

Town of Mount Hope

Zoning Law – January 2019

Chapter 250: Zoning

Article I Authority and Purposes

§ 250-1 Legislative authority; purpose.

There is hereby established a comprehensive zoning plan regulating and restricting the location, grouping, bulk, construction, and use of buildings and structures, and the development and use of land in the Town of Mount Hope, New York (hereinafter referred to as the "Town"), and providing fines and penalties for the violation thereof, which chapter is set forth in the following text, schedules, and map forming the "Zoning Law for the Town of Mount Hope." Said chapter is adopted for the purposes set forth in Article 16 of the Town Law and in the Municipal Home Rule Law of the State of New York and is enacted pursuant to said Municipal Home Rule Law in the interest of protection and promotion of order and the health, safety and well-being of persons and property and the protection and enhancement of the physical and visual environment.

§ 250-2 Purposes enumerated.

The comprehensive zoning plan shall be deemed to include the following purposes, among others, to:

- A. Guide future growth and development of the Town of Mount Hope in relation to the orderly development of the region of which it is a part, and in consideration of its existing development pattern and improvements, its resources, and the quality of its environment.
- B. Provide adequate light, air and privacy; to secure safety from fire, flood and other danger; to prevent overcrowding or the overly intensive or inappropriate use of land; and to protect the quality of the physical environment.
- C. Promote a mutually supportive, logical, and harmonious interrelation of land uses by bringing about the gradual conformity of the uses of land and building throughout the Town to the Zoning Law set forth in this chapter and minimizing conflicts between the uses of land and buildings.
- D. Prevent and reduce traffic congestion so as to promote safe and efficient circulation of pedestrian and vehicular traffic.
- E. Encourage the use of land and the design of buildings so as to create a harmonious appearance in all parts of the Town.
- F. Encourage flexibility in the design and development of land in such a way as to promote the most appropriate use of land; to facilitate the adequate and economical provision of streets, utilities and parks; to protect production agriculture; to preserve natural and scenic qualities of open lands for public enjoyment; and to provide opportunity and choice of housing and environment suitable to the varied needs of the population.

Article II Terminology

§ 250-3 Word usage.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meaning herein indicated. Words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, or other entity, as well as an individual; the word "lot" includes the word "plot." The term "occupied" or "used" as applied to any building, structure or parcel of land shall be construed as though followed by the words "or intended, capable of, arranged or designed to be occupied or used." The term "Board of Appeals" shall be interpreted to mean the same as the term "Zoning Board of Appeals" wherever used.

§ 250-4 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meaning herein indicated:

ACCESSORY — A term applied to a building or use clearly incidental or subordinate to, and customarily in connection with, the principal building or use on the same lot.

AGRICULTURE or HORTICULTURE — The cultivation of soils for food products or other useful or valuable growths in the field or garden or within structures, exclusive of facilities for display of products or on-premises marketing except as may be specifically permitted in this chapter. "Agriculture" shall also be deemed to include poultry, ratitae, or livestock production or breeding as permitted pursuant to this chapter, including the raising of cattle or other livestock for the purposes of milk or meat production. Agricultural or horticultural uses shall also be deemed to include uses such as nurseries, greenhouses, orchards, field crops, vineyards, and any other cultivation of soils and natural products thereof, as well as the keeping, breeding, and raising of beef or dairy cattle, horses, sheep or other permitted livestock. Horticultural uses shall be included under the definition of "agriculture." Breeding pigs for market and the commercial breeding and/or raising of fur-bearing animals, including but not limited to mink, shall also be considered to be an agricultural activity.

AGRICULTURAL ACTIVITY (as it relates to Article XII Stormwater Management and Erosion and Sediment Control) — The activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

ALTERATION — A change or rearrangement in the structural parts of a building, or an enlargement, whether by extending to a side or by increasing the height.

ANTENNA — Any tower, apparatus or structure for the purpose of transmitting or receiving radio waves or microwaves as defined by the Federal Communication Commission. The height of the antenna shall be measured in a vertical distance from the average elevation of the finished grade at the base of the antenna to

the highest point of the antenna, or, if mounted on a building, from the elevation of the finished grade of the building directly below the antenna.

APPLICANT – A property owner or agent of a property owner who has filed an application for a land development activity.

ART-AND-CRAFT STUDIO — A home occupation involving the fabrication and/or retail sale of curios, novelties, or handmade artwork and the repair or sale of antiques or collectibles.

BED-AND-BREAKFAST — A home occupation involving the rental of up to four rooms as transient accommodations, with breakfast served to guests, but with no full service restaurant facilities.

BOARDINGHOUSE — A building containing a single dwelling unit and lodging rooms accommodating, for compensation, two or more persons, who are not the keeper's family.

BUILDING — A structure wholly or partially enclosed within exterior walls and a roof, affording shelter to persons, animals or property.

BUILDING INSPECTOR — The Town official who is responsible to administer this chapter in addition to his role as enforcer and administrator of the local Building Construction Code. All references to the "Building Inspector" include the Deputy Building Inspector and Code Enforcement Officer.

CAMPER — Includes any person who registers his party for occupancy of a campsite or who otherwise assumes charge of or is placed in charge of a campsite.

CAMPGROUND — A plot of ground upon which two or more campsites are located, established, or maintained and occupied by camping units as temporary living quarters for a total of 15 days or more in any calendar year.

CAMPGROUND OWNER — Includes the owner, lessee, tenant or other person authorized to operate a campground as defined pursuant to this chapter.

CAMPING VEHICLE — Includes any licensed camp trailer, travel trailer or other unit built or mounted on a vehicle or chassis designed without permanent foundation which is used for temporary dwelling or sleeping purposes and which does not exceed eight feet in width in its travel state.

CAMPSITE — Includes any plot of ground within a campground intended for occupancy by a camp unit or units.

CAMP UNIT — Includes any tent, camping vehicle, or similar structure, temporarily located on a campsite as temporary living quarters, but shall not include any camping unit kept at a campground for storage purposes only.

CENTRAL WATER AND SEWER SYSTEMS — A system or systems under control and maintained by one ownership that serves two or more dwelling units. **[ADDED 12-10-2001 BY LL. No. 4-2001]**

CHANNEL — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING — Any activity that directly or indirectly removes the vegetative surface cover.

CONVENIENCE STORE — A one-story retail store containing less than 2,000 square feet of gross floor area that is designed and stocked primarily to sell food, beverages, and household supplies to retail customers. Such establishments may include the retail sale of gasoline, oil and other automotive fluids, although no repairs or servicing of vehicles are permitted.

CONSTRUCTION AND DEMOLITION DEBRIS — Wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving material and tree and brush stumps.

DAY-CARE CENTER — A facility licensed by the New York State Department of Social Services pursuant to Social Services Law. A day-care center program provides for more than three hours and less than 24 hours per day of care away from the child's home by an individual, association, corporation, institution or agency. A day-care center shall not include any of the following: a day camp; an after-school program operated for the primary purpose of religious education; or a facility operated by a public school district. **[ADDED 3-8-2004 BY LL. No. 1-2004]**

DESIGN MANUAL — The New York State Stormwater Management Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER — A person who undertakes land development activities or acts as an agent on behalf of another.

DOMESTIC ANIMAL — Any of various animals, including but not limited to the horse or sheep, that is typically and customarily adapted to living in a tame association with humans. Small pets that are not customarily adapted to being harbored outdoors or in barns, including but not limited to animals such as canaries, gerbils, and tropical fish, but specifically excluding cats and dogs, are not regulated for purposes of this chapter except where the same are harbored and/ or bred on a large scale for commercial, laboratory, fur, or other purposes.

DUMP — A parcel of land or part thereof used for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of any unwanted material of any origin, including but not limited to metal, stones, concrete, metal tanks, automobiles, automobile parts, construction and demolition debris, barrels, metal cans, or other metal containers, hazardous or medical waste materials, or garbage and soil

waste of any nature, and any materials or items which are being disposed of and which require federal, state, and/or local permits for the disposal of the same.

DWELLING — A building designed or used as the living quarters for one or more families. The term "dwelling" shall include seasonal homes and mobile homes, provided that they meet all of the requirements of this chapter, the Building Code and all other federal, state or municipal regulations, ordinances or local laws applicable to dwellings.

DWELLING, ONE-FAMILY — A detached building containing one dwelling unit only.

DWELLING, TWO-FAMILY — A detached building containing two dwelling units only.

DWELLING UNIT — A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, and having no enclosed spaces (other than vestibules, entrances and other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A boardinghouse room, dormitory, motel, inn, nursing home, or other similar structure shall not be deemed to constitute a "dwelling unit."¹

EARTH-MOVING EQUIPMENT — Scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed.

EROSION CONTROL MANUAL — The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book."

FAMILY — One or more persons living together as a single, stable, bona fide housekeeping unit using all rooms and housekeeping facilities of a dwelling unit in common. Any such number of persons shall not be deemed to constitute a "family" if any one of such persons does not have lawful access to all parts of said dwelling unit and/or if any or more of such persons lease or rent any separate portion of such dwelling unit from any other persons.

FLOOR AREA — The sum of the gross horizontal area of the floor or floors of a structure as measured from the exterior faces of the wall of the building.

FOWL — Including but not limited to domesticated birds such as pigeons, chickens, ducks, geese, turkeys and pheasants raised in confinement, whether indoors or outdoors.

¹ Editor's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Art. I).

GARAGE, PRIVATE — An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

GARAGE, PUBLIC — Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other motor vehicles.

GRADING — Excavation or fill of material, including the resulting conditions thereof.

HEALTH CLUB — A for-profit or not-for-profit indoor or mixed indoor/outdoor recreational and exercise facility that may include such facilities as weight-lifting equipment, indoor and/or outdoor running tracks, swimming pools, tennis, squash, handball, or racquetball courts, exercise machines such as treadmills, rowers, stationary bicycles and the like, and accessory facilities such as saunas, tanning rooms, showers and locker rooms, but specifically excluding video game rooms as well as all uses listed under § 250-610(3) of this chapter as prohibited recreational uses.

HEIGHT — The vertical distance measured from the average elevation of the finished grade along the side of the structure fronting on the nearest street to the highest point of such structure.

HOME OCCUPATION — Any gainful occupation customarily conducted within a dwelling by its residents thereof, clearly secondary to the use of the dwelling for living purposes, and that does not change the character of the structure as a residence. Said activity shall not occupy more than 1/2 of the ground floor area of the dwelling or its equivalent elsewhere in the dwelling if so used. Permissible home occupations include, but are not limited to, art-and-craft studio, writer's studio, insurance sales office, bed-and-breakfast establishment, dressmaking, offices of a clergyman, lawyer, physician, dentist, architect, engineer, accountant or similar professional; teaching, with musical, dancing and other instruction limited to one pupil at a time; barbershop or beauty parlor limited to one station, and office of real estate broker or salesperson. However, home occupations shall not be construed to include uses such as the following: clinic or hospital, restaurant, animal hospital, or dog kennel.

HOUSEHOLD PET — Any domesticated animal used solely for the enjoyment of the member(s) of a household and not for commercial purposes. Domesticated animals shall not include wild individual animals that have been tamed for household habitation, livestock, poultry, or ratitae.

IMPERVIOUS COVER — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.)

INDUSTRIAL STORMWATER PERMIT — A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION – The process of percolating stormwater into the subsoil.

JUNKYARD — Any area of land including buildings thereon which is used primarily for the collecting, storage and sale of wastepaper, rags, scrap metal, tires or discarded material; or for the collecting, dismantling, storage or salvaging of machinery or vehicles not in running condition and for the sale of parts thereof. Two or more motor vehicles either whole or complete, partially dismantled or parts thereof, stored outside without current license plates, unregistered and uninsured, shall constitute a "junkyard."

JURISDICTIONAL WETLAND – An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation." Such areas may also have government entities such as the New York State Department of Conservation (NYSDEC) and the United States Army Corps of Engineers (ACOE) which have jurisdiction over it.

KENNEL — A place where more than six adult dogs are kept for boarding, breeding and/or training, raising, grooming, training or veterinary care.

LAND DEVELOPMENT ACTIVITY – Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LIVESTOCK — Domesticated animals raised as a part of or in connection with an agricultural operation, including but not limited to horses, cows, poultry, sheep, goats, mink and pigs. See "agriculture."

LOT — A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses, accessory or incidental to the operation thereof, together with such open spaces as required by this chapter, and having frontage on a public street.

LOT AREA — The total area of a lot.

LOT, CORNER — A lot at the junction of and fronting on two or more intersecting streets. Such a lot would have two front yards.

LOT COVERAGE — The percentage of the area of the lot covered by a building or buildings.

LOT, DEPTH — The minimum distance from the street line of a lot to the rear lot line of such lot.

LOT LINE — Any boundary of a lot other than a street line.

LOT LINE, FRONT — The line separating a lot from a street.

LOT LINE, REAR — The lot line generally opposite to the street line.

LOT WIDTH — The distance between side lot lines at the required minimum front yard depth measured along a line parallel to a line connecting the end points of the front lot line.

MAINTENANCE AGREEMENT — A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

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

MOBILE HOME —

- A. Any vehicle mounted on wheels, movable either by its own power or capable of being drawn by another vehicle, and equipped to be used for living or sleeping quarters or so as to permit cooking.
- B. The term "mobile home" shall include vehicles if mounted on temporary or permanent foundations with the wheels removed.
- C. The term "mobile home" shall not include a camping trailer, travel trailer, or office trailer.
- D. Mobile homes are built with steel chassis, not requiring a foundation. Mobile homes require a title and do not need to be registered with the NYS Department of Motor Vehicles. Modular homes are placed on a foundation or basement. Manufactured homes are similar to modular, but require permanent wheeled chassis.

MOBILE HOME COURT OR PARK — Any area of land occupied by two or more mobile homes that are used for dwelling purposes.

MOBILE HOME, DOUBLE-WIDE — A mobile home structure, transportable in two or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities.

MOBILE HOME SALES LOT — Any area of land upon which mobile homes are placed for purposes of sale or display.

MODULAR HOME — An off-site fabricated, sectionalized transportable building for dwelling purposes, designed to be used by itself or to be incorporated with similar building sections and placed on a permanent foundation at the building site.

MOTEL or HOTEL — Any establishment consisting of a building or group of buildings providing living and/or sleeping accommodations with individual bathrooms, and designed for use by transient automobile travelers. Length of stay shall be limited to a period not to exceed 30 consecutive days nor more than 90 days in a calendar year within any room in such a facility.

NONCONFORMING LOT — Any lot lawfully existing and on record on the effective date of this chapter or any amendment thereto which does not meet the minimum bulk requirements, including but not limited to lot area and/or lot width, the depth requirements of this chapter for the zoning district in which such lot is situated as a result of such enactment or amendment.

NONCONFORMING STRUCTURE — Any structure which is lawfully in existence within a given zoning district on the effective date of this chapter or any amendment thereto, but which is not in conformance with the bulk table regulations² for that zoning district as a result of such enactment or amendment.

NONCONFORMING USE — Any use which is lawfully in existence within a given zoning district on the effective date of this chapter or any amendment thereto which does not conform to the district use regulations as a result of such enactment or amendment.

NON-NUISANCE INDUSTRY, LIMITED - employs four or fewer employees at one time, generates little or no heavy truck traffic, contains no outdoor storage yards, and is situated in a building or portion of a building of not more than 2,500 square feet in floor area.

NONPOINT SOURCE POLLUTION – Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

NURSERY SCHOOL — An instructional facility for preschool children, usually between ages three and five, providing care for less than three hours a day. Schools may hold two sessions daily. **[ADDED 3-8-2004 BY LL. No. 1-2004]**

PERSON — Any individual, firm, company, association, society, corporation, group, partnership, or entity.

PHASING (as it relates to Article XII Stormwater Management and Erosion and Sediment Control) – Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN – Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PRINCIPAL STRUCTURE — In any residence district, the residential structure shall be deemed the principal structure on the lot when a residence is situated on the lot.

² **Editor's Note: See also the bulk tables included in attachments to this chapter.**

PROFESSIONAL FORESTER — A graduate forester from a Society of American Foresters' accredited forestry curriculum who has at least two years of experience in the field of forest management or timber harvesting. **[ADDED 7-8-2002 BY LL. NO. 1-2002]**

PROJECT (as it relates to Article XII Stormwater Management and Erosion and Sediment Control) – Land development activity.

RECHARGE – The replenishment of underground water reserves.

RETAIL STORE — A fully enclosed permanent store for the sale of retail goods and commodities of various types. This definition shall include a department store and also personal service shops such as hair care salons, nail salons and the like. However, establishments involving the sale of gasoline or other fuels, new or used motor vehicles, heavy machinery or farm equipment, trailers or modular homes, or used automotive parts shall not be included in this definition.

SCHOOL and COLLEGE — These categories consist of private, public and parochial facilities that provide a curriculum of elementary and secondary academic instruction, as well as higher education, including kindergartens; elementary, middle, junior and senior high schools; and two- year, four-year and advanced degree institutions. Nursery schools and day-care facilities licensed by the state are covered under "nursery schools" and "day care." **[ADDED 3-8-2004 BY LL. NO.1-2004]**

SEDIMENT CONTROL – Measures that prevent eroded sediment from leaving the site.

SELF-STORAGE CENTER — A public facility for dead storage of personal, household or business property which is serviced by the owner of the stored property or an agent of the owner. The term "self-storage center" includes all similar uses and terms, but shall not be construed to mean a warehouse.

SENIOR HOUSING DEVELOPMENT — Dwelling units, either rental or condominium, established for primarily individuals and families age 55 and older with not more than two bedrooms per unit. [Added 12-10-2001 by LL. No. 4-2001]

SENSITIVE AREAS – Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SIGN — Any letter, word, model, banner, pennant, insignia, trade flag, device, or representation used as, or which is in the nature of, an advertisement, attraction or directive.

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

- A. When such sign is on a plate or framed or outlined, all of the area of such plate or the area enclosed by such frame or outline shall be included;

- B. When such sign consists only of letters, design, or figures engraved, painted or projected or in any manner affixed on a wall, the total area of such sign shall be deemed the area within which all of the matter of which such sign consists may be inscribed.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION (as it relates to Article XII Stormwater Management and Erosion and Sediment Control) – The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER – An order issued which requires that all construction activity on a site be stopped.

STORMWATER – Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT – A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT – The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY – One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER – An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMPS) – Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) – A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF – Flow on the surface of the ground, resulting from precipitation.

STORY — A space between the surface of any floor and the surface of the next higher floor, or if no floor above it, the space between the surface of any floor and the ceiling immediately above it.

STREET — A public way which affords principal means of access to abutting properties.

STRUCTURE — Anything constructed or erected on or under the ground or upon or attached to another structure or buildings or any other use attached to another use or structure attached to the ground, including but not limited to stadiums, platforms, radio towers, underground utilities, sheds, storage bins, portable concrete batch plants, billboards, and display signs.

SURFACE WATERS OF THE STATE OF NEW YORK – Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

SWIMMING POOL — A private swimming pool, pond or tank that is constructed, installed or maintained upon any premises by any person for his own or his family's use and for the use of his guests and invitees, and shall also mean and include a wading pool or tank, artificially constructed or installed, not designed or used for swimming with a surface area of more than 120 square feet and a water depth of more than 18 inches. This definition shall explicitly exclude farm ponds.

TIMBER HARVESTING — An activity that fells standing trees and/or removes trees, stems, tops or branches within any twelve-month period whose volume is greater than 20 standard cords of wood or 2,560 cubic feet of wood or 10,000 board feet of timber, as measured by International One-Fourth Inch Log Rule on any one parcel or series of contiguous parcels in the same ownership. **[ADDED 7-8-2002 BY LL. NO. 1-2002].**

TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation, to include, but not limited to “rooming house”, “lodging house”, “group dwelling”, and “tourist accommodation.”

TRAILER — Any type of portable structure, whether on wheels, skids, rollers, blocks or foundation supports which is capable of being used for living or sleeping purposes or the transportation or storage of material. The term "trailer" shall include, but is not limited to, camping trailer, utility trailer, travel trailer, office trailer, or truck trailer.

USE — The specific purpose for which land or a building is used or occupied or maintained.

UTILITIES, PUBLIC — Structural components of a transmission or distribution system using a physical medium such as pipe, wire, cable or conduit, for such services as electricity, gas, water or telephone. Also, the structural components of a transmission or distribution system using a nonphysical medium such as air for such services. Ham radios and private radio services or providers shall not be considered a utility for the purposes of this definition.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY (as it relates to Article XII Stormwater Management and Erosion and Sediment Control) — A channel that directs surface runoff to a watercourse or to the public storm drain.

YARD — An open space which lies between the principal building or groups of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as herein permitted:

- A. **YARD, FRONT** — An open space extending the full width of the lot between the principal building and the front lot line, unoccupied and unobstructed from the ground upward.
- B. **YARD, REAR** — An open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward.
- C. **YARD, SIDE** — An open space extending from the front yard to the rear yard, between the principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

Article III Districts, Schedules and Zoning Maps

§ 250-5 Districts enumerated.

The Town of Mount Hope is hereby divided into the following classes of districts, the respective symbol for each type of district being set forth opposite its title.

RP-1	Resource Preservation District, east side of Ridge
RP-2	Resource Preservation District, west side of Ridge
RA	Residential Agriculture District
SR	Suburban Residential District
LB	Local Business
LB - 2	Local Business – 2
B-1	Business

§ 250-6 Establishment of Schedules of District Regulations.

The general requirements affecting the use of buildings, structures, and land use, and relating to the arrangement of buildings, structures, and uses occupying a lot, for each of the zoning districts established by Article III are hereby established in the Schedules of District Regulations, which are a part of this chapter.³ The schedules are composed of tables entitled "Table of Use and Bulk Requirements" for each zoning district.

§ 250-7 Zoning Map.

The boundaries of said districts are hereby established as shown on the "Zoning Map," Town of Mount Hope, **as adopted by the Town Board, dated July 1997**, which accompanies, and which, with all explanatory matter thereon, is hereby made a part of this chapter. Said map, indicating the latest amendments, shall be kept up-to-date in the offices of the Planning Board and/or the Town Clerk for the use and benefit of the public.

§ 250-8 District Boundaries.

In determining the boundaries of the districts shown on the map, the following rules shall apply:

- A. Unless otherwise shown, the district boundaries shall be construed to coincide with the center lines of streets, highways, waterways, railroad rights-of-way, lot lines or boundary lines of subdivisions, municipal boundary lines, or such lines extended unless otherwise indicated.
- B. Where such boundaries are indicated as approximately following the property lines of publicly owned lands, such lines shall be construed to be such boundaries.
- C. Measurements stated on the Zoning Map are perpendicular or radial distances from street lines measured to the zone boundary line, which in all cases where distances are given, are parallel to the street line.
- D. Where a district boundary divides a lot in single ownership, the regulations for either portion of the lot may, at the owner's request, be extended up to 30 feet beyond the boundary of the district subject to

³ Editor's Note: Said schedules are included as attachments to this chapter.

the review and approval of the Planning Board. Any such change shall be recorded on an approved subdivision or site plan. In no event shall this section allow boundaries to be shifted which are shown as following the center line of the roadway.

- E. In all other cases, where dimensions are not shown on the map, the location of the boundaries shown on the map shall be determined by the use of the scale appearing thereon.
- F. The boundary line separating the RP-1 and RP-2 Districts south of the Village of Otisville has been mapped to follow the ridgeline of the Shawangunk Mountains at a point 100 feet west of and parallel to the ridgeline as shown on the USGS Otisville quadrangle dated 1976. Any land use application, whether to the Planning Board, Building Inspector, Zoning Board of Appeals or any other municipal agency, involving lands in such area shall include the submission of topographical and boundary information certifying to the location of the ridgeline and showing the RP-1/RP-2 zoning boundary by a licensed surveyor or professional engineer to the Town Engineer for his review.

Article IV Regulations for All Districts

§ 250-9 Applicability of district regulations; general requirements.

- A. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, moved, altered, rebuilt or enlarged except in conformity with the regulations herein specified for the district in which it is located.
- B. No yard or open space required in connection with any building or use shall be considered as providing a required open space for any other building on the same or any other lot.
- C. No yard or lot existing at the time of passage of this chapter shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet the minimum requirements established by this chapter.
- D. No lot shall be formed from part of a lot already occupied by a building or structure unless such building or structure and all yards and open spaces connected therewith and there remaining lot or lots comply with all bulk and area requirements prescribed in this chapter for the district in which said lot is located. No permit shall be issued for the erection of a building or structure on any new lot thus created unless such building or structure and lot comply with all the provisions of Article XI requiring site plan review. Formation of a new lot will require subdivision approval by the Planning Board.
- E. Where a lot is already occupied by a principal building, no other principal buildings or groups of buildings may be constructed on such parcel unless the existing buildings and all of its yards and open spaces comply with the bulk and area requirements of this chapter in the district in which said lot is located, and, in addition, the new building(s) or structure(s) must also comply with the same requirements. Such additional building(s) or structure(s) shall require site plan review by the Planning Board.
- F. No building or construction permits shall be issued without first securing a driveway permit from the state, county or Town, where applicable.
- G. Nothing contained in this chapter shall require any change in the plans, construction or designated use of a building or structure complying with the existing law, a permit for which shall be duly issued and the construction of which shall have been started at least 90 days before the date of the passage of this chapter.
- H. Nothing contained herein shall be construed to modify the provisions relating to nonconforming uses as set forth in § 250-10 of this chapter.
- I. Within each district, the regulations set by this chapter shall be minimum regulations and shall apply uniformly to each kind of structure or land.
- J. No trailer shall be moved into, located or placed in the Town of Mount Hope for any purpose except as follows:
 - (1) Construction trailers may be allowed for periods determined by the Planning Board as approved during the site plan approval or subdivision process. Such approval shall also stipulate a removal date and conditions for removal, and extensions to the same may be granted by the Planning Board in its discretion.
 - (2) Trailers located in garages, and travel or utility trailers under 15 feet in length located in side and rear yards shall be exempt from this section. Longer travel trailers may be located in rear yards and outside required side yards, provided that they are screened from the view of

existing or potential future adjacent residences. The sufficiency of such screening shall be subject to the approval of the Building Inspector.

- K. No structures which shall include but are not limited to tents, shacks, barns or lean-tos shall be erected for the purpose of residence or any other use except where otherwise allowed under this chapter until a permit is secured from the Building Inspector to erect and occupy said structures. This subsection shall not apply to temporary tents or children's play structures under 10 feet in height which are not subject to the Building Code for customary accessory use.
- L. All dwellings shall have a minimum habitable floor area as defined by the New York State Building Code of 1,000 square feet, unless a specific part of this chapter in a specific zoned area provides otherwise.
- M. There shall be a total of no more than one truck, piece of earth-moving equipment, or similar heavy equipment stored outdoors, in the front and side yards and on the property at any time, with the exception of agricultural equipment in agricultural districts.

§ 250-10 Nonconforming buildings, structures and uses.

The following provisions shall apply to all buildings and uses existing on the effective date of this chapter excepting farm structures situated in the residential districts and to all buildings and uses that become nonconforming by reason of any subsequent amendment to this chapter and Zoning Map which is a part thereof and to all conforming buildings housing nonconforming uses.

A. Nonconforming uses:

- (1) May continue indefinitely;
- (2) Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot occupied by such uses on the effective date of this chapter, nor shall any external evidence or portion of such use be increased by any means whatsoever [SEE ALSO § 250-10B(3)];
- (3) Shall not be changed to another nonconforming use; and
- (4) Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

B. Nonconforming building or structure:

- (1) Shall not be extended or enlarged, or altered in any way except as indicated below.
- (2) Shall not be moved to another location where such building or structure would also be nonconforming.
- (3) May be restored but not enlarged after damage by fire, accident or other act of God and the nonconforming use reinstated, provided a building permit is obtained and a certificate of occupancy is issued within one year after such damage.
- (4) Normal maintenance and repair, alteration, reconstruction or enlargement of a building which does not house a nonconforming use, but is nonconforming as to district regulations for bulk requirements, including but not limited to lot area, lot width, front, side or rear yards, maximum height and lot coverage, or other such regulation, is permitted if the same does not increase the degree of, or create any new nonconformity with respect to such regulations in such building.

- (5) Nothing shall prevent normal maintenance and repair of any building or structure or the carrying out, upon the issuance of a building permit, of major structural alterations or demolition necessary in the interest of public safety. In granting such a permit, the Building Inspector shall state the reason why such alterations were deemed necessary.

§ 250-11 Exceptions to district regulations.

A. Existing lots.

- (1) Nothing shall prohibit the use of a lot of less than the prescribed area or width, when such lot was owned individually and separately from any adjoining lot or tract at the time of enactment of this chapter provided that all other provisions of this chapter are met other than the minimum lot area, lot width or side yards. Existing undersized lots meeting the above circumstances shall comply with the following table of widths and yards as measured in feet:

Widths		Yards	
Equal to or Greater Than (feet)	Less Than (feet)	Minimum Side Yard (feet)	Total of Both Side Yards (feet)
100	150	15	40
75	100	10	25
50	75	7.5	15

- B. Height regulations. The height limitations of these regulations shall be waived for barns and silos, private home antennas and for the following, provided that the areas of such uses do not exceed 10% of the total roof area of which they are a part: flag pole, spire, belfry, chimney, skylight, cupola, water or cooling tower or elevator or stair bulkhead.
- C. Lot depth. The required lot depth at any point may be decreased by 25% if the average lot depth conforms with the minimum required.
- D. Yards.
- (1) The following accessory structure may be located in any required yard:
- Chimneys or pilasters.
 - Open arbor or trellis.
 - Unroofed steps, patio or terrace no closer than 20 feet to the street line or 10 feet to any side or rear lot line, provided the building complies with the yard requirements of this chapter.
 - Awning or movable canopy not to exceed 10 feet in height.
 - Retaining wall, fence or masonry wall. (See § 250-15.)
 - Overhanging roof not in excess of 10% of the required front yard depth measured from the street line.
- (2) If two or more existing dwellings are located within 200 feet on each side of a proposed dwelling and on the same side of the street within the same block and district, said proposed dwelling need not have a front yard greater than the average setback of all existing dwellings so located.
- E. Excavation operations.

- (1) Nothing shall prohibit the excavation of sand, gravel, shale, topsoil or other aggregate from a lot or a parcel of land for which a subdivision has been granted final approval, preparatory to the construction of a building for which a building permit has been issued, provided that any area of land around the building from which topsoil has been removed or covered with fill shall be provided with an effective cover crop within the first growing season following the start of such operation, and further provided that the New York State Department of Environmental Conservation or other applicable regulatory agency determines that, based upon the volume of material removed or to be removed, no such permit is required.
- (2) No excavation or aggregate removal shall take place on a lot which requires subdivision or site plan approval until such approval has been granted for the same. The Planning Board shall consider the approval of such excavation or removal as a part of its overall grading plan within subdivision or site plan approval.

§ 250-12 Corner lots.

- A. Front yard setbacks are required on both street frontages, and one yard other than such front yards shall be deemed to be the rear yard and the other(s) side yard(s).
- B. At all street intersections, no obstructions to vision exceeding 30 inches in height shall be erected on any lot within the triangle formed by the intersecting street lines and a line drawn between points along such street lines 30 feet distant from their point of intersection.

§ 250-13 Accessory buildings.

- A. A permitted accessory building may be located in any required side or rear yard, provided:
 - (1) Such building shall not exceed 15 feet in height.
 - (2) Such building shall be set back at least five feet from any lot line and at least 10 feet from the main building.
 - (3) Such building shall not occupy more than 30% of the required yard.
 - (4) No such building on any lot in any district shall be used for residential purposes.
- B. No such building shall project nearer to the fronting street than the main building

§ 250-14 Accessory structure and use standards.

- A. The location, limitation and coverage of residential accessory buildings shall be as follows:
 - (1) No accessory building permitted by this chapter shall be placed in any required side or front yard except as provided in this article.
 - (2) The aggregate ground area covered by any accessory buildings in any rear yard shall not exceed 50% of the rear yard area.
 - (3) Accessory structures on residential lots not attached to a principal structure shall:
 - (a) Be located not less than 10 feet from any side or rear lot line.
 - (b) Be no closer to the street than any principal structure on the lot, except in the case of farm buildings. Accessory buildings to principal structures located more than 250 feet from the front lot line shall also be exempt. Accessory structures may, in these situations, be located in front of residences but not in required front yard areas.

- (4) Storage trailers, railroad cars, bulk containers or retired mobile home units and recreational vehicles shall not be used for purposes of accessory structures in connection with any nonagricultural use.
- (5) Swimming pools shall comply with the applicable sections of the New York State Uniform Fire Prevention and Building Code, as amended.
- (6) Fences (including hedges) and walls.
 - (a) Except as otherwise approved by the Planning Board as part of a site plan, fences and walls:
 - 1. Shall not exceed six feet in height when erected in required side or rear yards and shall not exceed four feet in height when erected in the required front yard;
 - 2. The setback requirements in this chapter shall not apply to retaining walls or fences less than or equal to six feet high in any side or rear yard, except where corner clearances are required for traffic safety, and shall not exceed four feet in any front yard;
 - 3. The setback requirements of this chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility, may be higher;
 - 4. Shall conform to corner lot requirements contained herein; and
 - 5. Shall be measured from the ground level at the base of the fence or wall, excepting that where there is a retaining wall the height shall be measured from the average of the ground levels at each end of the retaining wall.
 - (b) All retaining walls over four feet high shall be designed by a New York State-licensed design professional and obtain a building permit from the Building Inspector.
 - (c) Fences and walls shall be set back a minimum of 12 feet from the edge of the pavement, but must be located out of the Town's right-of-way.
- (7) Accessory uses/structures in residential properties.
 - (a) Accessory uses/structures to single-family, two-family and multifamily detached dwelling shall not exceed 25 feet by 50 feet in area with a maximum wall height of 12 feet.
- B. Accessory structures to commercial or industrial uses shall require site plan and/or special use approval from the Town of Mount Hope Planning Board. Existing, approved commercial or industrial site plans may add one accessory structure, such as a shed, up to 500 square feet, for storage, without additional site plan or special use permits, providing they meet all other applicable regulations and setbacks in the zone.
- C. Single-family dwellings. One single-family detached dwelling, not to exceed one dwelling on each lot. However, on lots which have sufficient lot area to be subdivided in accordance with the bulk table requirements for that particular zone, a second single-family detached dwelling shall be permitted, provided the second dwelling is situated such that it meets all the requirements in the zone in which it is located for a potential future subdivision. It must be in single ownership with the main building on

the lot. If either single-family dwelling is to be sold, subdivision approval must be obtained from the Planning Board.

§ 250-15 Fences and walls.

A. Fences and walls:

- (1) Shall not exceed six feet in height when erected in side or rear yards and not over four feet in height when erected in the front yard.
- (2) Shall conform to corner lot requirements where applicable.
- (3) Shall be measured from the ground level at the base of the fence, excepting that where there is a retaining wall the height shall be measured from the average of the ground levels at each end of the retaining wall.

B. All fences, walls, hedges and other barriers, border or boundary plantings or fixtures or otherwise shall be so constructed, planted and set back so that they do not interfere with the view along public streets and highways for traffic traversing or entering thereon.

§ 250-16 Off-street parking and loading facilities.

A. Permitted accessory parking.

- (1) There is no limitation on the number of agricultural equipment permitted accessory to an active and currently operating farm use.
- (2) No commercial vehicle over 20 feet in length may be parked on a lot in a residential district.
- (3) Campers, camper trailers, boat trailers, and utility trailers may not be parked in a required front yard nor between the street line and the principal building. In no event shall such parked vehicle be used for residential purposes.

B. Permitted accessory loading berths. Off-street loading berths are permitted accessory to any use except residences, provided that such facilities are not located in a required front yard.

C. Required off-street parking spaces. [AMENDED 3-8-2004 BY LL. NO. 1-2004]

(1) Required spaces.

Use	At Least One Parking Space for Each:
Dwelling	1/2 dwelling unit
Motel or hotel	Guest room plus 1 per 2 employees on site at any 1 time
Church, meeting hall, auditorium or other place of public assembly not otherwise classified "schools"	3 seats or 50 square feet of seating area where fixed seating is not provided
Day-care center, nursery school	10 students plus 1 per staff member
Grade school, elementary school and junior or senior high schools	12 students or the auditorium requirements as specified above, whichever is greater
Trade schools, business and commercial schools, colleges	Employee and faculty members plus 1 per 1.5 students for which the maximum capacity design or the auditorium requirements as specified above, whichever is greater
Home occupation	150 square feet of such use plus 1 for each additional 200 square feet or fraction thereof
Retail stores and service shops	150 square feet
Offices	200 square feet
Eating and drinking places	50 square feet of area available to patrons
Funeral homes	60 square feet of public room area
Bowling alleys	1/4 alley
Industrial establishments	Employee
Hospitals	3 employees plus 3 per 2 beds
Nursing home, sanitarium	3 beds
Veterinary hospitals, dog kennels	250 square feet

(2) For uses not specifically listed, the requirement shall be determined to be the same as the most similarly listed use and/or shall be determined by the Planning Board in its discretion, based on established parking criteria at the time of site plan review.

D. Parking space standards.

- (1) Areas which may be computed as a required off-street parking space may include a garage, carport or other area available for parking, other than a street or driveway. A driveway within a required front yard in a residential district may be counted as one space.
- (2) Required accessory parking spaces, open or enclosed, may be provided upon the same lot as the use to which they are accessory, or elsewhere, provided all spaces are located within 500 feet walking distance of such lot. In all cases, such parking spaces shall conform to all regulations of the district in which they are located; and in no event shall such parking spaces be located in any residential district unless the uses to which they are accessory are permitted in such districts. Such spaces shall be in the same ownership as the use to which they are accessory or leased for not less than 50 years, and said owner or lessee shall maintain the

required number of spaces available, either throughout the existence of such use, or until such spaces are provided elsewhere.

- (3) Minimum parking space width shall be 10 feet, minimum length shall be 20 feet, and 24 feet shall be available for driving aisles.
- (4) Unobstructed access to and from a street shall be provided. Such access shall consist of at least one lane for parking areas with less than 20 spaces, and at least two lanes for parking areas with 20 spaces or more.
- (5) All open parking areas shall be properly drained and all such areas of over 10 spaces shall be provided with a paved surface.
- (6) Required parking spaces may be provided in spaces designed to serve jointly two or more establishments whether or not located on the same lot, and the number of required spaces in such joint facilities shall be not less than the total required for all such establishments.
- (7) When any lot contains two or more uses having different parking requirements, the parking requirements for each use shall apply to the extent of that use. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when the other use or uses are not in operation, the Planning Board may reduce the total parking spaces so that the minimum number of spaces provided meets the highest peak parking demand.
- (8) Parking lots with a capacity in excess of 50 vehicles shall have 5% of the parking area landscaped. This 5% is exclusive of landscaping immediately in front of a building or alongside, front or rear lot lines.

§ 250-17 Floodplain Overlay Zone.

Within the borders of the Floodplain Overlay Zone, all uses described in this section shall be permitted as indicated for the district in which the uses are located except as follows:

- A. Whenever a request for a building permit is made for any use within the Floodplain Overlay Zone, the application shall include a site survey with accurate USGS elevations of all construction, and the Building Inspector shall refuse to issue a building permit if he determines there will be a danger of flooding.

§ 250-18 Swimming pools.

- A. This subsection shall apply to swimming pools within the Town of Mount Hope, and all the terms, conditions and provisions regulating such swimming pools shall be deemed to apply to existing pools and permits shall be required, and the persons who presently have swimming pools as defined within this chapter shall have 90 days after this chapter has been adopted to apply for said permit and comply with the regulations herein and after such expiration of 90 days shall be deemed in violation of this chapter in the event they do not comply with such regulations.
- B. It shall be unlawful for any person to hereafter construct or install a swimming pool in the Town without having first obtained a permit therefor. Application for such a permit, accompanied by two sets of plans and specifications of such proposed swimming pool shall be filed with the Building Inspector. There shall be stated in such application the premises and exact location thereon, where

said swimming pool is proposed to be constructed or installed. The Building Inspector shall not render a decision on nor establish any requirements regarding the structural features or durability of said pool except as hereinafter provided, but shall issue a permit therefor if the same complies with the provisions of this chapter. A fee shall be charged for such permit and shall accompany the application in accordance with the current fee schedule.

- C. Such swimming pool shall be manufactured and finished with materials which are waterproof and easily cleaned. No aluminum paint shall be used as a finish. No sand or earth bottoms shall be used.
- D. Every swimming pool hereafter constructed or installed shall be equipped with a discharge drain. Such drain shall not be over two inches in diameter and be of galvanized iron pipe, or of any equal material approved by the Town Building Inspector, who shall likewise approve its outlet connection. No swimming pool shall be drained while it is raining.
- E. No such swimming pool hereafter constructed or installed shall be located nearer than 10 feet to any property side line or rear line. No swimming pool shall be constructed or installed within any front yard.
- F. No artificial lighting shall be maintained or operated in connection with any swimming pool presently constructed or installed or hereafter to be constructed or installed, in such manner as to unreasonably interfere with the occupants of neighboring properties or public roads.
- G. Every swimming pool installed completely in ground heretofore, or hereafter constructed, installed or maintained, shall be completely enclosed by a fence of durable construction; not less than four feet high having at least one gate or door, which gate or door shall be kept securely locked by a self-closing snap lock at all times when such pool or pool area is not being used. If the fence be of wire construction it is not to have a linkage more than 2 1/2 inches in diameter. Such fence shall be approved in writing by the Building Inspector of the Town of Mount Hope. This provision shall not apply to fences safeguarding swimming pools existing at the time this chapter becomes effective. In such cases, the Building Inspector is hereby authorized and directed to approve such existing fences in his discretion which substantially comply with this section.
- H. All aboveground pools which have any part less than four feet high shall be fenced in accordance with Subsection G above. Such pool over four feet high must be equipped with a safety-type ladder to prevent general access.
- I. All drainage from a swimming pool as defined in this chapter shall be discharged in such a manner that sewage cannot be siphoned, flooded or otherwise discharged into the swimming pool. There shall be no physical connection between a potable public or private water supply system and a pool structure.
- J. Every swimming pool presently constructed or installed or hereafter constructed or installed shall be maintained at all times in a reasonably safe condition. Any unsafe condition shall be forthwith corrected upon notice from the Building Inspector. In any and all instances, all swimming pools must conform to the applicable requirements of the New York Code of Rules and Regulations, 10 NYCRR Part 6.⁴
- K. No person shall use any pool constructed or maintained in the Town without having secured a certificate of use.

⁴ **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

§ 250-19 Uses prohibited in all districts.

- A. Public and private dumps and landfills. No person, firm or private or municipal corporation shall place, store, deposit or dump or cause to be placed, stored, deposited or dumped for the purpose of abandonment any unwanted material of any origin, including, but not limited to, metal, stones, metal tanks, tires, automobiles, automobile parts (except for presently existing automobile salvage yards which possess a valid permit to operate the same), barrels, metal cans, or other metal containers, or medical waste materials, or garbage and soil waste of any nature on any public or privately owned lot, tract of land, street, lane, alley, road, park or reserve, within the corporate limits of the Town of Mount Hope, on any property, public or private. No "junkyard" as defined in § 250-4, Definitions, shall be permitted. [AMENDED 7-8-2002 BY LL. NO. 1-2002]
- B. Construction and demolition debris, composting and yard waste. No person shall conduct or cause to be conducted any business or operation to deposit construction and demolition debris, composting material or yard waste on any property, public or private, within the Town of Mount Hope.
- (1) Other dumping areas. This chapter shall not apply to active agricultural operations (as defined by the State Agriculture and Markets Law) which maintain their own disposal plant or area, and deposit thereon waste and refuse from their own farms, or organic materials to be used for fertilization, feed, or fuel. However, in no event may such agricultural operation herein exempt from this chapter conduct such disposal in such a manner which is, or could be, in any way detrimental, harmful, or hazardous to the health and welfare of the community and its residents.
 - (2) Exemptions.
 - (a) This chapter shall not be construed so as to prevent the Town of Mount Hope Highway Department, the New York State Department of Transportation, or the Orange County Department of Public Works from engaging in any highway maintenance activity. Such activities include, but are not limited to, highway improvements, the cleaning of ditches and disposing of the soil therefrom on lands within the Town of Mount Hope.
 - (b) This chapter shall not be construed so as to prevent a Town of Mount Hope homeowner from performing normal lawn care, maintenance and landscaping utilizing a total of up to 150 cubic yards of soil or topsoil or gravel or crushed stone or any other materials of a similar nature or a combination thereof during a period of one calendar year.
 - (c) This chapter shall not be construed so as to prevent installation of a duly permitted and approved septic system.
 - (3) Additional vehicle/trailer prohibitions. [ADDED 7-8-2002 BY LL. NO. 1-2002]
 - (a) At no time shall there be stored on any property and/or premises, developed or undeveloped, more than two whole and complete, unlicensed, unregistered or uninspected vehicles/trailers or combinations thereof, including, but not limited to, cars, trucks, trailers, including fifth-wheel boxes, boats, storage, flatbed, tag-along or other style trailers, motor homes or travel trailers or other motor vehicles. At no time shall partially assembled/disassembled vehicles/trailers be kept outside. At no time shall vehicles/trailers be stored on any vacant lots. The above vehicles and/or trailers

may be stored only in accordance with the applicable rear yard setbacks for the district in which the same is located and shall be kept at a minimum of five feet from any property line. At no time may any vehicle and/or trailer as set forth above be stored in a front or side yard.

- (4) Firms as offenders. In the event that an offender be a firm or corporation, the Town of Mount Hope shall determine the identity of the individual, officer, or personnel responsible for the commission of such offense and those individuals shall be held personally liable and punishable for the offense in addition to the firm or corporation.
- (5) Violation and penalties for § 250-19A and B only.
 - (a) Any person, firm or corporation who violates the foregoing provision of this chapter shall be guilty of a violation, punishable by a fine not to exceed \$5,000 or by imprisonment not to exceed 15 days, or by both such fine and imprisonment for each offense.
 - (b) Each day of violation of this chapter shall constitute a separate offense.
 - (c) In addition to the above penalties and punishment for a violation of the provisions of this chapter, the Town Board may also maintain an action or proceeding in the name of the Town of Mount Hope, in a court of competent jurisdiction, to compel compliance with, or to restrain by injunction such violation.
 - (d) In addition to the above penalties, the responsible person, firm or corporation shall immediately remove and properly and legally dispose of all materials illegally deposited and immediately take all measures necessary to properly and legally restore all disturbed land and surfaces to the condition preexisting the illegal dumping actions.
 - (e) Should the responsible person, firm or corporation fail to immediately remove the material illegally deposited on the property, the Town of Mount Hope is hereby authorized to go upon the property and remove the illegal material and restore the premises to its prior condition insomuch as same is possible, charging an amount equal to 150% of the Town's actual cost, including reasonable attorney's fees caused by noncompliance with the provisions of this chapter, in addition to the above-provided fines and penalties.
 - (f) Any expense incurred by the Town as described above shall be a lien on the property until payment is received and shall be added to any, become and form part, of the taxes next to be assessed and levied upon such lot or land and shall bear interest at the same rate as taxes and shall be collected and enforced by the same officers and in the same manner as taxes. [AMENDED 7-8-2002 BY LL. NO. 1-2002]

- C. Mobile homes and double-wide mobile homes other than those regulated under Article IX or those located in a licensed mobile home park; except as provided in mobile home park uses.

§ 250-20 Supplementary yard requirements and operating standards; timber harvesting.

- A. Supplementary yard requirements shall apply to agricultural operations and any other operations involving the keeping, breeding, and raising of animals and the raising of crops and other valuable growths to the extent permitted by this chapter:

- (1) Any structure used for housing animals within doors or overnight, including but not limited to coops and barns, shall be set back at least 175 feet from any lot line. Temporary shelters not used for permanent animal housing purposes, such as open-sided run—ins located within horse pasture areas, shall be exempt from the one-hundred-seventy-five-foot setback requirement, but shall be set back at least 50 feet from any lot line.
 - (2) Any locations used for open storage of manure or other odor— or dust-producing substances shall be set back at least 175 feet from any lot line.
 - (3) Where agricultural animals are permitted to be raised pursuant to this chapter, and where such animals are pastured or maintained outdoors for any length of time, such animals shall be kept securely contained by fencing or other device such that no agricultural animal shall be permitted to roam off of the bounds of the lands associated with such agricultural use to the detriment of public health and safety. Such fencing or other device shall be adequately and regularly maintained so as to function properly as intended, and shall be adequate in height, gauge, and type of construction for the type of animal contained thereby. Such fencing shall be set back at least five feet from any property line.
 - (4) Any heat-, power-, or noise-generating facilities, including, but not limited to, blowers or heaters shall be set back at least 200 feet from any lot line.
- B. Supplementary operating standards. Supplementary operating standards shall apply to agricultural operations and any other operations involving the keeping, breeding, and raising of animals and the raising of crops and other valuable growths to the extent permitted by this chapter, such that:
- (1) Adequate, safe, and sanitary animal housing facilities shall be furnished as needed to provide for animals associated therewith; that adequate food and water be provided for the same; that fences provided to contain pastured agricultural animals be adequately and regularly maintained so as to function properly as intended; that animal feed and wastes be stored and managed in such a way as to prevent its runoff to adjoining lots and off-site watercourses or water bodies and to avoid creating a public health hazard.
- C. Timber harvesting shall require a harvesting plan by a professional forester and a permit obtained from the Building Inspector. [ADDED 7-8-2002 BY LL. NO. 1-2002]

§ 250-21 Conservation Subdivisions

- A. Purpose. Pursuant to § 278 (Cluster Subdivisions) of New York Town Law, the purpose of these regulations is to achieve a balance between well-designed development, meaningful open space conservation and natural resource protection in the Town of Mount Hope by requiring conservation subdivisions instead of conventional subdivisions. Conservation subdivision (clustering) is intended to encourage development in the most appropriate locations on a subdivided parcel, to limit the impact of development on sensitive and/or significant environmental, agricultural, historical and archaeological resources, and to encourage development that enhances the Town's rural character, pattern and scale of settlement.
- B. Applicability.
- (1) These regulations shall apply to all subdivisions of property in all zoning districts unless:
 - (a) The proposed subdivision results in a total of four or fewer lots created from one parent parcel; and

- (b) The road frontage of the parent parcel will not be reduced by more than 50%; and
 - (c) No new public street or private roads will be created.
 - (2) Subdivision proposals that do not meet all three of the above criteria shall be subject to preliminary and final subdivision review, as described in Chapter 210, and the conservation subdivision process described herein.
 - (3) Subdivision proposals that meet all three of the above criteria may, at the discretion of the applicant, utilize the conventional subdivision process described in Chapter 210.
- C. Standards for conservation subdivisions.
- (1) Density Calculation
 - (a) Base Density - The base density in a conservation subdivision shall not exceed the maximum number of lots permissible in a conventional subdivision for the same parcel of land if the parcel was subdivided via a conventional subdivision where the lots conform to the minimum lot size, density, and other requirements otherwise applicable to the district or districts in which such parcel of land is located.
 - (b) Base density calculation - The applicant shall submit a sketch plan for a conventional subdivision conforming to the minimum lot size, requirements and standards otherwise applicable to the district or districts in which the subdivision is located in order to establish the number of dwelling units permitted in a conservation subdivision (the "Yield Plan"). Said sketch plan must show that each lot meets the minimum lot size and area requirements for the zoning district in which is located and that each lot shown can be developed as a viable single-family residential lot. Except as specified herein, all development standards and controls normally applicable to conventional subdivisions shall also be applicable to conservation subdivisions. Thus, areas of land needed for roads, infrastructure as well as environmental site constraints that limit the number of lots in a conventional subdivision shall be taken into account in determining the number of lots allowable in a conservation subdivision.
 - (c) The Planning Board, at its sole discretion, must determine whether the layout shown on the Yield Plan is realistic, reflecting a development pattern that could reasonably be expected to be implemented under conventional subdivision review.
 - (d) The base density determined under this section may be further reduced by the Planning Board as a result of the conservation analysis required in Subsection C(2), Conservation analysis, below.
 - (e) The density permitted by this section shall not be further reduced as a result of the reservation of parkland required during the subdivision process
 - (f) Density Bonus - Pursuant to § 261-b of New York Town Law, the base density may be increased by up to 15% by the Planning Board if permanent public access will be granted to the protected open space land and any associated improvements.
 - (2) Conservation Analysis
 - (a) As part of its preliminary plat submission, an applicant shall prepare a conservation analysis, consisting of inventory maps, description of the land and an analysis of the conservation value of various site features. The conservation analysis shall show lands with conservation value, including but not limited to:

1. Constrained land, including State or Federally regulated wetlands and associated buffers, watercourses, one-hundred year floodplains, slopes over 15%, land encumbered by existing easements or in other ways made unavailable for development, and land which is otherwise found by the Planning Board to be unsuitable for development
 2. Open space and recreational resources such as land exhibiting scenic, historic, recreational, ecological, water resource or other natural resource value
 3. Buffer areas necessary for screening new development from adjoining parcels
 4. In districts where agriculture is a permitted use, the agricultural value of land as indicated by the presence of soils classified by the U.S. Department of Agriculture as prime, prime if drained, and soils of statewide importance.
- (b) The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site. In the course of its initial preliminary plat review, the Planning Board shall indicate to the applicant which of the lands identified as being of conservation value are most important to preserve.
- (c) The outcome of the conservation analysis and the Planning Board's determination shall be incorporated into the approved preliminary plat, which shall show land to be permanently preserved by a conservation easement. The preliminary plat shall also show preferred locations for intensive development as well as acceptable locations for less dense development.
- (d) The determination as to which land has the most conservation value and should be protected from development by conservation easement shall be made by the Planning Board. Whenever the Planning Board approves a preliminary plat with protected open space, it shall make written findings identifying the specific conservation values protected and the conservation findings supporting such protection. An application that does not include a complete conservation analysis sufficient for the Planning Board to make its conservation findings shall be considered incomplete.
- (e) The preliminary plat shall show the following as land to be preserved by conservation easement:
1. Constrained land identified by the analysis described in Subsection C(2)(a)(1) above; and
 2. At least 40% of the remaining unconstrained land
- (3) Types of development in a conservation subdivision. The allowable residential units may be developed as single-family or two-family dwellings. Within a conservation subdivision, a maximum of 25% of the residential units may be placed in two-family dwellings. Two-family dwellings should be designed to look nearly indistinguishable from single-family dwellings.
- (4) Area and dimensional requirements.
- (a) The intent of this section is to allow flexibility of design that allows for enhancement of rural character and conservation of open space. Lots should vary in size and shape and should utilize existing land features in configuration of the lots.
 - (b) There shall be no minimum lot size in a conservation subdivision. The Planning Board shall determine appropriate lot sizes in the course of its review of a conservation

subdivision in consideration of specific site characteristics and public health and safety concerns. In order to permit a clustered lot configuration, wells and septic systems may be located in areas of protected open space, provided that necessary easements are provided for maintenance of these facilities.

- (c) Where a conservation subdivision abuts an existing residence in a residentially zoned area, a suitable buffer area shall be required by the Planning Board. This buffer shall be at least the same distance as the minimum rear or side yard setback in the district in which the abutting land is located.
 - (d) Where residential lots within a conservation subdivision abut agricultural operations, a suitable buffer area shall be required by the Planning Board.
 - (e) The applicant shall specify dimensional requirements for a proposed conservation subdivision by identifying setbacks and other lot dimensions to be incorporated into the final plat.
- (5) Town Clerk notations on Official Zoning Map. In accordance with § 278 of Town Law, when the final plat is filed with the County Clerk and a copy of the final plat is filed with the Town Clerk, the Town Clerk shall make appropriate notations and references thereto on the Town Zoning Map. The Town Clerk shall make such notations and references as needed, but not less frequently than semiannually.
- (6) Conservation subdivision of a portion of larger tract. The Planning Board may entertain an application for a subdivision of a portion of a parcel if a conservation analysis is provided for the entire parcel.
- D. Permanent open space. Open space set aside in a conservation subdivision shall be permanently preserved as required by this section. Any development permitted on land located in a conservation subdivision that is not protected as open space shall not compromise the conservation value of such open space land.
- (1) Conservation value of open space. The open space protected pursuant to this section must have conservation value, which shall be determined in the course of the conservation analysis described in Subsection C (2) above.
 - (2) Permanent preservation by conservation easement.
 - (a) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources or similar conservation purposes, pursuant to § 247 of the General Municipal Law and/ or §§ 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, and/or to a qualified not-for-profit conservation organization acceptable to the Town Board. Such conservation easement shall be approved by the Planning Board and is required for final plat approval. The Planning Board shall require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's office, and recording information (liber and page) shall be shown on the final plat prior to filing of the final plat in the County Clerk's office.

- (b) The conservation easement shall prohibit residential, industrial or commercial use of open space land (except in connection with agriculture, forestry and passive recreation) and shall not be amendable to permit such use. Driveways, wells, underground sewage disposal facilities, local utility distribution lines, stormwater management facilities, trails and agricultural structures shall be permitted on preserved open space land with Planning Board approval, provided that they do not impair the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices as described by the New York State Department of Environmental Conservation's Division of Lands and Forests.
- (c) A land management plan, approved by the Planning Board, shall be included in the conservation easement. The land management plan shall contain the following information:
 - 1. A baseline property condition report fully describing conditions of the property to be protected under the easement.
 - 2. Primary contact information for all parties responsible for holding, monitoring and enforcing the easement.
 - 3. A monitoring schedule and associated requirements.
 - 4. A recordkeeping procedure.
 - 5. Enforcement policy. The conservation easement shall provide that if the Town Board finds that the management plan has been violated in a manner that renders the condition of the land a public nuisance, the Town may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed against the landowner, or, in the case of a homeowners' association, the owners of properties within the development, and shall, if unpaid, become a tax lien on such property or properties. The conservation easement shall also provide that if the Town's Code Enforcement Officer finds that the conservation easement or management plan has been violated in any way, the owner of the property and any persons or entities contributing to said violation shall be subject to the penalties specified for Zoning Code violations in Town Code.
 - 6. An amendment procedure.
 - 7. For easements not held by the Town, a policy regarding dissolution of the easement-holding party.
- (d) The Town's Code Enforcement Officer shall have authority to enforce any conservation easement in the Town regardless of whether said conservation easement has been granted to the Town.
- (e) Preserved open space may be included as a portion of one or more large lots, or may be contained in a separate open space lot. The conservation easement may allow dwellings to be constructed on portions of lots that include preserved open space land, provided that the total number of dwellings permitted by the

conservation easement in the entire subdivision is consistent with applicable density limitations as determined under subsection C (1).

- (3) Notations on Final Plat. Preserved open space land shall be clearly delineated and labeled on the subdivision Final Plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of lots in the subdivision and the public to the open space land. The Final Plat shall clearly show that the open space land is permanently preserved for conservation purposes by a conservation easement required by this Section, and shall include deed recording information in the County Clerk's office for the conservation easement.
- (4) Ownership of Open Space Land
- (a) Open space land shall under all circumstances be protected by a perpetual conservation easement, but may be owned in common by a homeowner's association (HOA), offered for dedication to Town, County, or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.
 - (b) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
 1. The HOA application must be submitted to the New York State Attorney General's office before the approved subdivision final plat is signed and must comply with all applicable provisions of the General Business Law. The HOA must be approved by the New York State Attorney General's office prior to issuance of the first certificate of occupancy from the Code Enforcement Officer.
 2. Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance and maintenance of common open space, private roads and other common facilities.
 3. The HOA must be responsible for liability insurance, property taxes and the maintenance of recreational and other facilities and private roads.
 4. Property owners must pay their pro rata share of the costs in Subsection D(4)(b)[2] above, and the assessment levied by the HOA must be able to become a lien on the property.
 5. The HOA must be able to adjust the assessment to meet changed needs.
 6. The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Town Board, upon failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

7. Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
 8. The Town's Attorney shall find that the HOA documents presented satisfy the conditions in Subsection D(4)(b)[1] through [7] above and such other conditions as the Planning Board shall deem necessary.
- E. Conservation subdivision procedures. In addition to all other requirements applicable to conventional two-stage subdivision review, the following shall apply to conservation subdivisions:
- (1) Sketch plan. In accordance with Chapter 210 Subdivision of Land, applicants shall request a sketch plan discussion with the Planning Board prior to submission of a preliminary application.
 - (a) In addition to requirements specified in Chapter 210, a sketch plan for conservation subdivision shall show the approximate area of the project considered to be constrained lands (wetlands, floodplains, steep slopes, etc.) and the approximate area considered to be developable lands.
 - (2) Preliminary subdivision review. In addition to information required pursuant to Chapter 210, the preliminary subdivision application for a conservation subdivision shall contain the following:
 - (a) A density calculation, as described in Subsection C(1) above.
 - (b) A conservation analysis as described in Subsection C(2) above, including a proposed conservation analysis map.
 - (c) A schematic ("bubble") diagram showing which areas on the parcel would be developed and where land would be protected as permanent open space by a conservation easement.
 - (3) Final subdivision review. In addition to information required pursuant to Chapter 210, the final subdivision application for a conservation subdivision shall contain the following:
 - (a) All the materials required for approval as provided herein, unless waived by the Planning Board.
 - (b) Proposed conservation easement(s) for the protection of permanent open space land.
 - (c) A final land management plan for the permanent open space areas, to be incorporated into the conservation easement and made enforceable by the Town.
 - (d) Other submission requirements as specified by the Planning Board.

Article V Regulations for Residential Districts

§ 250-22 Principal uses.

- A. Within any residential district, a building, structure or lot shall only be used for one of the principal uses indicated in the Schedule of District Regulations,⁵ for the specific district in which it is located on the Zoning Map, and in accordance with the particular classification of that use in that district. Further, any such buildings, structures or lots shall only be utilized in conformance with the provisions of the above said schedule. In addition, such use shall also comply with all other applicable provisions of this chapter. When a residence is situated on a lot, that structure shall be deemed the only principal structure on the lot; all others being accessory thereto.
- B. Within any residential district, all uses other than single-family-detached residential uses and agriculture shall require site plan approval by the Planning Board.

§ 250-23 Prohibited uses.

In all residential zones, no building, structure or lot shall be used in whole or in part for any trade, business, industry or process which is noxious or offensive by reason of the production or emission of smoke, noise, gas, odor, dust, refuse matter, vibration or excessive light beyond the limits of its lot, so as to be dangerous or prejudicial to the public health, safety or general welfare of the Town. Agricultural uses shall not be deemed to be prohibited based upon this section.

§ 250-24 Accessory uses.

Special requirements for certain uses:

- A. Garden house, toolhouse, wading or swimming pool not operated for gain, provided that such accessory use shall not be located in any front yard.
- B. Keeping of certain customary household pets is addressed as follows: small animals typically kept as household pets and not customarily adapted to being harbored outdoors, including but not limited to canaries, captive reptiles, ferrets, gerbils, and Vietnamese potbellied pigs are not regulated by this chapter, provided that they are maintained within the house and are not being bred on a large scale and/or for commercial purposes. Notwithstanding the foregoing, animal wastes resulting from such pets shall be removed and handled in a manner which does not result in a public nuisance nor danger to public health. Keeping of dogs and certain other animals is addressed separately below.
 - (1) Keeping of dogs and certain other animals is permitted accessory to a residential lot subject to the following restrictions:
 - (a) Dogs. Not more than six adult dogs shall be kept as an accessory to a residential use on any lot.
 - (b) Accessory to any residential use on a lot not less than two acres in size, properly confined and maintained:

⁵ **Editor's Note: Said schedules are included as attachments to this chapter.**

- i. Two horses or two goats or two sheep or two cows or two calves or any mixture of the above up to two for the first two acres, with one additional of any of the above animals for each additional acre.
 - ii. Not more than 20 fowl, with permitted fowl being limited to chickens, guinea fowl, geese, ducks, birds of prey, pigeons, or similar fowl. Large birds/ratitae (including, but not limited to, ostriches or emus) shall not be permitted outside of a district in which agricultural uses are permitted under this chapter. Harboring of breeds of birds such as pheasants or peafowl which are likely to create a nuisance, is prohibited.
- (2) It is prohibited to keep certain animals strictly as an accessory to a residential use and not part of a bona fide agricultural operation where the same is otherwise permitted by this chapter. These animals include, but are not limited to, swine, peafowl of either sex, and mink.
- (3) Accessory structures such as noncommercial greenhouses are permitted if a bona fide accessory to a residence, except that no blowers, heaters, or mechanical equipment associated therewith shall be maintained less than 100 feet from any property line.

§ 250-25 Conditional uses.

Special requirements for conditional uses are specified in § 250-61.

§ 250-26 RP and RA Residential Districts.

Regulations pertaining to RP and RA Residential Districts only:

- A. Principal permitted uses. The growing of crops and keeping of fowl and livestock on lots meeting the bulk requirements set forth in the Town of Mount Hope Schedule of District Regulations⁶ is permitted subject to the requirements set forth in § 250-20 of this chapter.
- B. Accessory uses.
 - (1) On premises where the principal use is agriculture, the sale of agricultural products grown on said premises may be conducted within a seasonal roadside stand located on such premises. Such stand shall not exceed one story in height, nor 1,000 square feet in floor area, and must be located at least 50 feet from any street line.
 - (2) The outside storage of farm and earthmoving equipment is permitted, provided such equipment is kept beyond the required minimum front, side and rear yards and to the rear or side of a structure located within 100 feet of a street line.

§ 250-27 Lot areas in RP District.

Lot area regulations pertaining to RP District only:

- A. The minimum lot size for a principal or conditional use shall be determined by the following formula, or shall be a minimum of the area indicated for such use in the Minimum Lot Area column of Schedules 1 and 2,⁷ whichever is greater.

⁶ **Editor's Note: Said schedules are included as attachments to this chapter.**

⁷ **Editor's Note: Said schedules are included as attachments to this chapter.**

$300 \times A \times B \times C \times D = \text{square feet of lot area}$

Where:

A = average elevation in feet above sea level at mid-point of lot as measured from high point to low point of elevation of lot

B = slope factor (derived from the companion chart below)

Slope factor: average slope (as measured perpendicular to the contours from high point to low point of lot)

0% to 15%: factor of 1

>15% to 20%: factor of 2

>20% to 25%: factor of 3

>25% to 30%: factor of 4

>30% to 35%: factor of 5

>35% to 40%: factor of 6

>40% to 45%: factor of 7

> 45% to 50%: factor of 8

>50% and up: factor of 10

C = deed restriction on limitation of external treatment of buildings as described below is a factor of 0.5 (otherwise, use factor of 1): limitation of coloration of roofing and siding materials to earth colors (i.e., subdued brown, gray, green), and restrictions on use of white, bright or pastel colors

D = deed restriction on limitation of tree clearance to 15,000 square feet is a factor of 1.0. Tree clearance in excess of 15,000 square feet, use a factor of 2

§ 250-28 Lots in RA, SR, LB, and LB-2 Districts.

Bulk area regulations for lots in the RA, SR, LB, and LB-2 Districts:

- A. The maximum number of lots and minimum lot area for single-family dwellings in the RA, SR, LB, and LB-2 Districts shall be determined by the use of the following formulas, but, in any event, no lot shall have less than the area indicated in the minimum lot area column of Schedules 3, 4, 5 and 6.⁸
- B. The basis of the environmental control formula shall be determined by the classification of soil types into 15 soil groups; each soil group shall be assigned an environmental factor related to its ability to support sewage disposal systems. (See the following Soils Table.) These factors shall be applied to site acreage in each soil group to determine the maximum number of permitted lots and minimum permitted lot sizes as set forth in Subsections D and E.

⁸ **Editor's Note: Said schedules are included as attachments to this chapter.**

Soils Table

	Soil Group Type	Environmental Factor	Minimum Lot Size (acres)
I	can, CnB, CnC, HoA, HoB, HoC, OkA, OkB, OtB, OtC, RhA, RhB, RhC	2.0	0.5
II	AdA, AdB, UnB	1.35	0.75
III	ChB, ChC, PtB, PtC	1.0	1.0
IV	CgA, CgB, MdB, MdC, SwB, SwC, WuB, WuC	0.71	1.4
V	CoB, ScA, ScB	0.067	1.5
VI	BnB, BnC, CLC, SXC	0.67	1.5
VII	ErA, ErB, ESB, Fd, Ra, RbA, RbB	0.33	3.0*
VIII	ANC, FAC, HLC, LdB, LdC, RKC, ROC, RMC, RSB	0.33	3.0*
IX	Ab, AC, Ca, Ha, Ma, Sb	0.17	No Septic System Allowed
X	Be, My, Tg, Su, Uf, Wa, Wd	0.1	No Septic System Allowed
XI	CoC, UnC	0.17	5.8*
XII	AND, ANF, CLD, HLD, HoD, MdD, NaD, OtD, PtD, RhD, RKD, RMD, ROD, RSD, SwD, SXD	0.33	No Septic System Allowed
XIII	CoD, OVE, MNE, RKF, ROF, RSF, SXF	0.17	No Septic System Allowed
XIV	Cd, Ce, Pa, Pb	0.1	No Septic System Allowed
XV	Cf, HH, water	0.1	No Septic System Allowed

NOTES:

* See Appendix A for a further explanation of these soil groups, which Appendix A is hereby incorporated by reference⁹.

C. The environmental control formula shall be calculated as follows:

$$\text{Soil Group Environmental Factor} \times \text{Total Acreage in Soil Group} = \text{Environmental Acreage Quota or Maximum Number if Lots Permitted}$$

D. Procedure for determining the maximum number Of lots permitted shall be as follows:

- (1) Select soil types which are found on the site in question, and thereby the soil group.
- (2) Calculate the acreage in each soil group.
- (3) Determine the environmental factor for each soil group, as listed in Subsection B.
- (4) Calculate each environmental acreage quota by multiplying each environmental factor by the acreage in each soil group.
- (5) Total the environmental acreage quotas. This shall be the maximum number of lots permitted. Any fractional value shall be determined to be equal to the next lowest whole number (i.e., if an environmental acreage quota is equal to 2.61, the maximum permitted number of lots is equal to two).

E. The procedure for determining the minimum lot size shall be as follows:

- (1) Delineate the various soil types and soil groups on the subdivision plat.

⁹ Editor's Note: Said schedules are included as attachments to this chapter.

- (2) The lot size shall be determined by establishing which soil type, and thereby which soil group, the proposed septic system is proposed to be placed on.
- (a) To obtain the various lot sizes, Subsection B, Column 4, entitled "Minimum Lot Size," shall be applied (i.e., if the septic system is on a Group IV soil, the minimum lot size would be 1.4 acres).
 - (b) If the proposed septic system is in two or more different soil groups, the minimum lot size for the most restrictive soil group shall be utilized.
 - (c) As noted in Subsection B and Appendix A,¹⁰ there are soils on which septic systems shall not be allowed.

¹⁰ Editor's Note: Said schedules are included as attachments to this chapter.

Article VI Regulations for LB, LB-2, and B-1 Districts

§ 250-29 Permitted uses and district regulations.

- A. Objectives. It is the objective of the LB, LB-2, and B-1 Districts to create an attractive and convenient environment for compatible commercial uses to serve local neighborhood areas along county and state roadways. The LB District allows numerous neighborhood-scale commercial uses as principal uses by-right and others by conditional use permit while the LB-2 District allows all commercial uses by conditional permit only. The B-1 District permits commercial uses by-right but with less restrictive bulk requirements compared with the LB District. The geographic boundaries of these districts are situated to promote continuity of local aesthetic and development character.
- B. Within any districts of this section a building, structure or lot shall only be used for one of the uses indicated in the Schedule of District Regulations,¹¹ for the specific district in which it is located on the Zoning Map, and in accordance with the particular classification of that use in that district. Further, any such buildings, structures or lots shall only be utilized in conformance with the provisions of the above said schedule. In addition, such use shall also comply with all other applicable provisions of this chapter. However, more than one use may be allowed on a lot, provided that such additional use shall be deemed and treated as a conditional use and shall be subject to the approval by the Planning Board in accordance with § 250-61.
- C. All uses in the LB, LB-2, and B-1 Districts shall require site plan and/or special use permit approval by the Planning Board.
- D. Within any districts of this section, where the use of a building changes to a different type of use, site plan approval shall be required prior to such change.

¹¹ Editor's Note: Said schedules are included as attachments to this chapter.

Article VII Sign Regulations

§ 250-30 Residential districts.

Permitted signs in residential districts:

- A. One indirectly illuminated name plate or professional sign with an area not to exceed two square feet.
- B. One temporary non-illuminated sign per frontage road advertising the sale or rental of the premises on which such sign is located with an area not to exceed four square feet.
- C. One directly illuminated identification sign or bulletin board for school, churches, and other public and semipublic institutions with an area not to exceed 32 square feet and located not closer than 15 feet to any street line.
- D. One non-illuminated sign advertising the sale of agricultural products grown on premises shall be permitted except in the SR District, provided:
 - (1) The area of the sign shall not exceed 12 square feet.
 - (2) Such sign shall be removed one month following the end of the growing season.

§ 250-31 LB, LB-2 and B-1 Districts.

Permitted signs in LB, LB-2, and B-1 Districts:

- A. Non-flashing business signs related to an establishment located on the same lot, provided:
 - (1) Illumination shall be diffused or indirect and shall be arranged so as to not reflect direct rays of light into adjacent residential districts or the public way.
 - (2) The number of square feet of the gross surface area of all signs on a lot shall not exceed two times the number of lineal feet in the frontage of the lot. Each side of a building which abuts upon more than one street shall be considered as separate frontage.
 - (3) No sign shall project more than 18 inches from the wall to which it is applied.
 - (4) There may be not more than one freestanding sign, located not less than 40 feet from the public right-of-way, fronting each abutting street.
- B. Temporary seasonal holiday lighting, political or election posters, or special event signs are permitted and not otherwise regulated, provided that they are:
 - (1) Not erected in such a way as to become a hazard; and
 - (2) Removed within two weeks after the date of said election or special event.

§ 250-32 Prohibited signs and lighting.

Prohibited types of signs and lighting:

- A. Flashing signs, including any sign or device on which artificial light is not maintained stationary and constant in intensity and color.
- B. Signs which may compete with or may be mistaken for a traffic signal.
- C. Outlining any part or a structure or building such as a gable, roof, sidewalk or corner with lighting.
- D. Temporary signs. The erection, installation or maintenance of temporary signs is hereby prohibited, except as follows:

- (1) The Building Official may grant special permission for the maintenance of a temporary sign or signs to a municipal, charitable, or nonprofit organization or requested special event for a period of not to exceed 15 days. Said permit, by the consent of the Building Official, may be extended for an additional period not to exceed 15 days. Submission of a refundable bond in the amount prescribed by the Town Board from time to time is required. The bond amount is refundable to the applicant upon removal and inspection by the Building Official or his designee.
- (2) A temporary sign announcing anticipated occupancy of a site or building shall be permitted for a period not to exceed six months without approval. Such sign shall not exceed thirty-two (32) square feet if it is freestanding and shall not exceed the maximum size permitted for a permanent sign if it is affixed to a building.
- (3) Temporary signs announcing special sales or events shall be permitted without approval for a period not to exceed 15 days. Any such temporary signs shall not exceed thirty-two (32) square feet in area and shall not be located closer than fifteen (15) feet to any street line.
- (4) Real estate signs. Such signs shall be for the sole purpose of advertising the sale of the premises upon which the sign is located.
 - (a) Provisions Applicable to All Zoning Districts. One real estate sign only, not larger than six square feet on one lot, advertising the sale or letting of only the premises on which it is maintained and set back not less than fifteen (15) feet from the street line and not less than ten (10) feet from each side line, shall be allowed; where setbacks do not permit. This regulation shall apply to all zoning districts.
 - (b) Prohibited locations. No sign shall be erected, placed or maintained within the right-of-way lines of any public street, sidewalk or public right-of-way. Any sign violating this subsection may be removed by the Building Official/Code Enforcement Officer or any other Town employee or agent duly designated by the Supervisor without prior notice to the owner. Such removal shall include the sign structure.
 - (c) Reclamation fee. If the Town has removed a sign, a fee as provided in shall be charged and paid to the Town for a reclamation fee. The reclamation fee shall be set by Resolution of the Town Board.
- (5) All political support signs shall be removed seven days after the general election.
 - (a) Political campaign signs do not require a permit from the Town.
 - (b) Political campaign signs shall not be designed or situated so as to become a traffic or safety hazard.
 - (c) Political campaign signs shall not be placed on private property without the owner's permission.
 - (d) The candidate, on whose behalf the sign is placed, is responsible for having the signs removed.
 - (e) Political campaign signs shall be placed no earlier than thirty (30) days before the applicable election and shall be removed no more than seven (7) days following the applicable election.
 - (f) Political campaign signs shall be no more than 32 sq. ft. in size.

- (6) Temporary signs may not be placed to stand on sidewalks or other pedestrian walkways.
- (7) Temporary signs must be properly mounted or anchored.

Article VIII Solar Energy Power Systems

§ 250 – 33 Purpose and intent

- A. The Town Board of the Town of Mount Hope wishes to promote renewable energy resources by permitting solar energy power systems and limiting their location to protect the public health, safety and welfare.
- B. This chapter is not intended to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this chapter imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.

§ 250 – 34 Solar Code Definitions

As used in this Article, the following terms shall have the meanings indicated, unless the context or subject matter requires otherwise.

- A. Accessory Structure: A structure, the use of which is customarily incidental and subordinate to that of the principal building and is attached thereto, and is located on the same lot or premises as the principal building.
- B. Alternative Energy Systems: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal building.
- C. Building-Integrated Photovoltaic (BIPV) Power Systems: A solar energy power system that consists of integrating photovoltaic modules into the building structure, such as the roof of the façade and which does not alter the relief of the roof.
- D. Collective Solar: Solar installations owned collectively through subdivision homeowner associations, college student groups, “adopt-a-solar-panel” programs, or other similar arrangements.
- E. Flush-Mounted Solar Panel: Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised.
- F. Freestanding or Ground-Mounted Solar Energy Power System: A solar energy power system that is directly installed in the ground and is not attached or affixed to an existing structure. Pole mounted solar energy power systems shall be considered Freestanding or Ground-Mounted Solar Energy Power Systems for the purposes of this Local Law.
- G. Large-Scale Solar: For purposes of this article, the term "large-scale solar" refers to solar photovoltaic systems that produce more than 12 kilowatts per hour of energy or solar-thermal systems which, although it may serve the building or electrical service to which they are attached, provides energy for other buildings, other properties or the commercial electrical grid.
- H. Net-Metering: A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

- I. Photovoltaic (PV) Power Systems: A solar energy power system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.
- J. Qualified Solar Installer: A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified installers if the Town of Mount Hope determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.
- K. Rooftop or Building Mounted Solar Power System: A solar energy power system in which solar panels are mounted on top of the structure of a roof as a flush-mounted power system.
- L. Setback: The distance from a front lot line, side lot line or rear lot line of a parcel to any component of a freestanding or ground-mounted solar energy power system, solar facility or solar power plant within which no solar components shall be permitted.
- M. Small-Scale Solar: For purposes of this article, the term "small-scale solar" refers to solar photovoltaic systems that produce up to 12 kilowatts per hour of energy or solar-thermal systems which serve only the building or electrical service to which they are attached, and do not provide energy for any other buildings.
- N. Solar Access: Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of active and/or passive solar energy power systems on individual properties.
- O. Solar Collector: A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.
- P. Solar Easement: An easement recorded pursuant to NYS Real Property Law §335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.
- Q. Solar Energy Equipment/Power System: Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar power systems include solar thermal, photovoltaic and concentrated solar. For the purposes of this law, a solar energy power system does not include any solar energy power system of four square feet in size or less.
- R. Solar Panel: A device for the direct conversion of solar energy into electricity.
- S. Solar Power Plant: Energy generation facility or area of land whose principal use is allowed by special permit issued by the Planning Board to convert solar energy to electricity, whether by photovoltaics,

concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of wholesale or retail sales of electricity. No other buildings or uses are required unless needed for the solar installation.

- T. Solar Storage Battery: A device that stores energy from the sun and makes it available in an electrical form.
- U. Solar-Thermal Power Systems: Solar thermal power systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

§ 250 – 35 Applicability

- A. The requirements of this local law shall apply to all solar energy power systems and equipment installations modified or installed after the effective date of this local law.
- B. Solar energy power system installations for which a valid building permit has been issued or, if no building permit is presently required, for which installation has been completed before the effective date of this local law shall not be required to meet the requirements of this local law.
- C. All solar energy power systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Building Code and the Town of Mount Hope Code.
- D. Solar energy power systems, unless part of a Solar Facility or Solar Power Plant, shall be permitted only to provide power for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit the sale of excess power through a “net billing” or “net-metering” arrangement in accordance with New York Public Service Law §66-j or similar state or federal statute within the limitations provided **in** herein.

§ 250 – 36 Permitting.

- A. No solar energy power system or device shall be installed or operated in the Town of Mount Hope except in compliance with this article.
- B. The distinction between residential and commercial solar facilities shall be consistent with the latest determinations and kilowatt thresholds held by NYSERDA. The purpose of residential solar facilities is to provide electrical power to the property where such power is generated. The purpose of commercial solar facilities is primarily to provide electrical power for properties beyond where such power is generated.
- C. Rooftop and Building-Mounted Solar Power Systems, including BIPV: Rooftop and building-mounted solar power systems, including BIPV on residential or commercial structures are permitted in all zoning districts in the Town subject to the following conditions:
 - (1) Building permits shall be required for installation of all rooftop and building-mounted solar power systems, including BIPV. No Planning Board approval is required for these installations, unless in the sole opinion of the Code Enforcement Officer a Planning Board review is necessary and appropriate.
 - (2) Rooftop and building-mounted solar power systems, including BIPV when installed shall not exceed the maximum permitted building height in the zoning district where the system is to be located.

- (3) Rooftop and building-mounted solar power systems shall match the contour and slope of the existing roof structure. An exception is provided for buildings with flat or shallow-sloped roofs that allows for solar power systems that do not match roof contour, but are effectively screened from public view by a parapet.
 - (4) Rooftop and building-mounted solar power systems, including BIPV, are permitted on primary structures and as well as permitted on accessory structures.
 - (5) Rooftop and building-mounted solar power systems, including BIPV must be eighteen inches from any chimney and shall not be permitted on any roof overhangs.
 - (6) In order to ensure firefighter and other emergency responder safety, rooftop and building-mounted solar power systems, including BIPV shall be installed in accordance with the following:
 - (a) Each photovoltaic array shall not exceed 150 feet in any direction.
 - (b) Panels, modules or arrays installed on roofs with a single ridge shall be located in a manner that provides two (2) thirty-six (36) inch wide access pathways extending from the roof access point to the ridge.
 - (c) Panels, modules or arrays installed on dwellings with hip roofs shall be located in a manner that provides a clear access pathway not less than thirty-six (36) inches wide, extending from the roof access point to the ridge or peak, on each roof slope where panels, modules or arrays are located.
 - (d) Panels and modules shall not be located less than eighteen (18) inches from a valley, ridge or peak on any roof.
 - (e) In the event any of these standards are more stringent than the New York State Uniform Fire Prevention and Building Code, they shall be deemed to be installation guidelines only and the standards of the state code shall apply.
- D. Solar-Thermal Power Systems: Solar-Thermal Power Systems are permitted in the Town under the following conditions:
- (1) Rooftop and building-mounted solar-thermal power systems are permitted in all zoning districts and shall be subject to the same requirements set forth in Subsection 2 above as for rooftop and building-mounted solar power systems.
 - (2) Freestanding or ground-mounted solar-thermal power systems are permitted as accessory structures in all zoning districts and shall be subject to the same requirements set forth in Subsection 4 below as for freestanding and ground-mounted solar power systems.
- E. Freestanding and ground-mounted solar power systems: Freestanding or ground-mounted solar power systems are permitted in all zoning districts as an accessory structure to single family and two-family residences under the following conditions:
- (1) Building permits shall be required for the installation of all freestanding and ground-mounted solar power systems. No Planning Board approval is required for these installations, unless in the sole opinion of the Code Enforcement Officer a Planning Board review is necessary and appropriate.
 - (2) Freestanding and ground-mounted solar power systems shall only be permitted on lots with a minimum size of 80,000 square feet.

- (3) Developmental coverage on a lot, including freestanding and ground-mounted solar power systems shall not exceed that permitted in the bulk table for single family and two-family residences in the zoning district in which the lot is located.
 - (4) All freestanding and ground-mounted solar power systems shall be subject to a fifteen (15) foot setback from the property line.
 - (5) All freestanding and ground-mounted solar power systems shall be enclosed by a continuous fence (or fence with privacy slats) consistent with NYS and Federal requirements.
 - (6) Freestanding and ground-mounted solar power systems shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for collectors.
 - (7) Freestanding and ground-mounted solar power systems, including any mounts shall not exceed ten (10) feet in height when oriented at maximum tilt.
 - (8) Freestanding and ground-mounted solar power systems can only be installed in side or rear yards. No front yard installations are permitted.
 - (9) Freestanding and ground-mounted solar power systems shall only be permitted as an accessory use provided they generate 30 kilowatts or less. The code enforcement officer may require up to twelve (12) months of electrical usage invoices to demonstrate the applicant's installation complies with this requirement.
 - (10) Any application for the installation of freestanding or ground-mounted solar power systems which will produce kilowatts in excess of the amount specified in §250.36(E)(9) above shall constitute an application for site plan approval and special use permit which shall require the Planning Board's approval pursuant to Article XI herein. Any solar installations that require Planning Board site plan and special use permit approval can, based on surrounding uses, be required to install additional screening and/or fencing to mitigate visual impact.
- F. Freestanding and Ground-Mounted Solar Power Systems Accessory to Approved Site Plans: Freestanding or ground-mounted solar power systems installed pursuant to this section shall be considered accessory uses which shall require site plan approval. Accessory freestanding and ground-mounted solar power systems are permitted in all zoning districts as an accessory structure subject to the following conditions:
- (1) Site plan approval granted by the Town of Mount Hope Planning Board is required under Article XI of the Town Code. If an accessory freestanding and ground-mounted solar power system is installed after site plan approval and/or construction has already been completed at the site, a site plan amendment approval is required.
 - (2) All accessory freestanding and ground-mounted solar power systems shall be subject to a minimum fifteen (15) foot setback from the property line. The Planning Board may require increased setbacks as it deems necessary based on the surrounding conditions.
 - (3) Developmental coverage on a lot, including accessory freestanding and ground-mounted solar power systems shall not exceed that permitted in the bulk table for the primary use of the lot in the zoning district in which the lot is located.
 - (4) All accessory freestanding and ground-mounted solar power systems shall be enclosed by a fence consistent with NYSERDA regulations.

- (5) Accessory freestanding and ground-mounted solar power systems shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for collectors. Additional screening may be required as part of the Planning Board approval.
 - (6) Accessory freestanding and ground-mounted solar power systems, including any mounts shall not exceed ten (10) feet in height when oriented at maximum tilt.
 - (7) Accessory freestanding and ground-mounted solar power systems can only be installed in side or rear yards. No front yard installations are permitted.
 - (8) The installation of accessory freestanding or ground-mounted solar power systems shall be considered a Land Development Activity for purposes of Article XII, Stormwater Management of the Code of the Town of Mount Hope. The site shall comply with all current standards for New York State Stormwater Regulations.
 - (9) Accessory freestanding and ground-mounted solar power systems shall only be permitted on a site to provide sufficient kilowatts to power the site plus twenty percent (20%) and the applicant must provide a calculation demonstrating the required amount.
 - (10) Any application for the installation of accessory freestanding or ground-mounted solar power systems which will produce kilowatts in excess of the amount specified in §250.36(F)(9) above shall constitute an application for a special use permit which shall require the Planning Board's additional approval pursuant to Article XI herein. Any solar installations that require Planning Board special use permit approval can, based on surrounding uses, be required to install additional screening and/or fencing to mitigate visual impact.
- G. Solar Facilities and Solar Power Plants: Solar Facilities and Solar Power Plants shall be permitted as structures in all zoning districts subject to the following conditions:
- (1) Site plan and special use permit approval granted by the Town of Mount Hope Planning Board is required under Article XI herein. As part of the application, the applicant shall submit the following (in addition to all other submittal requirements for site plans):
 - (a) A written narrative describing how the solar facility or solar power plant will be constructed, operated and maintained.
 - (b) Manufacturer's information and specifications for the proposed solar facility or solar power plant.
 - (c) A written narrative describing the eventual decommissioning of the solar facility or solar power plant that describes the anticipated life of the solar facility or solar power plant, the estimated decommissioning costs and the method for insuring funds will be available for decommissioning and restoration of the site.
 - (2) Compliance with the State Environmental Quality Review Act shall be required. Applicants shall prepare and submit a completed Part I of a Full Environmental Assessment Form, together with such additional analyses as may be required by the Planning Board.
 - (3) The installation of a solar facility or solar power plant shall be considered a Land Development Activity for the purposes of Article XII, Stormwater Management of the Code of the Town of Mount Hope. The site shall comply with all current standards for New York State Stormwater Regulations.

- (4) The site plan shall indicate all existing and proposed access to the site, including road, electric power, emergency access, and other utilities existing and proposed within the property boundaries. All easements and rights-of-way should be shown on the site plan.
 - (5) The manufacturer's or installer's identification and appropriate warning signage shall be posted at the site and clearly visible.
 - (6) The solar facility or solar power plant shall be screened when possible and practicable from adjoining lots and street rights of way through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with the normal operation of the solar collectors. Additional screening may be required as part of the Planning Board approval.
 - (7) All solar facility or solar power plant equipment and installations shall be subject to a minimum setback of 100 feet plus the setback minimum from all property lines required in the zoning district. The Planning Board may require increased setbacks as it deems necessary based on the surrounding conditions.
 - (8) A solar facility or solar power plant shall only be permitted on lots with a minimum size of 10 acres.
 - (9) Notwithstanding bulk table requirements to the contrary, developmental coverage of a lot with a solar facility or solar power plant shall not exceed 85%.
 - (10) The height of the freestanding or ground-mounted solar collectors and any mounts shall not exceed fifteen (15) feet when oriented at maximum tilt.
 - (11) The solar facility or solar power plant installation shall be enclosed by a fence consistent with NYSERDA regulations. Planning Board may require a greater height in fencing depending on individual conditions.
 - (12) Solar facility and solar power plant panels and equipment shall be surfaced, designed and sited so as not to reflect glare onto adjacent properties and roadways.
 - (13) On-site power lines shall, to the maximum extent practicable, be placed underground.
- H. All solar energy power systems and equipment shall be permitted only if they are determined by the Town of Mount Hope not to present any unreasonable safety risks, including but not limited to: weight load, wind resistance and ingress or egress in the event of fire or other emergency.
 - I. All solar energy power systems and equipment shall be surfaced, designed and sited so as not to reflect glare onto adjacent properties and roadways.

§ 250 – 37 Safety

- A. All solar energy power system installations must be performed by a qualified solar installer.
- B. Prior to operation, electrical connections must be inspected by a Town of Mount Hope Code Enforcement Officer and by an appropriate electrical inspection person or agency as determined by the Town.
- C. Any connection to the public utility grid must be inspected by the appropriate public utility.
- D. Solar energy power systems shall be maintained in good working order.
- E. Rooftop and building-mounted solar power systems shall meet New York's Uniform Fire Prevention and Building Code standards.

- F. If solar storage batteries are included as part of the solar power system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of the Town and other applicable laws and regulations.
- G. If the solar power system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collectors, mount and associated equipment no later than 90 days after the end of the twelve-month period.
- H. Solar energy power systems and equipment shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar energy power system. Materials used for marking shall be weather resistant.
 - (1) For one and two-family residential installations, the marking may be placed within the main service disconnect. If the main service disconnect is operable with the service panel closed, then the marking should be placed on the outside cover.
 - (2) For accessory installations, the marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.
 - (3) In the event any of the standards of this subsection for markings are more stringent than applicable provisions of the New York State Uniform Fire Prevention and Building Code, they shall be deemed to be guidelines only and the standards of the state code shall apply.

§ 250 – 38 Decommissioning

- A. If a solar energy power system ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the power system, mount and associated equipment from the property no later than ninety (90) days after the end of the 12 month period.
- B. If a freestanding solar power system, ground-mounted solar power system, solar facility or solar power plant has been out of active and continuous service for a period of one (1) year, it shall be removed from the premises to a place of safe and legal disposal. Any and all structures and accessory structures shall also be removed. The site shall be restored to as natural a condition as possible. Such removal shall be completed within eighteen (18) months of the cessation of active and continuous use. A permit for the demolition of the system shall be required under Chapter 94 of the Town Code.
- C. If the owner of a freestanding solar power system, ground-mounted solar power system, solar facility or solar power plant that has ceased operation as provided in Section 250-38(A) fails to remove the system, the Town may serve on the owner a notice of demand to remove.
 - (1) Notice shall be served upon the owner or owners by certified mail, addressed to his or their last known address, and/or posting of said notice on the premises and mailing a copy of said notice to the owner at the address or addresses as recorded in the Sole Assessor's office on the same day as posted. Service of notice upon any owner of land, or the designated person to receive process as provided by law, shall suffice for the purposes of this section.
 - (2) Whenever a notice or notices referred to in this article has or have been served upon or posted on said real property requiring such owner or owners of the respective lots or parcels to remove a freestanding solar power system, ground-mounted solar power system, solar facility or solar power plant, and such owner or owners shall neglect or fail to comply with the requirements of such notice or notices within the time provided therein, the Town Supervisor

may authorize the work to be done and pay the cost thereof out of general Town funds or authorize Town employees and equipment to perform the work.

- (3) The Town shall be reimbursed for the cost of the work performed or services rendered by direction of the Town Supervisor, as herein provided, by assessment and levy upon the lots or parcels of land wherein such work was performed or such services rendered, and the expenses so assessed shall constitute a lien and charge on the real property on which they are levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges.

§ 250 – 39 Appeals

- A. If a person is found to be in violation of the provisions of this Local Law, appeals should be made in accordance with the established procedures and time limits of the Zoning Code and New York State Town Law.
- B. If a building permit for a solar energy power system is denied based upon a failure to meet the requirements of this Local Law, the applicant may seek relief from the Zoning Board of Appeals in accordance with the established procedures and time limits of the Zoning Code and New York State Town Law.

§ 250 – 40 Fees

The fees for all building permits required herein shall be paid at the time each building permit application is submitted pursuant to the Schedule of Fees provided for in the Town Code.

Article IX Mobile Homes and Double-Wide Mobile Homes

§ 250-41 Applicability.

These regulations shall apply to existing mobile homes as of the date of this chapter.

- A. No person shall move into, locate, place, occupy or make additions to or replace a damaged or destroyed mobile home or a double-wide mobile home in the Town of Mount Hope without a permit, pursuant to the provisions as herein provided below, obtained from the Building Inspector, and failure to have such a permit shall constitute a violation of this chapter.¹²
- B. In no event shall a mobile home or a double-wide mobile home be altered as to electrical wiring, walls or roof structure without obtaining a permit and applicable inspections from the Building Inspector.

§ 250-42 Placement of mobile home or double-wide mobile home.

- A. No mobile home or double-wide mobile home shall be moved into, located, placed or occupied as a residence in the Town of Mount Hope, except as provided by the requirements and restrictions specified in this chapter for the district such mobile home or double-wide mobile home is moved into, located, placed or occupied as a residence.
- B. In the event a mobile home is replacing a mobile home that is damaged or destroyed by fire or other event, the replacement mobile home may be larger than the original, but must be no more than five years old on the date of replacement.
- C. All other applicable Building Codes, municipal standards, rules and regulations requiring permits, certificates of occupancy and other permits for the location of a residential dwelling applicable to a mobile home or double-wide mobile home must be adhered to and complied with, when locating the same in a zone permitting such uses.

§ 250-43 Lot requirements.

- A. The minimum lot area and setback requirements for a lot having a mobile home or double-wide mobile home shall be no less than the minimum required for one-family detached dwellings in that district as such mobile home or double-wide mobile home lot shall be located in. Such minimum requirements for said lots shall be in accordance with the Schedule of District Regulations¹³ provided in this chapter.
- B. The restrictions concerning the number of dwellings per lot as stated in the Table of District Regulations shall apply equally to mobile home or double-wide mobile homes.

§ 250-44 Special requirements.

- A. Engineering plans required:
 - (1) All mobile home or double-wide mobile homes shall be placed on permanent foundations. In the event the site will not allow a foundation, a plan prepared, signed and sealed by a New York State licensed architect or engineer shall be submitted to and approved by the Building Inspector showing an alternative plan such as a pier-type foundation for securing

¹² Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

¹³ Editor's Note: Said schedules are included as attachments to this chapter.

the dwelling to the site. Pier-type foundations shall be fully skirted, and such skirting shall consist of approved materials by the Building Inspector for below-grade use and be insulated to meet all New York State Energy Codes.

- (2) Any application for a permit to construct an addition to a mobile home or double-wide mobile home shall require stamped and sealed plans by a New York State licensed engineer or architect. Such plans shall show structural tie-ins to roofs, including but not limited to wall-bearing data of structure if applicable.
- B. All mobile home or double-wide mobile homes shall be constructed in conformity with New York State Fire, Building and Energy Codes.
 - C. The minimum habitable floor area for a mobile home or double-wide mobile home shall be 800 square feet.
 - D. For all mobile homes or double-wide mobile homes, in no event shall a superstructure (i.e., reroof) be placed over the existing roof and bearing on the existing exterior wall. This shall not prevent normal maintenance such as tarring, sealing or painting.

Article X Multi-Family Dwellings, Group Dwellings, and Tourist Home Accommodations

§ 250-45 Scope.

This article in this chapter shall apply to all boardinghouses, rooming houses and lodging houses, multifamily dwellings, group dwellings, mobile home courts, tourist accommodations, bed-and-breakfasts, as defined, located within the Town of Mount Hope.

§ 250-46 Applicability

The provisions of this article in this chapter shall be deemed to supplement applicable state and local laws, ordinances, codes or regulations, and nothing in this chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the Town, County or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this chapter and any applicable state or local laws, ordinances, codes or regulations, the more restrictive or stringent provision or requirement shall prevail.

§ 250-47 Permit required.

All boardinghouses, rooming houses and lodging houses, multifamily dwellings, group dwellings, mobile home courts, tourist accommodations and bed-and-breakfasts in the Town must have a permit issued by the Town Building Inspector.

§ 250-48 Application for permit.

Application for a permit for a boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast shall be made, in writing, to the Town Building Inspector on a form provided by the Inspector for that purpose.

Such application shall be filed in duplicate and shall contain:

- A. The name, address and telephone number, if any, of the owner of the boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast.
- B. The street address and Tax Map description (section, block, lot or lots) of the boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast.
- C. The number of dwelling units/rooms in the boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast, the dimensions of each dwelling unit/room, the number of persons intended to be accommodated by and to reside in each such dwelling unit/room and a description of the present use or uses thereof, if any.
- D. The name, address and telephone number of the managing agent or operator of each such boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast who is authorized to act on behalf of the owner, along with his or her phone number. The name and phone number of an on-premises person who can grant access to the building and its occupants shall also be furnished. The Town Building Inspector shall be notified within 10 working days of any change in this information.

- E. The name and address of the insurance company, if any, providing the fire and other hazard and public liability insurance for the owner of the boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast, with a description of the type of insurance provided, the policy limits for each coverage and the policy number and expiration date of such policy.

Such application shall be signed by the owner of the boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast, and the statements of such owners therein contained shall be verified under oath.

§ 250-49 Fees.

A nonrefundable permit application fee set from time to time by the Town Board in Article XVII, Fees, shall be paid upon filing an application for a permit. A nonrefundable permit renewal fee also set by the Town Board shall be paid upon filing an application for renewal.

§ 250-50 Review of permit application; registry; posting.

- A. Review. The Town Building Inspector shall review each application for completeness and accuracy and shall make an on-site inspection of the proposed boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast. If satisfied that the proposed use and premises comply fully with all applicable laws, rules and regulations of the state, County and Town, including local laws and ordinances, and that such proposed use would not create an unsafe or dangerous condition or create an unsafe or substandard structure or create a nuisance to adjoining or nearby properties, the Town Building Inspector shall issue the permit or permits applied for.
- B. Registry. It shall be the duty of the Town Building Inspector to maintain a register of permits issued pursuant to this chapter. Such register shall be kept by street address, showing the name and address of the permittee, the number of dwelling units/rooms at such street address and the date of expiration of permit for such unit. Such registry shall be kept available for public inspection during regular business hours at the office of the Inspector.
- C. Posting. The permit containing the number of dwelling units/rooms and the names and addresses and phone numbers of the owner and premises manager shall be conspicuously posted at or near the principal entrance.

§ 250-51 Term of permit; renewal; enlargement.

- A. Term. All permits issued pursuant to this chapter shall be valid for a period of one year from the date of issuance and may be renewed for additional one-year periods as provided in Subsection B of this section.
- B. Renewal.
 - (1) A renewal application must contain the same information required for the initial application by § 250-48, must be accompanied by the fee required under § 250-49 and must be submitted to the Town Building Inspector.

- (2) A renewal permit shall be granted unless the Town Building Inspector finds there is reasonable cause not to renew. The Inspector shall notify the applicant of there being reasonable cause not to renew. Within 10 working days the applicant may request a hearing before the Inspector. During this hearing process, the applicant will be issued a temporary permit which shall expire 60 days after the final decision of the Inspector.
 - (3) The aforesaid hearing shall be public, and the applicant may be represented by counsel and shall be able to call witnesses on his or her behalf. The Inspector shall act as Hearing Officer and, in his or her discretion, may decide not to renew the permit if, upon substantial evidence, the Inspector determines that the subject boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast is either a nuisance to neighboring or adjoining property or is not in compliance with all required state, County and Town laws, ordinances, rules and regulations.
- C. Enlargement. Any enlargement of an existing boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast shall require a full review under this section.

§ 250-52 Inspections; search warrants.

- A. Inspections. The Town Building Inspector or his or her designee is authorized to make or cause to be made inspections, from time to time, to determine the condition of any boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast and to safeguard the health, safety and welfare of the public. The Town Building Inspector or his or her designee is authorized to enter, upon consent of the owner or occupant, any rental unit and the premises in which the same is located at any reasonable time. Unconsented entries and entries at unreasonable hours may be made upon warrant duly issued by a justice of the Town Court of the Town of Mount Hope. All applications and renewals shall be granted only after an inspection.
- B. Search warrants. The Town Building Inspector or his or her designee is authorized to make application to the Town Court of the Town of Mount Hope for the issuance of a search warrant to be executed by a Town constable, state trooper or other law enforcement officer where there exists reasonable justification for an inspection to be conducted pursuant to this chapter or where there is reasonable cause to believe that there has occurred or is occurring a violation of this chapter, of the Multiple Residence Law, of the New York State Uniform Fire Prevention and Building Code or of the Town of Mount Hope Zoning Law. The application for a search warrant shall, in all respects, comply with applicable laws of the State of New York.

§ 250-53 Notification of permit violations.

The Town Building Inspector shall notify a permit holder of reasonable cause to believe the permit has been violated in any of the following ways:

- A. The permit holder has caused, permitted, suffered or allowed to exist and remain upon the premises for which such permit has been issued for a period of 10 days or more after written notice has been given to the permit holder or the managing agent of such rental unit a violation of the Multiple Residence Law, the New York State Uniform Fire Prevention and Building Code or of the Town of Mount Hope Zoning Law.

§ 250-54 Unlawful acts.

It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any person to:

- A. Operate a boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast without a permit.
- B. List, solicit, advertise or offer, exhibit or show to any person a dwelling unit/room in a boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast located within the Town of Mount Hope for the purpose of bringing about the rental thereof where no currently effective permit has been issued in respect of such dwelling unit/room as herein required. No violation of this section shall occur if the person is licensed by New York State as a real estate broker or real estate salesman and is acting solely in that capacity.
- C. Accept a deposit of rent or security or a commission in connection with the rental of a rental unit in a boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast located within the Town of Mount Hope where no currently effective permit has been issued in respect of such rental unit as herein required. No violation of this section shall occur if the person is licensed by New York State as a real estate broker or real estate salesman and is acting only in that capacity.
- D. Sell a boardinghouse, rooming house, lodging house, multifamily dwelling, group dwelling, mobile home court, tourist accommodation or bed-and-breakfast which does not have a permit under this chapter.
- E. In the event that a person convicted of a violation of Subsection A(4) of this section shall have been a real estate broker or sales person licensed by the State of New York at the time such violation was committed, it shall be the duty of the Town Clerk to transmit a record of such conviction to the Division of Licensing Services of the Department of State and to make complaint thereto against such licensee on behalf of the Town pursuant to the provisions of Article XIA of the Real Property Law.

§ 250-55 Penalties for offenses.

A violation of any provision of this article of this chapter shall constitute an offense within the meaning of the Penal Law of the State of New York, punishable as provided for in this chapter. A fine of no less than \$250 and no greater than \$500 for a first offense and/or up to 15 days in jail shall be imposed upon conviction, and a fine of no less than \$500 and no greater than \$1,000 and/or up to 30 days in jail shall be imposed for conviction of a second or subsequent offense.

Article XI Planning Board

§ 250-56 Authorization and approval of plans.

- A. In all cases where this chapter requires authorization and approval of plans by the Planning Board, no building permit shall be issued by the Building Inspector except upon authorization of, and in conformity with the plans approved by, the Planning Board. All uses other than one-family detached dwellings and agricultural uses shall require site plan approval by the Planning Board.
- B. Pre-submission conference. Site plan applications may, at the discretion of the Code Enforcement staff and the Planning Board, have an optional pre-submission conference.
 - (1) The purpose of such conference shall be to give both the Town and the applicant an opportunity to gain a better perspective on the ramifications of the proposal. This conference does not constitute a formal submission of an application. The applicant may prepare a sketch plan and narrative description of the project and provide copies as requested by Code Enforcement staff and members of the Planning Board prior to the pre-submission conference.
 - (2) The Code Enforcement staff and members of the Planning Board may provide project direction and feedback on the sketch plan to the applicant, based on the professional expertise of Code Enforcement staff and members of the Planning Board, the Town's current planning documents and the design guidelines and other requirements of this chapter.
- C. Change of use or conversion.
 - (1) In cases of changes of use of an existing use or structure to a use permitted in the district, the Planning Board is hereby authorized to waive all or part of the requirements of Subsection D and § 250-57 where the Board determines the same are not applicable under the facts and circumstances of a particular application.
 - (2) In cases of a change of use of an existing structure or use to a conditional use, the Planning Board may waive all or part of the requirements of § 250-57 where they do not apply, or their requirement would not provide the Planning Board with additional information necessary to make a judgment on the specific use.
 - (3) A change of ownership of a given use in and of itself shall not constitute a change of use for the purpose of these regulations, so long as there is no change in the use itself.
- D. Public hearings. The Planning Board shall, except as provided herein and above, fix a time for the conduct of a public hearing on the matter of a site plan application within 62 days from the date the application is received. The Planning Board shall mail notice of said hearing to the applicant at least 10 days prior to the hearing. Public notice of said hearing shall be printed in the official newspaper of the Town at least five days prior to the date thereof. The Planning Board shall decide upon the application within 62 days after the conclusion of the final hearing. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Board. The decision of the Board on the application after conclusion of the public hearing shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant. Notification of other municipalities and agencies shall be made in accordance with § 274-a of Town Law and §§ 239-l and 239-m of General Municipal Law and as spelled out in

§250-82B below for variances. Notification of property owners shall be in accordance with §283-a of the Town Law in regard to Farm Operations in Agricultural Districts.

- E. The Planning Board may, at its sole discretion, engage the services of such experts and/or consultants, including but not limited to engineers or other analysts, as it determines shall be required in order to properly evaluate a site plan application pursuant to this chapter. The costs for such expert consultation shall be limited to that necessary for proper consideration of said application, and shall be paid for by the applicant. [Amended 3-17-2014 by L.L. No. 2-2014]
- F. The Town Board of the Town of Mount Hope shall be responsible for appointing an attorney or attorneys to represent the Planning Board and to make all appropriations necessary for the attorney. [Added 3-17-2014 by L.L. No. 2-2014]

§ 250-57 Plan requirements.

Submitted applications shall include a description of all proposed uses, a State Environmental Quality Review (SEQRA) Short or Long Environmental Assessment Form, as determined by the Planning Board, and a site plan. The site plan shall show the subject lot and all structures on adjacent properties within 100 feet of the lot lines of subject lot, plans and elevations of all proposed outdoor signs, floor plans and plans for exterior alterations of all existing and proposed structures and any other such building plans and elevations as the Planning Board may require. Site plans shall indicate the following:

- A. Location of all existing and proposed structures and outdoor signs.
- B. Location of all uses not requiring a structure.
- C. Location of driveways, parking and loading areas with the number of stalls provided therewith.
- D. Existing and proposed storm drainage facilities.
- E. Location of buffer strips and screening where necessary.
- F. Where the applicant wishes to develop in stages, a site plan indicating ultimate development shall be presented for approval.
- G. In the case of uses requiring approval of the New York State Department of Health, the approval of said Department.
- H. Names of all other agencies whose approval is needed for the proposed use.
- I. All easements, restrictions, covenants and other matters of record affecting the subject premises shall also be shown on the plan. Written copies of said restrictions shall be provided, if requested.
- J. All farm operations in accordance with the New York State Agriculture and Markets Law within 500 feet of the property.
- K. All existing or proposed wells and septic systems.
- L. Stormwater pollution prevention plan. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Article [XII](#) of this chapter shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in Article [XII](#) of this chapter. The approved site plan shall be consistent with the provisions of Article [XII](#) of this chapter. [Added 6-14-2010 by L.L. No. 1-2010]

§ 250-58 General considerations.

In authorizing any use, the Planning Board shall take into consideration the public health, safety and general welfare, and comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular, and may attach reasonable conditions and safeguards as a precondition to its approval. The Board shall consider the special conditions set forth for any use requiring Planning Board authorization and the following general objectives:

- A. That all proposed structures, equipment or material shall be readily accessible for fire and police protection.
- B. That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- C. That, in addition to the above, in the case of any use located in, or directly adjacent to, a residential district:
 - (1) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therein will not be hazardous or inconvenient to, or incongruous with, said residential district or conflict with the normal traffic of the neighborhood; and
 - (2) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

§ 250-59 Design considerations.

In approving the plans for a particular use, the Planning Board shall give specific consideration to the design of the following:

- A. Traffic access. That all proposed traffic accessways are adequate but not excessive in number; adequate in width, grade, alignment and visibility; not located too near street corners or other places of public assembly; and other similar safety considerations.
- B. Circulation and parking. That adequate off-street parking and loading spaces are provided to prevent parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking.
- C. Landscaping and screening. That all playground, parking and service areas are reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is in character with that generally prevailing in the neighborhood. Preservation of existing trees over 12 inches in diameter to the maximum extent possible shall be provided.
- D. Character and appearance. That the character and appearance of the proposed use, buildings, and/or outdoor signs shall be in general harmony with the character and appearance of the surrounding neighborhood and that of the Town of Mount Hope and will not adversely affect the general welfare of

the inhabitants of the Town of Mount Hope. Such considerations shall not include the architectural period or style of any proposed building.

§ 250-60 Special permits for conditional uses.

On application, and after public notice and hearing, the Planning Board may authorize the issuance of special permits for conditional uses. All applications for special permits and/or conditional use require site plan approval. In authorizing the issuance of special permits, the Board shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to insure the accomplishments of the objectives of site plan approval as described in § [250-58](#) above and of this chapter and the conditions peculiar to the specific use proposed as found in § [250-61](#) below.

- A. In authorizing the issuance of a special permit, it shall be the duty of the Board to attach such conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the general objectives of this chapter.
- B. The Board may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and meeting, and the Planning Board shall conduct a public hearing. The Planning Board, in determining whether to grant renewal of such special permits, shall determine the same following receipt of a report of the Building Inspector as to whether such conditions have been complied with as may have been previously issued and/or prescribed by the Board in conjunction with the issuance of the original permit. In the event such conditions have not or are not being complied with, a period of 60 days shall be granted the applicant for full compliance prior to the revocation of the permit.
- C. All conditional uses shall require site plan approval in addition to special permit for conditional use. The procedure for a special permit for a conditional use shall be identical to and may be made simultaneous with the procedure, notifications and hearings for site plan approval as defined in §§ [250-56](#) and [250-57](#) above.

§ 250-61 Special requirements for conditional uses.

- A. Accessory Apartments. A special permit may be granted by the Planning Board to permit accessory apartments. It is the specific purpose and intent of this provision to provide the opportunity for the development of small, rental dwelling units designed, in particular, to meet the special housing needs of single persons and couples of low- and moderate income, both young and old, and of relatives of families presently living in the Town. Furthermore, it is the purpose and intent of this section to allow the more efficient use of the Town's existing stock of dwellings to provide economic support for present resident families of limited income, to protect and preserve property values and to maintain the single family character of the residential districts of the Town of Mount Hope without the over-utilization of the land.
 - (1) To help achieve the vision and goals of the Town's Comprehensive Plan, a special permit is required to create a single apartment within a one-family dwelling, subject to the following provisions:
 - (a) Owner occupancy required. The owner(s) of the one-family lot upon which the accessory apartment is located shall occupy at least one of the dwelling units on the premises.

- (b) Only one apartment is allowed, and it shall be clearly subordinate to the one-family dwelling.
 - (c) The number of bedrooms in the apartment shall not be more than two.
 - (d) The floor area of the apartment shall be greater than 400 square feet.
 - (e) The floor area devoted to the apartment shall not exceed 35% of the entire floor area of the one-family dwelling.
 - (f) The apartment and one-family dwelling must have safe and proper means of entrance, clearly marked for the purpose of emergency services.
 - (g) If the water supply is from a private source, the applicant shall certify that the water supply is potable and of adequate flow. The applicant shall furnish an engineer's report and obtain certification of well and septic adequacy from the Orange County Health Department. Failure to correct promptly any water quality problems shall result in the revocation of the special permit.
 - (h) The applicant shall maintain a proper sewage disposal system adequate for the two dwelling units. The applicant shall furnish an engineer's report and obtain certification of well and septic adequacy from the Orange County Health Department. Failure to correct promptly any sewage system problem shall result in revocation of the special permit.
 - (i) Stairways leading to any floor or story above the first floor shall be located within the walls of the building wherever practicable. Stairways and fire escapes shall be located on the rear wall in preference to either side wall. In no instance shall an exterior stairway or fire escape be located on any wall fronting on a street.
 - (j) Off-street parking shall be in accordance with § 250-15 and shall be on the parcel on which the accessory apartment is located.
 - (k) Continued compliance with all of these regulations is required. Failure to do so will result in a revocation of the special permit.
- (2) A special permit is required to create an apartment which requires an addition to a one-family dwelling. If an addition is requested, it must comply with provisions in § 250-61A(1) above as well as the following:
- (a) All bulk regulations and coverage limitations of the Schedule of Lot and Bulk Requirements must be met.
 - (b) Design and construction of the addition must be compatible with the parent structure.
- (3) A special permit is required to create a detached accessory apartment in gatehouses, garages, barns or similar accessory structures, subject to the following provisions:
- (a) No new construction shall be permitted to enlarge existing accessory buildings in order to accommodate apartments unless they conform to zoning density requirements.
 - (b) Construction associated with adaptation of buildings should be performed in a way that retains the character of the structure. The design and construction of the adaptation of the building must be compatible with the parent structure.
 - (c) The conditions of § 250-61 A (1) (a), (d), (f), (g), (h), (i), (j) and (k) must be met.

- (d) The number of dwelling units permitted on the lot shall not exceed that which is normally permitted in the zone, except for structures which are in existence at the time of the adoption of this amendment.
 - (e) Accessory apartments are prohibited in accessory buildings when an accessory apartment already exists within the one-family residence.
- (4) A special permit is required for preexisting accessory apartments, subject to the following provisions:
- (a) Owners of accessory apartments in existence as of the effective date of this section shall have twelve months from the date of enactment to apply for a special permit for an accessory apartment and to meet the requirements of this section wherever practicable.
 - (b) Any such property owner who is not in the process of or completed meeting these requirements within the required twelve months shall be found in violation if the apartment is occupied.
- (5) Term of permit.
- (a) The special permit shall be issued to the owners of the property. Should there be a change in ownership or a change in the residence of the owner, the special permit and the certificate of occupancy for the accessory apartment shall become null and void. Thereafter, should the new owner decide to live in the structure and desire to continue the use of the accessory apartment, within 90 days of the change of ownership, he or she shall apply to the Planning Board for a special permit. Should the new owner decide not to live in the structure or desire not to continue the use of the accessory apartment, the tenant shall have 90 days to relocate, the owner shall remove the kitchen of the accessory apartment within 60 days after the tenant leaves and the premises shall revert to a single-dwelling unit.
 - (b) The special permit shall remain valid so long as the applicable provisions of this section are complied with. Failure to do so will result in a revocation of the special permit.
- B. Animal boarding homes (subject to requirements in § 250-61H and X below).
- C. Boardinghouse/bed-and-breakfast residence.
- (1) Boardinghouse. Renting of rooms by a resident family in the dwelling for rooming or boarding purposes only, for the accommodation of not more than two persons per dwelling.
 - (2) Bed-and-breakfast residence. Accessory to a resident single-family detached dwelling, renting of up to four bedrooms of the dwelling for transient purposes (not more than 14 consecutive days), with food service limited to those renting rooms.
 - (3) Such uses shall not alter the character and appearance of the structure as a single-family residence. Sufficient parking of one space per rental room with full turnaround (in addition to the residence requirement) shall be provided for rental rooms, with provision of adequate water supply and sanitary facilities.
- D. Campgrounds. Campgrounds are regulated by the Town Board of the Town of Mount Hope as described below in order to provide municipal supervision for the public welfare and benefit in relation to construction, maintenance, sanitary facilities and general orderliness and conduct of such campgrounds. (Editor's Note: See also Ch. 101, Campgrounds.)

(1) Regulations.

- (a) Each campground shall be provided with safe and convenient access for the ingress and egress of traffic from the public highway.
- (b) All service roads shall be constructed at a minimum width of 12 feet for one-way and 20 feet for two-way traffic, to permit safe and convenient movement of traffic and shall be maintained in a proper state of repair.
- (c) All campsites shall be set back at least 100 feet from any public road and 100 feet from an adjoining property line.
- (d) Suitable parking for campers shall be provided which does not interfere with access and service road traffic.
- (e) Campsites in a campground shall not exceed an average of 20 campsites per acre inclusive of service roads, toilet buildings, other buildings and recreation and service facilities.
- (f) Each campsite, including parking space, shall provide a minimum of 1,500 square feet of space per tent site and 2,500 square feet of space for travel trailer and/or recreational vehicle site.
- (g) Each campsite shall be well-drained and laid out in such a manner as to provide sufficient open and graded space for the accommodation of camping units and shall provide parking space for an automobile which will not interfere with the convenient and safe movement of traffic.
- (h) Consistent with these requirements, trees for the provision of shade shall be disturbed as little as possible, and, whenever practicable, trees, underbrush, large rocks and other natural features should be left intact at the edges of the adjoining campsites to insure privacy. Natural vegetative cover shall also be retained, protected and maintained within the campground wherever possible so as to facilitate drainage, prevent erosion or gullyng and preserve the scenic attributes of the area.
- (i) Occupancy.
 - [1] Occupancy, other than by the owner/caretaker, of the campground between December 15 and March 15 by the same person or persons shall not be permitted to exceed 15 days.
 - [2] Occupancy of any campsite shall not be permitted to be used for the purpose of establishing residency, for example; withholding taxes, voting, schooling, licenses, etc.; and under no circumstances shall the occupancy of any campsite by an individual or any individuals in any form of permitted temporary, movable, or portable shelter be used as a home for any children while they are attending regular school sessions.
 - [3] During the period of November 1 through April 1, unoccupied camping units and equipment shall not be permitted to remain on any campsite if the camping units are unoccupied for more than seven days.
 - [4] Between December 15 and March 15, unoccupied camping units shall not be permitted to remain on any campsite.

- [5] Any unoccupied camping units and equipment must be stored at a designated storage area on the campground.
- (j) Fireplaces, if provided, shall be located in a safe and convenient location where they will not constitute a fire hazard to vegetation, undergrowth, trees and camping units.
 - (k) An adequate supply of potable water shall be provided within 200 feet of all campsites. One water spigot with soakage pit or other disposal facilities shall be provided for each 10 campsites without water facilities capable of providing a minimum of 500 gallons of water per day at a minimum pressure of 20 pounds per square inch. Where spigots and sewer hookups are provided at each site, a minimum volume of 150 gallons of water per site per day at a minimum pressure of 20 pounds per square inch shall be provided.
 - (l) Only water from a source approved by the local Board of Health shall be provided at a campground. Individual point or driven wells, dug wells, springs, and other sources of supply may be used if approved by the Orange County Department of Health. Such source of supply shall be properly located, constructed and maintained to avoid contamination of the water therefrom.
 - (m) Toilets and urinals shall be provided at one or more locations in every campground and shall be convenient for access. Separate toilet facilities shall be provided for males and females and shall be clearly marked. Each toilet shall be in a separate compartment and a door shall be provided for privacy. Toilets and urinals shall be maintained in a clean condition.
 - (n) The owner of a campground shall provide for the collection of refuse and garbage daily and shall also conveniently locate refuse containers at each campsite. Refuse containers shall be cleaned and maintained as often as may be necessary to promote a wholesome and nonodorous condition to prevent the breeding of insects.
 - (o) The owner of a campground shall adopt control measures for insect, rodent and weed control and shall keep the campgrounds free of refuse, stagnant water areas, and other articles which may provide temporary breeding places for insects and rodents.
 - (p) No owner of a campground shall cause or permit any discontinuance or unnecessary interruption of any services, facilities, equipment or utilities on the campground.
 - (q) Every campground shall be under the supervision of the owner or caretaker to maintain order and to insure compliance with the regulations herein.
 - (r) Every camper, during the period of his occupancy of any campsite, shall be responsible for the conduct of the members of his party and shall be responsible for the maintenance of his campsite in clean and wholesome conditions, shall see that his campsite is not littered with debris and refuse, shall maintain all pets under control so as not to create a public health or noise menace, shall not leave a dog unleashed and unattended at a campsite, shall not leave fires unattended at a campsite, and shall not permit undue noise at any time.
 - (s) Whenever a camper has terminated his stay at a campground, he shall not leave the campsite without clearing the same of litter and debris and leaving it in a clean and

wholesome condition. All fires shall be extinguished and all possessions of the camper and his party removed.

- (t) Each camper, upon arriving at a campground, shall register, leaving his name, address, car registration, and number of persons in his party with the owner or caretaker of said campground.
- (u) It shall be the responsibility of the owner of the campground to maintain accurate records for the dates campers check in and check out, campsites assigned, etc. The owner of the campground will provide documentation concerning compliance with this chapter with respect to camping to the Town Clerk's office as requested.
- (v) Sanitary facilities.
 - [1] Every campground shall have a minimum of three toilets for male persons, and a minimum of three toilets for female persons. If there be over 20 campsites in a campground there shall be an additional toilet for both male and female persons for every 10 campsites. In no case shall toilets be located more than 300 feet from any campsite or 500 feet from sites with water and sewer hookups. Urinals shall be provided. Up to 1/2 the male toilets may be urinals.
 - [2] If drinking fountains are provided, they shall be constructed of impervious material and have an angle jet with a nozzle above the overflow rim of the bowl. The nozzle shall be protected by a nonoxidizing guard. The bowl shall be of easily cleanable design and be equipped with a strainer.
 - [3] If showers are provided, there shall be separate showers for males and females clearly marked. Shower stalls and dressing compartments shall be maintained in clean condition. Showers must be served with hot and cold or tempered water between 90° F. and 110° F. and be available at a ratio of two showers for each 50 sites for each sex.
 - [4] If a holding tank emptying station for camping vehicles is provided, each station shall be convenient for access, shall be at least 50 feet from any campsite, and shall be equipped with means of flushing the camping vehicle holding tank. Such station shall be posted to warn against unreasonable access.
 - [5] Lavatories or other hand-washing facilities shall be provided at a ratio of one for each 15 sites (minimum of two for each sex). Utility sinks shall be provided. The sinks shall be near the door if located within a building where they can be utilized for the disposal of dishwater brought in buckets.
 - [6] At least one toilet, lavatory and shower for each sex; at least one water fountain and access to utility and recreation areas and building shall be so construed as to accommodate the physically handicapped.

(2) Permits.

- (a) No person shall construct, expand and/or operate a campground without a permit.
- (b) Any person desiring to construct, expand and/or operate a campground shall make application therefor in writing to the Town Board. Such application shall include:

- [1] The applicant's full name, residence, post office address and whether the applicant is an individual, firm or corporation.
 - [2] If a partnership, the names and addresses of the officers of the corporation.
 - [3] A diagrammatic sketch plan of the proposed campground or expansion showing the location, dimensions of the area, proposed service roads, campsites, water supplies, sanitary conveniences, sewage disposal facilities, storage areas, and auxiliary buildings.
 - [4] Distances from adjoining public highways and adjoining owners.
 - [5] Approval of the Board of Health shall be attached in relation to sanitary and sewage disposal facilities.
- (c) The Town Board, upon approval of such application, shall authorize the Town Clerk to issue a permit, and such permit shall be conspicuously posted on the campground premises.
 - (d) A fee for an initial permit is hereby fixed in the sum of \$250 and shall be valid from the date of its issuance until the last day of the year of issuance, and shall be renewed annually. The renewal fee shall be \$75 per annum.
- (3) Inspection. The Town Police, Building Inspector or the Town Board or any of its representatives or designated agents shall be granted access to the area of such campground at all reasonable hours to inspect the same for compliance herewith.
 - (4) Revocation and suspension of permits.
 - (a) A permit may be revoked by the Town Board after a public hearing thereon at which the licensee shall have an opportunity to be heard.
 - (b) Upon complaint filed with the Town Board in writing or upon the Town Board's own initiative, a permit may be suspended or revoked for a violation of this chapter or for failure to conform to any rules and regulations of the Department of Health, or any other state or local agency.
 - (c) While a permit is suspended or if a permit is revoked, no owner of any campground shall permit the same to be used or occupied by any camper. (Editor's Note: See also Ch. 101, Campgrounds.)
- E. Conversion of an existing one-family detached dwelling to a two-family detached dwelling structure, provided that all of the following criteria are met by the applicant and structure.
 - (1) Such dwelling contains at least 1,000 square feet of habitable floor area as defined in the New York State Building Code for the first dwelling plus at least 600 square feet of similar area for the second dwelling.
 - (2) In order to be eligible for conversion, the original structure shall have been constructed no later than 1960. Evidence of age satisfactory to the Planning Board shall be submitted along with the application.
 - (3) Direct egress to the exterior of the structure must be provided for each unit.
 - (4) Off-street parking shall be provided on the following basis:
 - (a) One-bedroom units: 1.5 parking spaces.
 - (b) Units with two or more bedrooms: two parking spaces.
 - (5) No office or retail or service commercial uses shall be permitted within the structure.

- (6) The front yard and side yard facing a street shall be properly landscaped prior to the issuance of a certificate of occupancy, or a cash performance bond to insure completion of said landscaping may be required to be posted with the Town Board in an amount to be determined by the Planning Board at its discretion and upon the advice of the Town Engineer.
 - (7) The structure's final appearance shall be in keeping with the character of the immediate neighborhood within 300 feet of the side and front lot lines. Only one entrance shall be permitted for each facade of the structure per floor or story.
 - (8) Each dwelling unit shall contain its own separate and private bathroom and kitchen facilities wholly within each dwelling unit.
 - (9) Each structure proposed for conversion shall have one dwelling unit occupied by the property owner, and said property owner shall have been a resident of the premises for at least four consecutive years preceding the application for conversion. Should the owner have a place of permanent residence other than the premises for a period of more than six consecutive months, the conditional use shall become null and void and the premises shall revert to its original permitted use which existed immediately prior to the issuance of a permit.
 - (10) The location of the existing well and septic system shall be shown on the site plan. Expansion of the septic system and/or a new well may be required if there is evidence that their capacity is not adequate for the units proposed, based upon current engineering and health standards of the Town, county or state. A professional engineer shall certify that the existing septic system is adequate for both units or that modification is needed.
 - (11) A new owner shall apply for a new permit for an existing accessory apartment within two months of taking of title to the property. Such application shall be made directly to the Building Inspector. The Building Inspector shall issue said permit, if after inspection the premises are in the condition approved in the original application, and the application was made within two months of the initial ownership. If these conditions have not been met, the application shall be rejected and the applicant shall reapply to the Planning Board.
 - (12) The permit shall terminate upon the sale and/or conveyance of the property by the owner(s) or by the death of the owner or survivor, or by the owner(s) no longer occupying the premises as their primary residence.
 - (13) All new and existing units for which a conversion has been approved shall be brought up to current Building Code requirements as a condition of approval. Such condition shall be noted on the plans and the Building Inspector shall determine such changes have been made prior to the issuance of a certificate of occupancy.
- F. Home occupations are permitted, provided that:
- (1) No display of goods is visible from the street.
 - (2) The premises shall not be used in any manner as to cause injury or disturbance to any of the adjacent or surrounding properties and their owners and occupants, as determined by the Building Inspector.
- G. Hotels/motels.
- (1) The actual floor area of accessory restaurant, conference, or banquet facilities shall be subtracted from the site area available for motel or hotel use.

- (2) The entire property occupied by a hotel, motel, and related accessory restaurant structures shall be maintained in common ownership and control throughout the life of the development.
 - (3) Access conditions shall be adequate for the estimated traffic to and from the site to assure the public safety and to avoid traffic congestion in the surrounding neighborhood.
 - (4) Vehicular entrances and exits shall be clearly visible from the street with adequate sight distances along the main street.
 - (5) All parking areas, lots or garages shall be adequately screened from neighboring residential properties.
 - (6) Units shall not contain kitchen facilities or be used as apartments for transient tenants. Each unit shall be at least 200 square feet and have bath or shower facility, toilet and sink.
 - (7) The minimum lot size shall be 20,000 square feet plus 1,500 square feet per guest room.
- H. "Kennels not associated with a veterinarian's office" are defined as any use involving the keeping of more than six adult dogs. The minimum lot size shall be five acres. No dog runs or pens shall be located within 100 feet of any property line.
- I. Machinery repair or service station and repair garage, convenience store with conditions as noted in Subsection [M](#) below.
- J. Mining, loading, hauling and/or processing of sand, gravel, shale, topsoil or other aggregate provided under the jurisdiction of the New York State Department of Environmental Conservation (NYSDEC). All other mining activities shall be subject to § [250-61K](#) below.
- (1) All applications to the Planning Board for plan approval shall present to the Board proof of application for a mining permit to the NYSDEC and copy of the mining plan. In addition, the following shall also be submitted and/or approved:
 - (a) The location of site ingress and egress points to roads controlled by the Town of Mount Hope.
 - (b) The routes to be taken by mineral transport vehicles on roads controlled by the Town of Mount Hope.
 - (c) The requirements and conditions as specified in the permit issued by the NYSDEC under Part 420 of Title 6 of the New York Code of Rules and Regulations (NYCRR), when such requirements or conditions are established, concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control, hours of operation and enforcement of reclamation requirements. The Town has the right to regulate these areas of concern and can make certain they all meet local requirements of this chapter. Section [250-61K](#) below shall be used as the basis for these criteria.
- K. Mining, loading, hauling and/or processing of sand, gravel, shale, topsoil or other aggregate not under the jurisdiction of the NYSDEC.
- (1) All applications to the Planning Board for plan approval shall include plan requirements contained in Article XI of this chapter as well as the following:
 - (a) A time schedule for completion of either the entire operation or of each stage of the entire operation.
 - (b) The number and types of trucks and other machinery to be used on the site.

- (c) A rehabilitation plan showing both existing and proposed final contours after operations are completed.
- (2) All excavations shall conform to the following rules and regulations:
- (a) The proposed operation shall not adversely affect soil fertility, drainage, and lateral support of abutting land or other properties nor shall it contribute to soil erosion by water or wind.
 - (b) Within 1,000 feet of any residence, there shall be no operation on Sundays or legal holidays, nor between 7:00 p.m. and 7:00 a.m. on Monday through Saturday.
 - (c) Where any open excavation will have a depth of 10 feet or more and a slope of more than 30°, there shall be a substantial fence approved by the Planning Board, with suitable gates where necessary, effectively blocking access to the area in which such excavation is located. Such fence shall be located 50 feet or more from the edge of the excavation. All operations shall be screened from nearby residential uses as required by the Planning Board.
 - (d) There shall be adequate access to and from a public street without using said access for processing and loading purposes and shall not be located nearer than 200 feet of a lot line; such access road shall be provided with a dustless surface.
 - (e) The top of the natural slope in cut for any excavation and any mechanical equipment shall not be less than 50 feet from any lot line.
 - (f) Where any excavation or part of any excavation is within 200 feet of any abutting public road and results in a depth below the level of such abutting road, such excavation or part of such excavation shall be restored to the elevation of such abutting road or to the highest elevation of the land which existed prior to the excavation.
 - (g) After any such operation, the site shall be made reusable for a use permitted in the district. Where topsoil is removed, sufficient arable soil shall be set aside for retention on the premises and shall be respread over the premises after the operation. The area shall be brought to final grade by a layer of earth two feet or original thickness, whichever is less, capable of supporting vegetation. Fill shall be of suitable material approved by the Planning Board.
 - (h) At all stages of operations, proper drainage shall be provided to prevent the collection and stagnation of water and to prevent harmful effects on surrounding properties.
 - (i) In granting site plan approval, the Planning Board may require that the owner or his agent post a bond in the amount to be determined by the Town Engineer sufficient to secure the rehabilitation of the site in accordance with the approved site plan. Such bond shall be approved by the Town Board as to form, sufficiency and manner of execution, and shall run for the same term as the term of the site plan approval. In the event the owner or his agent does not fulfill the conditions of the bond, the Town shall, after due notice to the owner or his agent and to his bonding or surety company upon their failure to comply with the terms of the site plan approval, proceed to rehabilitate the premises in accordance with the plan described above, either with its

own forces or by contract, and shall charge the costs to the owner, his agent, or the bonding or surety company.

L. Mobile home park in the LB-2 District, provided that:

- (1) The lot area shall be not less than five acres, and a proposed site development plan for the entire site, prepared by a licensed professional engineer, shall be submitted for approval. The initial development shall cover at least two acres and subsequent additions shall not be less than one acre.
- (2) The park shall have a street system providing either a thirty-foot wide paved roadway in the event that on-street parking is permitted; or, where on-street parking is prohibited, a twenty-foot wide paved roadway provided with common off-street parking areas distributed around said park in approved locations. Said roadway(s) shall be provided with curbs and gutters and shall have a fifty-foot wide right-of-way reserved for the same regardless of the pavement width option that is chosen. Said street system shall provide access to all mobile home spaces and shall provide at least two access drives to and from the public street. Except that, the requirement for provision of two or more access drives to and from the public street may be waived by the Planning Board based upon the establishment of alternative requirements that are acceptable to the Planning Board, including but not limited to the establishment of a boulevard (or double-wide divided road) access drive connecting to the public street, as well as parking restrictions as needed.
- (3) Mobile home spaces shall have a minimum area of 5,000 square feet for single units, and 8,000 square feet for double-wide units and have a maximum density of six units per acre. The average width of all spaces shall not be less than 50 feet. Drainage easements and all other easements that prohibit development shall not be included in the minimum lot area or dimensions. Each space shall provide:
 - (a) A twelve-foot wide driveway from trailer to park roadway.
 - (b) A minimum of two parking spaces.
 - (c) A stabilized gravel mobile home stand.
 - (d) A four-inch thick concrete patio, 10 feet by 18 feet in area.
 - (e) An inconspicuous fuel oil storage shelter.
 - (f) Underground utility connections.
- (4) All mobile homes and their accessory structures shall be at least 30 feet apart from all other mobile homes and accessory uses. There shall be a fifty-foot setback for all mobile homes from the right-of-way of any public street or highway, a twenty-five-foot setback from the outside edge of mobile home park street rights-of-way, and a thirty-foot setback from all property lines.
- (5) The park shall have an on-site stormwater drainage system, including provisions for well-drained mobile home spaces, interior private streets and other public areas, as well as consideration for natural watercourses.
- (6) The park shall have a central water and sewer system approved by the New York State Department of Health and/or New York State Department of Environmental Conservation.
- (7) The park shall have a complete electrical system in conformance with municipal Electrical Code provisions, including outdoor lighting along all interior streets, entrances and exits and in

- public open spaces, with light illumination for these spaces to be determined by the Town Engineer.
- (8) The park shall be served with garbage and trash collection points so located that no mobile home is more than 150 feet from such point, which point shall be equipped with an adequate number of garbage cans with tight-fitting covers or dumpsters appropriately screened from view.
 - (9) The park shall, at the discretion of the Planning Board, provide:
 - (a) Appropriate community facilities such as a meeting hall.
 - (b) A recreation facility with an area that is not less than one acre for the first 50 units or increment thereof, and one additional acre for each additional 50 units or increment thereof.
 - (c) A walkway system of paved or stabilized gravel all-weather paths along interior streets and leading to public open spaces.
 - (10) All mobile homes, accessory structures and appurtenances shall comply with applicable provisions of Article IX in this chapter, other provisions of this chapter, the New York State Building Code, Energy Code and such other codes, ordinances and regulations as shall apply and a new certificate of occupancy is required for any new mobile home located at the site.
- M. Motor vehicle sales, gasoline service station and repair garage, with or without convenience stores, provided:
- (1) No entrance or exit driveway shall be located closer than 10 feet to any property line and shall be laid out so as to avoid the necessity of any vehicle backing out across any public right-of-way.
 - (2) No gasoline pump shall be located closer than 25 feet to any street line.
 - (3) Minimum street frontage shall be 150 feet.
 - (4) Parking shall be provided for all uses proposed and the pump area shall be counted as parking spaces, provided at least five other spaces are available away from the gasoline pumps.
- N. Nuisance industry. Any industry which is not detrimental to the environment in which it is located by reason of the emission of smoke, noise, odor, dust, vibration or excessive light, beyond the limits of its lot, or by reason of generating excessive traffic with attendant hazards and which does not include any outdoor processing of materials, or open accessory storage yard unless completely enclosed by a solid wall or fence not less than six feet in height.
- O. Outdoor storage of goods. Outdoor storage of goods shall be screened from view of adjacent streets and properties with a solid fence or evergreen plantings or a combination of both satisfactory to the Planning Board.
- P. Printing and publishing plants (subject to requirements in § [250-61Z](#)).
- Q. Public communications utility towers/antennas. The construction or erection of new radio antennas, radio towers and other public communications utility towers and equipment mounted thereon, and/or the reconstruction, addition or alteration to existing such towers, antennas and equipment mounted thereon used to send, receive, and relay transmissions, shall constitute a conditional use subject to special permit in the LB, LB-2, B-1, and RP-2 Districts only, subject to the restrictions and requirements of this section. The Town of Mount Hope desires to preserve the visual and community character of the bulk of its residentially zoned areas, and, in particular, desires to preserve the unique scenic and

visual qualities of the Shawangunk Ridge and its viewshed, with the objective of limiting the visibility of communications towers above the skyline and mountain ridge tree line, so as to reduce or avoid visual impacts connected therewith. The Town notes the visual incompatibilities of tall and highly visible structures such as public utility communications towers and devices mounted thereon with the Town's residential areas in general. The Town particularly notes the visual incompatibilities with locating such structures on the easterly slopes of the Shawangunk Ridge, which are open, more gently sloped and less wooded, and therefore on which such towers and devices are more prominent and more visually intrusive to greater land areas. The Town further recognizes that the placement of such structures and access drives thereto may be needed within selected areas of the Town, notwithstanding their undesirable prominence and the general visual incompatibility of such towers and utility structures with the primarily residential character of the Town, in order to provide vital utility services within the Town and/or its surrounding region. Accordingly, the Town Board has provided for the needs of public utility communications within the Town of Mount Hope in the following way:

- (1) The utility requesting to site a public utility communications device shall constitute a genuine public utility providing commercial communications services to the public. Any public utility communications device to be located within the Town of Mount Hope shall fully conform to the Federal Communications Commission's (FCC's) current regulations and requirements concerning radio frequency emissions, as the same may be amended from time to time.
- (2) Public utility communications towers and devices shall be a conditional use in the B-1 LB, and LB-2 Districts, subject to the procedures and special permit requirements listed herein below and the requirements of site plan approval.
 - (a) In the event that, due to technical reasons, the necessary service cannot be provided by siting such facility in the B-1, LB, and/or LB-2 Districts, the utility requesting such use shall make application to the Town of Mount Hope Planning Board and shall demonstrate this factually to the satisfaction of said Planning Board. Said utility shall then endeavor to locate the proposed communications device(s) on existing communications or other existing towers within the RP-1 District of the Town of Mount Hope, subject to the requirements of site plan approval and the requirements listed herein below.
 - (b) In the event that the necessary service cannot be provided by locating such device(s) on existing communications or other existing towers in the RP-1 District, the utility requesting such use shall demonstrate same factually to the Town of Mount Hope Planning Board, and shall then endeavor to locate said communications device within the RP-2 District, subject to the requirements of site plan approval and the requirements of this section. The Planning Board may require a good faith demonstration that the owner(s) of such structure(s) were contacted and either denied permission for such shared use, required economically infeasible lease or rental provisions, or in the alternative, the applicant may demonstrate factually to the satisfaction of the Planning Board that the necessary service cannot be provided by use of such locations.
- (3) Lot size and setbacks. The lot size and setback requirements for a public communications utility tower/antenna shall be related to the height of said tower/antenna. Pursuant to the

requirements of this chapter, said structure shall be located in the center of a lot, which lot shall measure not less than 1/2 the height of said tower in all directions, so that in the event said tower should collapse or fail, no structure or persons on any adjoining properties will be placed at risk.

(4) Accessories.

- (a) Any antenna or other communications device that is accessory to and attached to a building located in the LB, LB-2, or B-1 Districts which does not exceed the height limitation for buildings in said districts by more than 10 feet shall be considered a permitted accessory thereto. Such device shall not require further review pursuant to this section, except pursuant to Subsection [Q\(5\)](#) and [\(7\)](#) of this section, to the extent that they apply. Such accessory communications devices shall be camouflaged by making it resemble a structural or architectural element of the building to which it is accessory to the extent possible.
- (b) Other utility structures, such as storage buildings necessary to the operation of said tower/antenna may be located on the same lot if such location is necessary for the operation of said facility, subject to site plan approval by the Planning Board as to color, location, visual screening, access control and/or other valid site plan review considerations.

(5) Visual impacts. All public utility communications structures shall be sited to create the least practicable adverse visual impact on the surrounding community. Any applicant pursuant to this section shall provide visual impact assessment information as reasonably required to evaluate the visual effects of a proposed communications tower/antenna or device pursuant to this section, with particular attention to key vantage points or viewshed areas both within the Town of Mount Hope and in other municipalities as may also be affected during both daytime and nighttime conditions. To the extent practicable, reasonable screening shall be provided from scenic vantage points, and/or other means of minimizing the visual effects of said facility, including but not limited to the color of the tower and appurtenances, which shall be light grey or have a galvanized finish above the tree line, and a grey, green, or black finish below the tree line, to the extent that such color is not preemptively regulated by the Federal Aviation Administration (FAA). The Planning Board may permit the use of vegetation, either alone or in combination with topography, fences, walls or other features to achieve sufficient screening. If vegetative plantings are proposed for screening purposes, the Planning Board shall require planting and replacement specifications to ensure that the intended effect is achieved and maintained. Siting of such facilities shall where possible avoid the need for compliance with FAA lighting and painting requirements.

(6) Access and parking. The Planning Board shall review the means of access to the public communications utility tower/antenna site and shall consider its sufficiency with regard to relevant factors including but not limited to width, surfacing, slope, side slopes, drainage and erosion control, access control device(s) restricting unauthorized entry, as appropriate to the utility and any emergency vehicles needed to access the site. Adequate parking and turnaround area shall be provided for the site. Care shall be taken to minimize the visual impacts of such means of access, parking and turnaround area as seen from key vantage

points, and the visual impacts of the same shall be evaluated and mitigated as set forth in Subsection [Q\(5\)](#) of this section.

- (7) Public safety. The applicant shall demonstrate that the proposed communications utility tower/antenna and/or appurtenant device(s) will not pose a threat to public health and safety as a result of falling or blowing ice and/or other debris, that public access to the same has been restricted so as to prevent climbing or other trespass on the structure itself, and/or any other relevant health and safety concern under the jurisdiction of this chapter.
- (8) Nothing herein shall be construed as preventing the continued existence of any public communications tower/antennas that are lawfully in existence at the date of enactment of this chapter. Further, nothing herein shall be construed as preventing the maintenance and continued operation of such preexisting facilities, including the utilization of "state of the art" equipment for the facility in order to maintain its existing level of service consistent with current technology. However, any increases in tower/antenna height or visibility for the purpose of increasing the service area or population shall be considered a new application and shall conform to the locational and other requirements set forth in this section.
- (9) Inspection. The Town Building Inspector or any authorized agent for the Town shall have the right to enter upon any area with existing or proposed towers in order to inspect the same for any lawful purpose, including but not limited to safety, structural integrity, visual impacts, conformance to approved plans and the requirements of this chapter and any other applicable statutes, rules and/or regulations.

R. Recreational facilities providing for permitted recreational uses as follows:

- (1) Permitted recreational uses. Permitted recreational uses for a recreational facility include but are not limited to uses such as indoor and outdoor tennis courts; indoor and outdoor public swimming pools; "health club" as defined in this chapter; [\[2\]](#) batting cages; shuffleboard courts; golf (including miniature golf); jogging trails, hiking trails, horse trails, or ski trails; indoor shooting ranges; indoor or outdoor ice-skating rinks, indoor roller-skating rinks, indoor or outdoor skateboard facilities, and the like. (See § [250-4](#), Definitions)
- (2) The Planning Board shall consider the plan and layout of permitted recreational uses with respect to factors including, but not limited to, the noise generated by the recreational use itself and the noise generated by any spectators or participants; lighting; any outdoor public address or sound system; hours of operation; parking; access; waste generation and handling; and may impose such conditions as it deems reasonably necessary to minimize any potential impacts on current or future surrounding land uses and community character and the public health, safety, and welfare.
- (3) Prohibited recreational uses. Prohibited recreational uses for a recreational facility include but are not limited to uses such as outdoor shooting ranges (whether or not involving the use of live ammunition, and involving any type of ammunition and method of propulsion); bungee-jumping facilities; carnival rides such as roller coasters, Ferris wheels and the like except by temporary special permit of the Town Board; automotive race tracks; motorcycle, motorbike, or other automotive vehicle tracks including all-terrain vehicle tracks or trails; and the like. Other uses which may create an objectionable nuisance by reason of their inherent generation of noise or unreasonably large crowds, excessive off-sight visual impacts, or other nuisance

factors as determined by the Planning Board shall be deemed to be prohibited recreational uses.

- S. Research institute or laboratory (subject to requirements in § [250-61K](#) above).
- T. Restaurants / eating and drinking places. [Amended 3-8-2004 by L.L. No. 1-2004]
 - (1) The entire lot except for areas covered by buildings, parking lot or loading areas shall have a landscape plan approved by the Planning Board and be properly maintained.
 - (2) Exterior lighting shall be restricted to that essential for safety and convenience of the users of the premises; and the source of such illumination shall be shielded from the view of all surrounding streets and lots.
- U. Senior housing developments. [Added 12-10-2001 by L.L. No. 4-2001]
 - (1) No overall dimension of any building with one habitable floor shall exceed 250 feet in length. No building with more than one habitable floor shall exceed 160 feet in length, and, in addition, any such building shall be provided with a minimum five-foot offset at a maximum of every 40 feet of any such building. The aforesaid offset shall include the rooflines and extend a minimum of one unit width or a maximum of 40 feet. [Amended 8-12-2002 by L.L. No. 2-2002]
 - (2) The design and layout of the site, all buildings and all improvements shall be planned for the convenience of the senior citizens and in accordance with applicable federal, state and local codes, rules and regulations.
 - (3) Handicapped access to all buildings and all floors, units and rooms therein within said buildings shall be provided. Installation of ramps and elevators shall be in accordance with all applicable codes and regulations.
 - (4) The minimum distance between facing elevations of principal dwelling buildings shall be 35 feet.
 - (5) Any inner court shall have a minimum dimension of 60 feet. Any outer court shall have a minimum dimension of 20 feet, and its depth shall not exceed its width.
 - (6) The development shall provide adequate on-site active and passive recreational facilities such as recreation and social gathering areas, sitting areas, gardens and usable open space, which shall be fixed by the Planning Board.
 - (7) Off-street parking shall meet the following requirements:
 - (a) One space per habitable room;
 - (b) Provisions shall be made for handicap parking spaces as required by law;
 - (c) Every attempt shall be made to design the development such that no off-street parking areas are located within the minimum yard setbacks;
 - (d) Access to and from the street shall be a minimum 24 feet in width;
 - (e) All access and parking areas shall be properly drained, paved and striped;
 - (f) Parking areas shall meet all other requirements of § 250-15D.
 - (8) The development shall have central water and sewer systems which shall be commonly owned by the developer and/or owner of this project, shall be approved by the New York State Department of Health and/or New York State Department of Environmental Conservation.
 - (9) A paved walkway system shall be provided leading from all units to parking areas and public streets.

(10)The allowable number of dwelling units shall be determined utilizing the following minimum required square footages per dwelling unit:

Number of Habitable Rooms	Minimum Lot Area/Unit (square feet)
1	3,900
2	4,800
3	7,200

- (a) To derive the acreage used in computing the allowable number of dwelling units on a given property, use the gross acreage minus the area allotted to bodies of water, areas subject to flooding, ponding or officially designated freshwater wetlands, areas which have slopes in excess of 20% and existing rights-of-way and easements.
- (b) For the purpose of this section, an efficiency unit contains one habitable room, a one-bedroom unit contains two habitable rooms and a two-bedroom unit contains three habitable rooms.

(11)The minimum livable floor area and occupancy standards for all units shall be as follows:

Number of Habitable Rooms	Minimum Livable Floor Area/Unit (square feet)	Maximum Number of Persons
1	450	1
2	700	2
3	850	4

(12)The development shall be adequately landscaped throughout the site and provide adequate vegetative screening along all property lines to provide a privacy and noise barrier, as may be deemed appropriate and in the discretion of the Planning Board. A landscape plan shall be submitted to the Planning Board for its review.

(13)Architectural renderings shall be submitted to the Planning Board for the purpose of evaluating aesthetic impact of the development on the community. The renderings shall be complete, including, but not limited to, color schemes, architectural details, material, landscaping and any other information requested by the Planning Board.

V. Utility building (public), plant, office structure or storage yard:

- (1) The Planning Board may require that such use be enclosed by protective fencing with a gate and have controlled access to such use.
- (2) The installation shall be so designed, enclosed, painted and screened with evergreens that it will be harmonious with the area in which it is located. The property shall be suitably landscaped and maintained in reasonable conformity with the surrounding neighborhood.
- (3) In appropriate cases, satisfactory evidence shall be submitted establishing that there will be no interference with radio and television reception on adjoining property.

W. Utility structures (public), buildings, and rights-of-way necessary to serve areas within the Town but excluding building offices, repair or storage of equipment. Also included in this category are structures such as transformers, telephone and utility pads, pump stations, etc., but specifically excluded are antennas, radio and other communications towers, etc. or additions thereto.

- X. Veterinarian's office and hospital, provided that:
- (1) All animal housing and related structures are located not closer than 100 feet to any lot or street line.
 - (2) Between the hours of sunset and 7:00 a.m. all animals shall be confined in a fully enclosed and suitably ventilated building.
- Y. Warehouse.
- (1) The entire lot except for the area covered by buildings, parking lot or loading areas shall have a landscape plan approved by the Planning Board.
 - (2) Exterior lighting shall be restricted to that essential for the safety and convenience of the users of the premises; and the source of such illumination shall be shielded from view of all surrounding streets and lots.
 - (3) All goods stored out of doors shall be stored in only rear or side yards in conformance with the minimum requirements stated in the Schedule of District Regulations. (Said schedules are included as attachments to this chapter.)
- Z. Wearing apparel or accessories manufacturing:
- (1) A manufacturing use must not create any dangerous, noxious or otherwise objectionable fire, explosion, radioactivity or other hazard, so as to adversely affect the surrounding area.
 - (2) Outside storage of materials shall not exceed 70% of the lot area when combined with the building and all other paved surfaces.
 - (3) The outside storage area shall be screened from an arterial or collector road or adjacent residential district. Screening shall take the form of either evergreen landscaping, walls, topographic break or fencing of a height of at least eight feet.
- AA. Wholesale business. (See § [250-61Z](#).)

Article XII Stormwater Management and Erosion and Sediment Control

§ 250-62 Findings of fact.

It is hereby determined that:

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 250-63 Purpose.

The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § [250-62](#) hereof. This article seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- B. Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
- C. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;

- D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 250-64 Applicability.

- A. This article shall be applicable to all "land development activities" as defined in § 250-4.
- B. The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may:
 - (1) Review the plans;
 - (2) Upon approval by the Town Board of the Town of Mount Hope, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or
 - (3) Accept the certification of a licensed professional that the plans conform to the requirements of this article.
- C. All land development activities subject to review and approval by the Town of Mount Hope Planning Board under subdivision, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in this article.
- D. All land development activities not subject to review as stated in § 250-64C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this article.

§ 250-65 Exemptions.

The following activities may be exempt from review under this article:

- A. "Agricultural activity" as defined in this article. [1] Editor's Note: See § 250-4, Definitions.
- B. Silvicultural activity except that landing areas and log haul roads are subject to this article.
- C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- D. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved and filed with the Orange County Clerk by the Town of Mount Hope on or before the effective date of this article.
- F. Land development activities for which a building permit has been approved on or before the effective date of this article.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property or natural resources.

- J. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.

§ 250-66 Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article.
- B. Contents of stormwater pollution prevention plans. All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (1) Background information about the scope of the project, including location, type and size of project;
 - (2) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharge(s). The site map should be at a scale no smaller than one inch equals 100 feet (e.g., one inch equals 500 inches is smaller than one inch equals 100 feet);
 - (3) Description of the soil(s) present at the site;
 - (4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - (6) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
 - (7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
 - (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (10) Temporary practices that will be converted to permanent control measures;

- (11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (13) Name(s) of the receiving water(s);
 - (14) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - (16) Any existing data that describes the stormwater runoff at the site.
- C. "Land development activities" as defined in § 250-4 and meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in § 250-66D below as applicable:
- (1) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (2) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (3) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- D. SWPPP requirements for Conditions A, B and C:
- (1) All information in § 250-66B.
 - (2) Description of each post-construction stormwater management practice.
 - (3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
 - (4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
 - (5) Comparison of post-development stormwater runoff conditions with predevelopment conditions.
 - (6) Dimensions, material specifications and installation details for each post-construction stormwater management practice.
 - (7) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
 - (8) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
 - (9) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 250-68.
 - (10) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall

certify that the design of all stormwater management practices meet the requirements in this article.

- E. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- F. Contractor certification.
 - (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
 - (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
 - (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- G. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 250-67 Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article:
 - (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").
 - (2) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in § 250-67A hereinabove and the SWPPP shall be prepared by a licensed professional.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 250-68 Maintenance, inspection and repair of stormwater facilities.

- A. Maintenance and inspection during construction.

- (1) The applicant or developer of the land development activity or its representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 - (2) For "land development activities" as defined in § 250-4 and meeting Condition A, B or C in § 250-66C, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site log book.
 - (3) The applicant or developer or its representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.
- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Mount Hope to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Mount Hope.
- C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:
- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.
 - (2) Written procedures for operation and maintenance and training new maintenance personnel.
 - (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 250-67C.
- D. Maintenance agreements. The Town of Mount Hope shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this chapter entitled "Sample Stormwater Control Facility Maintenance Agreement." [1] The Town of Mount Hope, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. [1] Editor's Note: Said schedule is on file in the Town offices.

§ 250-69 Administration and enforcement.

A. Construction inspection.

(1) Erosion and sediment control inspection. The Town of Mount Hope Stormwater Management Officer may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Mount Hope enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

- (a) Start of construction.
- (b) Installation of sediment and erosion control measures.
- (c) Completion of site clearing.
- (d) Completion of rough grading.
- (e) Completion of final grading.
- (f) Close of the construction season.
- (g) Completion of final landscaping.
- (h) Successful establishment of landscaping in public areas.

(2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

B. Stormwater management practice inspections. The Town of Mount Hope Stormwater Management Officer or his professional designee, the Town of Mount Hope Planning Board Engineer, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as-built" plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

C. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

D. Submission of reports. The Town of Mount Hope Stormwater Management Officer may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.

- E. Right of entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Mount Hope the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

§ 250-70 Performance guarantee.

- A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Mount Hope in its approval of the stormwater pollution prevention plan, the Town of Mount Hope may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Mount Hope as the beneficiary. The security shall be in an amount to be determined by the Town of Mount Hope based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Mount Hope, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town of Mount Hope. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Mount Hope with a cash deposit to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Mount Hope may draw upon the account containing said cash deposit to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- C. Recordkeeping. The Town of Mount Hope may require entities subject to this article to maintain records demonstrating compliance with this article.

§ 250-71 Enforcement; penalties for offenses.

- A. Notice of violation. When the Town of Mount Hope determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
- (1) The name and address of the landowner, developer or applicant;
 - (2) The address when available or a description of the building, structure or land upon which the violation is occurring;
 - (3) A statement specifying the nature of the violation;

- (4) A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action;
 - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- B. Stop-work orders. The Town of Mount Hope may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Mount Hope confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
- C. Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
- D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the Stormwater Management Officer may prevent the occupancy of said building or land.
- F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Mount Hope may, but shall not be obligated to, take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 250-72 Fees for services.

The Town of Mount Hope may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Mount Hope or performed by a third party for the Town of Mount Hope as well as reasonable legal fees and disbursements incurred by the Town of Mount Hope and/or its Planning Board.

Article XIII Enforcement and Penalties

§ 250-73 Powers and duties of Building Inspector.

The Town Building Inspector shall administer and enforce all of the provisions of this chapter except where otherwise herein specifically provided, and, whenever any permit is provided for herein, the same shall be applied for and shall be issued in the first instance from the office of the Town Building Inspector. All construction shall be performed in accordance with Article 18 of the Executive Law and Title 19 of the New York Code of Rules and Regulations, as well as the National Electrical Code.

[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 250-74 Building permits.

[Amended 4-11-2005 by L.L. No. 2-2005[1]]

See Chapter 108, Construction Codes, Uniform, of the Code of the Town of Mount Hope.

[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 250-75 Certificates of occupancy or use.

See Chapter 108, Construction Codes, Uniform, of the Code of the Town of Mount Hope.

[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 250-76 Duties of Building Inspector.

- A. It shall be the duty of the Building Inspector to enforce this chapter and all rules, conditions and requirements adopted or specified pursuant thereto. All references to "Building Inspector" shall be deemed to include the Deputy Building Inspector and/or Code Enforcement Officer.
- B. The Building Inspector or his duly authorized agent shall have the right to enter any building or enter upon any land at any reasonable hour as necessary in the execution of the duties of the office. The Building Inspector or his duly authorized agent shall display identification signed by the Town Clerk upon commencing an inspection.
- C. The Building Inspector shall maintain files, open to the public, of all applications for certificates of occupancy and building permits along with plans submitted herewith as well as final certificates, permits or record of application disposition, in accordance with the New York State Sunshine Laws.[1]
[1] Editor's Note: See Public Officers Law, Art. 7 (Open Meetings Law), § 100 et seq. See also Ch. 181, Records, Public Access to, of this Code of the Town of Mount Hope.
- D. The Building Inspector shall also maintain records, open to the public, of every complaint of a violation of the provisions of this chapter as well as action taken as a result of such complaints in accordance with applicable laws and requirements.
- E. The Building Inspector shall submit to the Town Board, for insertion in the Board minutes, a written report summarizing for the month all building permits and certificates of occupancy issued by him as well as complaints of violations and action taken as result of such complaints.

§ 250-77 Penalties for offenses.

- A. 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.
 - B. The owner, general agent or contractor of a structure, premises, or part thereof where such a violation has been committed or does exist shall be guilty of such offense.
 - C. Any agent, contractor, architect, builder, corporation or other person who commits, takes part or assists in such violation shall also be guilty of such an offense.
 - D. A notice of violation of this chapter shall be written by the Building Inspector and served by registered mail, return receipt requested, or by direct personal service. Each and every day that such violation continues after notification that such violation exists shall constitute a separate offense. Separate notice on a daily basis is not required. The owner or duly authorized agent shall notify the Building Inspector by registered mail upon the satisfactory resolution of said violation, and receipt of such notice by the Building Inspector shall be used to determine the number of days of the violation.
 - E. Each person or corporation who or which violates any provision of this chapter, or any regulation made hereunder, shall be guilty of an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed "misdemeanors," and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.[1]
- [1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- F. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent the illegal occupancy of a building, structure or premises.

§ 250-78 Dangerous or unsafe buildings or structures.

- A. A building or structure which creates an imminent danger to life and safety due to structural instability, fire, explosion, act of God, or other hazardous situation shall be made safe and secure, or demolished and removed by the owner thereof, in accordance with the procedures in Chapter 94, Buildings, Unsafe, of the Code of the Town of Mount Hope. The Building Inspector shall have the power to order that a dangerous or unsafe building be either rendered safe and secure or be demolished and removed pursuant to this requirement.[1]
- [1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. The Building Inspector shall have the power to order the occupants of any such unsafe building or structure to vacate the premises forthwith. No person shall be permitted to use or occupy such building or structure until and unless it is deemed safe and secure by determination and order of the Building Inspector.

§ 250-79 Vacant buildings or structures.

Every person owning or having responsibility for or control of any building which has been vacant for over 60 days shall remove all combustible waste and refuse therefrom and lock, barricade, guard continuously or otherwise satisfactorily secure all windows, doors, and other openings in the building to prohibit entry by unauthorized persons.

Article XIV Board of Appeals

§ 250-80 Creation, appointment and organization.

- A. Establishment and membership. There shall be a Board of Appeals of five members pursuant to the provisions of Article 16 of the Town Law. The Town Board shall appoint said members, shall designate a Chairman, and may remove any member of the Board of Appeals for cause after public hearing. The members of the Board shall be appointed for a term of five years. If a vacancy shall occur otherwise than by expiration of the term, it shall be filled by the Town Board by appointment for the unexpired term.
- B. Procedure. Meetings shall be held at the call of the Chairman or at other such times as the Board of Appeals may determine. A quorum shall consist of three members, but, in order to reverse a decision of the Building Inspector or authorize a variance, an affirmative vote of at least three members shall be required. 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.
- C. The Town Board of the Town of Mount Hope shall be responsible for appointing an attorney or attorneys to represent the Zoning Board of Appeals and to make all appropriations necessary for the attorney or attorneys.

[Added 3-17-2014 by L.L. No. 2-2014]

- D. Alternate members of the Board of Appeals and the Planning Board.[1]
 - (1) Board of Appeals. As authorized by Town Law § 267, Subdivision 11, the Town Board hereby establishes up to three positions of alternate member of the Board of Appeals, who may serve on such Board in the event that a regular member is unable to serve. Appointment, terms, training requirements, duties and responsibilities of such alternate members shall be as provided in Town Law § 267, Subdivision 11. The Town Board intends to supersede § 267, Subdivision 11, of the Town Law only to expand the circumstances in which an alternate may serve, so that an alternate may serve when a regular member has a conflict of interest or is absent or where there is a vacancy on the Board of Appeals.
 - (2) Planning Board. As authorized by Town Law § 271, Subdivision 15, the Town Board hereby establishes up to three positions of alternate member of the Planning Board, who may serve on such Board in the event that a regular member is unable to serve. Appointment, terms, training requirements, duties and responsibilities of such alternate members shall be as provided in Town Law § 271, Subdivision 15. The Town Board intends to supersede § 271, Subdivision 15, of the Town Law only to expand the circumstances in which an alternate may serve, so that an alternate may serve when a regular member has a conflict of interest or is absent or where there is a vacancy on the Planning Board.

[1] Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 250-81 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, provided that none of the following provisions shall be deemed to limit any power of said Board that is conferred by law:

- A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official, or on request by an 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 condition 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.
- B. Variances. To authorize, upon appeal in specific cases, such variances from the terms of this chapter after public notice and personal notice and after hearing and subject to appropriate safeguards and conditions for the protection of public and of neighboring properties as will not be contrary to the public interest where, due to exceptional and extraordinary circumstances, there are unnecessary hardships in the way of carrying out of the strict letter of this chapter, subject to terms and conditions to be fixed by the Board. The sole purpose of any variance shall be to prevent discrimination, and no variance shall be granted which would have the effect of granting a special privilege not shared by other property in the same vicinity or zone.
- (1) Use variance. The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this chapter, shall have the power to grant use variances, authorizing the use of the land which otherwise would not be allowed or would be prohibited by the terms of this chapter. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions create unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate to the Board and the Board must find that:
 - (a) Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.
 - (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
 - (c) The requested use variance, if granted, will not alter the essential character of the neighborhood.
 - (d) The alleged hardship has not been self-created.
 - (2) Area variance. The Zoning Board shall have the power upon appeal from a decision or determination of an administrative official charged with the enforcement of this chapter, or upon direct application of a property owner, to grant area variances from the area or dimensional requirements of this chapter. In making its determination, the Board shall take into account the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - (a) 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 variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;

- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (3) Basis for determination of variance.
- (a) That the granting of either an area or use 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. That for the reasons set forth in the findings of the Board, the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the Zoning Board is the minimum variance that will accomplish this purpose.
 - (b) The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto.
 - (c) Where the Board finds the zoning classification of a particular property to be conducive to the deprivation of any economic benefit or reasonable use of the land or building by the owner thereof, and where the Board deems the same condition to apply generally to other land or buildings in the same neighborhood or district, said Board may call this condition to the attention of the Planning Board or Town Board.
 - (d) In all cases where the Board of Appeals grants a variance from the strict application of the requirement of this chapter, it shall be the duty of such Board to attach conditions and safeguards as may be required in order that the result of its action may be nearly as possible in accordance with the spirit and intent of this chapter.

§ 250-82 Procedure.

- A. Application for any action by the Board of Appeals shall be submitted in the form required by the Board and filed with the Town Clerk.
- B. The Board shall fix a time and place for a public hearing thereon, and shall provide for giving of notice at least five days prior to the date thereof, as follows:
 - (1) By publishing a notice in the official newspaper for at least two consecutive days or editions.
 - (2) By requiring the Secretary of the Board of Appeals to transmit to the Secretary of the Planning Board a copy of any appeal for a variance together with a copy of the notice of such hearing.
 - (3) By requiring the applicant to give notice of the substance of every appeal for a variance together with notice of the hearing in a form prescribed and approved by the Zoning Board thereon by mailing to the owners of all property abutting that held by the applicant in the immediate area (whether or not involved in such appeal) and all other owners within a five-

hundred-foot radius, or such additional distance or persons as the Board of Appeals may deem advisable, from the exterior boundaries of the land involved in such appeal, and to further provide notice may be either by certified or registered mail, return receipt requested.

- (a) The names of said owners shall be taken as they appear on the last completed tax roll of the Town.
 - (b) Provided that there shall have been substantial compliance with these provisions, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Board of Appeals in connection with the granting of an appeal for a variance.
- C. If the land involved in an appeal lies within 500 feet of the boundary of any other municipality, the applicant shall also mail to the municipal clerk of such other municipality or municipalities, a copy of notice of the substance of every appeal together with a copy of the official notice of the public hearing thereon no later than the day after such notice appears in the official newspaper of the Town. Such notice shall be by registered mail, return receipt requested, and the applicant shall furnish proof of compliance with the notifications procedure.
- D. Areas within 500 feet.
- (1) Where the land involved in any application for a variance lies within 500 feet of:
 - (a) The boundary of any other municipality; or
 - (b) The boundary of any existing or proposed county or state park or other recreation area; or
 - (c) The right-of-way of any existing or proposed county or state road or highway; or
 - (d) The right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
 - (e) The existing or proposed boundary of any county- or state-owned land on which a public building is situated; or
 - (f) The boundary of a farm operation within an agricultural district as defined by Article 25-AA of the Agricultural and Markets Law.
 - (2) In such cases, unless waived by the agreement between the Town of Mount Hope and Orange County, the application, accompanied with the notice of public hearing, shall be transmitted by the Secretary of the Board of Appeals to the Orange County Planning Department for review in accordance with the provisions of §§ 239-1 and 239-m of Article 12-B of the General Municipal Law of the State of New York. No action shall be taken by the Board of Appeals on such application until the Department's recommendation has been received or 30 days have elapsed after the Department received the full statement on the application's proposal.
- E. A variance shall become null and void and shall be deemed abandoned after six months of its issuance in writing unless:
- (1) A building permit for the use for which the variance was required is issued and construction is commenced and diligently prosecuted; or
 - (2) A site plan or subdivision application has been made for which the variance is a prerequisite.
- F. All appeals made to the Board of Appeals shall be in writing, on forms prescribed by the Board, and shall be accompanied by a fee according to the Town fee schedule. In addition, the applicant is responsible for mailing together with the deposit on the day of the hearing of an additional amount to be applied

to the payment of the original and one copy of the stenographic minutes and expenses for the benefit of the Town, the applicant to be obligated to pay the entire cost thereof. A refund shall be made of the deposit which is in excess of stenographic expenses.

- G. Each appeal shall fully set forth the circumstances of the case. Every appeal or application shall refer to the specific provision of this chapter involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.
- H. 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 of the Board shall be by resolution, and each such resolution shall be filed in the office of the Town Clerk by case number, under the heading of either "Interpretation" or "Variance." The filing shall include all documents pertaining to the decision. The Board of Appeals shall notify the Town Clerk, the Building Inspector, each member of the Town Board, the Secretary of the Planning Board, and the municipal clerk of any affected municipality given notice of hearing set forth in § 250-82C of its decision in each case.
- I. All the provisions of this chapter relating to the Board of Appeals shall be strictly construed. The Board, 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.

Article XV Amendments

§ 250-83 Review and referral of amendments.

This chapter or any part thereof, including the Zoning Map indicating the district boundaries, may from time to time be amended, supplemented, changed, modified or repealed by the Town Board and in the manner as provided by Article 16, § 265, of the Town Law. Every proposed amendment or change shall be referred by the Town Board to the Planning Board for its report pursuant to Article 16, § 271, of the Town Law and pursuant to the provisions of this chapter.

§ 250-84 Report of Planning Board.

In making such report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below.

A. Concerning a proposed amendment to or change in the text of this chapter:

- (1) Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned;
- (2) Which areas and establishments in the Town will be directly affected by such change and in what way they will be affected;
- (3) The indirect implications of such change in its effect on other regulations; and
- (4) Whether such proposed amendment is consistent with the aims of the Master Plan of the Town.

B. Concerning a proposed amendment involving a change in the Zoning Map:

- (1) Whether the uses permitted by the proposed change would be appropriate in the area concerned;
- (2) Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such a change;
- (3) Whether the proposed change is in accord with any existing or proposed plans in the vicinity;
- (4) The effect of the proposed amendment upon the growth of the Town as envisaged by the Master Plan;
- (5) Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the Town and the probable effect thereof.

§ 250-85 Public hearing.

By resolution adopted at a duly called meeting, the Town Board shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given in the same manner as required for hearings on variances by the Board of Appeals in Article XIV except that, where the Town Board acts on its own petition and motion, it may proceed with notice as provided and required under the applicable provisions of the Town Law of the State of New York.

§ 250-86 County referrals.

Where the land involved in any proposed amendment exceeds 25 acres and lies within 500 feet of the areas

stipulated in § 250-82D herein, such application accompanied with the notice of the public hearing shall be forwarded to the Orange County Planning Department for review in accordance with the provisions of Article 12-B, §§ 239-l and 239-m, of the General Municipal Law of the State of New York.

§ 250-87 Municipal notice.

- A. Should any proposed amendment consist of or include:
 - (1) Any change in the boundaries of any district, which change would occur within a distance of 500 feet of the boundary of any other municipality; or
 - (2) Any change in the regulations prescribed for any district any portion of which is located within 500 feet of such boundaries;
- B. The Town Clerk shall transmit to the municipal clerk of such other municipality a copy of the official notice of the public hearing thereof not later than the day after such notice appears in the official newspaper of the Town.

§ 250-88 Content of hearing notice.

All notices of public hearing shall specify:

- A. The nature of any proposed amendment;
- B. The land or district affected; and
- C. The date when, and the place where, the public hearing will be held.

§ 250-89 Protest.

In the case of a protest against any amendment, such amendment shall not become effective except in accordance with the provisions of Article 16 of the Town Law.

§ 250-90 Findings.

In all cases where the Town Board shall approve an amendment to the Zoning Map, said Board will fully set forth the reasons for its findings.

Article XVI Interpretation and Applicability

§ 250-91 Effect on other provisions.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. They are not intended to interfere with or to abrogate or annul other rules, regulations, local laws, or ordinances, provided that where this chapter imposes greater restrictions upon the use of buildings or premises, or upon the height or bulk of a building, or requires larger open spaces, the provisions of this chapter shall apply.

Article XVII Fees**§ 250-92 Required fees.**

With respect to any application made to the Planning Board and/or the Zoning Board of Appeals, such applicant shall pay for the reasonable review and inspection fees of the engineers for the Town for services rendered to the Town in reviewing the applicant's submissions and inspecting the site and work performed and for rendering such other engineering services in connection with the application as the Town may reasonably request of such engineer. The applicant shall also pay the reasonable administrative, engineering, legal, stenographic, and/or other specialist fees, disbursements and/or costs incurred by the Town with respect to any application and/or any public hearings taken in connection with such application and/or such services performed on behalf of the Town which are requested by the New York State Department of Health, New York State Department of Environmental Conservation and/or any other governmental body having jurisdiction over the application, other than the Town itself. The Town may, from time to time, estimate the amounts to be paid hereunder and require the amount thereof to be paid within 15 days of notice to the applicant of the amount of such estimate. The estimate may be reviewed from time to time and the revised amounts shall likewise be paid within 15 days of notice thereof to the applicant. Upon the completion of the rendering of services for which the applicant must make payment hereunder, the Town shall compute the actual amount required to be paid and shall return to the applicant any overpayment or the applicant shall pay the balance due within 15 days of the notice of the amount due thereof.

Article XVIII Repealer

§ 250-93 Repeal of prior ordinance.

The Zoning Ordinance of the Town of Mount Hope as revised and amended by the Town Board on **December 14, 1992**, effective on submission to and receipt by the New York State Department of State, and any and all amendments thereto, are hereby repealed. Such repeal shall not affect or impair any act done, offense committed or right occurring, occurred, or acquired, or liability penalty, forfeiture, or punishment incurred, prior to the time such repeal takes effect; but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if such repeal had not been effected.