

- (5) The grading and drainage plan showing existing and proposed contours at an appropriate interval to be specified by the Planning Board at the sketch plan conference, with two-foot contour intervals and soils data generally required on that portion of any site proposed for development where general site grades exceed five percent (5%) or there may be susceptibility to erosion, flooding or ponding.
- (6) The location, proposed use and height of all buildings.
- (7) The location, design and construction materials of all parking and truck-loading areas, with access and egress drives thereto.
- (8) Any provision for pedestrian access.
- (9) The location of outdoor storage equipment and materials, if any.
- (10) The location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- (11) A description of the method of sewage disposal and the location, design and construction materials of such facilities.
- (12) A description of the method of securing water supply and the location, design and construction materials of such facilities.
- (13) The location of fire and other emergency zones, including the location of the nearest water supply for fire emergencies.
- (14) The location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy.
- (15) The location, size and design and construction materials of all proposed signage.

- (16) The location and proposed development of all buffer areas, including indication of existing vegetative cover.
- (17) The location and design of outdoor lighting facilities, including data regarding, when appropriate, lighting levels, both within the site and at the site's boundaries.
- (18) A designation of the amount of building area proposed for retail sales, office use or similar commercial activity.
- (19) A general landscaping plan and planting schedule.
- (20) Other elements integral to the proposed development, as considered necessary by the Planning Board, including the identification of any state or county permits required for the project's execution.

B. Required fee. An application for site plan review and approval shall be accompanied by the applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board.

§ 106-46. Planning Board review.

The Planning Board's review of a site plan shall include, as appropriate, but is not limited to, the following:

A. General considerations:

- (1) The adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, structures and traffic controls.
- (2) The adequacy and arrangement of pedestrian traffic access and circulation, walkways, control of intersections with vehicular traffic and overall pedestrian convenience.

- (3) The location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (4) The location, arrangement, size, design and general site compatibility of principal and accessory buildings, lighting and signage.
 - (5) The adequacy of stormwater and drainage facilities.
 - (6) The adequacy of water supply and sewage disposal facilities.
 - (7) The adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-detering buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
 - (8) In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.
 - (9) Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
 - (10) The adequacy of fire lanes and other emergency zones and water supply for fire emergencies.
 - (11) Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
 - (12) The compatibility of building design with the existing characteristics of the neighborhood.
- B. Consultant review. In its review, the Planning Board may consult with the Town Building Inspector, the Superintendent of Highways, other local and county officials and its designated private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

- C. Public hearing. The Planning Board may conduct a public hearing on the application for site plan approval. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within forty-five (45) days of the receipt of the application and shall be advertised in a newspaper of general circulation in the town at least five (5) days before the public hearing.
- D. Required referral. Prior to taking action on the site plan, the Planning Board shall refer the site plan, when applicable, to the Franklin County Planning Board for advisory review and a report in accordance with §§ 239-l and 239-m of the General Municipal Law.

§ 106-47. Planning Board action.

Within sixty (60) days of the receipt of an application for site plan approval or within forty-five (45) days of the conduct of a public hearing, whichever shall first occur, the Planning Board shall act on the site plan application.

A. Action by resolution.

- (1) The Planning Board shall act, by resolution, to either approve, disapprove or approve with modifications the site plan application. A copy of the resolution shall be filed in the Town Clerk's office and mailed to the applicant within ten (10) days of the Planning Board's action. A resolution of either approval or approval with modifications shall include authorization to the Planning Board Chairman to stamp and sign the site plan upon the applicant's compliance with the subdivision requirements stated in Subsection B.
- (2) If the Planning Board's resolution includes a requirement that modifications be incorporated in the site plan, conformance with said modifications shall be considered a condition of approval. If the site plan is disapproved, the Planning Board's

resolution shall state specific reasons for such decision. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

- B. Submission requirements for stamping. After receiving site plan approval, with or without modifications, from the Planning Board, the applicant shall, within six (6) months, submit six (6) prints and one (1) reproducible Mylar of the site plan to the Planning Board for stamping and signature by the Chairman. The site plan submitted for stamping shall conform strictly to the site plan approved by the Planning Board, except that it shall further incorporate any revisions or other modifications required by the Planning Board and shall be accompanied by the following additional information:
- (1) A record of application for and approval status of all necessary permits from federal, state and county officials.
 - (2) Detailed sizing and final material specification of all required improvements.
 - (3) An estimated project construction schedule.
- C. Effect of stamping by Planning Board. Upon stamping and signature by the Chairman, the Planning Board shall forward a copy of the approved site plan to the Building Inspector and the applicant. The Building Inspector may then issue a building permit or certificate of occupancy or use if the project conforms to all other applicable requirements.

§ 106-48. Reimbursable costs.

Reasonable costs incurred by the Planning Board for private consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the

fee required in § 106-45B herein. Maximum amounts for such reimbursable costs by project type and size shall be in accordance with the fee schedule established and annually reviewed by the Town Board.

§ 106-49. Performance guaranties.

No certificate of occupancy or use shall be issued until all improvements shown on the site plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed. Such performance guaranty shall be posted in accordance with the procedures specified within § 277 of the Town Law relating to subdivisions. The amount and sufficiency of such performance guaranty shall be determined by the Planning Board after consultation with the Town Attorney, the Building Inspector, other local officials or its designated consultants.

§ 106-50. Inspection of improvements.

The Building Inspector shall be responsible for the overall inspection of site improvements, including coordination with the town's private consultants and other local officials and agencies, as may be appropriate, on multifamily residential, commercial and industrial projects.

§ 106-51. Integration of procedures.

Whenever the particular circumstances of a proposed development require compliance with either another procedure in this chapter, the requirements of the Town Land Subdivision Regulations⁹ or the requirements of the State Environmental Quality Review Act, the Planning Board may integrate, if it deems appropriate and to the extent of its authority under law, site plan review as required by this section with the procedural

⁹ Editors Note: See Ch. 98, Subdivision of Land.

and/or submission requirements for such other compliance. Such integration of procedures may require, upon mutual written consent of the Planning Board and the applicant, reasonable modification of the time schedules otherwise stated in this Article.

ARTICLE IX Innovative Development

§ 106-52. Residential cluster development.

The Planning Board of the Town of Harrietstown is authorized simultaneously with the approval of a plat or plats pursuant to Article 16 of the Town Law of the State of New York to modify applicable provisions of this chapter, subject to the conditions set forth in § 281 of said Town Law and those further requirements set forth below:

A. Density.

- (1) The average residential density throughout the plat shall not exceed the maximum density permitted for the zoning district in which the plat is located, with such calculation of maximum density based solely upon an approvable plat for lot-by-lot development of single-family detached dwellings on those portions of the site considered by the Planning Board to be suitable for building development based upon analysis of the site's topographic, geologic and hydrological characteristics.
- (2) The number of permissible dwelling units within a cluster development may be alternately established by subtracting a fixed percentage of twenty percent (20%), plus any unbuildable land area from the total land area and dividing the remaining land area by the minimum lot area permitted within the residential district in accordance with § 106-11, Schedule of Area and Bulk Regulations.

- B. Central water supply and common sewage disposal facilities shall be provided in accordance with the requirements of the Town of Harrietstown and the New York State Departments of Health and Environmental Conservation.
- C. While either attached, semidetached or detached dwelling units are permissible, no individual structure shall contain more than six (6) attached units. Minimum required side yards shall be provided at the ends of said structure.
- D. The maximum height shall be restricted to thirty-five (35) feet, as otherwise applicable for residential uses within the Town of Harrietstown.
- E. Common open space totalling not less than twenty-five percent (25%) of the total development site shall be provided in perpetuity. At least ten percent (10%) of the total land area within the cluster development shall consist of common open space which does not lie within the minimum required front, rear and side yards, as specified.
- F. A homeowners' association or similar mechanism, for the long-term ownership and maintenance of common open space shall be provided, subject to approval of the Town Planning Board. Provision, satisfactory to the Town of Harrietstown, shall also be made for the long-term ownership and maintenance of roadways, drainageways and other improvement features within the cluster development.
- G. Common driveway access shall be provided to a cluster development to the extent considered practicable by the Planning Board.
- H. The minimum front, rear and side yards required by the Schedule of Area and Bulk Regulations¹⁰ for the zoning

¹⁰ Editor's Note: The Schedule of Area and Bulk Regulations is included at the end of this chapter.

district in which the cluster development is proposed or the most restrictive residential zoning district to which it abuts shall be increased by fifty percent (50%) to establish the minimum front, rear and side yards required for the cluster development.

- I. The minimum number of residential dwelling units that may be considered within a cluster development shall be five (5) dwelling units.

§ 106-53. Planned resort development. [Added 10-15-1992 by L.L. No. 1-1992]

A. Intent and objectives.

- (1) The Planned Resort Development rezoning procedure provides a flexible land use and design regulation through the use of performance criteria so that large-scale resort development may be matched with sensitivity to the unique characteristics of its site and innovative development techniques may be accommodated that might not otherwise be possible through strict applications of standard land use regulation and subdivision requirements. The conventional use, area, bulk and density specifications set forth by other sections of this chapter are intended to be replaced by the approved PRD District plan, which then becomes the basis legislatively established by the Town Board through rezoning for detailed design, review and control of subsequent development.
- (2) While flexibility in substantive regulations is thus encouraged, it is intended that this uniform procedure and the required conformance with the Town Comprehensive Plan and the purposes of this chapter, as specified in § 106-2, shall ensure the general welfare through equal treatment under the

law as well as precise control of aspects of the development as approved.

B. General criteria. The legislative determination to establish a Planned Resort Development (PRD) District shall be based upon the following standards:

- (1) Location. A Planned Resort Development (PRD) District may be established on any lands within the Town of Harrietstown but only if the objectives and provisions of this chapter are satisfied as determined by the Town Board.
- (2) Development area. The minimum development area required to qualify for a Planned Resort Development District shall be twenty-four (24) contiguous acres of land.
- (3) Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners of all property included in the project. In the case of multiple ownership, the approved plan and its amendments shall be binding on all owners or their successors in title and interest.
- (4) Permitted uses in PRD Districts.
 - (a) All uses within an area designated as a Planned Resort Development District shall be determined in accordance with the provisions of this section and the approved plan of the project concerned.
 - (b) All Planned Resort Development (PRD) Districts shall include a mix of uses from within at least two (2) of the categories of recreation and open space uses, lodging and tourist services and multifamily or cluster residential development. Eligible principal uses within the PRD District may be limited to those principal

uses listed below, but not limited to each of the categories:

- [1] Recreation and open space uses.
 - [a] Forestry and conservation uses.
 - [b] Parks and recreation areas.
 - [c] A golf course and country club.
 - [d] A commercial recreation or amusement facility.
 - [e] A riding academy.
 - [f] Waterfront uses.
 - [g] A marina or boatyard.
 - [h] A nonprofit membership club or nonprofit recreation use.
- [2] Lodging and tourist services.
 - [a] A day camp, camp, cottage or cabin development.
 - [b] Cultural facilities (library, art gallery, museum, etc.).
 - [c] A gasoline station, including convenience retail facilities.
 - [d] A hotel or motel development.
 - [e] A restaurant.
 - [f] A theater or concert hall.
 - [g] Tourist homes and bed-and-breakfast establishments.
 - [h] Vacation resorts.
 - [i] Health-related facilities.
- [3] Residential uses.

- [a] Residential cluster development in accordance with the standards and criteria set forth within Article IX of this chapter, with it further provided that such housing shall be restricted to attached condominium, cooperative or rental dwelling units or single-family dwellings, fee simple townhouses also included.
- (c) Customary accessory uses shall also be eligible for inclusion in a PRD District project plan. Such accessory uses may include:
 - [1] Home occupations.
 - [2] Private garages, storage spaces, recreational and community facilities as appropriate to the needs of the residents within the proposed PRD development or to the nonresidential uses located there.
 - [3] Limited neighborhood convenience retail, service and other nonresidential uses within the residential portion of a PRD District where such are scaled to primarily serve the residents of the proposed PRD development and are operated and maintained under the control of the PRD District's homeowners' association. The aggregate floor area of such convenience retail, service or nonresidential uses shall not exceed three percent (3%) of the aggregate residential floor area within the PRD.
 - [4] Recreation and community facilities serving both the residents of the proposed PRD development and the surrounding community to extend and enhance cultural and recreational opportunities within the town, provided that the facilities are

available to the residents of the proposed PRD District on an acceptable priority basis, e.g., a day-care center.

- (d) Furthermore, all uses listed as eligible for inclusion within a PRD District under the recreation and open space use and the lodging and tourist service categories shall be construed to include subordinate uses, e.g., small shops and personal uses, customarily accessory to the principal use and having as their primary clientele the visitors to or users of the principal use.

(5) Intensity of residential land use.

- (a) The residential density allowed within the Planned Resort Development District shall be determined by the approved Planned Resort Development District site plan. Where a Planned Resort Development District occurs by rezoning of a prior residential district (R-1, R-2 or R-3) as established by this chapter, the gross density may be increased from that otherwise permitted in the Schedule of Area and Bulk Regulations¹¹ for the prior residential district to a maximum of one hundred fifty percent (150%) of the permitted number of lots or dwelling units within a residential cluster development under § 281 of the Town Law, the Land Subdivision Regulations of the Town of Harrietstown¹² and § 106-52 of this chapter.
- (b) The maximum fifty-percent density bonus or some portion thereof may be authorized at the discretion of the Town Board upon satisfaction

¹¹ Editor's Note: The Schedule of Area and Bulk Regulations is included at the end of this chapter.

¹² Editor's Note: See Ch. 98, Subdivision of Land.

of a minimum of one (1) of the following performance criteria:

- [1] Developer-financed highway and intersection improvements which result in an improvement in the capacity of potentially impacted highways or the level of service of potentially impacted intersections;
 - [2] Developer participation in a town-defined affordable housing program (fair market rates are established by the Department of Housing and Urban Development for Franklin County);
 - [3] Provision by the developer of a site or an improvement essential for the development of the municipal water and/or sanitary sewage system;
 - [4] Dedication by the developer of significant public open space; and
 - [5] Grant by the developer of perpetual conservation easements covering five percent (5%) or more of the tract.
- (6) Water supply and sewage disposal. Any Planned Resort Development District shall be served by both water supply and sewage disposal facilities in accordance with the requirements of the Town of Harrietstown and the New York State Departments of Health and Environmental Conservation.
- (7) Building structure requirements. The building shall not occupy more than sixty-five percent (65%) of the total Planned Resort Development District tract.
- (8) Intensity of nonresidential land use. The nonresidential land use intensity allowed within a Planned Resort Development District shall be determined on a project-specific basis in accordance

with the intent and objectives of the PRD District rezoning procedure and the particular mix and configuration of uses proposed within the PRD District project plan. In making such determination, the Planning Board and Town Board may be guided by the supplementary regulations set forth in Article VI and the extraordinary standards for certain special permit uses stated in § 106-38 of this chapter.

C. Review and approval procedure.

(1) Application.

- (a) Application for establishment of a Planned Resort Development District shall be made, in writing, to the Town Board and shall be accompanied by the applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board. The application shall also be accompanied by either a short environmental assessment form or a full environmental assessment form as required by Article 8 of the Environmental Conservation Law and 6 NYCRR 617.
- (b) The Town Board shall refer the application to the Town Planning Board or its designated planning consultant for review and recommendation within forty-five (45) days of the date of application. The Planning Board shall require the applicant to furnish basic site data pertaining to the boundaries of the proposed Planned Resort Development District, existing zoning, the topography and subsoil conditions and such land use, utility and access plans as may be required by the Planning Board for a reasonable understanding of the nature and character of the proposed development. Said plans shall generally be at the level of detail anticipated for a preliminary plat or site plan

submission under the town's Land Subdivision Regulations or Zoning Law but need not exhibit engineering and/or construction detail. When a project has already been approved by the Planning Board, that application and approval will be made a part of the application for a PRD District.

(2) Planning Board review.

- (a) In its review of the application, the Planning Board shall consider, among other factors, the following:
 - [1] The need for the proposed land use or uses at the proposed location.
 - [2] The existing character of the neighborhood in which the use or uses would be located.
 - [3] The location of principal and accessory uses and buildings on the site in relation to one another.
 - [4] The pedestrian circulation and open space configuration in relation to structures.
 - [5] The traffic circulation features within the site, and the amount, location and access to automobile parking areas.
- (b) The Planning Board may recommend at this stage such changes in the proposed Planned Resort Development District plans that it deems essential to protect established or permitted uses in the vicinity, promote and protect the orderly growth and sound development of the Town and otherwise meet the requirements of this chapter.
- (c) Further, the Planning board may recommend to the Town Board at this stage the scope of the draft environmental impact statement (DEIS) that the applicant may prepare in accordance

with the provisions of this chapter and the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and related 6 NYCRR 617. The Planning Board shall also advise the Town Board, through its designated planning consultant, of the procedure to be followed to comply with the applicable State Environmental Quality Review Act requirements, with it required that all petitions for PRD District Zoning Map amendment be treated as the appropriate type of action under the State Environmental Quality Review Act.

- (d) Upon satisfaction of all State Environmental Quality Review Act requirements, the Planning Board shall, within thirty (30) calendar days, recommend approval, approval with modifications or disapproval to the Town Board of such PRD District rezoning application.
- (3) Town Board action. Upon receipt of the Planning Board's written report, the Town Board may then consider the legal establishment of the Planned Resort Development District through Zoning Map amendment. The procedure followed shall be as specified in Article XIII of this chapter.

D. Relationship to other requirements.

- (1) Upon approval of the Planned Resort Development District by the Town Board, application shall be made within one (1) year for approval of all or some portion of the intended development, in accordance with the more specific review requirements of the town's Land Subdivision Regulations, the site plan review and approval procedure contained in Article VIII of this chapter and other applicable regulations.
- (2) Additional performance requirements which may have been specified by the Town Board in its PRD

District approval actions, such as a time limit for either initiation or completion of improvements and other construction work on the proposed development, shall also be followed. The Town Board may act to return the property to its prior zoning district classification unless the Town Board, upon specific application and for good cause, authorizes an extension of such performance requirement.

- E. Effect of conditions. All conditions imposed by the Town Board, including those the performance of which are conditions precedent to the issuance of any permit necessary for the development of all or any part of the entire site, shall run with the land and shall neither lapse nor be waived as a result of any subsequent change in the tenancy or conditions and shall further be a part of any certificate of occupancy issued for any use or structure in such development.

ARTICLE X

Nonconforming Uses, Structures and Bulk

§ 106-54. Applicability.

The following provisions shall apply to all buildings, structures and uses existing on the effective date of this chapter, to all buildings and uses that may become nonconforming or noncomplying by reason of any subsequent amendment to this chapter and the Zoning Map¹³ which is a part thereof and to all complying buildings housing nonconforming uses.

¹³ Editor's Note: The Zoning Map is on file and available for inspection in the office of the Town Clerk.

§ 106-55. Nonconforming uses.

- A. Any lawful nonconforming use of buildings or open land in existence on the effective date of this chapter may be continued indefinitely but:
- (1) Shall not be enlarged, altered, extended, reconstructed or restored, except as provided in this Article, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, nor shall any external evidence of such use be substantially increased by any means whatsoever.
 - (2) Shall not be moved to another location where such use would be nonconforming.
 - (3) Shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals and then only to a use which, in the opinion of the Board of Appeals, is of the same or a more restricted nature.
 - (4) Shall not be reestablished if such use has been discontinued for any reason for a period, whether through vacancy or cessation of use, of one (1) year or more or has been changed to or replaced by a conforming use, with the intent to resume a nonconforming use not conferring the right to do so.
- B. While a nonconforming use may not be extended, nothing contained herein shall prohibit the extension of a lawful use to any portion of a noncomplying building or structure which existed prior to the enactment of this chapter. No nonconforming use shall, however, be extended to displace a conforming use. Furthermore, no change of title or possession of any such building, structure or lot shall be construed to prevent the continued nonconforming use of such building, structure or lot, except as hereinafter provided.

§ 106-56. Noncomplying buildings.

Nothing contained in this Article shall be deemed to prevent normal repair and maintenance of or structural alteration within a noncomplying building, provided that such action does not increase the degree of or create any new nonconformity. Further, any noncomplying building or structure declared unsafe by the Building Inspector in accordance with Chapter 43, Buildings, Unsafe, may be restored to a proper condition within the time period provided for such restoration.

§ 106-57. Restoration of damage.

Nothing contained in this Article shall be deemed to prevent the restoration of a lawful nonconforming use after damage for any reason or by any cause, provided that the bulk, height and area shall not be in excess of that which existed prior to the damage, that all applicable New York State Building Construction and Fire Code provisions are fully complied with and that the restoration must be commenced within six (6) months and completed within one (1) year of such occurrence or the use of such buildings or land as a legal nonconforming use shall thereafter be terminated.

§ 106-58. Termination of certain uses.

Each of the nonconforming uses specified in this Article is deemed sufficiently objectionable and out of character within the zoning district in which such use is located as to depreciate the value of other property and uses permitted in the district and otherwise inhibit the proper and orderly development of such district. Therefore, each such nonconforming use must be and shall be terminated on or before the expiration of the specified period of time after the effective date of this chapter.

- A. Nonconforming signs. Any nonconforming or noncomplying sign, accessory or nonaccessory, including such features or locations as prohibited in § 106-21A herein, shall be modified by its owner to conform or be

removed within thirty (30) days after receipt by the owner of specific written notice from the Building Inspector to so comply.

- B. Obsolete signs. Any sign existing on or after the effective date of this chapter which advertises a business no longer conducted, a product no longer available or a service no longer provided on the premises shall be removed by the owner of the sign and/or premises upon which the sign is located within ten (10) days after receipt of written notice from the Building Inspector to remove such obsolete sign.
- C. Objectionable land uses.
 - (1) Any nonconforming use of open land, including but not limited to such uses as disposal areas, junkyards and motor vehicle junkyards, may be continued for a period of three (3) years after the effective date of this chapter, provided that after the expiration of such period, such nonconforming use shall be terminated. Notice of this provision shall be provided to any affected property owner within ninety (90) days of the adoption of this chapter.
 - (2) As an alternative to termination of the objectionable land use, upon specific application to the Zoning Board of Appeals, continuation of the use may be authorized by special permit upon strict compliance with all regulations established within the town's May 1963 licensing ordinance,¹⁴ the site plan review and approval requirements stated within Article VIII of this chapter and the standards and procedures established within Article VII of this chapter.

¹⁴ Editor's Note: Said licensing ordinance was deleted at time of adoption of Code.

**ARTICLE XI
Administration and Enforcement**

§ 106-59. Building Inspector; right of entry.

- A. The Town Building Inspector shall administer and enforce all provisions of this chapter, except where otherwise herein specifically required. Whenever any permit is required herein, the same shall be applied for and shall be issued in the first instance from the office of the Building Inspector in accordance with the requirements of this chapter and applicable regulations governing building construction and the issuance of building permits.
- B. The Building Inspector shall have the right to enter upon, examine and inspect or cause to be entered, examined and inspected any building or property at any reasonable time for the purpose of carrying out his duties and to determine compliance with the provisions of this chapter. A written report of each such examination and inspection shall be prepared on an appropriate form and kept on file by the Building Inspector.

§ 106-60. Powers and duties of Building Inspector.

In addition to all other authority conferred by law, the Building Inspector shall have the following powers and duties with respect to this chapter:

- A. Issuance of building permits.
 - (1) Except as provided in § 106-15C as it pertains to portable accessory structures, no building or structure shall be erected, altered, reconstructed or enlarged and no excavation for any building begun, nor shall substantial alteration of or additions to facilities such as sewage disposal systems, electrical systems and water supply systems, including plumbing or drainage facilities, be undertaken until the Building Inspector has issued a building permit

stating that the proposed use and structure comply with all applicable provisions of this chapter.

- (2) All building permit applications shall be accompanied by two (2) copies of a plot plan or an approved site plan drawn to scale and accurately dimensioned, showing the location of all existing and proposed structures on the lot and such other information as may be required by the Building Inspector to determine compliance with this chapter and other applicable regulations. One (1) copy of such plan, when approved by the Building Inspector, shall be returned to the applicant upon payment of the required building permit fee in accordance with a schedule established and reviewed annually by the Town Board.

B. Issuance of certificates of occupancy or use.

- (1) Except as provided in § 106-15C as pertains to portable accessory structures, no use shall be established on land or structure occupied or otherwise used until the Building Inspector has issued a certificate of occupancy or use stating that the use, land and structure comply with all applicable provisions of this chapter.
- (2) More particularly, no certificate of occupancy or use shall be issued for any special use of a building or of land requiring special permit or site plan approval by the Planning Board unless and until such special permit or site plan approval has been granted by the Planning Board. Every certificate of occupancy or use for which special permit or site plan approval has been granted or in connection with which a variance has been granted by the Board of Appeals shall contain a detailed statement of any condition to which the same is subject and include, by attachment, a copy of such Board of Appeals decision.

- C. Issuance of notices of violation. Whenever, in the opinion of the Building Inspector, after proper examination and inspection, there appears to exist a violation of any provision of this chapter or of any rule or regulation adopted pursuant thereto, he shall, on his own initiative, serve a written notice upon the appropriate person responsible for such alleged violation. Such notice shall be served by certified mail and shall inform the recipient of the following:
- (1) The nature and specific details of such violation.
 - (2) The date of compliance by which the violation must be remedied or removed, which period shall not exceed ten (10) days from the receipt of such notice.
- D. Issuance of stop orders. Whenever the Building Inspector has reasonable grounds to believe that work on any building or structure or any use of land is occurring either in violation of the provisions of this chapter, not in conformity with any application made, permit granted or other approval issued hereunder or in an unsafe or dangerous manner, the Building Inspector shall promptly notify the appropriate person responsible to suspend work on any such building or structure or the use of any such land. Such persons shall forthwith suspend such activity until such time that the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work or use may be resumed and may be served upon the person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building under construction or premises in use and additionally sending a copy of the same by certified mail.
- E. Taking of emergency action. If, in the opinion of the Building Inspector, a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety or welfare of occupants of a building or to other persons, the Building Inspector may

direct such violation to be immediately remedied or may take direct action on his own initiative to abate the hazard or danger. Any costs incurred by such action shall be paid for by the owner, occupant or person responsible for the violation. The Building Inspector shall keep on file an affidavit stating with fairness and accuracy the items of expense and date of execution of action taken and is furthermore authorized to institute a suit, if necessary, against the person liable for such expenses or to place a lien against property in order to recover said costs.

§ 106-61. Penalties for offenses.

- A. Civil penalty. Violation of any provision or requirement of this chapter or violation of any statement, plan application, permit or certificate approved under the provisions of this chapter shall be considered an offense punishable by a fine of not more than two hundred fifty dollars (\$250.) and/or imprisonment for not more than six (6) months for each such offense. The owner, general agent or contractor of a building premises or part thereof where such a violation has been committed or does exist and any agent, contractor, architect, builder, corporation or other person who commits or takes part or assists in such violation shall be liable for such an offense. All such penalties shall be collectible by and in the name of the town; each and every day that any such violation continues after notification that such violation exists shall constitute a separate offense. Such notice shall be given, in writing, by the Building Inspector and shall be served by certified mail or personal service.
- B. Court action. The imposition of penalties herein prescribed shall not preclude the town or any person from instituting appropriate legal action or proceedings in a court of competent jurisdiction to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to

restrain by injunction, correct or abate a violation or to prevent the illegal occupancy of a building, land or premises.

- C. **Taxpayer action.** If the Building Inspector fails or refuses to act upon or to refer a violation of this chapter to the Town Attorney for legal action in accordance with the provisions contained herein within a ten-calendar-day period following written request by any taxpayer to so proceed, then any three (3) or more taxpayers of the Town of Harrietstown may institute appropriate legal action in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter.

ARTICLE XII Zoning Board of Appeals

§ 106-62. **Board created; membership; organization.** [Amended 8-27-1987 by L.L. No. 2-1987]

A Zoning Board of Appeals is hereby created in accordance with § 267, Article 16 of the Town Law. Said Board shall consist of seven (7) members appointed by the Town Board for terms of five (5) years. All members are subject to removal by the Town Board for cause after public hearing. The Town Board shall annually designate the Chairman of the Board of Appeals, while the Board of Appeals shall annually designate its Secretary and may prescribe in its bylaws reasonable rules in addition to those provided herein for the conduct of its affairs.

§ 106-63. **Powers and duties.**

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- A. **Interpretation.** To hear and decide on questions where it is alleged there is an error in any order, requirement,

decision or determination made by the Building Inspector involving the interpretation of any provision of this chapter or, on request by an administrative official, board or agency of the town, to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this chapter or of any conditions or requirement specified or made under the provisions of this chapter.
 - (2) Determination of the exact location of any district boundary shown on the Zoning Map.¹⁵
- B. Issuance of special permits. In authorizing any special permit use, as specified in Article IV, Use Regulations, the Board of Appeals shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and that of the residents of the immediate neighborhood in particular. The Board of Appeals shall also take into strict account the general standards for special permit uses set forth in § 106-37 of this chapter and the more specific standards for certain special permit uses set forth in §§ 106-38 and 106-39 herein.
- C. Variances. To authorize, upon appeal in specific cases, such variances from the terms of this chapter as will not be contrary to the public interest where, due to exceptional and extraordinary circumstances, there are unnecessary hardships or practical difficulties in the way of carrying out the strict letter of this chapter subject to terms and conditions to be fixed by the Board; provided, however, that no such variance shall be granted unless the Board finds that:
- (1) There are physical conditions, such as the case of an exceptionally irregular, narrow, shallow or steep lot, fully described in the findings of the Board, applying

¹⁵ Editor's Note: The Zoning Map is on file and available for inspection in the office of the Town Clerk.

to the land or building for which the variance is sought, which conditions are peculiar to such land or building and have not resulted from any act of the applicant or any predecessor in title;

- (2) For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; and
- (3) The granting of the variance under such conditions as the Board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this chapter, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

§ 106-64. General procedures.

In carrying out its responsibilities under § 106-63, the Zoning Board of Appeals shall act in strict accordance with the procedure specified by § 267 of the Town Law and this chapter.

- A. Meetings. Meetings shall be held at the call of the Chairman or at such other times as the Board of Appeals may determine. A quorum shall consist of three (3) members, but in order to reverse a decision of the Building Inspector, issue an interpretation or special permit or authorize a variance, an affirmative vote of at least (3) members shall be required. A favorable vote of a majority plus one (1) shall also be required if the action taken is contrary to an advisory recommendation received from the Franklin County Planning Board

under the provisions of §§ 239-l and 239-m of the General Municipal Law. The Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations and other official actions. All meetings of the Board of Appeals shall be open to the public.

- B. Application and fee. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board, within thirty (30) days of the action appealed from, and shall be accompanied by the applicable fee in accordance with the fee schedule established and annually reviewed by the Town Board. Every appeal or application shall refer to the specific provision of this chapter that is involved and shall precisely set forth either the interpretation that is claimed or the details of the action that is applied for and the grounds on which it is claimed that such action should be granted.
- C. Public notice and hearing. The Board shall fix a reasonable time and place for a public hearing on any such appeal or application, of which hearing date the appellant shall be given notice and at which hearing he shall appear in person or by agent. The Board shall additionally provide notice as follows:
 - (1) By publishing, at least ten (10) calendar days prior to the date thereof, a legal notice in the official newspaper of the town.
 - (2) By requiring the Secretary of the Board of Appeals to provide notice, at least five (5) calendar days prior to the date thereof, of the substance of every appeal or application, together with a notice of the hearing thereon, by mailing such to the owners of all property abutting that held by the applicant. Compliance with this notification procedure shall be certified by the Secretary.
 - (a) The names of owners notified shall be taken as such appear on the last completed tax roll of the town.

- (b) Provided that there has been substantial compliance with these provisions, the failure to give notice in exact conformance herewith shall not be deemed to invalidate an action taken by the Board of Appeals in connection with granting or denying of an appeal or application.
- (3) By requiring the Secretary of the Board of Appeals to transmit to the Secretary of the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing, at least twenty (20) calendar days prior to the date thereof. The Board of Appeals shall request that the Planning Board submit to the Board of Appeals an advisory opinion prior to the date of such hearing. Upon failure of the Planning Board to submit such report, said Board shall be deemed to have recommended approval of the application or appeal.
- (4) If the land involved in the appeal lies within five hundred (500) feet of the boundary of any other municipality, the Secretary of the Board of Appeals shall also submit, at least five (5) calendar days prior to the public hearing, to the Municipal Clerk of such other municipality or municipalities, a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.

D. Required referral.

- (1) A full statement of any appeal or special permit application that meets the referral requirements of §§ 239-l and 239-m of the General Municipal Law shall also be referred prior to the public hearing to the Franklin County Planning Board for its review.
- (2) Such actions shall include those which affect property located within five hundred (500) feet of the following:
 - (a) A municipal boundary.

- (b) A boundary of any existing or proposed county or state park or other recreation area.
 - (c) A right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
 - (d) An existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
 - (e) An existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.
- (3) No action shall be taken by the Board of Appeals on such appeal or special permit application until an advisory recommendation has been received from said County Planning Board or thirty (30) calendar days have elapsed since the Planning Board received such full statement.
- E. Decisions. Every decision of the Board of Appeals shall be recorded in accordance with standard forms adopted by the Board and shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is based. Every decision shall be by resolution of the Board, with each such decision being filed in the office of the Town Clerk within ten (10) calendar days thereof. The Board shall also notify the Building Inspector, the Secretary of the Planning Board and any affected municipality given notice of hearing of its decision in each case. If applicable, a report on the action taken shall also be filed within seven (7) calendar days of said action with the Franklin County Planning Board.
- F. Attachment of conditions. In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this chapter, it shall be the duty of such Board to attach such conditions and safeguards as

may be required in order that the result of its action shall be as nearly as possible in accordance with the spirit and intent of this chapter.

- G. Expiration of approval. Unless construction or use is commenced and diligently pursued within one (1) calendar year from the date of the granting of a variance or special permit, such variance or special permit shall become null and void without further hearing by the Board of Appeals.
- H. Strict construction. All the provisions of this chapter relating to the Board of Appeals shall be strictly construed. The Board of Appeals, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein; provided, however, that if the procedural requirements set forth in this chapter have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.

§ 106-65. Appeals.

Any person or persons jointly or severally aggrieved by any decision of the Board of Appeals may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Laws and Rules of the State of New York. Such proceeding shall be governed by the specific provisions of Article 78, except that the action must be initiated as therein provided within thirty (30) days after the filing of the Board's decision in the office of the Town Clerk.

ARTICLE XIII
Amendments

§ 106-66. Amendments authorized; method.

This chapter or any part thereof, including the Zoning Map¹⁶ indicating the various district boundaries, may, from time to time, be amended, supplemented, changed, modified or repealed by the Town Board in the manner provided by §§ 264 and 265 of the Town Law.

§ 106-67. Initiation of amendments.

An amendment to this chapter may be initiated in any of four (4) ways:

- A. By the Town Board upon its own motion.
- B. By resolution of the Planning Board, filed with the Town Clerk, wherein certain changes to or repeal of specific provisions of this chapter are recommended, in which case it shall be the duty of the Town Board to act on such proposed amendment within ninety (90) days of the time such resolution is filed by the Planning Board with the Town Clerk.
- C. By petition duly signed and acknowledged from the owners of fifty percent (50%) or more of the frontage in any district or part thereof requesting an amendment, supplement or change in the regulations prescribed for such district or part thereof, in which case it shall be the duty of the Town Board to act upon such petition for amendment within ninety (90) days of the time such petition is filed by the petitioners with the Town Clerk.
- D. When an amendment to the Zoning Map involves reclassification of land to the C-1 (Conservation) District, the Town Board shall, upon notice and accompanying accurate map from the New York State Department of

¹⁶ Editor's Note: The Zoning Map is on file and available for inspection in the office of the Town Clerk.

Environmental Conservation that the land shown on said map has been acquired by the State of New York as part of the forest preserve or for other purposes under the administrative jurisdiction of said Department, initiate proceedings to amend the Zoning Map to reclassify the land to the C-1 District in accordance with the provisions of this section.

§ 106-68. Referral to Planning Board; report.

- A. All proposed amendments, supplements or changes originating by petition or by motion of the Town Board shall be referred to the Planning Board for a report and recommendation thereon, provided that, in connection with proposed Zoning Map amendments involving changes to the C-1 District, the referral shall be for informational purposes only and the Planning Board shall not be required to report thereon. In undertaking such review, the Planning Board shall make inquiry and provide recommendation concerning the items specified below:
- (1) Whether such change is consistent with the purposes embodied in this chapter as applied to the particular districts concerned.
 - (2) Which areas and establishments in the town will be directly affected by such change and in what way will they be affected.
 - (3) Whether adequate public services and other support facilities exist or can be created to serve the needs of any additional development that may occur as a result of such change.
 - (4) The indirect implications of such change in its effect on other regulations.
- B. The Planning Board shall submit its report within forty-five (45) days after receiving such referral. Failure of the Planning Board to report within the required time shall

be deemed to be a recommendation of approval of the proposed amendment.

§ 106-69. Public notice and hearing.

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

- A. By publishing a notice at least ten (10) calendar days prior to the time of such hearing in the official newspaper of the town, specifying:
 - (1) The nature of the proposed amendment;
 - (2) The land or district affected; and
 - (3) The date, time and place where the public hearing shall take place.
- B. By providing a copy of such notice of any proposed change or amendment affecting property within five hundred (500) feet of any other municipality to the Clerk of such municipality at least ten (10) calendar days prior to the date of such public hearing.

§ 106-70. Referral to County Planning Board.

The Town Board shall transmit a full statement of any proposed amendment, either map or text, that meets the referral requirements of §§ 239-l and 239-m of the General Municipal Law to the Franklin County Planning Board for its review and recommendation. No action shall be taken by the Town Board on such proposed amendment until a recommendation has been received from the Franklin County Planning Board or thirty (30) calendar days have elapsed since said Board received such full statement.

§ 106-71. Environmental quality review.

Proposed amendments are actions subject to the provisions of the New York State Environmental Quality Review Act.¹⁷ Prior to formal consideration and public hearing, the Town Board shall make a determination as to the type of action, lead agency status and environmental significance of the proposal in accordance with Article 8 of the Environmental Conservation Law and 6 NYCRR 617.

§ 106-72. Town Board action.

The Town Board may approve any such proposed amendment by a majority vote of said Board, except that a favorable vote of at least four (4) members of the Town Board, i.e., a majority plus one (1), shall be required if:

- A. Action being taken is contrary to the advisory recommendation received from the Franklin County Planning Board under the provisions of §§ 239-l and 239-m of the General Municipal Law; or
- B. In accordance with the provisions of § 265 of the Town Law, a protest petition against such amendment has been duly signed and acknowledged by the owners of at least twenty percent (20%) of the land area included in such proposed change or of that immediately adjacent extending one hundred (100) feet therefrom or that directly opposite, separated only by a private or public thoroughfare.

¹⁷ Editor's Note: See Art. 8 of the Environmental Conservation Law.

§ 106-73

ZONING

§ 106-75

ARTICLE XIV
Miscellaneous Provisions

§ 106-73. Construal of provisions; greater restrictions to apply.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions or those imposing the highest standards shall govern. Furthermore, this chapter shall not be deemed to interfere with, abrogate, annul or otherwise affect any easements, covenants or other agreements between parties, provided that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are required by those easements, covenants or agreements, the provisions of this chapter shall prevail.

§ 106-74. Existing violations.

No site plan or special permit shall be approved, no building permit or certificate of occupancy or use issued or variance granted under this chapter for premises upon which there is an existing violation of this chapter or any related town regulation governing either building construction or the use of land and structures within the Town of Harrietstown. This limitation does not, however, prohibit such an approval, issuance or grant with respect to a legal nonconforming use or legal noncomplying structure.

§ 106-75. Periodic review required.

From time to time, at intervals of not more than five (5) years, the Planning Board shall conduct a review of the effectiveness of the provisions of this chapter, including the

§ 106-75

HARRIETSTOWN CODE

§ 106-76

location of district boundaries, and shall submit a report thereon to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

§ 106-76. Superseded legislation.

The Zoning Ordinance of the Town of Harrietstown, New York, enacted by the Town Board on May 27, 1971, together with all changes and amendments thereto, is hereby comprehensively amended and superseded by this chapter.