

**TOWN OF HORNBY  
ZONING ORDINANCE**

**TABLE OF CONTENTS**

	Page
<b>ARTICLE 1</b>	<b>TITLE, PURPOSE AND AUTHORITY</b>
Section 1.0	Title, Purpose and Authority . . . . . 1
<b>ARTICLE 2</b>	<b>INTERPRETATION</b>
Section 2.0	Interpretation, Separability and Conflict . . . . . 2
Section 2.1	Definitions . . . . . 3
<b>ARTICLE 3</b>	<b>ESTABLISHMENT OF DISTRICTS</b>
Section 3.0	Application of Regulations . . . . . 21
Section 3.1	Names of Zoning Districts . . . . . 21
Section 3.2	Zoning Map . . . . . 22
<b>ARTICLE 4</b>	<b>USE REGULATIONS</b>
Section 4.0	Agricultural/Residential District . . . . . 23
<b>ARTICLE 5</b>	<b>AREA AND BULK REGULATIONS-DENSITY CONTROL</b>
Section 5.0	Purpose . . . . . 28
Section 5.1	Density Control Schedule (Area and Bulk Schedule) . . . . . 28
Section 5.2	Corner Lots . . . . . 28
Section 5.3	Projections into Required Yards . . . . . 28
Section 5.4	Compliance with Maximum Average Residential Density . . . . . 29
Section 5.5	Side Yards for Multi-family Dwelling Units . . . . . 29
Section 5.6	Distance between Principal Buildings on Same Lot . . . . . 29
Section 5.7	Buildable Land Calculations . . . . . 29

**ARTICLE 6 FLOOD DAMAGE PREVENTION DISTRICT**

Section 6.0 Intent . . . . . 31  
Section 6.1 Definitions . . . . . 32  
Section 6.2 General Provisions . . . . . 36  
Section 6.3 Administration . . . . . 37  
Section 6.4 Provisions for Flood Hazard Reduction . . . . . 41  
Section 6.5 Special Exception Procedures for Flood Damage . . . . . 46  
Prevention District Provisions

**ARTICLE 7 PLANNED UNIT DEVELOPMENT**

Section 7.0 Intent . . . . . 50  
Section 7.1 Permitted Uses . . . . . 50  
Section 7.2 Dimensional Requirements . . . . . 50  
Section 7.3 Special Provisions Applying to the Planned Unit Development . . 50  
Section 7.4 Procedures for Establishing a Planned Unit Development . . . . . 52

**ARTICLE 8 RESIDENTIAL CLUSTER DEVELOPMENT**

Section 8.0 Intent . . . . . 53  
Section 8.1 Authorization to Grant or Deny Residential Cluster . . . . . 53  
Development  
Section 8.2 Standards Governing Residential Cluster Development . . . . . 53  
Section 8.3 Review of Residential Cluster Development Plans . . . . . 55

**ARTICLE 9 PLANNED RESIDENTIAL DISTRICT**

Section 9.0 Intent . . . . . 56  
Section 9.1 Uses . . . . . 56  
Section 9.2 Standards Governing Planned Residential Districts . . . . . 56  
Section 9.3 Special Provisions Applying to Planned Residential Districts . . . . 57  
Section 9.4 Procedures for Establishing a Planned Residential District . . . . . 58

**ARTICLE 10 NON-RESIDENTIAL PLANNED DEVELOPMENT**

Section 10.0 Intent . . . . . 59  
Section 10.1 Standards Governing Non-residential Planned Development . . . . 59  
Section 10.2 Special Provisions Applying to Non-residential Planned . . . . . 59  
Development  
Section 10.3 Procedures . . . . . 59

**ARTICLE 11                    CONDITIONAL USES**

Section 11.0            Intent ..... 60  
Section 11.1            Authorization to Grant or Deny Conditional Uses ..... 60  
Section 11.2            Application for Conditional Use ..... 60  
Section 11.3            Standards Governing Conditional Use ..... 60  
Section 11.4            Public Hearing on Conditional Use ..... 61  
Section 11.5            Notification of Action ..... 62  
Section 11.6            Appeal ..... 62

**ARTICLE 12                   SITE PLAN APPROVAL FOR CONDITIONAL USES**

Section 12.0            Intent ..... 63  
Section 12.1            Authorization ..... 63  
Section 12.2            Concept Plan Conference ..... 63  
Section 12.3            Preliminary Site Plan Application ..... 64  
Section 12.4            Preliminary Site Plan Requirements ..... 65  
Section 12.5            Public Hearing ..... 67  
Section 12.6            Notification of Decision on Preliminary Site Plan ..... 67  
Section 12.7            Final Site Plan Application ..... 68  
Section 12.8            Notification of Decision on Final Site Plan ..... 68  
Section 12.9            Appeal ..... 68

**ARTICLE 13                   DEVELOPMENT GUIDELINES AND GENERAL PROVISIONS**

Section 13.0            General ..... 69  
Section 13.1            Lots and Blocks ..... 69  
Section 13.2            Street, Road and Pavement Design ..... 69  
Section 13.3            Off-street Parking ..... 69  
Section 13.4            Off-street Loading and Unloading Requirements ..... 73  
Section 13.5            Signs ..... 74  
Section 13.6            Accessory Buildings and Uses ..... 77  
Section 13.7            Driveway Standards ..... 78  
Section 13.8            Fences, Walls, Hedges and Screen Plantings ..... 79  
Section 13.9            Steep Slope Guidelines ..... 80  
Section 13.10            Drainage Systems and Erosion Control ..... 81  
Section 13.11            Open Space, Parks and Playgrounds ..... 85  
Section 13.12            Utilities ..... 86  
Section 13.13            Mobile Homes ..... 86  
Section 13.14            Mobile Home Parks ..... 89

Section 13.15	Excavation of Soil Mining . . . . .	94
Section 13.16	Erection, Re-erection and Razing of Damaged Buildings . . . . .	96
Section 13.17	Light Industrial Regulations . . . . .	96
Section 13.18	Solar Energy Systems and Solar Access . . . . .	98
Section 13.19	Wind Energy Conversion Systems (Windmills) . . . . .	99
Section 13.20	Home Occupations . . . . .	100
Section 13.21	Kennel Standards . . . . .	101
Section 13.22	Townhouse and Multi-family Development . . . . .	102
Section 13.23	Gasoline Filling Stations, Service and Repair Garages, Auto Sales Area . . . . .	104
Section 13.24	Design Standards for Mobile Homes as Second Principal Residential Uses . . . . .	105

**ARTICLE 14                   NONCONFORMING BUILDINGS USES AND LOT**

Section 14.0	Continuation of Nonconforming Buildings and Lots . . . . .	107
Section 14.1	Discontinuance . . . . .	107
Section 14.2	Necessary Maintenance and Repairs . . . . .	107
Section 14.3	Construction Started Prior to Zoning Ordinance . . . . .	107
Section 14.4	Existing Undersized Lots . . . . .	107
Section 14.5	Alterations . . . . .	108
Section 14.6	Restoration . . . . .	108
Section 14.7	Reduction in Lot Area . . . . .	108

**ARTICLE 15                   GENERAL EXCEPTIONS**

Section 15.0	Public Properties . . . . .	109
Section 15.1	Public Utilities . . . . .	109

**ARTICLE 16                   ZONING BOARD OF APPEALS**

Section 16.0	Establishment of Duties . . . . .	110
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**ARTICLE 17                   ADMINISTRATION**

Section 17.0	Enforcement . . . . .	111
Section 17.1	Building Permit . . . . .	111
Section 17.2	Certificate of Occupancy . . . . .	112

**ARTICLE 18            AMENDMENTS**

Section 18.0            Procedure ..... 114  
Section 18.1            Advisory Report by Planning Board ..... 114  
Section 18.2            Public Notice ..... 114  
Section 18.3            Protest by Owners ..... 114  
Section 18.4            Decision by Town Board ..... 115  
Section 18.5            Notification of Decision ..... 115

**ARTICLE 19            REMEDIES**

Section 19.0            Penalty ..... 116  
Section 19.1            Alternative Penalty ..... 116

**ARTICLE 20            FEE SCHEDULE**

Section 20.0            Fee Schedule ..... 117

**APPENDIX A**

**ZONING BOARD OF APPEALS RULES AND PROCEDURES**

Section 1.0    Meetings ..... 118  
Section 2.0    Minutes ..... 118  
Section 3.0    Referrals to the Town Planning Board ..... 118  
Section 4.0    Public Notice and Hearing ..... 118  
Section 5.0    Appeals ..... 119  
Section 6.0    Variances ..... 120  
Section 7.0    Relief from Decisions ..... 122

**APPENDIX B**

Town of Hornby Density Control Schedule ..... 123

## **ARTICLE 1. TITLE, PURPOSE, AND AUTHORITY**

### Section 1.0 - Title, Purpose, and Authority.

This following ordinance shall be known as the Town of Hornby Zoning Ordinance. It has been enacted by the Town Board of the Town of Hornby pursuant to Article 16 of the Town Law of the State of New York which empowers the Town Board to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open space, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and to establish penalties for the violation of such regulations.

The Town Board under Section 274-a of the Town Law authorizes the Planning Board to review, approve, approve with modification or disapprove site plans prepared to specifications set forth in this Zoning Ordinance.

The intent of this Ordinance is to encourage appropriate and orderly physical development; promote in all ways public health, safety, convenience and general welfare; classify, designate and regulate the location and use of buildings, structures and land for agriculture, residential, commercial, industrial or other uses in appropriate places. Objectives of this ordinance are to provide assurance of opportunities for effective utilization of land; provide adequate community and public utility facilities; provide workable relationships of land uses to the transportation system and lessen congestion on the roads; conserve and stabilize the value of property, provide adequate open space for light and air; provide desired levels of population density; secure safety from fire, flood and other dangers, and the accommodation of solar energy systems, equipment, and access to sunlight necessary therefore.

These regulations have been made with reasonable consideration, among other things, as to the physical character of land and its peculiar suitability for particular uses, and with a view to conserving and stabilizing the value of land and buildings and encouraging the most appropriate use of land throughout the town. This ordinance has been developed in accordance with a comprehensive plan for the Town of Hornby.

## **ARTICLE 2. INTERPRETATION**

### **Section 2.0 Interpretation, Separability and Conflict.**

- A. The following rules of construction of language shall apply to the text of this Ordinance.
1. Words used in the present tense include the future tense.
  2. Words used in the singular include the plural, and words used in the plural include the singular.
  3. Words used in the masculine form shall also include the feminine.
  4. The word "lot" includes the word "plot" or "parcel".
  5. The word "person" includes an individual, firm or corporation.
  6. The word "shall" is always mandatory; the word "may" is always permissive.
  7. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".
  8. A "building" or "structure" includes any part thereof.
  9. The phrases, "to erect", "to construct", and "to build" a building, each has the same meaning and includes to excavate for a building and to relocate a building by moving it from one location to another.
- B. If any section, paragraph, subdivision, or provision of this Ordinance shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision, or provision judged invalid, and the rest of this Ordinance shall remain valid and effective.
- C. This Ordinance shall be interpreted in such a way wherever possible so that the meaning of the words and phrases and sections herein shall make them valid and legal in their effect.

- D. Whenever the requirements of this Ordinance are at variance with the requirements of other lawfully adopted rules, regulations or ordinances, the Ordinance or Law with the most restrictive provisions or those imposing the higher standards shall govern.

## Section 2.1 Definitions.

The following words or phrases as used in this Ordinance are defined as follows:

**ACCESSORY BUILDING** - A building detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building.

**ACCESSORY USE** - A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**AGRICULTURE, BUILDING** - A single purpose structure necessary for the raising of crops and livestock.

**AGRICULTURE, CROPS** - Any parcel of land, including a garden, used for the raising of fruits, vegetables and the like, but not for the raising or keeping of animals.

**AGRICULTURE, LIVESTOCK** - Any parcel of land used for the raising of any animals for commercial purposes including fur-bearing animals or farm animals including livestock, horses, poultry, dairy cattle, bees, or other such farm animals, but excluding pets, riding academies, liveries and kennels. The operation will be humane and not harm the environment.

**AGRICULTURE, MANUFACTURE** - Any parcel of land used for the processing of crops and livestock, such as a cheese factory, tannery, food processing, and the like.

**AGRICULTURE, NURSERY** - a wholesale or retail business which sells primarily trees, shrubs, plants and other landscaping materials and may sell related lawn and garden supplies and ornaments as an accessory use.

**AIRPORT** - Any runway, land area or other facility, designed, used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings open spaces.



**ALTERATION** - As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

**AREA, BUILDING** - The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of terraces, and uncovered steps.

**AREA, COMMON** - Space reserved for use by any and all residents of a housing development such as halls, stairways and landings in apartment houses.

**AREA, LOT** - The total area within the property lines excluding external streets.

**ATTIC** - That space of building which is immediately below and wholly or partly within the roof framing.

**AUTOMOTIVE/REPAIR** - A building or premises used for the repair of motor vehicles, including painting and the sale of related parts and accessories. A junk yard or auto salvage yard is not to be construed as a garage.

**AVERAGE DENSITY DEVELOPMENT, RESIDENTIAL CLUSTER DEVELOPMENT** - A zoning technique whereby any dimensional requirements in the Zoning Ordinance may be modified in a subdivision provided that the overall density requirements are met for the total parcel.

**AZIMUTH, SOLAR** - The angular distance between true south and the point on the horizon directly below the sun. Values to the east of south (in the morning) shall be negative. Values to the west of south (in the afternoon) shall be positive.

**BAR** - A business establishment licensed by the State of New York to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

**BASEMENT** - A story partly below average finished grade, having at least one-half of its height measured from floor to ceiling, but no less than four feet, above average finished grade. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes shall be excluded from this definition.

**BILLBOARDS** - A sign or structure which directs attention to an idea, product, business activity, service, or entertainment which is conducted, sold, or offered elsewhere than upon the lot on which such sign is situated.

**BOARDING HOUSE** - A building, other than a hotel, containing a general kitchen and a general dining room, in which at least three, but no more than six sleeping rooms are offered for rent, with or without meals. A lodging house, tourist house or rooming house shall be deemed a boarding house.

**BUILDING** - Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattel.

**BUILDING, ACCESSORY** - See "ACCESSORY BUILDING".

**BUILDING, DETACHED** - A building surrounded by open space on the same lot.

**BUILDING, HEIGHT** - The vertical distance measured from the average elevation of the proposed or existing finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING, PRINCIPAL** - A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING, SEMI-DETACHED** - A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

**BUILDING AREA** - The area taken on a horizontal plane at the main grade level of the building exclusive of storage space, open porches, terraces, and steps, and in respect to dwellings, also exclusive of attached or built-in garages.

**BUILDING GROUP** - A group of two or more principal buildings and any buildings accessory thereto, occupying a lot in one ownership and having any yard in common.

**BUILDING LINE** - The line, established by statute, local law or Ordinance, beyond which a building shall not extend, as specifically provided by law.

**BULK** - A term to describe the size, volume, area, and shape of buildings and structures, and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures, or other walls of the same building; and all open spaces required in connection with a building, other structure, or tract of land.

**CAMP** - Any parcel of land on which may be located one or more cabins, camping vehicles, tents or other accommodations of a design or character suitable for seasonal or other temporary living purposes including summer cabin colony, vacation resort, day camp, and travel trailer park but not including a mobile home park, boarding house or motel.

**CAR WASH** - A building, premises or portions thereof where automobiles are washed either by the patron or others using machinery and mechanical devices specifically designed for this purpose.

**CELLAR** - Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes shall be excluded from this definition.

**CHURCH OR PLACE OF WORSHIP** - A building or premises used for regular public worship by members or representatives of a religious sect or organization as defined by State statute.

**CLUB, COUNTRY** - A public or private club for golfing, tennis, hunting, fishing, horseback riding, skiing, or similar sports.

**CLUB, (NON-PROFIT) MEMBERSHIP** - An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

**COMMERCIAL USE** - The use of a parcel of land/building for the purpose of retailing/wholesaling business or trade of products, commodities or services, and the preparation, processing or repair of such articles, substances or commodities for on-premise transactions.

**CONDITIONAL USE** - Uses granted through the site plan approval process as specified in Article 12 of the Zoning Ordinance.

**CONTIGUOUS PARCEL** - A tract of land under the control of the applicant or his agent that is not divided by any natural or man-made barriers such as existing roads and highways, rivers, areas with slopes greater than thirty-five percent (35%), and not bisected by waterbodies.

**CONTRACTOR'S YARD** - Any space, whether inside or outside a building, used for the storage or keeping of more than three pieces of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor.

**CONVENIENCE/MINI-MARKET** - A commercial retail use which combines the sale of beverages, dairy and baked goods, snack foods and similar grocery items, which may also be accompanied by the sale of motor vehicle fuel and accessory substances.

**COVERAGE** - That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures.

**CREMATORY** - Any place, however designated, operated for the purpose of reducing deceased bodies to ashes.

**DAY NURSERY** - Any place, however designated, operated for the purpose of providing daytime care and instruction for two or more children from two to five years of age inclusive, and operated on a regular basis, including kindergartens, day nurseries, and day care centers.

**DUMP** - A lot or land used primarily for the disposal by abandonment, burial, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste materials of any kind.

**DWELLING** - A building designed or used principally as the living quarters for one or more families. The terms "dwelling", "one-family dwelling", "two-family dwelling", "multi-family dwelling", "multiple dwelling", or "dwelling group" shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy.

**DWELLING, IN-GROUND** - A dwelling that is constructed principally below the finished average grade elevation of the lot on which it is located and with at least one wall open for a height of a least 6 feet and/or special light and ventilation designs.

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

**DWELLING, ONE-FAMILY DETACHED** - A building accommodating but a single family and having two side yards.

**DWELLING, ONE-FAMILY SEMI-DETACHED** - A one-family dwelling having one party wall and one side yard.

**DWELLING, TWO-FAMILY** - A building containing two (2) dwelling units.

**DWELLING, MULTI-FAMILY** - A dwelling containing three (3) or more dwelling units and occupied or designed for occupancy by three (3) or more families living independently of each other.

**DWELLING GROUP** - A group of three or more, but not over twelve(12) attached single or two family dwellings with party walls between.

**DWELLING UNIT** - One room or rooms connected together, consisting of a separate, independent housekeeping establishment for owner occupancy; rental or lease, and containing independent cooking, sanitary and sleeping facilities.

This shall include sectional, modular and mobile home units provided they meet the standards of this Ordinance and the building code.

It shall not include motel, hotel and lodging establishments.

**EASEMENT** - A vested or acquired right to use land other than as a tenant for a specific purpose, such right being held by someone other than the owner who holds title to the land.

**EFFECTIVELY SCREENED** - A particular use shall be considered effectively screened when barriers of sufficient height and opacity are provided so as to reduce the transmission of sound and light into adjacent properties to the point where the adjacent property owner is not disturbed.

**EFFICIENCY APARTMENT** - A dwelling unit without a separate distinct room for sleeping which is part of a multi-family structure.

**EQUIPMENT RENTAL OR SALES YARD** - See Contractor's Yard.

**FAMILY** - Any single person or group of persons who live together in a one dwelling unit and maintain a common household.

**FARM** - Any parcel of land containing at least five (5) acres which is used for gain in the raising of agricultural crops, livestock, and nursery stock. It includes necessary farm structures within the prescribed limits and the storage of equipment used.

**FENCE** - Any fence, brick or stone wall, and hedge or other continuous natural growth located outside of the area bounded by the front building foundation line and the side and rear setback requirements.

FLOOR AREA - The aggregate sum of the gross horizontal area of the several floors of the building or buildings, measured from the exterior walls or from the centerlines of walls separating the buildings. In particular, the "floor area" of a building or buildings shall include:

- (1) Basement space.
- (2) Elevator shafts and stairwells at each floor.
- (3) Floor space for mechanical equipment, with structural head room of six (6) feet or more.
- (4) Penthouses.
- (5) Attic space (whether or not a floor has actually been laid) providing structural headroom of six (6) feet or more.
- (6) Interior balconies and mezzanines.
- (7) Enclosed porches.
- (8) Accessory uses, not including space for accessory off-street parking.

However, the "floor area" of a building shall not include:

- (1) Cellar space, except that cellar space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
- (2) Elevator and stair bulkheads, accessory water tanks, and cooling towers.
- (3) Floor space used for mechanical equipment, with structural headroom of less than six (6) feet.
- (4) Attic space, whether or not a floor has actually been laid, providing structural headroom of less than six (6) feet.
- (5) Uncovered steps; exterior fire escapes.
- (6) Terraces, breezeways, open porches, and outside balconies and open spaces.

(7) Accessory off-street parking spaces.

(8) Accessory off-street loading berths.

**GASOLINE FILLING STATION** - An area of land, including structures thereon, or any building or part thereof, that is used primarily for the sale and direct delivery to the motor vehicle of gasoline or any other motor vehicle fuel or oil and other lubricating substances, including any sale of motor vehicle accessories, and which may or may not include facilities for lubricating, washing, (which does not require mechanical equipment) or otherwise servicing motor vehicles, but not including auto body work, welding, or painting.

**GOLF COURSE** - Any tract of land designated for playing the game of golf and services related thereto.

**GRADE LEVEL** - The level where the average finished grade of the ground intersects the foundation wall at the main entrance.

**GRAVEL PIT** - A lot or land or part thereof used for the purpose of extracting stone, sand, gravel, or top soil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building.

**GROCERY STORE** - A commercial retail use which provides for the sale of a full range of food products including meats, fruits, vegetables, dairy products, snack foods, beverages and similar grocery items.

**HEIGHT OF BUILDING** - The vertical distance measured from the elevation of the average finished grade level to the highest point of the roof.

**HOME OCCUPATION** - An accessory use, which, is clearly incidental to or secondary to the residential use of a dwelling unit and does not change the character thereof, and is carried on wholly within the enclosed walls of a dwelling unit or accessory building by one or more occupants of such dwelling unit and in which not more than one person not residing in such dwelling is employed at any one time.

**HOSPITAL** - An institution for the care and treatment of sick and injured, equipped with technical facilities, medical, nursing and other professional and technical personnel necessary for diagnosis and treatment of persons suffering from sickness or injury which requires bed care.

**HOTEL** - A building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms.

**INDUSTRIAL USE** - The use of a parcel of land and/or building for the purpose of manufacture, fabrication, extraction, assembly, warehousing and other processing or handling of materials.

**INSTITUTIONAL OR PHILANTHROPIC USE** - Those uses limited to churches, public or private schools covering kindergarten through grade 12, libraries and uses by the municipal, state, or federal government.

**JUNK YARD** - An area of land with or without buildings used for or occupied by the storage, keeping, or abandonment of junk, including scrap metals or other scrap, used or salvaged building materials, or the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof. A lot on which two (2) or more wrecked or broken down vehicles or major parts thereof are stored for three (3) months or more shall be considered to meet this definition of a junk yard.

**KENNEL** - Any place at which there are kept four or more dogs more than four months of age or any number of dogs that are kept for the primary purpose of sale or for the boarding, care or breeding for which a fee is charged or paid.

**LAUNDRY, SELF-SERVICE** - A business premises equipped with individual clothes washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

**LAUNDRY, DRY CLEANING PLANT** - A building or premises where public laundry work is done directly for public, by cleaning and ironing soiled and used clothes on order received from members of the public as customers.

**LOT** - A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same and which abuts and is accessible from a private or public street.

**LOT, CORNER** - A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle or intersection does not exceed one hundred thirty-five (135) degrees.

**LOT, DEPTH OF** - The mean distance from the front street line of a lot to its rear line.



LOT, THROUGH - A lot which faces on two (2) streets at opposite ends of the lot and which is not a corner lot.

LOT, AREA - The area within the property lines excluding any portion thereof within the boundaries of a street or highway right-of-way.

LOT COVERAGE - See "COVERAGE".

LOT FRONTAGE - A lot line which is coincident with a road line.

LOT LINES - The lines bounding a lot as defined herein.

LOT WIDTH - The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines or the width of a lot measured along the rear line of the required front yard.

MOBILE HOME - A dwelling unit that is manufactured as a relocatable structure, which is designed to be transported on a permanent chassis and to be installed on a site with or without a permanent foundation when connected to utilities and includes all required plumbing, heating, air conditioning, and electrical systems contained therein. This includes house trailer. This does not include Department of Motor Vehicle registered recreation vehicles, travel trailers or dwelling units that are prebuilt in one or more parts and transported to and assembled on a permanent foundation.

DOUBLE -WIDE MOBILE HOME - A mobile home which is two sections joined on site into one (1) unit.

EXISTING SINGLE-WIDE MOBILE HOME - A single-wide mobile home on an individual lot located in the Town of Hornby at the time of the zoning law, as amended on, which may be replaced in kind, but may not be enlarged or extended unless in conformance with the zoning law.

ILLEGAL MOBILE HOMES - Any single-wide without a valid Conditional Use Permit, any double-wide used as a second principal use without a valid Conditional Use Permit, and any third, fourth or additional mobile home on a lot is illegal and in violation of the Town of Hornby Zoning Law.

SINGLE -WIDE MOBILE HOME - A mobile home which is a single section.

**SUBSTANDARD MOBILE HOME** - A mobile home which does not meet the Federal Manufactured Housing Construction and Safety Standards Act of June 15, 1976 regardless of the date of construction.

**MOBILE HOME PARK** - A contiguous parcel of land on which five or more mobile homes are, or will be, placed for nontransient use. Two to four mobile homes on a lot shall be prohibited.

**MOBILE HOME SPACE (OR SITE)** - The land in a mobile home park that is rented to an individual for the exclusive right of occupancy which can accommodate one mobile home, off-street parking, private outdoor space and patios, storage buildings and other accessory structures.

**MOTEL** - A building or group of buildings containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space, and is offered for rental and use principally by motor vehicle travelers. The term "motel" includes, but is not limited to, every type of similar establishment known variously as an auto court, motor hotel, motor court, motor inn, motor lodge, tourist court, tourist cabins, roadside hotel.

**MOTOR VEHICLE SALES AND SERVICE AREA** - A premises, including open areas, other than a street or way, and enclosed showrooms for the display and sale of new or used automobiles, trucks, trailers, motorcycles and recreational vehicles, and where mechanical repairs may be conducted as an accessory use incidental to the primary sales use.

**MUNICIPAL BUILDINGS** - Any buildings established and operated by any governmental agency.

**NON-CONFORMING BULK** - That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this Zoning Ordinance, either following its effective date or as a result of subsequent amendment thereto.

**NON-CONFORMING USE** - Any use of a building, other structure, or tract of land which does not conform to the use regulations for the district in which such use is located, either at the effective date of this Zoning Ordinance or as a result of subsequent amendment thereto.

**NURSING OR CONVALESCENT HOME** - A building with sleeping rooms where persons are housed or lodged on a twenty-four (24) hour basis and furnished with meals and/or nursing care for hire.

**NURSERY SCHOOL** - Any place, however designated, operated for the purpose of providing daytime care or instruction for two or more children from two to five years of age inclusive, and operated on a regular basis, including kindergartens, day nurseries, and day care centers.

**OPEN SPACE** - Area not occupied by any building, structure or parking area.

**OPEN SPACE, COMMON** - Area unoccupied by any building structure or parking area which is available to general public.

**OPERATING PERMIT** - A renewable license to operate a mobile home park in the town, in compliance with Section 13.14 of this Ordinance.

**PARKING SPACE** - An off-street space available for the parking of one motor vehicle and having an area of not less than two-hundred (200) square feet exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PERSONAL SERVICE ESTABLISHMENT** - An office, store or other place of business catering to the personal needs of a customer, such as normally conducted by a beautician, tailor or dressmaker.

**PREMISES** - A lot together with all the buildings and uses thereon.

**PUBLIC UTILITY** - A business or service which is of public consequence and need, such as electricity, gas, water or telephone service.

**QUASI-PUBLIC USE** - Churches, Sunday schools, parochial schools, colleges, and other facilities of an educational, religious, or charitable nature.

**REFLECTOR, SOLAR** - A device for which the sole purpose is to increase the solar radiation received by the solar collector.

**RESEARCH INSTITUTE OR LABORATORY** - A building for experimentation in pure or applied research design, development, and production of prototype machines or devices or of a new product, and uses accessory thereto; with respect to the application of this Ordinance.

**RESIDENCES** - See "DWELLING UNIT"

**RESIDENTIAL CLUSTER DEVELOPMENT** - A flexible zoning technique whereby a subdivision may be laid out on smaller lot sizes than required in the Zoning Ordinance, provided that the overall density requirements are met for the total parcel.

**RESTAURANT** - Any establishment, however designated, whose primary use is preparation and sale of food for consumption to patrons seated within an enclosed building or on the premises. However a snack bar or refreshment stand at a public or quasi-public community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

**RIDING ACADEMY, STABLE** - Any establishment where horses are kept for riding, driving or stabling for compensation.

**RIGHT-OF-WAY** - The property under ownership or easement normally used for movement of vehicles, including, but not restricted to, the pavement area.

**ROAD, PRIVATE:** A non-dedicated road, meeting town standards, serving no more than two residential lots.

**ROAD, PUBLIC:** A right-of-way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, place, alley, or however otherwise designated, that is built to municipal specifications and dedicated to the town, county or state for maintenance, but not including a private driveway serving no more than one property, or a private road.

**Abandoned Road:** A former Town road which has been formally returned to the ownership of the adjacent landowners(s).

**Collector Roads:** Roads which are used or designed primarily for through or heavy traffic (County and State roads) and roads which carry traffic from minor roads, including the principal entrance roads of a residential development and roads for circulation within a development. Collector Roads are designated on the Town of Hornby Comprehensive Plan Map #4.

**Dead-end Road or cul-de-sac:** A minor road with only one vehicular access.

**Low Maintenance Roads** Town roads designated by the Town Board to receive limited maintenance.

Minor Roads: Town roads which are used year-round primarily for access to the abutting properties.

Seasonal Roads: Town roads which are only open to traffic and maintained by the Town less than year-round between specific dates.

ROAD WIDTH - The width of the right-of-way or the distance between property lines on opposite sides of a street.

ROADSIDE STAND - A light structure with a roof, either attached to the ground or movable, not for year-round use and at which only local produce is offered for sale to the general public.

SATELLITE TELEVISION ANTENNA - An antenna the purpose of which is to receive television and/or radio signals from orbiting satellites.

SETBACK - The required distance from the nearest right-of-way or lot line measured at right angles or radially from such points to the nearest edge of any building located on such lot.

SIGN - Any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes a billboard, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement, or event which is temporary in nature and which does not include any lettering or advertisement.

SIGN, ACCESSORY - Any "sign", other than the primary or principal business sign which relates to the business or profession conducted or to a commodity or service sold or offered upon the premises.

SIGN, BUSINESS - Means the primary "sign" or "signs" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a "business sign".

SIGN, ILLUMINATED - Means a "sign" designed to give forth any artificial light, or designed to reflect such light deriving from any source which is intended to cause such light or reflection.

**DIRECTLY ILLUMINATED** - A sign which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radioactive or gaseous material or substance.

**FLASHING** - An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

**INDIRECTLY ILLUMINATED** - A sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

**SIGN, PORTABLE** - Any "sign" which is not permanently affixed to a building or land and which is capable of being transported or moved. Such sign is generally handmade, leased or rented by the property owner.

**SIGN, PRINCIPAL BUSINESS** - Means a "sign" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a "business sign".

**SIGN, REPRESENTATIONAL** - Any three-dimensional sign which is built so as to physically represent the object advertised.

**SIGN, AREA** - The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. Only one face of a sign shall be counted to determine the sign area, except that any neon tube, string of lights, or similar device shall be deemed to have minimum dimensions of one foot.

**SINGLE OWNERSHIP** - Possession of land under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than thirty years (30), regardless of any division of such land into parcels for the purpose of financing.

**SITE PLAN** - Maps and supporting information required under Article 12 for Conditional Uses as specified in Article 4 Use Regulations.

**SOLAR COLLECTOR** - A device, or combination of devices, structure or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy, and that contributes significantly to a structure's energy supply, and components for containing and supporting such device.

**SOLAR COLLECTOR, DETACHED** - A solar collector, as defined herein physically detached from the structure for which solar energy is to be supplied.

**SOLAR ENERGY SYSTEM** - A complete design or assembly consisting of a solar energy collector (herein called a solar collector), an energy storage facility (where used), and components for the distribution of transformed energy (to the extent that they cannot be used jointly with a conventional energy system). Passive solar energy systems are included in this definition, but not to the extent that they fulfill other functions such as structural and recreational.

**STORY** - That portion of a building included between the surface of the floor and the ceiling next above it, having a height of at least seven (7) feet six (6) inches.

**STORY, HALF** - That portion of a building situated above a full story and having at least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to one-half the floor-to-ceiling height of the story below. An attic with a finished floor shall be considered a half story.

**STRUCTURE** - A static construction of building materials, including buildings, stadiums, platforms, towers, sheds, display stands, storage bins, signs, fences, reviewing stands, gasoline pumps, mobile dwellings (whether mobile or stationary at the time), and the like.

**SUITABLE VEGETATION** - Vegetation in sufficient quantity and of sufficient maturity so as to prevent erosion, maintain the general character of the area, and provide effective screening when such purpose is warranted.

**SUITABLY LANDSCAPED** - Landscaped with vegetation of a type sufficient to effectively screen differing uses, enhance the quality of the environment, limit erosion, and protect the general welfare.

**THEATER** - A building or part of a building devoted to showing moving pictures or stage productions on a paid admission basis.

**TOWNHOUSE** - A building consisting of three (3) or more attached single-family dwelling units each having separate entrances and common vertical party walls.

**TRAILER, HOUSE** - (See **MOBILE HOME**).

**TRAILER PARK** - (See **MOBILE HOME PARK**).

**TRAVEL TRAILER** - A unit which is used or designed to be used, for seasonal and/or temporary living or sleeping purposes, and which is customarily standing on wheels or rigid supports.

USE - This term is employed in referring to both:

- a. The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained, or occupied;
- b. Any occupation, business activity, or operation conducted in any building or other structure, or on land.

VETERINARY HOSPITAL - A building for the treatment of animal illness including kennels or other similar facilities for boarding animals.

WAREHOUSE - A building, or part of a building or premises, for storing of goods, wares and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation and whether it is a public or private ownership and use.

WAY - A thoroughfare, however designated, permanently established for passage of persons or vehicles.

WHOLESALE (STORE, BUSINESS, ESTABLISHMENT) - A business establishment engaged in selling to retailers or jobbers rather than directly to consumers.

WIND ENERGY CONVERSION SYSTEM (WINDMILL) - Any mechanical device designed for the purpose of converting wind energy into electrical or mechanical power.

WRECK - An unlicensed motor vehicle in such condition that it cannot be repaired or which has remained unrepaired for sixty (60) days after the damage occurred or which by reason of age and prior use is unsuitable for use on the highway. An unlicensed motor vehicle is one for which the registration for the current year has not been issued and affixed thereto.

YARD, REQUIRED - That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, FRONT - A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REAR - A yard extending along the full length of the rear lot line, between the side lot lines.



**YARD, SIDE** - A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).

**ZONE** - Area defined for the purpose of regulating permitted and conditional land uses.

**NOTE:** WORDS AND PHRASES NOT HEREIN DEFINED SHALL BE GIVEN THEIR STANDARD DICTIONARY DEFINITIONS OR COMMON USAGE MEANING.

### **ARTICLE 3. ESTABLISHMENT OF DISTRICTS**

#### **Section 3.0 Application of Regulations.**

Except as hereinafter provided:

- A. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved, or altered, unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of dwelling units, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards or side yards, than is specified herein for the district in which such building is located. Basements may be considered habitable structures subject to the provisions of a temporary certificate of occupancy.
- C. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Law shall be included as part of a yard or other open space similarly required for another building.
- D. No lot shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this Ordinance.
- E. The Code Enforcement Officer shall, prior to issuing a building permit, be satisfied that the issuance of such permit is not in violation of the Land Subdivision Rules and Regulations of the Planning Board or any other Law, laws or regulations of record. Cases which appear in violation of the Subdivision Regulations shall be referred to the Chairman of the Board of Zoning Appeals and the Chairman of the Town Planning Board for review and recommendation.

#### **Section 3.1 Names of Zoning Districts.**

- A. In order to fulfill the purpose of this Zoning Ordinance, the Town of Hornby establishes and is hereby classified in the following zoning district:

A-R - Agricultural - Residential

B. This Ordinance also establishes flexible districts that may be applicable anywhere in the town that specified criteria and conditions are met:

- PUD - Planned Unit Development
- RCD - Residential Cluster Development
- PRD - Planned Residential District
- PNRD - Planned Non-residential District
  - Neighborhood Business
  - Industrial District

Section 3.2 Zoning Map.

The location and boundaries of said zoning district is shown on the map designated "Official Zoning Map of the Town of Hornby", adopted on \_\_\_\_\_, and certified by the Town Clerk. Said map together with everything shown thereon and all amendments thereto is hereby adopted and is declared to be an appurtenant part of this Zoning Ordinance.

## ARTICLE 4. USE REGULATIONS

### Section 4.0 Agriculture-Residential District (A-R).

- A. Intent. The Residential Agriculture District is intended to promote and encourage a suitable environment for family living and to conserve those areas in the Town suitable for farm and agricultural uses. The topographic and soil conditions in the town restrict development in many areas. Development guidelines as specified in Article 13 shall be applicable where appropriate. To maintain the openness and rural nature of the countryside is a policy stated in the Comprehensive Plan and is adhered to in this Ordinance.
- B. Permitted Uses. The following uses are permitted:
1. Agriculture, crops
  2. Agriculture, livestock on five acres or more
  3. Single-family dwelling on more than five (5) acres. Two (2) of these acres must be buildable (See Section 5.7)
  4. Two-family dwelling on more than ten (10) acres. Four (4) of these acres must be buildable (See Section 5.7)
  5. Factory manufactured homes - modular
  6. Public schools, parks and recreation
  7. Wind energy conversion systems (windmills)
  8. Satellite television antennas
  9. Accessory uses customarily incident to any uses mentioned herein and located on the same lot as the principal use
  10. Home Occupation
- C. Conditional Uses. The following uses are permitted when authorized in accordance with Articles 11 and 12. Development guidelines as specified in Article 13 shall be applicable as appropriate:

1. Single-family dwelling on less than five acres. Two (2) of these acres must be buildable (See Section 5.7)
2. Two-family dwelling on less than ten (10) acres. Four (4) of these acres must be buildable (See Section 5.7)
3. Single lot mobile home
4. Mobile home park
5. Multi-family dwelling
6. Mobile Home as second principal dwelling
7. Boarding house
8. Agriculture - livestock on less than five (5) acres
9. Single-Family dwelling with accessory business
10. Accessory uses customarily incident to any uses mentioned in Section 4.0B and herein and not located on the same lot as the principal use
11. General uses
  - (a) Cemetery
  - (b) Church or other place of worship
  - (c) Crematory
  - (d) Cultural facilities (library, art gallery, museum, etc.)
  - (e) Day nursery
  - (f) Golf course or country club
  - (g) Hospital or sanitarium
  - (h) Institutional or philanthropic use

- (i) Municipal buildings
  - (j) Non-profit club
  - (k) Nursing or convalescent home
  - (l) Public utility or transportation use
  - (m) vacation resort, camp, cottage, travel trailer park or cabin development
  - (n) Wind energy conversion systems (windmills)
12. Business/commercial uses:
- (a) Agriculture, nursery
  - (b) Airport
  - (c) Automobile repair garage
  - (d) Bank
  - (e) Bar or night club
  - (f) Bowling alley
  - (g) Car washing station
  - (h) Convenience/mini-market
  - (i) Department store/general merchandise
  - (j) Drive-in movie
  - (k) Drug store
  - (l) Equipment rental or sales yard
  - (m) Funeral home
  - (n) Gasoline filling station

- (o) Grocery store
- (p) Laundry or dry cleaning plant
- (q) Motel/hotel
- (r) Motor vehicle sales and service
- (s) Newspaper offices and printing shops
- (t) Offices - general
- (u) Offices - one practicing professional
- (v) Offices - more than one practicing professional
- (w) Personal commercial/service establishments
- (x) Restaurant
- (y) Retail business or service, not otherwise specifically mentioned herein
- (z) Riding academy, stable
- (aa) Roadside stand
- (bb) School conducted for profit
- (cc) Self-service laundry
- (dd) Theater or concert hall
- (ee) Veterinarian office, animal hospital or kennels
- (ff) Wholesale business or service, not otherwise specifically mentioned herein

13. Industrial Uses:

- (a) Administrative, educational and related offices/facilities in conjunction with an industrial use listed herein

- (b) Agriculture, manufacture
- (c) Contractors equipment storage
- (d) Extractive operations and soil mining in compliance with Section 13.15
- (e) Manufacture, fabrication, extraction and assembly/and other handling of material
- (f) Research laboratories
- (g) Warehouse and distribution facilities



## **ARTICLE 5. AREA BULK REGULATIONS - DENSITY CONTROL**

### **Section 5.0 Purpose.**

In order to provide adequate open spaces for access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to lessen congestion on streets, no building or premises shall be erected, altered or used except in accordance with the standards set forth in this Article.

### **Section 5.1 Density Control Schedule (Area and Bulk Schedule).**

The attached schedule of density control regulations is hereby adopted and declared to be a part of this Zoning Law and is hereinafter referred to as the "Town of Hornby Density Control Schedule."

### **Section 5.2 Corner Lots.**

Wherever a side or rear yard is adjacent to a street, the standards for front yards shall apply.

### **Section 5.3 Projections Into Required Yards.**

A. The following projections into required yards may be permitted:

1. Open fire escapes - four (4) feet into side or rear yards.
2. Awnings or movable canopies and overhangs - six (6) feet into any yard.
3. Cornices, eaves, insulation walls and roofs, and other similar architectural features - three (3) feet into any yard.
4. Apparatus needed for the operation of active or passive solar energy systems, including detached solar collectors, reflectors, piping or ductwork, and insulation necessary for efficient utilization thereof.

B. Any open or enclosed porch or attached carport or garage shall be considered a part of the building in the determination of the size of the required yard or lot coverage. Non-roofed paved terraces shall not be considered a part of the building.

C. Accessory uses and buildings may be located in accordance with Section 13.6.

Section 5.4 Compliance with Maximum Average Residential Density.

- A. In all districts where residences are permitted, a lot held in single ownership may be improved for residential use according to the minimum lot size per dwelling unit and bulk regulations for each district as set forth in the Density Control Schedule, provided that there shall be no more than one principal building and use on each lot. If two or more principal residential structures are located on the same lot, the minimum average density requirement must be complied with and future partition of the lot must be anticipated by providing adequate width and yards.
- B. A residential lot of required or larger than required size as set forth in this Zoning Ordinance shall not be reduced in size for transfer of ownership if such lot so subdivided will form one or more lots which shall not be in compliance with the requirements for the minimum average residential density for the district in which such lot or lots are situated, except as provided in Article 8.

Section 5.5 Side Yards for Multi-family Dwelling Units.

Side yards for semi-detached, townhouses or multi-family dwelling units, where permitted, shall be required at the ends of the total structure only.

Section 5.6 Distance Between Principal Buildings on Same Lot.

No detached principal building shall be closer to any other principal building on the same lot than the average heights of said buildings.

Section 5.7 Buildable Land Calculations.

Density is calculated on net acreage, not gross acreage, of buildable land according to the following guidelines:

- A. Applicant shall identify and subtract all acreage considered to be undevelopable as follows:
  - 1. steep slopes twenty-five percent (25%) or greater,
  - 2. floodways as defined by the Town Flood Hazard Boundary Map
  - 3. wetlands, both state and federal
  - 4. lands covered by water bodies

5. stream corridors (fifty foot (50) setback from each streambank) or as designated on Town of Hornby Natural Features Map
  6. hydric soils as shown on the Steuben County Soil Survey, US Soil Conservation Service as revised.
- B. The applicant shall then calculate the acreage that is determined to be buildable and apply the bulk density control schedule minimum square footage per dwelling unit for the zoning district to determine the maximum number of permitted dwelling units or principal buildings. All density values shall be rounded to the nearest whole number of dwelling units or principal buildings.

## ARTICLE 6. FLOOD DAMAGE PREVENTION DISTRICT

### Section 6.0 Intent.

The potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Hornby and such damages may include: destruction or loss of private and public housing, damage of public facilities, both publically and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this Article is adopted.

A. Statement of Purpose. It is the purpose of this Article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
4. control filling, grading, dredging and other development which may increase erosion or flood damages;
5. regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands; and
6. qualify and maintain for participation in the National Flood Insurance Program.

B. Objectives. The objectives of this Article are:

1. to protect human life and health;
2. to minimize expenditure of public money for costly flood control projects;
3. to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. to minimize prolonged business interruptions;
5. to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, street and bridges located in areas of special flood hazard;
6. to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. to provide that developers are notified that property is in an area of special flood hazard; and
8. to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

#### Section 6.1 Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

**APPEAL** - means a request for a review of the Local Administrator's interpretation of any provision of this Article or a request for a variance.

**AREA OF SHALLOW FLOODING** - means a designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designed as Zone A, AE, AH, AO, AI-99, V, VO, VE, or VI-30. It is also commonly referred to as the base floodplain or 100-year floodplain.

**BASE FLOOD** - means the flood having a one percent (1%) chance of being equalled or exceeded in any given year.

**BASEMENT** - means that portion of a building having its floor subgrade (below ground level) on all sides.

**BREAKAWAY WALL** - means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading force without causing damage to the elevated portion of the building or the supporting foundation system.

**BUILDING** - means any structure built for support, shelter, or enclosure for occupancy or storage.

**CELLAR** - has the same meaning as "Basement".

**DEVELOPMENT** - means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, located within the area of special flood hazard.

**ELEVATED BUILDING** - means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

**FLOOD OR FLOODING** - means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)** - means an official map of the Community published by the Federal Emergency Management Agency as part of a riverine Community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along water courses studied in detail in the Flood Insurance Study.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** - means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but water surface elevation data is not provided.

**FLOOD INSURANCE RATE MAP (FIRM)** - is the official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** - is the official report provided by the Federal Emergency Management Agency (FEMA). The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevations of the base flood.

**FLOOD PROOFING** - means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** - has the same meaning as **REGULATORY FLOODWAY**.

**FLOOR** - means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

**FUNCTIONALLY DEPENDENT USE** - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

**HIGHEST ADJACENT GRADE** - means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

**LOWEST FLOOR** - means lowest level including basement or cellar of the lowest enclosed area. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement or cellar is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Local Ordinance.

**MANUFACTURED HOME (MOBILE HOME)** - means a structure, transportable in one 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. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**MOBILE HOME** - has the same meaning as **MANUFACTURED HOME**.

**MOBILE HOME PARK** - a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent.

**NATIONAL GEODETIC VERTICAL DATUM (NGVD)** - as corrected in 1929, is a vertical control used as a reference for establishing elevations within the flood plain.

**NEW CONSTRUCTION** - means structures for which the "start of construction" commenced on or after the effective date of this Ordinance.

**PRINCIPALLY ABOVE GROUND** - means that at least 51 percent of the actual cash value of the structure, excluding land value) is above ground.

**100-YEAR FLOOD** - See **BASE FLOOD**

**REGULATORY FLOODWAY** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 6.3.C.2. of this Article.

**START OF CONSTRUCTION** - means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers, and building materials.

**STRUCTURE** - means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL IMPROVEMENT** - means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, excluding land values, before the improvement or repair is started.

For the purpose of this definition "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

1. any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary, safety code specifications which are solely necessary to assure safe living conditions; or
2. any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.



VARIANCE - means a grant of relief from the requirements of this local law which permits construction or use in a manner that would otherwise be prohibited by this Article.

Section 6.2 General Provisions.

- A. Lands to Which This Article Applies. This Article shall apply to all areas of special flood hazards within the jurisdiction of the Town of Hornby as delineated on the FIRM and the zoning map.
- B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Hazard Boundary Map (FHBM), or Flood Insurance Rate Map (FIRM) No. #361211A, 01-10 dated April 15, 1986 is hereby adopted and declared to be a part of this Article. The FHBM or FIRM is on file at Hornby Town Hall.
- C. Interpretation, Conflict with Other Laws. This article is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986 and shall supercede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.

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

- D. Severability. The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.
- E. Penalties for Non-Compliance. No structure shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this Article and any other applicable regulations. Any infraction of the provisions of this Article by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof be fined no more than \$250 or imprisoned for not more than 15 days or both. Each week of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Hornby from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this Article for which the developer and/or

owner has not applied for and received an special exemption under Section 6.5, Special Exception Procedures for Flood Damage Prevention District Provisions will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

- F. Warning and Disclaimer of Liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

### Section 6.3 Administration.

- A. Designation of the Local Administrator. The Code Enforcement Officer is hereby appointed Local Administrator to administer and implement this Article by granting or denying development permit applications in accordance with its provisions.
- B. Establishment of Development Permit. A Development Permit shall be obtained before the start of construction or any other development within the areas of special flood hazard as established in Section 6.2.B. Basis for Establishing the Areas of Special Flood Hazard. Application for a Development Permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
1. Application Stage. - The following information is required where applicable:
    - (a) Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures;
    - (b) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
    - (c) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in Section 6.4.A.3.a. Utilities;
    - (d) Certificate from a licensed professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing

criteria in Section 6.4.B.2; Non-Residential Construction and

- (e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

- 2. Construction Stage. - Upon placement of the lowest floor, or flood-proofing by whatever means, it shall be the duty of the permit holder to submit to the Local Administrator a certificate of the as-built elevation of the lowest floor, or flood-proofed elevation, in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, the flood-proofing certificate shall be prepared by or under supervision of a licensed professional engineer or architect and certified by same. Any further work undertaken prior to submission and approval of the certificate shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

C. Duties and Responsibilities of the Local Administrator. Duties of the Local Administrator shall include, but not be limited to:

1. Permit Application Review.

- (a) Review all development permits to determine that the permit requirements of this Article have been satisfied.
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (c) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this Article, "adversely affect" means physical damage to adjacent properties. A hydraulic engineering study may be required of the applicant for this purpose.
  - (1) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this Article.

- (2) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (d) Review all development permits for compliance with the provision of Section 6.4.A.5., Encroachments.
- (1) Use of Other Base Flood and Floodway Data. When base flood data has not been provided in accordance with Section 6.2.B, Basis for Establishing the Area of Special Flood Hazard , the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and Floodway data available from a Federal, State or other source, including data developed pursuant to Section 6.4.A.4.d. in order to administer Section 6.4.B., Specific Standards and Section 6.4.D. Floodways.
  - (2) Information to be Obtained and Maintained.
    - a. Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor including basement or cellar of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
    - b. For all new or substantially improved floodproofed structures:
      - 1) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
      - 2) Maintain the floodproofing certifications required in Sections 6.4.A. General Standards and 6.4.B. Specific Standards.
    - c. Maintain for public inspection all records pertaining to the provisions of this Article including variances, when granted, and Certificates of Compliance.
  - (3) Alteration of Watercourses.
    - a. Notify adjacent communities and the N.Y.S. Department

of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York NY 10278.

- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

- 2. Interpretation of FHBM, FIRM or FBFM Boundaries. The Local Administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.

Base flood elevation data established pursuant to Section 6.2.B. Basis for Establishing the Areas of Special Flood Hazard and/or Section 6.3.C.2. Use of Other Base Flood and Floodway Data, when available, shall be used to accurately delineate the area of special flood hazard.

The Local Administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the area of special flood hazards when base flood elevations are not available.

- 3. Stop Work Orders.
  - (a) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the Local Administrator. Disregard of a stop-work order shall be subject to the penalties described in Section 6.2.E. Penalties for Non-Compliance of this Article.
  - (b) All floodplain development found noncompliant with the provisions of this Ordinance and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the Local Administrator. Disregard of a stop-work order shall be subject to the penalties described in Section 6.2.E. Penalties for Non-Compliance of this Article.

4. Inspections. The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of this Article.
5. Certificate of Compliance.
  - (a) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a Certificate of Compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of either the Development Permit or the approved variance.
  - (b) All other development occurring within the area of special flood hazard will have upon completion a Certificate of Compliance issued by the Local Administrator.

All certificates shall be based upon the inspection conducted subject to Section 6.3.C.7. Inspections and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of approved permit.

#### Section 6.4 Provisions for Flood Hazard Reduction.

##### A. General Standards.

1. Anchoring.
  - (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

- (b) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

2. Construction Materials and Methods.

- (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. Utilities.

- (a) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (b) All new and replacement water supply systems shall be designed to minimize or eliminate the infiltration of flood waters into the systems.
- (c) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters.
- (d) On-site waste disposal systems shall be located to avoid impairment of them or contamination from them during flooding.

4. Subdivision Proposals.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.

- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either 50 lots or 5 acres.

5. Encroachments.

- (a) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood carrying capacity of the area of special flood hazards set forth in Section 6.3.C.1, Permit Application Review. This may require the submission of additional technical data to assist in determination.
- (b) In all areas of special flood hazard in which base flood elevation data is available pursuant to 6.3.C.2. Use of Other Base Flood and Floodway Data.or Section 6.4.A.4.d. Subdivision Proposals and no floodway has been determined the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
- (c) In all areas of the special flood hazard where floodway data is provided or available pursuant to Section 6.3.C.2 Use of Other Base Flood and Floodway Data the requirements of Section 6.3.D. Floodways, shall apply.

B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 6.2.B. Basis for Establishing the Areas of Special Flood Hazard and Section 6.3.C.2., Use of Other Base Flood Data, the following standards are required:

- 1. Residential Construction - New construction and substantial improvements of any resident structure shall:



- (a) Have the lowest floor, including basement or cellar elevated to or above the base flood elevation;
- (b) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
  - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - (2) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
  - (3) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

2. Non-residential Construction - New construction and substantial improvements of any commercial, industrial or other non-residential structure, together with attendant utility and sanitary facilities, shall either: have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or be floodproofed to the base flood level.

- (a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
  - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - (2) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and

(3) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

(b) If the structure is to be floodproofed:

(1) a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction,

and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(2) a licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.

The Local Administrator shall maintain on record a copy of all such certificates noted in this section.

C. Construction Standards for Areas of Special Flood Hazards without Base Flood Elevation - New construction or substantial improvements of structures including manufactured homes shall have the lowest floor including basement elevated to or above the base flood elevation as may be determined in Section 6.3.C.2. Use of Other Base Flood and Floodway Data or 2 feet above the highest adjacent grade where no elevation data is available.

1. New construction or substantial improvements of structures including manufactured homes shall have the lowest floor (including basement) elevated at least 2 feet above the highest adjacent grade next to the proposed foundation of the structure.

2. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirements must either be certified by a licensed profession I engineer or a licensed architect or meet the following criteria:

- (a) a minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding;
- (b) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
- (c) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

D. Floodways. Located within areas of special flood hazard are areas designated as floodways (see definition, Section 6.1 Definitions). The floodway is an extremely hazardous area due to high velocity flood waters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by Section 6.3.C.2. Use of Other Base Flood and Floodway Data, all encroachments including fill, new construction, substantial improvements, and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

Section 6.5 Special Exception Procedures for Flood Damage Prevention District Provisions.

A. Appeals Board.

1. The Zoning Board of Appeals as established by Town of Hornby shall hear and decide appeals and requests for variances from the requirements of this Article.
2. The Zoning Board of Appeals shall hear and decide appeals for any variation requested from any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this Article.
3. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

B. Review Criteria.

In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other section of this

Article and:

1. The danger that materials may be swept onto other lands to the injury of others;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location, where applicable;
  6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  7. The compatibility of the proposed use with existing and anticipated development;
  8. The relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
  9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
  11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  12. The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems And streets and bridges.
- C. Upon consideration of the factors of Section 6.5.B Review Criteria and the purposes of this Article, the Zoning Board of Appeals may attach such conditions to the

granting of variance as it deems necessary to further the purposes of this Article.

D. The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

E. Considerations for Special Exceptions.

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1-12) in Section 6.5.B Review Criteria have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the contributing structures procedures set forth in the remainder of this Article.
3. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - (a) the criteria of subparagraphs A, D, E, and F of this section are met;
  - (b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
4. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
6. Variances shall only be issued upon receiving written justification:
  - (a) a showing of good and sufficient cause;
  - (b) a determination that failure to grant the variance would result in

exceptional hardship to the applicant; and

- (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public or conflict with other Articles of this Ordinance and other existing local laws or ordinances.
7. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting.

## **ARTICLE 7. PLANNED UNIT DEVELOPMENT (PUD)**

### **Section 7.0 Intent.**

It is the intent of the Planned Unit Development (PUD), to provide flexible land use and design regulations through the use of performance criteria so that small-to-large scale neighborhoods or portions thereof may be developed within the town that incorporate a variety of residential types and non-residential uses, and contain both individual building sites and common property which are planned and developed as a unit. The PUD designation is a rezoning, subject to site plan approval, and may be applicable to any area of the town where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article.

### **Section 7.1 Permitted Uses.**

The following uses and their accessory or associated uses are permitted subject to site plan approval:

- A. All residential types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this district.
- B. Commercial, service and other non-residential uses. These are to be scaled primarily to serve the residents of the PUD.

### **Section 7.2 Dimensional Requirements.**

- A. The minimum area required to qualify for a Planned Unit Development shall be fifty (50) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.
- B. The Planning Board, in its review of said PUD proposal shall determine the appropriate land use configuration, road network, and open space requirements.

### **Section 7.3 Special Provisions Applying to the Planned Unit Development (PUD).**

- A. In order to carry out the purpose of this district, a development shall achieve the following objectives:
  - 1. A maximum flexibility in the types of residential and business development,

occupancy, building types, lot sizes, and community facilities to meet the demand of existing and potential town residents.

2. More efficient allocation and maintenance of open space and recreation areas.
  3. The preservation of trees and outstanding natural features.
  4. A creative use of land and related physical development.
  5. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower development costs.
  6. A development pattern in harmony with the objectives of the Comprehensive Plan for the Town.
  7. Be compatible with all applicable guidelines and standards set forth in this Article and Article 13.
- B. The tract of land for a project may be owned, leased or controlled either by a single person, or corporation or a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.
- C. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvements, operation and maintenance of common property and facilities, including private streets, drives, service and parking areas, and recreational and open space areas.
- D. In the event that the organization established to own and maintain common property, or any successor organization, fails to maintain such property in reasonable order, the Town Board may cause such property to be maintained in accordance with the procedure set forth the Hornby Subdivision Law Section 4.4.
- E. For the purposes of regulating the development and use of property after initial construction and occupancy, any changes shall be subject to a site plan approval by the Planning Board. Properties lying in the PUD are unique and shall be so considered by the Planning Board when evaluating these requests; and maintenance of the intent and function of the planned unit shall be of primary importance.



Section 7.4 Procedures for Establishing a Planned Unit Development.

- A. Any applicant wishing approval for a Planned Unit Development shall submit his request to the Town Board and the Planning Board in the form of a concept site plan as defined in Section 12.2.
- B. Upon conditional approval of the concept plan by the Town Board and the Planning Board, the applicant shall submit within six (6) months an application for preliminary site plan approval to the Planning Board in conformance with the procedures and requirements set forth in Article 11 and 12.
- C. The Town Planning Board, in its review of the proposed planned district, will consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property.
- D. Within forty-five (45) days of the Planning Board action on a final site plan application, the Town Board shall, after the required publication of notice, hold a public hearing on the rezoning. The Planning Board's action shall include a detailed explanation of the reasons for its finding. Within fifteen (15) days after such hearing the Town Board shall act on the rezoning. The Board may attach such conditions on the approval as it deems necessary. The Town Board shall not act contrary to the Planning Board's recommendation, except on a vote of at least four (4) members in favor of such proposal and shall state all reasons for such decision.
- E. If approved, the Town Board shall then amend the Zoning Ordinance and Map to define the boundaries of the Planned District, but such action shall have the effect of only granting permission for the development of the specific proposed use in accordance with the specifications and plans shown on the final site plan filed with the Town Board.
- F. If the Planned Unit Development proposal involves the subdivision of land into parcels for sale to individual owners, the site plan review and public hearing required for the PUD may suffice for Planning Board review under the Town's subdivision regulations. In such cases the developer shall prepare a subdivision plat suitable for filing with the Steuben County Clerk in addition to the required site plan drawings. Coincident with final site plan approval, final plat approval may be given under the Town subdivision regulations; the plat shall then be signed by the Planning Board Chairman, or his designate, and filed with the County Clerk in the manner prescribed by said regulations.

## **ARTICLE 8. RESIDENTIAL CLUSTER DEVELOPMENT**

### **Section 8.0 Intent.**

The intent of this Article is to permit variation in lot size and housing type in suitable areas in order to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural, agricultural and scenic qualities of open space, in accordance with Section 281 of the New York State Town Law. This purpose is achieved by permitting lot sizes to be reduced in a subdivision tract if the overall density does not exceed that which otherwise permitted in the applicable zoning district, and the land thus gained is preserved as permanent open space for the use and enjoyment of the residents of the areas and town.

### **Section 8.1 Authorization to Grant or Deny Residential Cluster Development.**

In accordance with Section 281 of the Town Law, the Town Board authorizes the Planning Board to permit variations in the dimensional requirements of this Ordinance under their subdivision review powers. The Planning Board shall comply with all procedures and standards set forth in this Article when implementing such power.

### **Section 8.2 Standards Governing Residential Cluster Development.**

Any residential cluster development considered shall conform to the following standards which are regarded as minimum requirements.

- A. This procedure shall apply only to residential zoned land which shall be a minimum of ten (10) contiguous acres in size. In addition, it shall be determined that the proposed development create an attractive residential environment that is in conformity with the objectives of the Town Comprehensive Plan, and that the gross density will be no greater than if the tract were developed in accordance with the existing zoning requirements, and that the permanent retention of open space areas along with their care and maintenance is guaranteed.
- B. When such development is proposed adjacent to any existing residence or residential area, the proposed cluster development shall be designed so that a portion of the designated open space shall separate the development from existing homes, if appropriate.

C. The size of lots in a residential cluster development may vary from the normal requirements of the district, but no dimensional or area requirement of the district shall be reduced by more than fifty (50) percent.

D. Single family detached houses shall be subject to the following minimum setback requirements:

Front Yard	Rear Yard	Side Yard
25 ft.	25 ft.	12.5 ft

E. All residential cluster development plans shall be prepared with competent professional assistance and shall be consistent with the spirit and intent of the Zoning Ordinance.

F. In areas without public water and sewer, any reduction in lot size allowed under this Article shall be dependent on approval of the on-lot water and sewer system by N.Y.S. Department of Health and N.Y.S. Department of Environmental Conservation.

G. All the land not contained in the lots or the road right-of-way, if provided, shall be contiguous and of such size and shape as to be usable for active or passive recreation, environmental protection or agriculture

H. Such land shall be maintained in open space in accordance with the Town of Hornby Subdivision Regulations Section 4.4. No structure save those incidental to the recreational, cultural or agricultural use shall be permitted thereon.

The open space lands shall be subject to taxation, unless deeded to the Town. In the case of such tracts, the developer may petition to the Town to take over the land to be used in perpetuity as open space.

I. Special Designs: In cases where a developer has proposed architecturally unusual groups of dwellings and garages, the Town Planning Board after inspecting the plans and elevations, may recommend approval of smaller minimum lot sizes than those specified in Section 8.2 C, provided that the sanitary systems are approved by the NYS DOH/DEC, that the gross density does not exceed that permitted within the zoning district in which the land occurs, and the layout is not detrimental to the health, general welfare, and aesthetic character of the community.

- J. Construction shall start within one year of the date of approval and shall be completed within a timeframe agreed to by the developer and the Planning Board. If such timeframe is not met by the developer, the residential cluster development approval shall be revoked.
- K. Failure to maintain common property. See the Town of Hornby Subdivision Section 4.4 Additional Requirements

Section 8.3 Review of Residential Cluster Development Plans.

The approval procedure shall be the same as that specified in the subdivision regulations for the review and approval of a proposed subdivision of land.

## **ARTICLE 9. PLANNED RESIDENTIAL DISTRICT**

### **Section 9.0 Intent.**

The provisions of this Article are intended to permit and encourage the development of well-planned, high density, residential neighborhoods or groups of residences on sites larger than normal building lots. To give the site planner maximum freedom, more intensive use of land may be permitted, and the coverage, height, setback and other requirements may be varied under circumstances which will ensure more imaginative use of a building site than can be achieved under the other regulations of this Ordinance. This district may contain both individual building sites and common property which is planned and developed as a unit. The Planned Residential Development shall be considered a rezoning and shall be subject to all procedures and requirements set forth in this Article and Article 12.

### **Section 9.1 Uses.**

The following uses and their accessory or associated uses may be permitted subject to site plan approval by the Planning Board:

- A. Single-family dwellings (detached and attached), multi-family dwellings, rooming and board houses
- B. Churches, parish houses, convents
- C. Professional offices, funeral homes, banks
- D. Public and private schools, public libraries, hospital and municipal and fire department buildings
- E. Private fraternities, societies, or clubs

### **Section 9.2 Standards Governing Planned Residential Districts (PRD).**

Any development proposal to be considered as a planned residential district shall conform to the following standards, which shall be regarded as minimum requirements, in addition to all applicable standards in other sections of this Ordinance.

- A. This provision shall apply only to land which shall be a contiguous parcel ten (10) acres in size. Where the applicant can demonstrate that his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.

- B. The gross density of any parcel shall not exceed ten (10) dwelling units per acre
- C. All parcels shall be serviced by public water and sanitary sewer systems.
- D. All undeveloped lands including all required yard areas shall be designated for open space purposes. A minimum area of four hundred (400) sq. ft./dwelling unit containing two bedrooms or more may be required to be set aside for open space/recreation purposes.
- E. When such development is proposed adjacent to any existing residence or residential area, a buffer of at least one hundred fifty (150) feet in width shall be maintained within the proposed development along any lot line that abuts existing residential development. The one hundred fifty (150) foot buffer shall be maintained as permanent open space.
- F. Single-family detached dwelling units shall meet the following standards which shall be considered minimum:

Minimum lot size per dwelling unit: 20,000 sq. ft.

- 1. Yard requirements:
  - (a) Front yard - 30 feet
  - (b) Side yard - 15 feet
  - (c) Rear yard - 25 feet
- 2. Maximum lot coverage: 15%
- 3. Maximum building height: 35 feet

- G. Townhouse and multi-family developments shall comply with standards set forth in Section 13.22.

Section 9.3 Special Provisions Applying to the Planned Residential District (PRD).

- A. In order to carry out the purpose of this district, a development shall achieve the following objectives:
  - 1. A maximum choice in the types of environment, occupancy, tenure, types of housing, lot sizes and community facilities available to existing and potential town residents at all economic levels.

2. More useable open space and recreation areas.
  3. The preservation of trees and outstanding natural features.
  4. A creative use of land and related physical development.
  5. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.
  6. A development pattern in harmony with the objectives of the Comprehensive Plan for the Town.
  7. Be compatible with all applicable guidelines and standards set forth in Article 13.
- B. The tract of land for a project may be owned, leased or controlled either by a single person, or corporation or a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.
- C. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvements, operation and maintenance of common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.
- D. In the event that the organization established to own and maintain common property, or any successor organization, fails to, maintain such property in reasonable order, the Town Board may cause such property to be maintained in accordance with the procedure set forth in the Hornby Subdivision Law Section 4.4.
- E. For the purpose of regulating the development and use of property after initial construction and occupancy, any changes shall be subject to a site plan approval by the Planning Board. Properties lying in the PRD are unique and shall be so considered by the Planning Board when evaluating these requests; and maintenance of the intent and function of the planned unit shall be of primary importance.

Section 9.4 Procedures for Establishing a Planned Residential District .

Shall be as set forth in Section 7.4.

## **ARTICLE 10. NON-RESIDENTIAL PLANNED DEVELOPMENT**

### Section 10.0 Intent.

The intent of the non-residential planned development is to provide an opportunity for centers of convenient shopping to serve residential neighborhoods and small light industrial activities to locate in the most suitable locations without causing detrimental effects to neighboring uses or the health, safety and general welfare of the community. These districts shall be encouraged to locate in clusters throughout the Town in proportion to the population served. The non-residential planned development shall be considered a rezoning and shall be subject to the procedures and requirements of this Article, and Article 11; and may be applicable where the applicant can prove his holdings will meet the objectives of this Article.

### Section 10.1 Standards Governing Non-residential Planned Development.

#### A. Dimensional Requirements.

1. The minimum area required to qualify for a Planned Neighborhood Business District shall be a two (2) acre contiguous parcel.
2. The minimum area required to qualify for a Planned Industrial District shall be a five (5) acre contiguous parcel.
3. All bulk and density requirements specified in Section 5.1 may be varied by the Planning Board in the site plan approval.

B. Uses. All permitted and conditional uses and their accessory or associated uses as specified in Article 4.

C. All applicable standards and guidelines set forth in this Article and Article 13 shall apply.

### Section 10.2 Special Provisions Applying to the Non-residential Planned Development.

In order to carry out the purpose of this district, a development shall comply with all provisions set forth in Section 7.3 applicable to non-residential uses.

### Section 10.3 Procedures for Establishing a Non-residential Planned Development.

Shall be as specified in Section 7.4.



## **ARTICLE 11.    CONDITIONAL USES**

### **Section 11.0 Intent.**

The intent of conditional use approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their special characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this Ordinance and their effect on surrounding properties.

### **Section 11.1 Authorization to Grant or Deny Conditional Uses.**

The conditional uses listed in this Ordinance may be permitted upon authorization by the Planning Board in accordance with the standards and procedures set forth in this Ordinance. Conditional uses may also be enlarged or otherwise altered by such authorization. In permitting a conditional use or the modification of a conditional use, the Planning Board may impose in addition to those standards and requirements expressly specified by the Ordinance, any additional conditions which the Planning Board considers necessary to protect the best interests of the surrounding property, the neighborhood, or the town as a whole. These conditions may include limiting the height of buildings, controlling the location and number of vehicle access points, increasing the street width, increasing the number of off-street parking and loading spaces required, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this Ordinance and classified in this Ordinance as a conditional use, any change in use or in lot area or alteration of structure shall conform to this Ordinance.

### **Section 11.2 Application for Conditional Use.**

A property owner(s) or his agent(s) may initiate a request for a conditional use by filing an application with the Planning Board. Such application shall be accompanied by a site plan in conformance with Article 12. A filing fee, as set by the Town Board, shall also be required, no part of which is returnable.

### **Section 11.3 Standards Governing Conditional Use.**

A conditional use shall comply with the procedures and standards set forth in Article 12 and Article 13 except as these standards have been modified in authorizing the conditional use or as otherwise modified when consideration is given to the following:

- A. The submission of a site plan in accordance with Article 12 is required before any consideration can be given for a conditional use.
- B. In order to grant any conditional use, the Planning Board shall find that the request is in harmony with the general purpose and intent of this Ordinance, taking into account the location and size of use, the nature and intensity of the proposed use and the size of the site with respect to its accessibility and the traffic bearing capacity of the surrounding thoroughfares.
- C. In order to grant any conditional use, the Planning Board shall find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- D. In the case where a conditional use has been permitted, no building permit shall be issued until fifteen (15) days after the granting of the conditional use by the Planning Board, and then only in accordance with the terms and conditions of said permit. Any appeals shall be filed within such period.
- E. A conditional use permit shall become void one (1) year after approval or after such time as may be specified as a condition of approval, if no construction or use activity has begun. The conditional use permit shall be void if the original use shall cease for more than one (1) year for any reason.
- F. The Planning Board, on its own motion and proper notice and hearing, may revoke any approval of a conditional use for noncompliance with conditions set forth in the granting of said use after first holding a public hearing and giving notice of such hearing as provided in Article 18. The foregoing shall not be the exclusive remedy, but it shall be unlawful and punishable hereunder for any person to violate any condition imposed by an approved conditional use.

#### Section 11.4 Public Hearing on Conditional Use.

Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Board at a public hearing. Notice of said hearing shall be given as provided in Section 12.5.

Section 11.5 Notification of Action.

The Planning Board shall notify the applicant for a conditional use in writing of the Planning Board's action within forty-five (45) days after the public hearing.

Section 11.6 Appeal.

The applicant or any interested person may appeal a decision of the Planning Board. The appeal shall be made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after the filing of a decision on a conditional use application.

## **ARTICLE 12. SITE PLAN APPROVAL**

### **Section 12.0 Intent.**

The intent of site plan approval is to determine compliance with the objectives of this Ordinance and with regard to conditional uses that may be permitted in the Town of Hornby. The objective is to evaluate various land uses that may cause a conflict between existing and proposed uses or be in conflict with natural site conditions and thereby minimize the adverse effects concerning health, safety, and overall welfare of the residents of the community. The Planning Board, at its discretion, may waive the concept and final application procedure.

### **Section 12.1 Authorization.**

The power to approve, approve with modification, or deny site plans for conditional uses as required by this Ordinance is vested in the Planning Board. Section 274-A of the Town Law provides the legislative means for the Town Board to authorize the Planning Board to review and approve site plans. Prior to issuing a building permit for the construction or expansion, or change in use of any conditional use, a site plan and supporting documentation shall be submitted to the Planning Board for its review and approval. The Planning Board may require that the site plans be prepared by a licensed architect or engineer. Such requirement shall be based on the complexity of the site features and of the proposed structures or land use as related to same.

### **Section 12.2 Concept Plan Conference.**

The concept plan submittal is optional. The purpose of the concept is to encourage the person applying for a conditional use to consult early and informally with the Planning Board in order to save time and money and to make the most of opportunities for desirable development.

- A. Requirements. A concept plan if prepared shall be submitted in triplicate to the Planning Board. Before preparing a concept layout, the developer may discuss with the Planning Board or the Town Planning Consultant the general requirements as to design of streets, reservations of land, drainage, sewerage, water supply, fire protection, and other improvements as well as procedural matters.

Developers of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or County Highway Superintendent at the concept layout stage in order to resolve problems of street openings or storm water drainage at the earliest possible stage in the design process. The Planning Board shall provide written comments on the concept plan of a proposed development in relation to the applicable requirements of this Article and Article 11, existing or potential development of the adjacent area, the Town

Comprehensive Plan, and in the course of its review may consult with other interested public agencies.

The concept plan shall include in as much detail as possible the following information:

1. An area map showing:
  - (a) Applicant's entire holdings, that portion of the applicant's property under consideration for development and any adjacent parcels owned by the applicant.
  - (b) All properties, their ownership and uses, subdivisions, streets, zoning districts, easements, and adjacent buildings within five hundred (500) feet of the applicant's property.
  
2. A site development plan:
  - (a) Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees, flood hazard areas.
  - (b) Zoning districts, certified agricultural districts, school districts.
  - (c) Special improvement districts (water, sewer, light, fire, drainage and the like).
  - (d) Easements.
  - (e) All existing man-made features.
  - (f) All proposed buildings, man-made structures and public improvements.
  - (g) A map of site topography (USGS topo map).
  - (h) A soils overlay, if general site grades exceed fifteen percent (15%) or portions of the site have susceptibility to erosion, flooding or ponding.

### Section 12.3 Preliminary Site Plan Application.

Application for preliminary site plan approval shall be made in writing in triplicate to the Town Clerk fifteen (15) days prior to a scheduled Planning Board meeting. The clerk shall refer all preliminary site plan applications to the Planning Board for its review and approval. For the purposes of this Ordinance, the submission date shall be the date of the first regular Planning Board meeting following submission to the Town Clerk.

Section 12.4 Preliminary Site Plan Requirements.

The preliminary site plan application shall include the information listed below. The Planning Board may at its discretion waive any preliminary requirements which are clearly not relevant to the proposed use and site.

- A. An area map showing that portion of the applicant's property under consideration for development, any adjacent parcels owned by the applicant, and all properties, their ownership, uses thereon, subdivisions, streets, zoning districts, easements and adjacent buildings within five hundred (500) feet of applicant's property.
  
- B. A preliminary site plan shall include the following information:
  - 1. Title of drawing, including name and address of applicant.
  - 2. North point, scale and date.
  - 3. Boundaries of the project plotted to scale of not more than one hundred (100) feet to one (1) inch.
  - 4. Existing natural features such as watercourses, water bodies, wetlands, wooded areas and individual large trees. Features to be retained should be noted.
  - 5. Existing and proposed contours at intervals of not more than five (5) feet of elevation.
  - 6. Location of proposed land uses and their areas in acres and location, proposed use and height of all buildings.
  - 7. Location of all existing or proposed site improvements including streets, drains, culverts, retaining walls, fences and easements, whether public or private.
  - 8. Description of sewage disposal and water systems and location of such facilities.
  - 9. Location and proposed development of buffer areas and other landscaping.
  - 10. Delineation of the various residential areas, if applicable, indicating for each such area its general extent, description and composition of dwelling unit type, and a calculation of the residential density in dwelling units per gross acre for each such area.

11. Location of all parking and truck-loading areas, with access and egress drives thereto.
  12. Location, design and size of all signs and lighting facilities.
  13. The approximate locations and dimensions of areas proposed for neighborhood parks or playgrounds, or other permanent open space.
  14. Building orientation and site design for energy efficiency.
  15. Location and design of all energy distribution facilities, including electrical, gas and solar energy.
  16. Grading and erosion. - Description and location of control measures including proposed location of sediment sink/settling pond and interceptor swales, etc.
  17. Location and design for stormwater management facilities.
  18. Drainage report including supporting design data and copies of computations used as a basis for the design capacities and performance of drainage facilities.
  19. The lines and dimensions of all property which is offered, or is to be offered, for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the property owners of the development.
- C. The Planning Board may require such additional information that appears necessary for a complete assessment of the project.
- D. The Planning Board's review of the preliminary site plan shall include, but is not limited to the following considerations:
1. Adequacy and arrangement of vehicular traffic access and circulation.
  2. Location, arrangement, appearance and sufficiency of offstreet parking and loading.
  3. Location, arrangement, size and design of buildings, lighting and signs.
  4. Relationship of the various uses to one another and their scale.
  5. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise deterring buffer between adjacent uses and adjoining lands.

6. Adequacy of storm water and sanitary waste disposal.
7. Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding and/or erosion.
8. Compatibility of development with natural features of the site and with surrounding land uses.
9. Adequacy of floodproofing and prevention measures consistent with flood hazard prevention district regulations.
10. Adequacy of building orientation and site design for energy efficiency. The extent to which the proposed plan conserves energy use and energy resources in the community including the protection of adequate sunlight for use by solar energy systems.
11. Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.
12. Adequacy of pedestrian access, circulation, convenience and safety.
13. In their review of a preliminary site plan, the Planning Board may consult with the Code Enforcement Officer, Fire Commissioners, other local and county officials, and its designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Environmental Conservation.

#### Section 12.5 Public Hearing.

Upon the Planning Board's certification that the preliminary site plan application is complete and satisfactory, a public hearing shall be scheduled within forty-five (45) days from the time of such certification. For the purpose of this Ordinance, the submission date shall be taken as the date of the first regular Planning Board meeting following submission of the preliminary site plan to the Town Clerk. The hearing shall be advertised at least five (5) days prior to the scheduled date in a newspaper of general circulation in the Town.

#### Section 12.6 Notification of Decision on Preliminary Site Plan.

Within forty-five (45) days of the public hearing at which a preliminary site plan is considered, the Planning Board shall act upon it. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, conditionally approved, or disapproved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report. The Planning Board's statement may include



recommendations as to desirable revisions to be incorporated in the final site plan application. If the preliminary layout is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case the Planning Board may recommend further study of the proposal and resubmission of the preliminary site plan.

#### Section 12.7 Final Site Plan Application.

After receiving approval, with or without conditions, from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final site plan and submit it to the Planning Board for its review and approval. However, if more than six (6) months have elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revisions prior to accepting the proposed final site plan for review. The final site plan shall conform to the approved preliminary site plan, and shall incorporate any revisions or other features that may have been recommended by the Planning Board at the preliminary review. All compliances shall be clearly indicated by the applicant.

#### Section 12.8 Notification of Decision on Final Site Plan.

Within forty-five (45) days of the submission of the final site plan, the Planning Board shall render a decision.

- A. Upon approval, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Code Enforcement Officer who shall then issue a building permit if the project conforms to all other applicable requirements.
- B. Upon disapproval, the Planning Board shall so inform the Code Enforcement Officer and he shall deny a building permit. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.
- C. Specifications for improvements shown on the site plan shall be those set forth in this Ordinance and in other ordinances, rules and regulations, or in construction specifications of the Town of Hornby.

#### Section 12.9 Appeal.

The applicant or any interested person may appeal a decision of the Planning Board. The appeal is made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after the filing of a decision on a conditional use application.

## **ARTICLE 13. DEVELOPMENT GUIDELINES AND GENERAL PROVISIONS**

### Section 13.0 General.

The Planning Board, in reviewing a site plan, shall be guided by the considerations and standards presented in this Article. In the review, they shall take into consideration the prospective character of the development and require improvements be designed to such standards as are consistent with reasonable protection of the public health, safety, or welfare. For permitted uses the Code Enforcement Officer shall ensure compliance with this Article and any other applicable ordinances, articles or sections.

### Section 13.1 Lots and Blocks.

- A. Lot Size and Arrangement. The dimensions and arrangements of lots shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in providing access to buildings on such lots or in securing building permits. In general, side lot lines shall be at right angles or radial to street lines, unless a variation from this can be shown to result in a better plan.
- B. Access. Insofar as possible, lots shall not derive access from a major road. Access to lots adjacent to a primary road shall, in general, be from marginal access streets or other streets within the development. Where a watercourse separates the buildable area of a lot from the street by which it has access, provision shall be made for installation of a culvert or other structure, which shall be subject to the same design criteria and review as all other storm water drainage facilities in the development.

### Section 13.2 Street, Road, and Pavement Design.

See Town of Hornby Subdivision Regulation Section 5.2 Road Design Guidelines

### Section 13.3 Off-Street Parking.

- A. General Requirements.
  - 1. It shall be the responsibility of the owner of a property to provide the off-street parking spaces required in the listing below for any use which is erected, enlarged, or altered after the effective date of this Ordinance.
  - 2. A parking space shall be considered adequate if it is not less than two hundred (200) sq. ft. (10' x 20') exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to street or alley.
  - 3. No exit or entrance drive connecting a parking area and a street shall be permitted within thirty (30) feet of the intersection of two public rights-of-way.

4. Where appropriate, the Zoning Board of Appeals may, upon the presentation of evidence, vary the number and circumstance of the following parking space requirements, in order that the general welfare be served and the prospective uses be equitably treated.
5. In stadiums, churches, and other places of assembly, in which patrons or spectators occupy benches, pews, or other similar seating facilities; each twenty (20) inches of such seating facilities shall be counted as one seat.
6. The lighting of off-street parking lots shall not be directed into adjacent properties.
7. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.

B. Required Off-Street Parking Spaces. The minimum cumulative number of spaces shall be determined by the amount of dwelling units, bedrooms, floor area, members, equipment, employees, and/or seats contained in such new buildings or structures, or added by alteration of buildings or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures, as follows:

1. Single Family Residences - Two (2) spaces per dwelling unit.
2. Multi-Family Residences - Two (2) spaces per dwelling unit.
3. Mobile Home Parks - Two (2) spaces per dwelling unit.
4. Home Occupation - One (1) space for each person or employee engaged in any home occupation.
5. Hospitals, Sanitariums, Nursing Homes - One (1) space for each bed.
6. Tourist Home, Rooming House - One (1) space for each bedroom within the facility.
7. Motels/Hotels. - One (1) space for each unit plus one space for every four (4) employees.
8. Offices - Service, Retail, Professional - One (1) space for each two hundred (200) sq. ft. of gross floor area.
9. Medical and Dental Clinics - One (1) space for each one hundred (100) sq. ft. of gross floor area.

10. Retail Establishments, Funeral Homes, Veterinary Hospitals, Banks, and Related Commercial Establishments of a Personal Service or Business Service Nature - One (1) space for each one hundred (100) sq. ft. of gross floor area.
11. Restaurants - One (1) space for each fifty (50) sq. ft. of customer floor area plus additional space as required to accommodate tractor trailer parking and maneuvering.
12. Commercial Recreation, Private Membership Clubs - One (1) space for every One hundred (100) sq. ft. of gross floor area.
13. Roadside Stands - One (1) space for every fifty (50) sq. ft. of area devoted to selling or display.
14. Nursery and Elementary Schools.- One (1) space per employee plus two(2) additional spaces per classroom.
15. High Schools and Colleges - Five (5) spaces for each classroom.
16. Churches, Temples, Auditoriums, Theaters - One (1) space for every five seats.
17. Industrial Uses
  - (a) One (1) space for each eight hundred (800) sq. ft. of floor area devoted to manufacture including printing, publishing, and laundry or dry cleaning plants.
  - (b) One (1) space for each one thousand five-hundred (1,500) sq. ft. of floor area devoted to storage or stationary operating equipment.
  - (c) One (1) space for each three thousand (3,000) sq. ft. of area devoted to outside storage, including used car lots and equipment rental or sales yards.
  - (d) For any industrial use, one (1) space for each company vehicle.

C. Calculation of Required Spaces. In the case of combination of uses, the total requirements for offstreet automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.

D. Dimensions for Off-Street Automobile Parking Spaces and Lots. Every such space provided shall be at least ten (10) feet wide and twenty (20) feet long, and every space shall have direct and usable driveway access to a street or alley with minimum maneuver area between spaces as follows:

1. Parallel Club Parking: Five (5) feet end to end with twelve (12) foot aisle width for one directional flow and twenty-four (24) foot aisle width for two (2) directional flow.
2. 30 Degree Parking: Thirteen (13) foot aisle width for one directional flow and twenty-six (26) foot aisle width for two (2) directional flow.
3. 45 Degree Parking: Sixteen (16) foot aisle width for one (1) directional flow and twenty-six (26) foot aisle width for two (2) directional flow.
4. Sixty (60) Degree Parking: Twenty-one (21) foot aisle width for one (1) directional flow and twenty-six (26) foot aisle width for two directional flow.
5. Perpendicular Parking: Twenty-six (26) foot aisle width for one (1) directional and two (2) directional flow.

E. Location of Required Parking Spaces. For any residential use, required automobile parking spaces shall be provided on a buildable portion of the same lot. This space shall be graded for parking use and readily accessible from the street.

For any residential use, no open or enclosed parking area shall encroach on any required front yard. Open parking areas may encroach on a required side or rear yard to within three (3) feet of a property line.

For business and industrial uses, such spaces shall be provided on the same lot, or not more than four hundred (400) ft. therefrom. Vehicles and equipment for display or for sale shall not be parked or stored within the front yard requirement.

F. Construction of Parking Areas. Parking areas, with the exception of single family residences, shall be surfaced with a suitable all-weather, dust-free surface. The individual spaces shall be visibly marked with paint or other durable material.

G. Landscaping. At least 8 percent of the area of the lot usable for off-street parking shall be devoted to landscaping with lawn, trees, shrubs or other plant material. All loading berths and parking areas of three or more spaces that abut a residential lot line, and any parking lot for more than twenty (20) cars shall be screened by a six (6) foot high solid masonry wall, or compact evergreen hedge or a landscaped strip of trees and shrubs so designed as to form a visual screen from the adjoining property.

All parking areas and landscaping shall be properly maintained thereafter in a sightly and well kept condition.

Section 13.4 Off-Street Loading and Unloading Requirements.

- A. **Dimensions of Loading Berths.** Each loading berth, either open or enclosed, shall be fifty-five (55) feet long, twelve (12) feet wide and fourteen (14) feet high; businesses utilizing vehicles not larger than panel trucks may have berths which are not smaller than twenty (20) feet long, ten (10) feet wide and eight (8) feet high.
- B. **Location of Berths.** The Planning Board shall make sure that berths are located in such a way as not to unreasonably interfere with the movement of people and vehicles on public ways.
- C. **Required Loading Berths.** The following shall be considered minimum requirements:

Use	Gross Floor Area (Sq. Ft.)	Loading and Unloading Berth
Retail Stores,	3,000 - 15,000	1
Wholesale	15,000 - 40,000	2
Establishments	each 25,000 addt'l.	1 additional
Storage Uses, Other Commercial Uses		
Motels - Hotels,	100,000 or less	1
Office	100,001 - 300,000	2
Buildings	each 200,000 addt'l.	1 additional
Industrial	15,000 or less	1
	15,000 - 40,000	2
	40,001 - 100,000	3
	each 40,000 addt'l.	1 additional

The Planning Board may require additional berths as necessary to adequately accommodate the use.

- D. **Landscaping** as required in Section 13.3.G.

## Section 13.5 Signs.

No sign or other outdoor devices for the purpose of advertising of any kind may be erected or established in the Town except in conformance with the standards in this section.

### A. General Provisions.

1. All signs except those set forth in Section 13.5.B shall require a building permit and shall comply with applicable regulations of the Building Code.
2. No permanent or temporary sign shall be erected or placed at or near the intersection of any streets in such a manner as to cause a traffic hazard at the intersection; or at any location where, by reason of the position, shape, or color of the sign it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device, or which makes use of the words, "Stop", "Look", "Drive-in", "Left", or any other words, phrase, symbol, or character in such a manner as to interfere with, mislead or confuse traffic.
3. No sign shall be placed or erected above the maximum elevation of the main roofline of a building.
4. Any permitted free-standing sign shall not be more than forty (40) feet in height above the average surface of the ground of the parcel on which the sign is located.
5. All signs shall be set back a minimum of ten (10) feet from any lot line.
6. Size of a sign shall refer to the overall area occupied by the total sign and includes for a free-standing sign outside dimensions only, or a single face.
7. The provisions of this section shall not apply to safety signs, road signs, historical markers or highway directional signs erected by municipal or public agencies.
8. Illumination of signs shall not be intermittent or of varying intensity and may not produce glare beyond the limits of the property lines.
9. Signs with moving parts are not permitted except public service signs (such as time and temperature) approved by the Code Enforcement Officer.
10. Signs projecting into a public right-of-way shall have a clearance of not less than ten (10) feet above the sidewalk or surrounding ground and not less than fifteen (15) feet above any public driveway or thoroughfare.

B. Signs Permitted For Any Use.

1. Real estate signs - maximum eight (8) sq. ft. for residential uses, maximum thirty (30) sq. ft. for business and industrial uses.
2. Professional or business name plates - maximum two (2) sq. ft.
3. Memorial signs or tablets.
4. Temporary signs denoting architect, engineer, contractor, etc. when placed upon the premises where the construction is proposed or underway. Such signs shall be removed within thirty (30) days after construction is completed.
5. Traffic or other municipal signs, legal notice and such temporary or non-advertising signs for government purposes.
6. Temporary posters covering such things as political and sporting events, shows and elections. Such signs shall not be displayed until four (4) weeks prior to the event and must be removed within two (2) weeks following the event.
7. Non-permanent banners and similar devices may be displayed for the occasion of the special event and shall be displayed for no longer than a three (3) week period.
8. All signs, certificates and licenses that are mandated to be on display by any local, county, state or federal law or authority.
9. Two (2) signs each not exceeding four (4) sq. ft. in area, indicating or calling attention to traffic entrances and exits, provided that, if illuminated, such illumination shall cease at the close of business hours or 11:30 p.m. whichever is later. Such signs shall not carry any advertisement, insignia or business logo nor shall they be nearer than five (5) feet to any lot line and shall not project more than four (4) feet above grade.
10. Directional location signs in conformance with standards in Section 13.5.F.

C. Residential Uses

1. An apartment complex may have one identification sign which shall not have a total face area of more than fifty (50) sq. ft. for each lineal foot of road frontage. In addition, each building may be allowed one identification sign, total face area not to exceed ten (10) sq. ft. per linear foot of road frontage.



2. A dwelling unit, in which a home occupation is permitted, may display a sign noting such occupation. Such sign shall be no more than six (6) sq. ft. in area.
3. Subdivision signs - any person offering lots for sale in an approved subdivision may erect a non-illuminated sign having an aggregate total face area of not more than one hundred six (106) sq. ft.

D. Business, Commercial and Industrial Uses.

1. Two (2) primary business identification signs, one free standing with a maximum of two display faces and one sign mounted on the building may be displayed on the same lot as the business with which they are associated. The total display area of such signs shall be related to the lot size, size or scale of the business, and its arrangement on such lot as determined by the Planning Board.
2. One (1) high rise sign which advertises travelers' services (gas, food, lodging) located on the property where services are available, and within one thousand (1,000) feet of the right-of-way of a State highway may be permitted provided that the supports and foundations of such sign are designed by a licensed professional engineer and the drawings of such have his seal and signature.
3. Accessory signs may be displayed at each establishment provided that such signs conform with the following:
  - (a) Signs may be exhibited in any window area provided that the display area does not exceed thirty percent (30%) of the window area.
  - (b) Additional signs may be located on the building facade or on certain merchandise displays as may be appropriately stored outside during business hours.
  - (c) The aggregate total display area of all such signs shall be determined by the Planning Board and shall be related to the lot size scale of business, its arrangement on such lot, and the specific needs of each business.

E. Plaza or Mall Signs.

1. Two (2) free-standing double-faced signs identifying the group of businesses. Each sign shall have a maximum total face area of one hundred fifty (150) sq. ft. with no single face exceeding one hundred (100) sq. ft.

2. One (1) free-standing directory sign identifying each business located within the Plaza. Such sign shall not exceed one hundred fifty (150) sq. ft. and each business name identified on such sign shall be of a uniform size.
3. Each business in the group may have one sign which shall not exceed ten percent (10%) of the front facade on which it is mounted. Corner establishments with more than one front facade visible may have up to two (2) signs with a maximum area as calculated herein.

F. Directional Signs. Signs directing travelers to area food, gas and lodging establishments are permitted as follows:

1. Maximum area - one hundred (100) sq. ft.
2. Two (2) signs per establishment, maximum.
3. In highway businesses or industrial districts only.
4. Maximum height - fifteen (15) feet.

#### Section 13.6 Accessory Buildings and Uses.

A. Accessory Buildings. Accessory buildings not attached to principal buildings shall comply with the following:

1. All structures fifty (50) sq. ft. or more in size shall require a building permit.
2. Be located in compliance with all setback requirements as stated in the Density Control Schedule.
3. Be located no closer to the principal building than twelve (12) feet or a distance equal to the height of each accessory building whichever is greater.

B. Accessory Uses. For any residential use, accessory uses not enclosed in a building, including swimming pools and tennis courts, shall be erected only on the same lot as the principal structure, shall not be located in front yard on such lot and shall be located not less than twenty (20) feet from any lot line nor less than 10 feet from the principal structure, and shall not adversely affect the character of any residential neighborhood by reason of noise or glare or safety.

1. A swimming pool or the lot or any part thereof within which a pool is located shall be completely enclosed by a chain-link fence, or a type of fence that offers the same degree of security against accidental or unauthorized entry. Such fence shall be four (4) to six (6) feet in height, and all entrance gates

thereof shall be self-enclosing, self-latching and capable of being locked. The fence shall be separate and physically detached from the swimming pool itself, and shall be a minimum distance of four (4) feet from the water's edge.

2. An above ground pool with no part of its side wall height less than four (4) feet above ground and so constructed by the manufacturer that the vertical sides are smooth, sheer and do not provide any means for intermediate foot or hand holds, and any pool with decking and a ladder that are designed to restrict access, may be exempt from the full provisions of the above fence requirement. However, a full height fence with a self-closing, self-latching gate capable of being locked shall enclose the ladder area not less than four (4) feet in width and four (4) feet in depth, and the ladder shall remain permanently therein. Above ground pools provided with foot or hand holds (draw-banded) and above ground pools less than four (4) foot side wall height above ground are not exempt from the full fencing requirement.
- C. Residential Building Setbacks - Variance. Where twenty-five percent (25%) or more of the lots in a block are occupied by buildings, the average yard dimensions, average of lot coverage of such buildings and the average side and rear yard set-back shall determine the yard set-back and coverage requirements for any new accessory building or use, within the block. Or, where no standard block exists the word "block" as used above shall be interpreted to mean those structures within two hundred fifty (250) feet of either side of the lot in question, on the same side of the street. The average set-back shall be based on no fewer than two similar uses.
- D. Special Designs. In cases where a developer has designed a grouping of buildings, the Planning Board may approve the siting of accessory buildings such as garages and carports in the front yard, provided that the buildings are in compliance with all required setbacks.

### Section 13.7 Driveway Standards.

No person, firm or corporation shall construct or locate any driveway entrance or exit into a highway of the Town of Hornby without having first met the provisions of this section. The "Standard Entrance and Exit Crossing Requirements" shall be as follows:

- A. All design, work and materials shall be required to meet the specifications set by the Town Highway Superintendent and/or County and State Highway Departments.
- B. No alteration or addition shall be made to any driveway without first securing permission from the Town Highway Superintendent.
- C. A minimum clear vision distance of two hundred fifty (250) feet shall be available in each direction.

- D. All driveways shall be constructed with a suitable crown so as to lessen the erosion effect of surface runoff. In addition, as specified by the appropriate Highway Superintendent, a catch basin at a point near the intersection of the driveway and town highway may be required. This will prevent surface water and debris from being discharged onto the highway.
- E. Agricultural and residential uses including, single-family, two-family residences and mobile homes:
  - 1. Except where required for safe turning radius, the maximum drive width shall not exceed twenty (20) feet.
  - 2. No more than two (2) driveways shall be permitted.
- F. Commercial, business, industrial and multi-family residential use:
  - 1. Except where required for safe turning radius, the maximum width for a combined entrance and exit shall not exceed fifty (50) feet.
  - 2. The slope of the driveway shall not be greater than ten percent (10%). Slope of the driveway shall not exceed two (2%) within twenty-five (25) feet of the intersecting public road.
  - 3. No more than two (2) driveways to a single commercial establishment entering one (1) highway shall be permitted.

Section 13.8 Fences, Walls, Hedges and Screen Planting.

Fences, walls, hedges and screen planting are permitted as follows:

- A. Where the driveway meets the road the hedge shall not exceed three (3) feet in height.
- B. On a corner lot, no fence, wall, hedge or screen planting over three (3) feet in height shall be constructed at the intersection of the two streets. In any use, the minimum clear vision distance shall be twenty-five (25) feet from the edge of the pavement at in intersection.
- C. Fences, walls, hedges or screen plantings may be required, in multi-family, commercial or industrial uses, by the Planning Board, as is necessary to protect the residential quality of adjacent property.
- D. The clear vision area shall contain no plantings, fences, walls, structures, or temporary or permanent obstructions exceeding three (3) feet in height measured from the top

of the street pavement, except that street trees exceeding this height may be located in this area, provided all branches and foliage are removed to a height of eight (8) feet above the grade.

### Section 13.9 Steep Slope Guidelines.

The Town of Hornby is characterized by numerous steep slope (fifteen percent (15%) or greater) areas. Special design treatment for streets, building sites and other development is needed to preserve the natural terrain, trees, rock formation, scenic views, etc. Development on steep slopes will be permitted subject to the following guidelines:

- A. Development proposals shall be of sufficient detail to show site work (cut and fill), housing site location, erosion and drainage control measures (terraces, sediment basins, diversions, retaining walls, stream channel improvement, etc.) and road location (including cross-sections).
- B. Padding, which is the creation of level building sites, shall be permitted only when it can be clearly demonstrated by exhibits that the final treatment of the site will not reflect an unfavorable environmental impact and/or an unfavorable visual appearance.
- C. MINIMIZE GRADING: All grading and earthmoving on slopes exceeding fifteen percent (15%) shall be minimized.
- D. SLOPES > twenty-five (25%). No site disturbance shall be allowed on slopes exceeding twenty-five (25%) except grading for a portion of a driveway accessing a single family dwelling when it can be demonstrated that no other routing which avoids slopes exceeding twenty-five percent (25%) is feasible.
- E. SLOPES. Fifteen percent (15%) TO twenty-five percent (25%). On slopes of fifteen (15%) to twenty-five (25) percent, the only permitted grading beyond the terms described above, shall be in conjunction with the siting of a single family dwelling, its access driveway, and the septic system (which should be typically be designed with a long, narrow drainage field following the land contours) if appropriate.
- F. CUTS/FILLS. Grading or earthmoving on all sloping lands of fifteen percent(15%) or greater shall not result in earth cuts or fills whose highest vertical dimension exceeds six (6) feet, except where in the judgment of the Board no reasonable alternatives exist for construction of roads, drainage structures and other public improvements, in which case such vertical dimensions shall not exceed twelve (12) feet. Roads and driveways shall follow the line of existing topography to minimize the required cut and fill. Finished slopes of all cuts and fills shall be as required to minimize disturbance of natural grades.

G. Design principles shall include, but not be limited to, the following:

1. Landscaping of areas around structures making them compatible with the natural terrain.
2. Shaping, grouping and placement of man-made structures to complement the natural landscape.
3. Arrange buildings so they complement one another to promote visual interest. Clustering of residential units and multiple dwellings shall be encouraged to house a given population with a minimum spoilage of land. The developer shall first of all determine the qualities of the site and then plan and build to accentuate these qualities rather than destroy them.
4. Shape of essential grading to complement existing land forms and prohibit any appearance of successive padding, terracing or other similar forms for building sites in the hill area.
5. Encourage split-level building sites.
6. Outstanding natural features such as the highest crest of the hill, range, natural rock outcroppings, particularly desirable vegetation, etc. should be retained.

Section 13.10      Drainage System and Erosion Control.

A. Drainage Systems. The following standards are intended to ensure that storm water runoff is safely conveyed through a development site, to minimize streambank erosion, and to reduce flooding related to land development and urbanization. The standards for storm water drainage systems are as follows:

1. Any alteration of the hydrology of the site shall be minimized and/or mitigated so as to minimize the impact on water quality, peak discharge, groundwater recharge, and drainage patterns. To the extent possible, the quantity, quality, and timing of stormwater runoff during and after development shall not be substantially altered from pre-development conditions. The recommended technical standards for the design of post-construction structures are detailed in the “*New York State Stormwater Management Design Manual*,” as revised.
2. Any new or modified drainage channel or storm water facility shall have sufficient capacity to accommodate the potential future runoff based upon the probable land use and ultimate development of the total watershed area upland of the development.

3. Priority should be given to maintaining natural drainage systems, including perennial and intermittent streams, swales and drainage ditches.
4. Any existing storm water management system including a swale, ditch, basin, pond, drywell, catch basin, stream or other system component shall be maintained in such a manner as to be functional.
5. No building or structure shall be erected, altered or moved within any drainage course, including a swale, ditch, or stream. Any activity within Waters of the United States or within fifty (50) feet of a New York State protected stream will comply with all permit requirements of the New York State Department of Environmental Conservation and the U.S. Army Corps of Engineers.
6. Any disturbance or alteration of a wetland or wetland buffer area will be minimized and shall comply with all permit requirements of the New York State Department of Environmental Conservation and the U.S. Army Corps of Engineers.
7. All new buildings shall be set back a minimum of fifty (50) feet from the bank of any perennial or intermittent stream. Site Plan Review is required for any other development within fifty (50) feet of a streambank, such as roads, grading, shaping, or removal of vegetation.
8. Private stream crossings should be avoided wherever possible. When such crossings are necessary, they should be adequately designed and installed to provide a stable flow path during all water level conditions. Planning Board review and Town approval is required for any bridge or culvert build as a private stream crossing on any perennial or intermittent stream. If professional engineering and/or review are necessary, incurred costs are the responsibility of the property owner.
9. When a land development project is within or adjacent to any area with known flooding problems or known high ground water, the elevations of buildings should be above the observed, anticipated or computed water levels. The effect of such development on upstream and downstream reaches of the watercourse and adjacent properties shall be considered and adequate protective measures shall be implemented.
10. Any development on alluvial fans (at the base of Mormon Hollow, Wilson Hollow, Kerrick Hollow, and Buck Hollow) should be protected from the streambank erosion and flood damage that may result from natural channel alterations in these areas.

11. Utilizing the drainage guidelines outlined above, the Planning Board may require the developer to submit the following:
  12. A Stormwater Pollution Prevention Plan, the contents of which are specified in the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity.
  13. A statement of the proposed stormwater management objectives.
  14. The soil types in all areas that will be disturbed. If those soils have limitations applicable to the proposed development (as indicated on tables in the “*Soil Survey of Steuben County, New York*”) the developer should indicate how the project would overcome those limitations.
  15. A description of the proposed structural and vegetative stormwater measures that will be utilized to ensure that the quantity, temporal distribution and quality of stormwater runoff during and after development are not substantially altered from pre-development conditions. This will include appropriate plans, design data, calculations, and other information.
  16. A maintenance plan, which describes the type and frequency of maintenance required by the stormwater management facilities utilized and the arrangements that will be made to ensure long-term maintenance of these facilities. Operation, maintenance, and any necessary repairs are the responsibility of the property owner or his/her designee. Storm water management facilities shall have adequate easements to permit the Town to inspect and, if necessary, to take corrective action should the owner fail to properly maintain the system. If corrective action by the Town is required, incurred costs are the responsibility of the property owner.
  17. A flood hazard analysis for any development located within or adjacent to the designated floodplain.
  18. The Town shall inspect drainage systems and drainage structures before, during and after construction to assure that all Town specifications and requirements are met. The applicant shall promptly correct any portion of the work that does not comply.
- B. Erosion and Sediment Control. The goals for erosion and sediment control are (1) to minimize the opportunity for soil to be moved by wind, precipitation and runoff and (2) to contain sediment that does move close to its place of origin and thus prevent it from reaching a water body or damaging other lands. In order to ensure that the land will be developed with a minimum amount of soil erosion and to protect the natural character of on-site and off-site water bodies, the Planning Board shall require the



developer to follow certain erosion control practices. The standards for erosion and sediment control are as follows:

1. Erosion and sediment control practices shall be consistent with requirements of the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity. A permit is generally required for construction activities that disturb one or more acre of land.
2. The Planning Board may require the developer to submit an erosion and sediment control plan, the contents of which are specified in the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity.
3. The recommended technical standards for erosion and sedimentation control are detailed in the "*New York Standards and Specifications for Erosion and Sediment Control*" published by the Empire State Chapter of the Soil and Water Conservation Society, as revised (previously the "*New York Guidelines for Erosion and Sediment Control*," also commonly referred to as the "Blue Book").
4. The development plan should be consistent with the topography, soils, and other physical characteristics of the site so as to minimize the erosion potential and avoid disturbance of environmentally sensitive areas.
5. Existing vegetation on the project site should be retained and protected as much as possible to minimize soil loss from the project site. (This will also minimize erosion and sediment control costs.)
6. Erosion and sediment control measures should be constructed prior to beginning any land disturbances. All runoff from disturbed areas should be directed to the sediment control devices. These devices should not be removed until the disturbed land areas are stabilized.
7. The timing and sequence of construction activities shall expose the smallest practical area of land at any one time during the development. Temporary vegetation and/or mulching should be used to protect critical areas. Permanent vegetation shall be established as soon as practicable. Construction will not be considered complete until all disturbed areas are successfully seeded or stabilized with erosion control materials.

8. The off-site impacts of erosion and sedimentation from the development site should not be any greater during and following land disturbance activities than under pre-development conditions. Sediment laden runoff should not be allowed to enter the roadside drainage system or any water body in such quantity that would result in deposition on the bottom of the water body, degrade its natural biological functions, or be harmful to the classified usage of the water.
9. Water in streams on-site and downstream of construction areas should not have substantial visible contrast relative to color, taste, odor, turbidity and sediment deposition from upstream of the construction area.
10. The Town shall inspect erosion and sediment control practices during and after construction to assure that all Town specifications and requirements are met. The applicant shall promptly correct any portion of the work that does not comply.

C. Off-site drainage and sediment control facilities. The Town may allow storm water runoff or sediment leaving the site to exceed the Town's performance standards if the runoff is discharged into storm water management facilities off the site and all of the following conditions are met:

1. It is not practicable to completely manage runoff on-site in a manner that meets the Town's performance standards.
2. The off-site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with all Town specifications and requirements.
3. Adverse environmental impacts on the site of development will be minimized.
4. A request to use off-site storm water management facilities and relevant information about to the proposed off-site facilities shall be submitted to the Planning Board.

Section 13.11      Open Space, Parks and Playgrounds.

If specific areas are to be designated for recreational purpose such lands shall meet the following minimum standards.

- A. Such land shall either be deeded to the Town or be held in corporate ownership and maintained by an established organization.

- B. Shall have physical characteristics and locations which render them readily usable for appropriate recreation purposes, and their locations shall be selected with a view to minimize hazards and vehicular traffic for children walking between such facilities and their homes in the neighborhood.
- C. No such area may be smaller than two (2) acres, and in general, recreation areas shall be located at a suitable place on the edge of the development so that additional land may be added at such time as the adjacent land is developed.
- D. A detailed development plan shall be provided for each neighborhood park or playground. As a minimum, the development plan shall provide for an approximately level area at least one hundred seventy-five (175) feet square for children's field games.
- E. The development plan shall show how the entire area is to be graded, drained, and landscaped to make it a useful and attractive feature of the neighborhood.

Section 13.12        Utilities.

- A. Water Supply and Sewage Disposal. Provisions for water supply and sewage disposal shall comply with requirements of the Town of Hornby, N.Y.S. Health Department and/or N.Y.S. Department of Environmental Conservation. All habitable structures shall meet minimum requirements as identified by the Town or N.Y.S. Health Department.
- B. Underground Installation. All utility companies (telephone, electric, etc.) are now equipped to make underground installation of their services; underground installation shall be required when practical.

Section 13.13        Mobile Homes.

Intent - The intent of the Town of Hornby Zoning Law, consistent with the Comprehensive Plan, as amended, is to improve the quality of existing housing in the Town and to maintain or improve the tax base. This section defines standards for all mobile homes and regulates single-wide mobile homes as temporary uses so that, over time, the housing stock will improve.

- A. Mobile Home Standards. All mobile homes installed in the Town of Hornby shall meet the following minimum requirements:
  - 1. Minimum size - 720 square feet.
  - 2. No less than two (2) means of exit.

3. The home(s) must be connected to the water and sewer system or well and septic tank, whichever is applicable, approved by the Town Code Enforcement Officer and/or the NYS Department of Health.
4. The home must be properly installed per the Manufacturer's Installation Manual. In the event that the Manufacturer's Installation Manual is not provided, the home, must be installed according to ANSI A225.1 (1994).
5. Skirting or a curtain wall, unpierced except for required ventilation and access door must be installed and may consist of brick masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation.
6. Fixed landing and steps or ramp with handrails are required at each exterior doorway. The structure must include steps which lead to the ground level.

B. Temporary Location: A mobile home used for a temporary purpose shall require a Conditional Use Permit and meet the following requirements.

1. Non-residential Use. A mobile home (single-wide or double-wide) to be used as a temporary business office, or construction field office may be temporarily located anywhere in the Town. Such temporary location, however, shall be allowed for a period not to exceed six (6) months. This time limit may be extended if in the opinion of the Code Enforcement Officer, such extension is a proper continuance of the temporary purpose.
2. Residential Use - Emergency. A mobile home (single-wide or double-wide) may be used as a residence on an emergency, temporary basis on a lot where the principal residence is being constructed, or an existing residence is destroyed or damaged to the extent that it is not habitable for a time period not to exceed twelve (12) months. Such temporary location, however, shall be allowed for a period not to exceed six (6) months after the principal residence is habitable. This time limit may be extended if in the opinion of the Code Enforcement Officer, such extension is a proper continuance of the temporary purpose.
3. Residential Use: Second Principal Residential Use. A mobile home (single-wide or double-wide) may be allowed as a second principal residential use on a lot in single ownership upon approval of a Conditional Use Permit and the following standards:

- (a) All residential setback requirements must be met by such mobile home, except that in no event shall it be situated closer than 20 feet from the principal residential building.
  - (b) The applicant shall justify the adequacy of the proposed water and sewer arrangement for the mobile home to the Planning Board.
    - (1) The Planning Board may determine upon showing of adequate data such as flow tests and quality reports that a single water supply source is adequate.
    - (2) In all instances, separate distinct sewage disposal systems shall be required.
  - (c) The granting of a Conditional Use Permit shall be for a period up to three years as determined by the Planning Board, and may be renewed for a one time extension. Such Permit, however, shall be allowable only upon the issuance of a permit by the Code Enforcement Officer and may be renewed if, in the opinion of the Planning Board, it is a proper extension of the permit.
4. Residential Use: Single-wide on an Individual Lot. It is recognized that single-wide mobile homes can provide acceptable short term housing for people establishing homes on individual lots. To accommodate residents in transition, the following regulations shall apply.
- (a) Individual lot single-wide mobile homes for residential use are a Conditional Use and are allowed subject to site plan approval and shall meet the minimum lot size and setback requirements for a residential use in said district. All mobile homes require a building permit.
  - (b) The granting of a Conditional Use Permit shall be for a period up to three years as determined by the Planning Board, and may be renewed for a one time extension. Such Permit, however, shall be allowable only upon the issuance of a permit by the Code Enforcement Officer and may be renewed if, in the opinion of the Planning Board, it is a proper extension of the permit.
- C. Substandard Mobile Homes. All non-conforming mobile homes shall be removed from any property within six (6) months of abandonment.

- D. Accessory Buildings and Structures All accessory buildings and structures including unattached garages shall be located in conformance with Section 13.6.

Section 13.14 Mobile Home Parks.

Intent - It is the intent of the Town of Hornby to provide for the development and operation of mobile home parks in an appropriate, safe, sanitary and attractive environment. All new mobile home park developments and improvements to or expansion of existing parks shall be considered a conditional use subject to site plan approval. Operational permits shall also be required and shall be renewed biannually. All existing mobile home parks shall be required to obtain an operation permit within two (2) years of the enactment of this Ordinance.

All construction and operation permits shall be reviewed and issued in conformance with the site plan provision of this Ordinance. The following standards shall apply to any mobile home park. Existing mobile home parks shall be required to upgrade the facility to reasonably comply with the standards contained herein to promote the health, safety and general welfare in the Town. The Planning Board may use some discretion in the application of the standards.

- A. Standards Governing Mobile Home Parks. Any mobile home park shall conform to the following standards which are to be regarded as minimum requirements.

1. Sites for mobile home parks shall be a contiguous parcel a minimum of ten (10) acres in size of which a minimum of seven (7) acres shall be buildable. The parcel shall have at least three hundred (300) feet frontage on a suitably improved public road. Where the applicant can demonstrate that the characteristics of his holding will meet the objectives of this section, the Planning Board may consider projects with less acreage or frontage. Additional park land must be contiguous to the existing park and shall not be bisected by a public road except to the extent a new such road may be approved as part of the plan.
2. Conformance with health regulations - all sanitary and health regulations, state and local shall be met.
3. Location near residential areas. No park shall be permitted whose proposed boundaries are within two hundred (200) feet of an existing permanent residential dwelling unit, unless there exists a natural vegetation barrier or an artificial man-made screen is erected that are of sufficient height and opacity to screen the park from the residence.,

4. Mobile Home Spaces. Boundaries of mobile home spaces shall be well-defined and permanently marked. Mobile home spaces shall meet the following requirements;
  - (a) The density of development shall not exceed five (5) units per developed acre (buildable land excluding required open space).
  - (b) Each space shall be a minimum of eight thousand (8000) square feet buildable land with a minimum width of 50 feet.
  - (c) No more than one mobile home shall be placed on a mobile home space.
  - (d) Maximum site coverage by all buildings shall be 30% of the mobile home space.
5. Parking. Parking spaces shall be provided in conformance with Section 13.3. Two parking spaces shall be situated on a side yard of each lot, plus additional off-street as required for visitors. Each parking space shall have dimensions of at least 10 feet by 20 feet.
6. Outdoor Storage. Secure outdoor storage areas shall also be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, incapacitated or unregistered vehicles and similar such equipment and vehicles. All such parking areas shall be effectively screened from roads and mobile home sites. Storage of unlicensed vehicles for more than six (6) months shall be prohibited. Except in the case of emergency, there shall be no on-street parking.
7. Yard dimensions:
  - (a) Minimum front setback from public road r-o-w - 75 feet
  - (b) Minimum setback from pavement edge of any roadway located within the park - 25 feet.
  - (c) Minimum rear setback - 10 feet.
  - (d) Minimum side yard setback - 10 feet.
  - (e) Minimum distance between adjacent mobile homes - 35 feet.

8. Mobile home stand. Each mobile home lot shall contain a mobile home stand capable of containing a mobile home in a fixed position. The mobile home stand shall be graded with an impenetrable material at least six (6) inches in thickness. It may be surfaced with a layer of uniform sized crushed stone to a depth of nine (9) inches in lieu of paving. The topographic angle of the mobile home stand shall not exceed one and one-half (1-1/2) feet for the length of the stand. The elevation, distance and angle of the mobile home stand in relation to the access way shall be such as to facilitate the safe and efficient placement and removal of the mobile home. In addition, all mobile homes shall be anchored to the stand or the ground in such a way to resist forces of wind. Such anchors shall be approved by the Code Enforcement Officer.
9. Patios. A patio, if proposed for the individual mobile home lots, shall be constructed of concrete, asphalt or similar suitable material. It shall be located so as to provide easy access to the mobile home and shall extend the full size of any awning or patio cover to allow adequate anchoring.
10. Sidewalks. Individual sidewalks shall be constructed to each mobile home stand from a paved street or from a paved driveway or parking space connecting to a paved street. Common walks shall be constructed in a suitable layout and width as determined by the Planning Board taking into consideration the following; locations where pedestrian traffic is concentrated; for example, at the court entrance, and to the court office and other important facilities.
11. Entrances and streets. All mobile home parks containing sixteen (16) or more mobile home lots shall have access from two points along a single street or highway, or if bordering on two streets, access may be one for each street, each such access shall be a minimum 60 ft. right-of-way, and shall be separated by a minimum of one hundred (100) feet.

Streets shall be provided on the site where necessary to furnish principal trafficways for convenient access to the mobile home stands and other important facilities on the property.

Streets shall be privately owned with right-of-way widths of not less than 30 feet. Interior intersections shall have rights-of-way of not less than 50 feet to facilitate the turning movements of vehicles with mobile homes attached.

All streets within the mobile home park shall meet town highway specifications and be hard surfaced and not less than 24 feet in width.



No individual mobile home shall have direct access to a state, county or town road without first entering the mobile home park access road.

12. Fire District Approval and Firefighting Requirements . No Conditional Use for a mobile home park shall be approved until the plans have been reviewed and approved by the appropriate fire district concerning access and availability of sufficient water. If fire district approval cannot be obtained, the Town Planning Board may require a financial contribution from the applicant toward providing fire-fighting services or facilities. Such contribution shall be reasonable and directly related to the costs of serving the mobile home park.
13. Service buildings. Each park shall provide community service buildings to house laundry facilities and other sanitary facilities, as required by the N.Y.S. Department of Health. Service buildings shall be well lighted at all times from dawn to 11:00 p.m. and capable of being lighted between 11:00 p.m. and dawn.
14. Accessory building. One accessory building may be located on each site to a size not to exceed the maximum site coverage. Such building shall require a building permit and shall be placed on a permanent foundation or permanently anchored to the ground. No outside storage shall be permitted on a mobile home space.
15. Drainage facilities. The mobile home park shall be provided with a storm water system in accordance with Section 13.13 Drainage Systems and Erosion Control.
16. Landscaping. Mobile home parks shall be landscaped to provide an attractive setting for mobile homes and other improvements, to provide adequate privacy, and pleasant outlooks for living units, to minimize reflected glare, and to afford summer shade. Such landscaping shall include the planting and maintenance of at least the following
  - (a) Every attempt shall be made to retain any existing trees four (4) inches or larger in caliper.
  - (b) Trees and shrubs at suitable intervals along park streets, within recreation areas, and around park borders providing a visual screen from adjacent land uses and the public road.

- (c) Special planting to screen objectionable views such as laundry drying yards, garbage and trash collection stations, non-residential uses, and any unsightly objects or conditions on adjacent properties.
  - (d) Lawns shall be planted on all areas which are not paved or used as sites for mobile homes or buildings.
  - (e) Each mobile home space shall be landscaped to ensure effective separation of manufactured homes from each other for purposes of privacy and aesthetics.
17. Skirts. Each mobile homeowner shall be required to enclose the bottom portion of the mobile home with either a metal or vinyl skirt properly ventilated within 15 days after arrival in the park.
18. Open Space. Each mobile home park shall provide common, conveniently located open space for the use of the residents of the park. Such space shall be an area of at least twenty-five percent (25%) of the gross land area of the park.
19. Recreation facilities. For mobile home parks designed for ten (10) spaces or more, recreation areas and facilities, such as playgrounds, ball fields, picnic areas, swimming pools, and community buildings shall be provided to meet the anticipated needs of the residents . Not less than fifty percent ( 50%) of the open space area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all. All recreational areas shall be buildable land.
20. Utilities. All electric utility, telephone, and cable conduit shall be installed underground and maintained in accordance with applicable codes and regulations governing such systems. An electrical connection receptacle or terminal box of an approved weather proof type shall be provided at each mobile home lot. Such receptacle shall be properly grounded and shall provide adequate voltage.
21. Lighting. The minimum requirements for such shall be a street light at the end of a street, at any street intersection and near recreation areas.
22. Water supply. An adequate supply of water must be available to all occupants of mobile homes in the park and the quality must be satisfactory to the New York State Health Department.

23. Sewage disposal. An adequate and safe sewerage system shall be provided in all mobile home parks for conveying and disposing of all sewage. Such systems shall be designed, constructed and maintained in accordance with local and state health laws.
24. Refuse disposal. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident of fire hazards or air pollution.  
  
All refuse shall be stored in fly-tight, watertight, rodent proof containers, which shall be located not more than 150 feet from any mobile home site. Containers shall be provided in sufficient number and capacity to properly store refuse.
25. Sales lot. No sales lot or area for the purpose of selling or parking mobile homes for off-site sale shall be permitted,, within the mobile home park. However, mobile homes may be sold if set up on specified lots, complete with electrical, sanitary and water services. The lots shall be landscaped and the mobile homes shall be suitable for living quarters.

Section 13.15      Excavations for Soil Mining.

Excavation for the purpose of commercial soil mining such as gravel pits, quarrying, or any subsoil removal shall be allowed only by conditional permit, subject to the following provisions:

- A. Before a conditional permit is issued, the applicant shall submit to the Planning Board the following information:
  1. Two copies of a map at a scale of one inch equals not more than 100 feet showing all land within two hundred (200) feet thereof, with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names of landowners. Such map shall also show the present topography at two (2) foot contour intervals. The map shall be signed by a professional engineer or land surveyor for certification of its accuracy.
  2. Two copies of the proposed plan of excavation at the same scale as above showing the proposed finished elevations at two (2) foot contour intervals and the proposed drainage plan.

3. Two copies of a reclamation plan. The plan must show the land restored to a configuration permitting reuse of the land for another purpose such as housing, industrial parks, commercial areas, parks, etc. Such a plan would illustrate road and building layout as well as final contour elevations. Pre-planning for such future use enables an efficient, sequential restoration of land as excavation progresses, thereby permitting an economically efficient operation. The plans shall be prepared by competent professionals such as architects, landscape architects or civil engineers.
- B. Excavation operations for which a N.Y.S. Department of Environmental Conservation Soil Mining Permit is required shall obtain such permit prior to the issuance of a conditional permit by the Town.
  - C. During excavation or quarry operations, open pits and quarry walls shall be entirely surrounded by a substantial fence at least six (6) feet high that will effectively block access to the area, with suitable gates provided with locks. The top of the slope shall not be closer than forty (40) feet to a property line. Suitable landscaping may also be required if appropriate to the public health, safety, or welfare. In those cases where excavating is already in progress but has not as yet come within forty (40) feet of the property line, this Ordinance shall be retroactive to prevent excavation within forty (40) feet of the property line.
  - D. No rock crusher, cement plant, or other crushing, grinding, polishing, or cutting machinery or other physical or chemical process for treating the product of such excavation shall be permitted, without prior approval of the Zoning Board of Appeals.
  - E. The proposed finished grading plan shall show the land to be smooth-graded and topsoil respread to a minimum depth of four (4) inches; the slope shall not exceed the normal angle of repose of the material removed but in no instance shall a finished slope exceed one (1) foot vertical to two (2) feet horizontal. Slopes shall be seeded with appropriate grasses. and reforestation seedlings may be required to be planted.
  - F. The applicant may be required to furnish a performance bond, in an amount determined by the Town Board to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released by the Town Board only upon certification that all requirements including the finished grading and drainage have been complied with.
  - G. No conditional permit for excavation operations or soil mining shall be granted for a period of more than five (5) years, but such permit may be extended for additional five (5) year periods upon approval of the Planning Board, To receive such an

extension, the applicant must provide plans and information showing the sequence and timing of excavation operations.

- H. Upon approval, one (1) copy of the approved excavation plan shall be returned to the applicant by the Town Clerk together with a conditional permit upon payment of a fee as set by the Town Board resolution to cover all engineering and other costs directly attributable to the approval, and office and field checking of the proposed soil mining operation.

Section 13.16      Erection, Re-erection, and Razing of Damaged Buildings.

Any building which has been damaged by fire or other causes to the extent of more than seventy-five percent (75%) of its appraised valuation shall be repaired or rebuilt in conformance with the regulations of this Ordinance. Such building shall either be so repaired or razed within twelve (12) months in a fashion which leaves the site clean.

A building which has been damaged by fire or other causes to the extent of less than seventy five percent (75%) of its appraised valuation must be reconstructed within a period not to exceed twelve (12) months or be razed by or at the cost of the owner.

Enforcement will be by the Code Enforcement Officer, utilizing the services of a qualified appraiser when necessary.

Section 13.17      Light Industrial Use Regulations.

A.      Design Standards.

General Standards: The following general standards are hereby adopted for the control of any Industrial Use. No such use shall be permitted, established, maintained or conducted therein which shall cause or be likely to cause:

1. Excessive smoke, fumes, gas, dust, odor, or any other atmospheric pollutant beyond the boundaries of the lot whereon such use is located. What smoke is excessive shall be determined according to the Ringelmann's Scale for Grading the Density of Smoke, published by the U.S. Bureau of Mines, when the shade or appearance of such smoke is darker than No. 2 on said Ringelmann Smoke Chart.
2. Noise levels greater than fifty-five (55) dba measured at the boundaries of the lot occupied by such use causing the same.
3. Any pollution by discharge of any effluent whatsoever into any watercourse,

open ditch, or land surface.

4. Discharge of any effluent whatsoever into any sanitary disposal system or sewerage system except only in accordance with the rules of, and under the control of, public health authorities or the public body controlling such sewerage system. Any chemical or industrial waste which places undue loads, as determined by the Town Engineer, shall not be discharged into any municipal system and must be treated by the industrial use.
5. Storage or stocking of any hazardous waste materials whatsoever.
6. Glare, objectionably high light levels, or vibration perceptible beyond the lot lines whereon such use is conducted.
7. Hazard to person or property by reason of fire, explosion, radiation, or other cause.
8. Any other nuisance harmful to person or property.

B. Specific Standards. The following specific standards are hereby adopted and must be complied with, for, any industrial use before the same be permitted, established, maintained or conducted:

1. Storage Facilities. Materials, supplies, or semifinished products shall be stored on the rear one-half of the property and shall be screened from any existing or proposed street.
2. Loading Docks. No loading docks shall be on any street frontage. Provision for handling of all freight shall be on those sides of any building which do not face on any street or proposed streets.
3. Landscaping. All areas of the plot not occupied by buildings, parking, driveways or walkways, or storage shall be landscaped with lawn, trees, shrubs, or other plant material. Such landscaping shall take into consideration the natural growth presently on the premises, and the nature and condition of the terrain, as well as well as the situation of the lands and premises themselves and with regard to adjoining lands and premises.
4. Fences and Walls. Property that is adjacent to a residential or business use shall be provided along such property lines, with a wall, fence, compact evergreen hedge, or a landscaped strip of trees and shrubs so designed as to form a visual screen not less than six (6) feet high at the time of planting.

Except for landscaped areas and parking areas, a use which is not conducted within a completely enclosed building shall be screened by a six (6) foot solid masonry wall, chain link fence covered with an evergreen vine, or compact evergreen hedge. Where a front yard adjoins a street, the wall, fence, or hedge shall be located not closer to the street than the depth of the required yard.

5. Off-Street Parking and Loading. Refer to Sections 13.3 and 13.4.
6. Signs. Refer to Section 13.5.
7. Buffer Strip. In addition to the fences, walls and hedges, all principal buildings shall be set back front any lot lines abutting residential use a minimum of one hundred (100) feet. Such buffer shall be landscaped in accordance with this section
8. Utilities. All water and sewer facilities shall be designed and installed according to NYS DOH, DEC and Town standards.
9. Access. Special consideration shall be given to access to and from public streets and traffic volumes generated by the proposed use. A projection of expected vehicular use of neighborhood streets, including estimates of traffic volumes, shall be submitted. No access drive for any industrial use shall be within three hundred (300) feet of and on the same side of the street as a school, public library, theater, church, or other public gathering place, park, playground, or fire station unless a street fifty (50) feet or more wide lies between such access drive and such building or use.

#### Section 13.18 Solar Energy Systems and Solar Access.

To the maximum extent possible, all new development proposals totaling ten (10) or more acres may be designed so that the maximum number of buildings shall receive direct sunlight sufficient for using solar energy systems for space, water, or industrial process heating or cooling. Buildings and vegetation should be sited and maintained so that unobstructed direct sun light reaches the southern exposure of the greatest number of buildings according to the following guidelines:

- A. Solar access shall be protected between the solar azimuths of - 45 degrees (east of due south) to + 45 degrees (west of due south).
- B. In considering dimensional modifications permitted in Articles 7, 8, 9, and 10, the Planning Board shall also consider solar access and design considerations.

- C. For purposes of solar access, streets, lots and building setbacks should be designed so that the buildings are oriented with their long axes running from east to west for single-family development and north to south for townhouse and multi-family development.
- D. In order to maximize solar access, the highest densities shall to the maximum extent possible be placed on the south facing slopes with lower densities sited on north-facing slopes.
- E. Streets should be oriented on an east/west axis to the greatest possible extent.
- F. Buildings shall to the greatest extent possible be sited as close to the north lot line or lines as possible to increase yard space to the south for better owner control of shading.
- G. Tall buildings shall to the greatest possible extent be sited to the north of shorter ones and be buffered from adjacent development.
- H. Existing vegetation shall be retained and incorporated into the design as practicable.
- I. A description of any mechanisms, such as deed restrictions. covenants, etc., that are to be applied shall be provided.

Section 13.19      Wind Energy Conversion Systems (Windmills).

The intent of this section is to regulate the placement of and access to wind energy conversion systems for the purpose of protecting the health and safety of individuals on adjacent properties as well as the general public.

- A. Setback - The installation shall not be erected nearer to any lot line than the total height of the structure. Such height shall be defined as the tower height plus one-half (1/2) the rotor diameter on a horizontal axis installation, and, on vertical axis installations, the distance from the base of the tower to the top of the unit.
- B. Dimensions:
  - 1. Maximum allowable height shall be eighty (80) feet unless otherwise prohibited by state or federal statues or restrictions.
  - 2. Minimum blade height shall be fifteen (15) feet at the lowest point of arc.



C. Safety:

1. The foundation and supports for the windmill shall either be designed by a licensed professional engineer and the drawings bear his seal and signature, or carry a manufacturer's seal or certification.
2. At least one (1) sign shall be posted at the base of the tower warning of high voltage.
3. Tower climbing apparatus shall be no lower than twelve (12) feet from the ground.
4. All installations shall be designed with braking systems.

D. Noise - The maximum level of noise permitted to be generated by an installation shall be fifty-five (55) dba, measured at the property line.

E. Design considerations:

1. All electric lines serving the installation shall be installed underground.
2. All towers proposed to have guy wire supports shall have the guy wire foundation setback the minimum distance as specified for the tower in Section 13.19 A.

Section 13.20 Home Occupation.

A home occupation, as defined in this Ordinance, may be permitted provided such use is not specifically prohibited and conforms to the following standards which shall be minimum requirements:

- A. No more than thirty-five (35%) of the total floor area of a dwelling unit or not more than six hundred (600) square feet of an accessory structure may be used for such use.
- B. The use shall be carried on wholly within the enclosed walls of the dwelling unit or accessory structure.
- C. There shall be no external evidence of such use except for one sign not exceeding two (2) square feet in area mounted flush with and on the front facade of the dwelling unit. Stock, merchandise, equipment or displays-of any kind shall not be visible outside the dwelling unit or accessory building.

- D. No external structural alterations which are not customary to a residential building shall be allowed.
- E. The use shall not result in or cause vehicular traffic that will create a nuisance to abutting properties or be detrimental to the residential character of the neighborhood.
- F. Such uses shall also be subject to any other conditions the Planning Board deems necessary to meet the intent of these requirements.
- G. Any form of business, the primary function of which is the wholesale or retail sale of goods or articles at the premises, shall be deemed a commercial use.
- H. The following uses and other uses similar in character shall not be considered to meet the intent of this section:
  - 1. Vehicle repair, engine repair
  - 2. Vehicle body work
  - 3. Veterinary hospital, kennel
  - 4. Bar and restaurant
  - 5. Any use that is not permitted in a Type 5 building (wood frame) construction under the New York State Uniform Fire Prevention and Building Code.

Section 13.21      Kennel Standards.

A kennel as defined in this Ordinance is a conditional use. Such use shall conform to the following standards which shall be minimum requirements:

- A. Minimum lot size - five (5) acres.
- B. Setback - the actual kennel facility and all associated runs or fenced areas shall be setback a minimum of one hundred fifty feet (150) from all lot lines.
- C. Buffer - all kennel facilities and associated shall be adequately screened by fence, plantings or landscaping from all roads and adjacent properties.
- D. Kennel facility - shall have sufficient indoor boarding areas and associated outdoor runs to accommodate the proposed number of animals to be boarded:

1. Indoor area -
  - (a) shall be a minimum of sixteen (16) square feet in size
  
2. Outdoor runs -
  - (a) shall be a minimum four and one half (4 ½) feet wide and twelve feet (12) long.
  - (b) shall be appropriately separated from adjacent runs by fencing, concrete, block or other appropriate materials.
  - (c) shall provide a form of shelter if not directly linked to a separate indoor kennel area.

Section 13.22 Townhouse and Multi-Family Developments.

All townhouse and multi-family development, as permitted in Article 8 of this Ordinance, shall, in addition to the requirements set forth in said section and articles, conform to the following standards. These standards shall be regarded as minimum requirements:

- A. Townhouse developments shall meet the following standards:
  1. There shall be no more than eight (8) townhouse units in any contiguous group.
  2. Yard requirements:
    - Front Yard - Minimum thirty (30) feet (from interior project road)
    - Rear Yard - Minimum twenty-five (25) feet
    - Side Yard - Minimum ten (10) feet (at ends of buildings)
  3. All principal buildings shall be set back a minimum of fifty (50) feet from any lot line.
  4. No accessory building, including unattached garages, shall be nearer than fifty (50) feet from any lot line.
  5. Maximum building height shall be three (3) stories or thirty-five (35) feet whichever is the lesser.

6. Maximum site coverage by all buildings and structures shall not be more than thirty percent (30%) of the lot area, such percentage to be calculated on the basis of the total project area.
7. Accessory buildings, including unattached garages, shall be located a minimum distance of ten (10) feet from any lot line and shall only be permitted in the rear or side yard.

B. Multifamily developments shall meet the following standards:

1. Yard requirements:
  - (a) No building shall be nearer than fifty (50) feet to the road line of any dedicated road peripheral to the site.
  - (b) No building shall be nearer than thirty (30) feet from the road line of any interior project road. In the case of non-dedicated streets and roads, this setback shall be measured from the limits of the paved area.
  - (c) No accessory building, including unattached garages, shall be nearer than fifty (50) feet from any lot line.
2. No dwelling unit building shall be nearer than fifty (50) feet from any lot line.
3. The maximum building height shall be three (3) stories or thirty-five (35) feet whichever is the lesser.
4. Maximum site coverage by all buildings and structures shall be not more than thirty percent (30%) of the lot area, such percentage to be calculated on the basis of total project area.
5. No building shall contain more than twelve (12) dwelling units.

C. Minimum unit size of multi-family dwelling units:

1. Efficiency: 550 sq. ft.
2. One bedroom: 700 sq. ft.
3. Two bedroom: 850 sq. ft.
4. Three bedroom: 1,000 sq. ft.
5. An additional one hundred twenty (120) sq. ft. for each 'bedroom shall be

added for larger apartment sizes.

Section 13.23      Gasoline Filling Stations, Service and Repair Garages, Automobile Sales Areas.

Where permitted, a gasoline filling station, service and repair garage and automobile sales areas shall conform to the following standards which shall be regarded as minimum requirements:

- A. Minimum lot size shall be:
  - 1. 30,000 sq. ft. for a gasoline filling station, service and repair garage
  - 2. 45,000 sq. ft. for a combination gas station, mini-mart convenience food store
  - 3. Additional lot area and setbacks shall be required as deemed to be adequate by the Planning Board to accommodate tractor trailer servicing.
- B. Lot frontage and width shall be at least one hundred fifty (150) feet.
- C. No gasoline service station or public garage shall be located within five hundred (500) feet of any public entrance to a church, school, library, hospital, charitable institution, or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- D. Fuel pumps and other service device shall be located at least thirty-five (35) feet from any front lot line and fifty (50) feet from any side and rear lot lines. This distance shall be measured from the outside edge of the fuel island.
- E. All automobile parts, including tires and dismantled vehicles are to be stored within a building. Old tires that are offered for sale may be placed outside during normal business hours but must be stored in a rack. Old tires to be scrapped or sold for junk must be stored either inside a building or behind a 6 foot high fence, wall or natural screen.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans, and/or anti-freeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.

- G. All repair work is to be performed within a building. Automobiles waiting to be serviced or stored on the premises shall not encroach on any required yard area. Wrecked automobiles being held for insurance adjuster inspection may be stored for a period not to exceed thirty (30) days and must be stored in the rear of the premises, out of sight as much as is possible.
- H. Parking:
1. No vehicle shall be parked, stored or left standing within thirty-five (35) feet of the street line.
  2. Parking requirements shall be in conformance with Section 13.3. Such parking areas shall not conflict with the traffic pattern established for the use of the fuel pumps. Additional parking area may be required by the Planning Board to accommodate tractor trailer parking areas.
  3. Where parking areas abut a residential use, they shall be screened by a buffer area no less than ten (10) feet in depth composed of densely-planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six (6) feet above finished grade at the highest point of the parking area. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate screen, the Code Enforcement Officer may direct the property owner to replace said shrubs.
- I. All storage and display areas shall be provided with a hard, dust-free surface, shall be adequately drained and, if lighted, shall produce no glare on adjacent properties.
- J. A maximum of two (2) driveways and curb cuts shall be permitted. These shall be no less than twenty (20) feet and no wider than thirty (30) feet, and located a minimum of thirty (30) feet from any street intersection; and a minimum distance of forty (40) feet shall be maintained between such driveways and curb cuts.

Section 13.24      Design Standards for Mobile Homes as Second Principal Residential Uses .

- A. A mobile home may be allowed as a second principal residential use on a lot in single ownership subject to site plan approval and the following standards:
1. A mobile home, if proposed on a separate lot, shall meet the setback and yard

requirements of residential use.

2. If a mobile home is to be permitted on a lot containing a principal residential use, all residential setback requirements must be met by such mobile home, except that in no event shall it be situated closer than twenty (20) feet from the principal residential building.
3. The applicant shall justify the adequacy of the proposed water and sewer arrangement for the mobile home to the Planning Board.
4. The Planning Board may determine upon showing of adequate data such as flow tests and quality reports that a single water supply source is adequate.
5. In all instances, separate distinct sewage disposal systems shall be required.
6. The granting of a Conditional Permit shall be for a period as determined by the Planning Board, and may be renewed. Such Permit, however, shall be allowable only upon the issuance of a permit by the Code Enforcement Officer and may be renewed if, in the opinion of the Planning Board, it is a proper extension of the permit.

## **ARTICLE 14. NON-CONFORMING BUILDINGS, USES AND LOTS**

### **Section 14.0 Continuation of Non-Conforming Buildings and Lots.**

Any lawful building, structure or use of premises existing at the time of enactment of this Zoning Ordinance, or any subsequent amendment thereof applying to such building, structure, or use of premises, may be continued although such building, structure, or use of premises does not conform to the provisions of this Ordinance, provided however:

- A. No non-conforming building shall be enlarged/extended or increased unless such enlargement would be in conformance with this Article and Articles 4, 11, 12 and 13 of this Ordinance.

### **Section 14.1 Discontinuance.**

- A. Any building or land which is used for or occupied by a nonconforming use and which is changed to or replaced by a conforming use, shall not thereafter be used for or occupied by a non-conforming use.
- B. When a non-conforming use has been discontinued for a period of one year, it shall not thereafter be re-established and the future use shall be in conformity with the provisions of this Ordinance.

### **Section 14.2 Necessary Maintenance and Repairs.**

A building or structure of non-conforming use may be repaired or restored to a safe condition.

### **Section 14.3 Construction Started Prior to this Zoning Ordinance.**

Any building or structure for which construction was begun prior to the effective date of this Ordinance, or any subsequent amendment thereof applying, may be completed and used in accordance with the plans and specifications for such building and structure.

### **Section 14.4 Existing Undersized Lots.**

Any lot held in single and separate ownership prior to the adoption of this Zoning Ordinance, and whose area and/or width and/or depth are less than the specified minimum lot requirements of this Zoning Ordinance for the district, may be considered as complying with such minimum lot requirements and no variance shall be required, provided that:



- A. Such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.
- B. Such lot has an area of at least twenty thousand (20,000) square feet and a minimum width of at least fifty (50) feet at the required setback line and is to be used for one single-family dwelling only,
- C. The following minimum yard dimensions are maintained for residences:

- Side yards - 8 feet
- Rear yards - 25 feet
- Front yards - 25 feet

- D. No detached accessory building shall be located closer to a side lot line than five (5) feet, provided, however, that the side yard requirement for accessory buildings shall not be less than three (3) feet, if such accessory building is ten (10) feet or more to the rear of the residence building and is located behind the rear line of such residence building. No accessory building shall be located closer to the rear lot line than three (3) feet if no easement is located along such rear lot line.
- E. All other bulk requirements for that district are complied with.

Section 14.5 Alterations.

A non-conforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost fifty (50) percent of the assessed value of the building unless said building is changed to conform to the requirements of this Ordinance.

Section 14.6 Restoration.

No building damaged by fire or other causes to the extent of more than fifty (50) percent of its assessed valuation shall be repaired or rebuilt except in conformity with the regulations of this Ordinance. Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the Code Enforcement Officer.

Section 14.7 Reduction in Lot Area.

A building permit shall not be issued for any lot that is reduced in area so that it creates a non-conforming bulk or use in violation of any regulations contained in this Ordinance.

## **ARTICLE 15    GENERAL EXCEPTIONS**

### Section 15.0 Public Properties.

Nothing in this Ordinance shall restrict construction or use in the exercise of a governmental function of public buildings, lands or property supported in whole or in part by taxes imposed on property in the Town of Hornby.

### Section 15.1 Public Utilities.

Nothing in this Ordinance shall restrict the construction or use of underground or overhead distribution facilities of public utilities operating under the Laws of the State of New York. Other facilities may be constructed subject to a conditional use permit.

## ARTICLE 16. ZONING BOARD OF APPEALS

### Section 16.0 Establishment and Duties.

Pursuant to Town Law, the Town Board shall appoint a Zoning Board of Appeals consisting of five (5) members, shall designate its chairman, and also provide for such expenses as may be necessary and proper. A member of the Zoning Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

- A. Term of Appointment. Of the members of the Zoning Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two (2) years, one (1) for the term of three years, one (1) for the term of four (4) years, one (1) for the term of five (5) years, from and after his appointment. The appointment of a chairman shall be for a term of one year.

Their successor shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the duration of the unexpired term.

- B. Staff. The Zoning Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.
- C. Rules of Procedure, By-Laws, Forms. The Zoning Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this Zoning Ordinance.

## ARTICLE 17. ADMINISTRATION

### Section 17.0 Enforcement.

- A. This Ordinance shall be enforced by the Code Enforcement Officer, who shall be appointed by the Town Board. No permit shall be issued by him except where all the provisions of this Ordinance have been complied with. He/she shall keep the Zoning Board of Appeals advised of all matters pertaining to the enforcement of this Ordinance other than routine duties, and shall submit a monthly report to the Town Board enumerating the applications received, inspections made, permits issued or refused, and other actions taken.
- B. Whenever a violation of this Ordinance occurs, any person having knowledge thereof may lay any information in regard thereto before a proper magistrate as provided by law, and the procedures thereafter shall be as set forth in the Code of Criminal Procedure.
- C. Notices and Orders: The Code Enforcement Officer shall issue all necessary notices and orders to abate illegal conditions to ensure compliance with the requirements of this Ordinance.

### Section 17.1 Building Permits.

- A. No building or structure shall be erected, added to, or the exterior structurally altered until a permit thereof has been issued by the Code Enforcement Officer. Except on written order of the Zoning Board of Appeals, no such building permit shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this Ordinance. Further, the Code Enforcement Officer shall be satisfied that issuance of a building permit is not in violation of the Town's Land Subdivision Rules and Regulations of the Planning Board.
- B. There shall be submitted with all applications for building permits two (2) copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this Ordinance.
- C. One (1) copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer, together with such permit to the applicant, upon the payment of a fee as set by Town Board resolution.

- D. In the event that an application for a building permit is not approved, the applicant shall be entitled to a refund of fifty (50%) of the fee paid, provided no construction has commenced. If construction work has started and the application is not approved, the fees paid shall not be refunded.
- E. Upon approval of the application, and upon receipt of the legal fees therefor, the Code Enforcement Officer shall issue a building permit to the applicant upon the form prescribed by him and shall affix his signature or cause his signature to be affixed thereto.
- F. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved". One (1) set of such approved plans and specifications shall be retained in the Town files and the other set shall be returned to the applicant together with the building permit and shall be kept at the building site open to inspection by the Code Enforcement Officer or his authorized representative at all reasonable times.
- G. If the application together with plan, specifications, and other documents filed therewith, describe proposed work which does not conform to all of the requirements of the applicable building regulations, the Code Enforcement Officer shall disapprove the same and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Code Enforcement Officer shall cause refusal, together with the reasons therefore, to be transmitted to the applicant in writing.

Section 17.2 Certificate of Occupancy.

No land, building or structure shall be used or occupied, and no building or structure hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Code Enforcement Officer in accordance with the provisions of this Ordinance.

All certificates of occupancy for new or altered buildings or structures shall be applied for coincident with the application for a building permit therefore. Such certificate of occupancy shall be issued within thirty (30) days after the erection or alteration shall have been approved as complying with the provisions of this Zoning Ordinance.

A temporary certificate of occupancy may be issued for a residence for a period of sixty (60) days, with one (1) thirty (30) day extension. Such temporary certificate of occupancy shall only be issued based on a showing that the following can meet minimum state codes:

- A. Water Supply
- B. Sewage
- C. Plumbing
- D. Heating
- E. Electrical meeting requirements of insurance underwriters

## ARTICLE 18      AMENDMENTS

### Section 18.0 Procedure.

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation from the Town Planning Board, amend the regulations and districts established under this Zoning Ordinance after public notice and hearing in each case. All proposed amendments of the regulations or districts herein established shall be filed in writing in a form required by the Town Board.

### Section 18.1 Advisory Report by Town Planning Board.

Every proposed amendment, unless initiated by the Town Planning Board, shall be referred to the Town Planning Board. The Town Planning Board shall report in writing its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Town Planning Board fails to report within a period of forty-five (45) days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Town Planning Board disapproves the proposed amendment, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

### Section 18.2 Public Notice.

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

- A. By publishing notices of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the Town, not less than ten (10) days prior to the date of public hearing.
- B. By giving written notice of hearing to any required Municipal, County, Regional, Metropolitan, State or Federal agency in a manner prescribed by law.

### Section 18.3 Protest by Owners.

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of twenty (20) percent or more of the area of land included in such proposed amendment, or by the owners of twenty (20) percent or more of the area of land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty (20) percent or more of the area of land directly opposite thereto extending one

hundred (100) feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least a three-fourths (3/4) majority of the Town Board.

Section 18.4 Decision by Town Board.

The Town Board shall set the public hearing as required and shall render its decision within sixty (60) days of the receipt of the Planning Board's report.

Section 18.5 Notification of Decision.

The Town Board shall notify the applicant for an amendment of its decision in writing within five (5) days after the decision has been rendered.



## **ARTICLE 19. REMEDIES**

### Section 19.0 Penalty.

Any person, firm, company or corporation owning, controlling or managing any building, structure or premises therein or whereon there shall be placed, or there exists anything in violation of any of the provisions of this Ordinance; and any person, firm, company, or corporation who shall assist in the commission of any violation of this Ordinance or any conditions imposed by the Town Board or 'the Zoning Board of Appeals; or who shall build, contrary to the plans or specifications submitted to the Code Enforcement Officer and by him certified as complying with this Ordinance shall be guilty of an offense and subject to a fine of not more than two hundred and fifty dollars (\$250), or imprisonment for a period of not more than six (6) months, or both such fine and imprisonment. Every such person, firm, company, or corporation shall be deemed guilty of a separate offense for each week such a violation, omission, neglect, or refusal shall continue.

### Section 19.1 Alternative Penalty.

In case of any violation or threatened violation of any of the provisions of this Ordinance, or conditions imposed by the Planning Board, Code Enforcement Officer, or Zoning Board of Appeals, in addition to other remedies herein provided, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

**ARTICLE 20. FEE SCHEDULE**

Section 20.0 Fee Schedule.

A schedule of fees for all building permits and approval applications as required in this Ordinances shall be set by Town Board resolution from time to time.

## APPENDIX A

### ZONING BOARD OF APPEALS RULES AND PROCEDURES

#### Section 1.0 Meetings.

All meetings of the Zoning Board of Appeals shall be held at the call of the chairman and at such other times as such Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of such Board shall be open to the public. The concurring vote of a majority of all members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to decide in favor of an applicant in any matter upon which they are required to pass under any law to effect any variation in the Zoning Ordinance.

#### Section 2.0 Minutes.

The Zoning Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every question. If a member is absent or fails to vote, the minutes shall indicate such fact. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

#### Section 3.0 Referrals to the Town Planning Board.

At least forty-five (45) days before the date of hearing held in connection with any appeal or application submitted to the Zoning Board of Appeals, said Board shall transmit to the Planning Board a copy of said appeal or application submitted to the Zoning Board of Appeals, and shall request that the Planning Board submit to the Zoning Board of Appeals its advisory opinion prior to the date of said public hearings.

#### Section 4.0 Public Notice and Hearing.

Public notice of any required hearing by the Zoning Board of Appeals shall be given in accordance with Town Law as follows:

- A. By publishing a notice of any appeal or application and the time and place of the public hearing in the official newspaper of the Town of Hornby, not less than five (5) days, prior to the date of such hearing.

- B. By giving written notice of hearing to any appellant or applicant, and any other such notice to property owners in an affected area as may be required by the Zoning Board of Appeals, and to the Planning Board, not less than five (5) days prior to such hearing.
- C. By giving written notice of hearing to any required Municipal, County, Metropolitan, Regional, State or Federal agency in the manner prescribed by Law.

#### Section 5.0 Appeals.

The Zoning Board of Appeals shall hear and decide appeals from, and review any order, requirement, decision, or determination made by the Code Enforcement Officer under this Zoning Ordinance in accordance with the procedure set forth herewith:

- A. Notice of Appeal shall be filed with the Code Enforcement Officer and/or the Secretary to the Zoning Board of Appeals in writing, in a form required by such Board, within 30 days from the date of the action appealed from, specifying the grounds thereof.
- B. Upon filing of a Notice of Appeal and payment of a filing fee, as set by Town Board resolution, by the appellant or applicant, the Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all the paper constituting the record upon which the action appealed from was taken.
- C. The Zoning Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given notice and at which hearing he shall appear in person or by agent or by attorney. The Zoning Board of Appeals shall decide on the appeal within sixty (60) days after the final hearing.
- D. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Code Enforcement Officer and on due cause shown.
- E. Following public notice and hearing, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the power of the Code Enforcement Officer. If the action by the Zoning

Board of Appeals is to reverse the action of the Code Enforcement Officer in whole, the filing fee shall be refundable to the appellant.

## Section 6.0 Variances.

6.0.1 Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Zoning Ordinance, the Zoning Board of Appeals shall have the power, after public notice and hearing, to vary or modify through a variance the application of any of the regulations or provisions of the Zoning Ordinance. There are two (2) types of variance which the Zoning Board of Appeals will have to act on and it is imperative that a clear distinction be made between them.

6.0.2 Area Variance. So called because the applicant requests relief in dimensional nature from requirements such as setback lines, lot coverage, and frontage requirements, a peculiar size, shape lot, etc. Area variances may be granted upon the applicant's showing of practical difficulties and by satisfying all of the following criteria:

- (a) The variation is the minimum necessary to meet the needs of the applicant. To this end the Board may permit a lesser variance than that applied for.
- (b) A substantial change in the character of the neighborhood or a substantial detriment to adjoining properties or the public welfare is not created.
- (c) Where the applicant can prove significant economic injury, the Board must determine that the public health, safety and general welfare will be served by denying the variance.
- (d) The difficulty cannot be avoided by some method feasible for the applicant to pursue other than a variance.
- (e) In view of the manner in which the difficulty arose and in considering all the above factors, the interest of justice will be served by allowing the variance.

The granting of an area variance can only result in a restriction or modification which permits the applicant to use his land for one of the uses permitted in the district.

6.0.3 Use Variance. A use variance is requested when the applicant desires to utilize the land for a use not allowed by the Zoning Ordinance in the district. The established rule is that the Appeals Board has the power to grant a use variance only when the applicant has proved that the literal application of the Zoning Regulations will result in an unnecessary hardship. When determining unnecessary hardship for a use variance, all of the following criteria shall be satisfied.

- (a) The land in question cannot yield a reasonable return if used only for uses permitted in the Zoning District.
  - (1) Financial loss alone will not satisfy as unnecessary hardship, such loss may be considered along with the criteria listed here.
  - (2) Proof of a more profitable return if the variance is granted is not itself evidence of hardship.
  - (3) An applicant who maintains a nonconforming use or structure must show not only that all permitted uses will be unprofitable, but that his nonconforming use of the premises is incapable of yielding a reasonable return.
- (b) The modification or use to be authorized will not alter the essential character of the locality. The proposed modification of the property must not materially change the essential character or quality of the neighborhood and the spirit of the Ordinance shall be preserved.
- (c) The unnecessary hardship claimed as a ground for the variance has not been created by the owner or by a predecessor in title. Where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (d) The unnecessary hardship which will support granting of a variance must relate to the uniqueness of the land not to the applicant/owner.

6.0.4 All applications for variances shall be filed with the Secretary to the Zoning Board of Appeals in writing, shall be made in a form required by the Zoning Board of Appeals, and shall be accompanied by payment of a filing fee, and a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot,

6.0.5 Any variance which is not exercised within one year from the date of issuance is hereby declared to be revoked without further hearing by the Zoning Board of Appeals.

Section 7.0 Relief from Decisions.

Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for relief by a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York. Costs shall not be allowed against the Zoning Board of Appeals unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

**APPENDIX B**  
**SECTION 5.1**  
**Town of Hornby Density Control Schedule**  
**(Area and Bulk Requirements)**

Principal Use	Lot		Minimum Yard Dimensions <sup>1</sup> (feet) Principal Building			Minimum Yard Dimensions (feet) Accessory Building			Maximum Lot Coverage (percent)	Maximum Height (feet)
	Minimum BUILDABLE <sup>2</sup> Lot Size Per Principal Use (acres)	Width (feet)	Front	Rear	Side	Front	Rear	Side		
Agriculture <sup>3</sup> - Livestock	5 Acres	250	75	50	50	N/A	50	25	5	35
Residential <sup>4</sup> - Dwelling Unit on Collector Road <sup>5</sup>	2 Acres	250	50	50	50	N/A	50	25	10	35
Residential <sup>6</sup> - Dwelling Unit on Minor Road	2 Acres	250	50	50	50	N/A	50	25	10	35
General Uses	30,000 sq. ft.	100	40	40	20	N/A	25	15	30	35
Religious & Quasi Public	4 Acres	250	50	40	50	N/A	25	20	30	35
Gasoline Filling Station	30,000 sq. ft.	100	50	35	35	N/A	25	25	25	18
Commercial Uses	30,000 sq. ft.	100	40	30	40	N/A	N/A	N/A	30	35
Industrial Uses	2 acres	300	30	50	25	N/A	N/A	N/A	50	35

<sup>1</sup> Front yards are measured from the road right-of-way.

<sup>2</sup> See Section 5.7 to calculate net acreage of BUILDABLE land. See Article 8 Residential Cluster Development and Article 9 Planned Residential District.

<sup>3</sup> Acreage for agricultural uses may be computed as **GROSS**, not **BUILDABLE** acres.

<sup>4</sup> Residential lot size may be reduced if part of a cluster residential development. See Article 8 Residential Cluster Development. See the Town of Hornby Subdivision Law for additional requirements for lots in major and minor subdivisions.

<sup>5</sup> Curb cuts on collector roads must be a minimum of five hundred feet (500) apart (same side of road).

<sup>6</sup> Same as note 4.