area more attractive and/or to add visual screening. This shall include adding lawns, trees, shrubs, etc., and/or through the sculpturing of the terrain, i.e., earth berms, ponds, walkways, retaining walls, rock outcrops, etc.⁷

LIGHT MANUFACTURING — A facility where a process is used to alter the nature, size or shape of articles or raw materials, or to assemble articles or raw materials, in order to create new goods. The process and the storage of materials used in the process occur totally within the confines of enclosed structures. [Added 2-9-1998 by L.L. No. 3-1998]

LOT — A parcel of land having a distinct and defined boundary as described by a legal land survey or, in the absence of a legal land survey, the tax maps of Washington County or the Town of Kingsbury. [Amended 3-21-2005 by L.L. No. 1-2005]

- A. **LOT, AREA** — The computed area contained within the lot lines.
- B. **LOT, BUILDING** — A lot occupied or capable of being occupied by a dwelling unit and its accessory buildings or by a multiple dwelling and its accessory buildings, having not less than the minimum area and lot width required by this chapter for a lot in the district in which such land is

7. Editor's Note: The definition of "large-scale business and industrial development," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

situated and having its principal frontage on an approved street or road.

- C. LOT, CORNER — A lot abutting on two or more streets, roads or highways at their intersection or on two parts of the same street, road or highway, such streets, roads or highways or parts of the same street, road or highways forming an interior angle of less than 135°. The point of intersection of street lot lines is the corner. A lot located at a curve in any road shall be considered a corner lot if the tangents to the curve at the point of the smallest angle intersect at an interior angle of less than 135°. Corner lots shall consist of two front yards and two side yards for setback purposes.
- D. LOT, DEPTH — The mean horizontal distance between the front and rear lot lines.
- E. LOT LINE — The established division line between different parcels of property.
- (1) LOT LINE, FRONT — The lot line which abuts upon a street or highway.
- (2) LOT LINE, REAR — The lot line opposite and most distant from the front lot line.
- (3) LOT LINE, SIDE — Any lot line other than a front or rear lot line.
- F. LOT OF RECORD — Any lot which has been recorded by registration of a deed or recorded on a plat approved by the Town Planning Board or for which an administrative agency has approved a valid construction or use permit.
- G. LOT WIDTH — The total distance between the side lot lines of the lot measured at the front lot line on an approved road. [Amended 3-21-2005 by L.L. No. 1-2005]

MANUFACTURING — The mechanical or chemical transformation of materials or substances into new products including the assembling of component parts. Said products are

consumed or used at another location. **[Added 2-9-1998 by L.L. No. 3-1998]**

MINERAL EXTRACTION — Any extraction other than specimens or samples from the land of stone, coal, salt, ore, talc, granite, petroleum products or other minerals, except for commercial sand, gravel or topsoil extractions, including the construction, alteration or maintenance of mine roads, mine tailing pipes or dumps and mine drainage.

MINERAL EXTRACTION STRUCTURE — Any mine hoist, ore reduction, concentrating, sintering or similar facilities and equipment, administrative buildings, garages or other main buildings or structures.

MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers. A doublewide mobile home consisting of two sections of equal length, with a 3/12 minimum truss roof, and placed on a foundation consisting of poured concrete footing below the frost line and blocks at least one block above grade, shall not be considered a "mobile home" for purposes of these regulations. **[Amended 9-12-1988 by L.L. No. 5-1988]**

MOBILE HOME PARK — Any parcel of land whereon two or more mobile homes are parked or located or which is planned and improved for the placement of two or more mobile homes and which is held open to the public for the parking or placement of mobile homes.

MODULAR — A factory built component building similar in construction to an on-site wood frame building and meeting the same New York State Construction Codes and Energy Code. Additionally, a "modular" is transported to a building site and permanently attached to a foundation.

NONCONFORMING LOT — Any lot lawfully on record on the effective date of this chapter which does not meet the minimum lot area and/or width or depth requirements of this chapter for the zoning district in which such lot is situated.

NONCONFORMING STRUCTURE — A legally existing building in existence on the effective date of this chapter which does not comply with the requirements established for the district in which it is located.

NONCONFORMING USE — A use of land, lawfully in existence on the effective date of this chapter, which does not conform to the zoning regulations of the district in which it is located.

NURSING HOME or CONVALESCENT HOME — Any dwelling used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished.

OPEN SPACE — Land not covered by buildings, pavement, open storage, mining operations, or any other use that visually obscures the natural or improved landscape, except for recreation facilities.

PARKING SPACE, OFF-STREET — A space adequate for parking an automobile, with room for opening doors on both sides, together with properly related access to a public street or alley, and necessary maneuvering room, approximately 300 square feet.

PERMITTED USE — Any use requiring no special action by the Board of Appeals or site plan review by the Planning Board before a building permit is granted by the Code Enforcement Officer, subject to all other applicable provisions of this chapter. **[Amended 3-21-2005 by L.L. No. 1-2005]**

PERSON — Any individual, corporation, partnership, association, trustee, the state and All political subdivisions of the state or any agency or instrumentality thereof.

PLANNING BOARD — The Planning Board of the Town of Kingsbury.

PLAT — A map, plan or layout of an area indicating the location and boundaries of individual properties.

PRINCIPAL USE — The primary use for which land and/or buildings are occupied or designed to be occupied.

PRIVATE SAND, GRAVEL OR TOPSOIL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of use, but not sale, by the owner of the land or any extraction for the purpose of sale of less than 50 cubic yards in any two-year period.

PROFESSIONAL OCCUPATION — One who is engaged in a licensed or professional service, including but not limited to: medical, legal, architectural, engineering, surveying, cosmetology or barbering, real estate brokerage, consulting or accounting. **[Amended 3-21-2005 by L.L. No. 1-2005]**

PUBLIC OR SEMIPUBLIC BUILDING — Any component building of a college, school, hospital, animal hospital, library, place of worship, museum, research center, rehabilitation center or similar facility or a municipal building.

PUBLIC RIGHT-OF-WAY — Any right-of-way open to the public for vehicular or pedestrian access.

RECREATION —

- A. RECREATION, COMMERCIAL — Recreation facilities operated for profit and available to the general public for a fee, including, but not limited to: golf courses, golf driving ranges, ice-skating rinks, swimming pools, picnic groves, amusement parks and fairgrounds. **[Amended 3-21-2005 by L.L. No. 1-2005]**
- B. RECREATION, PRIVATE, NONCOMMERCIAL — Clubs or recreation facilities, operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.

- C. RECREATION, PUBLIC — Recreation facilities operated as a nonprofit enterprise by the Town of Kingsbury and any other governmental entity or any nonprofit organization and open to the general public.

RESIDENTIAL STREET, ROAD OR HIGHWAY — A street, road or highway between two street, road or highway intersections where 50% or more of the abutting street, road or highway frontage is residential in use.

SCREENING — Solid fence, evergreen foliage, mounds, trees, shrubs or landscaped natural materials and evergreen plants which conceal the visual character and suppress the noise of any given building or use of land. Required screening shall have a minimum height of six feet and a maximum height of eight feet, exclusive of growing trees and shrubs. **[Amended 3-21-2005 by L.L. No. 1-2005]**

SECONDARY USE — Any use performed on a lot in addition to the principal or primary use.

SETBACK — The distance of a building or use from a prescribed point or line.

SIGN — Any device designed to inform or attract the attention of persons not on the premises where the sign is located.

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, then the space between the floor and the ceiling next above it.

STREET, ROAD OR HIGHWAY — A public thoroughfare which affords the principal means of access to the abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley.

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

SUBDIVISION — The division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways, and includes resubdivision. **[Amended 3-13-2000 by L.L. No. 4-2000]**

- A. This shall not apply to the sale of a small amount of land to correct the boundary of a lot, if such sale or exchange does not create an additional lot according to the zoning regulations.
- B. A division of lands into parcels of three acres or more, each having a lot width of 300 feet or more at the setback line along a town, county or state road, with utilities, or the division of any parcel fronting on a residential district into two lots, each conforming in every respect to the dimensional requirements of the zoning district in which it is located, shall not be a subdivision under these regulations.
- C. In or to be exempt under Subsection B of this definition, the applicant shall provide to the Code Enforcement Officer a mylar plot plan demonstrating compliance with this section. Thereafter, said mylar plot plan shall be filed with the County Clerk in the County of Washington.

TRAVEL TRAILER — Any portable vehicle, including a tent camper or motor home, which is designed to be transported on its own wheels, which is designed and intended to be used for temporary living quarters for travel, recreational or vacation purposes and which may or may not include one or all of the accommodations and facilities customarily included in a mobile home.

TRAVEL TRAILER PARK — A parcel of land under single ownership which is designed and improved for use by two or more travel trailers.

USABLE OPEN SPACE — Required open space which shall be entirely undeveloped, except for planting, landscaping and recreational equipment and shall be available for the sole enjoyment of the occupants of the zone lot of which it shall be a

part, and shall not include any side yards, driveways and accessways.

VARIANCE — The Board's authorized departure from the terms of this chapter in direct regard to a hardship peculiar to an individual lot in accordance with the procedures established in this chapter.

WASTE DISPOSAL AREA — Any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than on-site disposal area directly associated with an industrial use.

WETLANDS — Any land which is annually subject to periodic or continual inundation by water and commonly referred to as a "bog," "swamp" or "marsh" which are either one acre or more in size or located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

YARD — An area, as may be required by this chapter of uniform width or depth on the same lot with a building or a group of buildings, which area lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as herein permitted. Covered porches, whether or not enclosed, shall be considered as part of the main building and shall not project into a required "yard."

- A. **YARD, FRONT** — An area extending the full width of the lot between a building and the street or highway right-of-way line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.
- B. **YARD, REAR** — An area extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

- C. YARD, SIDE — An area extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

ZERO LOT LINE — The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.⁸ [Added 10-13-1992 by L.L. No. 4-1992]

ZONING BOARD — The Zoning Board of Appeals in the Town of Kingsbury.

ARTICLE II Administrative Agencies

§ 80-8. Planning Board.

- A. Pursuant to § 271 of the Town Law, the Town of Kingsbury has created a Planning Board. Said Board consists of seven members appointed by the Town Board in such manner and for such terms as provided in the town laws. The Planning Board shall have all the powers and perform all the duties prescribed by statute and by this chapter. The Planning Board shall have original jurisdiction for all matters pertaining to this Zoning Chapter pursuant to § 274-a of the Town Law, Site Plan Review.
- B. The Planning Board shall study the application of this chapter and shall from time to time recommend to the Town Board such changes in this chapter and in the boundaries of the various districts as it shall deem advisable to further promote the health, safety and general welfare of the community.
- C. The Code Enforcement Officer shall serve in an advisory capacity to the Planning Board. [Amended 3-13-2000 by L.L. No. 4-2000]

8. Editor's Note: The definition of "Zoning Administrator," which immediately followed this definition, was repealed 3-13-2000 by L.L. No. 4-2000.

§ 80-8.1. Alternate members of Planning Board. [Added 12-13-1999 by L.L. No. 6-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board in the Town of Kingsbury.
- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Planning Board because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board when a regular member is unable to participate on an application or matter before the Town Planning Board.

MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board pursuant to the provisions of the local law or ordinance which first established such Planning Board.

PLANNING BOARD — The Planning Board of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of the Town Law.

- D. Authorization; term of office; designation.
- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Planning Board. These individuals would serve when members are

absent or unable to participate on an application or matter before the Board.

- (2) Alternate members of the Planning Board shall be appointed by the Town Board or other duly authorized appointing authority for a term as set forth in § 271 of the Town Law.
- (3) The Chairperson of the Planning Board may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, term, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 271 of the Town Law relating to the appointment of members to town planning boards.

§ 80-9. Code Enforcement Officer. [Amended 3-13-2000 by L.L. No. 4-2000]

- A. The Code Enforcement Officer shall have the power and duty to:

- (1) Enforce the provisions of this chapter.
 - (2) Exercise general surveillance over the town as to compliance.
 - (3) Issue construction permits and certificates of occupancy within 30 days of receipt of application wherever there is compliance with the provisions of this chapter.
 - (4) Investigate all complaints submitted in compliance with the provisions of this chapter.
- B. The Code Enforcement Officer shall be appointed and may be removed by the Town Board.
- C. An appeal from an action, omission, decision or rule by him regarding a requirement of this chapter may be made only to the Zoning Board of Appeals.

§ 80-10. Zoning Board of Appeals.

Pursuant to § 267 of the Town Law, the Town of Kingsbury has created a Zoning Board of Appeals consisting of seven members appointed by the Town Board in such manner and for such term as provided in town laws. The Zoning Board of Appeals shall perform the duties and have the powers granted by and be controlled by the provisions of the Town Law and amendments thereto, and by this chapter. The Zoning Board of Appeals shall have appellate jurisdiction for all matters pertaining to this Zoning Chapter.

§ 80-10.1. Alternate members of Zoning Board of Appeals. [Added 12-13-1999 by L.L. No. 7-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Zoning Board of Appeals in the Town of Kingsbury.

- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the Zoning Board of Appeals, as provided herein.

MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Zoning Board of Appeals.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of the Town Law.

- D. Authorization; term of office; designation.
- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the Board.
 - (2) Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board or other duly

authorized appointing authority for a term of four years.

- (3) The Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
 - (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.
- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 267 of the Town Law relating to the appointment of members to Town zoning boards of appeals.

ARTICLE III

Permits; Certificates of Occupancy; Appeals; and Variances

§ 80-11. Construction permits. [Amended 9-10-1990 by L.L. No. 5-1990; 3-13-2000 by L.L. No. 4-2000]

Building and construction permits shall be issued as set forth in Chapter 47, Fire Prevention, § 47-7 of this Code.

§ 80-12. Special permits or special use permits. ⁹ [Added 8-15-2005 by L.L. No. 3-2005]

- A. Applicability. This section shall apply to any uses that require special permits found in the district regulations in Article VI of the Town of Kingsbury Zoning Local Law. Special permits, as discussed in the Town of Kingsbury Zoning Local Law, shall also be known as "special use permits," as discussed in New York State Town Law § 274-b.
- B. Declaration of policy and intent. There are certain uses which, by their inherent nature, present certain problems or difficulties for neighborhoods in which they might be located. It is the intention of the Town that these uses should be reviewed, and that their overall impact on the neighborhood and community character in which they are proposed to be located should be studied prior to their location in such neighborhoods. The overall intention of this section is to mitigate such problems and to minimize, to the extent practicable, such impacts on the Town's neighborhoods.
- C. Delegation to the Zoning Board of Appeals. In accordance with New York State Town Law § 274-b, the Zoning Board of Appeals is hereby authorized to issue special use permits or special permits as required by the Town of Kingsbury Zoning Local Law. Applications for such permits shall be reviewed in accordance with this § 80-12.
- D. Application. Prior to the commencement of any construction activities or the use of any property requiring a special permit or special use permit, the owner, or if not the owner, then the authorized applicant, shall submit an application on such forms, and within such time frames, as may be designated by the Zoning Board of Appeals. The owner or applicant shall submit such information as required by the Zoning Board of Appeals. The Zoning

9. Editor's Note: Former § 80-12, Use permits, as amended, was repealed 3-13-2000 by L.L. No. 4-2000.

Board of Appeals may empower the Zoning Administrator to make preliminary determinations on what information should be submitted to the Zoning Board of Appeals prior to the application being placed on the Zoning Board of Appeals agenda. Such authorization shall not preclude the Zoning Board of Appeals from requesting any additional information it deems necessary for its review of the application. An application shall not be deemed complete until all information requested by the Zoning Board of Appeals has been submitted.

- E. Procedure. The Zoning Board of Appeals shall comply with the requirements of New York State Town Law § 274-b and the applicable provisions of the State Environmental Quality Review Act (SEQRA), 6 NYCRR Part 617, the General Municipal Law, and any other applicable laws. If, during the review of an application, the Zoning Board of Appeals finds that certain aspects of the proposed use require a review of the technical plans, and that such review may be better suited for the Town of Kingsbury Planning Board, the Zoning Board of Appeals may refer the application to the Planning Board for its comment and for any recommendations of that Board. To expedite the review, the Zoning Board of Appeals may limit the time frame within which the Planning Board has to return its recommendations.
- F. Review standards. Before granting approval on a special permit or special use permit, the Zoning Board of Appeals shall consider the following:
- (1) The use shall be of such location, size and character that it will conform to an appropriate and orderly development of the district and neighborhood in which it is to be located and will not be detrimental to the orderly development of neighboring districts and neighborhoods.
 - (2) The use will not create undue safety hazards in its own or adjacent districts or neighborhoods and will

not require increased public expenditure in excess of its value to the Town.

- (3) The use will not create undue traffic congestion, noise, vibrations, light, stormwater runoff, or air pollution or substantially devalue neighboring properties.
- (4) A special permit or special use permit shall be granted unless the Zoning Board of Appeals finds that substantial evidence has been presented which shows that the negative effects of the proposed use, as evaluated above, outweigh the benefits of the use to the Town.
- (5) The Zoning Board of Appeals may condition the approval of any special permit or special use permit on such reasonable conditions that it finds may mitigate against the potential negative effects on the neighborhood of the proposed use.

§ 80-13. Certificates of occupancy.

A. General requirements.

- (1) A certificate of occupancy is required prior to the use of any building for which a construction permit is required. Upon application within three months following the effective date of this chapter or any amendment date subsequent thereto, a certificate of occupancy shall be issued for continuation on a specified premises of any use existing on that premises on the aforesaid effective or amendment date.
- (2) Procedure. An application shall be submitted to the Code Enforcement Officer which shall show compliance with this chapter. It may be submitted as soon as sufficient progress has been made to show

compliance or at any time thereafter. **[Amended 3-13-2000 by L.L. No. 4-2000]**

B. Temporary certificates of occupancy.

- (1) Temporary certificates of occupancy shall be granted by the Code Enforcement Officer for a period of six months and renewable for three additional and successive six-month periods for the following purposes: **[Amended 3-13-2000 by L.L. No. 4-2000]**
 - (a) For occupancy of a dwelling space less than the minimum specified for the district pending the construction on the lot of a dwelling for which a valid construction permit has been approved. Renewal of a certificate issued under this provision is contingent upon proof of progress upon the permanent structure.
 - (b) For the use of property which does not conform to the specifications required by this chapter, but which will be brought into conformity prior to the expiration of the third successive renewal.
- (2) The Board of Appeals may extend the number of renewal periods, provided that it is shown that unforeseen events prevented the completion of the project as planned, that termination of the temporary certificate of occupancy would produce an undue hardship and that the project will be complete in a reasonable length of time.
- (3) Procedure. The applicant shall submit to the Code Enforcement Officer an application in the same manner as for a permanent certificate of occupancy. The application shall include information to justify the issuance of a temporary certificate of occupancy and show an expected date of termination. **[Amended 3-13-2000 by L.L. No. 4-2000]**

§ 80-14. Appeals.

Any person aggrieved over any order, requirement, decision or determination by an administrative agency pursuant to the provisions of this chapter may present an appeal for redress to the Board of Appeals in accordance with the provisions of § 267, Subdivision 2, of the Town Law.

§ 80-15. Variances.

The Board of Appeals shall have the power to vary or modify the application of the provisions of this chapter where a strict application produces practical difficulties or unnecessary hardships as authorized by the provisions of § 267, Subdivision 5, of the Town Law.

§ 80-16. (Reserved) ¹⁰

**ARTICLE IV
Districts and Map**

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-17. Enumeration of districts. [Amended 9-25-1989 by L.L. No. 2-1989]

For the purpose of this chapter, the Town of Kingsbury is hereby divided into districts which are designated by type and identified by symbol as follows:

District Type	Symbol
Residential-Forestry	RF-5A
Residential-Agricultural	RA-1A
	RA-M-1A

10. Editor's Note: Former § 80-16, Duration of permits, was repealed 3-13-2000 by L.L. No. 4-2000.

District Type	Symbol
Low-Density Residential	LDR-25
	LDR-15
Commercial	Com-1A
Plaza Commercial	PC-1A
[Added 10-13-1992 by L.L. No. 4-1992]	
Industrial	Ind-75

§ 80-18. (Reserved) ¹¹

ARTICLE V

General Regulations

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-19. Provisions applicable in all districts.

The following regulations are applicable to all or several districts as specified and are supplemented by or superseded where in conflict with the provisions applicable to each individual district.

- A. Authorized uses. The uses of land and/or buildings shall be permitted in the various districts as specified by the provisions of this chapter, but any use which produces, beyond the confines of its own premises, an unusual noise intensity, dust, noxious or toxic fumes, smoke, danger from fire or explosion, vibration, public health hazard, danger from dissemination of radioactive materials or damage resulting from pollution or reduction in the supply of surface or ground waters shall be excluded from all districts.

11. Editor's Note: Former § 80-18, Zoning Map, was repealed 3-13-2000 by L.L. No. 4-2000.

- B. Appurtenances in front and side yards. The following features may extend into the minimum front and side yards to the distances specified:
- (1) Cornices, canopies, eaves and similar features: 30 inches.
 - (2) Open fire escapes: six feet.
 - (3) Terraces or uncovered porches with a floor level no higher than that of the entrance to the building: six feet in side yards and 20 feet in the front yard, limited at the ends by the minimum side yard requirements. A protective railing with a maximum height of three feet may be placed around the terrace or porch.
- C. Height. The maximum height of buildings in residential and commercial districts and of residential buildings or portions of buildings used for residential purposes in other districts shall be 35 feet. The maximum height of all other buildings shall be 50 feet. Chimneys, flagpoles, radio and television antennas, cupolas, church spires, siren towers, poles and masts to support public utility lines, cornices, monuments, water tanks, silos, elevator penthouses and the necessary structures to house machinery for vertical industrial operations are released from the height limitations of this subsection.
- (1) The minimum distance between the principal building and any accessory building and between individual accessory buildings shall be 10 feet or the height of the lower building, whichever is greater.
 - (2) The minimum distance between any accessory building and any adjoining property line shall be 10 feet.
- D. Signs. Signs may be erected and maintained only when in compliance with the provisions of this article and any and all other ordinances and regulations relating to the

erection, alteration or maintenance of signs and similar devices. Use permits shall be obtained from the Code Enforcement Officer except where the sign is part of an original site plan review that is subject to approval by the Planning Board. In that instance, the permit shall be obtained from the Planning Board as part of the site plan review. **[Amended 12-28-1987 by L.L. No. 5-1987; 9-10-1990 by L.L. No. 4-1990]**

- (1) All signs must be constructed of durable materials and shall be maintained in good condition and repair at all times.
- (2) In any district, a sign not exceeding two square feet in surface area is permitted which announces the name, address or professional or home occupation of the occupant of the premises on which said sign is located.
- (3) A bulletin board not exceeding 24 square feet is permitted in connection with any church, school or similar public structure. Said bulletin board shall use exterior lighting only.
- (4) A temporary real estate or construction sign, not exceeding 24 square feet is permitted on the property being sold, leased or developed. Such sign shall be removed promptly when it has fulfilled its function.
- (5) A business sign shall be permitted in connection with any legal business or industry located on the same premises and meeting the following requirements:
 - (a) Three signs are permitted with any legally established business, including those that are standing or attached to the building.

- (b) (Reserved)¹²
- (c) Signs on a building shall not extend above the roof or parapet of the building. The height of a freestanding sign shall not exceed 35 feet.
[Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (d) Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon or from within the sign itself.
- (e) Signs which are animated, flashing or with intermittent illumination are prohibited.
- (f) Signs shall not project over public right-of-way or property lines.
- (g) Maximum square footage of any sign shall be 120 square feet or a total of 300 square feet for the three signs. [Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (h) No portable signs, signs on rocks, trees and other parts of the natural landscape or signs attached to the rooftop of vehicles parked on a public street shall be allowed.
- (i) No projecting sign shall be erected or maintained from the front or face of a building a distance of more than 12 inches.¹³

12. Editor's Note: Former Subsection D(5)(b), regarding the text on business signs, was repealed 3-13-2000 by L.L. No. 4-2000.

13. Editor's Note: Former Subsection D(5)(j) added 10-13-1992 by L.L. No. 4-1992, regarding height of signs in a PC-1A District, which immediately followed this subsection, was repealed 3-21-2005 by L.L. No. 1-2005.

- (6) Signs and billboards in a commercial zone having a depth less than 400 feet, which contain more than two square feet of surface area, shall be set back a minimum of 10 feet from the right-of-way. Signs and billboards in a commercial zone having a depth of 400 feet or more, which contain more than two square feet of surface area, shall be set back a minimum of 25 feet from the right-of-way. All other signs shall be set back from the right-of-way a minimum of five feet.

E. Parking areas.

- (1) Off-street parking space shall be required for all buildings constructed, altered, extended and engaged in use after the effective date of this chapter. A minimum of 162 square feet shall be provided for each stall, with a minimum nine-foot width and eighteen-foot depth. Said area shall be clearly delineated on the ground using appropriate pavement demarcation. Access drives shall be a minimum of 20 feet clear in width. The overall dimension of both stalls and drive shall be a minimum of 40 feet for parking along one side and 60 feet for parking along both sides of the drive. In addition, space necessary for maneuvering, safe pedestrian walkways and drives shall be provided. Parking requirements are specified in § 80-19E(3).
[Amended 10-13-1992 by L.L. No. 4-1992]
- (2) For uses not specified in § 80-19E(3), the Planning Board may establish parking requirements consistent with those specified in § 80-19E(3).
 - (a) For any building having more than one use, parking space shall be required as provided for each use.
 - (b) Floor areas for the purposes of computing parking requirements shall be the sum of the horizontal area within exterior walls of the

several floors of a building, excluding basement, cellar and attic areas used primarily for storage or service.

- (c) Any parking lot or parking area that will contain more than 100 cars shall be effectively configured using stripping and islands, so as to ensure safety of vehicles moving within the entire parking area and to control speed.
[Amended 10-13-1992 by L.L. No. 4-1992]
 - (d) Access points (ingress and egress) from parking areas, for industrial and commercial uses shall have a physical barrier separating the ingress and egress area of the access points. A maximum of two lanes, a minimum width of 12 feet wide per lane, shall be permitted for each. Access points shall be separated from adjoining access points by at least 50 feet.
 - (e) All nonresidential parking shall be adequately lighted.
- (3) Off-street parking schedule.

Use	Minimum Spaces Required
Dwelling	2 for each dwelling unit
Rooming house, motel	1 for each guest room
Church or temple	1 for each 4 seating spaces in the main assembly room
School	3 for each classroom
Theater or other place of assembly	1 for each 4 seating spaces
Retail store or bank	1 for each 200 square feet of gross floor area

Use	Minimum Spaces Required
Eating and drinking establishments	1 for every 3 seats
Wholesale, storage, freight terminal or utility use	1 for each 1,000 square feet of gross floor area
Industrial use or manufacturing use	1 for each 1.5 employees on the maximum working shift, plus 1 for company vehicle
Home occupation and professional offices	1 for each 100 square feet of feet of floor area devoted to such use
Commercial or shopping center	5.5 per 1,000 square feet of gross leasable floor space
Commercial or shopping center in a PC-1A Zone [Added 10-13-1992 by L.L. No. 4-1992]	4.5 per 1,000 square feet of gross leasable floor area
Eating and drinking establishments in a PC-1A District [Added 10-13-1992 by L.L. No. 4-1992]	1 for every 5 seats

F. Off-street loading space.

- (1) At least one off-street loading space shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 5,000 square feet, computed as described below. Space for off-street loading shall be in addition to space for off-street parking.

- (2) Each off-street loading space shall be subject to the following minimum requirements:
 - (a) Each berth shall be not less than 12 feet wide, 40 feet long and 14 feet in height when covered.
 - (b) Off-street loading space (or spaces) located within 50 feet of a residential property shall be shielded by wall, fencing or other suitable material which shall serve to screen noise and limit uncontrolled entrance. Do not inhibit sight distance.

G. Uses subject to special requirements. The following uses shall be subject to special requirements hereby established.

- (1) Commercial extraction and processing of natural products. Extraction and processing of natural products may be permitted in planned development districts, subject to the following conditions:
 - (a) The final slope of material in the excavation or pit shall not exceed the normal angle of repose of the material.
 - (b) There shall be adequate lateral support at all times for the soil of adjoining lots.
 - (c) The natural water supply of adjoining lots shall be unimpaired.
 - (d) The final contours shall be such as to prevent the accumulation of stagnant water.
 - (e) Within one year after the termination of operations, all area except that covered by buildings or intended to be covered by buildings for which valid construction permits have been issued, or covered by a permanent body of fresh water, or included in the sites for existing or planned roads, shall be covered with topsoil to

the depth of three inches or to the original depth, whichever is less, and shall be seeded. Whenever a construction permit becomes invalid or if a planned road does not become an existing road within three years after the termination of operations, any area from which natural products have been extracted or been involved in extraction operations shall be covered with topsoil to the depth of three inches or the original depth, whichever is less, and shall be seeded. A performance bond or other evidence of good faith shall be given the Town at the time of the issuance of the use permit to guarantee fulfillment of the conditions under which the permit is issued.

- (f) Adequate measures shall be taken to ensure public safety at the site.
- (2) Gasoline retail sales. The use of land and structures for gasoline retail sales shall be subject to the following conditions:
- (a) The minimum road frontage shall be 150 feet, except on corner lots where it shall be 150 feet along the shorter side.
 - (b) Pump islands shall be so placed as to provide easy access from and to the public highway without producing interference with the flow of traffic.
 - (c) Service shelters or booths may be placed adjacent to pump islands. If only one lane is to be used, the service shelter shall be placed on the side of the lane away from the public highway.
 - (d) Any building containing stalls in which minor repair and servicing may be performed shall be

located in back of the minimum setback line prescribed in § 80-23 of this chapter.

- (e) All major repair work shall be performed indoors.
- (f) All liquid fuel shall be stored in underground tanks located at least 35 feet distant from the public right-of-way and the lot lines.
- (3) Manure heaps. Manure heaps shall be a minimum of 100 feet distant from adjacent lot lines.
- (4) Outdoor storage of equipment and vehicles. In districts where such storage is permitted, it shall be limited to the area behind the minimum setback line and shall be screened from view from residential and commercial districts and from public roads, except when such storage is part of customary farming operations.
- (5) Public garages. All repair work and all storage of vehicles shall be performed indoors or within a screened enclosure situated behind the setback line.
- (6) Public utility unit substations. Public utility unit substations shall be screened and constructed in such a manner as to preserve and protect the character of the district where located.
- (7) (Reserved)¹⁴
- (8) (Reserved)
- (9) Mobile homes. Mobile homes, either as separate units or as component parts of a building, shall be located in the Town only in accordance with the Mobile Home Ordinance.¹⁵

14. Editor's Note: Former Subsections G(7), pertaining to junkyards and salvage reclamation operations, as amended, and G(8), pertaining to storage of used material and equipment, were repealed 9-22-2008 by L.L. No. 5-2008.

15. Editor's Note: See Ch. 58, Mobile Homes.

- (10) Mobile home parks. Mobile homes in a mobile home park shall be situated 40 feet distant from the side park lot line, with setback lines the same as for residences. **[Amended 9-25-1989 by L.L. No. 2-1989]**
 - (11) (Reserved)¹⁶
 - (12) Storage and display of merchandise. All merchandise on display for sale or rent shall be set back a minimum of 10 feet from the right-of-way. This standard shall not apply to the seasonal sale of agricultural products or to occasional sales, including but not limited to garage sales or lawn sales, lasting no more than three days in any thirty-day period. **[Added 9-12-1988 by L.L. No. 6-1988]**
- H. Landfills. Notwithstanding anything to the contrary stated within this Code, a sanitary landfill (nonhazardous) may be constructed anywhere within the Town of Kingsbury upon application to and approval of the Town Board, subject to site plan review by the Planning Board, and provided that all state and federal laws, rules and regulations must be met as a condition of approval.

ARTICLE VI District Regulations

§ 80-20. RF-5A Residential-Forestry District. [Amended 4-13-1987]

- A. Description. These areas contain soils, slopes and forms that, on the whole, are not desirable for continued agricultural use, that have already discontinued agricultural production or that never were in agricultural use. In addition, these areas usually contain less desirable

16. Editor's Note: Former Subsection G(11), pertaining to unregistered, old or secondhand motor vehicles, as amended, was repealed 9-22-2008 by L.L. No. 5-2008.

soils for urban development than the residential-agricultural and low-density residential zones.

- B. Purpose. The purpose of the RF-5A District is to prevent destructive development of the land, to retain areas for nonintensive uses, to prevent intensive development where it would be a burden to the Town and to retain open spaces.
- C. Density. Primary uses are as forest land where forestry management practices are carried out, agricultural production where practical, single-family home sites at a density not less than five acres per house, outdoor recreation activities and other very-low-density and -intensity uses desirable for rural areas.
- D. Permitted uses. The following uses shall be permitted in the RF-5A District:
 - (1) Forestry.
 - (2) Farms, all classes. **[Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]**
 - (3) Single-family dwellings.
 - (4) Nurseries and greenhouses.
 - (5) Accessory uses.
 - (6) Essential services.
- E. Special permit. The following uses will be permitted in the RF-5A District upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family dwellings.
 - (2) Temporary sawmills.
 - (3) Cemeteries.

- (4) Water recreation and water storage other than for fire protection or agricultural purposes.
- (5) Removal of fill, gravel, stone or loam.
- (6) Public and nonprofit outdoor recreational facilities.
- (7) Home industries.
- (8) Home occupations.
- (9) Essential service buildings.

F. Site plan review. The following uses will be permitted in the RF-5A District upon site plan review and approval by the Planning Board:

- (1) Travel trailer parks.
- (2) Summer camps and retreats.
- (3) Churches.
- (4) Public and nonprofit recreational buildings.
- (5) Dog kennels.
- (6) Timber harvesting involving the clear cutting of an area greater than five acres.

G. Minimum requirements:

- (1) Minimum lot size. Minimum lot size shall be as follows: **[Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]**

Area
(acres)

5

Width
(feet)

400

- (2) Minimum yard dimensions.

Front (feet)	1 Side Yard (feet)	Yards (feet)	2 Side Rear (feet)
50	50	150	100

§ 80-21. RA-1A and RA-M-1A Residential-Agricultural Districts. [Amended 4-13-1987]

- A. Description: a district that generally contains soils and slopes suitable for agriculture and for development. For reasons of access, topography and possible community facilities and utilities, such land should not be built on at a high density.
- B. Purpose. The purpose of the RA-1A and RA-M-1A Districts is to accommodate houses at a low density for people wanting to live in a rural atmosphere but without interfering with prime agricultural areas. The continuation of forestry and agriculture is strongly encouraged. Other low-intensity uses are also permitted.
- C. Density. A one-acre density is established to retain a rural atmosphere. This density may be increased if public water or sewers are provided.
- D. Permitted uses. The following uses shall be permitted in the RA-1A and RA-M-1A Districts:
- (1) Single-family dwellings.
 - (2) Mobile homes (NOTE: RA-M-1A Districts only).
 - (3) Forestry.
 - (4) Accessory uses.
 - (5) Farms, all classes, and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]**

- (6) Home occupations.
- (7) Essential services.
- E. Special permit. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family residential.
 - (2) Water recreation and storage.
 - (3) Essential service buildings.
 - (4) Farms engaged in the raising and sale of hogs, pigs and fur-bearing animals as a major source of income.
 - (5) Home industry.
 - (6) Kennels.¹⁷
- F. Site plan review. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon site plan review and approval by the Planning Board:
 - (1) Noncommercial public and private recreational use.
 - (2) Multifamily dwellings.
 - (3) Churches.
 - (4) Public and semipublic uses compatible with rural residential use.
 - (5) Professional offices.
 - (6) Riding stables and equine recreational uses.
[Added 3-21-2005 by L.L. No. 1-2005]
- G. Minimum requirements:

17. Editor's Note: Former Subsection E(7), Riding stables, which immediately followed, was repealed 3-21-2005 by L.L. No. 1-2005. See now § 80-21F(6).

- (1) Minimum lot size. Minimum lot size shall be as follows: [Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]

Area (acres)	Width (feet)
1*	200

* NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
50	50	100	50

* NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-22. LDR-25 and LDR-15 Low-Density Residential Districts. [Amended 4-13-1987]

- A. Description: areas that generally have suitable soils and slopes for urban development, are accessible to other population centers, are feasible to serve with public water and sewer and are generally outside the prime agricultural areas.
- B. Purpose. The purpose of the LDR-25 and LDR-15 Districts is to accommodate a high percentage of the population growth where it can be provided with adequate facilities

and utilities at densities attractive to development, leaving prime agricultural areas free of scattered development which would destroy agricultural pursuits.

- C. Density. There are two different densities associated with LDR Zones. An LDR-25 District allows one dwelling unit for every 25,000 square feet, and an LDR-15 District allows one dwelling unit for every 15,000 square feet.
- D. Permitted uses. The following uses shall be permitted in the LDR-25 and LDR-15 Districts:
 - (1) Single-family dwellings.
 - (2) Accessory uses.
 - (3) Public recreational facilities.
 - (4) Essential facilities.
- E. Special permit. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family residential.
 - (2) Essential service buildings.
 - (3) Nursery schools.
 - (4) Day care centers.
 - (5) Professional offices incidental to home use.
 - (6) Home industry.
 - (7) Home occupations.
- F. Site plan review. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon site plan review and approval by the Planning Board:

- (1) Multifamily dwelling projects.
- (2) Multidwelling projects, conversion.
- (3) Professional offices.
- (4) Hobby farms and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 8-15-2005 by L.L. No. 3-2005]**
- (5) Planned unit developments.
- (6) Churches.

G. Minimum requirements:

- (1) Minimum lot size.

District	Area (square feet)	Width (feet)
LDR-25	25,000*	150
LDR-15	15,000*	100

*NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

District	Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
LDR-25	40	25	75	50
LDR-15	40	20	40	35

*NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-23. Com-1A Commercial District. [Amended 5-12-1986 by L.L. No. 1-1986]

- A. Description. These areas are intended for commercial development. They are located along main highways with heavyduty roadbeds intended to facilitate ease of transportation for supplies as well as general traffic for commercial developments.
- B. Purpose. These areas are intended to promote the development of stores, production of commercial goods and other types of commercial services, to give balance to the development of the Town of Kingsbury, to promote development on existing arteries and to discourage scattered development on secondary roads.
- C. Density. A one-acre minimum is established. However, developments in excess of this will be largely encouraged and favored. These areas should be relatively large to provide for a selection of stores and/or adequate parking. One principal building of up to 16,000 square feet of gross floor area will be allowed for every one acre within this zone.
- D. Permitted uses. Businesses may include the following, but are not limited to:
 - (1) Retail and/or wholesale businesses.
 - (2) Tourist accommodations.
 - (3) Personal and professional services.
 - (4) Banks.
 - (5) Theaters.

- (6) Commercial recreation.
- (7) Commercial storage building.
- (8) Auto, farm and construction equipment sales/service.
- (9) Social clubs, halls and fraternal organizations.
- (10) The manufacture of products where a maximum of 10 persons is engaged or employed on the manufacturing portion of the enterprise.
- (11) Warehousing and trucking terminals.
- (12) Dwelling units in combination with permitted uses operated by the resident of the dwelling.
- (13) Multifamily dwellings.
- (14) Customary farming operations on land which is part of a farm included within the boundaries of the district.
- (15) Public utility unit substations necessary for the service of the area.
- (16) Single-family dwellings. **[Added 3-21-2005 by L.L. No. 1-2005]**

E. Permitted accessory uses are as follows:

- (1) Loading facilities.
- (2) Parking facilities.
- (3) Signs.

F. Minimum requirements are as follows:

- (1) Lot and yard size.

Minimum Lot Size		Minimum Yard Sizes		
Area (acres)	Width (feet)	Front* (feet)	Side (feet)	Rear (feet)
1	150	50	20	20, except that a 50-foot side/rear yard is required adjoining residential zones

*NOTE: Properties fronting on a state or county highway shall provide for an additional 30 feet of setback.

- (2) Minimum percent of lot to be permeable: 25%.

- G. Site plan review. All development within the Commercial Districts shall be subject to site plan review as described in Article VIII of this chapter.

§ 80-24. Ind-75 Industrial District. [Amended 4-13-1987]

- A. Description: an area with suitable space for manufacturing, processing and storage with access to various types of transportation, situated to have minimal impact on residential and other adjacent zones.
- B. Purpose: to provide for the establishment of new industrial activities in areas already containing this type of activity, to encourage development of an industrial sector of the Town and to provide for the expansion of heavy industry without competition with other use types.

C. Density. Building(s) of up to 30,000 square feet in gross floor area will be allowed for every 75,000 square feet of site. For each additional 1,000 square feet of gross floor area, 2,000 square feet of land area will be required.

D. Permitted uses.

- (1) Manufacturing operations, provided that the use meets standards of the State of New York.
- (2) Sand and gravel processing.
- (3) Building supply lumberyards and similar storage yards.
- (4) Research and testing laboratories.
- (5) Offices.
- (6) Warehousing and trucking terminals.
- (7) Public facilities and essential services.
- (8) Heavy equipment sales or service.
- (9) Accessory uses.
- (10) All uses allowed in more restrictive zones.
- (11) Junkyards. [Note: Junkyards shall not be permitted in any other zoning district.] **[Added 9-22-2008 by L.L. No. 5-2008¹⁸]**

E. Special permit.

- (1) Asphalt plants.
- (2) Cement manufacturing.
- (3) Chemical processing.

18. Editor's Note: This local law also provided that all existing junkyards located outside of the IND-75 District in the Town shall be deemed nonconforming pursuant to § 80-28.

- (4) Commercial uses serving the industrial area.
- (5) Essential service buildings.

F. Minimum requirements:

- (1) Minimum lot size.

Area (square feet)	Width (feet)
75,000	200

- (2) Minimum yard dimensions.

Front*	Each Side Yard	Rear
(feet)	(feet)	(feet)
40	25**	50**

NOTES:

*Properties fronting on a state or county highway shall provide for an additional 30 feet of setback.

**Increase to 100 feet when adjacent to other districts.

- G. Exclusion. Any other use not specifically permitted, except accessory uses, shall be prohibited, including but not limited to hazardous waste.
- H. Site plan review. All development within the Industrial Districts shall be subject to site plan review as described in Article VIII of this chapter.

**§ 80-24.1. PIC-75 Park Industrial/Commercial District.
[Added 2-9-1998 by L.L. No. 3-1998]**

- A. Description: an area that is appropriate for a wide range of light industrial and commercial uses that are not detrimental to existing adjacent residential and agricultural uses.
- B. Purpose: to establish an area in which a broad range of light industrial and compatible commercial uses can develop; to permit the continued light industrial and commercial uses and the expansion of those uses in the district; to prohibit heavy industrial uses which may have an adverse effect on the surrounding uses and adjacent districts.
- C. Density: building(s) of up to 30,000 square feet in gross floor area will be allowed for every 75,000 square feet of site. For each additional 1,000 square feet of gross floor area, 2,000 square feet of land area will be required.
- D. Permitted uses:
 - (1) Light manufacturing operations where the use meets the definition of "light manufacturing" put forth in this chapter.¹⁹
 - (2) Building supply lumberyards and similar storage yards.
 - (3) Research and testing laboratories.
 - (4) Offices.
 - (5) Warehousing for enclosed storage of goods and materials.
 - (6) Public facilities and essential services.
 - (7) Heavy equipment sales and service.

19. Editor's Note: See § 80-7, Definitions.

- (8) Distribution plants.
- (9) Construction companies.
- (10) Essential service buildings.
- (11) Retail and/or wholesale businesses.
- (12) Commercial enclosed storage buildings.
- (13) Truck, farm and construction equipment sales/service.
- (14) Public utility unit substations necessary for the service of the area.
- (15) Commercial greenhouses.
- (16) Service businesses.
- (17) Metal fabrication.

E. Minimum requirements:

- (1) Minimum lot size:

Area (square feet)	Frontage (feet)
75,000	200

- (2) Minimum yard dimensions: [Amended 3-21-2005 by L.L. No. 1-2005]

Front*	Each Side Yard	Rear
(feet)	(feet)	(feet)
40	25**	50**

Notes:

*Properties fronting on a state highway shall provide for an additional 30 feet of setback.

**Double when adjacent to residential districts.

- F. Exclusion. Any other use not specifically permitted, except accessory uses, shall be prohibited, including but not limited to hazardous waste disposal.
- G. Site plan review. All development within the PIC-75 Districts shall be subject to site plan review as described in Article VIII of this chapter.

§ 80-25. (Reserved).²⁰

ARTICLE VII
Miscellaneous Requirements

§ 80-26. Transitional zoning.

The provisions for transitional zoning are concerned with the common boundaries between different districts, the lots situated along such boundaries and with abutting areas of lots where the requirements are dissimilar.

- A. The provisions of a district with greater minimum requirements, with respect to side yard width and distance of accessory buildings from adjoining property lines, shall apply to the adjoining sides of border lots in adjacent districts with lesser minimum requirements.
- B. The owner of any lot in a Commercial, Industrial or Planned Development District or area in an Agricultural District which is used for purposes other than customary

20. Editor's Note: Former § 80-25, PC-1A Plaza Commercial Zone, added 10-13-1992 by L.L. No. 4-1992, was repealed 3-21-2005 by L.L. No. 1-2005. Also former § 80-25, Planning Development District, was repealed 9-25-1989 by L.L. No. 2-1989.

farming operations, which adjoins a residential district, shall provide screening along the district boundary, except when such lot or area is being used solely for agricultural or residential purposes for a minimum distance of 150 feet from the district boundary line.

- C. The minimum side yard requirements of any lot with a side yard boundary line common with a rear lot boundary line of a corner lot shall apply to that portion of the rear yard of the said corner lot which is adjacent to said side yard.
- D. Transition between Com-1A Districts and all residential districts. The owner of any lot that is zoned Com-1A for any portion of the lot shall be allowed to use the entire lot as set forth in § 80-23, Com-1A Commercial District, only where all of the following provisions are fully complied with: **[Added 11-9-1998 by L.L. No. 5-1998]**
- (1) The entire lot must have been of record as of the date that this subsection is enacted. This subsection shall not apply to lots that are created after the date of enactment of this subsection.
 - (2) The portion of the lot that is zoned Com-1A must have frontage on an improved roadway sufficient to satisfy the road frontage requirements of the Com-1A Districts.
 - (3) The portion of the lot facing the residential district must have solid fencing (either wood fencing or solid vegetation fencing) at least five feet in height, which fencing shall be within the required lot setback and which shall be of sufficient length to screen the commercial use from the residential district.
 - (4) Where the subject lot adjoins a lot that is entirely within the residential zone, a buffer area of 50 feet (minimum) shall be maintained. This buffer area may not contain any improvements. The buffer area

shall extend from the side yard setback of the subject lot to the lot line of the adjoining residential lot.

- (5) All provisions of the Com-1A Zone must be complied with in regard to the subject lot.

§ 80-27. Visibility at corners and curves in roads.

On any corner lot, a clear view of the intersections shall be provided from a point at least 25 feet distant from the intersection of the lot lines at the intersection or apex of the curve. Such intersection or apex shall have a view unobstructed by solid fencing, shrubbery, structures of any kind or posts more than one foot in diameter in a space between three and 10 feet above the average established grade of the adjacent road or roads.

§ 80-28. Nonconforming buildings and uses.

The lawful uses of land and/or buildings in existence on the effective date of this chapter or any amendment date thereafter may be continued without change indefinitely. Nonconforming uses and/or buildings may be changed only as authorized by the following provisions:

- A. A lot or record existing on the effective date or subsequent amendment date of this chapter may be used for any purpose permitted in the district where located, provided that the lot contains 70% of the minimum area requirement established by this chapter.
- B. A lot or record on the effective date of this chapter or subsequent amendment date which exceeds the minimum required area and frontage by at least 70% may be divided into two approximately equal sized lots which may be used for purposes permitted in the district where located.
- C. Any provisions regulating the use of land in any development which have been approved by the Planning Board prior to the effective date of this chapter, which are

in conflict with any of the provisions of this chapter, shall take precedence over the provisions of this chapter in that development.

- D. A nonconforming building may be enlarged, altered and/or moved only after a variance is obtained. A variance may be granted only under the condition that the proposed change enables the building to conform as near to or more closely to the requirements of the district where located as the building prior to the proposed change.
- E. A nonconforming use shall be limited to the confines of the buildings and/or area in use at the time the use becomes nonconforming unless a variance permitting expansion is obtained. Before a variance is granted, proof shall be submitted to the Board of Appeals that the proposed expansion does not increase the nonconforming characteristics of the use and lot.
- F. A nonconforming use may be changed to another nonconforming use or other nonconforming uses may be introduced in areas or buildings where a nonconforming use is permitted, provided that a variance is obtained. A variance shall be granted only if the proposed change will be accomplished without increasing the nonconformity of the area concerned.
- G. If any nonconforming use enterprise ceases to operate for a continuous period of one year for any reason other than the required participation of any owner, a tenant or essential personnel of either in the military service, the right to use the premises for a nonconforming use shall be terminated.
- H. Nonconforming junkyards. Notwithstanding any other provisions of this section, nonconforming junkyards may be continued only as provided herein:²¹ **[Added 3-9-2009 by L.L. No. 1-2009]**

21. Editor's Note: See also Ch. 55, Junkyards.

- (1) Nonconforming junkyards may be continued for a period of two years following the effective date of this subsection.
- (2) Within 60 days from the effective date of this subsection, the owner of a nonconforming junkyard may apply to the Town Board for such additional amortization period beyond the two-year period provided herein as the Town Board determines is reasonable under the circumstances considering the public benefit to be achieved and the nonconforming owner's economic loss. In applying for an additional amortization period, the owner must provide competent evidence demonstrating the need for such additional amortization period, considering its capital investment in the nonconforming use.
- (3) Nothing in this section shall relieve the person operating such a nonconforming junkyard from the requirement to obtain a junkyard license under applicable laws.

ARTICLE VIIA

Sexually Oriented Businesses

**[Added 6-11-2001 by L.L. No. 1-2001; amended 11-19-2001
by L.L. No. 2-2001]**

§ 80-28.1. Purpose and findings.

- A. Purpose. It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults

to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

- B. Finding. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Town Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41(1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215(1990); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), and on studies in other communities, including but not limited to, New York City, Village of Washingtonville, New York, Town of Ellicottville, New York, and Kansas City, Kansas; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented

Businesses, (June 6, 1989, State of Minnesota), the Town Board finds that:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of sexually oriented businesses defined in this article as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of

AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.

- (8) As of March 2001, there have been many, many reported cases of AIDS in the State of New York.
- (9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in New York.
- (10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 1/2 million cases being reported in 1990.
- (12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

- (15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult-oriented films.
- (16) The findings noted in Subsection B(1) through (15) raise substantial governmental concerns.
- (17) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
- (20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

- (21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- (22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this article is designed to prevent or who are likely to be witnesses to such activity.
- (23) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this article.
- (24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- (25) The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this article.

§ 80-28.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing

devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE — A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space, for the sale or rental, for any form of consideration, of any one or more of the following:

- A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas.
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

ADULT CABARET — A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- A. Persons who appear semi-nude; or
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas.

ADULT MOTEL — A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; and either:

- A. Offers a sleeping room for rent for a period of time that is less than 10 hours, or
- B. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON — The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

EMPLOYEE, EMPLOY, and EMPLOYMENT — Describe and pertain to any person who performs any service on the premises

of a sexually oriented business, on a full-time, part-time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or other status. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ENFORCEMENT OFFICER — The Town Code Enforcement Officer or such person as may be designated by the Town Board.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISH OR ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business; or

LICENSEE — A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

NUDITY or STATE OF NUDITY — The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

OPERATE or CAUSE TO BE OPERATED — To cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

SEMI-NUDE or SEMI-NUDE CONDITION — The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO — Any place where a person appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration. "Nude model studio" shall not include:

- A. A proprietary school licensed by the State of New York or a college, junior college or university supported entirely or in part by public taxation;
- B. A private college or university which maintains and operates educational programs in which credits are

transferable to a college, junior college, or university supported entirely or partly by taxation; or

C. A structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude or semi-nude model is on the premises at any one time.

SEXUAL ENCOUNTER CENTER — A business or commercial establishment that as one of its principal business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of "sexual encounter establishment" or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS —

- A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY — Any of the following offenses: prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any offenses similar to those described above under the criminal or penal code of other states or countries; for which:

- A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES — Any of the following:

- A. The fondling of another person's genitals, pubic region, anus, or female breasts;

- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in Subsection A through B above.

SUBSTANTIAL ENLARGEMENT (OF A SEXUALLY ORIENTED BUSINESS) — The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this article takes effect.

TRANSFER OF OWNERSHIP OR CONTROL (of a sexually oriented business) — Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 80-28.3. Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;

- F. Adult theaters;
- G. Escort agencies;
- H. Semi-nude model studios; and
- I. Sexual encounter centers.

§ 80-28.4. License required; application.

A. It is unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town pursuant to this article.
- (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Town pursuant to this article.
- (3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this article.

B. An application for a license must be made on a form provided by the Town. All applicants must be qualified according to the provisions of this article.

C. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Town Code Enforcement Officer a completed application made on a form prescribed and provided by the Town. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this article. The application shall be notarized. The application shall include the information called for in Subsection C(1) through (6) as follows:

- (1) The full true name and any other names used in the preceding five years.
 - (2) Current business address.
 - (3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter or the applicant's social security number to be used for the same purpose.
 - (4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.
 - (5) Written proof of age, in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency.
 - (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, whether any such license or permit has been denied, revoked or suspended and, if so, the reason or reasons therefor.
 - (7) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process. The information provided pursuant to Subsection C(1) through (7) of this section shall be supplemented in writing by certified mail, return receipt requested, to the Code Enforcement Officer within 10 working days of a change of circumstances which would render the information originally submitted false or incomplete.
- D. The application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or

diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

- E. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, such as a corporation, each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must be qualified under § 80-28.5, and each applicant shall be considered a licensee if a license is granted.
- F. A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this chapter, where applicable.
- G. The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only to other governmental agencies in connection with a law enforcement or public safety function, or as may otherwise be required by law or court order.

§ 80-28.5. Issuance of license.

- A. Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Enforcement Officer shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the Enforcement Officer to deny or grant the license. Within

20 days after the receipt of a completed application, the Enforcement Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Enforcement Officer shall approve the issuance of a license unless one or more of the following is found to be true:

- (1) An applicant is less than 18 years of age.
 - (2) An applicant is delinquent in the payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
 - (3) An applicant has failed to provide information as required by § 80-28.4 for issuance of the license.
 - (4) An applicant, a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest, has been convicted of a specified criminal activity as defined in this chapter. The fact that a conviction is being appealed shall have no effect.
 - (5) The license application fee required by this article has not been paid.
 - (6) An applicant has falsely answered a question or request for information on the application form.
 - (7) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under this article or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).
- B. An applicant ineligible for a license due to Subsection A(4) of this section may qualify for a sexually oriented business license only when the time period required by the applicable subsection has elapsed.

- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other authorized Town official.

§ 80-28.6. Fees.

- A. The nonrefundable initial license fee and annual renewal fee for a sexually oriented business license or a sexually oriented business employee license shall be set by the Town Board at an amount determined to be sufficient to pay the cost of administering this program, subject to Subsection B herein.
- B. In no event shall the fees exceed \$500 for the initial license and \$125 for the renewal fee for a sexually oriented business license. In no event shall the fees exceed \$100 for the initial license and \$50 for the renewal fee for a sexually oriented business employee license.

§ 80-28.7. Inspection.

- A. An applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or town agency in the performance of any function connected with the enforcement of this article, normally and regularly conducted by such agencies, to inspect those portions the premises of a sexually oriented business

where patrons or customers are permitted to occupy for the purpose of ensuring compliance with this chapter, at any time the business is occupied or open for business.

- B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

§ 80-28.8. Expiration of license.

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 80-28.4. Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.
- B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date denial became final.

§ 80-28.9. Suspension of license.

The Town shall issue a written intent to suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any section of this article;
- B. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

§ 80-28.10. Revocation of license.

- A. The Code Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in § 80-28.9. occurs and the license has been suspended within the preceding 12 months.
- B. The Code Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:
- (1) A licensee gave false or misleading information in the material submitted during the application process;
 - (2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A licensee has knowingly allowed prostitution on the premises;
 - (4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either in exchange for money or in a public place or within public view.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. When, after the notice and hearing procedure described in § 80-28.11, the Enforcement Officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective,

provided that, if the conditions of § 80-28.11D are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the Code Enforcement Officer finds that the basis for the revocation found in Subsection B(1) and B(4) of this section has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

§ 80-28.11. Hearing; license denial, suspension or revocation; appeal.

- A. If the Code Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Code Enforcement Officer. Within 10 working days of receipt of such notice, the respondent may provide to the Code Enforcement Officer and Town Clerk in writing a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three days of the receipt of the respondent's written response, the Town Clerk shall notify respondent in writing of the hearing date on the respondent's denial, suspension or revocation proceeding.
- B. Within 10 working days of the receipt of the respondent's written response, the Town Board shall conduct a hearing at which the respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Town Clerk and Code Enforcement Officer in the time stated, or if after the hearing the Town Board finds that grounds as specified in this resolution exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five days after the Town

Clerk sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

- C. If the Town Board finds that no grounds exist for denial, suspension, or revocation of a license, then within five days after the hearing the Town Board shall withdraw the intent to deny, suspend, or revoke the license and the Town Clerk shall so notify the respondent in writing by certified mail of such action and shall contemporaneously therewith issue the license.
- D. When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the granting of a temporary restraining order or a preliminary injunction of the Town's enforcement of the denial, suspension, or revocation, the Town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the Town's enforcement.

§ 80-28.12. Transfer of license.

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

§ 80-28.13. Location of sexually oriented businesses.

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in the Kingsbury Industrial Park or in any zoning district other than the district area defined herein.
- B. A person commits an offense if the person operates or causes to be operated a sexually oriented business within 500 feet of:
- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (2) A public or private educational facility, including but not limited to child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; "school" includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (3) A boundary of a residential district as defined in the Zoning Local Law;
 - (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;
 - (5) The property line of a lot devoted to a residential use as defined in the Zoning Code;

- (6) An entertainment business which is oriented primarily towards children or family entertainment; or
 - (7) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 500 feet of another sexually oriented business.
- D. A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- E. For the purpose of Subsection B of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection B. Presence of a town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- F. For purposes of Subsection C of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- G. Any sexually oriented business lawfully operating on the effective date of this article that is in violation of

Subsections A through F of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered, except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 500 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

- H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in Subsection B of this section within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

§ 80-28.14. Exhibition of sexually explicit films, videos or live entertainment in viewing rooms.

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- (1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the

location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
- (4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an

unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the licensee to ensure that the view area specified in Subsection A(5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection A(1) of this section.
- (7) No viewing room may be occupied by more than one person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five footcandles as measured at the floor level.
- (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

- B. A person having a duty under Subsection A(1) through (14) above commits a misdemeanor if he knowingly fails to fulfill that duty.

§ 80-28.15. Escort agencies.

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

§ 80-28.16. Public nudity.

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or engages in specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally, in a sexually oriented business, appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.

- D. It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

§ 80-28.17. Prohibition against children in sexually oriented businesses.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

§ 80-28.18. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 12:00 midnight and 8:00 a.m. on weekdays and Saturdays, and 12:00 midnight and noon on Sundays.

§ 80-28.19. Exemptions.

It is a defense to prosecution under § 80-28.17 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the State of New York; a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

- (2) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude model is on the premises at any one time.

§ 80-28.20. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of \$200 or 30 days' imprisonment. Each day a sexually oriented business so operates is a separate offense or violation.

ARTICLE VIII Site Plan Review

§ 80-29. Purpose.

The purpose of this article is to allow the proper integration into the community of uses listed in Article V of this chapter, which may be suitable within a zoning district only on certain conditions and only at appropriate locations. Because of their characteristics or the special characteristics of the area in which they are to be located, these uses require special consideration so that they may be properly located and planned with respect to:

- A. The objectives of this chapter.
- B. Their effect on surrounding properties.
- C. The ability of the Town to accommodate the growth resulting from the proposed use without undue adverse effect on the Town and its citizens and taxpayers, and the protection of health, safety and welfare of the Town and its citizens.

§ 80-30. Applicability of article. [Amended 3-13-2000 by L.L. No. 4-2000]

A land use or development involving a use listed in Article V as site plan review or in Article VI hereof shall not be undertaken unless and until the Planning Board has approved or approved with conditions such use, and the Code Enforcement Officer has issued a required permit for such land use or development pursuant to the terms of Article VIII hereof.

§ 80-31. Authorization to approve or disapprove site plan.

In accordance with § 274-a of the Town Law, the Planning Board is authorized to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in this chapter and in regulations of the Planning Board showing the arrangement, layout and design of the proposed use of the land shown on such plan.

§ 80-32. Application for review. [Amended 3-13-2000 by L.L. No. 4-2000]

Application for project approval shall be made to the Code Enforcement Officer using forms supplied by the Officer. Applications shall include reasonably sufficient information for the Officer to make his or her finding under § 80-34 of this chapter and shall be submitted in 10 copies.

§ 80-33. Sketch plan. [Amended 3-13-2000 by L.L. No. 4-2000]

A sketch plan conference may be held at the advice of the Code Enforcement Officer between the Planning Board, or its designee, and the applicant prior to the preparation and submission of a formal site plan application. The intent of such conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan and for the Planning Board to review the basic site design

concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:

- A. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation and other planned features, anticipated changes in the existing topography and natural features and, where applicable, measures and features to comply with flood hazard and flood insurance regulations.
- B. A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, properties, easements and other pertinent features.
- C. A topographic or outdoor map of adequate scale and detail to show site topography.

§ 80-34. Procedure.

- A. Application to the Code Enforcement Officer. **[Amended 3-13-2000 by L.L. No. 4-2000]**
 - (1) Not later than 10 days following receipt of a complete application for a project listed as site plan review, the Code Enforcement Officer shall notify the Planning Board of such receipt and shall furnish a copy of the project application.
 - (2) Information.
 - (a) When the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as deemed necessary by the Planning Board at said sketch plan conference. In the event that a sketch plan conference was not held, the applicant shall

provide information to all applicable items on the following checklist.

(b) The site plan checklist shall read as follows:

- [1] Title of drawing, including name and address of applicant, owner of property and person responsible for preparation of such drawing.
- [2] North arrow, scale and date.
- [3] Boundaries of the property plotted to scale and adjacent property owners.
- [4] Existing watercourses.
- [5] Grading and drainage plan showing existing and proposed contours.
- [6] Location, design and type of construction, proposed use and exterior dimensions of all buildings.
- [7] Location, design and type of construction of all parking and trucking loading areas showing access and egress.
- [8] Provision for pedestrian access.
- [9] Location of outdoor storage, if any.
- [10] Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- [11] Description of the method of sewage disposal and location, design and construction materials of such facilities.

- [12] Description of the method of securing water and location, design and construction materials of such facilities.
- [13] Location of fire and other emergency zones, including the location of fire hydrants.
- [14] Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy.
- [15] Location, size and design and type of construction of all proposed signs.
- [16] Location and proposed development of all buffer areas, including existing vegetative cover.
- [17] Location and design of outdoor lighting facilities.
- [18] Identification of the location and amount of building area proposed for retail sales or similar commercial activity.
- [19] General landscaping plan and planting schedule.
- [20] An estimated project construction schedule.
- [21] Record of application for and approval status of all necessary permits from state and county officials.
- [22] Identification of any state or county permits required for the projects execution.

[23] Other elements integral to the proposed development as considered necessary by the Planning Board.

[24] If applicable, a stormwater pollution prevention plan in accordance with the Town of Kingsbury stormwater regulations. **[Added 12-18-2006 by L.L. No. 7-2006]**

- B. Planning Board schedules optional hearing. Within 31 days of its next regular meeting following the receipt of a complete application by the Code Enforcement Officer, the Planning Board shall hold a public hearing if the Planning Board deems a public hearing is necessary. In determining whether a public hearing is necessary, the Planning Board shall be guided by the expected level of public interest in the project and the possibility of an eventual disapproval. No site plan review project may be disapproved unless a hearing shall have first been held on the project application. The Planning Board shall give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof. **[Amended 3-13-2000 by L.L. No. 4-2000]**
- C. Planning Board decision. Within 31 days after a required public hearing or within 31 days after initial review of a complete application where no public hearing was required, the Planning Board shall render a decision. Said decision shall be in the form of an approval, approval with conditions or disapproval based on the criteria and procedures cited in Articles V and VI of this chapter. The Planning Board's review of the site plan shall include, as appropriate, but is not limited to the following general considerations:
- (1) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - (2) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road

widths, pavement surfaces, dividers and traffic controls.

- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (5) Adequacy of stormwater and drainage facilities.
- (6) Adequacy of water supply and sewage disposal facilities.
- (7) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- (8) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (9) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (10) No approval, or approval with conditions, shall be granted until the Planning Board determines the applicant is in compliance with all other provisions of this chapter.

D. Filing of decision. **[Amended 3-13-2000 by L.L. No. 4-2000]**

- (1) The decision of the Planning Board shall immediately be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. The decision shall contain such findings of fact as are required by § 80-35 hereof. The Planning Board, in

conjunction with its approval of any site plan review project, may impose such requirements and conditions as are allowable within the proper exercise of the police power, including the restriction of land against further development of principal buildings, whether by deed restriction, restrictive covenant or other similar appropriate means, to ensure that guidelines as to intensity of development as provided in this chapter shall be respected. The Planning Board may impose reasonable conditions to ensure that the project will be adequately supported by services and improvements made necessary by the project and to ensure that the project will be completed in accordance with the requirements and conditions authorized under § 80-31 of this chapter. In addition, the Planning Board may require that the Code Enforcement Officer incorporate any such requirements and conditions in any permit issued with regard to such site plan review project.

- (2) Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward a copy to the applicant, the Code Enforcement Officer and file the same with the Town Clerk.
- (3) Upon disapproval of a site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a required permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. Such disapproval shall be filed with the Town Clerk.

§ 80-35. Requirements for approval.

In order to approve any site plan review use, the Planning Board shall find that:

- A. The use complies with all other requirements of this chapter, including the dimensional regulations of the zoning district in which it is proposed to be located.
- B. The use would be in harmony with the general purpose and intent of this chapter, specifically taking into account the location, character and size of the proposed use and the description and purpose of the district in which such use is proposed, the nature and intensity of the activities to be involved in or conducted in connection with the proposed use, and the nature and rate of any increase in the burden of supporting public services and facilities which will follow the approval of the proposed use.
- C. The establishment, maintenance or operation of the proposed use would not create public hazards from traffic, traffic congestion or the parking of automobiles or be otherwise detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be unduly detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the town.
- D. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the town or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, the Planning Board shall consider those factors pertinent to the project contained in the development considerations set forth herein, and in so doing, the Planning Board shall make a net overall evaluation of the project in relation to the development objectives and general guidelines set forth in § 80-36 of this article.

§ 80-36. Development considerations.

The following are those factors which relate to potential for adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Town of Kingsbury. These factors, listed above, shall be considered, as provided in this chapter, before any site plan review project is undertaken in the town. Any burden on the public in providing facilities and services made necessary by such land use and development or subdivision of land shall also be taken into account, as well as any commercial, industrial, residential, recreational or other benefits which might be derived therefrom.

A. Natural resource considerations shall be as follows:

- (1) Water.
 - (a) Existing water quality.
 - (b) Natural sedimentation or siltation.
 - (c) Eutrophication.
 - (d) Existing drainage and runoff patterns.
 - (e) Existing flow characteristics.
 - (f) Existing water table and rates of recharge.
- (2) Land.
 - (a) Existing topography.
 - (b) Erosion and slippage.
 - (c) Floodplain and flood hazard.
 - (d) Mineral resources.
 - (e) Viable agricultural soils.
 - (f) Forest resources.

- (g) Open space resources.
- (h) Vegetative cover.
- (i) The quality and availability of land for outdoor recreational purposes.
- (3) Air.
 - (a) Air quality.
- (4) Noise.
 - (a) Noise levels.
- (5) Critical resource areas.
 - (a) Rivers and corridors of rivers designated to be studied as wild, scenic or recreational in accordance with the Environmental Conservation Law.
 - (b) Rare plant communities.
 - (c) Habitants of rare and endangered species and key wildlife habitats.
 - (d) Wetlands.
 - (e) Unique features, including gorges, waterfalls and geologic formations.
- (6) Wildlife.
 - (a) Fish and wildlife.
- (7) Aesthetics.
 - (a) Scenic vistas.
 - (b) Natural and man-made travel.

B. Historic site considerations shall be as follows:

- (1) Historic factors.
 - (a) Historic sites or structures.

C. Site development considerations shall be as follows:

- (1) Natural site factors.
 - (a) Geology.
 - (b) Slopes.
 - (c) Soil characteristics.
 - (d) Depth to groundwater and other hydrological factors.
- (2) Other site factors.
 - (a) Adjoining and nearby land uses.
 - (b) Adequacy of site facilities.

D. Governmental considerations shall be as follows:

- (1) Governmental service and finance factors.
 - (a) Ability of government to provide facilities and services.
 - (b) Municipal school or special district taxes or special district user charges.

E. Governmental review considerations shall be as follows:

- (1) Governmental control factors.
 - (a) Conformance with other governmental controls.

ARTICLE IX
Enforcement

§ 80-37. Penalties for offenses.

A violation of this chapter is hereby declared to be a misdemeanor punishable by a fine not exceeding \$50 or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate additional violation.

ARTICLE X
Amendments

§ 80-38. Amendment procedure.

The Town Board may from time to time amend, supplement, change, modify or repeal any of the regulations, restrictions and boundaries contained in this chapter, including the Zoning Map, in accordance with the provisions of §§ 264 and 265 of the Town Law.

ARTICLE XI
Interpretation

§ 80-39. Provisions held to be minimum requirements.

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, morals, safety and general welfare.

ARTICLE XII
Fees

§ 80-40. Schedule of fees. [Amended 12-27-1994 by L.L. No. 3-1994]

The following fees shall be charged for services performed under the provisions of this chapter:

Type of License, Application or Permit	Fee
Site plan review	\$100
Submission of application for a planned development permit (including site plan review) [Amended 12-27-1994 by L.L. No. 3-1994]	\$400
Submission of development construction applications [Amended 12-27-1994 by L.L. No. 3-1994]	\$100
Certificate of occupancy [Amended 12-27-1994 by L.L. No. 3-1994]	\$25
Residential (one- or two-family dwelling), per hundred square feet or each fraction thereof [Amended 12-27-1994 by L.L. No. 3-1994]	\$7
Garages and accessory building (attached or detached and including porches and carports), per hundred square feet or each fraction thereof [Amended 12-27-1994 by L.L. No. 3-1994]	\$7
Additions or alterations which increase the habitable living space of a residence, per hundred square feet or each fraction thereof	\$7
Swimming pools, each (with certificate of compliance)	\$30

Type of License, Application or Permit	Fee
Variance (any type which requires Zoning Board action), each	\$75
Farm buildings (any type construction), per hundred square feet or each fraction thereof	\$5
Multiple dwelling (multifamily unit of 3 or more), per hundred square feet or each fraction thereof	\$10
Commercial or industrial building, per hundred square feet or each fraction thereof	\$12
Signs, each	\$25
Mobile homes (either inside or outside a mobile home court), each	\$50
Demolition permit, each	\$25

APPENDIX

SUBDIVISION REGULATIONS

Chapter A84

SUBDIVISION REGULATIONS

ARTICLE I General Provisions

- § A84-1. Declaration of policy.
- § A84-2. Definitions.

ARTICLE II Minor and Major Subdivision Approval

- § A84-3. Written application required.
- § A84-4. Submission of sketch plan.
- § A84-5. Minor subdivision approval.
- § A84-6. Submission of preliminary plat for major subdivision.
- § A84-7. Submission of final plat for major subdivision.
- § A84-8. Required improvements.
- § A84-9. Filing of approved major subdivision plat.
- § A84-10. Streets and recreation areas.

ARTICLE III General Requirements; Design Standards

- § A84-11. Standards to be minimum requirements.
- § A84-12. Land requirements; conformity required.
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- § A84-14. Street design.
- § A84-15. Street names.

§ A84-1

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§ A84-1

§ A84-16. Lots.

§ A84-17. Drainage improvements.

§ A84-18. Parks, open spaces and natural features.

ARTICLE IV
Required Documents

§ A84-19. Sketch plan.

§ A84-20. Minor subdivision plat.

§ A84-21. Major subdivision preliminary plat.

§ A84-22. Major subdivision plat and accompanying data.

ARTICLE V
Variances and Waivers

§ A84-23. Conditions for waivers and variances.

Procedures Summary

[HISTORY: Adopted by the Planning Board of the Town of Kingsbury 11-19-80; approved by the Town Board 12-8-80. Sections A84-5A, A84-6A and A84-7A amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.
Subdivision enforcement — See Ch. 69.
Zoning — See Ch. 80.

ARTICLE I
General Provisions

§ A84-1. Declaration of policy.

By the authority of the resolution of the Town Board of the Town of Kingsbury, adopted on December 8, 1980, pursuant to

the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Kingsbury is authorized and empowered to approve plats showing lots, blocks or sites, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the county and to conditionally approve preliminary plats within the Town of Kingsbury. It is declared to be the policy of the Planning Board to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the Official Map, if such exists, and shall be properly related to the proposals shown on the Master Plan, if such exists, and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of fire-fighting equipment to buildings; and that proper provision shall be made for open spaces for parks and playgrounds. In order that land subdivision may be made in accordance with this policy, these regulations which shall be known as and which may be cited as the "Town of Kingsbury Land Subdivision Regulations" have been adopted by the Planning Board on November 19, 1980, and approved by the Town Board on December 8, 1980.

§ A84-2. Definitions.

For the purpose of these regulations, certain words and terms herein are defined as follows:

COLLECTOR STREET — A street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to a major street.

COUNTY — Washington County.

DEAD-END STREET or CUL-DE-SAC — A street or a portion of a street with only one vehicular traffic outlet.

EASEMENT — Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

ENGINEER or LICENSED PROFESSIONAL ENGINEER — A person licensed as a professional engineer by the State of New York.

MAJOR STREET — A street which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic-generating areas.

MAJOR SUBDIVISION — Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots, or any size subdivision requiring any new street or extension of municipal facilities.

MASTER OR COMPREHENSIVE PLAN — A comprehensive plan, prepared by the Planning Board pursuant to § 272-a of the Town Law, which indicates the general locations recommended for various functional classes of public works, places and structures and for general physical development of the town and includes any unit or part of such plan separately prepared and any amendment to such plan or parts therein.

MINOR STREET — A street intended to serve primarily as an access to abutting properties.

MINOR SUBDIVISION — Any subdivision containing not more than four lots fronting on an existing street, not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion

of the Master Plan, Official Map or Zoning Ordinance,¹ if such exist, or these regulations. Successive minor subdivision may be considered as a major subdivision.²

PLANNING BOARD or BOARD — The Planning Board of the town.

PRELIMINARY PLAT — A drawing or drawings clearly marked "preliminary plat" showing the salient features of a proposed subdivision, as specified in Article IV, § A84-21, of these regulations, submitted to the Planning Board for the purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

SKETCH PLAN — A sketch of a proposed subdivision showing the information specified in Article IV, § A84-19, of these regulations to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the layout and objectives of these regulations.

STREET — Includes streets, roads, avenues, lanes or other traffic ways between right-of-way lines.

STREET PAVEMENT — The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH — The width of right-of-way measured at right angles to the center line of the street.

SUBDIVIDER — Any person, firm, corporation, partnership or association, who shall lay out any subdivision or part thereof as defined herein, either for himself or others.

SUBDIVISION [Amended 6-27-1988; 3-13-2000 by L.L. No. 3-2000] — The division of any parcel of land

¹ Editor's Note: See Ch. 80, Zoning.

² Editor's Note: The definition of "official map," which immediately followed this definition, was repealed 3-13-2000 by L.L. No. 3-2000.

into two or more lots, blocks or sites, with or without streets or highways, and includes resubdivision.

- A. This shall not apply to the sale of a small amount of land to correct the boundary of a lot if such sale or exchange does not create an additional lot according to the zoning regulations.³
- B. A division of lands into parcels of three acres or more, each having a lot width of 300 feet or more at the setback line along a town, county or state road, with utilities, or the division of any parcel fronting on a residential district into two lots, each conforming in every respect to the dimensional requirements of the zoning district in which it is located, shall not be a subdivision under these regulations.
- C. In or to be exempt under Subsection B of this definition, the applicant shall provide to the Code Enforcement Officer a mylar plot plan demonstrating compliance with this section. Thereafter, said mylar plot plan shall be filed with the County Clerk in the County of Washington.

SUBDIVISION PLAT or FINAL PLAT — A drawing, in final form, showing a proposed subdivision, containing all information or detail required by law and by these regulations to be presented to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the office of the County Clerk.

SURVEYOR — A person licensed as a land surveyor by the State of New York.

TOWN — The Town of Kingsbury.

TOWN ENGINEER — The duly designated Engineer of the town.

³ Editor's Note: See Ch. 80, Zoning.

ARTICLE II

Minor and Major Subdivision Approval**§ A84-3. Written application required.**

Whenever any subdivision of land is proposed to be made, and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply in writing for approval of such proposed subdivision in accordance with the following procedures.

§ A84-4. Submission of sketch plan.

- A. Submission of sketch plan. Any owner of land shall, prior to subdividing or resubdividing land, submit to the Code Enforcement Officer, at least 21 days prior to the regular meeting of the Board, 10 copies of a sketch plan of the proposed subdivision, which shall comply with the requirements of Article IV, § A84-19, for the purposes of classification and preliminary discussion. [Amended 3-13-2000 by L.L. No. 3-2000]
- B. Discussion of requirements and classification. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, sewerage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information. Classification of the sketch plan is to be made at this time by the Planning Board as to whether it is a minor or major subdivision, as defined in these regulations. The Board may require, however, when it deems it necessary for protection of the public health, safety and welfare, that a minor subdivision comply with all or some of the requirements specified for major subdivisions. If the sketch plan is classified as a minor subdivision, the

subdivider shall then comply with the procedure outlined in Article II, § A84-5, of these regulations. If it is classified as a major subdivision, the subdivider shall then comply with the procedures outlined in Article II, §§ A84-6, A84-7 and A84-8.

- C. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes of these regulations and shall, where it deems necessary, make specific recommendations in writing to be incorporated by the applicant in the next submission to the Planning Board.
- D. Accelerated procedure for minor subdivision. The subdivider may elect to submit his complete application prior to the Planning Board's sketch plan meeting, in conformance with § A84-5 of Article II and § A84-20 of Article IV. If the subdivision is classified as minor, and the application submission is complete, the Planning Board shall schedule a public hearing within 30 days of the sketch plan meeting, if the Planning Board deems a public hearing necessary. If the subdivision is classified as major, the date of submission shall be considered to be the date of the next regular meeting of the Planning Board after receipt of a complete submission. [Amended 11-28-1988]

§ A84-5. Minor subdivision approval.

- A. Application and fee. Within six months after classification of the sketch plan as a minor subdivision by the Planning Board, the subdivider shall submit an application for approval of a subdivision plat. Failure to do so shall require resubmission of the sketch plan to the Planning Board for reclassification. The plat shall conform to the layout shown on the sketch plan plus any recommendations made by the Planning Board. Said application shall also conform to the requirements listed in Article IV, § A84-20. All applications for plat approval for minor subdivisions shall be accompanied by a fee

according to the fee schedule.⁴ **[Amended 12-28-1983 by L.L. No. 2-1983]**

- B. Number of copies. Ten copies of the subdivision plat shall be presented to the Code Enforcement Officer at least 21 days prior to a scheduled monthly meeting of the Planning Board. **[Amended 3-13-2000 by L.L. No. 3-2000]**
- C. Subdivider to attend Planning Board meeting. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the subdivision plat.
- D. When officially submitted. The time of submission of the subdivision plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least 10 days prior to which the application for plat approval, complete and accompanied by the required fee and all data required by Article IV, § A84-20, of these regulations, has been filed with the Code Enforcement Officer. **[Amended 3-13-2000 by L.L. No. 3-2000]**
- E. Public hearing. A public hearing shall be held by the Planning Board within 30 days from the time of submission of the subdivision plat for approval, if the Planning Board deems a public hearing necessary. Said hearing shall be advertised in the official newspaper of the town at least five days before such hearing. **[Amended 11-28-1988]**
- F. Action on subdivision plat. The Planning Board shall, within 31 days from the date of the public hearing, approve, modify and approve or disapprove the subdivision plat. Failure of the Planning Board to act within such time shall constitute approval.

⁴ Editor's Note: For current fees, see Ch. 46, Fees.

§ A84-6. Submission of preliminary plat for major subdivision.

- A. Application and fee. Prior to the filing of an application for the approval of a major subdivision plat, the subdivider shall file an application for the consideration of a preliminary plat of the proposed subdivision, in the form described in Article IV, § A84-21, hereof. The preliminary plat shall, in all respects, comply with the requirements set forth in the provisions of §§ 276 and 277 of the Town Law, and Article IV, § A84-21, of these regulations, except where a waiver may be specifically authorized by the Planning Board. The application for conditional approval of the preliminary plat shall be accompanied by a fee according to the fee schedule. **[Amended 12-28-1983 by L.L. No. 2-1983]**
- B. Number of copies. Ten copies of the preliminary plat shall be presented to the Code Enforcement Officer for transmittal to the Secretary of the Planning Board at least 21 days prior to a regular monthly meeting of the Planning Board. **[Amended 3-13-2000 by L.L. No. 3-2000]**
- C. Subdivider to attend Planning Board meeting. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the preliminary plat.
- D. Study of preliminary plat. The Planning Board shall study the practicability of the preliminary plat taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet unsubdivided and the requirements of the Master Plan, the Official Map and Zoning Regulations,⁵

⁵ Editor's Note: See Ch. 80, Zoning.

if such exist. The Planning Board, in reviewing a preliminary plat, shall attempt to avoid excessive community expenditures by the town because of necessary community improvements. This applies particularly to improvements not only viewing them as capital expenditures by the municipality, but also taking into consideration excessive operating expenditures, such as school bus operation, police and fire protection, etc. The Planning Board shall avoid approval of premature subdivisions in light of orderly community development.

- E. When officially submitted. The time of submission of the preliminary plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least 21 days prior to which the application for conditional approval of the preliminary plat, complete and accompanied by the required fee and all data required by Article IV, § A84-21, of these regulations, has been filed with the Code Enforcement Officer. **[Amended 3-13-2000 by L.L. No. 3-2000]**

- F. Conditional approval of the preliminary plat.

- (1) Within 45 days after receipt of such preliminary plat by the Secretary of the Planning Board, the Planning Board shall hold a public hearing, which hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. Within 45 days after the date of such hearing, the Planning Board shall approve, with or without modification, or disapprove such preliminary plat, and the grounds for modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. The time in which the Planning Board must take action on such plat may be extended by mutual consent of the

subdivider and the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing modifications, if any, as it deems necessary for submission of the plat in final form. Within five days of the approval of such preliminary plat, it shall be certified by the Secretary of the Planning Board as granted preliminary approval, and a copy shall be filed in his office, a certified copy shall be mailed to the owner, and a copy shall be forwarded to the Town Board. Failure of the Planning Board to act within 45 days shall constitute approval of the preliminary plat.

- (2) When granting approval to a preliminary plat, the Planning Board shall state the terms of such approval, if any, with respect to the modifications to the preliminary plat; the character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety, morals and general welfare; and the amount of improvement or the amount of all bonds therefor which it will require as prerequisite to the approval of the subdivision plat. Approval of a preliminary plat shall not constitute approval of the subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these regulations. Prior to approval of the subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in final form or as a result of new information obtained at the public hearing.

§ A84-7. Submission of final plat for major subdivision.

- A. Application for approval and fee. The subdivider shall, within six months after the conditional approval of the preliminary plat, file with the Planning Board an application for approval of the subdivision plat in final form, using the approved application blank available from the Secretary of the Planning Board. All applications for plat approval for major subdivisions shall be accompanied by a fee according to the fee schedule.⁶ If the final plat is not submitted within six months after the conditional approval of the preliminary plat, the Planning Board may refuse to approve the final plat and require resubmission of the preliminary plat. **[Amended 12-28-1983 by L.L. No. 2-1983]**
- B. Number of copies. A subdivider intending to submit a proposed subdivision plat for the approval of the Planning Board shall provide the Secretary of the Board with a copy of the application and three copies (one copy in ink on linen or plastic reproducible material) of the plat, the original and one true copy of all offers of cessation, covenants and agreements, two prints of all construction drawings and estimates of the costs of roads and utility improvements proposed, said estimate to be prepared by a licensed professional engineer or land surveyor, at least 10 days in advance of the regular monthly meeting of the Planning Board at which it is to be officially submitted.
- C. When officially submitted. The time of submission of the subdivision plat shall be considered to be the date of the regular monthly meeting of the Planning Board at least 21 days prior to which the application for approval of the subdivision plat, complete and accompanied by the required fee and all data required by Article IV, § A84-22, of these regulations has been filed with the Secretary of the Planning Board. In addition, if the

⁶ Editor's Note: For current fees, see Ch. 46, Fees.

applicant elects to construct any or all required improvements [as specified in Article II, § A84-8A(2)], the Town Engineer must file a certificate with the Planning Board stating that these improvements have been satisfactorily installed, or the Town Clerk must certify that a performance bond in the amount specified has been filed with the town, before the subdivision plat shall be considered officially submitted. **[Amended 3-13-2000 by L.L. No. 3-2000]**

- D. Endorsement of state and county agencies. Water and sewer facility proposals contained in the subdivision plat shall be properly endorsed and approved by the State Department of Health where appropriate. Applications for approval of plans for sewer or water facilities will be filed by the subdivider with all necessary town, county and state agencies. Endorsement and approval shall be secured by the subdivider prior to the final approval of the subdivision by the Planning Board becoming effective.
- E. Public hearing. Within 45 days of the submission of a plat in final form for approval a hearing shall be held by the Planning Board. This hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing, provided that when the Planning Board deems the final plat to be in substantial agreement with a preliminary plat approved under § A84-6 of this article, and modified in accordance with requirements of such approval if such preliminary plat has been approved with modification, the Planning Board may waive the requirements for such public hearing.
- F. Action on proposed subdivision plat.
 - (1) The Planning Board shall by resolution conditionally approve, conditionally approve with or without modification, disapprove or grant final approval and authorize the signing of such plat, within 45 days of its receipt by the Secretary of the

Planning Board if no hearing is held or, in the event that a hearing is held, within 45 days after the date of such hearing. This time may be extended by mutual consent of the subdivider and the Planning Board. Failure to take action on a final plat within the time prescribed therefor shall be deemed approval of the plat.

- (2) Upon resolution of conditional approval of such final plat, the Planning Board shall empower a duly authorized officer to sign the plat upon completion of such requirements as may be stated in the resolution. Within five days of such resolution, the plat shall be certified by the Secretary of the Planning Board as conditionally approved, and a copy shall be filed in his office and a certified copy shall be mailed to the subdivider. The copy mailed to the subdivider shall include a certified statement of such requirements which, when completed, will authorize the signing of the conditionally approved final plat. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the Planning Board.
- (3) Conditional approval of a final plat shall expire 180 days after the date of the resolution granting such approval unless the requirements have been certified as completed within that time. The Planning Board may, however, extend the time within which a conditionally approved plat may be submitted for signature if, in its opinion, such extension is warranted in the circumstances, but not to exceed two additional periods of 90 days each.

§ A84-8. Required improvements.

- A. **[Amended 3-13-2000 by L.L. No. 3-2000]**
Improvements and performance bond. Before the Planning Board grants final approval of the subdivision

plat, the subdivider shall follow the procedure set forth in either Subsection A(1) or (2) below:

- (1) In an amount set by the Planning Board, the subdivider shall either file with the Town Clerk certified check to cover the full cost of the required improvements or the subdivider shall file with the Town Clerk a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of § 277 of the Town Law and shall be satisfactory to the Town Board and the engineer for the town as to form, sufficiency, manner of execution and surety. A period of one year (or such other period as the Planning Board shall determine appropriate, not to exceed three years) shall be set forth in the bond within which required improvements must be completed.
 - (2) The subdivider shall complete all required improvements to the satisfaction of the engineer for the town, who shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Board. For any required improvements not so completed the subdivider shall file with the Town Clerk a bond or certified check covering the costs of such improvements and the cost of satisfactorily removing any improvement not approved by the engineer for the town. Any such bond shall be satisfactory to the Town Board and engineer for the town as to form, sufficiency, manner of execution and surety.
- B. Modification of design of improvements. If at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the engineer for the town that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the engineer for the town may, upon approval by a previously delegated member of the Planning Board, authorize modifications,

provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The engineer for the town shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at their next regular meeting. [Amended 3-13-2000 by L.L. No. 3-2000]

- C. Inspection of improvements. At least five days prior to commencing construction of required improvements, the subdivider shall pay to the Town Clerk the inspection fee required by the Town Board and shall notify the Town Board in writing of the time when he proposes to commence construction of such improvements so the Town Board may cause inspection to be made to assure that all town specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the Planning Board.
- D. Proper installation of improvements.
- (1) Thirty days prior to the expiration of the performance bond, the subdivider shall provide as-built certification of improvements by a licensed professional engineer or land surveyor stating that the improvements were constructed in substantial conformance with the approved plan. Said certification shall contain a list of all modifications and/or changes in improvements from the approved plan.
 - (2) If the engineer for the town shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the

Town Board, Building Inspector and Planning Board. The Town Board then shall notify the subdivider and, if necessary, the bonding company, and take all necessary steps to preserve the town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat. [Amended 3-13-2000 by L.L. No. 3-2000]

§ A84-9. Filing of approved major subdivision plat.

- A. Final approval and filing. Upon completion of the requirements in §§ A84-7 and A84-8A above and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Planning Board (Chairman or Acting Chairman) and may be filed by the applicant in the Office of the County Clerk. Any subdivision plat not so filed or recorded within 90 days of the date upon which such plat is approved or considered approved by reason of the failure of the Planning Board to act, shall become null and void, unless the particular circumstances of said applicant warrant the Planning Board to grant an extension which shall not exceed two additional periods of 90 days.
- B. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless the said plat is first resubmitted to the Planning Board, and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ A84-10. Streets and recreation areas.

- A. Public acceptance of streets. The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the town of any street, easement or other open space shown on such subdivision plat.
- B. Ownership and maintenance of recreation areas. When a park, playground or other recreation area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the town of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town Board covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.

ARTICLE III**General Requirements; Design Standards****§ A84-11. Standards to be minimum requirements.**

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth hereinafter. The said standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in Article V herein.

§ A84-12. Land requirements; conformity required.

- A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
- B. Conformity to Official Map and Master Plan. Subdivisions shall conform to the Official Map of the

town and shall be in harmony with the Master Plan, if such exists.

- C. Specifications for required improvements. All required improvements shall be constructed or installed to conform to the town specifications, which may be obtained from the engineer for the town.

§ A84-13. Street layout.

- A. Width, location and construction. Streets shall be of sufficient width, suitably located and adequately constructed to conform with the Master Plan, if such exists, and to accommodate the prospective traffic and afford access for fire-fighting, snow removal and other road maintenance equipment. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system.
- B. Arrangement. The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivisions and for proper projection of principal streets into adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services, such as sewers, water and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- C. Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.

(Cont'd on page A8419)

- D. Special treatment along major arterial streets. When a subdivision abuts or contains an existing or proposed major arterial street, the Board may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- E. Provision for future resubdivision. Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations.
- F. Dead-end streets. The creation of dead-end or loop residential streets will be allowed wherever the Board finds that such type of development will not interfere with normal traffic circulation or protection of property and public health in the area. In the case of dead-end streets, where needed or desirable, the Board may require the reservation of a twenty-foot wide easement to provide for continuation of pedestrian traffic and utilities to the next street.
- G. Block size. Blocks generally shall not be less than four hundred (400) feet nor more than twelve hundred (1200) feet in length. In general, no block width shall be less than twice the normal lot depth. In blocks exceeding eight hundred (800) feet in length, the Planning Board may require the reservation of a twenty-foot wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved footpath be included.
- H. Intersections with collector or major arterial roads. Minor or secondary street openings into such roads shall, in general, be at least five hundred (500) feet apart.

- I. Street jogs. Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall be avoided.
- J. Angle of intersection. In general, all streets shall join each other so that for a distance of at least one hundred (100) feet the street is approximately at right angles to the street it joins.
- K. Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography.
- L. Other required streets. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land (as for park purposes in residential districts or for commercial or industrial purposes in appropriate districts). Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

§ A84-14. Street design.

- A. Widths of rights-of-way. Streets shall have the following widths (When not indicated on the Master Plan or Official Map, if such exists, the classification of streets shall be determined by the Board.):

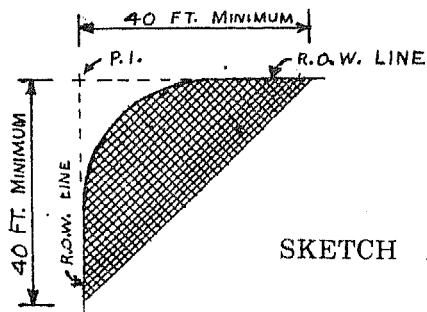
Classification	Minimum Right-of-way (feet)	Minimum Pavement (feet)
Local streets	50	24
Major streets	66	30
Collector streets	60	24

B. Improvements.

- (1) Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, street trees and fire hydrants in such a manner as to meet the minimum requirements of the Town Board and the standards established as part of the Comprehensive Plan of the town.
 - (2) Waivers may be requested and the Planning Board may waive sections or reduce the standards established as part of the Comprehensive Plan, subject to appropriate conditions, where such improvements in the judgment of the Planning Board may be omitted or altered without jeopardy to the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Town Engineer. Such grading and improvements shall be approved as to design and specifications by the Town Engineer.
 - (a) Fire hydrants. Installation of fire hydrants shall be in conformance with town standards.
 - (b) Street lighting facilities. Lighting facilities shall be in conformance with the lighting system of the town. Such lighting standards and fixtures shall be installed after approval by the appropriate power company and the authorized Town Electrical Inspector.
- C. Utilities in streets. The Planning Board shall, wherever possible, require that underground utilities be placed in the street right-of-way between the paved roadway and street line to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities before the street is paved.
- D. Utility easements. Where topography is such as to make impractical the inclusion of utilities within the rights-of-way, perpetual unobstructed easements at least twenty

(20) feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present as few irregularities as possible. Such easements shall be cleared and graded where required.

- E. Grades. Grades of all streets shall conform in general to the terrain, and shall in general be not less than one-half ($\frac{1}{2}$) nor more than six percent (6%) for major or collector streets, or ten percent (10%) for minor streets in residential zones, but in no case more than three percent (3%) within fifty (50) feet of any intersection.
- F. Changes in grade. All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Town Engineer so that clear visibility shall be provided for a safe distance.
- G. Curve radii at street intersections. All street right-of-way lines at intersections shall be rounded by curves of at least a twenty-foot radius and curbs shall be adjusted accordingly.
- H. Steep grades and curves; visibility of intersections. A combination of steep grades and curves shall be avoided. In order to provide visibility for traffic safety, that portion of any corner lot (whether at an intersection entirely within the subdivision or of a new street with an existing street) which is shown shaded on Sketch A shall be cleared of all growth, except isolated trees, and obstructions above the level three (3) feet higher than the center line of the street. If directed, ground shall be excavated to achieve visibility.



SKETCH A

- I. Dead-end streets (culs-de-sac). Where dead-end streets are designed to be so permanently, they should, in general, not exceed five hundred (500) feet in length and shall terminate in a circular turn-around having a minimum right-of-way radius of sixty (60) feet and pavement radius of fifty (50) feet. At the end of temporary dead-end streets a temporary turnaround with a pavement radius of fifty (50) feet shall be provided, unless the Planning Board approves an alternate arrangement.
- J. Watercourses.
- (1) Where a watercourse separates a proposed street from abutting property, provision shall be made for access to all lots by means of culverts or other structures of design approved by the Town Engineer.
 - (2) Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a stormwater easement or drainage right-of-way as required by the Town Engineer, and in no case less than twenty (20) feet in width.
- K. Curve radii. In general, street lines within a block deflecting from each other at any one (1) point by more than ten degrees (10°) shall be connected with a curve, the radius of which for the center line of streets shall not be less than four hundred (400) feet on major streets, two hundred (200) feet on collector streets and one hundred fifty (150) feet on minor streets.
- L. Service streets or loading space in commercial development. Paved rear service streets of not less than twenty (20) feet in width, or in lieu thereof, adequate off-street loading space, suitably surfaced, shall be provided in connection with lots designed for commercial use.
- M. Free flow of vehicular traffic abutting commercial developments. In front of areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial use is contemplated, the street width shall be increased by such amount on each side as may be deemed necessary by the Planning Board to assure

the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.

§ A84-15. Street names.

- A. Type of name. All street names shown on a preliminary plat or subdivision plat shall be approved by the Planning Board. In general, streets shall have names and not numbers or letters.
- B. Names to be substantially different. Proposed street names shall be substantially different so as not to be confused in sound or spelling with present names, except that streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name. Generally, no street should change direction by more than ninety (90) degrees without a change in street name. Names of existing streets within the town shall not be reused.

§ A84-16. Lots.

- A. Lots to be buildable. The lot arrangement shall be such that in constructing a building in compliance with the Zoning Ordinance,⁷ there will be no foreseeable difficulties for reasons of topography or other natural conditions. Lots should not be of such depth as to encourage the later creation of a second building lot at the front or rear.
- B. Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines, unless a variance from this rule will give a better street or lot plan.
- C. Corner lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each street and provide a desirable building site.
- D. Driveway access. Driveway access and grades shall conform to specifications of the town driveway ordinance, if one exists.

⁷ Editor's Note: See Ch. 80, Zoning.

- E. Access from private streets, Access from private streets shall be deemed acceptable only if such streets are designed and improved in accordance with these regulations.
- F. Monuments and lot corner markers. Permanent monuments, meeting specifications approved by the engineer for the town as to size, type and installation, shall be set at such block corners, angle points, points of curves in streets and/or points as the engineer for the town may require, and their location shall be shown on the subdivision plat. [Amended 3-13-2000 by L.L. No. 3-2000]

§ A84-17. Drainage improvements.

- A. Removal of spring and surface water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way, where feasible, or in perpetual unobstructed easements of appropriate width. The design of such facilities shall be performed by a licensed professional engineer in conformance with standards set by the engineer for the town. [Amended 3-13-2000 by L.L. No. 3-2000]
- B. Drainage structure to accommodate potential development upstream. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The engineer for the town shall approve the design and size of facility based on anticipated runoff from a design storm under conditions of total potential development permitted by the Zoning Ordinance⁷ in the watershed.

⁷ Editor's Note: See Ch. 80, Zoning.

The engineer for the town shall establish the recurrence interval of the design storm. [Amended 3-13-2000 by L.L. No. 3-2000]

- C. Responsibility for drainage downstream. The subdivider's engineer shall also study the effect of each subdivision on the existing downstream drainage facilities outside the area of the subdivision; this study shall be reviewed by the engineer for the town. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a five-year storm, the Planning Board shall notify the Town Board of such potential condition. In such case, the Planning Board shall not approve the subdivision until provision has been made for the improvement of said condition. [Amended 3-13-2000 by L.L. No. 3-2000]
- D. Land subject to flooding.
- (1) Land which has been classified by the Federal Insurance Administration as a floodplain area having special flood hazard shall not be platted for residential development, nor for such other uses deemed by the Planning Board to increase the danger to health, life or property or aggravate the flood hazard, but such lands within any plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or shall be improved in a manner satisfactory to the Planning Board to remedy said hazardous conditions.
 - (2) Fill or encroachments within the floodway, as designated by the Federal Insurance Administration, which would impair its ability to carry and discharge the waters resulting from the one-hundred-year flood, are prohibited.

§ A84-18. Parks, open spaces and natural features.

- A. Recreation areas shown on town plan. Where a proposed park, playground or open space shown on the Town Plan is located in whole or in part in a subdivision, the Board shall require that such area or areas be shown on the plat in accordance with the requirements specified in Subsection B below. Such area or areas may be dedicated to the town by the subdivider if the Town Board approves such dedication.
- B. Information to be submitted. In the event that an area to be used for a park or playground is required to be so shown the subdivider shall submit, prior to final approval, to the Board, three prints (one on cloth) drawn in ink showing, at a scale of not less than 30 feet to the inch, such area and the following features thereof:
 - (1) The boundaries of the said area, giving lengths and bearings of all straight lines, radii, lengths, central angles and tangent distances of all curves.
 - (2) Existing features such as brooks, ponds, clusters of trees, rock outcrops or structures.
 - (3) Existing and, if applicable, proposed changes in grade and contours of the said area and of areas immediately adjacent.
- C. Reserve strips prohibited. Reserve strips of land, which might be used to control access from the proposed subdivision to any neighboring property or to any land within the subdivision itself shall be prohibited.
- D. Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, water courses and falls, beaches, historic spots, vistas and similar irreplaceable assets.

ARTICLE IV
Required Documents

§ A84-19. Sketch plan.

The sketch plan initially submitted to the Planning Board shall be based on Tax Map information or some other similarly accurate base map at a scale (preferably not less than 200 feet to the inch) to enable the entire tract to be shown on one sheet, the sketch plan shall be submitted, showing the following information:

- A. The location of that portion which is to be subdivided in relation to the entire tract, and the distance to the nearest existing street intersection.
- B. All existing structures, wooded areas, streams and other significant physical features, within the portion to be subdivided and within 200 feet thereof.
- C. The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.
- D. The tax map sheet, block and lot number, if available.
- E. All the utilities available, and all streets which are either proposed, mapped or built.
- F. The proposed pattern of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage and water supply (see § A84-20B) within the subdivided area.
- G. All existing restrictions on the use of land, including easements, covenants or zoning lines.

§ A84-20. Minor subdivision plat.

- A. The Planning Board requires a sketch drawing, giving dimensions and may require an actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by

a licensed land surveyor. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10 feet. The Planning Board may also require that the corners of the tract shall also be located on the ground and marked by monuments, as approved by the engineer for the town or set by town standards, and shall be referenced and shown on the plat. **[Amended 3-13-2000 by L.L. No. 3-2000]**

- B. All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health, and a note to this effect shall be stated on the plat and signed by a licensed engineer. On-site disposal systems shall be designed on the basis of a percolation test performed on the site. Said test shall be witnessed and certified by a licensed engineer or a licensed surveyor. **[Amended 3-13-2000 by L.L. No. 3-2000]**
- C. Proposed subdivision name, name of the town and county in which it is located.
- D. The date, North arrow, map scale, name and address of record owner and subdivider.
- E. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
- F. The plat to be filed with the County Clerk shall be printed upon reproducible material approved by the Planning Board and County Clerk. The size of the sheet shall be 17 inches by 22 inches or 22 inches by 34 inches. Variance with this size shall be allowed where required to conform with filing requirements of the County Clerk and/or where approved by the Planning Board.
- G. If applicable, a stormwater pollution prevention plan in accordance with the Town of Kingsbury stormwater regulations. **[Added 12-18-2006 by L.L. No. 7-2006]**

§ A84-21. Major subdivision preliminary plat.

The following documents shall be submitted for conditional approval:

- A. **[Amended 3-13-2000 by L.L. No. 3-2000]** Ten copies of the preliminary plat prepared at a scale of not more than 100 but preferably not less than 50 feet to the inch, showing:
- (1) Proposed subdivision name, name of town and county in which it is located, date, true North arrow, scale, name and address of record owner, subdivider and engineer or surveyor, including license number and seal.
 - (2) The name of all subdivisions immediately adjacent and the name of the owners of record of all adjacent property.
 - (3) Zoning district, including exact boundary lines of district, if more than one district, and any proposed changes in the zoning district lines and/or the Zoning Ordinance text applicable to the area to be subdivided.¹
 - (4) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
 - (5) Location of existing property lines, easements, buildings, water courses, marshes, rock outcrops, wooded areas, significant groves of trees and other significant existing features for the proposed subdivision and adjacent property.
 - (6) Location of existing sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
 - (7) Contours with intervals of five feet or less as required by the Board, including elevations on

¹ Editor's Note: See Ch. 80, Zoning.

existing roads. Approximate grading plan if natural contours are to be changed more than two feet.

- (8) The width and location of any streets or public ways or places shown on the Official Map or the Master Plan, if such exists, within the area to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the developer.
- (9) The approximate location and size of all proposed water lines, valves, hydrants, wells, sewage disposal systems, sewer lines and fire alarm boxes. Connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law. Profiles of all proposed water and sewer lines.
- (10) Storm drainage plan indicating the approximate location and size of proposed lines and their profiles. Connection to existing lines or alternate means of disposal.
- (11) Plans and cross-sections showing the proposed location and type of sidewalks, street lighting standards, street trees, curbs, water mains, sanitary sewers and storm drains and the size and type thereof, the character, width, depth of pavements and subbase, the location of manholes, basins and underground conduits.
- (12) Preliminary designs of any bridges or culvert which may be required.
- (13) The proposed lot lines with approximate dimensions and area of each lot.
- (14) Where the topography is such as to make difficult the inclusion of any of the required facilities with the public areas as laid out, the preliminary plat shall show the boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than 20 feet

in width and which shall provide satisfactory access to an existing public highway or other public highway or public open space shown on the subdivision or the Official Map.

- (15) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial monuments of such size and type, as approved by the engineer for the town, and shall be referenced and shown on the plat.
- B. If the application covers only a part of the subdivider's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract and the probable future drainage layout of the entire tract shall be submitted. The part of the subdivider's entire holding submitted shall be considered in the light of the entire holdings.
- C. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
- D. If applicable, a stormwater pollution prevention plan in accordance with the Town of Kingsbury stormwater regulations. [Added 12-18-2006 by L.L. No. 7-2006]

§ A84-22. Major subdivision plat and accompanying data.

The following documents shall be submitted for plat approval:

- A. **[Amended 3-13-2000 by L.L. No. 3-2000]** The plat to be filed with the County Clerk shall be reproducible mylar prints. The size of the sheets shall be 24 inches by 36 inches, 30 inches by 42 inches, or 48 inches by 72 inches, including a margin for binding of two inches outside of the border along the left side, and a margin of one inch outside of the border along the remaining sides. Variance with these sizes shall be allowed where required to conform with filing requirements of the County Clerk and/or where approved by the Planning Board. The plat shall be drawn at a scale of no more

(Cont'd on page A8433)

than 100 feet to the inch and oriented with the North arrow at the top of the map. When more than one sheet is required, an additional index sheet of the same size shall be filed showing to scale the entire subdivision with lot and block numbers clearly legible. The plat shall show:

- (1) Proposed subdivision name or identifying title and the name of the town and county in which the subdivision is located, the name and address of record owner and subdivider, name, license number and seal of the licensed land surveyor.
- (2) Street lines, pedestrianways, lots, reservations, easements and areas to be dedicated to public use.
- (3) Sufficient data acceptable to the engineer for the town to determine readily the location, bearing and length of every street line, lot line, boundary line and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
- (4) The length and bearing of all straight lines, radii, length of curves and central angles of all curves, tangent bearings shall be given for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and true North point.
- (5) The plat shall also show, by proper designation thereon, all public open spaces for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner

in which such areas are to be maintained and the provisions made therefor.

- (6) All offers of cession and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.
- (7) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing town practice.
- (8) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the engineer for the town. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the State Department of Transportation. They shall be placed as required by the engineer for the town and their location noted and referenced upon the plat.
- (9) All lot corner markers shall be permanently located satisfactorily to the engineer for the town, at least $\frac{3}{4}$ inches (if metal) in diameter and at least 24 inches in length, and shall be located in the ground to existing grade.
- (10) Monuments of a type approved by the engineer for the town shall be set at pertinent points as required by the engineer for the town.
- (11) Construction drawings, including plans, profiles and typical cross-sections, as required, showing the proposed location, size and type of streets, sidewalks, street lighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, pavements and subbase, manholes, catch basins and other facilities.

ARTICLE V
Variances and Waivers

§ A84-23. Conditions for waivers and variances.

- A. Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the Official Map, the Master Plan or the Zoning Ordinance, if such exists.⁹
- B. Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions.
- C. In granting variances and modifications, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

⁹ Editor's Note: See Ch. 80, Zoning.

SUBDIVISION REGULATIONS

PROCEDURES SUMMARY

[Amended 11-28-1988; 3-13-2000 by L.L. No. 3-2000]

Minor Subdivision (Accelerated)

Application Procedure	Time Frame
File sketch plan (10 copies) and subdivision plat with Code Enforcement Officer	21 days prior to the regular meeting
Appear at Planning Board to discuss	At regular monthly meeting
Planning Board may hold a public hearing	Within 30 days of meeting
Planning Board shall act on subdivision plat	Within 31 days of hearing

Minor Subdivision (Standard)

Application Procedure	Time Frame
File sketch plan (10 copies) with Code Enforcement Officer	21 days prior to the regular meeting
Appear at Planning Board to discuss	At regular monthly meeting
Subdivision to be classified major or minor	At regular monthly meeting
Submit subdivision plat for approval (10 copies)	Within 6 months of classification and 21 days before the regular monthly meeting
Appear at Planning Board to discuss subdivision plat	At regular monthly meeting
Planning Board may hold a public hearing	Within 30 days of meeting
Planning Board shall act on subdivision plat	Within 31 days of hearing

KINGSBURY CODE

Major Subdivision

Application Procedure	Time Frame
File sketch plan (10 copies) with Code Enforcement Officer	21 days prior to the regular meeting
File copy of environmental assessment form*	21 days prior to the regular meeting
Appear at Planning Board to discuss	At regular monthly meeting
Subdivision to be classed major or minor	At regular monthly meeting
Environmental assessment, Type I or Type II, determination*	Within 15 days of meeting
Apply for consideration of preliminary plat	21 days prior to regular meeting and within 6 months of sketch plan classification
For Type I environmental actions, also file a draft environmental impact statement*	21 days prior to regular meeting and within 6 months of sketch plan classification
Planning Board shall hold a public hearing on preliminary plat	Within 45 days of regular meeting
Planning Board may hold a public hearing on the draft environmental impact statement*	
Submit the final environmental impact statement	
Planning Board shall act on preliminary plat	Within 45 days of hearing or extended by mutual consent

SUBDIVISION REGULATIONS

Application Procedure	Time Frame
Notice of action on preliminary plat	Within 5 days of such action
Submit subdivision plat	Within 6 months of conditional approval of preliminary plat
Planning Board shall hold a public hearing	Within 45 days of submission of final subdivision plat
Planning Board shall act on final subdivision plat	Within 45 days of hearing or extended by mutual consent

NOTES

*Denotes Environmental Impact Procedures.

Chapter A85**ELECTION DISTRICTS****§ A85-1. Districts established.**

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 7-1-1918. Amendments noted where applicable.]

§ A85-1. Districts established. [Amended 5-20-1965]

The following are the boundaries of the nine election districts of the Town of Kingsbury, Washington County, New York, as established July 1, 1918, and revised May 20, 1965:

- A. District No. 1. Bounded and described as follows:
bounded on the west by the westerly line of the Town of Kingsbury, on the north by the northerly line of the Town of Kingsbury, on the east by the easterly line of the Town of Kingsbury, and on the south by a line drawn from west to east beginning at the west line of said town in the center of Casey Road, Tracy Road, Underwood Road east to intersection of Geer Road; thence in the center of the said last-mentioned highway southerly until it intersects U. S. Route No. 4 leading from Hudson Falls to Whitehall; thence in a direct line to the intersection of Hudson Falls - Smiths Basin Road and Hartman Road; thence in a direct line to the east line of said town where it is intersected by a road from South Hartford Village to Smiths Basin called the Hartford Road.
- B. District No. 2. Bounded and described as follows:
bounded on the north by the southerly line of District No. 1 as described above from the center of U. S. Route No. 4 at the intersection of Route No. 4 and Geer Road;

then on a straight line to intersection of Smiths Basin Road and Hartman Road; thence on a straight line to easterly line of Town of Kingsbury where it intersects the Hartford Road, on the east by the easterly line of the Town of Kingsbury, on the south by the southerly line of the Town of Kingsbury, on the west by the easterly line of the Village of Hudson Falls running north westerly to U. S. Route No. 4.

- C. District No. 3. Bounded and described as follows: Beginning at the center of Feeder Street and the Village of Hudson Falls line, and running thence easterly along the northerly boundary line of said village to the northeast corner thereof; thence southerly along the easterly boundary line thereof to the center of Martindale Avenue; thence westerly along the center of Martindale Avenue to the center of Lower Feeder Street (which is walking trail along the old canal most of the way); across Main Street; thence northerly following the center of Feeder Street to the place of beginning. **[Amended 4-22-1996]**
- D. District No. 4. Bounded and described as follows: Beginning at the northwest corner of the village of Hudson Falls and running thence easterly along the northerly boundary line of said village to the center of Feeder Street; thence southerly along the center of Feeder Street across Main Street and following Lower Feeder Street, which is mostly a walking trail following the old canal to Martindale Avenue; thence westerly along the center of Martindale Avenue to Main Street; thence southerly along the center of Main Street to the intersection of Main and Maple Streets; thence westerly to the Hudson River; thence along the easterly bank of the Hudson River to the Washington and Warren County line; thence northerly along said county line to the place of beginning. **[Amended 4-22-1996]**
- E. District No. 5. Bounded and described as follows: commencing in the center of Martindale Avenue and the easterly boundary line of the Village of Hudson Falls,

and running thence southerly along the said easterly boundary line to the center of Maple Street; thence westerly along the center of Maple Street to the center of Main Street; thence northerly along the center of Main Street to Martindale Avenue; thence easterly along the center of Martindale Avenue to the place of beginning.

- F. District No. 6. Bounded and described as follows: commencing in the center of Maple Street and in the easterly boundary line of the Village of Hudson Falls, and running thence westerly along the center of Maple Street, and across Main Street in a straight line to the easterly bank of the Hudson River; thence southerly along said easterly bank of the Hudson River to the center of the River Bridge; thence easterly along the center of Sumpter Street to the center of Main Street; thence northerly along the center of Main Street to a point opposite the center of Elm Street; thence easterly along the center of Elm Street and on a straight line, being the prolongation of said center line of Elm Street to the easterly boundary line of said Village of Hudson Falls; thence northerly along said easterly boundary line to the place of beginning.
- G. District No. 7. Bounded and described as follows: commencing at a point in the easterly boundary line of the Village of Hudson Falls, the same being a point where the prolongation of the center of Elm Street intersects said easterly boundary line and running westerly to the center of Elm Street; thence continuing westerly along the center of Elm Street to the center of Main Street to a point opposite the center of Sumpter Street; thence westerly along the center of Sumpter Street to the river bridge; thence southerly along the easterly bank of the Hudson River to a point opposite the center of John Street; thence easterly to the center of John Street; thence easterly along the center of John Street and the prolongation of the center line of John Street to the easterly boundary line of the Village of

Hudson Falls; thence northerly along said easterly boundary line to the place of beginning.

- H. District No. 8. Bounded and described as follows: commencing at a point in the easterly boundary line of the Village of Hudson Falls, said point being where the prolongation of the center line of John Street intersects said boundary line, and running thence westerly along said prolongation of the center line of John Street to the center of said John Street; thence westerly along the center of said John Street to the Hudson River; thence southerly along the easterly bank of the Hudson River to the southerly boundary line of said Village of Hudson Falls; thence easterly along the southerly line of said Village of Hudson Falls to the easterly boundary line thereof; thence northerly along said easterly boundary line to the place of beginning.
- I. District No. 9. Bounded and described as follows: bounded on the north by the southerly line of District No. 1 as described above to a point where the Geer Road intersects U.S. Route No. 4, on the east by U. S. Route No. 4 running south in the center of said Route No. 4 to the Hudson Falls Village line, on the south by the northerly line of the Village of Hudson Falls, and on the west by the westerly line of the Town of Kingsbury.

Chapter A86

ZONING DISTRICT BOUNDARIES

§ A86-1. Metes and bounds.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 4-13-87. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 80.

§ A86-1. Metes and bounds.

The following are the boundaries of the zoning districts of the Town of Kingsbury, Washington County, New York, as established August 6, 1958, and revised April 13, 1987.

A. RF-5A Residential-Forestry District.

- (1) Zone 1 shall be between Route 4 and Notre Dame Street extension and shall include those lands within the 240-foot contour line serving as a drainage basin for Bonds Creek.
- (2) Zone 2 shall start at a point along Tow Path Road 700 feet from Route 196. It shall then proceed east parallel to Route 196 to a point 500 feet east of Wood Creek. It shall then turn northeast and proceed 6,000 feet to the first 90° turn on New Swamp Road. It shall then proceed 1,500 feet north of this turn on a line parallel to the next northerly portion of the New Swamp Road and 2,000 feet to the east of that road. The zone shall then turn west to meet New Swamp Road and proceed along that road to Tow Path Road. It shall then head southwest along Tow Path Road to the point of beginning.

- B. RA-1A Residential-Agricultural District. Those portions of the Town of Kingsbury not in any other zoning classification shall be designated RA-1A.
- C. RA-M-1A Residential-Agricultural District.
- (1) Zone 1 shall begin on the east side of Tripoli Road 1,000 feet south of the Kingsbury Town line and proceed east parallel to the Kingsbury Town line to a point 1,000 feet beyond Farley Road, then northerly parallel to Farley Road to the town line.
 - (2) Zone 2 shall begin on Route 196 1,000 feet west of its intersection with County Route 43 and proceed north parallel to County Route 43 to a point 1,000 feet beyond Gulf Road. From that point, it shall proceed easterly parallel to Gulf Road to the town line.
 - (3) Zone 3 shall begin on the west side of Hinds Road 1,000 feet north of the intersection of Hinds Road and Town Line Road. It shall proceed westerly 6,000 feet parallel to Town Line Road, then proceed southerly at right angles to Town Line Road to the town line.
- D. LDR-25 Low-Density Residential District. This zone shall be between the Hudson Falls Village line and a line 2,000 feet north of the center of Dix Avenue and shall run parallel to Dix Avenue from the Washington County line on the west to New York State Route 4 on the east, excluding the commercial zones established in this area and excluding the LDR-15 Low-Density Residential Zone established in this area. This zone shall also be between the Hudson Falls Village line and a line 2,000 feet east of the center of Burgoyne Avenue and shall run parallel to Burgoyne Avenue from New York State Route 4 on the north to the Fort Edward Town line on the south, excluding the commercial zones established in this area and excluding the area within the 240-foot contour which forms the watershed for Bonds Creek.
- E. LDR-15 Low-Density Residential District. This zone shall be bounded on the east by a line 100 feet east of Feeder Street, from the Hudson Falls Village line to the Commercial District along Dix Avenue, it shall be bounded on the north by the

Commercial District along Dix Avenue, from 100 feet east of Feeder Street to 325 feet west of Broad Street, it shall be bounded on the west by a line parallel to and 325 feet west of Broad Street, from the Commercial District on the north to the Hudson Falls Village line on the south; and it shall be bounded on the south by the Hudson Falls village line from 325 feet west of Broad Street to 100 feet east of Feeder Street.

F. Com-1A Commercial District.

(1) Number 1.

- (a) Two hundred feet on each side of Route 4 from the Village of Hudson Falls to Waite Road.

(2) Number 2.

- (a) Four hundred feet on the west side of Route 4, beginning at Waite Road, proceeding north 2,700 feet to the line between Parcel No. 146-2-12 and Parcel No. 146-2-11.2.
- (b) The zone shall begin again 1,122 feet further north at the line between Parcel No. 146-2-8 and Parcel No. 137-1-1920 and proceed north to a point 1,860 feet north of Geer Road to a line between Parcel No. 13-81-66 and Parcel No. 138-1-70.
- (c) The zone shall begin again 473 feet further north at the line between Parcel No. 138-1-71.2 and Parcel No. 138-1-72 and proceed north 59 feet to a point 4,380 feet north of Rock City Road to a line between Parcel No. 129-3-20.3 and Parcel No. 129-3-20.1.
- (d) The zone shall begin again at the intersection of Route 4 and Green Barn Road and proceed north to the Kingsbury Town line.

(3) Number 3.

- (a) Four hundred feet on the east side of Route 4 beginning 3,768 feet north of the intersection of Route 4 and Waite Road on a line between Parcel No. 146-3-3.1 and Parcel No. 146-3-3.2, proceeding north to a point 412 feet before the intersection of Route 4 and Kingsbury Road at a line between Parcel No. 129-3-12 and Parcel No. 129-3-14.
 - (b) The zone shall begin again at a line between Parcel No. 129-4-5 and Parcel No. 129-2-17 and proceed north to the Kingsbury Town line.
- (4) Number 4.
- (a) Two hundred feet on the north side of Dix Avenue from the county line to Dean Road.
 - (b) Three hundred fifty feet on the north side of Dix Avenue from Dean Road to Route 4.
 - (c) Two hundred feet on the south side of Dix Avenue from the county line to North Street and from Vaughn Road to Route 4.
 - (d) Two hundred feet on the east side of Burgoyne Avenue from Route 4 to the intersection of Burgoyne Avenue and Maynard Street.
 - (e) Two hundred feet on the west side of Burgoyne Avenue from Route 4 to Franklin Street and from the south side of the Central School property to the intersection of Burgoyne Avenue and Maynard Street.
- (5) Number 5.
- (a) Two hundred feet on each side of Maple Street from the Village of Hudson Falls line to the intersection of Maple Street and Burgoyne Avenue.

G. Ind-75 Industrial District. [Amended 1-25-1988 by L.L. No. 1-1988; 2-9-1998 by L.L. No. 3-1998]

- (1) This zone shall be 1,000 feet on each side of the Barge Canal from the Fort Edward Town line on the south to the Fort Ann Town line on the north, excluding the RF-5A Zone.

H. Pld-5A Planned Development District. (NOTE: The terms used are from the Zoning Ordinance of 1958 and subsequent amendments.)

- (1) A planned development district in the former R-20 District, hereafter known as the "R-15 District," in the area bounded as follows: on the south by the Bentley Road, on the east by Donald Wheeler's east line, on the north by Harlan Haynes' south line, on the west by Vaughn School Road, excepting and reserving therefrom so much thereof as goes with the schoolhouse property, consisting of approximately 60 acres, is hereby created, and the Zoning Map is hereby amended to show such area.
- (2) A planned development district in the R-15 Residential District is hereby created and bounded as follows: on the north by Coddington; on the east by New York State Route No. 4; on the south by Geer Road; and on the west by Geer Road and lands of Donald Geer, consisting of approximately 5 acres, and the Zoning Map is hereby amended to show such change.
- (3) A planned development district in the Residential R-15 District is hereby created, bounded as follows: beginning at the intersection of premises reputedly owned by Hassett, Dickinson and Birinyi and Matte, thence proceeding in a general easterly direction along the southerly boundary line of said Hassett property 870 feet more or less to an iron pipe, thence at a right angle to the aforementioned line in a general southerly direction 540 feet more or less to an iron pipe, thence at a right angle and approximately parallel to the first line in a general westerly direction 870 feet more or less to an iron

pipe, thence in a general northerly direction along the boundary line of premises owned by Dickinson, Birinyi and Matte 540 feet more or less to the point or place of beginning, containing approximately 10 acres more or less.

I. Pld-2A Planned Development District. (NOTE: The terms used are from the Zoning Ordinance of 1958 and subsequent amendments.)

- (1) A planned development district partially in the Commercial District and R-10 District is hereby created, bounded as follows: on the north by Dix Avenue, on the east by Hoose and Village of Hudson Falls, on the west by Meader and on the south by Village of Hudson Falls, consisting of approximately 2½ acres, and the Zoning Map is hereby amended to show such area.

(a) Permitted uses. The following uses are permitted in the area:

- [1] Trailer parks.
 - [2] Commercial enterprises.
 - [3] All other uses permitted in residential districts now known as "R-15" and "R-10" as they shall be laid out by the owner, subject to the restrictions and provisions of § 80-25.
- (2) A planned development district in the Commercial and Residential R-10 District is hereby created, bounded as follows: on the north by Dix Avenue; on the east by property of Miss Marion Meader and Miss Elizabeth Meader; on the south by property owned by the Village of Hudson Falls; and on the west by property of Mrs. Emerson North; consisting of approximately 3½ acres, owned by Morris Solomon, who proposes to develop a mobile home trailer park at 678 Dix Avenue, Town of Kingsbury,

and the Zoning Map is hereby amended to show such area.

J. PIC-75 Park Industrial District. [Added 2-9-1998 by L.L. No. 3-1998]

- (1) This zone shall start 1,265 feet north of the intersection of County Line Road and Casey Road and proceed easterly 2,600 feet, then turn at right angles northerly and go 1,320 feet and then turn again easterly and proceed 900 feet. It shall then turn southerly for 500 feet and then proceed westerly 250 feet and then turn southerly for a distance of 2,000 feet, then turning northwest for 1,060 feet. From here, it shall head south-southwest 650 feet to Casey Road. From there it shall proceed west along Casey Road and then turn southerly parallel to County Line Road for 2,000 feet and then turn east-southeast 360 feet and then southerly again 1,100 feet. From here the zone boundary shall proceed westerly 500 feet, southerly 760 feet, westerly 1,400 feet to County Line Road 6,160 feet to the beginning point.
- (2) This zone shall start at the northwest corner of 137-1-49 and running 87 degrees east along the northerly boundary of this parcel 1,016 feet, then south 21 degrees 45 minutes west for 785.4 feet, then south 84 degrees 45 minutes east 50.82 feet, then south 3 degrees 30 minutes west 324.06 feet, then south 85 degrees 45 minutes west 146.52 feet, then south 11 degrees thirty minutes east 261.36 feet, then south 50 degrees 45 minutes west approximately 654 feet to the Washington-Warren County line. From here the boundary shall run northerly along the county line to the place of beginning.
- (3) This zone shall include the balance of tax map Parcel 137-1-49.

WATER DISTRICT RULES & REGS.

Chapter A87

WATER DISTRICT RULES AND REGULATIONS

ARTICLE I

Kingsbury Water District Nos. 1, 2 and 3

- § A87-1. Regulations deemed part of contract.
- § A87-2. Unauthorized connections and attachments.
- § A87-3. Applications for connections; charges.
- § A87-4. Meter required.
- § A87-5. Use of fire hydrants; fine.
- § A87-6. Connections; service turnoff.
- § A87-7. Cross-connections prohibited.
- § A87-8. Supply regulations; town liability; special equipment.
- § A87-9. Billing procedure.
- § A87-10. Fire-protection service.
- § A87-11. Curb box.
- § A87-12. Minimum charge.
- § A87-14. Severability.
- § A87-15. When effective.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury: Art. I, 9-28-1987 as L.L. No. 4-1987. Amendments noted where applicable.]

ARTICLE I

Kingsbury Water District Nos. 1, 2 and 3
[Adopted 9-28-1987 as L.L. No. 4-1987]**§ A87-1. Regulations deemed part of contract. [Amended 12-28-1992 by L.L. No. 5-1992]**

Every rule and regulation adopted by the Town Board of the Town of Kingsbury for the operation of Water District No. 1, No. 2 and No. 3 shall be binding upon each and every person whose property shall be supplied with water by said district, and such rules and regulations shall be deemed to constitute a part of the contract existing by law between such person and the town.

§ A87-2. Unauthorized connections and attachments.

No person other than the duly authorized representatives of the town will be permitted to tap or make any connection or attachment with any town water mains or to make any repairs, additions or alterations to any pipe, tap, cock, meter or other fixture connected with any service line from the water main to the curb box, including said curb box.

§ A87-3. Applications for connections; charges.

- A. Application for service connections with any water main or pipe forming a part of the distribution system of the town shall be made to the town on the form provided therefor. Such application shall be signed by the owner of the property to be served or by an agent holding legal authorization to sign for the owner. Payment for such connection must be made in advance, in accordance with the schedule in effect. No connection to the system will be made without approval of the application verified by the issuance of a permit. No connections will be made for properties outside water district limits.
- B. An authorized representative of the town will perform all work from the main to the curb box, including tapping

the main, furnishing and installing the water service piping to the curb stop and furnishing and installing the curb stop and box.

C. Charges. **[Amended 12-28-1992 by L.L. No. 5-1992]**

- (1) Charges are as established in Chapter 46, Fees.
- (2) Rates for service connections will be reviewed by the town on an annual basis.
- (3) Charges for services larger than one and one-half (1½) inches shall be made on a case-by-case basis.

D. Service connection from the curb box to the building being served shall be made by the property owner at his own expense and shall conform to the town's specifications, including the following:

- (1) Pipe running from the curb box to the building shall be a minimum of three-fourths (¾) inch or larger and shall be Type K copper. Large size connection pipes may be ductile iron in lieu of copper.
- (2) The pipe between the curb box and the building shall be buried at a depth of not less than six (6) feet.
- (3) The pipe shall be cushioned with a minimum of six (6) inches of sand all around.
- (4) The owner shall obtain all permits required for the construction of the connection from the curb box to the building.
- (5) A gate valve of the size of the service connection shall be installed by the owner just inside the building between the building wall and the meter.
- (6) Immediately prior to making the connection to the curb box, the connection line shall be disinfected and flushed with water.
- (7) The owner will install a check valve, to be furnished by the owner at the expense of the owner, of a type

satisfactory to the town, on the outlet side of the water meter.

- (8) The owner shall provide a pressure reducing valve, to protect his fixtures, etc., from high pressures that may occur in the distribution system from time to time.
- E. Each and every property within Kingsbury Water District No. 1 which utilizes water for domestic purposes shall make connection to the distribution system within eighteen (18) months of when distribution system service is available to the property, "domestic purposes" being defined as the use of potable water for cooking, washing, bathing or flushing of human wastes. If the owner of any property fails to comply with this requirement, he shall be assessed for water just as if his property were connected.

§ A87-4. Meter required.

- A. Every property receiving water from Kingsbury Water District No. 1, No. 2 and No. 3 shall have a water meter installed and inspected prior to water service being turned on. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- B. Meters for services up to and including one and one-half ($1\frac{1}{2}$) inches in size shall be provided by the town. The cost of the meter shall be included in the town charges for connection. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- C. Meters for services larger than one and one-half ($1\frac{1}{2}$) inches in size shall be provided by the property owner at no cost to the town. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- D. It shall be the responsibility of the property owner to provide adequate and appropriate space for the meter installation with access for reading, lighting and

protection from freezing in the basement or other room of the building being served.

- E. Meters may be installed by the property owner or contractor working for the owner. However, the meter installation shall be inspected by a duly authorized representative of the town before the water services will be turned on. Meter installation shall be made at the expense of the property owner.
- F. No seal placed on any meter, valve or fitting shall be tampered with, defaced or broken. Seals may only be broken by a duly authorized representative of the town.

§ A87-5. Use of fire hydrants; fine.

- A. Except in case of fire, no person shall attempt to manipulate or control any fire hydrant or draw any water therefrom, except the regular employees or duly authorized representatives of the town, unless said person or persons shall have obtained a permit from the town.
- B. A fine of twenty-five dollars (\$25.) shall be imposed for every fire hydrant opened without the proper authority, and all water shall be paid for at the regular domestic rate for all water taken or permitted to run therefrom. The amount of water shall be computed from the time the water is allowed to run, taking the average pressure into consideration and presuming that the hydrant was fully opened.

§ A87-6. Connections; service turnoff.

- A. No connection of any kind shall be made to the service pipe between the main and the meter.
- B. In case any owner desires to abandon any service, the town shall be notified and the service will be disconnected at the main. This work shall be performed

by the town, for which service the owner shall be charged the fee as established in Chapter 46, Fees.

§ A87-7. Cross-connections prohibited.

No cross-connection shall be permitted between the public system and any private water supply, nor shall any situation be permitted which will permit any contaminated water to be returned to the public system in the event of low pressure.

§ A87-8. Supply regulations; town liability; special equipment.

- A. The town shall have full right at all times, whenever in its opinion the public good requires it, to regulate, diminish or entirely cut off the supply of water from any and all parties taking water and to make all such regulations and rules for the use, or for diminishing the use thereof, as it shall think proper.
- B. The town shall not be responsible for breaks, obstructions or intermissions in service arising from any cause whatever. The town and/or district shall not be responsible or liable for any damage which may result to consumers' pipes, appliances, etc., from the shutting off of water mains and/or service pipes for any purpose whatsoever, whether previous notice has been given or not.
- C. In cases where boilers or other special equipment are supplied with water, a suitable valve or other device must be installed by the owner to prevent collapse or explosion in case the water is shut off in the mains.

§ A87-9. Billing procedure. [Amended 1-14-1991 by L.L. No. 1-1991; 4-22-1991 by L.L. No. 6-1991]

- A. Water bills shall become due quarterly commencing on June 30, 1991, and quarterly payments shall be due on

September 30, December 31 and March 31. **[Amended 12-28-1992 by L.L. No. 5-1992]**

- B. Bills can be obtained at the Accounting Office after the first five (5) days of the period. Bills will be mailed to each consumer; however, the safe delivery of such bills is not guaranteed. If a consumer does not receive his bill on or before the 10th day of the period, he should call the Accounting Office for a duplicate. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- C. All bills are due and payable at the office of the Receiver of Water Rents on the dates fixed by the town. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- D. If any water account remains unpaid twenty (20) days after the bill for the same is rendered, there shall be charged as a penalty for such nonpayment an additional sum as stated in Chapter 46, Fees. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- E. If any water account remains unpaid ninety (90) days after the bill for the same has been rendered, the Accounting Office shall serve a notice upon the delinquent property owner, and if such account remains unpaid for ten (10) days thereafter, the premises shall be deprived of water until all arrearages are paid in full. No payment will be received which leaves a previous charge unpaid. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- F. If at the end of November there are any amounts still due and owing on said water account, said amount will be forwarded to the Washington County Treasurer's office and added in to the following year's town/county property taxes. **[Amended 12-28-1992 by L.L. No. 5-1992]**
- G. All water rents must be paid by the owners and will be billed to them only, unless a special permit is issued by the town acting as Commissioners of the water district.

§ A87-10. Fire-protection service.

- A. Large connections for fire protection by means of automatic sprinklers or standpipes shall be considered for approval upon special application to the town.
- B. When required, large connections for fire protection, etc., shall be metered, the cost of which shall be paid by the property owner.
- C. No service connection of any kind will be permitted to be attached to any fire-protection service.

§ A87-11. Curb box.

It shall be the duty of the property owner to keep the curb box at the curb shutoff in such condition that the employees of the Department may at all times have ready and convenient access thereto for the purpose of turning on and off the water supply to the premises using the same.

§ A87-12. Minimum charge.

- A. There will be a minimum period charge made in the amounts set forth, in Chapter 46, Fees. This minimum charge shall entitle the user to the quantity of water designated in Chapter 46, Fees. Meters will be read during the period immediately preceding the expiration of the period, and in the event that more water is used during any period than is allocated thereto, bills will be rendered for such excess at the rates stated in Chapter 46. In the event that less water is used during any period than the minimum, no credit, refund or allowance will be made therefor. [Amended 12-28-1992 by L.L. No. 5-1992]
- B. New subscribers coming in during a period need pay only the consumption charge without the minimum for the balance of the period.

§ A87-13. Penalties for offenses.

- A. For any and every violation of the provisions of this ordinance, the owner, general agent, occupant, lessee or tenant of any part of the premises in which said violation has been committed or shall exist shall be guilty of a misdemeanor, which shall be punishable by fine or imprisonment, or both.
- B. The fine shall not exceed twenty-five dollars (\$25.) or imprisonment not to exceed ten (10) days.
- C. In addition thereto and without any further notice to the owner, lessee, agent or tenant or any other person who shall aid or abet in the violation of this ordinance, the Town Board may enforce compliance with such ordinance by cutting off the supply of water.

§ A87-14. Severability.

If any clause, sentence, paragraph, section or part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ A87-15. When effective. [Amended 12-28-1992 by L.L. No. 5-1992]

This ordinance, as amended, shall take effect January 1, 1993.

**DISPOSITION
LIST**

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Kingsbury adopted since January 1, 2005, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Consult municipal records for disposition of prior legislation.

§ DL-1. Disposition of legislation.

Local Law No.	Adoption Date	Subject	Disposition
1-2005	3-21-2005	Zoning amendment	Ch. 80
2-2005	6-20-2005	Firearms	Ch. 46A
3-2005	8-15-2005	Zoning amendment	Ch. 80
4-2005	9-19-2005	Solid waste: litter	Ch. 64, Art. II
5-2005	11-14-2005	Sewer rules and regulations	Ch. 63, Part 1
6-2005	11-14-2005	Sewer rents	Ch. 63, Part 2
7-2005	12-19-2005	Fees amendment	Ch. 46
8-2005	12-19-2005	Senior citizens tax exemption amendment	Ch. 72, Art. I
1-2006	3-20-2006	Public access to records amendment	Ch. 24, Art. I

Local Law No.	Adoption Date	Subject	Disposition
2-2006	8-21-2006	Vehicle and truck exclusions	Ch. 75, Art. I
3-2006	10-16-2006	Taxation: alternative veterans exemption amendment	Ch. 72, Art. III
4-2006	12-18-2006	Fire prevention and building construction	Ch. 47 Part 1
5-2006	12-18-2006	Illicit discharges and connections to storm sewers	Ch. 65, Part 1
6-2006	12-18-2006	Stormwater management and erosion and sediment control	Ch. 65, Part 2
7-2006	12-18-2006	Zoning amendment; subdivision regulations amendment	Ch. 80, A84
1-2007	5-21-2007	Senior citizens tax exemption amendment	Ch. 72, Art. 1
1-2008	2-11-2008	Bingo amendment	Ch. 38
2-2008	2-11-2008	Sewer rents amendment	Ch. 63, Part 2
3-2008	4-14-2008	Cold War veterans exemption	Ch. 72, Art. VII
4-2008	4-14-2008	Tax exemption for persons with disabilities amendment	Ch. 72, Art. V
5-2008	9-22-2008	Zoning amendment	Ch. 80
1-2009	3-9-2009	Zoning amendment	Ch. 80

§ DL-1

DISPOSITION LIST

§ DL-1

Local Law No.	Adoption Date	Subject	Disposition
2-2009	3-9-2009	Junkyards: regulation and licensing	Ch. 55, Art. I
3-2009	4-13-2009	Fees amendment	Ch. 46
4-2009	4-13-2009	Tax exemption for persons with disabilities amendment	Ch. 72, Art. V
5-2009	4-13-2009	Senior citizens tax exemption amendment	Ch. 72, Art. I

INDEX

INDEX INSTRUCTIONS

The main **INDEX**, beginning on page 1, will guide you to the legislation contained within the Code at the time the main **INDEX** was originally prepared. As new legislation is adopted, or existing legislation is amended, the Code pages are replaced by supplementary pages which include the new material, thereby causing some **INDEX** entries to become obsolete. **INDEX** entries to the new material will be provided for in the **SUPPLEMENTAL INDEX**, beginning on page SI-1.

The **SUPPLEMENTAL INDEX** should, therefore, be consulted first, since it refers to the more recent legislation. Then reference should be made to the main **INDEX**.

When received, **SUPPLEMENTAL INDEX** pages should be placed directly following this page and in front of the main **INDEX**, according to the instructions accompanying the supplement.

Numbers in the indices refer to section numbers in the Code, e.g., 39-3 is a reference to Chapter 39, Section 3.

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§ 75-3.1.¹ Delivery or pickup. [Added 8-21-2006 by L.L. No. 2-2006]

Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highway from which such vehicles are otherwise excluded.

ARTICLE II

**Overnight Parking Certain Months
[Adopted 10-23-1978 by L.L. No. 4-1978]**

§ 75-4. Parking restricted during certain months.

It shall be unlawful for the owner or operator of any type vehicle to cause or permit any said vehicle to stand upon any portion of any public highway within the Township of Kingsbury during the hours of 12:00 midnight to 6:00 a.m., commencing on November 15 of each and every year and continuing through the months of December, January, February and March, except at such locations where signs permitting such parking have been erected by the Highway Department by order of the Town Board of the Town of Kingsbury.

§ 75-5. Exceptions.

The provisions of this article shall not apply to:

- A. Vehicles of the Township of Kingsbury, fire apparatus, ambulances or vehicles engaged in the work of a public utility.
- B. Vehicles actually engaged in the course of construction or repair of streets or while actually engaged in making deliveries or rendering services in or upon any property adjacent to the highway where said vehicle is parked.

¹ Editor's Note: This section was originally adopted as § 75-4, but was renumbered as § 75-3.1 as the Code already contained a § 75-4.

- C. Disabled motor vehicles, subject to the provisions of New York State Vehicle and Traffic Laws.

§ 75-6. Penalties for offenses.

Any person violating any of the provisions of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$25, together with costs of prosecution.

Chapter 80

ZONING

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- § 80-40. Schedule of fees.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-29-1985 by L.L. No. 2-1985.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.
Environmental quality review — See Ch. 43.
Flood hazard areas — See Ch. 48.
Mobile homes — See Ch. 58.
Subdivision enforcement — See Ch. 69.
Subdivision regulations — See Ch. A84.
Election districts — See Ch. A85.
Zoning district boundaries — See Ch. A86.

ARTICLE I Introductory Provisions

§ 80-1. Short title.

This chapter shall be known and be cited as the "Zoning Local Law of the Town of Kingsbury, New York."

§ 80-2. Statutory authorization.

Enactment of this chapter by the Town of Kingsbury is pursuant to Article 16 of the Town Law of the State of New York and Article 27 of the Executive Law of the State of New York.

§ 80-3. General intent.

The intent of this chapter is to establish a precise and detailed plan for the use of land in the Town of Kingsbury, to promote and to protect the health, safety, comfort, convenience and general welfare of the community and to protect the property values and aesthetics of the community. This shall be accomplished by channeling and directing growth and by regulating and restricting the height, number of stories and

1. Editor's Note: This local law superseded former Ch. 80, Zoning, adopted 8-6-1958, as amended.

size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, manufacturing, residence and other purposes. This chapter shall establish districts and the boundaries thereof for said purposes and provide for the administration and enforcement of this chapter in accordance with the Consolidated Laws of the State of New York.

§ 80-4. Purpose.

This chapter is hereby adopted to provide the Town of Kingsbury with all the protection authorized by the Consolidated Laws of the State of New York, and amendments thereof and is designed to:

- A. Promote the health, safety and general welfare of the community.
- B. Lessen congestion in streets, roads and highways.
- C. Provide adequate light and air.
- D. Secure safety from fire, flood, panic and other dangers.
- E. Prevent the overcrowding of land.
- F. Avoid undue concentration of population.
- G. Facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.
- H. Conserve the value of property and encourage the most appropriate use of land in the Town with reasonable consideration for the character of each district and its peculiar suitability for particular uses.

§ 80-5. Applicability.

No land use or development shall be undertaken or maintained except in conformity with all provisions contained in this chapter relating to the zoning district in which the land, water, site, structure or use is located or is proposed to be located. Where this chapter is more restrictive than covenants or agreements between parties or other plans or other rules or regulations or ordinances, the provisions of this chapter shall control.

§ 80-6. Word usage.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter. Words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used"; the word "shall" is always mandatory; the word "abut" shall include the words "directly across from"; and words of the masculine gender shall include the feminine. Unless otherwise specified, all distances and areas shall be measured in accordance with accepted surveying practices.

§ 80-7. Definitions.

The following terms, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

ACCESSORY STRUCTURE — A structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. Swimming pools on or in the ground shall be considered accessory use structures. [Amended 3-21-2005 by L.L. No. 1-2005]

ACCESSORY USE — Any use of a structure, lot or portion thereof, that is customarily incidental and subordinate to and

does not change the character of a principal land use or development.

ADDITION — Extension or increase in area, height or equipment of a building.

ADMINISTRATIVE AGENCY — Any person, board or commission charged with the responsibility of executing or enforcing the provisions of this chapter.

AGENT OF OWNER — Any person who can show written proof that he is acting for the property owner.

ALTERATION — As applied to a building or structure, means a change or rearrangement of the structural parts, or an enlargement or relocation.²

AUTOMOBILE SALES AREA AND SERVICES — An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

AUTOMOBILE SERVICE STATION OR FILLING STATION — A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor and major repairs are rendered.

BUILDING — Any structure permanently affixed to the land, having a roof supported by columns or walls, used or intended to be used for the shelter, housing or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate "building," except as regards minimum side yard requirements.

BUILDING AREA — The maximum area of a building at ground level, not including terraces or uncovered porches and accessory buildings or structures located on any lot.

2. Editor's Note: The definition of "auto court," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

BUILDING HEIGHT — The vertical distance measured from the average level of the highest and lowest portion of the building site covered by the building, to the uppermost portion of the structure, but not including chimneys, spires, towers, tanks and similar projections.

BUILDING LINE — The line which extends the width of the lot parallel to the front line and which is the minimum distance back from a specified base point or line. The minimum distance is known as the "setback." This line determines the point nearest the front lot line upon which buildings and/or other specified objects or uses may be placed.

CAMP — Any land, including any permanent buildings thereon used for seasonal group accommodations and/or recreational purposes. The use of the land may be, but need not be, for a profit. It may be used by children and/or adults as individuals, families or groups. This definition does not include private hunting. **[Added 3-21-2005 by L.L. No. 1-2005]**

CLUSTER DEVELOPMENT — A planned development in which lots are plotted with less than the minimum lot size and dimension requirements, but which have access to common open space which is part of the overall development plan approved by the Planning Board as per § 281 of the Town Law.

COMMERCIAL SAND AND GRAVEL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of sale or use by persons other than the owner of the land or for the purpose of use by any municipality.

COMMERCIAL USE — Any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale.

CONDOMINIUM — A multifamily project of one-family dwelling units which may consist of one, a part or more than one building, including one building per dwelling unit, where the real property title and ownership are vested in an owner who has an undivided interest with others in the common usage areas and facilities which serve the development. A

"condominium" which effects a division of land into sites (i.e., involves more than one building) shall be reviewed as a subdivision.³

DENSITY (MINIMUM AREA PER FAMILY OR DWELLING UNIT) — This area is the total usable area of any parcel of land, lot or plot to be developed or subdivided which is devoted to residential use or residentially related uses, such as parks, playgrounds, open spaces or residential streets. The Planning Board shall have the responsibility of determining what is usable land for purposes of this computation.

DEVELOPMENT — The introduction of a new use or primary structure (excepting one- and two-family dwellings) to a premises. Expansion of an existing facility for the existing use shall not be considered development for site plan review purposes unless such expansion increases the existing area of the structure or facility in excess of 25%. **[Added 2-9-1998 by L.L. No. 3-1998]**

DWELLING, MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers.

DWELLING, MULTIFAMILY — A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

3. Editor's Note: The definition of "day camp," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005. See now the definition of "camp."

DWELLING, MULTIPLE —

- A. A building containing living, sanitary and sleeping facilities occupied by one or two families and more than four lodgers residing with either one of such families.
- B. A building with one or more sleeping rooms, other than a one- or two-family dwelling, used or occupied by permanent or transient paying guests or tenants.
- C. A building with sleeping accommodations for more than five persons used or occupied as a club, dormitory, fraternity or sorority house, or for similar uses.
- D. A building used or occupied as an old-age home.
- E. A community residence.

DWELLING, SINGLE-FAMILY — A detached building designated for or occupied exclusively by one family and containing not more than one dwelling unit.

DWELLING, TWO-FAMILY — A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

DWELLING UNIT — One or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family.

ESSENTIAL SERVICES — The construction, alteration or maintenance by public utilities or governmental agencies of underground or overhead gas, electrical, steam, communication, or water transmission or distribution systems, including poles, wires, police call boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings unless granted by special permit and reasonably necessary for the furnishing of adequate service by public utilities or governmental agencies. **[Amended 3-21-2005 by L.L. No. 1-2005]**

ESTABLISHED GRADE — The elevation of the center line of a road as established by the Town authorities. In the absence of an "established grade," the elevation of the center line of the road concerned shall be taken in lieu thereof.⁴

FARM, ALL CLASSES — Land of not less than 10 acres being used for customary farming purpose, including, but not limited to, the raising and production of crops, livestock, horses, poultry, dairy products, trees, maple syrup products, and horticultural operations as a principal source of income, including any structure, building or residence which is incidental or accessory to the permitted use. The selling of farm products on the premises shall be considered agricultural operations. The term "farm" shall not include hog farms or fur farms. **[Amended 3-21-2005 by L.L. No. 1-2005]**

FENCE — A barrier utilized for screening, confinement, protection, separation or aesthetics composed of materials designed specifically for fencing or of braced wooden boards of uniform size and color. Retaining walls, building walls, structural walls or cultivated or natural growth of shrubs and trees are not intended as fences. **[Added 3-21-2005 by L.L. No. 1-2005]**

FENCE, SOLID — A fence with openings not to exceed one inch. **[Added 3-21-2005 by L.L. No. 1-2005]**

FLEA MARKET — A sale of items of tangible personal property, wherein, on one location, there are multiple vendors who have paid a fee for the privilege of occupying the space allotted to each such vendor for the purpose of displaying and selling, buying or exchanging, generally, used goods of any sort. **[Added 3-21-2005 by L.L. No. 1-2005]**

4. Editor's Note: The definition of "family" which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

FLOOR AREA — The gross floor area of a building or structure.

- A. RESIDENTIAL — The area in square feet within the exterior walls of a dwelling unit, not including attached garages, porches, decks, etc.
- B. PROFESSIONAL COMMERCIAL, INDUSTRIAL — The total area in square feet within the exterior walls of a building or structure and, when applicable, the sum total of all floor areas of the principal and accessory buildings or structures under a single ownership or business.

FORESTRY — Any management, including logging, of a forest or woodland, including the construction, alteration or maintenance of accessory structures, wood roads, skidways, landing fences and forest drainage systems. Forestry uses shall include tree farming and processing of timber into usable products. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOBBY FARM — Land of no less than five acres used for the raising of agricultural products or keeping of horses or other large mammals, poultry or fowl for personal use or pleasure and being incidental to residential use. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOME INDUSTRY — Any undertaking conducted as an accessory use for gain entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees. It may include but need not be limited to such enterprises as the refinishing of antiques, repair of furniture, ceramic manufacturing and decoration, repair of household articles or motor vehicles, rug weaving, manufacture of various articles, and home baking. All storage of materials and equipment shall be indoors. Maintenance of an inventory of goods, other than goods produced on the premises primarily for retail sale on the premises, and the public display of goods for sale are to be a minimum of 10 feet back from the edge of the highway right-of-way.

HOME OCCUPATION — Any use of a service nature customarily conducted entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees, such use being incidental to the use of the building as a dwelling and not changing the character thereof.⁵

JUNK — Junk motor vehicles and junk appliances as defined in this chapter, as well as scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc, ferrous or nonferrous scrap, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, boxes or crates, used pipe or used pipe fittings, used tires, other discarded materials and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled or recycled. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNK MOTOR VEHICLE — Any motor vehicle or used parts or waste materials from motor vehicles which, taken together, equals in bulk one or more such vehicle, which is unlicensed or unregistered; or abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or not in a condition for legal use upon the public highways. The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in a condition for legal use upon the highways. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNKYARD — [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

A. Any place of storage or deposit, whether in connection with another business or not, where two or more junk motor vehicles are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some

5. Editor's Note: The definition of "Homeowners' Association," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose or any place of storage or deposit, for any such purposes, of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles.

- B. Any place of storage or deposit for recycling or reclamation of any household appliance, including, but not limited to, a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, computer, or television, which is stored outside of any residence or enclosed structure.
- C. An establishment having facilities for processing iron, steel, or ferrous or nonferrous scrap and whose principal product is scrap iron, steel, or ferrous or nonferrous scrap for remelting purposes.
- D. Any business required to be licensed as a junkyard pursuant to § 136 of the General Municipal Law.
- E. Any business required to be licensed as a junk dealer pursuant to Article 6 of the General Business Law.
- F. Any business required to be licensed as a scrap processor pursuant to Article 6-C of the General Business Law.
- G. The following shall not be considered a junkyard and shall not be regulated under this law:⁶
 - (1) Storage and/or warehousing of used motor vehicle parts in a fully enclosed building(s) associated with a business engaged in selling the same for use in motor vehicles and temporary storage of five or fewer inoperative motor vehicles only in conjunction with the same.
 - (2) Unregistered, old or secondhand motor vehicles. The outdoor storage or deposit of one unregistered, old or

6. Editor's Note: The term "this law" refers to L.L. No. 5-2008.

secondhand motor vehicle, except as part of a legally licensed junkyard or legally licensed car sales business.

KENNEL — An establishment providing a service for the breeding, boarding and/or care of dogs, but not necessarily a veterinary or animal hospital.

LANDSCAPING — The act of changing or enhancing the natural features of a plot, buffer zone, public open space or other area or a portion of a lot so as to make said area more attractive and/or to add visual screening. This shall include adding lawns, trees, shrubs, etc., and/or through the sculpturing of the terrain, i.e., earth berms, ponds, walkways, retaining walls, rock outcrops, etc.⁷

LIGHT MANUFACTURING — A facility where a process is used to alter the nature, size or shape of articles or raw materials, or to assemble articles or raw materials, in order to create new goods. The process and the storage of materials used in the process occur totally within the confines of enclosed structures. [Added 2-9-1998 by L.L. No. 3-1998]

LOT — A parcel of land having a distinct and defined boundary as described by a legal land survey or, in the absence of a legal land survey, the tax maps of Washington County or the Town of Kingsbury. [Amended 3-21-2005 by L.L. No. 1-2005]

- A. **LOT, AREA** — The computed area contained within the lot lines.
- B. **LOT, BUILDING** — A lot occupied or capable of being occupied by a dwelling unit and its accessory buildings or by a multiple dwelling and its accessory buildings, having not less than the minimum area and lot width required by this chapter for a lot in the district in which such land is

7. Editor's Note: The definition of "large-scale business and industrial development," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

situated and having its principal frontage on an approved street or road.

- C. LOT, CORNER — A lot abutting on two or more streets, roads or highways at their intersection or on two parts of the same street, road or highway, such streets, roads or highways or parts of the same street, road or highways forming an interior angle of less than 135°. The point of intersection of street lot lines is the corner. A lot located at a curve in any road shall be considered a corner lot if the tangents to the curve at the point of the smallest angle intersect at an interior angle of less than 135°. Corner lots shall consist of two front yards and two side yards for setback purposes.
- D. LOT, DEPTH — The mean horizontal distance between the front and rear lot lines.
- E. LOT LINE — The established division line between different parcels of property.
- (1) LOT LINE, FRONT — The lot line which abuts upon a street or highway.
- (2) LOT LINE, REAR — The lot line opposite and most distant from the front lot line.
- (3) LOT LINE, SIDE — Any lot line other than a front or rear lot line.
- F. LOT OF RECORD — Any lot which has been recorded by registration of a deed or recorded on a plat approved by the Town Planning Board or for which an administrative agency has approved a valid construction or use permit.
- G. LOT WIDTH — The total distance between the side lot lines of the lot measured at the front lot line on an approved road. [Amended 3-21-2005 by L.L. No. 1-2005]

MANUFACTURING — The mechanical or chemical transformation of materials or substances into new products including the assembling of component parts. Said products are

consumed or used at another location. **[Added 2-9-1998 by L.L. No. 3-1998]**

MINERAL EXTRACTION — Any extraction other than specimens or samples from the land of stone, coal, salt, ore, talc, granite, petroleum products or other minerals, except for commercial sand, gravel or topsoil extractions, including the construction, alteration or maintenance of mine roads, mine tailing pipes or dumps and mine drainage.

MINERAL EXTRACTION STRUCTURE — Any mine hoist, ore reduction, concentrating, sintering or similar facilities and equipment, administrative buildings, garages or other main buildings or structures.

MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers. A doublewide mobile home consisting of two sections of equal length, with a 3/12 minimum truss roof, and placed on a foundation consisting of poured concrete footing below the frost line and blocks at least one block above grade, shall not be considered a "mobile home" for purposes of these regulations. **[Amended 9-12-1988 by L.L. No. 5-1988]**

MOBILE HOME PARK — Any parcel of land whereon two or more mobile homes are parked or located or which is planned and improved for the placement of two or more mobile homes and which is held open to the public for the parking or placement of mobile homes.

MODULAR — A factory built component building similar in construction to an on-site wood frame building and meeting the same New York State Construction Codes and Energy Code. Additionally, a "modular" is transported to a building site and permanently attached to a foundation.

NONCONFORMING LOT — Any lot lawfully on record on the effective date of this chapter which does not meet the minimum lot area and/or width or depth requirements of this chapter for the zoning district in which such lot is situated.

NONCONFORMING STRUCTURE — A legally existing building in existence on the effective date of this chapter which does not comply with the requirements established for the district in which it is located.

NONCONFORMING USE — A use of land, lawfully in existence on the effective date of this chapter, which does not conform to the zoning regulations of the district in which it is located.

NURSING HOME or CONVALESCENT HOME — Any dwelling used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished.

OPEN SPACE — Land not covered by buildings, pavement, open storage, mining operations, or any other use that visually obscures the natural or improved landscape, except for recreation facilities.

PARKING SPACE, OFF-STREET — A space adequate for parking an automobile, with room for opening doors on both sides, together with properly related access to a public street or alley, and necessary maneuvering room, approximately 300 square feet.

PERMITTED USE — Any use requiring no special action by the Board of Appeals or site plan review by the Planning Board before a building permit is granted by the Code Enforcement Officer, subject to all other applicable provisions of this chapter. [Amended 3-21-2005 by L.L. No. 1-2005]

PERSON — Any individual, corporation, partnership, association, trustee, the state and All political subdivisions of the state or any agency or instrumentality thereof.

PLANNING BOARD — The Planning Board of the Town of Kingsbury.

PLAT — A map, plan or layout of an area indicating the location and boundaries of individual properties.

PRINCIPAL USE — The primary use for which land and/or buildings are occupied or designed to be occupied.

PRIVATE SAND, GRAVEL OR TOPSOIL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of use, but not sale, by the owner of the land or any extraction for the purpose of sale of less than 50 cubic yards in any two-year period.

PROFESSIONAL OCCUPATION — One who is engaged in a licensed or professional service, including but not limited to: medical, legal, architectural, engineering, surveying, cosmetology or barbering, real estate brokerage, consulting or accounting. **[Amended 3-21-2005 by L.L. No. 1-2005]**

PUBLIC OR SEMIPUBLIC BUILDING — Any component building of a college, school, hospital, animal hospital, library, place of worship, museum, research center, rehabilitation center or similar facility or a municipal building.

PUBLIC RIGHT-OF-WAY — Any right-of-way open to the public for vehicular or pedestrian access.

RECREATION —

- A. RECREATION, COMMERCIAL — Recreation facilities operated for profit and available to the general public for a fee, including, but not limited to: golf courses, golf driving ranges, ice-skating rinks, swimming pools, picnic groves, amusement parks and fairgrounds. **[Amended 3-21-2005 by L.L. No. 1-2005]**
- B. RECREATION, PRIVATE, NONCOMMERCIAL — Clubs or recreation facilities, operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.

- C. RECREATION, PUBLIC — Recreation facilities operated as a nonprofit enterprise by the Town of Kingsbury and any other governmental entity or any nonprofit organization and open to the general public.

RESIDENTIAL STREET, ROAD OR HIGHWAY — A street, road or highway between two street, road or highway intersections where 50% or more of the abutting street, road or highway frontage is residential in use.

SCREENING — Solid fence, evergreen foliage, mounds, trees, shrubs or landscaped natural materials and evergreen plants which conceal the visual character and suppress the noise of any given building or use of land. Required screening shall have a minimum height of six feet and a maximum height of eight feet, exclusive of growing trees and shrubs. **[Amended 3-21-2005 by L.L. No. 1-2005]**

SECONDARY USE — Any use performed on a lot in addition to the principal or primary use.

SETBACK — The distance of a building or use from a prescribed point or line.

SIGN — Any device designed to inform or attract the attention of persons not on the premises where the sign is located.

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, then the space between the floor and the ceiling next above it.

STREET, ROAD OR HIGHWAY — A public thoroughfare which affords the principal means of access to the abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley.

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

SUBDIVISION — The division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways, and includes resubdivision. **[Amended 3-13-2000 by L.L. No. 4-2000]**

- A. This shall not apply to the sale of a small amount of land to correct the boundary of a lot, if such sale or exchange does not create an additional lot according to the zoning regulations.
- B. A division of lands into parcels of three acres or more, each having a lot width of 300 feet or more at the setback line along a town, county or state road, with utilities, or the division of any parcel fronting on a residential district into two lots, each conforming in every respect to the dimensional requirements of the zoning district in which it is located, shall not be a subdivision under these regulations.
- C. In or to be exempt under Subsection B of this definition, the applicant shall provide to the Code Enforcement Officer a mylar plot plan demonstrating compliance with this section. Thereafter, said mylar plot plan shall be filed with the County Clerk in the County of Washington.

TRAVEL TRAILER — Any portable vehicle, including a tent camper or motor home, which is designed to be transported on its own wheels, which is designed and intended to be used for temporary living quarters for travel, recreational or vacation purposes and which may or may not include one or all of the accommodations and facilities customarily included in a mobile home.

TRAVEL TRAILER PARK — A parcel of land under single ownership which is designed and improved for use by two or more travel trailers.

USABLE OPEN SPACE — Required open space which shall be entirely undeveloped, except for planting, landscaping and recreational equipment and shall be available for the sole enjoyment of the occupants of the zone lot of which it shall be a

part, and shall not include any side yards, driveways and accessways.

VARIANCE — The Board's authorized departure from the terms of this chapter in direct regard to a hardship peculiar to an individual lot in accordance with the procedures established in this chapter.

WASTE DISPOSAL AREA — Any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than on-site disposal area directly associated with an industrial use.

WETLANDS — Any land which is annually subject to periodic or continual inundation by water and commonly referred to as a "bog," "swamp" or "marsh" which are either one acre or more in size or located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

YARD — An area, as may be required by this chapter of uniform width or depth on the same lot with a building or a group of buildings, which area lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as herein permitted. Covered porches, whether or not enclosed, shall be considered as part of the main building and shall not project into a required "yard."

- A. **YARD, FRONT** — An area extending the full width of the lot between a building and the street or highway right-of-way line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.
- B. **YARD, REAR** — An area extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

- C. YARD, SIDE — An area extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

ZERO LOT LINE — The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.⁸ [Added 10-13-1992 by L.L. No. 4-1992]

ZONING BOARD — The Zoning Board of Appeals in the Town of Kingsbury.

ARTICLE II Administrative Agencies

§ 80-8. Planning Board.

- A. Pursuant to § 271 of the Town Law, the Town of Kingsbury has created a Planning Board. Said Board consists of seven members appointed by the Town Board in such manner and for such terms as provided in the town laws. The Planning Board shall have all the powers and perform all the duties prescribed by statute and by this chapter. The Planning Board shall have original jurisdiction for all matters pertaining to this Zoning Chapter pursuant to § 274-a of the Town Law, Site Plan Review.
- B. The Planning Board shall study the application of this chapter and shall from time to time recommend to the Town Board such changes in this chapter and in the boundaries of the various districts as it shall deem advisable to further promote the health, safety and general welfare of the community.
- C. The Code Enforcement Officer shall serve in an advisory capacity to the Planning Board. [Amended 3-13-2000 by L.L. No. 4-2000]

8. Editor's Note: The definition of "Zoning Administrator," which immediately followed this definition, was repealed 3-13-2000 by L.L. No. 4-2000.

§ 80-8.1. Alternate members of Planning Board. [Added 12-13-1999 by L.L. No. 6-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board in the Town of Kingsbury.
- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Planning Board because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.

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

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board when a regular member is unable to participate on an application or matter before the Town Planning Board.

MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board pursuant to the provisions of the local law or ordinance which first established such Planning Board.

PLANNING BOARD — The Planning Board of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of the Town Law.

- D. Authorization; term of office; designation.

- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Planning Board. These individuals would serve when members are

absent or unable to participate on an application or matter before the Board.

- (2) Alternate members of the Planning Board shall be appointed by the Town Board or other duly authorized appointing authority for a term as set forth in § 271 of the Town Law.
- (3) The Chairperson of the Planning Board may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, term, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 271 of the Town Law relating to the appointment of members to town planning boards.

§ 80-9. Code Enforcement Officer. [Amended 3-13-2000 by L.L. No. 4-2000]

- A. The Code Enforcement Officer shall have the power and duty to:

- (1) Enforce the provisions of this chapter.
 - (2) Exercise general surveillance over the town as to compliance.
 - (3) Issue construction permits and certificates of occupancy within 30 days of receipt of application wherever there is compliance with the provisions of this chapter.
 - (4) Investigate all complaints submitted in compliance with the provisions of this chapter.
- B. The Code Enforcement Officer shall be appointed and may be removed by the Town Board.
- C. An appeal from an action, omission, decision or rule by him regarding a requirement of this chapter may be made only to the Zoning Board of Appeals.

§ 80-10. Zoning Board of Appeals.

Pursuant to § 267 of the Town Law, the Town of Kingsbury has created a Zoning Board of Appeals consisting of seven members appointed by the Town Board in such manner and for such term as provided in town laws. The Zoning Board of Appeals shall perform the duties and have the powers granted by and be controlled by the provisions of the Town Law and amendments thereto, and by this chapter. The Zoning Board of Appeals shall have appellate jurisdiction for all matters pertaining to this Zoning Chapter.

§ 80-10.1. Alternate members of Zoning Board of Appeals. [Added 12-13-1999 by L.L. No. 7-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Zoning Board of Appeals in the Town of Kingsbury.

- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the Zoning Board of Appeals, as provided herein.

MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Zoning Board of Appeals.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of the Town Law.

- D. Authorization; term of office; designation.
- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the Board.
 - (2) Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board or other duly

authorized appointing authority for a term of four years.

- (3) The Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
 - (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.
- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 267 of the Town Law relating to the appointment of members to Town zoning boards of appeals.

ARTICLE III

Permits; Certificates of Occupancy; Appeals; and Variances

§ 80-11. Construction permits. [Amended 9-10-1990 by L.L. No. 5-1990; 3-13-2000 by L.L. No. 4-2000]

Building and construction permits shall be issued as set forth in Chapter 47, Fire Prevention, § 47-7 of this Code.

§ 80-12. Special permits or special use permits. ⁹ [Added 8-15-2005 by L.L. No. 3-2005]

- A. Applicability. This section shall apply to any uses that require special permits found in the district regulations in Article VI of the Town of Kingsbury Zoning Local Law. Special permits, as discussed in the Town of Kingsbury Zoning Local Law, shall also be known as "special use permits," as discussed in New York State Town Law § 274-b.
- B. Declaration of policy and intent. There are certain uses which, by their inherent nature, present certain problems or difficulties for neighborhoods in which they might be located. It is the intention of the Town that these uses should be reviewed, and that their overall impact on the neighborhood and community character in which they are proposed to be located should be studied prior to their location in such neighborhoods. The overall intention of this section is to mitigate such problems and to minimize, to the extent practicable, such impacts on the Town's neighborhoods.
- C. Delegation to the Zoning Board of Appeals. In accordance with New York State Town Law § 274-b, the Zoning Board of Appeals is hereby authorized to issue special use permits or special permits as required by the Town of Kingsbury Zoning Local Law. Applications for such permits shall be reviewed in accordance with this § 80-12.
- D. Application. Prior to the commencement of any construction activities or the use of any property requiring a special permit or special use permit, the owner, or if not the owner, then the authorized applicant, shall submit an application on such forms, and within such time frames, as may be designated by the Zoning Board of Appeals. The owner or applicant shall submit such information as required by the Zoning Board of Appeals. The Zoning

9. Editor's Note: Former § 80-12, Use permits, as amended, was repealed 3-13-2000 by L.L. No. 4-2000.

Board of Appeals may empower the Zoning Administrator to make preliminary determinations on what information should be submitted to the Zoning Board of Appeals prior to the application being placed on the Zoning Board of Appeals agenda. Such authorization shall not preclude the Zoning Board of Appeals from requesting any additional information it deems necessary for its review of the application. An application shall not be deemed complete until all information requested by the Zoning Board of Appeals has been submitted.

- E. Procedure. The Zoning Board of Appeals shall comply with the requirements of New York State Town Law § 274-b and the applicable provisions of the State Environmental Quality Review Act (SEQRA), 6 NYCRR Part 617, the General Municipal Law, and any other applicable laws. If, during the review of an application, the Zoning Board of Appeals finds that certain aspects of the proposed use require a review of the technical plans, and that such review may be better suited for the Town of Kingsbury Planning Board, the Zoning Board of Appeals may refer the application to the Planning Board for its comment and for any recommendations of that Board. To expedite the review, the Zoning Board of Appeals may limit the time frame within which the Planning Board has to return its recommendations.
- F. Review standards. Before granting approval on a special permit or special use permit, the Zoning Board of Appeals shall consider the following:
- (1) The use shall be of such location, size and character that it will conform to an appropriate and orderly development of the district and neighborhood in which it is to be located and will not be detrimental to the orderly development of neighboring districts and neighborhoods.
 - (2) The use will not create undue safety hazards in its own or adjacent districts or neighborhoods and will

not require increased public expenditure in excess of its value to the Town.

- (3) The use will not create undue traffic congestion, noise, vibrations, light, stormwater runoff, or air pollution or substantially devalue neighboring properties.
- (4) A special permit or special use permit shall be granted unless the Zoning Board of Appeals finds that substantial evidence has been presented which shows that the negative effects of the proposed use, as evaluated above, outweigh the benefits of the use to the Town.
- (5) The Zoning Board of Appeals may condition the approval of any special permit or special use permit on such reasonable conditions that it finds may mitigate against the potential negative effects on the neighborhood of the proposed use.

§ 80-13. Certificates of occupancy.

A. General requirements.

- (1) A certificate of occupancy is required prior to the use of any building for which a construction permit is required. Upon application within three months following the effective date of this chapter or any amendment date subsequent thereto, a certificate of occupancy shall be issued for continuation on a specified premises of any use existing on that premises on the aforesaid effective or amendment date.
- (2) Procedure. An application shall be submitted to the Code Enforcement Officer which shall show compliance with this chapter. It may be submitted as soon as sufficient progress has been made to show

compliance or at any time thereafter. **[Amended 3-13-2000 by L.L. No. 4-2000]**

B. Temporary certificates of occupancy.

- (1) Temporary certificates of occupancy shall be granted by the Code Enforcement Officer for a period of six months and renewable for three additional and successive six-month periods for the following purposes: **[Amended 3-13-2000 by L.L. No. 4-2000]**
 - (a) For occupancy of a dwelling space less than the minimum specified for the district pending the construction on the lot of a dwelling for which a valid construction permit has been approved. Renewal of a certificate issued under this provision is contingent upon proof of progress upon the permanent structure.
 - (b) For the use of property which does not conform to the specifications required by this chapter, but which will be brought into conformity prior to the expiration of the third successive renewal.
- (2) The Board of Appeals may extend the number of renewal periods, provided that it is shown that unforeseen events prevented the completion of the project as planned, that termination of the temporary certificate of occupancy would produce an undue hardship and that the project will be complete in a reasonable length of time.
- (3) Procedure. The applicant shall submit to the Code Enforcement Officer an application in the same manner as for a permanent certificate of occupancy. The application shall include information to justify the issuance of a temporary certificate of occupancy and show an expected date of termination. **[Amended 3-13-2000 by L.L. No. 4-2000]**

§ 80-14. Appeals.

Any person aggrieved over any order, requirement, decision or determination by an administrative agency pursuant to the provisions of this chapter may present an appeal for redress to the Board of Appeals in accordance with the provisions of § 267, Subdivision 2, of the Town Law.

§ 80-15. Variances.

The Board of Appeals shall have the power to vary or modify the application of the provisions of this chapter where a strict application produces practical difficulties or unnecessary hardships as authorized by the provisions of § 267, Subdivision 5, of the Town Law.

§ 80-16. (Reserved) ¹⁰

**ARTICLE IV
Districts and Map**

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-17. Enumeration of districts. [Amended 9-25-1989 by L.L. No. 2-1989]

For the purpose of this chapter, the Town of Kingsbury is hereby divided into districts which are designated by type and identified by symbol as follows:

District Type	Symbol
Residential-Forestry	RF-5A
Residential-Agricultural	RA-1A
	RA-M-1A

10. Editor's Note: Former § 80-16, Duration of permits, was repealed 3-13-2000 by L.L. No. 4-2000.

District Type	Symbol
Low-Density Residential	LDR-25
	LDR-15
Commercial	Com-1A
Plaza Commercial	PC-1A
[Added 10-13-1992 by L.L. No. 4-1992]	
Industrial	Ind-75

§ 80-18. (Reserved) ¹¹

ARTICLE V

General Regulations

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-19. Provisions applicable in all districts.

The following regulations are applicable to all or several districts as specified and are supplemented by or superseded where in conflict with the provisions applicable to each individual district.

- A. Authorized uses. The uses of land and/or buildings shall be permitted in the various districts as specified by the provisions of this chapter, but any use which produces, beyond the confines of its own premises, an unusual noise intensity, dust, noxious or toxic fumes, smoke, danger from fire or explosion, vibration, public health hazard, danger from dissemination of radioactive materials or damage resulting from pollution or reduction in the supply of surface or ground waters shall be excluded from all districts.

11. Editor's Note: Former § 80-18, Zoning Map, was repealed 3-13-2000 by L.L. No. 4-2000.

- B. Appurtenances in front and side yards. The following features may extend into the minimum front and side yards to the distances specified:
- (1) Cornices, canopies, eaves and similar features: 30 inches.
 - (2) Open fire escapes: six feet.
 - (3) Terraces or uncovered porches with a floor level no higher than that of the entrance to the building: six feet in side yards and 20 feet in the front yard, limited at the ends by the minimum side yard requirements. A protective railing with a maximum height of three feet may be placed around the terrace or porch.
- C. Height. The maximum height of buildings in residential and commercial districts and of residential buildings or portions of buildings used for residential purposes in other districts shall be 35 feet. The maximum height of all other buildings shall be 50 feet. Chimneys, flagpoles, radio and television antennas, cupolas, church spires, siren towers, poles and masts to support public utility lines, cornices, monuments, water tanks, silos, elevator penthouses and the necessary structures to house machinery for vertical industrial operations are released from the height limitations of this subsection.
- (1) The minimum distance between the principal building and any accessory building and between individual accessory buildings shall be 10 feet or the height of the lower building, whichever is greater.
 - (2) The minimum distance between any accessory building and any adjoining property line shall be 10 feet.
- D. Signs. Signs may be erected and maintained only when in compliance with the provisions of this article and any and all other ordinances and regulations relating to the

erection, alteration or maintenance of signs and similar devices. Use permits shall be obtained from the Code Enforcement Officer except where the sign is part of an original site plan review that is subject to approval by the Planning Board. In that instance, the permit shall be obtained from the Planning Board as part of the site plan review. **[Amended 12-28-1987 by L.L. No. 5-1987; 9-10-1990 by L.L. No. 4-1990]**

- (1) All signs must be constructed of durable materials and shall be maintained in good condition and repair at all times.
- (2) In any district, a sign not exceeding two square feet in surface area is permitted which announces the name, address or professional or home occupation of the occupant of the premises on which said sign is located.
- (3) A bulletin board not exceeding 24 square feet is permitted in connection with any church, school or similar public structure. Said bulletin board shall use exterior lighting only.
- (4) A temporary real estate or construction sign, not exceeding 24 square feet is permitted on the property being sold, leased or developed. Such sign shall be removed promptly when it has fulfilled its function.
- (5) A business sign shall be permitted in connection with any legal business or industry located on the same premises and meeting the following requirements:
 - (a) Three signs are permitted with any legally established business, including those that are standing or attached to the building.

- (b) (Reserved)¹²
- (c) Signs on a building shall not extend above the roof or parapet of the building. The height of a freestanding sign shall not exceed 35 feet.
[Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (d) Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon or from within the sign itself.
- (e) Signs which are animated, flashing or with intermittent illumination are prohibited.
- (f) Signs shall not project over public right-of-way or property lines.
- (g) Maximum square footage of any sign shall be 120 square feet or a total of 300 square feet for the three signs. [Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (h) No portable signs, signs on rocks, trees and other parts of the natural landscape or signs attached to the rooftop of vehicles parked on a public street shall be allowed.
- (i) No projecting sign shall be erected or maintained from the front or face of a building a distance of more than 12 inches.¹³

12. Editor's Note: Former Subsection D(5)(b), regarding the text on business signs, was repealed 3-13-2000 by L.L. No. 4-2000.

13. Editor's Note: Former Subsection D(5)(j) added 10-13-1992 by L.L. No. 4-1992, regarding height of signs in a PC-1A District, which immediately followed this subsection, was repealed 3-21-2005 by L.L. No. 1-2005.

- (6) Signs and billboards in a commercial zone having a depth less than 400 feet, which contain more than two square feet of surface area, shall be set back a minimum of 10 feet from the right-of-way. Signs and billboards in a commercial zone having a depth of 400 feet or more, which contain more than two square feet of surface area, shall be set back a minimum of 25 feet from the right-of-way. All other signs shall be set back from the right-of-way a minimum of five feet.

E. Parking areas.

- (1) Off-street parking space shall be required for all buildings constructed, altered, extended and engaged in use after the effective date of this chapter. A minimum of 162 square feet shall be provided for each stall, with a minimum nine-foot width and eighteen-foot depth. Said area shall be clearly delineated on the ground using appropriate pavement demarcation. Access drives shall be a minimum of 20 feet clear in width. The overall dimension of both stalls and drive shall be a minimum of 40 feet for parking along one side and 60 feet for parking along both sides of the drive. In addition, space necessary for maneuvering, safe pedestrian walkways and drives shall be provided. Parking requirements are specified in § 80-19E(3).
[Amended 10-13-1992 by L.L. No. 4-1992]
- (2) For uses not specified in § 80-19E(3), the Planning Board may establish parking requirements consistent with those specified in § 80-19E(3).
 - (a) For any building having more than one use, parking space shall be required as provided for each use.
 - (b) Floor areas for the purposes of computing parking requirements shall be the sum of the horizontal area within exterior walls of the

several floors of a building, excluding basement, cellar and attic areas used primarily for storage or service.

- (c) Any parking lot or parking area that will contain more than 100 cars shall be effectively configured using stripping and islands, so as to ensure safety of vehicles moving within the entire parking area and to control speed.
[Amended 10-13-1992 by L.L. No. 4-1992]
 - (d) Access points (ingress and egress) from parking areas, for industrial and commercial uses shall have a physical barrier separating the ingress and egress area of the access points. A maximum of two lanes, a minimum width of 12 feet wide per lane, shall be permitted for each. Access points shall be separated from adjoining access points by at least 50 feet.
 - (e) All nonresidential parking shall be adequately lighted.
- (3) Off-street parking schedule.

Use	Minimum Spaces Required
Dwelling	2 for each dwelling unit
Rooming house, motel	1 for each guest room
Church or temple	1 for each 4 seating spaces in the main assembly room
School	3 for each classroom
Theater or other place of assembly	1 for each 4 seating spaces
Retail store or bank	1 for each 200 square feet of gross floor area

Use	Minimum Spaces Required
Eating and drinking establishments	1 for every 3 seats
Wholesale, storage, freight terminal or utility use	1 for each 1,000 square feet of gross floor area
Industrial use or manufacturing use	1 for each 1.5 employees on the maximum working shift, plus 1 for company vehicle
Home occupation and professional offices	1 for each 100 square feet of feet of floor area devoted to such use
Commercial or shopping center	5.5 per 1,000 square feet of gross leasable floor space
Commercial or shopping center in a PC-1A Zone [Added 10-13-1992 by L.L. No. 4-1992]	4.5 per 1,000 square feet of gross leasable floor area
Eating and drinking establishments in a PC-1A District [Added 10-13-1992 by L.L. No. 4-1992]	1 for every 5 seats

F. Off-street loading space.

- (1) At least one off-street loading space shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 5,000 square feet, computed as described below. Space for off-street loading shall be in addition to space for off-street parking.

- (2) Each off-street loading space shall be subject to the following minimum requirements:
 - (a) Each berth shall be not less than 12 feet wide, 40 feet long and 14 feet in height when covered.
 - (b) Off-street loading space (or spaces) located within 50 feet of a residential property shall be shielded by wall, fencing or other suitable material which shall serve to screen noise and limit uncontrolled entrance. Do not inhibit sight distance.

G. Uses subject to special requirements. The following uses shall be subject to special requirements hereby established.

- (1) Commercial extraction and processing of natural products. Extraction and processing of natural products may be permitted in planned development districts, subject to the following conditions:
 - (a) The final slope of material in the excavation or pit shall not exceed the normal angle of repose of the material.
 - (b) There shall be adequate lateral support at all times for the soil of adjoining lots.
 - (c) The natural water supply of adjoining lots shall be unimpaired.
 - (d) The final contours shall be such as to prevent the accumulation of stagnant water.
 - (e) Within one year after the termination of operations, all area except that covered by buildings or intended to be covered by buildings for which valid construction permits have been issued, or covered by a permanent body of fresh water, or included in the sites for existing or planned roads, shall be covered with topsoil to

the depth of three inches or to the original depth, whichever is less, and shall be seeded. Whenever a construction permit becomes invalid or if a planned road does not become an existing road within three years after the termination of operations, any area from which natural products have been extracted or been involved in extraction operations shall be covered with topsoil to the depth of three inches or the original depth, whichever is less, and shall be seeded. A performance bond or other evidence of good faith shall be given the Town at the time of the issuance of the use permit to guarantee fulfillment of the conditions under which the permit is issued.

- (f) Adequate measures shall be taken to ensure public safety at the site.
- (2) Gasoline retail sales. The use of land and structures for gasoline retail sales shall be subject to the following conditions:
- (a) The minimum road frontage shall be 150 feet, except on corner lots where it shall be 150 feet along the shorter side.
 - (b) Pump islands shall be so placed as to provide easy access from and to the public highway without producing interference with the flow of traffic.
 - (c) Service shelters or booths may be placed adjacent to pump islands. If only one lane is to be used, the service shelter shall be placed on the side of the lane away from the public highway.
 - (d) Any building containing stalls in which minor repair and servicing may be performed shall be

located in back of the minimum setback line prescribed in § 80-23 of this chapter.

- (e) All major repair work shall be performed indoors.
- (f) All liquid fuel shall be stored in underground tanks located at least 35 feet distant from the public right-of-way and the lot lines.
- (3) Manure heaps. Manure heaps shall be a minimum of 100 feet distant from adjacent lot lines.
- (4) Outdoor storage of equipment and vehicles. In districts where such storage is permitted, it shall be limited to the area behind the minimum setback line and shall be screened from view from residential and commercial districts and from public roads, except when such storage is part of customary farming operations.
- (5) Public garages. All repair work and all storage of vehicles shall be performed indoors or within a screened enclosure situated behind the setback line.
- (6) Public utility unit substations. Public utility unit substations shall be screened and constructed in such a manner as to preserve and protect the character of the district where located.
- (7) (Reserved)¹⁴
- (8) (Reserved)
- (9) Mobile homes. Mobile homes, either as separate units or as component parts of a building, shall be located in the Town only in accordance with the Mobile Home Ordinance.¹⁵

14. Editor's Note: Former Subsections G(7), pertaining to junkyards and salvage reclamation operations, as amended, and G(8), pertaining to storage of used material and equipment, were repealed 9-22-2008 by L.L. No. 5-2008.

15. Editor's Note: See Ch. 58, Mobile Homes.

- (10) Mobile home parks. Mobile homes in a mobile home park shall be situated 40 feet distant from the side park lot line, with setback lines the same as for residences. **[Amended 9-25-1989 by L.L. No. 2-1989]**
 - (11) (Reserved)¹⁶
 - (12) Storage and display of merchandise. All merchandise on display for sale or rent shall be set back a minimum of 10 feet from the right-of-way. This standard shall not apply to the seasonal sale of agricultural products or to occasional sales, including but not limited to garage sales or lawn sales, lasting no more than three days in any thirty-day period. **[Added 9-12-1988 by L.L. No. 6-1988]**
- H. Landfills. Notwithstanding anything to the contrary stated within this Code, a sanitary landfill (nonhazardous) may be constructed anywhere within the Town of Kingsbury upon application to and approval of the Town Board, subject to site plan review by the Planning Board, and provided that all state and federal laws, rules and regulations must be met as a condition of approval.

ARTICLE VI District Regulations

§ 80-20. RF-5A Residential-Forestry District. [Amended 4-13-1987]

- A. Description. These areas contain soils, slopes and forms that, on the whole, are not desirable for continued agricultural use, that have already discontinued agricultural production or that never were in agricultural use. In addition, these areas usually contain less desirable

16. Editor's Note: Former Subsection G(11), pertaining to unregistered, old or secondhand motor vehicles, as amended, was repealed 9-22-2008 by L.L. No. 5-2008.

soils for urban development than the residential-agricultural and low-density residential zones.

- B. Purpose. The purpose of the RF-5A District is to prevent destructive development of the land, to retain areas for nonintensive uses, to prevent intensive development where it would be a burden to the Town and to retain open spaces.
- C. Density. Primary uses are as forest land where forestry management practices are carried out, agricultural production where practical, single-family home sites at a density not less than five acres per house, outdoor recreation activities and other very-low-density and -intensity uses desirable for rural areas.
- D. Permitted uses. The following uses shall be permitted in the RF-5A District:
 - (1) Forestry.
 - (2) Farms, all classes. [Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]
 - (3) Single-family dwellings.
 - (4) Nurseries and greenhouses.
 - (5) Accessory uses.
 - (6) Essential services.
- E. Special permit. The following uses will be permitted in the RF-5A District upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family dwellings.
 - (2) Temporary sawmills.
 - (3) Cemeteries.

- (4) Water recreation and water storage other than for fire protection or agricultural purposes.
- (5) Removal of fill, gravel, stone or loam.
- (6) Public and nonprofit outdoor recreational facilities.
- (7) Home industries.
- (8) Home occupations.
- (9) Essential service buildings.

F. Site plan review. The following uses will be permitted in the RF-5A District upon site plan review and approval by the Planning Board:

- (1) Travel trailer parks.
- (2) Summer camps and retreats.
- (3) Churches.
- (4) Public and nonprofit recreational buildings.
- (5) Dog kennels.
- (6) Timber harvesting involving the clear cutting of an area greater than five acres.

G. Minimum requirements:

- (1) Minimum lot size. Minimum lot size shall be as follows: **[Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]**

Area
(acres)

5

Width
(feet)

400

- (2) Minimum yard dimensions.

Front (feet)	1 Side Yard (feet)	Yards (feet)	2 Side Rear (feet)
50	50	150	100

§ 80-21. RA-1A and RA-M-1A Residential-Agricultural Districts. [Amended 4-13-1987]

- A. Description: a district that generally contains soils and slopes suitable for agriculture and for development. For reasons of access, topography and possible community facilities and utilities, such land should not be built on at a high density.
- B. Purpose. The purpose of the RA-1A and RA-M-1A Districts is to accommodate houses at a low density for people wanting to live in a rural atmosphere but without interfering with prime agricultural areas. The continuation of forestry and agriculture is strongly encouraged. Other low-intensity uses are also permitted.
- C. Density. A one-acre density is established to retain a rural atmosphere. This density may be increased if public water or sewers are provided.
- D. Permitted uses. The following uses shall be permitted in the RA-1A and RA-M-1A Districts:
- (1) Single-family dwellings.
 - (2) Mobile homes (NOTE: RA-M-1A Districts only).
 - (3) Forestry.
 - (4) Accessory uses.
 - (5) Farms, all classes, and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]**

- (6) Home occupations.
- (7) Essential services.
- E. Special permit. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family residential.
 - (2) Water recreation and storage.
 - (3) Essential service buildings.
 - (4) Farms engaged in the raising and sale of hogs, pigs and fur-bearing animals as a major source of income.
 - (5) Home industry.
 - (6) Kennels.¹⁷
- F. Site plan review. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon site plan review and approval by the Planning Board:
 - (1) Noncommercial public and private recreational use.
 - (2) Multifamily dwellings.
 - (3) Churches.
 - (4) Public and semipublic uses compatible with rural residential use.
 - (5) Professional offices.
 - (6) Riding stables and equine recreational uses.
[Added 3-21-2005 by L.L. No. 1-2005]
- G. Minimum requirements:

17. Editor's Note: Former Subsection E(7), Riding stables, which immediately followed, was repealed 3-21-2005 by L.L. No. 1-2005. See now § 80-21F(6).

- (1) Minimum lot size. Minimum lot size shall be as follows: [Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]

Area (acres)	Width (feet)
1*	200

* NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
50	50	100	50

* NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-22. LDR-25 and LDR-15 Low-Density Residential Districts. [Amended 4-13-1987]

- A. Description: areas that generally have suitable soils and slopes for urban development, are accessible to other population centers, are feasible to serve with public water and sewer and are generally outside the prime agricultural areas.
- B. Purpose. The purpose of the LDR-25 and LDR-15 Districts is to accommodate a high percentage of the population growth where it can be provided with adequate facilities

and utilities at densities attractive to development, leaving prime agricultural areas free of scattered development which would destroy agricultural pursuits.

- C. Density. There are two different densities associated with LDR Zones. An LDR-25 District allows one dwelling unit for every 25,000 square feet, and an LDR-15 District allows one dwelling unit for every 15,000 square feet.
- D. Permitted uses. The following uses shall be permitted in the LDR-25 and LDR-15 Districts:
 - (1) Single-family dwellings.
 - (2) Accessory uses.
 - (3) Public recreational facilities.
 - (4) Essential facilities.
- E. Special permit. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family residential.
 - (2) Essential service buildings.
 - (3) Nursery schools.
 - (4) Day care centers.
 - (5) Professional offices incidental to home use.
 - (6) Home industry.
 - (7) Home occupations.
- F. Site plan review. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon site plan review and approval by the Planning Board:

- (1) Multifamily dwelling projects.
- (2) Multidwelling projects, conversion.
- (3) Professional offices.
- (4) Hobby farms and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 8-15-2005 by L.L. No. 3-2005]**
- (5) Planned unit developments.
- (6) Churches.

G. Minimum requirements:

- (1) Minimum lot size.

District	Area (square feet)	Width (feet)
LDR-25	25,000*	150
LDR-15	15,000*	100

*NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

District	Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
LDR-25	40	25	75	50
LDR-15	40	20	40	35

*NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-23. Com-1A Commercial District. [Amended 5-12-1986 by L.L. No. 1-1986]

- A. Description. These areas are intended for commercial development. They are located along main highways with heavyduty roadbeds intended to facilitate ease of transportation for supplies as well as general traffic for commercial developments.
- B. Purpose. These areas are intended to promote the development of stores, production of commercial goods and other types of commercial services, to give balance to the development of the Town of Kingsbury, to promote development on existing arteries and to discourage scattered development on secondary roads.
- C. Density. A one-acre minimum is established. However, developments in excess of this will be largely encouraged and favored. These areas should be relatively large to provide for a selection of stores and/or adequate parking. One principal building of up to 16,000 square feet of gross floor area will be allowed for every one acre within this zone.
- D. Permitted uses. Businesses may include the following, but are not limited to:
 - (1) Retail and/or wholesale businesses.
 - (2) Tourist accommodations.
 - (3) Personal and professional services.
 - (4) Banks.
 - (5) Theaters.

- (6) Commercial recreation.
- (7) Commercial storage building.
- (8) Auto, farm and construction equipment sales/service.
- (9) Social clubs, halls and fraternal organizations.
- (10) The manufacture of products where a maximum of 10 persons is engaged or employed on the manufacturing portion of the enterprise.
- (11) Warehousing and trucking terminals.
- (12) Dwelling units in combination with permitted uses operated by the resident of the dwelling.
- (13) Multifamily dwellings.
- (14) Customary farming operations on land which is part of a farm included within the boundaries of the district.
- (15) Public utility unit substations necessary for the service of the area.
- (16) Single-family dwellings. **[Added 3-21-2005 by L.L. No. 1-2005]**

E. Permitted accessory uses are as follows:

- (1) Loading facilities.
- (2) Parking facilities.
- (3) Signs.

F. Minimum requirements are as follows:

- (1) Lot and yard size.

Minimum Lot Size		Minimum Yard Sizes		
Area (acres)	Width (feet)	Front* (feet)	Side (feet)	Rear (feet)
1	150	50	20	20, except that a 50-foot side/rear yard is required adjoining residential zones

*NOTE: Properties fronting on a state or county highway shall provide for an additional 30 feet of setback.

- (2) Minimum percent of lot to be permeable: 25%.

- G. Site plan review. All development within the Commercial Districts shall be subject to site plan review as described in Article VIII of this chapter.

§ 80-24. Ind-75 Industrial District. [Amended 4-13-1987]

- A. Description: an area with suitable space for manufacturing, processing and storage with access to various types of transportation, situated to have minimal impact on residential and other adjacent zones.
- B. Purpose: to provide for the establishment of new industrial activities in areas already containing this type of activity, to encourage development of an industrial sector of the Town and to provide for the expansion of heavy industry without competition with other use types.

C. Density. Building(s) of up to 30,000 square feet in gross floor area will be allowed for every 75,000 square feet of site. For each additional 1,000 square feet of gross floor area, 2,000 square feet of land area will be required.

D. Permitted uses.

- (1) Manufacturing operations, provided that the use meets standards of the State of New York.
- (2) Sand and gravel processing.
- (3) Building supply lumberyards and similar storage yards.
- (4) Research and testing laboratories.
- (5) Offices.
- (6) Warehousing and trucking terminals.
- (7) Public facilities and essential services.
- (8) Heavy equipment sales or service.
- (9) Accessory uses.
- (10) All uses allowed in more restrictive zones.
- (11) Junkyards. [Note: Junkyards shall not be permitted in any other zoning district.] **[Added 9-22-2008 by L.L. No. 5-2008¹⁸]**

E. Special permit.

- (1) Asphalt plants.
- (2) Cement manufacturing.
- (3) Chemical processing.

18. Editor's Note: This local law also provided that all existing junkyards located outside of the IND-75 District in the Town shall be deemed nonconforming pursuant to § 80-28.

- (4) Commercial uses serving the industrial area.
- (5) Essential service buildings.

F. Minimum requirements:

- (1) Minimum lot size.

Area (square feet)	Width (feet)
75,000	200

- (2) Minimum yard dimensions.

Front*	Each Side Yard	Rear
(feet)	(feet)	(feet)
40	25**	50**

NOTES:

*Properties fronting on a state or county highway shall provide for an additional 30 feet of setback.

**Increase to 100 feet when adjacent to other districts.

- G. Exclusion. Any other use not specifically permitted, except accessory uses, shall be prohibited, including but not limited to hazardous waste.
- H. Site plan review. All development within the Industrial Districts shall be subject to site plan review as described in Article VIII of this chapter.

**§ 80-24.1. PIC-75 Park Industrial/Commercial District.
[Added 2-9-1998 by L.L. No. 3-1998]**

- A. Description: an area that is appropriate for a wide range of light industrial and commercial uses that are not detrimental to existing adjacent residential and agricultural uses.
- B. Purpose: to establish an area in which a broad range of light industrial and compatible commercial uses can develop; to permit the continued light industrial and commercial uses and the expansion of those uses in the district; to prohibit heavy industrial uses which may have an adverse effect on the surrounding uses and adjacent districts.
- C. Density: building(s) of up to 30,000 square feet in gross floor area will be allowed for every 75,000 square feet of site. For each additional 1,000 square feet of gross floor area, 2,000 square feet of land area will be required.
- D. Permitted uses:
 - (1) Light manufacturing operations where the use meets the definition of "light manufacturing" put forth in this chapter.¹⁹
 - (2) Building supply lumberyards and similar storage yards.
 - (3) Research and testing laboratories.
 - (4) Offices.
 - (5) Warehousing for enclosed storage of goods and materials.
 - (6) Public facilities and essential services.
 - (7) Heavy equipment sales and service.

19. Editor's Note: See § 80-7, Definitions.

- (8) Distribution plants.
- (9) Construction companies.
- (10) Essential service buildings.
- (11) Retail and/or wholesale businesses.
- (12) Commercial enclosed storage buildings.
- (13) Truck, farm and construction equipment sales/service.
- (14) Public utility unit substations necessary for the service of the area.
- (15) Commercial greenhouses.
- (16) Service businesses.
- (17) Metal fabrication.

E. Minimum requirements:

- (1) Minimum lot size:

Area (square feet)	Frontage (feet)
75,000	200

- (2) Minimum yard dimensions: [Amended 3-21-2005 by L.L. No. 1-2005]

Front*	Each Side Yard	Rear
(feet)	(feet)	(feet)
40	25**	50**

Notes:

*Properties fronting on a state highway shall provide for an additional 30 feet of setback.

**Double when adjacent to residential districts.

- F. Exclusion. Any other use not specifically permitted, except accessory uses, shall be prohibited, including but not limited to hazardous waste disposal.
- G. Site plan review. All development within the PIC-75 Districts shall be subject to site plan review as described in Article VIII of this chapter.

§ 80-25. (Reserved). ²⁰

ARTICLE VII
Miscellaneous Requirements

§ 80-26. Transitional zoning.

The provisions for transitional zoning are concerned with the common boundaries between different districts, the lots situated along such boundaries and with abutting areas of lots where the requirements are dissimilar.

- A. The provisions of a district with greater minimum requirements, with respect to side yard width and distance of accessory buildings from adjoining property lines, shall apply to the adjoining sides of border lots in adjacent districts with lesser minimum requirements.
- B. The owner of any lot in a Commercial, Industrial or Planned Development District or area in an Agricultural District which is used for purposes other than customary

20. Editor's Note: Former § 80-25, PC-1A Plaza Commercial Zone, added 10-13-1992 by L.L. No. 4-1992, was repealed 3-21-2005 by L.L. No. 1-2005. Also former § 80-25, Planning Development District, was repealed 9-25-1989 by L.L. No. 2-1989.

farming operations, which adjoins a residential district, shall provide screening along the district boundary, except when such lot or area is being used solely for agricultural or residential purposes for a minimum distance of 150 feet from the district boundary line.

- C. The minimum side yard requirements of any lot with a side yard boundary line common with a rear lot boundary line of a corner lot shall apply to that portion of the rear yard of the said corner lot which is adjacent to said side yard.
- D. Transition between Com-1A Districts and all residential districts. The owner of any lot that is zoned Com-1A for any portion of the lot shall be allowed to use the entire lot as set forth in § 80-23, Com-1A Commercial District, only where all of the following provisions are fully complied with: **[Added 11-9-1998 by L.L. No. 5-1998]**
- (1) The entire lot must have been of record as of the date that this subsection is enacted. This subsection shall not apply to lots that are created after the date of enactment of this subsection.
 - (2) The portion of the lot that is zoned Com-1A must have frontage on an improved roadway sufficient to satisfy the road frontage requirements of the Com-1A Districts.
 - (3) The portion of the lot facing the residential district must have solid fencing (either wood fencing or solid vegetation fencing) at least five feet in height, which fencing shall be within the required lot setback and which shall be of sufficient length to screen the commercial use from the residential district.
 - (4) Where the subject lot adjoins a lot that is entirely within the residential zone, a buffer area of 50 feet (minimum) shall be maintained. This buffer area may not contain any improvements. The buffer area

shall extend from the side yard setback of the subject lot to the lot line of the adjoining residential lot.

- (5) All provisions of the Com-1A Zone must be complied with in regard to the subject lot.

§ 80-27. Visibility at corners and curves in roads.

On any corner lot, a clear view of the intersections shall be provided from a point at least 25 feet distant from the intersection of the lot lines at the intersection or apex of the curve. Such intersection or apex shall have a view unobstructed by solid fencing, shrubbery, structures of any kind or posts more than one foot in diameter in a space between three and 10 feet above the average established grade of the adjacent road or roads.

§ 80-28. Nonconforming buildings and uses.

The lawful uses of land and/or buildings in existence on the effective date of this chapter or any amendment date thereafter may be continued without change indefinitely. Nonconforming uses and/or buildings may be changed only as authorized by the following provisions:

- A. A lot or record existing on the effective date or subsequent amendment date of this chapter may be used for any purpose permitted in the district where located, provided that the lot contains 70% of the minimum area requirement established by this chapter.
- B. A lot or record on the effective date of this chapter or subsequent amendment date which exceeds the minimum required area and frontage by at least 70% may be divided into two approximately equal sized lots which may be used for purposes permitted in the district where located.
- C. Any provisions regulating the use of land in any development which have been approved by the Planning Board prior to the effective date of this chapter, which are

in conflict with any of the provisions of this chapter, shall take precedence over the provisions of this chapter in that development.

- D. A nonconforming building may be enlarged, altered and/or moved only after a variance is obtained. A variance may be granted only under the condition that the proposed change enables the building to conform as near to or more closely to the requirements of the district where located as the building prior to the proposed change.
- E. A nonconforming use shall be limited to the confines of the buildings and/or area in use at the time the use becomes nonconforming unless a variance permitting expansion is obtained. Before a variance is granted, proof shall be submitted to the Board of Appeals that the proposed expansion does not increase the nonconforming characteristics of the use and lot.
- F. A nonconforming use may be changed to another nonconforming use or other nonconforming uses may be introduced in areas or buildings where a nonconforming use is permitted, provided that a variance is obtained. A variance shall be granted only if the proposed change will be accomplished without increasing the nonconformity of the area concerned.
- G. If any nonconforming use enterprise ceases to operate for a continuous period of one year for any reason other than the required participation of any owner, a tenant or essential personnel of either in the military service, the right to use the premises for a nonconforming use shall be terminated.
- H. Nonconforming junkyards. Notwithstanding any other provisions of this section, nonconforming junkyards may be continued only as provided herein:²¹ **[Added 3-9-2009 by L.L. No. 1-2009]**

21. Editor's Note: See also Ch. 55, Junkyards.

- (1) Nonconforming junkyards may be continued for a period of two years following the effective date of this subsection.
- (2) Within 60 days from the effective date of this subsection, the owner of a nonconforming junkyard may apply to the Town Board for such additional amortization period beyond the two-year period provided herein as the Town Board determines is reasonable under the circumstances considering the public benefit to be achieved and the nonconforming owner's economic loss. In applying for an additional amortization period, the owner must provide competent evidence demonstrating the need for such additional amortization period, considering its capital investment in the nonconforming use.
- (3) Nothing in this section shall relieve the person operating such a nonconforming junkyard from the requirement to obtain a junkyard license under applicable laws.

ARTICLE VIIA

Sexually Oriented Businesses

**[Added 6-11-2001 by L.L. No. 1-2001; amended 11-19-2001
by L.L. No. 2-2001]**

§ 80-28.1. Purpose and findings.

- A. Purpose. It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults

to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

- B. Finding. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Town Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41(1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215(1990); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), and on studies in other communities, including but not limited to, New York City, Village of Washingtonville, New York, Town of Ellicottville, New York, and Kansas City, Kansas; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented

Businesses, (June 6, 1989, State of Minnesota), the Town Board finds that:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of sexually oriented businesses defined in this article as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of

AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.

- (8) As of March 2001, there have been many, many reported cases of AIDS in the State of New York.
- (9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in New York.
- (10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 1/2 million cases being reported in 1990.
- (12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

- (15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult-oriented films.
- (16) The findings noted in Subsection B(1) through (15) raise substantial governmental concerns.
- (17) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
- (20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

- (21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- (22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this article is designed to prevent or who are likely to be witnesses to such activity.
- (23) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this article.
- (24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- (25) The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this article.

§ 80-28.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing

devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE — A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space, for the sale or rental, for any form of consideration, of any one or more of the following:

- A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas.
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

ADULT CABARET — A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- A. Persons who appear semi-nude; or
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas.

ADULT MOTEL — A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; and either:

- A. Offers a sleeping room for rent for a period of time that is less than 10 hours, or
- B. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON — The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

EMPLOYEE, EMPLOY, and EMPLOYMENT — Describe and pertain to any person who performs any service on the premises

of a sexually oriented business, on a full-time, part-time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or other status. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ENFORCEMENT OFFICER — The Town Code Enforcement Officer or such person as may be designated by the Town Board.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISH OR ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business; or

LICENSEE — A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

NUDITY or STATE OF NUDITY — The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

OPERATE or CAUSE TO BE OPERATED — To cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

SEMI-NUDE or SEMI-NUDE CONDITION — The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO — Any place where a person appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration. "Nude model studio" shall not include:

- A. A proprietary school licensed by the State of New York or a college, junior college or university supported entirely or in part by public taxation;
- B. A private college or university which maintains and operates educational programs in which credits are

transferable to a college, junior college, or university supported entirely or partly by taxation; or

C. A structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude or semi-nude model is on the premises at any one time.

SEXUAL ENCOUNTER CENTER — A business or commercial establishment that as one of its principal business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of "sexual encounter establishment" or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS —

- A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY — Any of the following offenses: prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any offenses similar to those described above under the criminal or penal code of other states or countries; for which:

- A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES — Any of the following:

- A. The fondling of another person's genitals, pubic region, anus, or female breasts;

- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in Subsection A through B above.

SUBSTANTIAL ENLARGEMENT (OF A SEXUALLY ORIENTED BUSINESS) — The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this article takes effect.

TRANSFER OF OWNERSHIP OR CONTROL (of a sexually oriented business) — Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 80-28.3. Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;

- F. Adult theaters;
- G. Escort agencies;
- H. Semi-nude model studios; and
- I. Sexual encounter centers.

§ 80-28.4. License required; application.

A. It is unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town pursuant to this article.
- (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Town pursuant to this article.
- (3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this article.

B. An application for a license must be made on a form provided by the Town. All applicants must be qualified according to the provisions of this article.

C. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Town Code Enforcement Officer a completed application made on a form prescribed and provided by the Town. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this article. The application shall be notarized. The application shall include the information called for in Subsection C(1) through (6) as follows:

- (1) The full true name and any other names used in the preceding five years.
 - (2) Current business address.
 - (3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter or the applicant's social security number to be used for the same purpose.
 - (4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.
 - (5) Written proof of age, in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency.
 - (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, whether any such license or permit has been denied, revoked or suspended and, if so, the reason or reasons therefor.
 - (7) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process. The information provided pursuant to Subsection C(1) through (7) of this section shall be supplemented in writing by certified mail, return receipt requested, to the Code Enforcement Officer within 10 working days of a change of circumstances which would render the information originally submitted false or incomplete.
- D. The application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or

diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

- E. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, such as a corporation, each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must be qualified under § 80-28.5, and each applicant shall be considered a licensee if a license is granted.
- F. A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this chapter, where applicable.
- G. The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only to other governmental agencies in connection with a law enforcement or public safety function, or as may otherwise be required by law or court order.

§ 80-28.5. Issuance of license.

- A. Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Enforcement Officer shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the Enforcement Officer to deny or grant the license. Within

20 days after the receipt of a completed application, the Enforcement Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Enforcement Officer shall approve the issuance of a license unless one or more of the following is found to be true:

- (1) An applicant is less than 18 years of age.
 - (2) An applicant is delinquent in the payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
 - (3) An applicant has failed to provide information as required by § 80-28.4 for issuance of the license.
 - (4) An applicant, a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest, has been convicted of a specified criminal activity as defined in this chapter. The fact that a conviction is being appealed shall have no effect.
 - (5) The license application fee required by this article has not been paid.
 - (6) An applicant has falsely answered a question or request for information on the application form.
 - (7) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under this article or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).
- B. An applicant ineligible for a license due to Subsection A(4) of this section may qualify for a sexually oriented business license only when the time period required by the applicable subsection has elapsed.

- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other authorized Town official.

§ 80-28.6. Fees.

- A. The nonrefundable initial license fee and annual renewal fee for a sexually oriented business license or a sexually oriented business employee license shall be set by the Town Board at an amount determined to be sufficient to pay the cost of administering this program, subject to Subsection B herein.
- B. In no event shall the fees exceed \$500 for the initial license and \$125 for the renewal fee for a sexually oriented business license. In no event shall the fees exceed \$100 for the initial license and \$50 for the renewal fee for a sexually oriented business employee license.

§ 80-28.7. Inspection.

- A. An applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or town agency in the performance of any function connected with the enforcement of this article, normally and regularly conducted by such agencies, to inspect those portions the premises of a sexually oriented business

where patrons or customers are permitted to occupy for the purpose of ensuring compliance with this chapter, at any time the business is occupied or open for business.

- B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

§ 80-28.8. Expiration of license.

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 80-28.4. Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.
- B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date denial became final.

§ 80-28.9. Suspension of license.

The Town shall issue a written intent to suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any section of this article;
- B. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

§ 80-28.10. Revocation of license.

- A. The Code Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in § 80-28.9. occurs and the license has been suspended within the preceding 12 months.
- B. The Code Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:
- (1) A licensee gave false or misleading information in the material submitted during the application process;
 - (2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A licensee has knowingly allowed prostitution on the premises;
 - (4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either in exchange for money or in a public place or within public view.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. When, after the notice and hearing procedure described in § 80-28.11, the Enforcement Officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective,

provided that, if the conditions of § 80-28.11D are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the Code Enforcement Officer finds that the basis for the revocation found in Subsection B(1) and B(4) of this section has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

§ 80-28.11. Hearing; license denial, suspension or revocation; appeal.

- A. If the Code Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Code Enforcement Officer. Within 10 working days of receipt of such notice, the respondent may provide to the Code Enforcement Officer and Town Clerk in writing a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three days of the receipt of the respondent's written response, the Town Clerk shall notify respondent in writing of the hearing date on the respondent's denial, suspension or revocation proceeding.
- B. Within 10 working days of the receipt of the respondent's written response, the Town Board shall conduct a hearing at which the respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Town Clerk and Code Enforcement Officer in the time stated, or if after the hearing the Town Board finds that grounds as specified in this resolution exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five days after the Town

Clerk sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

- C. If the Town Board finds that no grounds exist for denial, suspension, or revocation of a license, then within five days after the hearing the Town Board shall withdraw the intent to deny, suspend, or revoke the license and the Town Clerk shall so notify the respondent in writing by certified mail of such action and shall contemporaneously therewith issue the license.
- D. When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the granting of a temporary restraining order or a preliminary injunction of the Town's enforcement of the denial, suspension, or revocation, the Town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the Town's enforcement.

§ 80-28.12. Transfer of license.

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

§ 80-28.13. Location of sexually oriented businesses.

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in the Kingsbury Industrial Park or in any zoning district other than the district area defined herein.
- B. A person commits an offense if the person operates or causes to be operated a sexually oriented business within 500 feet of:
- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (2) A public or private educational facility, including but not limited to child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; "school" includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (3) A boundary of a residential district as defined in the Zoning Local Law;
 - (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;
 - (5) The property line of a lot devoted to a residential use as defined in the Zoning Code;

- (6) An entertainment business which is oriented primarily towards children or family entertainment; or
 - (7) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 500 feet of another sexually oriented business.
- D. A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- E. For the purpose of Subsection B of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection B. Presence of a town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- F. For purposes of Subsection C of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- G. Any sexually oriented business lawfully operating on the effective date of this article that is in violation of

Subsections A through F of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered, except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 500 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

- H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in Subsection B of this section within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

§ 80-28.14. Exhibition of sexually explicit films, videos or live entertainment in viewing rooms.

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- (1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the

location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
- (4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an

unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the licensee to ensure that the view area specified in Subsection A(5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection A(1) of this section.
- (7) No viewing room may be occupied by more than one person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five footcandles as measured at the floor level.
- (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

- B. A person having a duty under Subsection A(1) through (14) above commits a misdemeanor if he knowingly fails to fulfill that duty.

§ 80-28.15. Escort agencies.

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

§ 80-28.16. Public nudity.

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or engages in specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally, in a sexually oriented business, appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.

- D. It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

§ 80-28.17. Prohibition against children in sexually oriented businesses.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

§ 80-28.18. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 12:00 midnight and 8:00 a.m. on weekdays and Saturdays, and 12:00 midnight and noon on Sundays.

§ 80-28.19. Exemptions.

It is a defense to prosecution under § 80-28.17 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the State of New York; a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

- (2) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude model is on the premises at any one time.

§ 80-28.20. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of \$200 or 30 days' imprisonment. Each day a sexually oriented business so operates is a separate offense or violation.

ARTICLE VIII Site Plan Review

§ 80-29. Purpose.

The purpose of this article is to allow the proper integration into the community of uses listed in Article V of this chapter, which may be suitable within a zoning district only on certain conditions and only at appropriate locations. Because of their characteristics or the special characteristics of the area in which they are to be located, these uses require special consideration so that they may be properly located and planned with respect to:

- A. The objectives of this chapter.
- B. Their effect on surrounding properties.
- C. The ability of the Town to accommodate the growth resulting from the proposed use without undue adverse effect on the Town and its citizens and taxpayers, and the protection of health, safety and welfare of the Town and its citizens.

§ 80-30. Applicability of article. [Amended 3-13-2000 by L.L. No. 4-2000]

A land use or development involving a use listed in Article V as site plan review or in Article VI hereof shall not be undertaken unless and until the Planning Board has approved or approved with conditions such use, and the Code Enforcement Officer has issued a required permit for such land use or development pursuant to the terms of Article VIII hereof.

§ 80-31. Authorization to approve or disapprove site plan.

In accordance with § 274-a of the Town Law, the Planning Board is authorized to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in this chapter and in regulations of the Planning Board showing the arrangement, layout and design of the proposed use of the land shown on such plan.

§ 80-32. Application for review. [Amended 3-13-2000 by L.L. No. 4-2000]

Application for project approval shall be made to the Code Enforcement Officer using forms supplied by the Officer. Applications shall include reasonably sufficient information for the Officer to make his or her finding under § 80-34 of this chapter and shall be submitted in 10 copies.

§ 80-33. Sketch plan. [Amended 3-13-2000 by L.L. No. 4-2000]

A sketch plan conference may be held at the advice of the Code Enforcement Officer between the Planning Board, or its designee, and the applicant prior to the preparation and submission of a formal site plan application. The intent of such conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan and for the Planning Board to review the basic site design

concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:

- A. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation and other planned features, anticipated changes in the existing topography and natural features and, where applicable, measures and features to comply with flood hazard and flood insurance regulations.
- B. A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, properties, easements and other pertinent features.
- C. A topographic or outdoor map of adequate scale and detail to show site topography.

§ 80-34. Procedure.

- A. Application to the Code Enforcement Officer. **[Amended 3-13-2000 by L.L. No. 4-2000]**
 - (1) Not later than 10 days following receipt of a complete application for a project listed as site plan review, the Code Enforcement Officer shall notify the Planning Board of such receipt and shall furnish a copy of the project application.
 - (2) Information.
 - (a) When the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as deemed necessary by the Planning Board at said sketch plan conference. In the event that a sketch plan conference was not held, the applicant shall

provide information to all applicable items on the following checklist.

(b) The site plan checklist shall read as follows:

- [1] Title of drawing, including name and address of applicant, owner of property and person responsible for preparation of such drawing.
- [2] North arrow, scale and date.
- [3] Boundaries of the property plotted to scale and adjacent property owners.
- [4] Existing watercourses.
- [5] Grading and drainage plan showing existing and proposed contours.
- [6] Location, design and type of construction, proposed use and exterior dimensions of all buildings.
- [7] Location, design and type of construction of all parking and trucking loading areas showing access and egress.
- [8] Provision for pedestrian access.
- [9] Location of outdoor storage, if any.
- [10] Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- [11] Description of the method of sewage disposal and location, design and construction materials of such facilities.

- [12] Description of the method of securing water and location, design and construction materials of such facilities.
- [13] Location of fire and other emergency zones, including the location of fire hydrants.
- [14] Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy.
- [15] Location, size and design and type of construction of all proposed signs.
- [16] Location and proposed development of all buffer areas, including existing vegetative cover.
- [17] Location and design of outdoor lighting facilities.
- [18] Identification of the location and amount of building area proposed for retail sales or similar commercial activity.
- [19] General landscaping plan and planting schedule.
- [20] An estimated project construction schedule.
- [21] Record of application for and approval status of all necessary permits from state and county officials.
- [22] Identification of any state or county permits required for the projects execution.

[23] Other elements integral to the proposed development as considered necessary by the Planning Board.

[24] If applicable, a stormwater pollution prevention plan in accordance with the Town of Kingsbury stormwater regulations. **[Added 12-18-2006 by L.L. No. 7-2006]**

- B. Planning Board schedules optional hearing. Within 31 days of its next regular meeting following the receipt of a complete application by the Code Enforcement Officer, the Planning Board shall hold a public hearing if the Planning Board deems a public hearing is necessary. In determining whether a public hearing is necessary, the Planning Board shall be guided by the expected level of public interest in the project and the possibility of an eventual disapproval. No site plan review project may be disapproved unless a hearing shall have first been held on the project application. The Planning Board shall give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof. **[Amended 3-13-2000 by L.L. No. 4-2000]**
- C. Planning Board decision. Within 31 days after a required public hearing or within 31 days after initial review of a complete application where no public hearing was required, the Planning Board shall render a decision. Said decision shall be in the form of an approval, approval with conditions or disapproval based on the criteria and procedures cited in Articles V and VI of this chapter. The Planning Board's review of the site plan shall include, as appropriate, but is not limited to the following general considerations:
- (1) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - (2) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road

widths, pavement surfaces, dividers and traffic controls.

- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (5) Adequacy of stormwater and drainage facilities.
- (6) Adequacy of water supply and sewage disposal facilities.
- (7) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- (8) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (9) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (10) No approval, or approval with conditions, shall be granted until the Planning Board determines the applicant is in compliance with all other provisions of this chapter.

D. Filing of decision. **[Amended 3-13-2000 by L.L. No. 4-2000]**

- (1) The decision of the Planning Board shall immediately be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. The decision shall contain such findings of fact as are required by § 80-35 hereof. The Planning Board, in

conjunction with its approval of any site plan review project, may impose such requirements and conditions as are allowable within the proper exercise of the police power, including the restriction of land against further development of principal buildings, whether by deed restriction, restrictive covenant or other similar appropriate means, to ensure that guidelines as to intensity of development as provided in this chapter shall be respected. The Planning Board may impose reasonable conditions to ensure that the project will be adequately supported by services and improvements made necessary by the project and to ensure that the project will be completed in accordance with the requirements and conditions authorized under § 80-31 of this chapter. In addition, the Planning Board may require that the Code Enforcement Officer incorporate any such requirements and conditions in any permit issued with regard to such site plan review project.

- (2) Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward a copy to the applicant, the Code Enforcement Officer and file the same with the Town Clerk.
- (3) Upon disapproval of a site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a required permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. Such disapproval shall be filed with the Town Clerk.

§ 80-35. Requirements for approval.

In order to approve any site plan review use, the Planning Board shall find that:

- A. The use complies with all other requirements of this chapter, including the dimensional regulations of the zoning district in which it is proposed to be located.
- B. The use would be in harmony with the general purpose and intent of this chapter, specifically taking into account the location, character and size of the proposed use and the description and purpose of the district in which such use is proposed, the nature and intensity of the activities to be involved in or conducted in connection with the proposed use, and the nature and rate of any increase in the burden of supporting public services and facilities which will follow the approval of the proposed use.
- C. The establishment, maintenance or operation of the proposed use would not create public hazards from traffic, traffic congestion or the parking of automobiles or be otherwise detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be unduly detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the town.
- D. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the town or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, the Planning Board shall consider those factors pertinent to the project contained in the development considerations set forth herein, and in so doing, the Planning Board shall make a net overall evaluation of the project in relation to the development objectives and general guidelines set forth in § 80-36 of this article.

§ 80-36. Development considerations.

The following are those factors which relate to potential for adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Town of Kingsbury. These factors, listed above, shall be considered, as provided in this chapter, before any site plan review project is undertaken in the town. Any burden on the public in providing facilities and services made necessary by such land use and development or subdivision of land shall also be taken into account, as well as any commercial, industrial, residential, recreational or other benefits which might be derived therefrom.

A. Natural resource considerations shall be as follows:

- (1) Water.
 - (a) Existing water quality.
 - (b) Natural sedimentation or siltation.
 - (c) Eutrophication.
 - (d) Existing drainage and runoff patterns.
 - (e) Existing flow characteristics.
 - (f) Existing water table and rates of recharge.
- (2) Land.
 - (a) Existing topography.
 - (b) Erosion and slippage.
 - (c) Floodplain and flood hazard.
 - (d) Mineral resources.
 - (e) Viable agricultural soils.
 - (f) Forest resources.

- (g) Open space resources.
- (h) Vegetative cover.
- (i) The quality and availability of land for outdoor recreational purposes.
- (3) Air.
 - (a) Air quality.
- (4) Noise.
 - (a) Noise levels.
- (5) Critical resource areas.
 - (a) Rivers and corridors of rivers designated to be studied as wild, scenic or recreational in accordance with the Environmental Conservation Law.
 - (b) Rare plant communities.
 - (c) Habitants of rare and endangered species and key wildlife habitats.
 - (d) Wetlands.
 - (e) Unique features, including gorges, waterfalls and geologic formations.
- (6) Wildlife.
 - (a) Fish and wildlife.
- (7) Aesthetics.
 - (a) Scenic vistas.
 - (b) Natural and man-made travel.

B. Historic site considerations shall be as follows:

- (1) Historic factors.

- (a) Historic sites or structures.

C. Site development considerations shall be as follows:

- (1) Natural site factors.

- (a) Geology.

- (b) Slopes.

- (c) Soil characteristics.

- (d) Depth to groundwater and other hydrological factors.

- (2) Other site factors.

- (a) Adjoining and nearby land uses.

- (b) Adequacy of site facilities.

D. Governmental considerations shall be as follows:

- (1) Governmental service and finance factors.

- (a) Ability of government to provide facilities and services.

- (b) Municipal school or special district taxes or special district user charges.

E. Governmental review considerations shall be as follows:

- (1) Governmental control factors.

- (a) Conformance with other governmental controls.

ARTICLE IX
Enforcement

§ 80-37. Penalties for offenses.

A violation of this chapter is hereby declared to be a misdemeanor punishable by a fine not exceeding \$50 or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate additional violation.

ARTICLE X
Amendments

§ 80-38. Amendment procedure.

The Town Board may from time to time amend, supplement, change, modify or repeal any of the regulations, restrictions and boundaries contained in this chapter, including the Zoning Map, in accordance with the provisions of §§ 264 and 265 of the Town Law.

ARTICLE XI
Interpretation

§ 80-39. Provisions held to be minimum requirements.

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, morals, safety and general welfare.

ARTICLE XII
Fees

§ 80-40. Schedule of fees. [Amended 12-27-1994 by L.L. No. 3-1994]

The following fees shall be charged for services performed under the provisions of this chapter:

Type of License, Application or Permit	Fee
Site plan review	\$100
Submission of application for a planned development permit (including site plan review) [Amended 12-27-1994 by L.L. No. 3-1994]	\$400
Submission of development construction applications [Amended 12-27-1994 by L.L. No. 3-1994]	\$100
Certificate of occupancy [Amended 12-27-1994 by L.L. No. 3-1994]	\$25
Residential (one- or two-family dwelling), per hundred square feet or each fraction thereof [Amended 12-27-1994 by L.L. No. 3-1994]	\$7
Garages and accessory building (attached or detached and including porches and carports), per hundred square feet or each fraction thereof [Amended 12-27-1994 by L.L. No. 3-1994]	\$7
Additions or alterations which increase the habitable living space of a residence, per hundred square feet or each fraction thereof	\$7
Swimming pools, each (with certificate of compliance)	\$30

Type of License, Application or Permit	Fee
Variance (any type which requires Zoning Board action), each	\$75
Farm buildings (any type construction), per hundred square feet or each fraction thereof	\$5
Multiple dwelling (multifamily unit of 3 or more), per hundred square feet or each fraction thereof	\$10
Commercial or industrial building, per hundred square feet or each fraction thereof	\$12
Signs, each	\$25
Mobile homes (either inside or outside a mobile home court), each	\$50
Demolition permit, each	\$25

APPENDIX

SUBDIVISION REGULATIONS

Chapter A84

SUBDIVISION REGULATIONS

ARTICLE I General Provisions

- § A84-1. Declaration of policy.
- § A84-2. Definitions.

ARTICLE II Minor and Major Subdivision Approval

- § A84-3. Written application required.
- § A84-4. Submission of sketch plan.
- § A84-5. Minor subdivision approval.
- § A84-6. Submission of preliminary plat for major subdivision.
- § A84-7. Submission of final plat for major subdivision.
- § A84-8. Required improvements.
- § A84-9. Filing of approved major subdivision plat.
- § A84-10. Streets and recreation areas.

ARTICLE III General Requirements; Design Standards

- § A84-11. Standards to be minimum requirements.
- § A84-12. Land requirements; conformity required.
- § A84-13. Street layout.
- § A84-14. Street design.
- § A84-15. Street names.

§ A84-1

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§ A84-1

§ A84-16. Lots.

§ A84-17. Drainage improvements.

§ A84-18. Parks, open spaces and natural features.

ARTICLE IV
Required Documents

§ A84-19. Sketch plan.

§ A84-20. Minor subdivision plat.

§ A84-21. Major subdivision preliminary plat.

§ A84-22. Major subdivision plat and accompanying data.

ARTICLE V
Variances and Waivers

§ A84-23. Conditions for waivers and variances.

Procedures Summary

[HISTORY: Adopted by the Planning Board of the Town of Kingsbury 11-19-80; approved by the Town Board 12-8-80. Sections A84-5A, A84-6A and A84-7A amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.
Subdivision enforcement — See Ch. 69.
Zoning — See Ch. 80.

ARTICLE I
General Provisions

§ A84-1. Declaration of policy.

By the authority of the resolution of the Town Board of the Town of Kingsbury, adopted on December 8, 1980, pursuant to