

Town of Duanesburg Zoning Ordinance

Adopted

12/13/001

TABLE OF CONTENTS

Section	Page
(1) Title and Purpose of Ordinance	3
(2) Establishment of Zoning Districts	4
(3) Application of Ordinance, Regulations and Definitions	6
(4) Nonconforming Use	18
(5) District Regulations in General	20
(6) Higher Density Residential (R-1)	22
(7) Lake District (L-1)	23
(8) Agricultural & Residential District (R-2)	24
(9) Hamlet District (H)	26
(10) Mobile Home Park District (MP)	28
(11) Commercial (C)	31
(12) Manufacturing and Light Industrial District (C-2)	33
(13) Supplementary Regulations	34
(14) Administration	46
(15) Enforcement	62
(16) Amendments	66
(17) Severability	67
(18) Exceptions	68
(19) Effective Date	69
(20) Index	

SECTION 1

TITLE AND PURPOSE OF ORDINANCE

1.1 Title

This ordinance shall be known as "The Town of Duanesburg, N. Y. Zoning Ordinance".

1.2 Purpose

This ordinance is enacted in order to promote the health, safety, morals and general welfare of the Town of Duanesburg by dividing the Town into Districts and by regulating and restricting the location, construction and use of buildings and structures, and the use of land in these Districts. It is hereby declared to be the specific intent and purpose of this ordinance to preserve wherever possible the natural beauty and ecology of forests, streams, watercourses and bodies of water and to preserve the rural character of the Town. This ordinance shall be construed, interpreted and applied in accordance with the fulfillment of these purposes and in compliance with the latest approved version of the Comprehensive Plan adopted 1991, Resolution 154-91.

This amendment is a compilation of the original Ordinance, (adopted on May 31, 1984), updated to include all revisions up to and including this change effective _____2001.

The Town Board of the Town of Duanesburg, County of Schenectady, under authority of Town Law of the State of New York hereby ordains, enacts, and publishes as follows:

SECTION 2

ESTABLISHMENT OF ZONING DISTRICTS AND BOUNDARIES

2.1 The Town is divided into the following districts:

1) **Higher Density Residential (R-1)**

Smaller lots may be approved within the boundaries of any sewer district, but outside the boundaries of any hamlet or village or Lake (L-1) zoning district within that sewer district. (See Section 6)

2) **Lake (L-1).**

This district is made up of properties surrounding and abutting a lake. (See Section 7)

3) **Agricultural and Residential (R-2)**

Areas are not likely to be served by public water and sewerage require large residential lots. (See Section 8)

4) **Hamlet (H)**

Hamlets are intended to develop as residential/retail business areas. Development should be in character with the historic nature of the hamlet and may be limited by availability of water and sewerage. (See Section 9)

5) **Mobile Home Park District (MP)**

Housing alternatives must be available to meet the diverse needs of the Town's residents. Such areas should be well designed and maintained so as not to affect the character of the neighborhood or the values of existing properties. (See Section 10)

6) **Commercial (C-1)**

The Comprehensive Plan specifies that commercial zones should be deep, affording the opportunity for development of off-highway centers which could share common entrances and exits, thereby minimizing the interruption of traffic on high volume roads. Strip development is discouraged. (See Section 11)

7) **Manufacturing & Light Industrial (C-2)**

The use of performance standards through the Special Use Permit procedure make it possible to accommodate light industrial development while protecting the adjoining properties. (See Section 12)

2.2 ZONING MAP

The Districts are bounded and defined as shown on a map entitled "Town of Duanesburg Zoning Map", adopted, with this Ordinance with all explanatory matter, and shall be kept on file in the office of the Town Clerk and available for public inspection.

2.3 INTERPRETATION OF DISTRICT BOUNDARIES

The District boundaries shall be interpreted as follows:

- 1) Where the district boundaries are shown to approximately follow lot line, such lot lines shall be construed to be said boundaries.
- 2) Where the district boundaries are indicated as approximately following the limit of the street, highway, or railroad rights-of-way, such rights of way limits shall be construed to be said boundaries.
- 3) Where the district boundaries are indicated to be approximately parallel to the street, highway, or railroad rights-of-way, such boundaries shall be construed to be parallel to said rights-of-way with distances shown on the Zoning Map being perpendicular distances from such rights-of-way.
- 4) Where the boundary of a district follows a waterway, said boundary shall be deemed to be at the centerline, or the limit of the jurisdiction of the Town if this limit is not the centerline.
- 5) In other cases, such boundaries shall be determined by the Code Enforcement Officer by use of the scale shown on the Zoning Map. (Also, see Section 14.5.1)

SECTION 3

APPLICATION OF ORDINANCE REGULATIONS AND DEFINITIONS

3.1 WORD USAGE

The present tense shall include the "future"; the singular number shall include the "plural", and the plural the "singular". The word "shall" is always mandatory. The term "person" includes a corporation, or any other legal entity. The term "lot" includes the word "plot" or "parcel". The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used, or occupied".

3.2 CONFORMITY WITH REGULATION REQUIRED

No building, structure, or land shall hereafter be used and no building or structure or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations, herein specified to the district in which it is located, except as hereinafter provided.

3.3 BUILDING PERMIT REQUIRED

No building or structure shall be excavated for, erected, added to, or structurally altered until a building permit has been issued, as specified in Section 14.3, signifying that the building or structure and proposed use thereof complies with the provisions of the ordinance. A permit is required for construction or repair of a septic system.

3.4 CERTIFICATE OF OCCUPANCY OR COMPLIANCE

No building or structure that was erected or added to or structurally altered in accordance with the issued Building Permit shall be occupied without the issuance of a Certificate of Occupancy or Compliance by the Uniform Code Enforcement Officer as specified in Section 14.4.

3.5 DEFINITIONS

The following definitions shall apply to this Ordinance:

3.5.1 Abandon. To voluntarily cease the use and maintenance of land, buildings or structures which have been a non-conforming use for a period in excess of one (1) year.

3.5.2 Accessory Structures and Uses.

An accessory structure or use is a structure or use which:

1. Is subordinate to and serves a principal building or a principal use.
2. Contributes to the comfort, convenience or necessity of the occupants, business or industry in the principal structure or principal use served; and
3. Is located on the same lot as the principal structure or principal use served.
4. Is used as a home occupation.

3.5.3 Adult Care Facility. A family type home for adults, a shelter for adults, a residence for adults or an adult home, which provides temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care, are by reason of physical or other

limitations associated with age, physical or mental disabilities or other factors unable or substantially unable to live independently.

- 3.5.4 **Addition.** Any structure which is built or placed so as to be attached to a building and have a common roof or wall with the building to which it is attached.
- 3.5.5 **Agriculture.** The use of land for agricultural purposes, including horticulture, floriculture, viticulture, farming, dairying, pasturage, animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing of produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.
- 3.5.6 **Amusement Park.** A facility which may contain rides, food concessions, water slides, restaurants, swimming pools and/or games of skill, open to the general public and operating without excessive or obnoxious noise, lights or odors.
- 3.5.7 **Animal Hospital or Veterinary Hospital.** A place where pets or animals are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-term boarding and shall be only incidental to such hospital use.
- 3.5.8 **Apartment.** A portion of a building used as a dwelling unit and without internal access to other parts of the building.
- 3.5.9 **Apartment House.** Same definition as 3.5.50, Dwelling-Multi-Family.
- 3.5.10 **Area, Building.** The total of the area taken on a horizontal plane at the main grade level, plus the vertically projected area of any building overhangs, exclusive of the eaves. The area will include that of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.
- 3.5.11 **Area, Land.** The term "land area", when referring to the required area per dwelling unit, means "net land area", the area exclusive of street and other public open space.
- 3.5.12 **Area, Total Floor.** The sum of the gross horizontal area of the several floors of the principal building on the lot, excluding the area of unenclosed or unheated porches and patios, and excluding cellar and basement floor area not devoted to residential use. All dimensions shall be measured between exterior faces or walls.
- 3.5.13 **Bar.** An establishment in business for the sale and consumption of alcoholic beverages. Different degrees of food service may be available, but the primary function is for the sale and consumption of alcoholic beverages. The definition for "bar" also includes, but not limited to, barroom and tavern.

- 3.5.14 **Basement.** That space of a building that is partly below grade which has more than half its average height, measured from floor to ceiling, above the established curb level or finished grade of the ground adjoining the building.
- 3.5.15 **Bed and Breakfast.** See Tourist Home, 3.5.123.
- 3.5.16 **Billboard.** Any structure or portion thereof situated on private premises upon which are signs or advertisements containing written or pictorial information not directly related to the principal use of the land upon which it is located.
- 3.5.17 **Boarding and/or Rooming House.** A dwelling, other than a hotel or motel wherein more than three (3) persons other than family members are sheltered and fed for profit.
- 3.5.18 **Building.** A structure wholly or partially enclosed within exterior or party walls and a roof designed to shelter persons, animals or property.
- 3.5.19 **Building, Accessory.** A supplemental building, the use of which is incidental to that of a main or principal building, and which is located on the same property as that occupied by the main building.
- 3.5.20 **Building, Alteration of.** As applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities, or in enlargement, whether by extending on a side or increasing in height, or the moving from one location or position to another position. Any change which requires inspection under New York State Code.
- 3.5.21 **Building, Height of.** The vertical distance measured from the average elevation of the finished lot grade at the front of the building to the highest point of the roof.
- 3.5.22 **Building Inspector.** See Section 14.2, Uniform Code Enforcement Officer.
- 3.5.23 **Building Front Line.** The base line of a vertical plane, parallel to the street line, and extending from one lot line to another. Side and rear lines shall be determined in the same manner.
- 3.5.24 **Building, Principal.** A building in which is conducted the principal use of the lot on which it is situated. In any residential district, the dwelling shall be deemed the principal use on the lot. Only one such building is allowed per lot. An exception may be considered to provide housing for farm help.
- 3.5.25 **Camp.** A structure built for occasional, seasonal, or recreational shelter.
- 3.5.26 **Campground.** A parcel of land improved with facilities designed and intended for the temporary accommodations of travel trailers, tents, recreational vehicles and campers.
- 3.5.27 **Cellar.** A story partly underground and having more than one-half (50%) of its clear height

below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories and shall not be used as a dwelling.

- 3.5.28 **Center Line of Street or Road.** A line midway between and parallel to the two street or road property lines or as otherwise defined by the Planning Board.
- 3.5.29 **Certificate of Compliance.** A certificate issued by the Uniform Code Enforcement Officer which states that the violation(s) of the Ordinance have been corrected.
- 3.5.30 **Certificate of Occupancy.** A certificate issued by the Uniform Code Enforcement Officer which states that the building is in compliance with all codes and zoning requirements.
- 3.5.31 **Club.** An organization catering exclusively to members and their guests for recreational, athletic or social purposes.
- 3.5.32 **Clubhouse.** A building to house a club or social organization.
- 3.5.33 **Cluster Housing.** A group of homes that meet all requirements for a subdivision in accordance with the applicable laws and ordinances with the exception of the minimum required front and rear yards, setbacks, and lot sizes.
- 3.5.34 **Commercial Vehicle.** A vehicle designed for carrying, hauling or towing property with a Gross Vehicle Weight of over 10,000 pounds.
- 3.5.35 **Condominium.** An estate in real property consisting of an undivided interest in common with other purchasers in a portion of a parcel of real property, together with a separate interest in space in a residential building, such as an apartment.
- 3.5.36 **Convenience Store.** A store providing retail sales of grocery items and motor fuels to the general public. As an accessory use only, the incidental sale of fast food and beverage items is permitted.
- 3.5.37 **Country Clubs.** An organization operated for gain with facilities for golf, other outdoor sports, or other social activities including but not limited to tennis, swimming, cross-country skiing, entertainment and the serving of food and beverages. Facilities may or may not be open to the public.
- 3.5.38 **Coverage.** That percentage of the lot area covered by the building area including accessory buildings.
- 3.5.39 **Customary Agricultural Uses.** Ordinarily, animal husbandry and/or the raising of crops.
- 3.5.40 **Day Care Center.** A facility providing day care to three or more children for more than three hours per day outside a family home. The term "Day Care Center" includes nursery school. (See 3.5.56, Family Day Care Home)

- 3.5.41 **Density.** The number of dwelling units per acre of land area.
- 3.5.42 **Development.** The utilization of a lot or tract of land for the planned construction of homes, businesses, or other approved structures.
- 3.5.43 **Designated Rear Lot.** See 3.5.77, Lot, Flag.
- 3.5.44 **District.** A portion of the territory of the town within which certain uniform regulations and requirements, or various combinations thereof, apply under the provisions of this Ordinance.
- 3.5.45 **Drive-in Establishment.** A place of business being operated for the sale and purchase of retail food and other goods, services, or entertainment, which is laid out and equipped so as to allow its patrons to be served or accommodated without entering the premises.
- 3.5.46 **Dwelling.** A house, apartment building or other building with living, sleeping, cooking, eating and sanitary facilities used primarily for human habitation. The word "dwelling" shall not include tourist homes, motels, hotels, or other structures designed for transient residence. The minimum gross floor area for any dwelling shall not be less than six hundred (600) square feet.
- 3.5.47 **Dwelling, Single-Family.** A building containing one (1) dwelling unit.
- 3.5.48 **Dwelling, Two-Family.** A building containing two (2) dwelling units.
- 3.5.49 **Dwelling, Multi-Family.** A building containing three (3) or more dwelling units and occupied or designed for occupancy by three (3) or more families living independently of each other.
- 3.5.50 **Dwelling, Row or Town House.** A building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings.
- 3.5.51 **Dwelling Unit.** Any dwelling or portion thereof used or intended to be used by one family, and providing cooking and sanitary facilities.
- 3.5.52 **Efficiency Apartment.** A dwelling unit without a separate distinct room for sleeping.
- 3.5.53 **Enactment.** Whenever the word "enactment" is used herein, it refers to the date of the enactment of this Ordinance.
- 3.5.54 **Exhibition.** A display or entertainment for which admission may or may not be charged.
- 3.5.55 **Family.** A household constituting a single housekeeping unit occupied by one or more persons.

- 3.5.56 **Family Day Care Home.** A program where day care is provided for three to six children for more than three hours per day in a family home occupied as a residence, and authorized by the NYS Department of Social Services in accordance with Section 390 of the Social Services Law. An additional two school-age children may be cared for if those children receive care primarily before or after school.
- 3.5.57 **Finished Grade.** The average elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure.
- 3.5.58 **Garage-Private.** An enclosed space for the storage of one or more motor vehicles.
- 3.5.59 **Garage-Public.** Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.
- 3.5.60 **Gasoline Station-Motor Vehicle Service Station.** Any area of land including structures thereon that is used either for the sale of gasoline, or any other motor vehicle fuel, together with oil and other lubricating substances, including any sale of motor vehicle accessories, or that is used and is available to the public for storage, repair, rental, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.
- 3.5.61 **Gross Floor Area.** The sum of the horizontal areas of the floors of a building excluding enclosed or unheated porches, basement areas and garages, measured from the interior face of the exterior walls, except that basement space used for commercial purposes shall be included for purposes of calculating requirements of accessory off-street parking space and accessory off-street loading berths.
- 3.5.62 **Group Family Day Care Home.** A program where day care is provided for seven to ten children, including not more than four children under two years of age, for more than three hours per day in a family home occupied as a residence, and authorized by the NYS Department of Social Services in accordance with section 390 of the Social Services law. Up to twelve children may be cared for if all the children are over two years of age. An additional two school-age children may be cared for if those children receive care primarily before or after school.
- 3.5.63 **Health Care Facility.** A skilled nursing care facility providing health related service.
- 3.5.64 **Home Occupation.** Any occupation or profession which is clearly incidental and secondary to the use of the dwelling unit for residential purposes and is a use not occupying more than twenty five percent (25%) of the total floor area thereof used for residential purposes or fifteen hundred (1500) square feet of any accessory structure and including:
- a) The office or studio of a physician or surgeon, dentist, artist, musician, lawyer, architect, engineer, teacher, or other such professional person residing on the premises, provided there shall be no advertising display visible from the street, other than a small unlighted professional nameplate not over eight (8) square feet in area. There shall be not more than two (2) full time

paid employees other than immediate family members, or their equivalent part time employees therein. The above shall not be interpreted to include the office or place of business of a mortician.

b) Home occupations (1) displaying no goods visible from the street, other than a sample of those produced upon the property as specifically allowed by the terms of the Site Plan Review, (2) no exterior advertising other than an unlighted sign not over eight (8) square feet in area, and (3) such occupation is conducted on the property by a person or persons residing therein, with not more than two (2) full time paid assistants or employees or their equivalent. Home occupations shall not create noise, dust, vibration, odor, glare, fumes or electrical interference detectable by the normal senses of persons outside the dwelling unit. In the case of electrical interference, there shall be no radio nor television disruption outside the dwelling unit nor fluctuations in line voltages off the premises. Sufficient off-street parking shall be provided.

c) A Home Occupation Business Permit may be authorized by the Zoning Board of Appeals after site plan review. The actual permit is to be issued by the Uniform Code Enforcement Officer.

- 3.5.65 **Hospital.** An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, and shall be limited to the treatment or other care of humans.
- 3.5.66 **Hotel.** A building or any part thereof, which contains living and sleeping accommodations for transient occupancy and provides off-street parking facilities.
- 3.5.67 **House Trailer.** Same definition as 3.5.83 Mobile Home.
- 3.5.68 **Industrial, Heavy.** A use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions subject to performance standards determined by the Planning Board in a manner that does not produce odor, dust, smoke, noise, gas, fumes, cinders, vibration, glare or liquor or solid wastes which is offensive as determined by normally accepted standards.
- 3.5.69 **Industrial, Light.** A use engaged in the manufacture, predominately from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products.
- 3.5.70 **Junk Yard.** Land, or part thereof, used for the collecting, storage or sale of waste paper, rags, unregistered motor vehicles or parts thereof, scrap metal, scrap building materials, household appliances or discarded materials in excess of three (3) cubic yards. (Junk yards are prohibited by Local Law dated 6/11/53.) (See 3.5.105 Salvage Yard)
- 3.5.71 **Kennel.** Any premises on which dogs or cats are maintained, boarded, bred or cared for, in

return for remuneration or a fee, or are kept for the purpose of sale.

- 3.5.72 **Landfill.** A piece of property used for disposing of waste material in accordance with the latest NYS Department of Environmental Conservation Regulations. (Landfills prohibited by Local Law #1 dated June 8, 1989)
- 3.5.73 **Lot.** A parcel or plot of land as determined by certain metes and bounds.
- 3.5.74 **Lot-Corner.** A lot abutting two (2) or more streets at their intersection.
- 3.5.75 **Lot Coverage.** That percentage of the lot or lot area covered by the building area including accessory buildings.
- 3.5.76 **Lot, Depth of.** The mean distance between the front and rear lot lines.
- 3.5.77 **Lot, Flag.** A lot which has limited road frontage except for a portion which consists of a narrow corridor of land no less than sixty (60) feet in width which connects the main area of the lot with a public street or highway. The land contained in the corridor connecting the main portion of the lot to the street or highway shall not be considered in any computation of the minimum lot size required for that district. The front lot line as defined for flag lots shall conform to any minimum front lot line requirements for that district. The width of the corridor may be used to calculate the length of the front line if said corridor intersects the front lot line.
- 3.5.78 **Lot Width.** The width at the building front line measured at right angles to its depth.
- 3.5.79 **Lot Lines.** Line dividing one lot from another, or from a street or other public space.
- 3.5.80 **Lot of Record.** Any lot which has been established as such by plat, survey, record, or deed prior to the date of this enactment as shown on the records of the Schenectady County Clerk's Office.
- 3.5.81 **Manufactured Housing.** A factory manufactured home other than a mobile home that incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on an approved continuous foundation. Such a manufactured home bears a N.Y.S. serial approval number.
- 3.5.81 **Mass Gathering.** The gathering or likelihood of gathering, collecting, or congregating of thirty five hundred (3500) or more people at any time within a 24 hour period.
- 3.5.82 **Mobile Home.** Manufactured housing built on a permanently attached metal frame. A mobile home shall be construed to remain a mobile home, subject to all town regulations applying thereto whether or not wheels, axles, hitch or other appurtenances of mobility are removed and

regardless of the nature of the foundation provided. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

- 3.5.83 **Mobile Home Park.** A tract of land, not less than ten (10) acres of contiguous land, which is used or intended to be used for the location of two or more mobile homes to be used for residential dwellings.
- 3.5.85 **Motel.** See 3.5.66 Hotel.
- 3.5.86 **Motor Vehicle.** Any passenger vehicle, truck, truck-trailer, trailer or semi-trailer propelled or drawn by mechanical power.
- 3.5.87 **Municipal Sewage Treatment Facility.** A facility to which raw sewage is taken (usually via sewer pipes), from individual households, places of business or any building having sanitary plumbing, for the purpose of treating said sewage in a manner rendering it safe to the health and welfare of the general population and to the environment.
- 3.5.88 **Nightclub/Lounge.** An establishment where entertainment is the primary function. Alcoholic beverages may or may not be served.
- 3.5.89 **Nonconforming Use.** The use of a building, structure or land existing at the time of enactment or amendment of this Ordinance and which does not conform to the regulations of the district or zone in which it is situated.
- 3.5.90 **Nonconforming Building, Structure.** An established building structure, lawful prior to and at the time of the adoption of this Ordinance or its Amendment which, because of its inherent nature or construction, does not conform with the provisions of this Ordinance for the district in which it is located.
- 3.5.91 **Nursing Care Home.** See 3.5.112, Skilled Nursing Care Facility.
- 3.5.93 **Nursery School.** See 3.5.40, Day Care Center.
- 3.5.93 **Office Building.** A structure, the principal use of which shall be the accommodation of offices for administrative, governmental, public utility, professional or sales activity.
- 3.5.94 **Outside Storage of Material.** The unenclosed placement or deposition of natural or man-made objects or materials for future use.
- 3.5.95 **Parking Space.** An off-street space available for the parking of one motor vehicle and having an area of not less than one hundred eighty square feet (9 feet by 20 feet) exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street, highway or alley. (see Section 13.3)

- 3.5.96 **Performance Standards.** Conditions which may be deemed necessary by the Planning Board including but not limited to, noise control, dust control, buffering.
- 3.5.97 **Professional Office.** A place for the regular transaction of business by a person duly authorized and licensed by the State of New York.
- 3.5.98 **Porch-Open.** A porch open on three (3) sides except for wire screening. A porch shall not be considered open if enclosed by either a permanent or detachable glass sash. A structure having a driveway running to it, under it, or through it shall not be considered to be an open porch (i.e., carport).
- 3.5.99 **Principal Use.** The use that is primary and dominant to the lot.
- 3.5.100 **Public Utility Structures.** A building, structure or lot used for or in connection with the transmission, distribution or regulation of water, gas, electric, telephone or other public utility service. For the purpose of this definition, in no event shall telecommunications towers be considered, or allowed as, a public utility use. (See Transmission Tower Ordinance)
- 3.5.101 **Quarry, Sand Pit, Gravel Pit, Top Soil Stripping.** A parcel of land or part thereof used for the purpose of extracting stone, minerals, gravel, or top soil for sale as a business operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.
- 3.5.102 **Restaurant.** Any structure having as a principal use the preparation and dispensing of foods and beverages.
- 3.5.103 **Riding Academy.** Any establishment where horses are kept for riding, driving or stabling for compensation.
- 3.5.104 **Roadside Stands.** A stall or booth for business which shall be limited to agricultural products.
- 3.5.105 **Salvage Yard.** A facility for the dismantling and sale of motor vehicles or machinery or parts therefrom, having a NYS Dismantler License.
- 3.5.106 **School, Private.** Any school not operated by a public school district but furnishing a comprehensive curriculum of academic instruction similar to that of a public school.
- 3.5.107 **Septic System.** A septic system consists of two parts: first, a watertight compartment into which sewage is discharged to allow anaerobic bacteria to begin the process of decomposition; second, a subsurface absorption field through which the effluent leaches into the earth, there to be further attacked and adequately treated by aerobic bacteria.
- 3.5.108 **Set Back Line.** The minimum set back shall be in accordance with the requirements of the applicable district as measured from the line at which the minimum lot dimension is obtained. No part of the building shall extend beyond this line except steps, open porches, eaves,

cornices and similar fixtures.

- 3.5.109 **Sign.** Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.
- 3.5.110 **Sign, Temporary.** Directional signs for guidance of the public to be displayed no more than two (2) weeks prior to the event nor be displayed more than four (4) days after such event. The sign shall bear the name and phone number of the advertiser.
- 3.5.111 **Special Use Permit.** See Section 14.6.2.
- 3.5.112 **Skilled Nursing Care Facility.** A medical facility where daily nursing and rehabilitative care is performed only by, or under the supervision of skilled medical personnel, serving three (3) or more residents, who are not related to the operator by blood or marriage.
- 3.5.113 **Stable.** A structure in which horses are kept for private use, public hire, sale or boarding.
- 3.5.114 **Story.** Story shall mean that part of a building, included between any floor, other than a basement, and the floor or roof next above.
- 3.5.115 **Street.** A public-way which affords a principal means of access to abutting properties.
- 3.5.116 **Street Line.** A street line is the right-of-way line of a street as indicated by dedication or by deed of record.
- 3.5.117 **Structure.** An assembly of material forming a construction frame of component structural parts for occupancy or use, including buildings.
- 3.5.118 **Swimming Pools.** A "swimming pool" shall be defined to mean any artificial pool or structure, intended for bathing or swimming purposes, made of concrete, masonry, metal or other impervious material, over 18 inches in depth and an area of water greater than one hundred (100) square feet.
- 3.5.119 **Temporary Use.** A temporary use is one that is established for a fixed period of time, less than one year, with intent to discontinue such use upon the expiration of such time. A permit is required from the UCEO or the ZBA.
- 3.5.120 **Theater, Outdoor.** An open lot or part thereof, with its appurtenant facilities, devoted primarily to entertainment where admission may or may not be charged.
- 3.5.121 **Transmission Tower.** See Transmission Tower Ordinance.

- 3.5.122 **Travel Trailer.** A trailer equipped for travel or camping providing sleeping accommodations. It may be equipped with holding tanks for water and sewerage and have cooking facilities, sink and shower. Such trailers require registration by DMV.
- 3.5.123 **Tourist Home.** A private dwelling in which no more than six (6) bedrooms are offered for rent on a daily basis to transient clients and where a single meal (breakfast) may be offered and may be included in the rental fee. The meal may be offered to overnight guests only.
- 3.5.124 **Town house.** See 3.5.50. Dwelling, Row or Town House.
- 3.5.125 **Unfinished Structure.** A structure shall be deemed unfinished if it does not have all the following: a permanent roof, completed enclosed outside walls, with the finished materials installed, all glazing in place, permanent heating system with chimney or vent ready for operation, permanent electric service and sewerage installed.
- 3.5.126 **Uniform Code Enforcement Officer.** See Section 14.2.
- 3.5.127 **Use.** The specific purpose for which land or building is designed, arranged or intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.
- 3.5.128 **Use Variance.** See Section 14.5.2 A.
- 3.5.129 **Used Car Lot.** Any place where two or more used motor vehicles in operating condition are offered for sale or are displayed.
- 3.5.130 **Yard-Front.** An open space extending across the entire width of the lot between the front wall and the front property line (street or road right-of-way line).
- 3.5.131 **Yard-Rear.** An open space extending across the entire width of the lot between the rear wall of the principal or accessory building and the rear line of the lot.
- 3.5.132 **Yard-Side.** That portion of the lot between the side wall of the principal or accessory building to the side line of the lot.

The NYS Building and Fire Prevention Code is adopted for all terms undefined in this Ordinance.

SECTION 4 NONCONFORMING USES

4.1 EXISTING USES

Except as hereinafter provided, the lawful use of any building, structure or land not contrary to laws or ordinances heretofore in effect, existing at the time of the enactment of this Amendment may be continued although such use does not conform with the provisions of this Amendment.

- 4.1.1 Any natural production use, such as the excavation for, and sale or exchange or for commercial, industrial, or municipal use, sand, gravel, clay, shale, or other natural deposit or the quarrying of any kind of rock formation, must be reported to the Planning Board within ninety (90) days of enactment of this Amendment. Such mining must be conducted in accordance with such safeguards as the Planning Board and NYS DEC may deem necessary.

4.2 CHANGES IN BUILDING OR USE

- 4.2.1 **Unsafe Buildings.** Any buildings or portion thereof containing a nonconforming use, which has been declared unsafe by any authority having jurisdiction over that structure, may be restored to a safe condition or demolished.
- 4.2.2 **Restoration.** Any building damaged by fire or other causes may be restored or rebuilt for the same nonconforming use, provided the area and cubic content of the building is not increased.
- 4.2.3 **Alterations.** A nonconforming building shall not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost one-half the replacement value of the building unless said building is changed to a conforming use. In no event shall more than one (1) alteration be permitted unless said use is changed to a conforming use.
- 4.2.4 **Extension.** A nonconforming use shall not be extended except by use variance. The extension of a lawful use to any portion of a nonconforming building that existed prior to the enactment of this Amendment shall not be deemed the extension of such nonconforming use.
- 4.2.5 **Displacement.** No nonconforming use shall be extended to displace a conforming use.
- 4.2.6 **Abandonment.** No nonconforming use which shall have ceased for a period exceeding one year shall be resumed except by use variance.
- 4.2.7 **Changes.** A nonconforming use shall not be changed to another nonconforming use. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use except by use variance.

4.3 CONSTRUCTION APPROVED PRIOR TO ORDINANCE

Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been previously issued and building constructed

according to plans, prior to the effective date of this Ordinance or any amendment affecting such Permit. The entire building shall be completed within one year from the effective date of this Ordinance or any such amendment and in accordance with such plans as originally filed.

4.4 DISTRICT CHANGES

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing after such change.

SECTION 5
DISTRICT REGULATIONS IN GENERAL

5.1 USE REGULATIONS

5.1.1 Permitted Uses. Permitted uses of land and buildings in this chapter shall be permitted in the districts indicated under the conditions specified. No building or tract of land shall be devoted to any use other than any uses permitted within the zoning district in which such building or tract of land is located, with the exception of the following:

- 1) Except as herein provided, uses lawfully established prior to the effective date of this Amendment.
- 2) Special use and use variance permitted in accordance with the provisions of this Amendment.

5.1.2 Special Uses. Special uses, as herein listed, may be permitted in the zoning district indicated, subject to the issuance of special use permits and site plan approval. Procedure is established in Section 14.6.2.

5.1.3 Non-conforming Uses. See Section 4.

5.1.4 Temporary Uses. Temporary uses are permitted by special use permit if such use requires a permit in the district in which the use is to take place.

5.2 ACCESSORY BUILDING AND USES

5.2.1 Permitted Accessory Uses in Residential District. (Residential districts shall include R-1, R-2, H, L-1 and MP only.)

Accessory uses in residential districts shall be limited to the following:

- 1) Private garages, swimming pools, tennis courts and other recreation facilities for the use of residents, and not operated for gain and shall not create noise, dust, vibration, odor, glare, fumes, or electrical interference's detectable by the senses of a normal person or generally accepted measuring procedures on surrounding properties.
- 2) Accessory parking and loading.
- 3) Buildings or structures accessory to permitted agricultural uses.
- 4) Buildings for lawn care or maintenance of residential property.
- 5) Buildings or structures designed to shelter school children awaiting school bus pickup.
- 6) Home gardening and non-commercial agriculture.
- 7) Home occupations. (Subject to site plan review by the Zoning Board of Appeals). (See 14.5.4)

5.2.2 **Business and Industrial Accessory Uses.** Accessory parking and loading and accessory buildings or structures incidental to the principal use may be permitted in the business and industrial districts subject to Special Use Permit and within setbacks.

5.3 LOT REQUIREMENTS

5.3.1 **Lot Size in General.** Lot size requirements shall be as specified under each zoning district. No building or structure shall be constructed or converted so as to conflict with the lot size requirement of the district in which such building or structure is located.

5.3.2 **Lot Coverage.** Lot coverage shall not exceed the maximum specified in this Article.

5.4 YARD REQUIREMENTS

5.4.1 **Yard Requirements in General.** Yard requirements shall be as set forth under each zoning district and use. Front, rear, and side yards shall be provided in accordance with the requirements of the principal building.

5.5 SIGN REQUIREMENTS (See 13.5 for more information.)

5.5.1 **Signs in all Districts.** Signs shall be considered to be accessory to the principal use of the premises, and shall pertain only to activities or products available on the premises.

5.5.2 **Pre-existing Nonconforming Signs.** Nonconforming signs that existed prior to the adoption of this section may not be altered or relocated except in conformance with this section. Any change in the content of a nonconforming sign, including names, words, logos or similar information shall constitute an alteration requiring conformance with this section.

5.6 FENCES

5.6.1 **Fences.** Privacy fences shall not exceed six (6) feet in height and be of a material compatible with the general surroundings with the finished side out. (See section 13.4.1)

SECTION 6 HIGHER DENSITY RESIDENTIAL (R-1)

Smaller lots may be approved within the boundaries of any sewer district, but outside the boundaries of any hamlet or village or Lake (L-1) zoning district within that sewer district.

6.1 PERMITTED USES

- 1) Single-family dwellings.
- 2) Religious Institutions.
- 3) Municipal parks and playgrounds.
- 4) Home occupations, (Subject to public hearing and site plan review by the Zoning Board of Appeals). (See 14.5.4)
- 5) Family and Group Family Day Care Homes
- 6) Tourist Home
- 7) Cluster Housing

6.2 USES PERMITTED BY SPECIAL USE PERMIT.

- 1) Private non-boarding educational institutions.
- 2) Day care center or nursery schools.
- 3) Libraries and museums.
- 4) Clubs and organizations.
- 5) Public utility installations, (See Transmission Tower Ordinance).
- 6) Two-family dwellings.
- 7) Professional offices.
- 8) Non-boarding public educational institutions.

6.3 MINIMUM LOT SIZES

- 1) Minimum lot area shall be 43,560 square feet.
- 2) Minimum lot width shall be 175 feet.
- 3) Minimum lot depth shall be 200 feet.
- 4) Maximum lot coverage shall be 30%.

6.4 MINIMUM BUILDING SETBACK DIMENSIONS

- 1) Minimum front setback shall be 40 feet.
- 2) Minimum side setback shall be 40 feet.
- 3) Minimum side setback on corner lot shall be 40 feet.
- 4) Minimum rear setback shall be 40 feet.

6.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building heights shall be 2 1/2 stories not exceeding 35 feet.

6.6 REDUCED LOT SIZE PROVISION - SINGLE FAMILY

Minimum lot sizes for a single family dwelling may be reduced to 15000 square feet, minimum lot width to 100 feet and minimum side setback to 20 feet when a municipal sewage treatment facility is available and utilized.

SECTION 7
LAKE DISTRICT (L-1)
(Duane and Mariaville Lakes)

This district is made up of properties surrounding and abutting a lake.

7.1 PERMITTED USES

- 1) Single-family dwellings.
- 2) Religious Institutions.
- 3) Family and Group Family Day Care Homes when connected to a sewage treatment facility
- 4) Tourist Home

7.2 USES PERMITTED BY SPECIAL USE PERMIT.

- 1) Municipal parks and playgrounds.
- 2) Two family dwellings.
- 3) Home occupations, (Subject to site plan review by the Zoning Board of Appeals). (See 14.6.3)
- 4) Day care or nursery schools.
- 5) Libraries and museums.

7.3 MINIMUM LOT SIZES

- 1) Minimum lot area shall be 43,560 square feet.
- 2) Minimum lot width shall be 175 feet.
- 3) Minimum lot depth shall be 200 feet.
- 4) Maximum lot coverage shall be 30%.

7.4 MINIMUM BUILDING SETBACK DIMENSIONS

- 1) Minimum front setback shall be 40 feet.
- 2) Minimum side setback shall be 40 feet.
- 3) Minimum side setback on corner lot shall be 40 feet.
- 4) Minimum rear setback shall be 40 feet.

7.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building heights shall be 2 1/2 stories not exceeding 35 feet.

7.6 REDUCED LOT SIZE PROVISION - SINGLE FAMILY

Minimum lot sizes for a single family dwelling may be reduced to 15000 square feet, minimum lot width to 100 feet and minimum side setback to 20 feet when a municipal sewage treatment facility is available and utilized.

SECTION 8

AGRICULTURAL & RESIDENTIAL DISTRICT (R-2)

Areas are not likely to be served by public water and sewerage require large residential lots.

8.1 PERMITTED USES

- 1) Customary agricultural use, including the keeping of domestic farm animals in buildings and structures not less than 200 feet from any neighboring property line, including commercial stables, breeding farms and riding academies.
- 2) Single-family dwellings.
- 3) Municipal park and playgrounds.
- 4) Fire houses and Ambulance buildings. (Need site plan approval)
- 5) Religious Institutions. (Need site plan approval)
- 6) Roadside stands.
- 7) Cluster housing.
- 8) Home occupations, (Subject to public hearing and site plan review by the Zoning Board of Appeals). (See 14.5.4)
- 9) Family and Group Family Day Care Homes
- 10) Tourist Home

8.2 USES PERMITTED BY SPECIAL USE PERMIT.

- 1) All principal uses permitted in the R-1 District subject to Special Use Permit.
- 2) Campgrounds and camps operated as such on an annual or seasonal basis, but not on a temporary or occasional basis.
- 3) Public swimming, tennis and similar clubs operated as such on an annual or seasonal basis, but not on a temporary or occasional basis.
- 4) Public utility uses. (See Transmission Tower Ordinance)
- 5) Veterinary clinics and kennels.
- 6) Airports and landing fields.
- 7) Commercial cemeteries.
- 8) Golf courses.
- 9) Commercial extraction of soil, sand, gravel, peat or stone.
- 10) Saw mills.
- 11) Professional offices.
- 12) Country Clubs.
- 13) Periodic or occasional exhibitions, provided that each exhibition shall be deemed a different use requiring a separate special use permit.
- 14) Antique and craft shops.
- 15) Non-boarding public educational institutions.
- 16) Garages and storage buildings for personal use.

8.3 MINIMUM LOT SIZE

The following minimum lot sizes and coverage shall be complied with by all uses in this District except where the Zoning Board of Appeals requires higher minimum values as a condition for a use variance.

- 1) Minimum lot area shall be 100,000 square feet.
- 2) Minimum lot width shall be 200 feet.
- 3) Minimum lot depth shall be 200 feet.
- 4) Maximum lot coverage shall be 25%.

8.4 MINIMUM BUILDING SETBACK DIMENSION

- 1) Minimum front setback shall be 80 feet.
- 2) Minimum side setback shall be 40 feet.
- 3) Minimum side setback on corner lot shall be 80 feet.
- 4) Minimum rear setback shall be 80 feet.

8.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building height shall be 2 1/2 stories not exceeding 35 feet.
- 2) There shall be no height restriction for buildings or structures used for agricultural purposes.

SECTION 9 HAMLET (H)

Hamlets are intended to develop as residential/retail business areas. Development should be in character with the historic nature of the hamlet and may be limited by availability of water and sewerage.

9.1 PERMITTED USES

- 1) Single-family dwellings.
- 2) Religious Institutions. (Need Site Plan Approval)
- 3) Municipal parks and playgrounds.
- 4) Cluster Housing.
- 5) Municipal buildings and facilities, Post Offices. (Need Site Plan Approval)
- 6) Firehouses and Ambulance buildings. (Need Site Plan Approval)
- 7) Home occupations, (Subject to public hearing and site plan review by the Zoning Board of Appeals).
(See Section 14.5.4)
- 8) Family and Group Family Day Care Homes.
- 9) Tourist Home.

9.2 USES PERMITTED WITH SPECIAL USE PERMIT

- 1) An electrical substation, gas district, telephone exchange, or other public utility building, (See Transmission Tower Ordinance).
- 2) Drive-in Establishment.
- 3) Recreation Center wherein may be carried on the business of operating a roller skating rink, snack bar, skate shop, pro shop, amusement devices and games.
- 4) Boarding and/or rooming house.
- 5) Two-family dwellings.
- 6) Bowling alley.
- 7) Convenience Store.
- 8) Hotel.
- 9) Motor Court or Motel.
- 10) Public Garage.
- 11) Restaurant.
- 12) Banks.
- 13) Self-service laundry and cleaning.
- 14) Shopping center.
- 15) Animal hospital.
- 16) Public Libraries and Museums.
- 17) Wholesale Establishments.
- 18) Motor vehicle fuel sales.
- 19) Multifamily dwellings connected to a municipal or private sewage system.
- 20) Non-boarding public education institutions.
- 21) Professional Offices.
- 22) Retail Stores.
- 23) Day Care Center.
- 24) Row or Town Houses, or Condominiums connected to a public or private sewage system.

9.3 MINIMUM LOT SIZES

- 1) Minimum lot area shall be 43,560 square feet.
- 2) Minimum lot width shall be 100 feet.
- 3) Minimum lot depth shall be 120 feet.
- 4) Maximum lot coverage shall be 50%.

9.4 MINIMUM BUILDING SETBACK DIMENSIONS

- 1) Minimum Front setback shall be 40 feet.
- 2) Minimum side setback shall be 15 feet.
- 3) Minimum side setback on a corner lot shall be 20 feet.
- 4) Minimum rear setback shall be 30 feet.

9.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building height shall be three (3) stories not exceeding 42 feet.

9.6 REDUCED LOT SIZE PROVISION - SINGLE FAMILY

Minimum lot sizes for a single-family dwelling may be reduced to 15,000 square feet when a municipal sewage treatment facility is available and utilized. Such facility shall be deemed available when sewer pipes to said facility are within 100 feet of the premises on which the dwelling is located and a connection may lawfully be made thereto.

SECTION 10

MOBILE HOME PARK DISTRICT (MP)

Housing alternatives must be available to meet the diverse needs of the Town's residents. Such areas should be well designed and maintained so as not to affect the character of the neighborhood or the values of existing properties.

10.1 PERMITTED USES

- 1) Mobile homes in mobile home parks subject to Section 10.6.
- 2) Recreational facilities intended primarily for the use of mobile home park residents
- 3) Home occupations, (Subject to public hearing and site plan review by the Zoning Board of Appeals). (See 14.5.4)
- 4) Tourist Home

10.2 USES PERMITTED BY SPECIAL USE PERMIT

- 1) Single-family dwellings accessory to a mobile home park.
- 2) Convenience store excluding sale of motor fuels.
- 3) Laundry facilities.
- 4) Family and Group Family Day Care Homes
- 5) Accessory public utility installations, (See Transmission Tower Ordinance).
- 6) Professional offices.

10.3 MINIMUM PARK SIZE

- 1) Minimum park area shall be 10 acres.
- 2) Minimum park width shall be 400 feet.
- 3) Minimum park depth shall be 400 feet.

10.4 MINIMUM LOT DIMENSIONS

- 1) Minimum lot width shall be 100 feet.
- 2) Minimum lot depth shall be 125 feet.
- 3) Minimum side and front setback shall be 30 feet.
- 4) Minimum rear setback shall be 25 feet.

10.5 MAXIMUM BUILDING HEIGHT

- 1) Maximum building height shall be 2 1/2 stories not exceeding 35 feet.

10.6 MOBILE HOMES AND MOBILE HOME PARKS

- 10.6.1 Location.** Mobile homes or house trailers are specifically prohibited in all zoning districts except the MP, Mobile Home Park District.

10.6.2 Pre-existing Mobile Homes. Notwithstanding any provision of this Ordinance, owners and/or lessees of property within the Town of Duanesburg, upon which a mobile home has been situated and established prior to the enactment of said Zoning Ordinance (May 31, 1984), shall retain such previous rights and prerequisites pertaining thereto, in the same manner as any other dwelling, and including the right to substitute another mobile home in the place of the mobile home presently situated and established on said property.

10.6.3 Mobile Home Park Design Regulations. The Town Board may, after Planning Board review, public notice and hearing, establish a Mobile Home Park District provided the applicant meets the following standards for development in the R2 District only:

- 1) Maximum Gross Density - The overall gross density (total acres of the site divided by the number of mobile home sites) shall not exceed one per 30,000 square feet.
- 2) Setbacks and Distances Between Mobile Homes - There shall be a minimum of sixty (60) feet distance between mobile homes, and interior streets and/or property line; minimum setbacks at the end of a mobile home shall be eighty (80) feet from a public street. In computing these clearances, lean-to's, auxiliary rooms, and similar accessories connected to the trailer, but not including temporary porches and canopies which are open on two or more sides, shall be considered as part of the mobile home.
- 3) Required Off-Street Parking - There shall be at least two (2) off-street parking spaces for each mobile home within the lot. In addition, there shall be 1/2 off-street parking space for each three mobile homes within the park located throughout the park at places of public congregation. Size and design of parking spaces shall conform to the requirements of this Ordinance.
- 4) Access - Mobile home parks shall have at least two (2) connections with a major street or highway, adequate to handle traffic from the park without creating a nuisance or endangering public safety in adjacent properties or neighborhoods.
- 5) Recreation Areas and Exterior Yards - An area, of not less than five hundred (500) square feet per trailer lot, shall be provided for the recreational use of all residents of the trailer park. In addition, such park shall have a landscaped area at least fifty (50) feet wide along all exterior lot lines and public street frontages. Such areas shall be suitably planted, landscaped and maintained so as to screen and obscure adjacent properties.
- 6) Waste Disposal - Any mobile home park shall have a sewage disposal system approved by the New York State Health Department.
- 7) Utility Shed - On each mobile home lot, there shall be located an enclosed approved utility shed. To meet approval, this shed must be sided with an acceptable siding material. Such shed shall not be located between the mobile home and the street.
- 8) Interior Roads - All roads in the mobile home park shall have no less than a sixty (60)

foot right-of-way, and at least twenty (20) feet hard aggregate surface in accordance with the Town Road Ordinance. All such roadways and streets shall be properly drained and shall be maintained in good condition by the operator of the mobile home park.

- 9) Skirting - All outside area below the mobile home floor line shall be enclosed with suitable material manufactured for that purpose.
- 10) Inspection - A semi-annual inspection of each mobile home park shall be made by the Town Uniform Code Enforcement Officer with the Fire Chief of the appropriate Fire District. Each residence requires a Building Permit and a Certificate of Occupancy issued by the Town Building Inspector. (See Section 14.3 and 14.4)

SECTION 11 COMMERCIAL (C-1)

The Comprehensive Plan specifies that commercial zones should be deep, affording the opportunity for development of off-highway centers which could share common entrances and exits, thereby minimizing the interruption of traffic on high volume roads. Strip development is discouraged.

11.1 PERMITTED USES

- 1) Home occupations, (Subject to public hearing and site plan review by the Zoning Board of Appeals). (see 14.5.4)

11.2 USES PERMITTED BY SPECIAL USE PERMIT

- 1) Municipal parks and playgrounds.
- 2) Roadside stands.
- 3) Retail or wholesale stores or shops.
- 4) Churches and other places of worship.
- 5) Federal, state, county or town municipal buildings.
- 6) Funeral Homes.
- 7) General Offices.
- 8) Post Offices.
- 9) Professional Offices.
- 10) Banks.
- 11) Gasoline and Automobile Service Stations.
- 12) Shopping Centers.
- 13) Bowling Alleys.
- 14) Hotel or motels.
- 15) Restaurants.
- 16) Theater or concert halls.
- 17) Amusement parks.
- 18) Campgrounds.
- 19) Single and two family dwellings.
- 20) Public utility uses (See Transmission Tower Ordinance).
- 21) Bars or nightclubs.
- 22) Barber shops and Beauty shops.
- 23) Firehouses and Ambulance buildings

11.3 MINIMUM LOT SIZE DIMENSIONS

- 1) Minimum lot area shall be 43,560 square feet.
- 2) Minimum lot width shall be 150 feet.
- 3) Minimum lot depth shall be 200 feet.
- 4) Maximum lot coverage shall be 35%.

11.4 MINIMUM BUILDING SETBACK DIMENSIONS

- 1) Minimum front setback shall be 70 feet.
- 2) Minimum side setback shall be 20 feet.
- 3) Minimum side setback on a corner lot shall be 70 feet.
- 4) Minimum rear setback shall be 50 feet.

11.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building height shall be three (3) stories not exceeding 42 feet.

SECTION 12

MANUFACTURING & LIGHT INDUSTRIAL DISTRICT (C-2)

The use of performance standards through the Special Use Permit procedure make it possible to accommodate light industrial development while protecting the adjoining properties.

12.1 PERMITTED USES

- 1) Home occupations, (Subject to site plan review by the Planning Board). (see 14.6.3)

12.2 USES PERMITTED BY SPECIAL USE PERMIT

- 1) Manufacturing and Light Industrial.
- 2) Warehouses and Storage Units.
- 3) Health Care Facilities.
- 4) Wholesale / Retail Stores and Shops.
- 5) Utilities, (See Transmission Tower Ordinance).
- 6) Firehouses and Ambulance buildings
- 7) All uses permitted by Special Use Permit in Commercial District. (Section 11.2)

12.3 MINIMUM LOT SIZES AND DIMENSIONS

- 1) Minimum lot size shall be 100,000 square feet.
- 2) Minimum lot width shall be 200 feet.
- 3) Minimum lot depth shall be 200 feet.
- 4) Maximum lot coverage shall be 30%.

12.4 MINIMUM BUILDING SETBACK DIMENSIONS

- 1) Minimum front setback shall be 80 feet.
- 2) Minimum side setback shall be 40 feet.
- 3) Minimum side setback on corner lot shall be 80 feet.
- 4) Minimum rear setback shall be 80 feet.

12.5 MAXIMUM BUILDING HEIGHTS

- 1) Maximum building height shall be three (3) stories not exceeding 42 feet.

SECTION 13 SUPPLEMENTARY REGULATIONS

13.1 USES PERMITTED

- 13.1.1 **Business Directional Signs.** A permanent directional sign not more than five (5) square feet in area, containing only the name of the establishment having goods and services for sale and directional guidance. A sign permit is required. Permission from the property owner is required.
- 13.1.2 **Natural Production Uses.** There may be allowed upon Special Use Permit issued by the Planning Board and, subject to such conditions and safeguards as deemed necessary by said Board, the excavation for, and sale or exchange or for commercial, industrial, or municipal use, sand, gravel, clay, shale, or other natural deposit or the quarrying of any kind of rock formation. (May be subject to New York State Mining Regulations.)
- 13.1.3 **Uses Prohibited.** Certain uses may be prohibited by the Planning Board or Zoning Board of Appeals where use is or is likely to be noxious or offensive by reason of the emission of odor, smoke, toxic or noisome fumes, radiation, gas, noise, vibration or excessive light or injurious to public health, safety or the general welfare.
- 13.1.4 **Temporary Storage of Trailers.** Nothing in this Ordinance shall prohibit the storing or parking of an unoccupied camping or travel trailer. The temporary parking of an occupied travel trailer on any residential lot is permitted for a period not longer than 30 days in any 12 consecutive months. The above mentioned trailers shall not violate the required minimum setback dimensions for the district in which located.
- 13.1.5 **Home Occupations.** Traditional home occupations are permitted in all zoning districts, but subject to site plan review by the Zoning Board of Appeals. A Home Occupation Business Permit may be authorized by the Zoning Board of Appeals after said review. The actual permit to be issued by the Uniform Code Enforcement Officer.

13.2 SPACE REGULATIONS

- 13.2.1 **Existing Small Lots.** Notwithstanding the limitations imposed by any other provisions of this Ordinance, the Board of Appeals may issue an area variance for the erection of a one family dwelling on any lot separately owned or under contract of sale and containing, at the time of the passage of this Ordinance (May 31, 1984) an area or a width smaller than that required in that district. The minimum side yard requirements are reduced in proportion to the reduction of lot width over the specified minimum lot width for the District. Where two or more adjacent lots are owned by the same applicant, the Ordinance will require combination of said lots.
- 13.2.2 **Reduced Lot Area.** No lot with an existing dwelling shall be so reduced in area as to cause it to be smaller than prescribed in the regulations for the District.

- 13.2.3 **Front Yard Depth.** Each dwelling hereafter erected may have a front yard equal in depth to the average front yard depth of the dwellings within one hundred (100) feet adjacent thereto on each side.
- 13.2.4 **Reduction in Rear Yards.** When a lot is less than one hundred (100) feet deep at the time of the passage of this Ordinance, such rear yard may be decreased by one-quarter of the distance that the lot depth is less than the one hundred (100) feet, provided, however, that no rear yard shall be less than fifteen (15) feet in depth except that any accessory building may be as close as six (6) feet from the rear property line.
- 13.2.5 **Corner Lot Transition.** On every corner lot there shall be provided on the side street a side yard equal in depth to the required front yard depth.

13.3 **OFF-STREET PARKING**

The purpose of this section is to provide guidance as to the appropriate parking facilities that shall be required in conjunction with new development or a change in use.

13.3.1 **Minimum spaces required for off-street parking:**

- 1) The required minimum number of parking spaces are as follows:

Residential dwelling unit:	Two (2) per unit.
Rooming house, Motel, Bed-and-Breakfast, Hotel or Inn	One (1) per each guest room.
Mobile home:	Two (2) on site per each mobile home lot and an additional one-half (.5) per lot located elsewhere in the mobile home park.
Religious Institution:	One (1) for each five (5) seating spaces in main assembly room.
School	Three (3) for each classroom.
Retail store, Bank, and Club	One (1) for each one hundred eighty (18) square feet of gross floor area.
Restaurant, Tavern	One (1) for each one hundred (100) square feet of gross floor space.

Business office, Business services	One (1) for every two hundred fifty (250) square and Medical office feet of gross floor area.
Wholesale, storage, Freight Terminal or Utility use.	One (1) for every one thousand (1000) square feet of gross floor area.
Industrial or manufacturing use	One (1) for every two (2) employees anticipated to be employed on the site at any given point in time, plus one (1) for each company vehicle.
Theater, Auditorium, Stadium	One (1) for each (4) new seats provided for its patrons (based on maximum seating capacity), or one (1) parking space for each four (4) persons contemplated for (based on maximum attendance).
Hospital, Sanitarium or Nursing Home	One (1) parking space for each three (3) patients and each three (3) employees.
Roadside stand	Five (5) spaces per stand plus one (1) for each two hundred (200) gross square feet.
Funeral homes	One (1) space for each one hundred (100) square feet Day Care Center One (1) space per teacher plus one (1) space per three (3) students.
Family or Group Family Day Care	One (1) for every three (3) people

- 2) The Planning Board and the Zoning Board of Appeals reserve the right to waive any portion of the parking requirements in the event that proximate public parking exists to support the use in question. Off-street parking spaces for separate uses may be provide collectively if the total number of spaces is not less than the sum of the requirements for the various uses. However, if the applicant can establish that such collective parking area will experience reduced parking demand due to staggered hours of operation, the Planning Board may authorize a reduction of the total number of spaces by up to twenty-five percent (25%).

13.3.2 Design of Off-Street Parking Facilities.

- 1) Each parking space shall be at least nine (9) feet wide and twenty (20) feet long. For parallel parking, the minimum length of the space shall be twenty-three (23) feet.

Parking Lot Sizes and Dimensions

Angle (degrees)	Aisle Width - One Directional	Aisle Width - Two Directional
90	20'	24'
60	18'	22'
45	13'	22'
30	11'	22'
Parallel	11'	22'

- 2.) Driveways providing street access to parking aisles shall be at least sixteen (16) feet in width.
- 3.) Lines designating parking spaces may be drawn at various angles in relation to the curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.
- 4.) Handicap parking spaces are to be supplied in accordance with Part 1102 of the General Building Section of the State of New York Uniform Fire Prevention and Building Code.
- 5.) In the Hamlet (H) District, parking on the principal street should be minimized and where possible, should be located in the rear and side yards.

- 13.3.2 **Off Street Loading.** Loading spaces shall be provided for each commercial or business use in sufficient location and size so that no loading and unloading operations infringe upon any sidewalk, street, or parking areas. A minimum of one (1) loading space shall be provided for the first four thousand (4,000) sq. ft. of gross floor areas and one (1) additional space for each additional fifty thousand (50,000) sq. ft. of gross floor area or major portion thereof. Each off-street loading space shall be at least fifteen (15) feet wide, thirty-five (35) feet long and, if covered, fourteen (14) feet high. No loading spaces shall be located within any required front yard, or closer than ten (10) feet from any lot line adjoining a residentially developed or zoned property. Sufficient screening shall be provided along all lot lines abutting residentially developed or zoned property to largely obscure the loading space from the residential use.

13.3.3 **Screening and Landscaping**

All parking areas containing more than five (5) parking spaces shall be located at a minimum of ten (10) feet from any residentially developed or zoned property. Sufficient screening shall be provided to largely obscure the parking space from the residential property.

13.4 TRAFFIC HAZARDS

- 13.4.1 Visibility at Intersections.** On a corner lot no fence, wall, hedge or other structure or planting shall be erected, placed, or maintained within the triangular area formed by the intersecting street lines and a line joining said street lines at points which are thirty (30) feet distant from the point of intersection, measured along said street lines.
- 13.4.2 Distracting Lights.** No artificial lights or reflecting devices shall be located or displayed where such lights or devices interfere with or compete for attention with traffic signals or divert the attention of operators of motor vehicles or otherwise create traffic hazards, or create glare on any neighboring property.

13.5 SIGNS

- 13.5.1 Purpose.** The purpose of this section is to permit such signs that shall not, by their size, location, construction or manner of display, obstruct the vision necessary for traffic safety or otherwise endanger public safety. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve scenic and natural beauty and provide more visual open space by permitting and regulating signs in such a way as to support and complement the objectives and goals of the town's Comprehensive Land Use Plan.
- 13.5.2 Signs.**
The following regulations shall govern the erection, relocation or alteration of signs within the Town. A sign permit is required for those signs expressly allowed in this section. Non-conforming signs in existence prior to the adoption of this Amendment shall not be relocated or altered except in conformance with this section. Any change in the content of a non-conforming sign, including names, words, logos, or similar information, shall constitute an alteration. The maximum sign area requirements as set forth in this Section shall apply to a single side of a sign. On a two sided sign only one side shall be counted in computing the sign's area. No portion of a sign shall be closer than ten (10) feet from the lot line and/or ten (10) feet from the edge of improved road. Business signs shall be removed when the business no longer engages in commerce.
- 13.5.3 Sign Permit Process.** The applicant shall be required to submit to the Uniform Code Enforcement Officer a completed sign permit application containing the following information prior to erection of the proposed sign:
- 1) Scaled drawing showing location of the sign on the lot.
 - 2) Sketch drawn to scale of the proposed sign, which indicates the sign dimensions, the graphic design, visual message, text and content of the sign.
 - 3) Fee for the permit is established by the Town Board.
 - 4) Letter of permission from owner of property for sign proposed to be located if other than applicant.
- 13.5.4 Permit Duration.** The sign permit shall be valid indefinitely, notwithstanding the requirements of this Ordinance pertaining to alteration or relocation.

13.5.5 Residential (R1), Lake (L1), Agricultural (R2), and Mobile Home Park (MP) District Sign Regulations:

- 1) Nonresidential uses and legal nonconforming, nonresidential uses, may display not more than one sign or bulletin board pertaining to the use of property. Such sign shall have a total face area of not more than twelve (12) square feet. Signs may be erected on the ground, provided that such ground signs shall not exceed four (4) feet in height. If such free standing sign faces substantially at right angles to the road and/or displays in more than one direction, it shall have a face area of not more than twelve (12) square feet, with no more than two sides.
- 2) Multifamily dwellings may display one non-illuminated sign identifying the premises, having a face area of eight (8) square feet and having not more than two (2) faces.
- 3) Any dwelling unit in a detached, attached or town house structure may display one name plate or professional sign not exceeding two (2) square feet in area and not having more than two (2) sides.
- 4) Any tourist home or bed and breakfast may display one sign not exceeding six (6) square feet in area and not having more than two (2) faces.
- 5) For Home Occupations, see 3.5.64.b.

13.5.6 Hamlet District (H) Sign Regulations. Not more than two (2) signs per business unit, having an aggregate face area of thirty (30) square feet. Such signs may be erected on the ground, and there shall be not more than one projecting sign per business unit, provided further that such signs shall not extend more than 20 feet above the ground or exceed the highest part of the building. A pole sign shall be limited to a maximum height of 25 feet above ground level.

13.5.7 Commercial District (C-1) Sign Regulations.

- 1) Where one business occupies a building, two business signs will be permitted. One sign shall be flush with and connected to the building and shall not exceed twenty (20) square feet in area. The other may be a free standing sign of not more than thirty (30) square feet in area, and shall not stand higher than ten (10) feet to the highest point of the sign, or a pole sign shall be limited to a maximum height of 25 feet above ground level.
- 2) Where more than one business occupies a building, one sign of not more than twenty (20) square feet may be mounted on the building. The sign shall be flush with, and connected to the building. One free standing sign shall be permitted for each principal business in the building, and shall not be more than ten (10) square feet in area. Each sign may be used to identify any or all businesses in the building. Any free standing sign shall not be higher than ten (10) feet to the highest point of the sign.

13.5.8 Light Industrial District (C-2) Sign Regulations.

- 1) An owner or occupant may maintain a detached identification sign having an aggregate total face area of not more than 80 square feet and not more than ten (10) feet in height, provided such sign shall be designated as part of a comprehensive site and landscape plan and such sign shall be placed not closer than ten (10) feet from any property line. A pole sign shall be limited to a maximum height of twenty-five (25) feet above ground level.

- 2) Directory signs listing occupants of individual buildings may be installed on the front lawn appurtenant to such building not closer than five (5) feet from the property line, provided such sign shall be designed as part of the site and landscape plan for such building and shall not exceed four (4) feet in height. Directional signs indicating entrances, exits and parking facilities not exceeding four (4) square feet may be appropriately positioned.

13.5.9 Projecting Signs. Signs shall not project into a public right-of-way, nor have a clearance of less than ten (10) feet above the sidewalk or surrounding ground and less than fifteen (15) feet above any driveway.

13.5.10 Subdivision Signs. A subdivision may erect a non-illuminated sign within the limits of the subdivision having a face area of not more than twenty-five (25) square feet and not to exceed five (5) feet in height measured from the level where the pole or support enters the soil or pavement.

13.5.11 Directional Signs.

13.5.11.1 Temporary Directional Signs. Nothing in this Ordinance shall prohibit the erection of temporary directional signs with the intended purpose of directing the public to the site of events or exhibitions. These signs shall not exceed an area of five (5) square feet, and display only the name and location of the establishment having the goods and services for sale, the name of the goods and services, and directional guidance.

Permission of the property owner or appropriate highway department shall be obtained before the signs are erected. The design, construction, and location of the signs shall be such as to not create traffic hazards by blocking line of sight views of rights of way.

Signs shall not be erected before four (4) weeks preceding the event, and shall be removed within four (4) days after the conclusion of the event.

No sign permit is required.

13.5.11.2 Permanent Directional Signs. (Business)

Permanent directional signs may be erected with the intended purpose of directing the public to the location of the businesses that provide goods and services. To qualify for such signs the maximum that such businesses can be located from the main traveled highway is five (5) miles. Permanent directional signs erected along U.S. or New York State highways shall conform the New York State Standards for Tourist Oriented Directional (TOD) Signs.

Permanent directional signs erected along county highways shall conform to the requirements of the Schenectady County Highway Department.

Permanent directional signs erected along Town of Duanesburg Roads shall conform to the Schenectady County Highway Department requirements unless otherwise approved by the Town of Duanesburg Zoning Board of Appeals.

Permanent directional signs require a sign permit from the Town of Duanesburg, and the application for such permit shall include written permission from the owner of the property or highway department right-of-way on which the sign is to be erected.

13.5.12 Exemptions. The following signs shall be exempt from the foregoing regulations:

- 1) Real estate signs which advertise the sale, rental, or lease of the premises upon which said signs are located, having an aggregate total face area of not more than six (6) square feet in the residential districts, (R1, R2, L1), twelve (12) square feet in the business districts, (H, C1), and twenty (20) square feet in the industrial district (C2).
- 2) One professional or business name plate not exceeding eight (8) square feet in area for any one professional or business establishment designating a home occupation.
- 3) One sign denoting the architect, engineer, and/or contractor when placed upon work under construction, not exceeding twelve (12) square feet in area; in no event for a period exceeding twelve (12) months.
- 4) Memorial signs or tablets attached flat, names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; in no event larger than two (2) square feet.
- 5) Traffic or other municipal signs, legal notices, and such temporary, emergency, historical, or non-advertising signs as may be authorized by the Town Board.
- 6) Posting of notices to the public pertaining to but not limited to fishing, trespassing and the like, provided each such sign does not exceed one (1) square foot in area.
- 7) Signs or bulletin boards customarily incidental to places of worship, libraries, museums, social clubs or societies, not exceeding twenty-four (24) square feet in area.

13.5.13 Homestead Signs. Sign which identifies a residence with other than a family name. It shall not advertise a business nor create a safety hazard. It requires a "no fee" permit and shall not be over four (4) square feet in area.

13.5.14 Illuminated Signs. Illumination of signs shall not be of varying or intermittent intensity or produce direct glare beyond the limits of the side property line. Colored lights of such shape and hue that they may be confused with official traffic lights and signals shall be prohibited. All bare light sources and immediately adjacent reflecting surfaces shall be shielded from view.

13.5.15 Banners. No permanent sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices.

13.5.16 Roof Signs. No signs shall be mounted on the roof of any building.

13.5.17 Posters. Temporary posters advertising or announcing political events, sporting events, shows, garage sales, or temporary directional signs, shall not be displayed until four (4) weeks prior to the event and must be removed within four (4) days after the event. No such sign shall be attached to a street or utility pole. All temporary posters shall have the date of the event and the telephone number of the sponsor prominently displayed.

13.5.18 Signs As Principal Use. No sign may be established as a principal use on any lot in any district except as otherwise expressly permitted by this Ordinance.

13.5.19 Maintenance, Alterations And Violations.

No sign shall be erected or altered except in conformity with the provisions of this Ordinance. It shall be the duty of the owner and occupant of lands of buildings having signs thereon to maintain the same free of faulty wiring, loose fastenings and any other conditions which, in the opinion of the Uniform Code Enforcement Officer, would render such sign unsafe and hazardous to members of the public. If the Uniform Code Enforcement Officer shall find that any sign has been erected, altered or maintained in violation of the provisions of this Ordinance he shall serve written notice specifying the violation upon the owner of the sign and the owner or occupant of the land or building upon which the sign is erected, directing such owner or occupant to forthwith remedy such violation or remove such sign within thirty (30) days from the date of service of such notice. Such notice may be served personally or by certified mail addressed to such owner or occupant at the address stated in the permit application for such sign, or in the absence of such permit, the address of the premises upon which such sign is located. Upon failure of such owner or occupant to remedy such violation or remove such sign within such thirty-day period, the Uniform Code Enforcement Officer shall thereupon revoke such sign permit. Thereafter such owner or occupant shall be in violation of this Ordinance, the Uniform Code Enforcement Officer may cause such sign to be removed and assess the costs and expenses incurred in such removal against the premises on which such sign is located. For the purposes of the service of all notices hereunder, the occupant of land or premises, if he shall not be the owner thereof, shall be deemed the agent of such owner for the purpose of receiving such notices, and service of notice upon such occupant shall be deemed service upon the owner.

13.6 CLUSTER DEVELOPMENT

Purpose. To enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of open lands, the Planning Board in reviewing or approving proposed residential developments, may approve or require approaches to housing and environmental design in accordance with this section.

13.6.1 Applicability.

- 1) The provisions of this section shall apply to the sub-division of land into at least four (4) building lots according to the standards of this section, and which will be considered a major subdivision in accordance with the Town Subdivision Ordinance.
- 2) Voluntary application. An owner of property within any residential zoning district may make application under this section provided that the land area is adequate for the size and number of lots required.
- 3) Required application. The Planning Board may require that a land parcel meeting the minimum requirements under this section be developed in a cluster design provided that:
 - a. The land parcel is located within a zoning district designated for residential use.
 - b. The parcel possesses one or more of the following site characteristics:
 - (1) Flood hazard areas in accordance with officially designated flood areas.
 - (2) Environmentally sensitive areas as may be designated on the Comprehensive

Plan Map, or other areas designated by the Town Board as critical environmental areas.

- (3) Other areas of environmental significance as may be designated by the Planning Board, such as stream protection corridor or green-way recreation area.
- (4) Areas where topographical considerations, such as steep slopes, may preclude the normal use of part of the land for developmental purposes.

13.6.2 Procedures.

- 1) The subdivider, in making a voluntary pre-application under this section, shall provide two sketch plans at the time of pre-application. One plan shall be a subdivision of conventional plan that meets all of the subdivision requirements in accordance with Town Zoning and Subdivision Ordinances. The other shall be a plan outlining cluster development.
- 2) Upon submission of a voluntary pre-application the subdivider shall present all information required to substantiate the rationale for proposing cluster development. Included shall be a written statement detailing the natural features to be preserved or enhanced, practical reasons for its consideration, and other reasons that indicate that cluster development is desirable. The statement should also compare the features of conventional subdivision plan to the cluster development plan.
- 3) Upon determination by the Planning Board that a subdivider be required to develop that property as a cluster design according to 13.6.3; the subdivider shall submit a preliminary plan meeting the requirements of this section.

13.6.3 General Design Requirements.

- 1) A cluster development shall meet all requirements for a subdivision in accordance with the applicable laws and ordinances with exception of the minimum required front and rear yards, setbacks and lot sizes.
- 2) The overall development shall be oriented in such a way as to maximize the preservation of environmental, recreational and cultural resources of the site.
- 3) The area dedicated for open space purposes shall be in amount, location, quality and shape as is desirable for accessibility to all developed properties and open space preservation as determined by the Planning Board.

13.6.4 Density. The average density of dwellings in a cluster development shall not exceed that of a conventional subdivision that meets the lot size requirements for the residential zone in which it will be located. The cluster arrangement shall be reviewed by the Planning Board prior to action on the preliminary plat for compliance with these requirements and any other relevant legislation.

13.6.5 Permitted Uses. Permitted uses in a cluster development shall be the same as those allowed in that zoning district.

13.6.6 Clustering of Structures, Lot Sizes and Dimensions.

- 1) Clustering of structures. Residential building lots proposed under this section shall be organized into clusters or groupings of individual building lots. No cluster of buildings shall contain less than four (4) lots.
- 2) Minimum lot size. An individual building lot in a cluster shall not be less than 1/4 of the acreage of that required for a similar building lot under the prevailing zoning district, and in no case shall an individual building lot be less than 1/2 acre.
- 3) Greenspace. Each cluster of buildings shall conform to setback requirements for that district from any adjoining property or highway or road right-of-way except that which is designated for exclusive use by residents of the development. (i.e. The road serving the cluster or the green-space serving the cluster.)
- 4) Yards. Each individual residential building within a cluster development shall have a minimum front and rear yard of 40 feet, and a minimum side yard as required by the zoning district in which the proposed development will be located.

13.6.7 Open Space.

- 1) All land not included in building lots or road right-of-way shall be designated as open space. At minimum, open space within a development should equal or exceed the difference between the total land area required for the building lots under conventional subdivision, and the total land area required for building lots under the proposed cluster development.
- 2) Where a cluster development abuts a public body of water or includes a body of water within its property boundaries, a usable portion of the shoreline, as well as reasonable access to it, shall be part of the open space.
- 3) All areas designated as open space shall also comply with the following:
 - a. As a condition of final plat approval of a cluster development, a perpetual conservation easement and/or other restrictive covenants upon property shall be placed on open space land which have the minimal effect of restricting development permanently and allowing use of open land for agriculture, forest management, recreation, watershed protection, wild life habitat or other open space use, and prohibiting residential, commercial or industrial use.
 - b. Open space created by cluster development shall be clearly labeled on the final plat as to its shape, use, ownership, management, method of preservation and the right to such land, if any, of the property owners of the subdivision, and the general public. The plat should clearly identify that the open space is permanently reserved for open space purposes and shall not be platted for building lots.
 - c. Open lands which are environmentally sensitive and not suitable for development, or are suitable for extensive public use, should be conveyed to a suitable nonprofit corporation to manage. Land which shall be principally used by residents of the development should be conveyed to a legally constituted homeowners association. If any land is to be held in common by a homeowners association, the declaration and the by-laws shall be submitted to the Planning Board prior to final plat approval, and reviewed by the Town Attorney to assure compliance with State laws, and that membership is mandatory for each lot owner who must be required

by covenants and restrictions to pay taxes, insurance and maintenance of the common property.

- d. Open space created by cluster development shall be owned in common by a homeowners association, transferred to a non-profit agency acceptable to the Planning Board, held in private ownership or held in such other form of ownership as the Planning Board determines acceptable to carry out the intent of the open space requirements.
- e. Use. Use of land for open space shall be restricted to noncommercial, non-intensive recreational use. Exception may be made for underground utility easements. The Planning Board may permit open land owned by a homeowners association to be used for septic systems or for communal septic systems, in accordance with Town requirements.

13.7 Telecommunications Towers. See the Telecommunications Facilities Law.

SECTION 14

ADMINISTRATION

14.1 INTERPRETATION AND APPLICATION

In interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the public health, safety, general welfare. If the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive, or that imposing the higher standards shall govern.

14.2 UNIFORM CODE ENFORCEMENT OFFICER

The Town Board shall appoint the Uniform Code Enforcement Officer who shall be charged with the general administration and the enforcement of this Ordinance and the executive administration of the New York Uniform Fire Prevention and Building Code. The Town Board shall fix the salary or remuneration of such office and shall provide for the payment thereof. The Town Board may also appoint a Deputy Uniform Code Enforcement Officer who shall be similarly empowered to act during the absence of or at the direction of the Uniform Code Enforcement Officer. It shall be the duty of the Uniform Code Enforcement Officer to:

1. Issue building permits and certificates of occupancy where compliance is made with the provisions of this Ordinance, and refuse to issue or revoke the same in the event of non-compliance. Prompt written notice of such refusal or the revocation of any permit and the reason therefore shall be given to the owner or occupant of the premises.
2. Keep the Zoning Board of Appeals and Planning Board advised of all matters, other than routine duties, pertaining to the enforcement of this law and keep all records necessary and appropriate to his office and to file them in the office of the Town Clerk, including records of all permits and Certificates of Occupancy or Compliance issued or withheld.
3. Refer appropriate matters to the Zoning Board of Appeals or the Planning Board for actions required by those Boards.
 - a) Refer applications for Home Occupation Business Permits to the Zoning Board of Appeals. With the Zoning Board of Appeal's approval, issue Home Occupation Business Permits with any conditions required by the Zoning Board of Appeals.
 - b) Refer applications for Special Use Permits to the Planning Board.
4. Schedule and conduct appropriate inspections on work sites.
5. Submit a report each month to the Town Board and Assessor enumerating the applications received, exceptions made and the action taken.
6. Initiate stop work orders and/or appropriate legal action on behalf of the Town to achieve enforcement of this Ordinance, Town Subdivision Regulations and the Uniform Fire Prevention and Building Code.
7. Maintain a list of special use permits granted after the enactment of this Ordinance.
8. Review all building permit applications for new construction or substantial improvements in designated flood hazard areas and follow all FEMA rules and regulations. If a proposed building is in a flood hazard area, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must (a) be designed (or modified) and anchored

- to prevent flotation, lateral movement, or collapse of the structure, (b) use construction materials and utility equipment that are resistant to flood damage, and (c) use construction methods and practices that will minimize flood damage: and require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.
9. Refer all building permit applicants for permit activities impacting designated wetlands to the Region 4 Department of Environmental Conservation (DEC) office for pre-approval. No permits impacting on a designated wetland will be issued until cleared by DEC.
 10. Issue summons to local Town Courts for violations of this Ordinance, Town Local Laws, and the Uniform Fire Prevention and Building Code. Such surveillance shall be the responsibility of the Uniform Code Enforcement Officer and he shall pursue these violations whether or not there has been a complaint, written or verbal.

14.3 BUILDING PERMITS

1. Under this Ordinance, no building or structure shall be excavated for, erected, added to or structurally altered externally in the Town of Duanesburg until a permit therefore has been issued by the Uniform Code Enforcement Officer.
2. Additionally, in accordance with the NYS Uniform Fire Prevention and Building Code, a building permit is required for:
 - a) Internal alteration affecting structural integrity.
 - b) Alterations affecting fire safety features.
 - c) Alterations having a significant effect on electrical systems.
 - d) Installation of solid fuel-burning appliances.
 - e) Installation of swimming pools.
 - f) Installation of a mobile home.
 - g) Any one (1) story shed or garage larger than 144 square feet.
3. Building permits are not required for repairs to existing buildings or structures where no structural changes are involved.
4. All building permits will be issued through the office of the Uniform Code Enforcement Officer. Applications for all construction outlined in (1) above will be filed with the Uniform Code Enforcement Officer and from that point will follow one of three tracks:
 - a) For those permitted uses a building permit may be issued directly by the Uniform Code Enforcement Officer.
 - b) For those uses requiring a special use permit or use variance, the Uniform Code Enforcement Officer will refer the application to the appropriate Board. This Board, as a result of a project analysis, may establish certain conditions which must be met or financially secured, to protect the Town before the project can be issued a permit by the Uniform Code Enforcement Officer.
 - c) Lastly, for proposed uses not listed in any of the Districts, a Use Variance will be required for approval. In those cases the Uniform Code Enforcement Officer will forward the application first to the Zoning Board of Appeals for processing as a Use Variance. If the Zoning Board of Appeals finds the proposed use suitable and acceptable as a use variance, the proposal will then undergo a Site Plan Review by the Planning

Board which may or may not impose conditions for design and construction. Following Site Plan Review, and appropriate authorization by the Planning Board a special use permit will be issued by the Uniform Code Enforcement Officer subject to condition(s) imposed.

5. There shall be submitted initially with all applications for building permits, two (2) copies of a layout or plot plan showing the actual dimensions of the lot to be built upon, the actual size and location on the lot of the building and accessory buildings to be erected, the general driveway location, and such other information as may be necessary to determine and provide for the enforcement of this Ordinance. Additional copies may be required if the project requires a Site Plan Review.
6. One copy of a final layout or plot plan shall be returned to the applicant when approved by the Uniform Code Enforcement Officer, together with a building permit upon payment of a fee set by the Town Board.
7. Permits for building not on approved streets.
 - a) No permit for the erection of any building (except on existing private roads) shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official Town Map or Plan, or is there if no official Town Map or Plan, such street or highway is (1) an existing state, county or town highway, or (2) a street shown upon a plat approved by the Planning Board, and released for building, or (3) a designated rear lot (Not a subdivision) .
 - b) Where the enforcement of the provision of the section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the Uniform Code Enforcement Officer to the Zoning Board of Appeals .
 - c) The same provisions are hereby applied to such appeals as are provided in cases of appeals on zoning regulations. The Zoning Board of Appeals will solicit an opinion and recommendation from the Planning Board related to conditions that will protect any future street or highway layout and the Town Comprehensive Plan. Any such decision shall be subject to review by the Supreme Court in the same manner and pursuant to the same provisions as in appeals from the decisions of such Board upon zoning regulations.
8. Building permits issued will be prominently displayed in a weatherproof covering on the plot involved.

14.4 CERTIFICATE OF OCCUPANCY or CERTIFICATE OF COMPLIANCE

1. Where a building permit is required, no building hereafter erected or relocated, and no addition to or structural alteration of any building, shall be used or occupied for any purpose until a Certificate of Occupancy or Certificate of Compliance shall have been issued stating that the building and proposed use thereof comply with the provisions of this Ordinance and the NYS Uniform Fire Prevention and Building Code. The Certificate of Occupancy or Certificate of Compliance shall be issued by the Uniform Code Enforcement Officer.
2. A Certificate of Occupancy or Compliance is required for each new use or change in use of any building. No such use or changed use of any building shall be undertaken and no such

building shall be occupied for such use or changed use until a Certificate of Occupancy or Compliance shall have been issued stating that the building and proposed new use or change in use thereof complies with the provisions of this Ordinance.

3. A Certificate of Occupancy or Compliance shall be issued within ten (10) days after a structure is erected or added to, altered or relocated, or a proposed change in use of any building, shall be approved by the appropriate agency as complying with the provisions of this Ordinance. Any Certificate of Occupancy or Compliance voids any certificate of a prior date for the same premises.
4. A Temporary Certificate of Occupancy may be issued for a period of twelve (12) months, with the option of renewing said permit for another twelve (12) months, providing construction for a house is underway. The certificate will approve residency in a 20 x 24 foot or larger garage, a mobile home, RV, or basement or uncompleted home if proper sanitary facilities are provided for and it is intended to finish a house within 24 months. Such intent must be accompanied by sufficient evidence that such construction will be implemented. Any such temporary Certificate of Occupancy must be approved by the Zoning Board of Appeals.
5. No Certificate of Occupancy shall be required for periods of up to four (4) weeks in any calendar year for occupied visiting recreation vehicles temporarily parked upon the premises of a resident of the Town of Duanesburg.
6. Emergency Temporary Certificate of Occupancy.
The Uniform Code Enforcement Officer may issue an emergency temporary Certificate of Occupancy for the placement and use of a mobile home on premises, meeting district setbacks, whereon a residential structure in use as a residence has been substantially destroyed by fire or natural disaster and space on the premises is adequate to accommodate the mobile home and rebuilding activities. Said emergency temporary Certificate of Occupancy shall be valid for a period not exceeding one year from the date of the destruction of the applicant's residence, and shall not be extended or renewed without written approval of the Zoning Board of Appeals. The maximum extension to be one (1) additional year. The Uniform Code Enforcement Officer shall not issue said emergency temporary Certificate of Occupancy unless proof of adequate sanitary facilities is offered and will be installed by the applicant.
7. The Uniform Code Enforcement Officer will issue a mailing/911 address for each new occupied structure concurrent with or before issuing the Certificate of Occupancy. Address numbers for new structures on existing roads shall be obtained from the County Communications Director/911 Coordinator so that the integrity of the numbering system based upon 1000 numbers per mile will be maintained. The Planning Board will establish and assign lot numbers for platted subdivisions on new roads. New road names should be coordinated with the County 911 Coordinator to avoid similar or same name streets that create confusion to emergency service agencies. In all cases, copies of the assignments will be provided to local fire and ambulance agencies, the appropriate Post Office and all local police, fire, and ambulance agencies.

14.5 ZONING BOARD OF APPEALS

Establishment and Organization.

A Zoning Board of Appeals is hereby created. Said Board shall consist of seven (7) members and two alternates who are residents of the Town of Duanesburg for a period of three (3) years prior to the effective date of appointment, and who are appointed by the Town Board, which shall also designate the chairperson. The five members first appointed shall serve respectively for terms of one year, two years, three years, four years and five years; thereafter each member appointed shall serve for five years. The two additional members appointed thereafter shall be first appointed for terms of two and four years respectively. Alternates shall serve for a period of two (2) years (See 14.7). The Board of Appeals shall prescribe the rules for the conduct of its affairs *not inconsistent with this Ordinance or with Section 267 of NYS Town Law*. Three successive absences from regular or special meetings or four meetings total in a calendar year will be considered cause for removal by the Town Board. The Zoning Board of Appeals shall have all the power and duties prescribed by the law and by this Ordinance.

Meetings and Records. *The meetings of the Board of Appeals shall be held at least once each month, at the call of the Chairperson and at such other times as the Board may determine.*

All hearings of the Board of Appeals shall be open to the public to the extent provided in article seven of the public officers law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board of Appeals shall be filed in the office of the town clerk within five business days and shall be a public record.

14.5.1 Interpretation. Upon appeal from a decision by the Uniform Code Enforcement Officer, the Board of Appeals shall decide any questions involving the interpretation of any provision of this Ordinance including determination of the exact location of any district boundary, if there is uncertainty with respect to interpretation of the Ordinance.

14.5.2 Variances. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals, to vary or modify in accordance with Paragraphs A) and B) below the application of any of the regulations or provisions of this Ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit and purpose of this Ordinance shall be observed, public safety and welfare secured and substantial justice done. Two types of variances, use or area, may be granted with or without conditions by the Board.

A) **Use Variance.** No such use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board that for each and every permitted use under the zoning regulations for the particular district where the property is located;

1. ...that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. ...that the alleged hardships relative to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
3. ...that the requested use variance, if granted, will not alter the essential character of the neighborhood;
4. ...that the alleged hardship has not been self-created.

B) **Area Variance.** An area variance is one which addresses matters of practical difficulties in meeting the requirements of this Ordinance such as side lot distances, frontages, set backs, etc. In making its determination on an application for an area variance, the Board of Appeals must consider the following:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.
3. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
4. whether the requested area variance is substantial.
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of an area variance.

14.5.3 Procedure for Appeals.

- 1) The Board of Appeals shall act in strict accordance with the procedure specified by law and this Ordinance. All applications for variances or interpretations shall be made to the Board of Appeals.
- 2) Every appeal or application shall refer to the specific provision in the Ordinance involved and shall exactly set forth the interpretation that is claimed, the use for which the special consideration is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- 3) Variances granted must be the minimum variance that will accomplish the purpose for which sought.
- 4) In granting any such variance, the Board may prescribe reasonable terms or conditions. As are directly related to and incidental to the proposed use of the property.
- 5) Reasons for granting or denying variances shall be fully set forth in the written findings supported by documentary evidence for or against.
- 6) Notices of public hearings, as required by law, shall be placed in the official newspaper designated by the Town at least five (5) days before the date of the said hearing.
- 7) At least ten (10) days prior to the date of public hearing as required by law, the clerk shall notify all property owners within 500 feet of *the parcel where an area variance is proposed* and all property owners within 1000 feet of *a parcel where a use variance is proposed as measured in all direction from the property boundaries*. The notice shall state the nature of the proposed variance and the place, date and time of the hearing.

- 8) The Zoning Board of Appeals shall comply with the provisions of the State Environmental Review Act under Article Eight (8) of the Environmental Conservation Law and its Implementing Regulations as codified in Title Six, part Six Hundred Seventeen of the New York codes, rules and regulations.
- 9) Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Town Clerk and mailed to the applicant within five (5) business days.
- 10) Decisions by the Board of Appeals may be rendered immediately following the public hearing or in any event within sixty-two (62) days after the public hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
- 11) The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant and forwarded to the Town Board, Planning Board, Assessor and the Uniform Code Enforcement Officer.

14.5.4 Home Occupation Business Permits. The Zoning Board of Appeals shall perform site plan review of all applications for Home Occupation Business Permits. No Home Occupation Business Permits shall be issued until the board finds that:

- a) The application is for a bona fide home occupation.
- b) Such use shall not adversely affect the character of the neighborhood, and the values of the surrounding properties.
- c) Such use is conducted on the property by a person or persons residing therein, with not more than two (2) full-time paid assistants or employees or their equivalent.

14.5.4.1 Procedures for Applying for a Home Occupation Business Permit.

The application should be made to the Office of the Uniform Code Enforcement Officer who will request that the Zoning Board of Appeals perform a site plan review. The application shall include the location of the proposed business and a sketch of the property on which the business will be conducted. The application shall also include: a detailed description of the proposed business, the number of employees, and an estimate of the traffic that may be created during business hours.

Also to be included is a description of the impacts the business may have on neighboring properties.

At its discretion, the Zoning Board of Appeals may require additional information for completing its review.

14.5.4.2 Action and Timing.

Within (62) sixty-two days of receiving the application the Board shall render its decision. The Board may approve, approve with conditions *or modifications*, *or it may disapprove*.

Failure of the applicant to abide by the conditions established may result in the revocation of the permit.

14.6 PLANNING BOARD

Establishment and Organization. *A Planning Board is hereby created. The Planning Board shall consist of seven members and two alternates (see 14.7), appointed by the Town Board, which shall also designate the Chairperson thereof, in such manner and for such terms as provided by NYS Town Law. The Planning Board shall prescribe the rules for the conduct of its affairs not inconsistent with this Ordinance or with Section 271 of NYS Town Law. Three successive absences from regular or special meetings or four meetings total in a calendar year will be considered cause for removal by the Town Board. The Planning Board shall have all the power and duties prescribed by the law and this Ordinance.*

Meetings and Records. *The meetings of the Board shall be held at least once each month, at the call of the Chairperson and at other times as the Board may determine.*

All hearings of the Board shall be open to the public to the extent provided in article seven of the public officers law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every motion, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions.

Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Planning Board shall be filed in the office of the town clerk within five business days and shall be a public record.

14.6.1 **Powers and Duties.**

- 1) While the Zoning Board of Appeals concentrates primarily on interpretation of this Ordinance, the granting of variances from this Ordinance, and interpretation of district boundaries, the Planning Board is focused broadly on review and approval of subdivisions and commercial development, changes to streets and roads, development and maintenance of the Town Comprehensive Plan, town environmental reviews and *Special Use Permits and Site Plan Review as specified herein.*
- 2) The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article (8) eight of the Environmental Conservation Law and its implementing regulations as codified in Title (6) six, part (617) six hundred seventeen of the New York codes, rules, and regulations.
- 3) The Planning Board is authorized and empowered by the Town Board to approve Plats showing lots, blocks or sites, with or without streets or highways, and to approve the development of entirely or partially undeveloped plats already filed in the office of the County Clerk.
- 4) The Planning Board is authorized to review site plans submitted with applications for Home Occupation Business Permits. In its review, The Board may approve, or approve with conditions, or modifications, or it may *disapprove the application.*

Site Plan Approval. *The Planning Board is authorized and empowered by the Town Board to review, approve, approve with modifications or disapprove all sit plans as hereinafter designated.*

Applicability. *Site Plan approval is required in the Town of Duanesburg for:*

- a) All uses requiring a Special Use permit*
- b) Those uses listed in the zoning district as requiring Site Plan approval.*

Sketch Plan. *A sketch plan conference may be held between the planning Board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the Planning Board about the proposal prior to the preparation of a detailed site plan. And for the Planning Board to review the basic 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, highway access, existing vegetation, proposed landscaping and other planned and significant natural features (e.g., streams, ponds, lakes, wetlands). Anticipated changes in the existing topography and other natural features should be identified.*
- b) A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features.*
- c) A topographic or contour map of adequate scale and detail to show site topography.*

Application. *An application for site plan approval shall be made in writing to the Chairperson of the Planning Board on forms provided by the Uniform Code Enforcement Officer and shall be accompanied by information contained in the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference. The Site Plan shall be submitted in sufficient detail and appropriate scale to accurately locate the information listed below:*

- 1) Title of drawing, including name and address of applicant and person responsible for preparation of drawing;*
- 2) North arrow, scale and date;*
- 3) Boundaries of the property plotted to scale. Right of ways and easements where applicable, should be shown on this plot;*
- 4) Existing watercourses, wetlands, flood plains, and bodies of water;*
- 5) Grading and drainage outline describing existing and proposed contours; (contour intervals as determined by Planning Board.)*
- 6) Location, outline of the proposed use, size and height of all buildings;*
- 7) Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site;*
- 8) Provision for pedestrian access;*
- 9) Location and description of outdoor storage including temporary storage areas, if any;*
- 10) Location, design and construction outline of all existing or proposed site improvements,*

- including culverts, drains, retaining walls and fences;
- 11) Description of the method of sewage and waste disposal including location, and design and construction description of such facilities;
 - 12) Description of the method of obtaining water and location, design, and construction description of the water system or systems;
 - 13) Location of fire and other emergency zones, including the location of fire hydrants;
 - 14) Location, design and construction description of all energy facilities, (i.e. heating, air conditioning, electrical, etc.);
 - 15) Location, size and design and construction materials of all proposed signs;
 - 16) Location and proposed development of all buffer areas, including indication of existing vegetative cover;
 - 17) Location and design of outdoor lighting facilities;
 - 18) Designation of the amount of building area proposed for retail or similar commercial activity;
 - 19) General landscaping plan and planting schedule;
 - 20) Phased construction schedule for all elements of the project;
 - 21) Current deed.
 - 22) Other elements integral to the proposed development, as considered necessary by the Board, including identification of any State or County permits required for the project's execution.
 - a) A visual and/or noise buffer for adjoining lands, including the maximum retention of existing vegetation.
- Adequacy of fire lanes and other emergency zones.

Review of Site Plans. *The Planning Board's review of site plans shall include, as appropriate, but not limited to, the following general considerations:*

- a) *Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.*
- b) *Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.*
- c) *Location, arrangement, appearance and sufficiency of off-street parking and loading.*
- d) *Adequacy and arrangement of pedestrian access.*
- e) *Adequacy of storm water and drainage facilities.*
- f) *Adequacy of water supply and sewage disposal facilities.*
- g) *Adequacy, type and arrangement of trees, shrubs and other landscaping constituting*

Action and Timing. *Within sixty-two (62) days of the receipt of a complete application for site plan approval, the Planning Board shall render its decision. The time within which a decision must be rendered may be extended by mutual consent of the applicant and the Planning Board. The Board shall approve, disapprove, or approve the project with modifications and/or conditions. The Board's action shall be in the form of a written statement for the record along with supporting documents deemed necessary. The applicant will be notified in writing of the decision and any conditions attached thereto.*

Performance Guarantee. *The performance guarantee shall be the same as a special use permit. (See Section 14.6.2).*

State Environmental Quality Review. *The State Environmental Quality Review shall be the same procedure as that for the special use permit. (See Section 14.6.2).*

Integration fo Procedures. *Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this Zoning Ordinance or other requirements of the town, the Planning Board shall integrate, as appropriate, Site Plan review as required by this section with the procedural and submission requirements for such other compliance.*

14.6.2 Special Use Permits. After due public notice and hearing and subject to appropriate conditions and safeguards, the Planning Board may issue special use permits for any of the uses for which this Ordinance requires the obtaining of such permits.

No special use permit shall be granted until the Board shall find and determine that:

- a) Such use is reasonably necessary or convenient to the public health, welfare or the economic or social benefit of the community;
- b) Such use is suitably located in relation to transportation, water and sewerage requirements of this Ordinance or, where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use;
- c) The character of the neighborhood and values of surrounding property is reasonably safeguarded;
- d) Such use will comply with all other terms, conditions, requirements and standards imposed by this Ordinance.
- e) The use is consistent with the Town Comprehensive Plan.

14.6.2.1 Requirements. Special Use Permits are required in the Town of Duanesburg for:

- a) All new businesses proposed in the Town.
- b) Major changes in product line or services for businesses previously granted a permit or classified as non-conforming.
- c) Those uses listed in the zoning districts as requiring a Special Use Permit, including those special events not customary to the nature of the business.

14.6.2.2 Procedure for Applying for a Special Use Permit.

The procedure for applying for a Special Use Permit is divided into two phases: pre-submission conference and formal application.

- a) **Pre-Submission Conference.** The Uniform Code Enforcement Officer shall refer the applicant requiring a Special Use Permit to the Planning Board who shall schedule a conference for the next regularly scheduled Board meeting *or sooner if deemed appropriate by the Board*. The purpose of the pre-submission conference is to give the Board and the applicant an opportunity to gain a perspective of the use's impact on the zoning district, the neighborhood in which it is proposed, and the Site Plan Review degree of complexity. The conference is beneficial to both parties because the community will gain knowledge of

the applicant's intent and the applicant will learn his or her rights and responsibilities before either is committed to significant outlays of time or capital.

- 1) At the pre-submission conference the applicant shall provide the Board with basic data regarding the proposed project. At a minimum the applicant shall provide a map showing the important existing natural and man-made features in and around the site and a sketch plan showing the major features of the proposal.
- 2) At the conclusion of the pre-submission conference, or within ten (10) working days, the Board will provide the applicant with a check-off list describing the minimum elements of a Site Plan Review required for processing the application. This does not preclude later requests for additional information required to properly evaluate the project.

b) Formal Application Procedure. Following the pre-submission conference a formal application for a Special Use Permit may be presented at the next regularly scheduled Board meeting or sooner if deemed appropriate by the Board.

- 1) The application shall be submitted on forms furnished by the Uniform Code Enforcement Officer and be accompanied by a copy of the site plan. The site plan data and information shall include information drawn from a checklist provided and as determined necessary by the Board at the pre-submission conference. Depending on the scope and complexity of the project, the Board may require that the site plan be prepared by a licensed professional engineer, architect or land surveyor at the applicant's expense.

14.6.2.3 Information Required.

A general and complete description of the proposed Special Use, together with a Site Plan prepared in accordance with Section 14.6.2 Site Plan Approval.

14.6.2.4 Planning Board Formal Review.

The Board conducts a formal review of the site plan data prior to action on the Special Use Permit.

- a) Within sixty-two (62) days after receipt of the completed application and all required site plan data and information, the Board will conduct a public hearing. The notice of the public hearing to be published at least five (5) days prior to the date of the Hearing in a newspaper with general circulation within the Town, normally the officially designated newspaper.
- b) In addition to holding a public hearing, the Board will notify by mail at least ten (10) days prior to the public hearing all adjacent property owners within 1000 feet, as measured in all directions from the property boundaries.
- c) The Board's detailed review of the application elements for the planned use shall be in such depth and detail to ensure the following:
 1. Determine whether the proposal is subject to the State Environmental Quality Review Act and, if so, to initiate the process in accordance with Section 14.6.2.7.

2. In its determination, the proposed use will not have a significant negative effect on existing adjacent land uses.
3. All requirements of this Ordinance are met *and any variances necessary have been identified.*
4. Adequacy and arrangement of pedestrian traffic access and circulation, including intersections, road widths, pavement surfaces, channelization structures and traffic control.
5. Location, arrangement, appearance and sufficiency of off-street parking and loading is satisfactory.
6. Location, arrangement, size, design and general site compatibility of buildings, lighting and signage is satisfactory.
7. Adequacy of storm water and drainage facilities.
8. Adequacy of water supply and sewage disposal facilities.
9. Adequacy of the type and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise deterring buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
10. *Compliance with Performance Standards established in Section 14.6.4 of the Zoning Ordinance to ensure* protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
11. Adequacy of fire lanes and other emergency zones and the availability of fire water, water points or hydrants.

14.6.2.5 Action Timing and Sequences.

Within sixty-two (62) days of the public hearing on the application for a Special Use Permit, the Planning Board shall act on it. *The decision of the Planning Board may be rendered immediately after the public hearing if deemed appropriate by the Board.*

The Planning Board shall provide copies of the applicant notification letters to the Uniform Code Enforcement Officer, Town Clerk, and the Zoning Board of Appeals within five (5) days where applicable. A copy of the site plans will be retained as the official Town record.

Expiration. A special use permit shall become void one year after approval unless a building permit is issued and construction has begun within such time and diligently pursued to completion or, by conditions of the use permit, greater or lesser time is specified as a condition of approval. A special use permit may be extended for a period of no more than one year.

Amendment. Following completion of the development or establishment of the use is authorized by a special use permit, no such use shall be expanded unless the special use permit is amended pursuant to the procedures established herein.

14.6.2.6 Performance Guarantee.

The Planning Board may require a bond or other performance or payment guaranteed by the applicant for all or portions of any project.

The sufficiency of such performance and payment guarantee shall be determined by the Planning Board after consultation with the Uniform Code Enforcement Officer and Town Engineer as necessary.

No certificate of occupancy shall be issued for the approved use until all improvements and conditions required by the Planning Board are in place and verified by the Uniform Code Enforcement Officer, Town Engineer, and Town Attorney as necessary.

14.6.2.7 State Environmental Quality Review.

The Planning Board will cause to be completed by the applicant and the Board a Short (Section 617.21) or Long (Section 617.2, Appendix A) Environmental Assessment Form as appropriate for each site plan reviewed by the Board. This form will be maintained in the applicant's file.

14.6.2.8 Fee Schedule.

For fees, see separate schedule set by the Town Board

14.6.3 Performance Standards.

The Planning Board under its powers of site plan review and special use permit approval shall decide whether proposed uses can meet the performance standards set forth herein. Failure to operate in compliance with these standards shall be a violation of the Zoning Ordinance. Enforcement of continued compliance is the responsibility of the Uniform Code Enforcement Officer.

The Uniform Code Enforcement Officer shall investigate any purported violation of performance standards. All violations as ascertained by the Uniform Code Enforcement Officer shall be terminated within (30) thirty calendar days of notification of the user and owner. Failure to comply shall subject the violator to the penalties specified in Section 15 of the Zoning Ordinance. All uses shall operate in compliance with the following standards.

Performance Standards. In the Town, uses are not permitted which exceed the following standards measured at individual property lines. The Planning Board under its powers of site plan review and approval shall decide whether uses meet the standards. Uses shall meet State air and water pollution standards and shall not:

1. Emit noise in excess of 70 decibels, dba scale, of a standard sound level meter.
 2. Emit odor, which is considered offensive.
 3. Emit dust or dirt, which is considered offensive.
 4. Emit noxious gases, which endanger health, comfort, safety, or welfare of any person, or have a tendency to cause injury or damage to property, business or vegetation.
 5. Cause, as a result of normal operation, a vibration, which creates displacement of 0.003 of one inch at the property line.
 6. Create glare by lighting or signs which could impair a driver's vision
 7. Cause a fire, explosion or safety hazard.
- Cause harmful waste to be discharged into sewer, streams, or bodies of water, or to be stored on said property.

14.6.4 Retention of Experts; Payment.

The Zoning Board of Appeals and the Planning Board are hereby authorized to retain engineering consultants and/or such other expert consultants as are determined to be necessary to enable the full performance of the duties of the respective Board relative to any matters before either Board.

Payment for the services of such consultants and/or engineers is to be made from funds deposited by the applicant with the Town in escrow accounts for such purpose. The expert consultant and/or engineer shall provide an estimate, including the number of hours and rate per hour, for the cost of service to be rendered to the Town. The amount deposited by the applicant will be based on this estimate. The estimate shall be reviewed and approved by the Uniform Code Enforcement Officer and should be fair, in line with costs in other communities, specific to the services requested by the Board, and based on previous experience. The Uniform Code Enforcement Officer will notify the applicant of the amount required.

It shall be the responsibility of the applicant to submit to the Town, at such time as directed by the Board, certified check(s) in the amounts equal to the approved estimate of the expert consultant and/or engineer for the cost of services to be rendered to the Town. The Town shall release money to said consultant and/or engineer in payment for the services rendered to it upon acceptance by the Town of said services. The consultant and/or engineer shall provide an itemized bill showing date(s) service was rendered, associated hours, and rate.

14.7 Alternate Members of the Zoning Board of Appeals and the Planning Board

In order to permit the Zoning Board of Appeals and the Planning Board to transact business in the event that absence or conflicts of interest or illness preclude any of the regular members from considering a particular matter, it is deemed advantageous for the Town Board to appoint alternate members to serve on these boards. Therefore the Town Board may appoint alternate members to the Zoning Board of Appeals and the Planning Board to serve as provided in this section.

1. Two alternate members shall be appointed to each board.
2. Alternate members shall be appointed to serve for a period of two years. The terms of the appointment shall be effective on January first (1st) of the year of the appointment and shall end two years later on December thirty first (31st).
3. The Chairperson of the Zoning Board of Appeals or the Planning Board shall assign the alternate members as necessary when absence of regular members of the Board, or conflict of interest of regular members of the Board, or disability of regular members of the Board, would prevent regular members of the Board from considering any impending matter.
4. Once designated to serve on a particular matter before the Board, the alternate members shall have the same powers and duties as regular members of the Board. Any determination of the Board consisting of alternate members shall have the same weight and be entitled to the same authority as the act or deed of the regular Zoning Board of Appeals or the Planning Board and all laws, statutes and regulations shall apply and be applied with equal force and effect.

5. Alternate members may be in attendance at all meetings, but may not participate in an official capacity in any Board activity in which all members are present and able to act.
6. Alternate members serving on the Board after appointment by the Chairperson shall be paid for their services in the same manner as regular members are paid.

SECTION 15

Enforcement

15.1 Designation of Enforcing Official

This section shall be administered and enforced by the Uniform Code Enforcement Officer, hereinafter referred to as the "official", duly appointed by the Town Board of Duanesburg to carry out the word and intent of this section.

15.2 Duties of Enforcing Official

- A. **Rules, regulations, and forms.** The official shall have authority to make, adopt and promulgate written rules, regulations and forms as may be necessary for administration and enforcement of the content and intent of this section. The official shall be responsible to submit such rules, regulations and forms to the Town Board, which shall move to approve, reject or modify the same within sixty (60) days after submission. Once approved by the Town Board and filed with the Town Clerk, rules, regulations and forms shall have the same force and effect as the provisions of this section and be subject to the same penalties for violation thereof.
- B. **Entry and Inspection.** The official shall have the right to enter upon, examine and inspect or cause to be entered, examined and inspected any building or property for the purpose of carrying out the provisions of this section after reasonable written notice of intent to examine or inspect has been provided to a property owner and permission of the owner has been granted. If such permission is denied, access shall be pursued by the Town Attorney, who shall be notified in writing by the official.
- C. **Referral to the Planning Board, Town Board and Zoning Board of Appeals.** The official shall inform any applicant of the appropriate town agency to whom the application should be presented prior to the issuance of a building permit, in accordance with this section and all other state, county and local law.
- D. **Retention of Experts.**
 - (1) The purpose of this provision to provide for coordinated review of applications and avoid duplication of services among the Town Board, Zoning Board of Appeals, and the Planning Board.
 - (2) The Zoning Board of Appeals and the Planning Board are hereby authorized to retain engineering consultants and/or such other expert consultants as are determined to be necessary to enable the full performance of their respective duties relative to any matters before either Board.
 - (3) Payment for the services of such consultants and/or other experts is to be made from funds deposited by the applicant with the town in escrow accounts for such purposes.
 - (4) It shall be the responsibility of the applicant to submit to the Town, prior to the start of any work associated with said application before the Board or at such other time as directed by the Board, certified check(s) in amounts equal to the estimate of the engineering consultant and/or other expert consultant for the cost of services to be rendered to the Town.

This sum shall be released by the Town to said engineer or consultant in payment for the services rendered to it upon acceptance by the Town of said services.

- (5) In the event that an application requires Town Board action for review or implementation, including consideration of zoning issues, contracts, bonding, financing or other associated actions required by virtue of an application under local zoning ordinances, the experts retained by the Zoning Board of Appeals and/or the Planning Board on behalf of the Town as outlined subsection (2) through (4) above shall provide to the Town Board such services as may be required by it also in connection with its review of the application and associated actions; the cost of said experts to be provided for as set forth under this section.

E. **General Duties and Powers.** The official shall be charged with the general and executive administration of this section and shall have the following general duties and powers:

- (1) To oversee and enforce all provisions of this section and all rules, conditions and requirements adopted or specified pursuant thereto.
- (2) To record all identifiable complaints or violations of any provision of this section
- (3) To file a report with the Town Board at monthly intervals, summarizing his activities for the period since the most recent previous report, listing all complaints of violations and subsequent action taken on each such complaint.

F. **Appearance Tickets.** In addition to any and all other authority vested in the official by state law and this section, the official is hereby authorized and empowered to issue appearance tickets, in a form to be approved by the Town Board, for the prosecution of all violations of this section.

Following the filing of information, the official shall have the authority to appear at any and all actions and proceedings in furtherance of said prosecution in any court of competent jurisdiction.

15.3 **Conflicts with other provisions.**

This section shall be administered and enforced in tandem with all other applicable town, county, state and federal laws.

15.4 **Penalties for Offenses.**

Whenever, in the opinion of the official after proper examination and inspections, there appears to exist a violation of any provision of this section or of any rule or regulation adopted pursuant thereto, the official shall serve a written notice of violation upon the owner or occupant of the premises by personal service or registered mail; if to the owner, at the tax billing address, if to the occupant, at the property address.

A. **Notice of violation.** Such notice of violation shall inform the recipient of:

1. The nature and details of such violation.
2. Recommended remedial action, if possible, which, if taken, will effect compliance with the provisions of this section and with rules and regulations adopted pursuant thereto.
3. The date of compliance by which the violations must be remedied or removed.
4. The right to a hearing before the official in accordance with Subsection C below.

- B. **Extensions.** The official may extend the date of compliance in a notice of violation, after written application, if, in his opinion, there is reasonable evidence of intent to comply and reasonable conditions exist which prevent compliance by the specified date.
- C. **Request for hearing.** Any person served with a notice of violation in accordance with Subsection A above and who denies the violation or is allegedly aggrieved by the required action necessary for compliance may, within ten (10) days after service of notice, request, in writing, a hearing before the official stating the reasons why such a hearing is requested. The person requesting the hearing shall be required to show cause or give evidence why he should not be required to remedy the violation or why he is unable to comply with the remedial action outlined in the notice of violation.
- D. **Abeyance.** Compliance with a notice of violation shall not be required while a hearing is pending.
- E. **Hearing.** Within ten (10) days after receipt of a request for a hearing, the official shall acknowledge receipt, in writing, and set a time and place for such hearing, not later than thirty (30) days after the date the request is received. Hearings may be postponed beyond thirty (30) days by the official for just cause, and notice of postponement shall be served.
- F. **Findings.** After consideration of all testimony given at the hearing held in accordance with Subsection E above, the official shall sustain, withdraw or modify the notice of violation as originally served. If such notice is sustained or modified, the official shall set a new compliance date by which the violation shall be remedied or removed in accordance with the original notice of violation or modified remedial action specified at the hearing.
- G. **Certificate of Compliance.** Upon re-inspection, following the expiration of the date of compliance as specified in the notice of violation or modification thereof, if the violation has been remedied or removed in accordance with the specified remedial action and there is no longer a violation of any provision of this section, then a certificate of compliance shall be issued by the official.
- H. **Legal Action by the Town for Noncompliance.** Upon re-inspection following the expiration of the date of compliance as specified in the notice of violation or as extended in accordance with Subsection B above, if the remedial action specified has not been carried out and there is still in existence, in the opinion of the official, a violation of a provision of this section, or, upon refusal to permit such re-inspection, then the official shall immediately issue an appearance ticket and notify the Town Attorney, who shall, if necessary, take appropriate legal action to restrain, prevent, enjoin, abate, remedy or remove such violation and take whatever other legal action is necessary to compel compliance with this section.
- I. **Apartments\Multifamily Buildings Without Certificates of Occupancy.** In situations and no building permits were obtained, and certificates of occupancy were not issued, the following procedure will be followed by the Uniform Code Enforcement Officer.
 - 1) Issue citation to the property owner for building code violation.
 - 2) Advise the Town Assessor to determine if back taxes are due.
 - 3) Determine if a variance, Sub-division or Special Use Permit is required in accordance with the Zoning and Sub-division Ordinances. If a Variance, Sub-division, or Special Use Permit is required, refer to the proper Board. If an apartment was created before the Zoning Ordinance Amendment of 1984 a Special Use Permit may not be required. The burden of proof lies with the property owner.
 - 4) The U.C.E.O. shall determine if Building and/or Sanitary Codes are involved.

- 5) If Code(s) are involved, required inspections will be made to the extent practical. The inspections shall be made at the owner's expense. A building permit shall be obtained for any corrective action to be taken. Any corrective action required to meet Code(s) shall be made at the owner's expense.
- 6) After satisfying the U.C.E.O. that all code requirements have been satisfied to the extent practical based on the results of the inspections, a Conditional Certificate of Occupancy may be issued. The Certificate of Occupancy shall clearly state that it was issued based upon "WALK THROUGH INSPECTION ONLY".
- 7) The resolution of the citation issued shall be pursued by the Town. Fines to be applied will be determined by a schedule established by the Town Board.

J. Penalties.

- 1) Any person who shall violate or cause to be violated or assist in the violation of any provision of this section shall be subject to conviction of an offense by a proper court and be subject to a fine of not less than one hundred dollars (\$100.00), not more than three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed fifteen (15) days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of three (3) years, such person shall be subject to a fine of not less than three hundred fifty dollars (\$350.00), nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed fifteen (15) days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, such person shall be subject to a fine of not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon the courts and judicial officers, generally, the first and second offenses shall be violations and third and subsequent offenses shall be misdemeanors for such purposes and all provisions of law relating to Penal Law violations and Penal Law misdemeanors shall apply.
- 2) The term "person," as used in this subsection, shall include an owner, occupant, tenant, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of a building property or part thereof.
- 3) Failure to timely comply with any court mandated action shall constitute a separate and distinct offense.

SECTION 16

Amendments

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Board of Appeals, after public notice and hearing, amend, supplement, change, modify or repeal this Ordinance, pursuant to the provisions of the New York State Town Law applicable thereto. Every such proposed amendment shall be referred to the Planning Board for review and comment. Any amendment shall, within ten (10) days of effective date, be incorporated in the text of the master copy of the Zoning Ordinance and all undistributed copies held for sale. The Records Management Officer shall be responsible for said incorporation and sale.

SECTION 17

Sever Ability

If any section, paragraph, subdivision, clause, phrase, or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of provisions thereof other than the part so declared to be invalid or unconstitutional.

SECTION 18

Exceptions

Nothing within this Ordinance shall require any duly established municipal, educational, historical, firefighting, recognized fraternal or civic order or religious organization or institution located in the Town or political party qualified for a line on the ballot in a General Election to apply for or obtain a special use permit with regard to gatherings or assemblages designed for the furtherance of its purposes, including fund raising, except when they act as sponsor(s) for a public assemblage which is not their own operation or affair. Public gatherings or assemblages in conjunction with an existing permitted building or use by any duly established municipal, educational, historical, fire-fighting, recognized fraternal or civic order or religious organization or institution located in the Town or political party qualified for a line on the ballot in a General Election shall not be prohibited in any district. Nothing within this Section 15 shall negate the applicability of and requirements of a Public Assemblage Law adopted by the Town of Duanesburg.

SECTION 19

Effective Date

This Amendment to the Ordinance shall become effective by its publication and posting in accordance to the applicable sections of the laws.