

2017

# TOWN OF CANAAN

ZONING LAWS

**ZONING LAW  
of the  
TOWN OF CANAAN, NEW YORK**

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## **TITLE OF ZONING LAW**

This Zoning Law shall be known as the Town of Canaan Zoning Law and shall be a law regulating and restricting the location, construction, and use of land, buildings, and structures; establishing boundaries of districts for said purposes; establishing a Board of Appeals with power to determine and vary the application of regulations hereby established in harmony with their general purposes and intent; establishing a Planning Board; providing for the enforcement of provisions hereof; and for the purpose of promoting the health, safety, and general welfare of the inhabitants of the Town of Canaan, Columbia County, New York.

## **ENACTING CLAUSE**

The Town Board of the Town of Canaan, Columbia County, New York, under authority of the Town Law of the State of New York, hereby ordains, enacts and amends its Zoning Code as set forth herein.

## **ARTICLE I - PURPOSES**

The regulations and controls set forth in this Zoning Law are adopted in accordance with a comprehensive plan duly adopted by the Town of Canaan. This Zoning Law, including the Appendices hereof, is designed to facilitate adequate planning for the following purposes:

1. To guide the future development of the Town of Canaan in accordance with a comprehensive plan and policies so that the Town may realize its potential as a place to live and to work, with the most beneficial and convenient relationships among the agricultural, residential, institutional, commercial and light industrial areas within the Town and with due consideration to the character of the Town's respective districts and their particular suitability for particular uses, the existing conditions and trends in population, economic value of buildings, and neighborhoods within in the Town, and the limitations imposed upon development by environmental factors.
2. To encourage the conservation and sound management of natural, scenic and historic resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.
3. To facilitate the provision of transportation, water supply, sewage disposal, parks and other public improvements.
4. To protect the character of scenic and historic resources, including groundwater, streams, wetlands, floodplains and significant wildlife habitats.
5. To foster the continuation and diversification of farm activities and preservation of irreplaceable agricultural land resources.
6. To foster the creation of economic development activities within the Town consistent with rural, small-town character yet capable of providing goods, services and jobs to Town residents.
7. To ensure compliance with all applicable laws, rules and regulations, local, county, state and federal, governing the use and development of land and the use of structures within the Town of Canaan.
8. to encourage open space.

9. to promote the health, safety and the general welfare;

## ARTICLE II - DEFINITIONS

Except where otherwise defined herein, all words in this Zoning Law shall carry their customary meanings. Words used in the present tense include the future, and words used in the plural form include the singular form. The word "person" shall be construed to be singular or plural, shall mean any individual or individuals, and shall include any partnership, limited partnership, association, foundation, trust, corporation, professional corporation, limited liability company and/or other legal entity. The word "lot" includes the word "plot" or "parcel". The word "shall" is mandatory. The word "used" or "occupied" as applied to any land or buildings shall be construed to include the words "intended, arranged or designed to be used or occupied".

### **AGRICULTURAL OR FARM OPERATIONS:**

(1) For parcels located within the Residential-Agricultural Zoning Districts, and for all parcels in the Town that are within a New York State certified Agricultural District and constituting a farming operation as defined in § 301 of the New York State Agriculture and Markets Law, "agriculture" shall mean any activity connected with the raising of crops, livestock, livestock products and farm woodland, as defined in § 301 of the New York State Agriculture and Markets Law.

(2) For all other parcels, "agricultural or farm operations" shall mean those parcels of land and buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including, but not limited to, a commercial horse boarding operation, timber processing, managing and harvesting of a farm woodland, and compost, mulch or other biomass crops. Such farm operation may consist of one (1) or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

**ALTERATION:** Any addition to or deletion of a Building or a change in its structural parts, or any change in its use classification as specified under Use Applications Article V.

**AMBULANCE:** A motor vehicle specifically designed to carry patients.

**AMBULANCE SERVICE:** An organization duly organized and existing under the laws of the State of New York, the purpose of which is transporting patients in ambulances for hire.

**AREA, LOT:** The net land area of a lot exclusive of Roads, Ways and other public open space. The area of any Road or Way shall not be included.

**AREA, RECREATION:** A defined area reserved for and specifically designed to accommodate sports and communal activities such as, but not limited to, tennis, swimming, baseball and clubhouse activities.

**AUTOMOTIVE FILLING STATION:** Any area of land, including the Structures thereon, that is used for the sale of automotive fuels. Motor oil, automotive fluids, lubricants, and customarily accessories may be sold at a filling station.

**AUTOMOTIVE SALES AREA:** Any area of land, including a showroom within a Building, used for the display or sale of new or used automobiles or trucks.

**AUTOMOTIVE SERVICE STATION:** Any area of land, including the Structures thereon, that is used for the repair and/or maintenance of privately owned motor vehicles. Service may include lubrication and/or non-mechanical washing.

**AUTOMOTIVE WASHING FACILITY:** A Structure or Building designed for the washing, waxing, or similar treatment of motor vehicles as its principal function.

**AUTOMOTIVE WRECKING:** The dismantling, wrecking, or burning of used motor vehicles.

**BED AND BREAKFAST:** An owner-occupied Single-Family Dwelling used for providing overnight accommodations and a morning meal to not more than 10 (ten) transient lodgers, containing not more than five bedrooms for such lodgers.

**BUILDING:** Any Structure having a roof supported by columns or walls and a permanent foundation, and intended for use as a shelter, housing, or enclosure of persons, animals, chattels, or property of any kind.

**BUILDING, ACCESSORY:** A Building or structure other than an Accessory Dwelling including but not limited to a garage, barn, Storage Building or shed, which is of a kind and size commonly, but not necessarily, associated with the type of principal Building to which it is incidental and which is located on the same lot as such principal Building.

**BUILDING AREA:** The total of areas taken on a horizontal plane at the main grade level of the principal Building and all Accessory Buildings exclusive of uncovered porches, terraces and outdoor steps. All dimensions shall be measured between the exterior faces of walls and/or columns.

**BUILDING HEIGHT:** The vertical distance measured from the top of the foundation to the elevation of the upper most ridge of the Building.

**BUILDING-INTEGRATED SOLAR ENERGY EQUIPMENT:** An active solar system that is an integral part of a principal or accessory building rather than a separate mechanical device replacing or substituting for an architectural component of the building. Building-integrated solar energy equipment includes but is not limited to photovoltaic or hot water systems that are contained within roofing materials, windows, skylights, awnings and tile.

**BUILDING LINE, FRONT:** The line running parallel to the centerline of the Road or Way that determines minimum front yard setback.

**BUILDING, PRINCIPAL:** A Building constituting the principal use of the Lot on which it is situated.

**BUILDING, STORAGE:** An enclosed Building used for the principal purpose of warehousing, storage, or safe keeping of goods.

**BURN FACILITY:** Any Structure, Building, and/or facility used to burn refuse or fuels for the purpose of material disposal or generation of power. This definition applies regardless of whether the facility is a principal or Accessory Use.

**CEMETERY:** Land used or intended to be used for the burial of dead human beings and dedicated for cemetery purposes, including columbarium's, mausoleums and mortuaries when

operated within the boundary of such lands and in accordance with the requirements of this chapter.

**CENTER LINE OF ROAD OR WAY:** A line parallel to and halfway between the two edges of the existing right of way of a Road or Way.

**CHILD DAY CARE:** shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child.

**CHILD DAY CARE PROVIDER:** shall mean any individual, association, corporation, partnership, institution, or agency whose activities include providing Child Day Care or operating a home or facility where Child Day Care is provided.

**CHILD DAY CARE CENTER:** shall mean any program or facility caring for children for more than three (3) hours per day per child in which Child Day Care is provided by a Child Day Care Provider except those programs operating as a Group Family Day Care Home, a Family Day Care Home, and a school age child care program as defined in NY Social Services Law Section 390.

**CHURCH/HOUSES OF WORSHIP:** Any building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and/or related educational, social, cultural and fund-raising activities, and which building is maintained and controlled by a recognized religious body organized to sustain public worship.

**CONSERVATION EASEMENT:** An easement, covenant, restriction or other interest in real property under the provisions of §247 of the General Municipal Law and/or the provisions of the Environmental Conservation Law of the State of New York, which limits or restricts the development, management or use of such real property for the purpose of preserving, managing or maintaining the scenic, open, historic, archeological, architectural or natural condition, character, significance or amenities of the real property.

**DAM:** A barrier constructed to restrict the flow of water and raise the existing water level above its natural level. A dam may require engineering certification and/or approval from the New York State Department of Environmental Conservation and the U.S. Department of Agriculture depending on gallon and size.

**DAY CARE**

- **CHILD** see **CHILD DAY CARE**
- **CHILD CENTER** see **CHILD DAY CARE CENTER**
- **CHILD PROVIDER** see **CHILD DAY CARE PROVIDER**
- **FAMILY HOME** see **FAMILY DAY CARE HOME**
- **GROUP FAMILY HOME** see **GROUP FAMILY DAY CARE HOME**

**DISTRIBUTION FACILITY:** A Structure used for receiving, storing and/or distributing materials, goods, freight, packages or items of production.

**DRIVEWAY:** Land situated within a Lot used or intended to be used to provide access to the Lot by vehicular traffic. Driveway grade shall not exceed 10% within 100 feet of the Road or Way it joins or 15% in any area of the Driveway. Driveways are exempt from setback requirements.

**DUMP:** Land used for the disposal by abandonment, dumping, burning, or any other means, of garbage, sewage, trash, refuse, junk, machinery, or waste material of any kind, or for Automotive Wrecking

**DWELLING:** A Building (other than a Mobile Home) arranged, intended or designed to be occupied by one (1) or more families living independently of each other.

**DWELLING, ACCESSORY:** One (1) additional, separate, Single Family, Dwelling Unit per Single-Family Dwelling. The additional unit may be within the Single-Family Dwelling, or an Accessory Building or part thereof. The Building Area of an Accessory Dwelling must not be less than three hundred (300) square feet, nor more than fifteen hundred (1500) square feet and it must have a separate entrance. Adequate septic, water, and utilities shall be provided and setback requirements as defined in this law shall be met. A lot containing an Accessory Dwelling cannot be subdivided so as to separate the Accessory Dwelling from the primary Dwelling. New construction for an unattached Accessory Dwelling requires a minimum five (5) acre lot.

**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, SINGLE-FAMILY:** A Building containing one (1) Dwelling Unit only

**DWELLING UNIT:** One (1) or more rooms constituting a separate, independent housekeeping unit with provisions for cooking, living, sanitary and sleeping facilities arranged for the use of one (1) family.

**EAF - ENVIRONMENTAL ASSESSMENT FORM:** used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes Rules and Regulations.

**ELECTROMAGNETIC INTERFERENCE (EMI):** The interference to communication systems created by scattering of electromagnetic signals.

**EMERGENCY SERVICES ORGANIZATION:** An organization duly organized and existing under the laws of the State of New York, the purpose of which is providing emergency medical care.

**FAMILY DAY CARE HOME:** For purposes of this Zoning Law, a Family Day Care Home shall be as defined in NY Social Services Law Section 390.

**FARM:** The land, buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products as defined in the NY State Agriculture and Markets Law. A Farm of fifty (50) contiguous acres or more may include one Mobile Home for the housing of a farm employee only (including his immediate family). Such Mobile Home shall be screened or buffered from any abutting property and the public view. If abandoned, a Mobile Home must be removed within one (1) year.

**FENCE:** A barrier or enclosure used to delineate an area or boundary, for screening or for purposes of privacy or protection. Fences over six (6) feet high and also swimming pool enclosures shall require a building permit.



**FIRE, AMBULANCE AND EMERGENCY SERVICE STATION:** A structure and/or accessory structures designed and constructed for the purposing of providing fire, ambulance and emergency services, including the storage of motor vehicles and equipment, the maintenance of an office, and the providing of living quarters to those individuals in the employ of the Fire, Ambulance and/or Emergency Service Organization.

**FIRE DEPARTMENT:** An organization duly organized and existing under the laws of the State of New York, the purpose of which is fighting fire.

**FIRE EQUIPMENT:** A motor vehicle or accessory equipment specifically designed to fight fire.

**FRONTAGE:** The linear measurement in feet of a lot measured on the property line of the right-of-way of a Road or Way.

**GRAVEL BANK, QUARRY, MINE:** The use of land for excavation, quarrying, or mining of any type of earth material, topsoil, gravel, rock, ore, or mineral which is removed from the Lot from which it is taken. No Special Permit is required if the activity is conducted totally on the same Lot without the removal of gravel or other earth materials from that Lot.

**GROUP FAMILY DAY CARE HOME:** For purposes of this Zoning Law, a Group Family Day Care Home shall be as defined in NY Social Services Law Section 390.

**HAZARDOUS SUBSTANCE:** Any material or substance defined as “hazardous” in Federal, State or Local laws or regulations. The term, "Hazardous Substance", does not include consumer products that are packaged for, stored, and used by a consumer with reasonable care and for their intended use, nor fertilizers and/or agricultural chemicals when legally used in connection with a farming operation.

**HOME OCCUPATION:** An occupation or profession which:

- a) is carried on within a Single-Family Dwelling or an Accessory Building,
- b) is carried on by a member of the household residing in the Single-Family Dwelling, and
- c) is clearly incidental and secondary to the use of the Single-Family Dwelling for residential purposes, and
- d) which conforms to the following additional conditions:
  1. The occupation or profession shall be carried on wholly within the Single-Family Dwelling or an Accessory Building.
  2. Not more than two persons at one time outside of the household shall be employed in the home occupation.
  3. There shall be no exterior display, or exterior sign (except as permitted under Article V, Section G); there shall be no exterior storage of materials and no other visible indication of the Home Occupation or other variation from the residential character of the Single-Family Dwelling.
  4. More than one Home Occupation may be conducted within a Single-Family Dwelling and/or an Accessory Building with Site Plan approval.
  5. The area utilized by each such Home Occupation shall not exceed 1,000 squareft.

**HORIZONTAL AXIS:** Primary orientation of shaft supporting the rotating blades is horizontal to the ground.

**HOTEL:** A Building (other than a Bed and Breakfast or Motel) used primarily for the purpose of furnishing lodging, with or without meals, to transient guests for compensation.

**JUNKYARD:** Any Lot used for the collection, storage and/or sale of wastepaper, rags, copper, brass, plastic, rope, batteries, tires, trash, rubber debris, waste, or discarded material; or scrapped, ruined, dismantled, and/or salvaged machinery, appliances, equipment or vehicles, or parts thereof, as well as iron, steel and any other old or scrap ferrous or nonferrous material. A Transfer Station as defined herein shall not be considered to be a Junkyard.

**LAND, CONSERVATION:** Land that is set-aside for public or private agricultural, recreational and/or other land conservation use that is left undeveloped and essentially unaltered in its natural state. Examples of Conservation Land are wetlands, parks, classified streams and conservation easements.

**LIGHT MANUFACTURING:** A use involving the manufacture of a product, but not requiring heavy or noisy machinery or transporting equipment. Light manufacturing uses shall be construed to include the following categories: food and beverage production; apparel and other textile products; furniture and fixtures; printing and publishing; electrical and electronic machinery and equipment.

**LOT:** A measured parcel of land, developed or undeveloped, having fixed boundaries and designated on a deed, plot plan or survey.

**LOT LINE:** Any boundary of a Lot that separates it from adjoining land.

**LOT DEPTH:** The horizontal distance of a Lot from the Road or Way on which it fronts to its opposite rear line of such lot, measured along the median between the two (2) side lotlines.

**LOT, UNIMPROVED:** A parcel of land on which there is no physical evidence of development.

**LOT WIDTH:** The distance between side lot lines of a Lot at the required minimum front yard depth measured from side lot line to side lot line along a line parallel to the Road or Way.

**MINE:** See **Gravel Bank, Quarry, Mine.**

**MOBILE HOME:** A structure, transportable in one or more sections, which in traveling mode is eight (8) feet or more in width or forty (40) feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a permanent, Single-Family Dwelling with or without a permanent foundation when connected to the required utilities.

**MOBILE HOME PARK:** A tract of land whereon two (2) or more Mobile Homes are located or parked or which is used or held out for the purpose of supplying to the public a parking or other space for two (2) or more Mobile Homes for use for permanent living purposes or for transient occupancy. No Mobile Home Park shall be located in the Town of Canaan unless it complies with all other laws and ordinances of the Town of Canaan and all necessary permits have been obtained.

**MODULAR HOME:** A single family residence that is prefabricated in sections, transported to a building site, then fastened together and placed on a permanent and totally enclosed masonry foundation. A "double-wide" or other Mobile Home shall not be considered to be a Modular Home.

**MOTEL:** A Building (other than a Bed and Breakfast) furnishing lodging, with or without meals, to guests for compensation, in which the exit from each Dwelling Unit or sleeping room is directly to the exterior.

**NUISANCE:** Any use referred to in Section 3a, Article VI of this Zoning Law or which violates any standard with respect to smoke, noise, odor, dust, vibrations, heat or glare or air ground, or water pollution set forth in any Federal or New York State or local law, rule or regulation.

**ON SITE CONSUMPTION:** on-site consumption of electrical energy shall be defined in the Solar Law as the total amount of electrical energy consumed for the preceding twelve months of energy use at the proposed building permit site.

**OPEN SPACE:** Space, natural (of nature) in character, without any improvements there on that provides conservation, environmental protection, natural, historic and/or cultural resources and/or recreational opportunities.

**PARK/PLAYGROUND:** Any land or associated structures created and maintained by a municipality for the express use and enjoyment by the general public for recreational purposes.

**PARKING LOT, COMMERCIAL:** Any Lot or portion thereof designed or used solely for the purpose of day to day parking of vehicles for which a fee is charged

**PARKING SPACE, AUTOMOBILE:** An enclosed or open space for the parking of an automobile shall be not less than 10 feet by 20 feet.

**POND, FLATLAND:** A body of water, not more than three-quarter (3/4) acre in surface area, formed only by an excavation (if it does not require the construction of a dam) and does not raise the pre-existing water level. Except for the outlet, the surrounding land shall remain not less than one (1) foot above the maximum water level for the minimum distance of 20 feet or five (5) times the maximum depth of the pond, whichever is less. The distance is to be measured from the water's edge outward on the pond's perimeter.

**PRIVATE SCHOOL:** shall mean any entity, whether or not operated for profit, offering to instruct or teach any subject by any plan or method including written, visual or audio-visual methods, other than schools operated by government agencies or authorities.

**RANCH, FUR BEARING:** The raising of fur bearing animals for the harvesting of pelts to be sold commercially. The harvesting and processing of the pelts shall be done within an enclosed Building and shall be screened from view of the abutting property owners and the public.

**RECREATION VEHICLE:** Any vehicle, including popup, tow behind, self-propelled or fifth wheel trailer, used primarily for travel or temporary residential purposes. Parking location of a recreational vehicle, other than one being used for temporary residential purposes, is not subject to setback requirements. Only one Recreation Vehicle on the lot, other than a Recreation Vehicle Sales Area or Service Area, shall be visible from a neighboring residence, Road or Way. A Recreation vehicle may be used for temporary residential purposes and for not more than one hundred twenty (120) days in any calendar year.

**RECREATION VEHICLE SALES AREA:** Any area of land, including a showroom enclosed within a Building, used for the display or sale of new or used Recreation Vehicles.

**RESTAURANT:** A public eating place, the principal activity of which shall be the service of food to the public and a secondary activity may be alcoholic beverage sales to supplement the service of food. A Restaurant may provide music for and permit dancing by patrons only (but no other live entertainment). A patron is someone who comes to such establishment for his/her personal use and enjoyment only and does not receive any form of remuneration or payment for being there.

**RIGHT OF WAY:** See **Way**.

**ROAD:** A state, county, or town public thoroughfare.

**ROADSIDE STAND, PERMANENT:** A fixed Building or Structure intended or used incidentally to the sale of goods or produce made or grown on the premises.

**ROADSIDE STAND, TEMPORARY:** A removable, temporary stand not fixed to the ground. The temporary stand may only remain in place and be open for a period not to exceed one hundred fifty (150) days in any calendar year.

**SEQRA:** The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617

**SETBACK:** The distance in feet from a given point or line of reference to the nearest element of a Building, Structure or Use. Front yard setbacks are from the centerline of the traveled, paved section of the Way or Road. Side or rear yard setbacks are from the side or rear lot line. In the case of a lot with frontage on two or more Roads or Ways, the Front Yard Setback requirement applies to all parts of the lot fronting on a Road or Way.

**SHADOW FLICKER:** The alternating pattern of sun and shade caused by wind tower blades casting shadow

**SIGN:** Any visual device or any device attached to a Structure or painted or represented on a Structure, which displays or includes any letter, word, model or device which represents or is in the nature of an announcement, direction or advertisement.

**SITE LOCATION SCORE:** See Article V, Subsection I, D, 5.

**SLAUGHTER FACILITY:** A Building, Structure or land used for the commercial butchering or rendering or parts thereof any animals and/or livestock.

**SOLAR ENERGY GROUND EQUIPMENT:** Materials, apparatus or hardware necessary to the process by which solar radiation is collected, stored, distributed and/or converted into another form of energy for the purposes of supplying heating, cooling, hot water or electricity. This shall only include materials, apparatus or hardware installed upon the ground and not mounted on a structure.

**SOLAR ENERGY-PRODUCING SYSTEM:**

**Solar Farm:** A large-scale or utility-scale solar energy system that is ground mounted and produces energy primarily for the purpose of offsite sale or consumption is strictly prohibited in all zoning districts.

**Solar Energy Small Non-Residential System:** A system having a gross output of energy no greater than 200 kW and providing energy no greater than 110% of the electric use of the intended

installation for the preceding year.

**Solar Energy Residential System:** A system having a gross output of energy no greater than 25 kW and provides energy no greater than 110% of the electric use of the intended installation for the preceding year.

**Solar Energy New Metering:** This is known as "behind-the-meter generation." It is a system that allows the power company to capture excess production from energy-producing equipment and credit the producer at a fixed dollar rate for the energy produced. Participation in the net metering program is subject to the power provider's approval.

**Solar Energy Storage Devices:** Equipment designed to store power that is generated in excess of the immediate needs of a site having a solar energy-installed system under this law. Solar energy storage devices shall be permissible on a property provided that the total electricity produced by both solar energy equipment.

**SOLAR ENERGY STRUCTURAL EQUIPMENT:** Materials, apparatus or hardware necessary to the process by which solar radiation is collected, stored, distributed and/or converted into another form of energy for the purposes of supplying heating, cooling, hot water or electricity. This shall only include materials, apparatus or hardware mounted on a structure and not installed upon the ground.

**SOUND PRESSURE LEVEL:** The physical intensity of sound. The measurement of sound pressure level can be measured according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or such other accepted procedures approved by the Town of Canaan Town Board.

**STABLE:** Commercial Premises maintained and operated for the riding, boarding, buying, selling, renting, training or showing of horses. Such Use shall not be permitted on any Lot less than five (5) acres.

**STORAGE CONTAINER:** An enclosed container used for storage of goods, including but not limited to shipping containers, truck bodies, trailers and obsolete school buses. The location must meet setback requirements and be totally screened from the public, and be located on a Lot of five (5) acres or more.

**STORAGE CONTAINER, REFUSE COLLECTION:** Standard garbage containers such as covered dumpsters used for scheduled refuse collection. Refuse Collection Storage Containers for temporary use during a period of not more than ninety (90) days and household garbage cans are exempt Uses.

**STORAGE CONTAINER TEMPORARY:** Enclosed container used for the storage of goods, residential belongings or building materials during construction or renovations. Refer to Article X, Section B, Subsection 2 c of the Zoning Law. The container must be located in the rear yard and meet setback requirements unless topography or construction constraints do not allow.

**STORY:** That part of a Building included between any floor other than a cellar floor, and the floor or roof next above

**STRUCTURE:** Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on or in the ground or water. Structures include dams, tennis courts, earthen ramps, ponds, excavations, fences over six (6) feet in height,

barriers, bridges, large culverts of three [3] feet or more in diameter, Roads, Ways, Driveways and decks, but not including logging roads, drainage excavation and landscaping.

**STRUCTURE, MINOR:** Any Building less than two hundred (200) square feet and also less than twelve (12) feet in height which otherwise qualifies as a Permitted Use as of right under the provisions of this law, does not require a Building Permit or a Certificate of Occupancy. A Minor Structure is still subject to the setback requirements of this Zoning Law.

**SUBDIVISION:** See Article IV, sub-article I.

**SWIMMING POOL:** Any outdoor pool, tank, depression or excavation created for the specific purpose of swimming that causes the retaining of water to a depth greater than 18 inches and having a water surface area in excess of 100 square feet.

**TELECOMMUNICATION FACILITY:** See Article IX; subsection D of this Zoning Law.

**THEATER:** A Building or Structure or part of a Building or Structure primarily devoted to showing motion pictures or for dramatic, dance, musical, or other live performances. The sale or distribution of alcoholic beverages is not permitted in a Theater.

**TOTAL HEIGHT:** The height of the tower and the furthest vertical extension of the WECS - Small

**TRANSFER STATION:** A Building, Structure or land where solid waste is taken from collection vehicles and placed in other covered transportation units for movement to another solid waste management facility, or where recyclables are collected, processed and then placed in transportation units for movement to another facility.

**USE:** The specific purpose, for which a Building, Structure or land is designed, arranged or intended or for which it is or may be occupied or maintained.

**USE, ACCESSORY:** A Use that is customarily incidental to and subordinate to the principal Use of a Building, Structure or lot and located on the same land as the principal Use, Building or Structure.

**USE, NONCONFORMING:** A Building or Structure, or a Use of a Building, Structure or land, which was constructed or established prior to the original enactment of a zoning law in the Town of Canaan and which was lawful under all other local laws of Canaan then in effect, or which was permitted by the Town of Canaan Zoning Law as in effect at the time of such construction or establishment, but which in either case does not conform to the provisions of the Zoning Law as in effect at the time conformity is being determined.

**USE, PERMITTED:** A specific Use of a Building, Structure, Lot or land or part thereof which Article V, Section B of this Zoning Law provides for in a particular district as a matter of right.

**USE, PROHIBITED:** Any Use that is not listed as a Permitted, Special Permit, or Accessory Use, in a particular zoning district as provided in Article V, Section B of this Zoning Law.

**USE, SPECIAL PERMITTED:** A Use requiring a special permit from the ZBA, as provided in Article V, Section B of this Zoning Law.

**VARIANCE, AREA:** The authorization by the ZBA for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**VARIANCE, USE:** The authorization by the ZBA for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations. An increase in density or intensity of Use shall be deemed to require a “Use Variance” if such increase is not allowed by right or by Special Permit.

**VERTICAL AXIS:** Primary orientation of the shaft supporting the rotating blades is perpendicular to the ground

**VETERINARIAN SERVICES:** The care and treatment of animals by individuals licensed to provide such services by the NYS Department of Education.

**VIEW SHED:** The area contained within a 3000 foot radius of the WECS –Small.

**WAY:** A private Road, which affords a means of access to a Lot or Lots not situated on an existing Road or Way. A Way must be at least sixty (60) feet in width and must be maintained by the owners. A Way shall be designated and dedicated as a sixty (60) foot wide right-of-way in plan, and shall be certified by a New York State licensed surveyor. Any cul-de-sac within the Way must have a minimum diameter of one hundred ten (110) feet. A Way providing access to a Lot must be improved before development of said Lot in accordance with the standards required for a Subdivision Road or Way, provided in Article IV, Subsection C hereto. An application to convert a Way into a town Road must demonstrate that the Way complies with the Town of Canaan Highway specifications for Town Roads and has been granted Site Plan approval by the Town Planning Board.

**WECS – Small:** (Wind Energy Conversion System – Small) A wind energy conversion system consisting of wind turbine, a tower, and associated control or conversion electronics, and which is intended to primarily reduce on-site consumption of utility power.

**WIND TOWER:** The monopole, freestanding or guyed structure that supports a wind turbine generator, gearbox and rotor blades.

**YARD, FRONT:** The open space extending across the entire width of the Lot between the front element of a Building or Structure closest to the centerline of a Road or Way.

**YARD, REAR:** The open space extending across the entire width of a Lot between the rear line of the Lot and the closest rear element of a Building or Structure.

**YARD, SIDE:** The open space on a Lot with a Building, between the building element and a side lot line, extending through from the Front Yard to the Rear Yard.

**ZBA:** The Zoning Board of Appeals of the Town of Canaan.

**ZEO:** The Zoning Enforcement Officer of the Town of Canaan.

### **ARTICLE III - ESTABLISHMENT OF DISTRICTS**

A. The Town of Canaan, New York is hereby divided into the following districts::

**Residential-Agricultural**

- RA-1 Medium Density (2 and 5 acre zones)
- RA-2 Rural Density (2 and 5 acre zones)
- RA-3 Mobile Homes (2 and 5 acre zones)
- RA-4 Agricultural Density (10 acre zone)

**Commercial and Industrial**

- C-1 General Business
- C-2 General Commercial
- C-3 Light Industrial

B. **ZONING MAP:** The foregoing districts are bounded as shown on a map entitled "Zoning Map, Town of Canaan, New York", which map and the description of boundaries with the explanatory matters thereon, are attached to APPENDIX There to.

C. **INTERPRETATION OF LOCATION OF DISTRICT BOUNDARIES:** Where uncertainty exists with respect to the boundaries of any of the districts as shown on the Zoning Map, the following rules of interpretation shall apply:

1. The district boundary lines are intended to follow Road lines, the Boston and Albany Railroad (or its successors) property lines, and natural lines such as streams wherever possible.
2. Where district boundaries are indicated as approximately parallel to the centerline of Roads, boundaries shall be considered as being parallel thereto and at such distance as indicated on the map.
3. Where a district boundary line divides a parcel in single or joint ownership of record at the time such boundary line is established, each portion of said parcel shall be governed by the zoning regulations within which it is located.
4. If there is ambiguity in determining the precise location of any District Boundary Lines, the ZBA shall, upon application, determine the location.

**ARTICLE IV – LAND SUBDIVISION REGULATIONS**

A. **DEFINITIONS**

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

**Plat - Final:** Means a drawing or drawings, in final form, containing all of the data required for a Preliminary Plat as set forth in Sub-article III, Section 2, hereof; and, in addition, containing all modifications and approvals required by Sub-article III, Section 1 and 3 hereof.

**Plat - Preliminary:** Means a drawing or drawings marked "preliminary plat" showing the features of a proposed subdivision, as specified in Sub-article III, Section 2, of these Regulations.



**State Environmental Quality Review (SEQR):** Means those requirements and review procedures set forth in the New York State Environmental Quality Review Regulations as the same may be amended from time to time.

**Sub-divider:** Means any person, firm, corporation, partnership or association, who shall lay out any subdivision of land as defined herein, either for himself or for others.

**Subdivision:** Any division of land resulting in two or more parcels more precisely defined in this section

**Exempt Subdivision:** Any division of land resulting in the ultimate creation of not more than three (3) parcels.

**Major Subdivision:** Any division of land resulting in the ultimate creation of seven (7) or more parcels.

**Minor Subdivision:** Any division of land resulting in the ultimate creation of between four (4) and six (6) parcels, not adversely affecting any adjoining property, and not in conflict with any provision or portion of the Town Zoning Law or these Land Subdivision Regulations.

## **B. REQUIREMENT OF APPROVED SUBDIVISIONS**

No subdivision of any land in the Town of Canaan may be made, and no permit for the erection of a structure in any subdivision shall be granted, unless the owner of said land shall obtain approval of such subdivision from the Town Planning Board in accordance with the procedures contained therein.

All applications for major or minor subdivisions shall be subject to review under the provisions of the State Environmental Quality Review Act (SEQRA).

No application for subdivision shall be approved until the applicant has received the necessary permit(s) from the proper municipal authority for ingress and egress to and from the public roadway.

Upon receipt of an application for subdivision, the Planning Board shall classify such application as a major, minor or exempt subdivision in accordance with "Definitions" in sub-article I hereof. After such classification, the applicant shall process its application in compliance with C. Procedure for Major Sub-divisions, D. Procedure for Minor Subdivisions, or E. Procedure for an Exempt Subdivision, set forth below. In classifying a subdivision, the Planning Board shall determine the number of lots subdivided or re-subdivided from a recorded parcel from and after the effective date of these Regulations. After ten (10) years from the date of the initial subdivision, a subdivided lot shall be considered a new lot for subdivision purposes and shall not be joined with any prior lot for the purposes of classification.

## **C. PROCEDURE FOR MAJOR SUBDIVISIONS**

### Section 1 – Preliminary Plat

(a) Submission of Preliminary Plat

A sub-divider of land shall, prior to subdividing or re-subdividing land, shall submit seven (7) copies of a Preliminary Plat of the proposed subdivision to the Secretary of the Planning Board at least ten (10) days prior to the regular meeting of the Board at which said plat will be discussed.

(b) Planning Board Discussion

The sub-divider, or his authorized representative, shall attend the meeting of the Planning Board to discuss the impact of the subdivision on street improvements, drainage, sewage, water supply, fire protection, availability of existing services, environmental concerns and other pertinent information.

(c) Study of Preliminary Plat

(1) The Planning Board shall study the Preliminary Plat taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location, and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet un-subdivided, and the requirements of the Town Zoning Law.

(2) In conducting its study of the Preliminary Plat, the Planning Board shall have the power to retain, within the budgetary appropriations available to it, such necessary engineering and other technical review services as may be necessary to enable the Planning Board to reasonably review the subdivision application. The Planning Board may require the applicant to pay an additional fee in such amount as may be necessary in order to reimburse the Planning Board for the actual costs of such engineering or technical review services.

(3) SEQR Review – In conducting its study of the Preliminary Plat, the Planning Board shall conduct and make whatever review and determinations are required by the State Environmental Quality Review (SEQR) Regulations.

(d) Conditional Approval of Preliminary Plat

(1) Within sixty-two (62) days after the submission of a Preliminary Plat containing all information required by the Planning Board, the Planning Board shall take action to conditionally approve, with or without modifications, or disapprove such Preliminary Plat. The grounds for any modification required, or the grounds for disapproval, shall be stated in writing by the Planning Board. Failure of the Planning Board to act within such sixty-two (62) day period shall constitute a conditional approval of the Preliminary Plat.

(2) When granting conditional approval of a Preliminary Plat, the Planning Board shall state the conditional of such approval, if any, with respect to (i) the specific changes which it will require in the Preliminary Plat; and (ii) the character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety, morals, general welfare, and environmental concerns; and (iii) the amount and form of improvement bonds or security which it will require as prerequisite to the approval of the Final Plat. The action of the Planning Board, in addition to any conditions attached thereto, shall be noted on three (3) copies of the Preliminary Plat. Conditional approval of a Preliminary Plat shall not constitute final approval

of the Preliminary Plat, but rather it shall be deemed an expression of approval of the design submitted on the Preliminary Plat, and as a guide to the Preparation of the Final Plat, which will be submitted for the approval of the Planning Board and for recording upon fulfillment of the requirements of these regulations and the conditions of the Conditional Approval, if any. Prior to approval of the Final Plat, the Planning Board may require additional changes as a result of further study of the subdivision in final form or as a result of new information obtained at the public hearing.

## Section 2 – Preliminary Plat Data

The following documents shall be submitted with a Preliminary Plat:

- (a) Seven (7) copies of the Preliminary Plat prepared in the form of an actual survey and at a scale of not more than one hundred (100) feet to the inch, showing:
  - (1) Proposed subdivision name, name of Town and County in which it is located, date, name and address of record owner, sub-divider and engineer or surveyor, including license number and seal.
  - (2) The name of all subdivisions immediately adjacent and the name of the owners or record of all adjacent property.
  - (3) Zoning District, including the location of district boundary lines, if subdivision lies in more than one Zoning District.
  - (4) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
  - (5) Location of existing property lines, easements, buildings, water courses, marshes, rock outcrops, eroded areas, single trees with diameter of twelve (12) inches or more, and other significant existing features.
  - (6) Location of existing sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
  - (7) Contours with intervals of five (5) feet or less, including elevations of existing roads.
  - (8) The width and location of any streets, roads, or public ways or places shown within the area to be subdivided, and the width, location, grades, street profiles and construction specifications of all streets, roads, or public ways proposed by the sub-divider.
  - (9) The approximate location and size of all proposed water lines, hydrants, sewer lines, and fire alarm boxes, as well as connections to existing lines or alternate means of water supply or sewage disposal and treatment. Profiles of all proposed water and sewer lines
  - (10) Storm drainage plan indicating the approximate location and size of proposed lines and their profiles. Connection to existing lines or alternate means of disposal.

(11) Plans and cross-sections showing the proposed location and type of sidewalks,

street lighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, and the size and type thereof; the character, width and depth of pavements and sub-base, the location of manholes, basins and underground conduits.

(12) Preliminary designs of any bridges or culverts that may be required.

(13) The proposed lot lines with dimensions and area of each lot.

(14) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out.

(b) SEQR Environmental Assessment Form (long form.)

(c) If the application covers only a part of the sub-divider's entire holding, a location map shall be submitted of the entire tract showing an outline of the area to be subdivided with its proposed streets.

(d) A copy of such covenants or deed restrictions as is intended to cover all or part of the subdivision.

(e) A copy of the sub-divider's deed to the property proposed to be subdivided.

(f) An application fee in accordance with the fee schedule adopted by resolution of the Town Board.

### Section 3 – Final Plat

(a) The sub-divider shall, within six (6) months after conditional approval of the Preliminary Plat, file with the Planning Board an application for approval of the Final Plat. If the Final Plat is not submitted within six (6) months after the conditional approval of the Preliminary Plat, the Planning Board may refuse to approve the Final Plat and require resubmission of the Preliminary Plat.

(b) Number of copies

A sub-divider submitting a Final Plat for approval of the Planning Board shall provide the Secretary of the Board with seven (7) copies of the Final Plat, together with seven (7) copies of all other written documents requested by the Planning Board.

(c) Endorsement of State and County Agencies

Water and sewer facility proposals contained in the Final Plat shall be endorsed and approved by the Columbia County Department of Health and such approval filed with the Final Plat.

(d) Public Hearing

A public hearing to review the Final Plat shall be held on at least five (5) days' notice in the official town newspaper, and shall be conducted by the Planning Board within thirty (30) days after submission of the complete Final Plat for approval.

(e) Action on Final Plat

The Planning Board shall, within sixty-two (62) days from the date of the public hearing on the Final Plat, approve, modify and approve, or disapprove the Final Plat. The Final Plat shall not, however, be approved for filing by the Planning Board until the sub-divider has complied with the provisions of Section 4 of the Article III. Failure of the Planning Board to act within sixty-two (62) days from the time of submission of the Final Plat shall constitute Planning Board approval of the Plat.

#### Section 4 – Required Improvements

##### (a) Financial Security

Before the Planning Board grants approval for filing of the Final Plat, the sub-divider shall follow the procedure set forth in either subparagraph (1) or subparagraph (2) below:

(1) The sub-divider shall file with the Town Clerk, cash, certified check, negotiable securities, or a letter of credit, in form and terms acceptable to the Planning Board and the town Attorney, so as to insure the performance and construction of any required improvements; or

(2) The sub-divider shall complete all required improvements to the satisfaction of the Planning Board.

#### Section 5 – Filing of Approved Final Plat

##### (a) Final Approval and Filing

Upon completion of the requirements of Section 4 above, and notation to that effect upon the Final Plat, it shall be signed by the Chairman of the Planning Board and must be filed by the applicant in the Office of the Columbia County Clerk. Any Final Plat not so filed or recorded within sixty-two (62) days after the Plat is signed by the Chairman of the Planning Board, shall become null and void, unless the Planning Board, upon good cause shown, grants an extension which shall not exceed two (2) additional periods of ninety (90) days each.

##### (b) Final Plat Void if Revised After Approval

No changes, erasures, modifications, or revisions shall be made in any Final Plat after approval has been given by the Planning Board and endorsed in writing on the Plat, unless the said Plat is first resubmitted to the Planning Board and such Board approves any modifications after public hearing. In the event that any such Final Plat is recorded without complying with this requirement, the same shall be null and void, and no lots sold therefrom or building permits issued with regard thereto.

#### Section 6 – Public Streets, Recreation Areas

##### (a) Public Acceptance of Streets and Other Areas

The approval by the Planning Board of a Final Plat shall not be deemed to constitute acceptance by the Town Board or require Town maintenance of any street, road, way, easement, or other open space or recreation area shown on such Final Plat.

## D. **PROCEDURE FOR MINOR SUBDIVISIONS**

### Section 1 – Review

Within sixty-two (62) days following classification as a Minor Subdivision by the Planning Board, the Planning Board shall:

- (a) Review the applicant's submission.
- (b) Evaluate applicant's submission, presentation and discussion with the applicant.
- (c) Determine whether the plan meets the objectives of and the requirements of this chapter, Zoning Ordinance and other applicable ordinances.
- (d) Recommend plan revisions so that it will conform to Town Zoning and Ordinances.
- (e) Approve or disapprove the plan.
- (f) Inform the applicant in writing of the approval of the plan and any changes, modifications or alternatives required or its disapproval.
- (g) If deemed necessary, the Planning Board will conduct a public hearing on the submission within sixty-two (62) days following classification as a minor subdivision.

### Section 2 – Filing of Approved Plans

If approved by the Planning Board:

- (a) After the approved plan has been officially stamped by the Planning Board Chairman, the owner shall file the plan or subdivision deed in the office of the Columbia County Clerk within sixty-two (62) days of the date of approval. Final Plat is void if revised after approval. No changes, erasures, modifications, or revisions shall be made in any Final Plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless the said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that such Final Plat is recorded without complying with this requirement, the same shall be null and void and no lots sold therefrom or building permits issued with regard thereto.
- (b) The applicant shall notify the Planning Board in writing of the date of such filing, and the map number assigned thereto by the County Clerk. If the plan is not filed within the sixty-two (62) day period, the approval shall lapse and become void. The Planning Board may extend the sixty-two (62) day period upon written application by the applicant.
- (c) No permits of any nature shall be issued until the plan is filed and the Planning Board has received written notification of such filing.

### Section 3 – Requirements

The Minor Subdivision plan, of which seven (7) copies shall be submitted, shall show or be accompanied by the following information:

#### (a) Drafting Standards

(1) The plan shall be drawn at the scale of one (1) inch equals fifty (50) feet or one (1) inch equals one hundred (100) feet or one (1) inch equals two hundred (200) feet.

(2) Dimensions shall be in feet and decimal parts thereof, and bearing in degrees, minutes and seconds.

(3) Minor Subdivision plans shall be on sheets eighteen by twenty-four (18 x 24) inches, twenty-four by thirty-six (24 x 36) inches, or thirty-four by forty-four (34 x 44) inches.

(4) The total subdivision of parcels proposed must be shown. In that total, the original parcel may be shown as a part configuration of the existing tax map, but the new parcel or parcels must be a Final Plat certified by a licensed New York State land surveyor.

#### (b) General Information to be shown on Plan

(1) Name of the subdivision.

(2) Name and address of the owner.

(3) Name and address of the registered professional engineer or surveyor in the State of New York responsible for the plan, stamped with an original seal.

(4) Zoning classification and requirements.

(5) Date, north point and scale.

(6) A location map for the purpose of locating the site, at a scale of not less than eight hundred (800) feet to the inch.

#### (c) Existing Features

(1) Complete outline survey of the property to be subdivided, showing all courses, distances, area and tie-ins to all adjacent street intersections.

(2) The location, names and widths of streets, the location of property lines and names of adjacent owners; the location of classified streams and wetlands, easements or rights-of-way, existing buildings, and similar features.

#### (d) Proposed Layout

(1) Proposed layout of lots.



(2) Lots numbered.

(3) Building setback lines from the property boundary, streams and wetlands, in accordance with the Zoning Law of New York State wetlands regulations.

(4) Total area for each lot.

(5) The location, width and purpose of all proposed easements or rights-of-way and boundaries by bearings and dimensions.

(e) Design Standards

All subdivided lots shall be buildable in accordance with the Zoning Ordinance and New York State wetlands and stream laws.

## E. EXEMPT SUBDIVISIONS

### Section 1 – Review Procedures

A sub-divider shall, prior to subdividing or re-subdividing land, submit seven (7) copies of a plat plan of the proposed subdivision to the Secretary of the Planning Board at least ten (10) days prior to the regular meeting of the Board at which said plat will be discussed.

The sub-divider, or his authorized representative, shall attend the meeting of the Planning Board, and the Planning Board shall at that time review the plat plan to determine whether the proposed subdivision by the applicant does, in fact, constitute an exempt subdivision, and shall further review the proposal to determine that the lot of lots which are proposed to be created comply in all respects with the Town of Canaan Zoning Law and any other applicable laws, rules and regulations of the Town of Canaan.

If the Planning Board determines that the proposal does qualify as an exempt subdivision, then the Planning Board shall make such determination and shall so indicate on the plat plans submitted by the applicant. The applicant shall, thereafter, file two copies of the plat plan with the Columbia County Clerk's office within sixty-two (62) days of the date upon which such plat is approved. Any plat plan not so filed or recorded within sixty-two (62) days of such approval in the Columbia County Clerk's office shall become null and void, unless the Planning Board, upon good cause shown, grants an extension which shall not exceed two (2) additional periods of ninety (90) days each. No subdivision shall be considered exempt until such approval is given by the Planning Board and no lot shall be considered to be created for any exempt subdivision, absent such approval.

### Section 2 – Requirements

The exempt subdivision plan, of which seven (7) copies shall be submitted, shall show or be accompanied by the following information:

(a) Drafting Standards

(1) The plan shall be drawn at the scale of one (1) inch equals fifty(50) feet or one (1) inch equals one hundred (100) feet or one (1) inch equals two hundred (200) feet.

(2) Dimensions shall be in feet and decimal parts thereof, and bearing indegrees, minutes and seconds.

(3) Exempt subdivision plans shall be on sheets eighteen by twenty-four (18 x24) inches, twenty-four by thirty-six (24 x 36) inches, or thirty-four by forty-four (34 x44) inches.

(4) The total subdivision of parcels proposed must be shown. In that total, the original parcel may be shown as a part configuration of the existing tax map, but thenew parcel or parcels must be a Final Plat certified by a licensed New York State land surveyor.

(b) General Information to be shown on Plan

(1) Name of the subdivision.

(2) Name and address of the owner.

(3) Name and address of the registered professional engineer or surveyor in the State of New York responsible for the plan, stamped with an original seal.

(4) Zoning classification and requirements.

(5) Date, north point and scale.

(6) A location map for the purpose of locating the site, at a scale of not less than eight hundred (800) feet to the inch.

(c) Existing Features

(1) Complete outline survey of the property to be subdivided, showing all courses, distances, area and tie-ins to all adjacent street intersections.

(2) The location, names and widths of streets, the location of property lines and names of adjacent owners; the location of classified streams and wetlands, easements or rights-of-way, existing buildings, and similar features.

(d) Proposed Layout

(1) Proposed layout of the lots.

(2) Lots numbered.

(3) Building setback lines from the property boundary, streams and wetlands in accordance with the Zoning Law of New York State wetlands regulations.

(4) Total area for each lot.

(5) The location, width and purpose of all proposed easements or rights-of-way and

boundaries by bearings and dimensions.

(e) Design Standards

All subdivided lots shall be buildable in accordance with the Zoning Ordinance and New York State wetlands and stream laws.

**F. VARIANCES AND WAIVERS**

Section 1 – Hardships

Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest served; provided, however, that no such variation may have the effect of nullifying the intent and purpose of the Town Zoning Law.

Section 2 – Improvements

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not required in the interest of the public health, safety and general welfare; or, that said improvements are inappropriate because of inadequacy or lack of connecting facilities adjacent to or in proximity with the proposed subdivision, it may waive such requirements subject to appropriate conditions.

Section 3 – Conditions

In granting variances and modifications, the Planning Board shall require such conditions as will, in its judgment, substantially secure the objectives of the standards or requirements so varied or modified.

**G. VIOLATIONS**

Section 1 – Penalties

Any person, firm or corporation whether owner, builder, architect, contractor or subcontractor or any agent thereof who or which constructs, alters, repairs, uses or occupies any building or structure or portion thereof or who conveys any land within the Town of Canaan, in violation of any provision of these Subdivision Regulations, shall be charged with a violation punishable by a fine not exceeding \$250.00 or by imprisonment not exceeding fifteen (15) days, or both said fine and imprisonment. Each day that a violation continues shall be deemed a separate and distinct violation punishable as herein indicated.

Section 2 – Enforcement

In addition to the provisions for fines and /or imprisonment set forth in the preceding section, the Town Board may commence an appropriate action or proceeding in a Court of competent jurisdiction to restrain any act or action which is in violation of the provisions herein.

**H. BOUNDARY LINE ADJUSTMENTS**

An application for a waiver of subdivision approval to allow lot boundary line adjustment shall include a plat(s) conforming to the standards set forth in Subsection A herein below and which shall identify or be accompanied by the information set forth in the subsections herein below:

#### A. Drafting Standards

(1) The plat(s) shall be drawn to the scale of one inch equals 50 feet or one inch equals 100 feet.

(2) Dimensions shall be in feet and decimal parts thereof (except that areas of lots shall be shown in acres and decimal parts thereof), and bearings in degrees, minutes and seconds.

(3) Plan(s) or Plat(s) shall be on sheets 18 inches by 24 inches or 24 inches by 36 inches.

(4) Existing and proposed lot lines shall be shown on plan(s) or plat(s) and certified by a licensed New York State land surveyor (except with respect to any lot or part of a lot not required to be surveyed as a result of the provisions of Subsection E below.) The Planning Board may in its discretion require the applicant to prepare a plat showing existing conditions and a plat showing the proposed adjustment where deemed necessary to interpret the full scope of the proposed boundary line adjustment.

#### B. General Information

(1) Names and addresses of the owners of the lots involved in the proposed lot boundary line adjustment.

(2) Names and address of the licensed New York State land surveyor responsible for the plat(s), stamped on each sheet with an original seal.

(3) Zoning classification and requirements.

(4) Date, North point and scale

(5) A location map for the purpose of locating the lots, at a scale of not more than 800 feet to the inch

#### C. Existing Features

(1) Except as otherwise provided in Subsection E herein below, a complete survey of the lots included in the proposed lot boundary line adjustment showing all existing lot lines, survey pins and other survey reference markers, courses, distances, lot sizes, buildings and other structures, driveways, ways, streets and roads, wells, septic fields and overhead utility lines and setback and road frontage distances.

(2) The location, names and width of all roads and ways adjacent to any of the lots and the location of classified streams and wetlands

## D. Proposed Features

Except as otherwise provided in Subsection E herein below, a complete survey of the lots included in the proposed lot line adjustment showing:

- (1) The location of all lot lines, survey pins and other survey reference markers after the proposed adjustment.
- (2) Total area of each lot after the proposed adjustment.
- (3) Setback distances from property boundaries of each building, structure, driveway, way, street and road, well, septic field and overhead utility after the proposed adjustment.
- (4) Road frontage distances for each lot after the proposed adjustment

#### E. Certain Un-surveyed Lots

(1) If any lot has not previously been surveyed by the licensed New York State land surveyor responsible for the plat and the proposed lot line adjustment (or, if more than one lot line is being adjusted, each lot line adjustment) would increase the size of one of such lots, then no survey of such lot shall be required by the plat shall nevertheless show the approximate location of the other lot line of such lot and its approximate size.

(2) In the case of either Subsection C or Subsection D herein above, if any lot greater than six acres in size has not previously been surveyed by the licensed New York State land surveyor responsible for the plat, then the survey of such lot required by either Subsection C or D may cover only a portion of such lot that is at least six acres in size and includes all lot lines being adjusted and all parts of the lot that are within 375 feet from any such lot line; provided, however, that the plat sheet shall include a drawing of the entire lot (which may be part of the location map) and set forth its estimated total area.

#### F. Survey Pin Certification

(1) A certification by the licensed New York State land surveyor responsible for the plat that all survey pins and other survey reference markers shown on each plat sheet are in place at the locations shown.

### **I. WAIVER OF SUBDIVISION**

The Planning Board may grant a Waiver of Subdivision only when a boundary line adjustment:

A) would not create an additional lot

B) any lot otherwise in conformance with the applicable density requirements of Sub-article V, Subsection D or any other applicable provisions of the Zoning Law would not be rendered nonconforming by virtue of the proposed action, and any of the affected lots are nonconforming would comply with the applicable density requirements to a greater extent and with all other applicable provisions of the Zoning Law to a lesser extent by virtue of proposed boundary line adjustment

(C) either of the following conditions is satisfied:

- (1) The action involves a modification of an existing lot line or,
- (2) The action involves the conveyance and merger of a portion of one or more parcels to an adjoining parcel.

J. **SUBDIVISION ROAD SPECIFICATIONS**

Section 1

The purpose of this Local Law is to regulate the design and construction of streets, thoroughfares, and highways and all utilities therein to be constructed in subdivisions requiring approval of the Town Planning Board. This local law is to be used in conjunction with, and is complementary to, the Land Subdivision Regulations and the Zoning Law of the Town of Canaan.

A. Wherever used in this Local Law, the word "street" and/or "right of way" shall also mean a thoroughfare, highway, road, avenue, lane or other traffic ways.

B. Wherever used in this Local Law, words in the singular number include the plural and words in the plural number include the singular.

C. The word "shall" is mandatory and not directory. Words used in the present tense include the future.

D. All applications for approval of plans shall be made in accordance with the Town Subdivision Regulations and Town Zoning Law.

E. Planning Board or Board means the Planning Board of the Town of Canaan.

F. Town Engineer means the duly designated engineer of the Town.

G. Owner or Developer means any person, firm, corporation, partnership or association; who shall lay out any subdivision or part thereof as defined herein, either for himself or others.

H. All applications shall be accompanied by a plan or plans which shall:

1. Be at a scale of one inch equals one hundred feet. The use of any other scale must have had prior approval of the Town Planning Board.
2. Show contours based on U.S.G.S. datum and at an interval not greater than five feet. Interpolation of contours from other mapping shall not be accepted.
3. Show a minimum of two benchmarks based on U.S.G.S. datum.
4. Show a location plan, at a minimum scale of one inch equals two thousand feet, giving location of the plot with relation to established streets.
5. Show, on a separate plan of the same scale as the sub-division plan, all drainage areas tributary to the development. Show drainage area limits tributary to



each

catch basin or inlet with a tabulation of runoff to each structure and the total of each outfall. Show detention area details with storage volume calculations including maximum detention times to drain completely. Calculation of runoff shall be based on a method in general use for the area involved and approved by the Town Engineer. The method used shall be approved by the Town Engineer, and shall be recognized as producing a problem-free storm drainage system. Calculations for all storm water structure shall be based on rainfall intensities resulting from a storm of a ten year return for storm sewers and a twenty-five year return for culverts. The designer shall examine and report on the routing and effects on the area system for the one hundred year storm event. The quantity of runoff after development may not exceed the amount prior to development. The storm drainage plans, calculations and narratives shall be submitted to the Town Engineer for review.

6. Show all proposed streets, roads or highways and lots with necessary survey data.

7. Show proposed finished street with road or highway grade. A separate supplementary map shall be submitted showing building lots and restrictions and names of abutting owners.

8. Show the proposed names of all streets and proposed lot numbers.

9. Show average daily traffic volume in vehicles per day to be using each street with peak a.m. and p.m. hours totals at intersections with existing streets with an evaluation and recommendation by a licensed traffic engineer at the owner/developer's expense, as to the ability of receiving streets to function at a satisfactory level of service.

10. Show the locations of soil borings along the streets or roads. Minimum boring depth shall be ten feet and the boring logs shall indicate depth to the water table, soil types, date of boring and other information normally shown on such logs. Locate borings of Proposed street enter-lines at 300 feet intervals. The Town Engineer may require a more extensive soil investigation with an evaluation and recommendation by a soil's engineer, at the expense of the sub-division/developer, as to the suitability of the sub-grade to perform satisfactorily.

11. Show a complete profile of the streets at a horizontal scale of 1 inch= 50 feet and a vertical scale of 1 inch=5 feet together with the street plan (use a standard highway plan-profile format sheet to conform with this Resolution, the Sub-division Regulations and Zoning Laws) and which profile shall show the original ground surface, finished grade proposal, all utilities including water mains, sanitary sewers, storm sewers together with all structures proposed.

12. Show size, type of pipe, class, valves, alignment and hydrant locations for portable water distribution system, after consultation with the Town Engineer as to the needed capacity and ability of the existing Town distribution system to supply the requirements; in all accordance with the New York State Health Department Regulations and acceptable design and construction practice.

13. Show size, type and class of pipe, alignment, grade and connections to existing outfall sewer, after consultation with the Town Engineer as to the ability of the existing Town system to handle the proposed additions, all in accordance with New York State Health and Environmental Conservation Departments regulations and acceptable design and construction practice.

## Section 2

The arrangement of streets or highways hereinafter laid out shall, wherever possible, provide for the continuation of the principal streets existing in the adjoining subdivision, or of their proper projection when the adjoining property is not subdivided, and shall be of a width as great as that of such existing streets but in no case have a right of way width less than sixty (60) feet.

## Section 3

The minimum width of street or highway right of way hereinafter laid out shall be sixty (60) feet. These widths shall be measured from right of way line to right of way line. Said width shall be measured normal to the lines on tangents and on the radial lines on curves.

## Section 4

Property lines at all street intersections shall be rounded sufficiently to allow a minimum radius on the property line of twenty-five (25) feet.

## Section 5

All pipe and necessary appurtenances for the proper and satisfactory collection and disposal of subsurface, or underground water from the right of way of the proposed highways shown on the approved Subdivision Plan, in order to establish a satisfactory roadbed for such highways, shall be supplied and installed by the Owner of the subdivision in accordance with the pertinent specifications of the Town. The necessity for draining subsurface water from the right of way of a proposed highway, the locations where such drainage is required, and the extent of piping necessary to affect such drainage shall be determinations of the Town Engineer. These determinations by the Town Engineer may precede the construction of the proposed highway, or may occur during construction as underground water conditions become evident. The Town Engineer will notify the owner of such determinations as soon as possible after such determinations are made. Type of pipe, diameter and gauge of pipe, line gradients, method of pipe placement and all materials required for the installation of such drainage shall conform to the requirements and specifications of the Town.

## Section 6

Streets designed to have one end permanently closed shall be provided at the closed end with a turnaround roadway having a minimum radius for the outside property line at least sixty (60) feet.

## Section 7

Street grades shall not exceed eight (8) percent nor be less than eight-tenths (0.8) percent. Particular attention shall be given to street design at intersections. Approach grades shall not exceed three (3) percent within one hundred twenty (120) feet of the street right of way line intersected and shall not exceed one and one half (1 ½) percent within forty (40) feet off the right of way line intersected. Combinations of grades over six (6) percent with curves of minimum radius shall not be used. Where the algebraic difference in street grades exceeds two (2) percent, the grades shall be connected by a vertical curve to produce a safe transition.

## Section 8

Street intersection shall be ninety (90) degrees within one hundred (100) feet of the intersected

right of way line. Street tangents with a deflection angle greater than five (5) degrees shall be connected by a minimum radius of curve of two hundred and fifty (250) feet, measured to the inside right of way line. Traffic safety provisions and necessary street signage must be recommended by a qualified traffic safety engineer employed and paid by the owner/developer at no cost to the Town.

#### Section 9

A tangent shall be introduced between reverse curves and shall be of at least 100 feet in length on minor and collector streets and such length as may be deemed necessary by the Planning Board for arterial streets.

#### Section 10

Driveway access and grades shall conform to specifications of the Town Engineer. Driveway grades between the street and the setback lines shall not exceed 10 percent.

#### Section 11

Land subject to flooding or land deemed by the Planning Board to be inhabitable shall not be platted for residential occupancy, nor for such other uses as may increase danger to health, life or property, or aggravate the flood hazard, but such land within the plot shall be set aside for uses as shall not be endangered by periodic or occasional inundation or improved in a manner satisfactory to the Planning Board to remedy said hazardous conditions.

#### Section 12

In general, storm sewers will be required and shall be designed to carry the flow tributary. The distance which water shall be allowed to run in open ditches will be determined in each individual case depending upon various factors involved. In areas of minimum grade, the distance shall not exceed 750 feet and in areas of maximum grade, this distance shall not exceed 250 feet.

Storm sewers, where installed, shall be of reinforced concrete pipe or corrugated metal pipe (galvanized steel), and, generally, shall be laid on grades to produce a velocity of not less than 3 feet per second nor more than 8 feet per second when flowing full. Under special conditions involving circumstances such as level terrain and shallow surface water outlet, permission to install storm sewers at grades producing velocities of not less than 2 feet per second when flowing full may be granted by the Town Engineer. Storm sewer design shall be on the basis of local 10 year storm frequency studies and shall be such that a minimum of 4'0" is maintained from invert of pipe to finish ground surface directly above.

Reinforced concrete pipe shall conform to A.S.T.M. Specifications Class III for Reinforced Concrete Pipe. In certain locations, the Town Engineer may require the use of A.S.T.M. designation C-76 Class IV or Class V.

Corrugated galvanized steel pipe, multi-plate pipe and pipe arches shall not be less than the gauge recommended by the American Association of State Highway Officials but not less than 16 gauge. Lengths of C.M.P. shall be joined with corrugated collars. All pipe ends shall be corrugated. All joints are to be encased in graded filter gravel, 15 inches either side of the joint to minimum depth of 12 inches above and 6 inches below the pipe. Local soil conditions may increase these requirements. All C.M.P. 48 inches in diameter and larger shall be strutted. Struts shall be removed after total compaction of the deck fill material in 6 inch lifts has been

completed.

The use of helically formed corrugated steel pipe shall require reformed annular ends to receive standard connectors. The use of "dimpled" connectors is prohibited.

All storm sewers shall be constructed accurately to line and grade, properly bedded, and shall be so constructed that all joints are watertight. The design of storm water inlet basins and manholes shall be acceptable to the Town and shall be in accordance with current standard modern practice. In no case will the use of concrete manhole block less than 8 inches in width be permitted.

All concrete block manhole structures are to be plastered inside and out, with 5/8 inch mortar. The design of poured, precast or prefabricated manhole structures shall be Fort Miller standard, or equal, and must have the approval of the Town Engineer, prior to installation. Pipe constructions shall be completely sealed with hydraulic mortar for the full thickness of the structure wall.

The minimum inside diameter of pipe for storm sewer use shall be twelve (12) inches, and for road culverts shall be eighteen (18) inches. The minimum seal thickness for corrugated steel pipe shall be 16 gauge. Shallower or deeper installations than standard or in particularly corrosive soil or flow conditions shall require the use of a heavier gauge, subject to the approval of the Town Engineer.

All catch basin and junction structures over four (4) feet in depth shall have substantial, non-corroding steps for safe access, and structures over eight (8) feet in depth shall have an offset cone section. All structures less than eight (8) feet in depth shall be equipped with a reinforced concrete flat top designed for a minimum H-20 highway load and set so the manhole opening is over the outlet pipe. Frames and grates shall be Campbell Foundry Pattern number 2253. Solid covers where required on certain structures, shall be Campbell Pattern number 1203. Inlet basin covers shall be set level and flush with finish gutter paving.

Under drainage shall be installed when so directed by the Town Engineer.

The developer, or owner, laying out the streets or highways, shall obtain all necessary easements and/or rights of way to take care of all surface and ground water caused by reason of the development of said street or highway and by reason of the installation of culverts or surface drains or under drains. The width of easement or right or way shall be 30 feet minimum for installation depths of 6 feet or less. At the discretion of the Town Engineer greater installation depths may require wider easements or rights of way depending upon particular circumstances.

### Section 13

To ensure compliance with approved plans, specifications and details, the Town Engineer, at the owner/developer's expense, shall observe the materials used in the construction of all improvements. When the owner/developer has completed the improvements, the Town Engineer shall report to the Planning Board, or the Zoning Board of Appeals that he has observed the installation of improvements and they conform, or that they conform conditionally, to the approved plans, and to acceptable construction practice.

### Section 14

If at any time before or during the construction of the required improvements it is demonstrated to the

satisfaction of the Town Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town Engineer may, upon approval by a previously delegated member of the Planning Board, authorize modifications provided these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at their next regular meeting.

#### Section 15

If the Town Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the sub-divider, he shall so report to the Town Board, Building Inspector, and the Planning Board. The Town Board then shall notify the sub-divider and, if necessary, the bonding company and take all necessary steps to preserve the Town's rights under the bond. No plot shall be approved by the Planning Board as long as the sub-divider is in default on a previously approved plot.

#### Section 16

Street signs and posts shall be furnished and properly placed by the owner/developer. Street signs shall conform in type to the Town Standard. Dead End signs shall be placed by the owner/developer at appropriate locations along streets terminating in turnarounds and as approved by the Town Engineer. Guide rails, where required for highway ditch or culvert protection or as a general safety measure shall be placed and paid for by the owner/developer and as specified by the Town Engineer.

#### Section 17

Approval in writing shall be obtained by the owners and/or developers from the New York State Department of Transportation where proposed streets or highways intersect State road for its permission to connect said streets with such roads.

Approval in writing shall be obtained by the owners and/or developers from Columbia County Superintendent of Highways where proposed streets or highways intersect Town roads for his permission to connect said streets with such roads.

#### Section 18

Telephone, gas, CATV, and power cable conduits shall be installed as shown on the typical street cross-section detail and as approved by the Town Engineer. The installation of these utilities shall be in accordance with specifications approved by the agencies governing these utilities and at no expense to the Town of Canaan.

#### Section 19

The proposed street plan shall be reviewed by a qualified traffic safety engineer, at the expense of the subdivision owner/developer, for required traffic regulatory and warning sign location and type. Such signage shall be in conformance with New York State Department of Transportation "Manual of Uniform Traffic Control" and shall be furnished and installed by the subdivision owner/developer with prior approval of the Town Engineer.

#### Section 20

The Canaan Planning Board shall annually review this Local Law for the purpose of upgrading, modifying or adding to the specifications and standards contained herein. Any such recommendations for modification by the Planning Board shall be forwarded to the Town Board for review and final action.

Section 21

Approval by the Town Planning Board and the construction of any highway in the Town of Canaan pursuant to the provisions of this Local Law shall not require the Town Board to accept such highway as a Town highway. Acceptance and dedication of a highway as an official Town highway lies solely within the discretion of the Town Board.

**STABILIZED GRAVEL SURFACE COURSE**

**Materials**

A. Gravel

The gravel shall conform to the following gradation requirements:

<u>Sieve Size</u>	<u>Percent Passing by Weight</u>
2 inch	100
¼ inch	30-65
No. 200	10-20

Particles passing the No. 40 sieve size shall have a maximum liquid limit of 30 and a plasticity index ranging from 3 to 8. The maximum loss in 4 cycles of the Magnesium Sulfate Soundness Test shall be 30. If the gravel, as obtained from the bank, is deficient in any of the requirements specified, such deficiency shall be corrected by screening, processing and/or blending with other acceptable materials before stockpiling.

B. Chemical Additive

The chemical additive shall be Calcium Chloride and may be either Type A -Solid Flake Calcium Chloride or Type B -Liquid Calcium Chloride Solution.

The Solid Flake Calcium Chloride shall meet the requirements of ASTM D98 and upon analysis shall show not less than form of dry, loose flakes, pellets or granules and shall be fine enough to feed through the common types of spreader used in road work.

Liquid Calcium Chloride shall be supplied as a mixed solution which upon analysis shall show not less than 33.0% CaCl<sub>2</sub>.

For purposes of these specifications 0.5 lbs./square yard of Type A, Solid Flake CaCl<sub>2</sub> is equivalent to 0.1 gal/square yard of Type B, Liquid CaCl<sub>2</sub> Solution.

**Construction Details**

A. Placement



After the base has been brought to grade and cross-section and thoroughly compacted, the stabilized gravel surface course shall be placed.

The calcium chloride shall be added by an approved mechanical distributor after the gravel has been spread and prior to the addition of water. Calcium chloride shall be added in the amount of one-half pound per square yard per inch of compacted thickness of course. Water shall then be added to the material in amounts as directed by the Town Highway Superintendent.

If so elected, the calcium chloride may be added to the gravel material as a water solution. In such case, the Town Highway Superintendent shall be furnished a detailed description in writing, of the proposed procedure of operations, and construction shall not be started until the Superintendent's approval is obtained.

#### B. Mixing

The water and the chemical additive shall be thoroughly and uniformly incorporated with the gravel for the full depth of the course, by mixing with an approved power-driven rotary type mixing machine. Mixing shall continue until the material is of uniform composition. Mixing by blading, shoveling and/or scooping will not be permitted.

#### C. Compaction

When the in-place material is of uniform consistency and has a moisture-content within the limits for proper compaction, as determined by the Town Highway Superintendent, it shall be thoroughly compacted by the use of self-propelled pneumatic tired or vibratory compactor. During the compaction operation, light grading shall be done as required to maintain the surface of the course true to grade and cross-section. The finished surface of the stabilized gravel course shall be rolled in a float of free water with a smooth steel wheeled roller weighing not less than ten tons. In all cases, the material must be so thoroughly compacted that it will not displace under the roller.

### ARTICLE V - REGULATIONS

#### A. **NONCONFORMING STRUCTURES, MOBILE HOMES, LOTS AND USES:**

**1. (a)** Any Nonconforming Use may be continued. Any Nonconforming Use of a Building, Structure, or land existing at the time this Zoning Law is adopted, may be continued. A Nonconforming Use may not be enlarged or expanded; a Nonconforming Use may not be changed except to a conforming Use. Any Nonconforming Use that is discontinued or abandoned for more than two (2) years shall not thereafter be re-established.

**(b)** Any nonconforming Structure may be rebuilt to its existing size or shape if damaged or destroyed. Nothing shall prevent repairs or alterations to a nonconforming Structure when declared unsafe by a proper authority. A nonconforming Structure may not be enlarged.

**(c)** A nonconforming Front Yard Setback does not restrict additions to a structure that is a conforming Use as long as the location of the front of the addition equals or exceeds the existing Front Yard Setback.

**2** Notwithstanding any provision of this Zoning Law, owners and lessees of property within the Town of Canaan upon which Mobile Homes have been situated and established prior to date

of enactment of the first Canaan Zoning Law, shall have the same rights and retain such previous rights and prerequisites as any other Dwelling, including the right to substitute another Mobile Home in place of the one presently situated and established on said property, provided the new Mobile Home is not larger than the original in total square footage. When determining the square footage, added Structures or extensions shall not be considered in determining the square footage of the original. A mobile home shall be removed from its Lot if such use of such Mobile Home has been discontinued for one (1) year or more in any zoning district other than RA3.

**3** In any zoning district, notwithstanding limitations imposed by other provisions of this Zoning Law, a single unimproved Lot that is a Nonconforming Use due to size may be built upon subject to the following conditions:

**a)** Such a Lot must be in separate ownership and not contiguous with any other Lot in the same ownership. This provision allowing building on a nonconforming lot shall apply even though such Lot fails to meet the requirements for area or width, or both, which are applicable in the zoning district; provided, however, that the Setback and other requirements not involving area or width, shall conform to the regulations for the zoning district in which the Lot is located.

**b)** If two or more unimproved Lots or combinations of Lots or portions of Lots which are contiguous were in single ownership on the effective date of enactment of this Zoning Law, and if the individual Lots do not meet the requirement for a Lot Width and area as established by this Zoning Law, the Lots involved shall be considered to be combined as an individual parcel for the purpose of this Zoning Law.

**c)** No portion of any Lot shall be divided or sold if such division leaves remaining any Lot Width or area below the requirements stated in this Zoning Law, or results in the creation of any Lot not conforming to any requirements of this Zoning Law, unless each nonconforming subdivided Lot is purchased by the owners of adjoining properties to increase the size of said owners' properties.

**4** Where two zoning districts meet, a conforming Use in one district may not be accessed through another district where that Use is nonconforming unless said access is by public Roads.

## **B. USE REGULATIONS**

Any Use not listed in this Section B, as a Permitted or Special Permitted Use shall be considered a Prohibited Use.

No Structure shall be erected, enlarged, altered, or moved, and no Use shall be established or changed in the Town of Canaan unless a permit for such activity has been issued by the ZEO pursuant to the provisions set forth herein. The ZEO may require such information as, in his sole discretion, may be necessary to determine if the proposed Structure or Use is in accordance with the provisions of this Zoning Law.

P	Permitted Use
SP	Special Permitted Use
X	Prohibited Use

## **RESIDENTIAL**

## USES

	<b>RA-1</b>	<b>RA-2</b>	<b>RA-3</b>	<b>RA-4</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>
Dwelling, Accessory	P	P	P	P	SP	SP	SP
Dwelling, Multi-Family	X	X	X	X	X	SP	SP
Dwelling, Single Family	P	P	P	P	SP	SP	SP
Home Occupation in Accessory Building	SP	SP	SP	SP	SP	SP	SP
Home Occupation within Dwelling	P	P	P	P	P	P	P
Mobile Home (see definition of Farm)	X	X	P	X	X	X	X
Mobile Home Park	X	X	SP	X	X	X	X
<b>Solar Energy:</b>							
- Farms	X	X	X	X	X	X	X
- Small Commercial systems under 200kw	X	X	X	X	S	S	S
- Residential & small commercial system	S	S	SP	S	P	P	P
- Solar Energy ground equipment	P	P	SP	P	S	S	S
- Solar Energy structural equipment & building-integrated solar energy equipment	S	S	P	S	P	P	P
	P	P		P	S	S	S
	P	P		P	P	P	P

## GENERAL USES

	<b>RA-1</b>	<b>RA-2</b>	<b>RA-3</b>	<b>RA-4</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>
Burn Facility	X	X	X	X	X	X	X
Cemetery	SP	SP	SP	SP	X	X	X
Churches / Houses of Worship	SP	SP	SP	SP	SP	SP	SP
Dams	SP	SP	SP	SP	SP	SP	SP
Dumps	X	X	X	X	X	X	X
Fire, Ambulance and Emergency Service Station	P	P	P	P	P	P	P
Junkyard	X	X	X	X	X	X	X
	<b>RA-1</b>	<b>RA-2</b>	<b>RA-3</b>	<b>RA-4</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>

Parks and Playgrounds	SP	SP	SP	SP	SP	SP	X
Ponds, Flatland	P	P	P	P	P	P	P
Ponds, Other than Flatland	SP	SP	SP	SP	SP	SP	SP
Private Schools	SP	SP	SP	SP	SP	SP	SP
Public utility poles and lines to service	P	P	P	P	P	P	P
<b>Solar Energy:</b>							
- Farms	X	X	X	X	X	X	X
- Small Commercial systems under 200kw	X	X	X	X	SP	SP	SP
- Residential & small commercial system	S	SP	SP	SP	SP	SP	SP
- Solar Energy ground equipment	P	SP	SP	SP	SP	SP	SP
- Solar Energy structural equipment & building-integrated solar energy equipment	S P P	P	P	P	P	P	P

### ACCESSORY USES

	<b>RA-1</b>	<b>RA-2</b>	<b>RA-3</b>	<b>RA-4</b>	<b>C- 1</b>	<b>C- 2</b>	<b>C-3</b>
Building, Accessory	P	P	P	P	P	P	P
Driveway	P	P	P	P	P	P	P
Fences, subject to the Limitations set forth herein	P	P	P	P	P	P	P
Garages, Residential	P	P	P	P	P	P	P
Recreation Vehicle	P	P	P	P	P	P	P
Signs, subject to the limitations set forth herein	P	P	P	P	P	P	P

	RA-1	RA-2	RA-3	RA-4	C-1	C-2	C-3
<u>Solar Energy:</u>							
- Farms	X	X	X	X	X	X	X
- Small Commercial systems under 200kw	X	X	X	X	SP	SP	SP
- Residential & small commercial system	SP	SP	SP	SP	SP	SP	SP
- Solar Energy ground equipment	SP	SP	SP	SP	SP	SP	SP
- Solar Energy structural equipment & building-integrated solar energy equipment	P	P	P	P	P	P	P
Storage Building, Commercial	SP	SP	SP	SP	P	P	P
Storage Building, Residential	P	P	P	P	P	P	P
Storage Container	SP	SP	SP	SP	SP	SP	SP
Storage Container, Refuse							
Storage Container, Temporary	S	SP	SP	SP	SP	SP	SP
	P	SP	SP	SP	SP	SP	SP
Swimming Pool, Residential	P	P	P	P	P	P	P
Way	SP	SP	SP	SP	SP	SP	SP
WECS - Small	SP	SP	SP	SP	SP	SP	SP

**COMMERCIAL  
USES**

	RA-1	RA-2	RA-3	RA-4	C-1	C-2	C-3
Automotive Filling Station	X	X	X	X	X	SP	SP
Automotive Service Area	X	X	X	X	X	SP	SP
Automotive Sales Area	X	X	X	X	X	SP	SP
Automobile Wrecking	X	X	X	X	X	X	X
Bank	X	X	X	X	SP	SP	SP
Bed & Breakfast, less than three rooms	P	P	P	P	P	P	P
Bed and Breakfast, three or more rooms	SP	SP	SP	SP	SP	SP	SP

	RA-1	RA-2	RA-3	RA-4	C-1	C-2	C-3
Boat, Farm, and Garden Machinery Sales and Service Establishments (subject to the limitations set forth herein)	X	X	X	X	X	SP	SP
Child Day Care Center	SP	SP	SP	SP	SP	SP	SP
Commercial Storage or Warehousing, excluding Secondhand Lumber/ Material Yard	X	X	X	X	X	SP	SP
Crematorium	X	X	X	X	X	X	X
Family Day Care Home	P	P	P	P	P	P	P
Farm	P	P	P	P	P	P	P
Golf Course	X	SP	SP	SP	SP	X	X
Gravel Bank, Quarry, and Mine	X	SP	SP	SP	SP	SP	SP
Group Family Day Care Home	P	P	P	P	P	P	P
Hotel, Small, less than 16 Bedrooms	X	X	X	X	SP	SP	SP
Hotel, Large, 16 bedrooms or more	X	X	X	X	X	SP	SP
Insurance Office	X	X	X	X	SP	SP	SP
Job Printing	X	X	X	X	SP	SP	SP
Library, Museum and Art Gallery	SP	SP	SP	SP	SP	SP	SP
Light Manufacturing or other Light Industry utilizing adjacent rail facility	X	X	X	X	X	X	SP
Motel	X	X	X	X	X	SP	SP
Newspaper Printing	X	X	X	X	X	SP	SP
Parking Lot, Commercial	X	X	X	X	X	SP	SP
Personal Service Establishments such as, but not limited to Barbershops, Hairdressers, and Tailors	X	X	X	X	SP	SP	SP

	RA-1	RA-2	RA-3	RA-4	C-1	C-2	C-3
Professional, Business and Service Offices not otherwise Specified	X	X	X	X	SP	SP	SP
Ranch, Fur Bearing	X	SP	SP	SP	X	SP	X
Real Estate Office	X	X	X	X	SP	SP	SP
Recreation Vehicle, Sale and Service	X	X	X	X	X	SP	SP
Restaurant	X	X	X	X	SP	SP	SP
Retail Store	X	X	X	X	SP	SP	SP
Roadside Stand, Permanent	SP	SP	SP	SP	SP	SP	SP
Roadside Stand, Temporary	SP	SP	SP	SP	SP	SP	SP
Slaughter Facility	X	X	X	X	X	X	SP
<u>Solar Energy:</u>							
- Farms	X	X	X	X	X	X	X
- Small Commercial systems under 200kw	X	X	X	X	SP	SP	SP
- Residential & small commercial system	SP	SP	SP	SP	SP	SP	SP
- Solar Energy ground equipment	SP	SP	SP	SP	SP	SP	SP
- Solar Energy structural equipment & building-integrated solar energy equipment	P	P	P	P	P	P	P
Swimming Pool, Non-Residential	SP	SP	SP	SP	SP	SP	SP
Telecommunication Facility	SP	SP	SP	SP	SP	SP	SP
Theater or Assembly Hall	X	X	X	X	X	SP	SP
Transfer Station	X	X	X	X	X	X	SP
Trucking, Materials Transfer, Truck or Heavy Equipment Maintenance or Sales or Fabrication, including Fuel Depot and Services supporting Thruway activities	X	X	X	X	X	X	SP
Veterinarian Services	X	SP	SP	SP	SP	SP	SP

**C. ADDITIONAL REQUIREMENTS AND INFORMATION REGARDING USES**

1. Any Building or Structure hereafter erected, altered, or used for Single Family Dwelling purpose in any zoning district shall provide not less than 600 square feet of first floor finished living area for a one-story Dwelling and not less than 1,000 square feet for both floors of a two-story Dwelling (above the basement).
2. No Lot may contain more than one (1) Single-Family Dwelling nor more than one (1) Accessory Dwelling.
3. No Building Height shall exceed 35 feet.
4. In the General Business district (C-1), the Uses allowed in or on a Lot in such district may include Buildings and Structures of a total of not more than 4,000 square feet of enclosed building Area but all Uses may not exceed 20% of the Lot Area.
5. In the General Commercial district (C-2), the following regulations and restrictions are applicable:
  - a) The Uses allowed in or on a Lot in such district may include Buildings and Structures of a total of not more than 30,000 square feet of enclosed building Area but all Uses may not exceed 20% of the Lot Area. Boats, autos, new machinery, manufactured products and building materials may be stored and displayed within secured, landscaped, and buffered areas or open sheds which shall be part of the enclosed building Area.
  - b) Automotive Service Stations may have a maximum of four (4) operational used cars for sale. Junk cars (non-repairable) may not be stored and must be removed within thirty (30) days after arrival.
6. In the Light Industrial district (C-3), there are no limits to enclosed building Area or Lot Area. However, each Use is subject to Site Plan approval and the issuance of a Special Permit.
- 7.

USE DISTRICT	RA-1	RA-2	RA-3	RA-4	C-1	C-2	C-3
WECS – Maximum Height	40'	40'	40'	40'	40'	40'	40'

**D. DENSITY REQUIREMENTS**

The density requirements set forth herein do not apply to a Telecommunication Facility. The density requirements for a Telecommunication Facility are set forth in Article IX, subsection D.



	RA-1 Medium Density	RA-2 Rural Density	RA-3 Mobile Homes	RA-4 Agricultural Density	C-1 General Business	C-2 General Commercial	C-3 Light Industrial
Minimum Acreage per Use	2** 5	2** 5	2** 5	10	½ acre	2	2
Minimum Lot Width	200' 350'	200' 350'	200' 350'	350'	200'	200'	200'
Minimum Front Yard Setback	75' 75'	75' 75'	75' 75'	75'	100*	100*	100*
Minimum Side Yard Setback	25' 50'	25' 50'	25' 50'	50'	25*	25*	25*
Minimum Rear Yard Setback	25' 50'	25' 50'	25' 50'	50'	25*	25*	25*

**Notes:**

\* If Site Plan approval is required, the minimum Setbacks shall be determined by the Planning Board as part of the Site Plan approval process.

\*\* Two (2) acre zones shall extend to a depth of 450' from the centerline of a Road or Way. No building site outside of the 450' depth shall be considered to be within a two (2) acre district, but will instead be within a five (5) acre district. All Setbacks are measured from the centerline of the traveled/paved section of Road or Way.

**EXEMPT SETBACK CONDITIONS**

1. Fences: No Setback is required; however, no fence may encroach on any adjacent Lot. Any fence must be located outside the right of way area of any Road or Way and not closer than twenty-five (25) feet from the centerline of any Town or County right-of-way, street, or private way, or within 33 1/3 feet from the centerline of any State right-of-way or State Highway.

2. Temporary or Permanent Roadside Stands: Front Yard Setback requirements shall be determined by the Planning Board as part of the Site Plan approval process. All other Setback requirements must be met.

3. Wells and Septic Systems: No Setback is required, subject to provisions of Article V, subsection H.

4. Docks: No Setback is required but location and Structure are subject to any review and/or approval required by the New York State Department of Environmental Conservation.

5. Driveways: No Setback is required.

6. Roads and Ways: No Setback is required, but new Roads and Ways must be located so that there are no violations of setback requirements with respect to existing Structures and facilities.

**E. OFF-STREET PARKING**

1. Adequate off-street automobile parking or waiting/standing space shall be provided at the time of the erection of any Building or Structure, at the time any Building or Structure is enlarged or increased in capacity by adding Dwelling Units, guest rooms, seats or floor area or before conversion from one Use or occupancy to another where such space is required. Such spaces required shall not thereafter be reduced or encroached upon.
2. Off street parking for any commercial Use allowed in a residential district shall not exceed the immediate requirements of such Use.
3. No off-street parking shall be used or designed in a manner that will obstruct or interfere with the free use of any Road, Way or adjoining property.
4. A minimum number of off-street Automobile Parking Spaces shall be provided as listed below:

Bed & Breakfast,	1 for each sleeping room	1 for every two employees
Dwelling, Single Family	2 for each Dwelling Unit	
Home Occupation within Dwelling	1 per 200 square feet of customer or office floor area;	1 for each employee outside the household; 2 per dwelling unit
5. Except as provided in paragraph 4 above, the number of Automobile Parking Spaces or other waiting/standing or other vehicle parking spaces required for any Use shall be determined by the Planning Board as part of the Site Plan approval process.

**F. OFF-STREET LOADING**

Off-street loading which is spaced logically shall be required for all commercial and industrial Uses and shall be conveniently located for bulk pickups and deliveries, shall be scaled to delivery vehicles expected to be used, and shall be accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not included as off-street parking space.

**G. SIGN AND POSTER CONTROL**

1. **Criteria.** The Planning Board shall consider the following criteria in determining compliance with this section:
  - (a) Size, build, mass.
  - (b) Materials.
  - (c) Structural members.

- (d) Lighting and illumination.
- (e) Orientation.
- (f) General and specific locations.
- (g) Proximity to streets and intersections.
- (h) Design, including character of lettering, logos and contents.
- (i) Site and context.
- (j) Zoning district regulations.

## **2 Administration and Application**

(a) Application for a permit shall be made to the Planning Board, in writing, along with seven (7) copies, which shall contain the following information:

(i) Site plan showing the location of proposed sign(s), building(s) and lighting, as well as existing signs, buildings, lighting and any other proposed or existing exterior display areas in relation to property lines.

(ii) A sketch of the proposed sign, drawn to scale, showing sign dimensions, exact layouts, actual typefaces, lighting, and sign structure.

(iii) For signs proposed on existing buildings, photographs of buildings indicating proposed sign location.

(iv) For signs proposed on new buildings, elevation(s) of building indicating proposed sign location

(v) Photographs and dimensions for all existing signs on the site.

(vi) Name, address and telephone number of the applicant and property owner. If the applicant is not the property owner, then signed permission of the property owner to place the sign is also required.

## **3 Application fee, expiration and renewal**

(a) Permit fees shall be set and promulgated by the Town Board and may be modified by the Town Board as may be necessary to defray the expenses of administration, compliance and enforcement of the provisions hereof.

(b) If the sign authorized under any such permit has not been completed within one (1) year from the date of issuance thereof, such permit shall become null and void, but may be renewed within 30 days from the expiration thereof for an additional one (1) year period, upon application to the Planning Board, for good cause shown and upon payment of an additional fee as set by the Town Board.

## **4 Nonconforming signs**

On-premises signs legally erected or approved before the effective date of this section which do not conform to the provisions of this section may continue to be maintained; provided, however, that no such sign shall be permitted if it is, after the adoption of this section, enlarged, reworded or otherwise modified (other than signs with automatic or manually changing messages such as theater or cinema marquees), except to conform to the requirements of this section.

## **5 Rules for Measuring Signs**

(a) Back-to-back signs, identical signs arranged back- to-back or diverging by less than thirty (30) degrees from a common line or point may be counted as one (1) sign.

(b) The area of a sign consisting of an insignia or other device, but without background,

shall be calculated as the smallest polygon or circle possible enclosing the insignia.

## **6. Illumination**

Lights for the illumination of signs shall be located and/or shielded as to not interfere with the enjoyment of a residential Use or detract from the safety of motorists. Lighting on all commercial signs shall be down force, shielded or otherwise designed to prevent light from going into the sky above the sign. Illumination of signs lit from below shall stop at the top of the sign. This shall not require that the edge of the beam of any artificial light source shall not cross any property line of the Lot on which the sign is situated. For this purpose, the edge of the beam is defined as the surface at which the intensity of the light does not exceed ten (10) percent of the luminescence of the center of the beam.

## **7. Construction signs**

A temporary construction sign not exceeding ten (10) square feet is permitted during the active construction process. Such sign shall be removed promptly when the construction process is completed.

## **8. Development signs**

A temporary development sign not exceeding thirty-two (32) square feet is permitted while Lots in the development are offered for sale. Such sign shall be removed when 75% of the Lots are sold.

## **9. Commercial Signage Overlay Zone (CSOZ)**

- (a) The Commercial Signage Overlay Zone shall begin at the junction of Edwards Park Road South and NYS Route 22, and thence shall proceed in a southerly direction following State Route 22 to the termination point of New York State Route 22 and the Canaan Town Line; the depth of the District boundary shall be measured from the centerline of State Route 22 and extend to a depth of 1,500 feet from either side of the centerline of State Route 22.
- (b) In addition to any other requirements set forth in this section, applicants seeking to place a sign in the Commercial Signage Overlay Zone shall satisfy the following additional requirements:
  - (i) approval from the New York State Thruway Authority for any sign to be constructed within 660 feet of the New York State Thruway or in any other location which falls under the jurisdiction of the New York State Thruway Authority

## **10. Business signs**

Exterior business signs located in any zoning district shall be permitted in connection with any authorized commercial activity located on the same premises and meeting the following requirements:

- (a) A maximum of two freestanding signs and three signs attached to a Building per lot. Freestanding signs may be double faced. Signs attached to a Building may be double faced.
- (b) The primary purpose of the sign shall be for brand identification and may state only the owner, trade names, trademarks, products sold and/or the

business activity conducted.

(c) The height of an exterior business sign or product sign or logo shall not exceed that permitted in the commercial sign footage allowance table below. Height is measured from the elevation of the abutting Road or Way, or of the finished grade at installation, whichever is higher.

(d) All approved or authorized commercial premises retain the right of signage hereunder, but also require Planning Board Site Plan review and approval for the signage.

(e) If any commercial Building with more than one operating business uses a cluster sign, the maximum allowance for each business on such cluster building sign shall increase by five (5) square feet per business over the square footage otherwise allowed for the zoning district or overlay zone. Such cluster signs shall be considered as one of the signs permitted for each business. Cluster signs can be used on either buildings or freestanding signs.

(f) The square footage per commercial sign shall not exceed the amount set forth on the allowance table below:

**Business Signs**

	<b>Area (square feet)</b>	<b>Height (feet)</b>
<b>C-1</b>	20	15
<b>C-2</b>	25	20
<b>C-3</b>	40	25
<b>CSOZ</b>	120	50

**Products and Logos**

<b>Area (square feet)</b>	<b>Height (feet)</b>
30	15
40	20
50	25
120	50

**11. Home Occupation signs or other commercial Use in a residential district:**

A Home Occupation or other commercial Use in a residential district is permitted one (1) sign not to exceed ten (10) square feet. The purpose of the sign shall be for identification and not for advertising and may state only the owner and/or trade name.

**12. Exempt Signs (not requiring any permit):**

The following signs shall not require a permit and shall not be counted against the allowable signage for a particular site:

(a) Historical markers, tablets and statues, memorial signs and plaques, names of buildings and dates of erection when cut into any masonry surface or when constructed of metal, emblems installed by governmental agencies, religious or non-profit organizations, not to exceed twelve (12) square feet.

(b) Government flags, insignia, fire department signs, municipal signs and/or signs identifying the Town of Canaan or any political agency thereof.

- (c) On-premise directional signs for the convenience of the general public, identifying public parking areas, handicapped parking, fire zones, entrances and exits and similar signs, internally illuminated or non-illuminated. Business names and personal names shall be allowed, excluding advertising messages.
- (d) Non-illuminating warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.
- (e) Number and name plates identifying residents or residences mounted on house, apartment or mailbox.
- (f) Lawn signs identifying residents, not exceeding two (2) square feet per face. Such signs are to be non-illuminated except by a light that is an integral part of a lamppost if used as a support, with no advertising message thereon.
- (g) Private owner merchandise sale signs for garage sales and auctions, not exceeding eight (8) square feet, for a period not exceeding seven (7) days.
- (h) Temporary non-illuminated "for sale" or "for rent" real estate signs and signs of similar nature concerning the premises upon which the sign is located. In a residential zoning district, one sign not exceeding eight (8) square feet per face. In a commercial district, one sign not exceeding thirty-two (32) square feet. All such signs shall be removed within three (3) days after the sale, lease, or rental of the premises.
- (i) One temporary sign for a Roadside Stand selling agricultural produce, providing that such sign not exceed sixteen (16) square feet per face of a double face. The sign shall be removed at the end of the selling season.
- (j) A sign identifying a farm may not exceed twenty (20) square feet per face of a double face.
- (k) At Automotive Service Stations and other commercial sites integral graphics, logos or attached price signs on gasoline pumps, fuel canopies and/or free-standing signs, provided that each such individual product graphic, logo and/or pricing sign does not exceed the square footage set forth in the commercial sign footage allowance table above.
- (l) All other Temporary signs not to exceed six (6) square feet in the residential districts or twelve (12) square feet in the commercial districts may not be erected more than forty-five (45) days before and must be removed within seven (7) days after the event.
- (m) An authorized new business or a business in a new location awaiting installation of a permanent sign or the sign Site Plan approval may utilize a temporary sign. Such a temporary sign must meet all the standards of the Zoning Law.

### **13. Sign Prohibitions**

- (a) No sign shall impair visibility for vehicular or pedestrian traffic.
- (b) No sign shall be illuminated by or contain intermittent or moving lights, except signs that show time, temperature or pricing information.
- (c) No sign or sign supports shall be placed upon the roof of any Building.
- (d) All signs and any part thereof shall be a minimum of ten (10) feet from the edge of the traveled surface of the Road or Way it abuts.

#### **14 Non-conforming Signs**

A non-conforming sign shall not be enlarged or modified nor shall it be replaced by another non-conforming sign.

#### **15 Public Hearing**

- (a) The Planning Board may conduct a public hearing within 62 days from the date the application is deemed complete. Where a public hearing is scheduled, public notice of the hearing shall be printed in the newspaper of general circulation in the Town at least 10 days prior to the date of the hearing. The Planning Board shall grant, deny, or grant with conditions the application within 62 days after the hearing. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
- (b) The applicant shall notify all property owners within a 1,500-foot radius of the location of the proposed signage of the date and time of the Public Hearing by Certified Mail and shall provide the Planning Board with receipts evidencing proof of mailing.

#### **16 Variances**

- (a) Any person wishing to construct, install or erect a sign other than as permitted herein shall be entitled to make application for an area variance to the Board of Zoning Appeals for modifications of the provisions herein.
- (b) Such applicants shall comply with all procedural requirements of the Board.

#### **17 Waivers**

Where the Zoning Board of Appeals finds that, due to the special circumstances of a particular application, the provision of certain requirements is not in the interest of the public health, safety and general welfare or is inappropriate, it may waive such requirements.

#### **18 Maintenance:**

The ZEO shall require proper maintenance of all signs and such signs, together with their supports, shall be kept in good repair and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings. The display surfaces and structures shall be kept neatly maintained at all times.

## **19. Removal of signs**

(a) Any sign, existing on or after the effective date of this section, which no longer advertises an existing business conducted or product sold on the premises upon which the sign is located shall be removed within a twelve-month period.

(b) The ZEO may cause any sign or decoration that is a source of immediate peril to persons or property to be removed immediately and without notice.

## **20. Other Jurisdictions:**

Sign regulations set forth herein shall not supersede or take the place of any other Federal, State, County, or local government requirements for signs, but shall be construed to be in addition thereto. Should these sign regulations require a stricter standard than any such other requirements, then the provisions of these sign regulations shall apply. Should any such other requirements require or impose a stricter standard than these sign regulations, then such other requirements shall apply.

## **21. Reimbursement of Expenses**

(a) In addition to any fees required by an applicant appearing before the Planning Board in connection with a request for a Sign Permit or any fees required of an applicant appearing before the Planning Board or ZBA in connection with a request for Site Plan review (said fees to be set by the Town Board pursuant to the Town of Canaan fee schedule) the applicant shall also be required to pay all expenses incurred by the ZBA or Planning Board in connection with the processing of such application including any reasonable fees and expenses incurred by either Board for the retention of a planner, engineer, attorney, architect, or other expert as provided for in paragraph (b) herein.

(b) In connection with any application before the Planning Board or ZBA, such Boards are hereby authorized and empowered to retain a planner, engineer, attorney, architect, or other deemed necessary by the ZBA or Planning Board to review and evaluate an application under this section. The viewing Board may require related fees and expenses to be paid in advance and may suspend review of an application until such payment is made.

## **H. SEPTIC SYSTEMS**

All septic or other waste elimination or disposal systems shall be designed and located so as not to be a source or a potential source of pollution for any body or source of water above or below ground, and such systems shall be built to the standards of, and shall require approval of design and installation by, the Columbia County Health Department. The owner of any failed system shall be liable for all remediation costs, including any cleanup costs with respect to any damaged stream, pond, underground



water supply, or other property.

## **I. WIND ENERGY CONVERSION SYSTEMS (WECS)**

### **A. APPLICABILITY**

1. The requirements of this section shall apply to all Small WECS proposed, operated, modified or constructed after the effective date of this local law.

a. No modification or alteration to an existing Small WECS shall be allowed without full compliance with this law.

b. Any small WECS not having a valid building permit, existing on the effective date of this local law (see above for date) shall be removed no later than six (6) months after said effective date, unless a special use permit for said Small WECS is obtained.

### **B. PERMITS**

1. No WECS, other than a Small WECS, shall be constructed, reconstructed, modified, or operated in the Town of Canaan. No Wind Measurement Tower that is in conjunction with a Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Canaan, except as part of an application for a Small WECS.

2. No Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Canaan unless in conformity with these regulations and after the issuance of a special use permit pursuant to Article IX – General Regulations, Special Permit Uses of the Town of Canaan Zoning Law.

3. Exemptions These regulations shall apply to all areas of the Town of Canaan, subject to the following:

a. No special use permit or other approval shall be required under this Zoning law for the operation of one (1) Small WECS utilized solely for Farm operations in a State or county agricultural district, as long as the Wind Tower and Wind Measurement Tower is set back at least a distance equal to 150 percent of the total height of the Wind Tower and Wind Measurement Tower from all buildings, overhead utility lines, deeded rights of way, public roads, and property boundary lines.

b. The proposed construction of an additional Small WECS upon a parcel to be utilized solely for Farm operations in a state or county agricultural district shall require the submission of an application to the Zoning Board of Appeals for a special use permit in accordance with the provisions of the Zoning Law and the Agriculture and Markets Law of the State of New York.

c. Prior to construction of a Small WECS under this exemption, the property owner or a designated agent shall submit a sketch plan and building permit application to the Zoning Board of Appeals to demonstrate the location of boundaries, dimensions of the parcel of land involved, existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structures on or immediately adjacent to the site, the proposed location of any Small WECS, and compliance with the setback requirements.

d. An applicant applying for exemption under this section shall be further required to furnish the Zoning Board of Appeals with a description of the project and a narrative of the intended use of the proposed Small WECS, including any anticipated changes to the existing topography and natural features of the parcel to accommodate the changes, a list of safety measure to prevent unauthorized climbing on

the tower, prescribed requirements for the automatic braking, governing, or feathering of the system to prevent uncontrolled rotation of the rotor blades and turbine components, and any other information requested by the Zoning Board of Appeals.

4. Notwithstanding the requirements of this Section, replacement in kind or modification of a permitted Small WECS may occur without Zoning Board approval when:

- a. There will be no increase in total height.
- b. No change in the location of the Small WECS.
- c. No additional lighting or change in facility color.
- d. No increase in noise produced by the Small WECS.

### C. APPLICABILITY

Applications for a Small WECS special use permit shall include:

1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent, as well as an original notarized signature of the applicant authorizing the agent to represent the applicant is required.

2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and is authorizing the submission of the application.

3. Address of the proposed tower site, including tax map section, block and lot number.

4. Detailed drawings showing that the proposed total height does not exceed the height allowed and/or that recommended by the manufacture or distributor of the system.

5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code (NEC).

6. A plot plan showing property lines, location, type and dimensions of all existing and proposed major structures on the property, as well as adjacent property lines, deeded rights of way, easements and overhead utility lines.

7. The location on a plot plan of the proposed Small WECS, including any guy wires, anchors, foundations, and any equipment associated with the Small WECS.

8. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

9. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid. In the event the applicant wishes to store the energy produced rather than send it to the electricity grid, the applicant shall provide the details of said storage system.

10. A visual analysis of the Small WECS as installed, which includes a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. Photographic simulations requirements are defined in Appendix #1.

11. A copy of the applicant's homeowner's insurance policy confirming liability coverage for the subject WECS, listing the WECS as a separate peril.

12. Any other evidence or information as reasonably required by the ZBA to review the application.

13. The application for a Small WECS Special Use Permit shall be reviewed by the ZBA pursuant process and procedure set forth in Article IX of the Town of Canaan Zoning Code.

#### D. DEVELOPMENT STANDARDS

All Small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Zoning Law that are not in conflict with the requirements contained in this section.

##### 1. Density restraints

a. Minimum 5 acre lot size for horizontal axis WECS. Multiple vertical axis WECS are permitted provided the applicant demonstrate the need for additional electricity production as set forth herein.

b. Rooftop installations are permitted provided they comply with all current zoning and building code.

c. Only one (1) Small WECS per legal lot shall be allowed, unless it can be demonstrated that an additional Small WECS is necessary to meet the on-site consumption of utility provided electricity.

##### 2. Zones C1, C2, C3

Same as Zone R1, R2, R3, R4

##### 3. Use of Electricity Generated

Maximum turbine output will not be limited to a kilowatt amount. Instead, an applicant shall:

a. submit proof of the energy consumption for the preceding year for the property in which the placement of a Small WECS is being considered;

b. the applicant's engineer for the Small WECS shall certify to the information on the total potential output of the Small WECS;

c. the applicant shall provide a ten (10) year projection of the anticipated electrical needs for the property in which the placement of a Small WECS is being considered which shall be supported by written documentation;

d. in no case shall a Small WECS be constructed which would exceed one hundred and ten percent (110%) of the anticipated demand for the property.

##### 4. Height

a. The maximum total Extended Height of a WECS shall be no greater than 40 feet.

b. For horizontal axis systems the total Extended Height shall mean the height above adjacent grade to a blade tip at its highest point of travel and including any other portion of the Wind Energy Conversion System. For vertical axis systems the total extend height shall be measured from the adjacent grade to the top to the vertical structure.

5. Color: WECS shall be a non-obtrusive non-reflecting gray color. Galvanized steel or metal is acceptable for the support structures. The painting or coating shall be kept in good repair for the life of the wind turbine.

6. WECS applicants should sight their system in a way that minimizes the effect of the system on neighboring properties.

7. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration (FAA). The applicant shall be permitted a down lighting fixture, for maintenance, on a fixed switch to be located no higher than 8 feet from ground level.

8. All on-site electrical wires associated with the system shall be installed underground or on previously existing appropriate structures except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Zoning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

9. Electromagnetic Interference: No wind energy conversion system shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No wind energy conversion system shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.

10. Signs: WECS shall have one sign, not to exceed two (2) square feet posted at the base of the tower or fence and said sign shall contain the following information:

- a. Warning high voltage
- b. Manufacturer's name
- c. Emergency phone number

11. Wind Energy Conversion System shall be constructed to provide one (1) of the following means of access control, or other appropriate method of access:

- a. Tower climbing apparatus located no closer than twelve (12) feet from the ground.
- b. A locked anti-climb device installed on the tower.
- c. A locked, protective fence at least six (6) feet in height that encloses the tower. If the WECS is fenced nothing is to be stored within the fenced area that is not directly involved in the operation of the WECS.

12. Anchor points for any guy wires for a system tower shall be not less than twenty-five (25) feet from the property line or highway right-of-way and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence

six (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground. Monopole and freestanding towers are preferred and towers requiring guy wires are discouraged. Towers with guy wires may be considered depending on their compatibility with the neighborhood and/or the size of the property involved.

13. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the preexisting natural condition after completion of installation. Clearing of natural vegetation shall be limited to that which is practical for the construction, operation and maintenance of the WECS and is otherwise prescribed by applicable laws, regulations, and ordinances.

14. Rotor Safety: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. An external, manual shut-off switch shall be included with the installation. The minimum distance between the ground and any protruding blades utilized on a residential WECS shall be 30 feet as measured at the lowest point of the arc of the blades. If this can't be achieved a locked, protective fence at least six (6) feet in height that encloses the tower must be installed.

15. All Small WECS structures shall be designed and constructed to be in compliance with the pertinent provisions of the Building Code of New York State and National Electric Code. All WECS shall bear the stamp of a design professional licensed to practice in the State of New York.

a. New residential wind turbines must be approved under a small wind certification program recognized by the American Wind Energy Association (AWEA) or the U.S. Department of Energy.

b. Non-certified, refurbished or re-engineered turbines must submit a description of the safety features of the turbine prepared by a registered mechanical engineer.

c. The safety of structural components of reconstructed or reconditioned WECS, and the compatibility of the rotors of reconstructed or reconditioned WECS, shall be certified by a Design Professional licensed by the State of New York. The safety of electrical components of reconstructed or reconditioned WECS shall be certified by a Design Professional licensed by the State of New York. The safety of all modifications to any WECS shall be certified by a Design Professional licensed by the State of New York. Certification of safety is required before any Building Permit for a WECS is issued for modifications made prior to installation.

d. Certification of the safety of modifications made after the WECS has been installed shall also be subject to the requirements of a Building Permit. Failure to have the safety of any modifications certified either prior to installation, or prior to use of a system modified after installation, shall result in the revocation of the Building Permit and any discretionary approvals granted for the WECS until such certification has been obtained and provided to the Town.

16. Setback Requirements: A Small WECS shall not be located closer to a property line than at least a distance equal to the one and one half times the total height of the WECS.

17. Shadow Flicker: A shadow flicker model shall demonstrate that shadow flicker will not fall on, or in, any existing residential structure. Shadow flicker expected to fall on a roadway or a portion of a residentially zoned parcel may be acceptable if the flicker does not exceed thirty (30) hours per year; and the flicker will fall more than one hundred feet (100') from an existing residence; or the traffic volumes are less than five hundred (500) vehicles (per year) on the roadway. The shadow flicker model (below) shall:

a. Map and describe within a one thousand foot (1,000') radius of the proposed WECS, the topography, any existing residences, locations of other structures, wind speeds and directions, existing vegetation and roadways. The model shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind directions and speed;

b. Calculate the locations of shadow flicker caused by the proposed project and the expected durations of the flicker at these locations, calculate the total number of hours per year of flicker at all locations;

c. Identify problem areas where shadow flicker will interfere with existing residences and roadways and describe propose mitigation measures, including, but not limited to, a change in siting of the wind energy conversion system, a change in the operation of the wind energy conversion system, or grading or landscaping mitigation measures.

18. Noise: No WECS or combination of WECS's on a single parcel shall create noise deemed to create a nuisance, disturbance or unreasonable interference with an adjoining landowner's use and enjoyment of their parcel or that exceeds a maximum of 50 decibels (dBA) at any property line above the ambient noise level while running at any wind speed within its operating range. Measurement of sound levels shall not be adjusted for, or averaged with, non-operating periods.

#### E. MAINTENANCE STANDARDS

1. Maintenance and Inspections: WECS are to be kept in good working order and maintenance shall include the physical appearance of the device. During the term of the WECS permit, the applicant shall grant the Town a license to enter upon the applicant's real property for the purpose of conducting periodic inspections of the WECS and associated equipment and structures. Pursuant to said license, the town reserves the right to inspect the WECS at any time to ensure that it is in compliance.

2. Waste: All solid wastes, whether generated from supplies, equipment parts, packaging, operation, or maintenance of the WECS, including old parts and equipment, shall be removed from the site immediately and disposed of in an appropriate manner. All hazardous waste generated by the operation and maintenance of the WECS, including but not limited to lubricating materials, shall be removed from the site immediately and disposed of in a manner consistent with all local, state, and federal rules and regulations. If the WECS is fenced, nothing is to be stored within the fenced area that is not directly involved in the operation of the WECS.

3. Abandonment of Use: Proof of the operation of a Small WECS shall be provided to the Building Inspector upon the completion of initial installation and on a yearly basis upon the renewal of the special use permit. A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be repaired or dismantled/decommissioned and removed from the property within six (6) additional months at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any special use permit shall constitute grounds for the revocation of the permit by the Town of Canaan.

Decommissioning shall include:

Removal of all structures (including transmission equipment and fencing) and debris to a depth of four (4) feet, restoration of the soil, and restoration of vegetation within six (6) months of the end of project life or facility abandonment.

4. Lien: To protect the Town of Canaan, a condition of the Special Permit will require that the owner of the WECS acknowledge and agree that a lien may be placed upon the property, if the WECS has not been maintained, abandoned and/or decommissioned in accordance with all applicable rules, regulations

and laws.

In the event the applicant fails to dismantle and remove the Small WECS and the Town commences legal action to enforce the above paragraph, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.

If all reasonable attorney's fees and court costs are not paid by the applicant, the same may be added to the tax bill for the property as a special assessment jurisdiction upon thirty (30) days written notice to the offending party.

#### **F. FURTHER INFORMATION REGARDING WIND ENERGY CONVERSION SYSTEMS**

1. Photo simulations, visualizations or view representations: The applicant shall submit photo simulations, visualizations, or view representations ("photo simulations"). After initial application, the ZBA shall select between three and six sight-lines for pre and post-construction photo simulations. Sites for the photo simulations shall be selected from populated structures, areas, or public ways within a 3000 foot radius of the wind facility. Photo simulations shall have the following characteristics:

- a. The photo simulation must show the tower superimposed on the 8.5x11 photograph with the tower height established.
- b. Photo simulations shall be in color and shall include actual pre-construction photographs, and accurate post-construction simulations of the height and breadth of the proposed WECS.
- c. All photo simulations must include existing, or proposed, buildings or tree coverage.
- d. Each photo simulation shall include description of the technical procedures followed in producing the photo visualization (distances, directions aimed, camera lens, etc.)

2. Photo simulations by others: For the purpose of allowing the Board to compare any photo simulation, submitted by a party other than the applicant, the information shall be submitted more than five business days in advance of the initial day of any hearing on the application for a special permit, and include the same elements required above.

- a. Monopole and freestanding towers are preferred and towers requiring guy wires are discouraged. Towers with guy wires may be considered depending on their compatibility with the neighborhood and/or the size of the property involved.
- b. WECS construction is limited to developed properties or a contiguous undeveloped parcel of the same owner.

#### **J. SOLAR ENERGY EQUIPMENT**

##### **A. Applicability**

1. The requirements of this section shall apply to all solar energy ground equipment, solar energy structural equipment and building-integrated solar energy equipment proposed, modified or constructed after the effective date of this local law. Solar energy ground equipment and/or solar energy structural equipment and/or building-integrated solar energy equipment existing as of the effective date of this local law shall be exempt from these regulations, however, future modifications to solar energy ground equipment and/or solar energy structural equipment which require the issuance of a building permit after the effective date of this local law shall be required to comply with this local law.

##### **B. Application**

An application for a building permit for solar energy structural equipment and/or building-integrated solar energy equipment shall include all of the requirements set forth in subsection B



(1)-(3) and subsection C (3) with regard to electricity usage. An application for a special use permit for solar energy ground equipment shall meet all the requirements set forth in Article IX of the Town of Canaan Zoning Code, and shall further include all of the following requirements set forth in this subsection B (1)-(4) and subsection C:

1. Certification from a New York State Licensed Engineer that: (a) the solar energy ground equipment and/or solar energy structural equipment is sufficiently installed and anchored to prevent flotation, collapse or lateral movement; and (b) the design and installation of the solar energy ground equipment and/or solar energy structural equipment meets an and all applicable provisions of New York State law, regulations and codes including, but not limited to: the Building Code; Residential Code; National Electric Code; Fire Code; Plumbing Code; Mechanical Code; Fuel Gas Code; Energy Conservation Construction Code; and Property Maintenance Code.

2. Applicant shall demonstrate that all proposed construction activities related to the solar energy equipment meet all applicable provisions of the New York State law, regulations and codes including, but not limited to: The Building Code; Residential Code; National Electric Code; Fire Code; Plumbing Code; Mechanical Code; Fuel Gas Code; Energy Conservation Construction Code; and Property Maintenance Code.

3. Applicant shall submit a site plan application in compliance with Article VII of the Zoning Law (Site Plan Review) to the Canaan Planning Board, which shall include a Site Plan setting forth the dimensions of all solar energy equipment, a scaled plot plan showing the location of any existing structures and the location of the solar energy equipment to be constructed, as well as such other information as the Planning Board deem relevant to its review of the application.

4. The Planning Board may, in its discretion, waive or simplify any of the requirements set forth in this section or in the provisions relating to Site Plan Approval set forth in Article VII, section B (3) and (4) that the Board deems are unnecessary or inappropriate for its review of an application.

5. The applicant shall provide such other reasonable information as may be requested by the Zoning Board of Appeals in review of the special use permit application.

C. Development Standards: All solar energy equipment shall comply with the following standards. Additionally, solar energy equipment shall also comply with all the requirements established by other sections of this Zoning Law that are not in conflict with the requirements contained in this section.

1. The minimum area lot size for residential ground-based solar equipment shall be three (3) acres.

2. The erection of ground-based solar equipment shall be on the same tax map parcel as the residency/structure that said equipment is intended to service.

3. The boundary line setbacks for ground-based solar equipment shall be as follows: a) minimum side yard and rear yard setback shall be 50 feet; b) front yard erection of ground-based solar equipment shall be permitted only in those instances where the solar equipment shall not be visible from a public road.

4. Applicant shall demonstrate that all solar energy ground equipment meets all other density requirements.

5. Solar energy equipment shall be located in a manner so as to avoid reflected glare, blockage of the view shed of neighboring parcels and shall, when deemed necessary during site plan review, include appropriate screening from adjoining properties and roads.

6. Any support structures designed and/or constructed to position, hold and/or otherwise support any ground-mounted solar energy equipment shall not cause the top edge of the solar panel to be higher than twenty (20) feet off the ground.

7. Use of Electricity Generated:

(a) Electricity generated from a solar panel system located on a roof, building or any other legally permitted building or structure for the purpose of producing electricity is restricted to onsite consumption of the energy produced for the R and RA Zoning districts, and shall be limited in the C1, C2 or C3 zoning districts as set forth in 7(b) herein.;

(b) Maximum kilowatt output ( i ) shall be limited to a maximum of 25 kw for residential and small commercial applications; non-residential applications located in the R and RA zoning districts; (ii) non-residential applications for commercial businesses located in the C1, C2, or C3 zoning districts shall not exceed 200kw of total output and must be roof structure mounted.

(c) The applicant shall further provide a ten (10) year projection of the anticipated electrical needs for the property in which the placement of solar energy equipment is being considered, which shall be supported by written documentation.

(d) The applicant's engineer shall certify the total annual potential kilowatt output of the proposed solar energy equipment;

(e) In no case shall a solar energy residential system equipment be constructed, which would exceed 110% of the anticipated electricity demand for the property.

(f) If solar energy equipment ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove all such equipment by no later than ninety (90) days after the end of the twelve (12) month period. In the event the property owner fails to remove the equipment, the Town of Canaan may institute a proceeding to have the equipment removed and charge the costs of said removal, including reasonable attorneys' fees, as a lien against the property on the property owner's Town tax bill.

(g) Any construction activities shall be in compliance with any and all applicable provisions of New York State laws, regulations and codes in relation to the design and construction of the solar energy equipment, including, but not limited to: The Building Code; Residential Code; National Electric Code; Fire Code; Plumbing Code; Mechanical Code; Fuel Gas Code; Energy Conservation Construction Code; and Property Maintenance Code.

D. Enforcement; Penalties and Remedies for Violations

1. The Town of Canaan Code Enforcement Officer shall enforce this section.

2. Any person owning, controlling or managing any building, structure or land who shall

undertake to construct and/or operate solar energy equipment in violation of this section or in noncompliance with the terms and conditions of any permit issued pursuant to this section or any order of the enforcement officer, and any person who shall assist in so doing, shall be charged with an offense and subject to a fine of not more than three hundred fifty (\$350) dollars or to imprisonment for a period of not more than six (6) months, or subject to both such fine and imprisonment. Every such person shall be deemed subject to charge of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of three hundred fifty (\$350) dollars for each violation and each week said violation continues shall be deemed a separate violation.

3. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

4. The penalties established by this section may be changed by the Town Board by resolution adopted after a duly noticed public hearing.

## **ARTICLE VI- SUPPLEMENTAL USE REGULATIONS**

The following Use regulations shall apply to all zoning districts:

1. Any Use otherwise permitted herein shall not be allowed if it is or results in a Nuisance.
2. In the case of Farms, the provisions of the Columbia County Right to Farm Law shall take precedence over any inconsistent provisions of this Zoning Law.
3. The following Use standards are made a part of this Zoning Law:
  - a. Noise: No noise that is objectionable due to volume, intermittence, beat; frequency or shrillness shall be perceptible outside the Lot where it originates.
  - b. Vibration: No vibration shall be permitted which is detectable without instruments beyond any property line of the Use.
  - c. Smoke: No emission shall be permitted of visible smoke having a six (6) minute average opacity of twenty percent (20%) or greater from any emission point. For the purposes of this regulation, opacity shall mean the degree to which emissions, other than water are detectable without instruments beyond any property line of the Use.
  - d. Dust: No emission of dust shall be allowed which travels beyond the property lines of the Use or which constitutes a health hazard or a violation of any environmental laws, rules or regulations of the State or Federal government.
  - e. Odors: No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be detectable beyond any property line of the Lot from which it is emitted.
  - f. Heat: No emission of heat shall be allowed which travels beyond any property lines

of the Use or which constitutes a health hazard or a violation of any environmental laws, rules or regulations of the State or Federal government.

- g. Light: No direct or sky-reflected light shall be allowed whether from lights or from high temperature processes such as combustion or welding, or otherwise, to be visible beyond any property line of the Lot from which it is emitted shall be permitted.
- h. Traffic: Excessive traffic or traffic that significantly alters the existing traffic pattern and imposes a significant burden upon the existing roadways servicing a site shall not be allowed.

i. Driveways and Ways: No Building Permit shall be issued herein nor any subdivision approved, unless and until the owner has received approval in writing from the applicable State or local municipal authority for the entrance location to the subject premises. The Town Superintendent of Highways shall review and approve the proposed entrance location to any Town Road and determine that such proposed location will provide adequate access to the subject premises and is not excessively steep, and that the installation of any culverts and other required improvements shall be made in order to provide for required effective drainage. In making such review, the Highway Superintendent may consult and receive input from the Town Engineer, if appropriate. The Town may require an easement, if necessary, to permit the Town to properly maintain the areas adjacent to the Road. However, nothing set forth herein shall be construed to impose any liability upon the Highway Superintendent or the Town of Canaan with regard to the location of any such entranceways. See also definition of Driveway herein and Local Law Number One of 1988, which establishes standards for subdivision Ways.

## **ARTICLE VII –PLANNING BOARD**

### **A. ESTABLISHMENT AND DUTIES**

A Planning Board is hereby established to review and take action on Site Plan applications per the requirements of the Town of Canaan Zoning Law, Subdivision and Boundary Line Adjustment applications per the requirements of the Land Subdivision Regulations of the Town of Canaan and applications for Telecommunication Facility Special Permits under Article IX, subsection D of the Town of Canaan Zoning Law. The Planning Board shall consist of 7 (seven) members, appointed by the Town Board and shall have the duties, rights, powers and functions conferred upon it by Article 16 of the NYS Town Law including but not limited to the following:

The Planning Board shall from time to time review the Town Zoning Law, the Land Subdivision Regulations Town of Canaan Road Specifications to make recommendations to the Town Board for changes therein based upon such review and shall also perform such other duties as the Town Board shall authorize.

The Planning Board shall also be authorized to prepare a proposed Comprehensive Plan in accordance with section 272-a of Article 16 of New York State TownLaw.

The Planning Board shall be subject to the following provisions:

1. **Meetings:** Meetings of the Planning Board shall be held monthly and at such other times as

shall be called by the Chairmen or on the written request of five (5) Board members. All meetings of the Board shall be open to the public to the extent provided in Article 7 of the Public Officer's Law. The Clerk of the Planning Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote indicating such fact, and shall also keep records of its examinations and other official actions.

- 2. Records:** All decisions of the Board shall be in writing, and a copy of each decision shall be sent to the applicant and to the ZEO. Every requirement, decision, and determination of the Board shall be filed in the Office of the Town Clerk, and shall be a public record. Each decision of the Board shall set forth the reason for the decision.
- 3. Public Hearings and Determination:** The Planning Board shall fix a reasonable time for any proposed or required hearing(s) and give due notice thereof to the applicants. It shall publish notice of any hearing at least once in the official newspaper of the Town at least five (5) days before the date of the hearing. At the hearing, any party may appear in person or by agent or by attorney. The Planning Board shall make such requirement, decision, or determination as in its opinion ought to be made upon the basis of the information available. The Planning Board shall file its decision with the Town Clerk within five (5) business days after the decision is rendered.

## **B. SITE PLAN REVIEW**

Site plan review and approval by the Planning Board is required for 1) a special permit, 2) a Variance other than one involving only a Single-Family Dwelling or an Accessory Dwelling or 3) any proposed change in a Use other than a Single Family Dwelling or an Accessory Dwelling if such Use did not, when established, require a special permit or variance but would have required, if first established at the time of such change. The Planning Board shall not be required to hold a public hearing in connection with any site plan review, but may do so if, in the sole discretion of the Planning Board, it deems same to be appropriate.

Subsequent provisions of this Article VII, Section B are not applicable to Telecommunication Special Permits, see Article IX, and subsection D regarding Telecommunication Facilities.

### **1. Application and Review**

a) Application for a building or use permit shall be made to the ZEO prior to the commencement of the excavation for, or the construction of, any Building or Structure or other Use. If, upon receipt of such application, the ZEO decides that the proposed building or use permit requires a Special Permit, he shall forward the application to the ZBA. If site plan review is required, the ZBA will forward a copy of the application to the Planning Board for review and determination.

b) Applicant shall provide the Planning Board with seven (7) copies of all items required by the Planning Board for their review of the site plan and such copies shall be submitted to the Clerk of the Planning Board at least ten (10) days prior to the date of the next Planning Board meeting. Failure of the applicant to comply with these requirements shall result in the matter being deferred until such time as these requirements are met or, in the alternative, the dismissal of the application.

### **2. Action of the Planning Board**

a) Upon receipt of the application for site plan review, the Planning Board shall notify the applicant in writing of the place, date, and time of the meeting at which the application is to be considered and request the applicant's presence for a complete evaluation.

b) Within sixty-two (62) days of the receipt and acceptance of a complete application and after the applicant has had the opportunity to meet with the Planning Board, the Board shall approve, approve with modifications or disapprove the site plan. The decision of the Planning Board shall be expressed in a report to the ZBA. A copy of said report shall be mailed to the applicant at the address indicated on the application and a copy shall also be filed with the Town Clerk and ZEO.

c) The final approved site plan shall be a condition of the final approved ZBA Special Permit.

### **3. Review Standards**

The Planning Board's review of a site plan shall take into consideration the requirements of the Zoning Law, including the official zoning map and the purposes of the Zoning Law set forth in Article I, and shall include, as appropriate, review of the matters described in paragraphs (a) through (l) below. The Planning Board may, in its discretion, waive or simplify any of the requirements of this subsection 3 or of subsection 4 that are unnecessary or inappropriate for its review of an application.

a) Location, arrangement, size and design of Buildings, other Structures, storage areas, utilities, easements, retaining walls, fences, lighting and signs shall be compatible with each other and with the site as a whole. Sufficient separation between Buildings and other Structures shall be maintained to ensure adequate and safe access and adequate light and air circulation.

b) Adequacy and arrangement of vehicular traffic access and circulation, including Driveways, Ways, intersections, road widths, pavement surfaces, dividers and traffic signs and other controls. All proposed traffic access points and internal Ways shall be adequate but not excessive in number, adequate in grade, alignment and visibility and not located too near street corners or other places of public assembly.

c) Location, arrangement, appearance and adequacy of off-street parking and loading. Off-street parking and loading facilities and spaces shall be arranged to prevent parking in Roads of vehicles of persons living or working in or visiting the site. The interior circulation system shall be adequate to provide safe accessibility to, from and within all off- street parking and loading areas.

d) Adequacy, safety, convenience and arrangement of pedestrian traffic access and circulation both within the site and to adjacent Roads and Ways, walkway structures, and control by signs and other means of intersections with vehicular traffic.

e) Location and adequacy of storm water and drainage facilities. Drainage shall be conducted to a point of adequate and suitable disposal. Storm water control shall be provided so as to prevent increased overflow to, or other adverse overflow

impacts on neighboring properties, Roads and Ways. Storm water and drainage facilities shall be designed to control erosion and sedimentation.

- f) Location and adequacy of water supply and refuse and sewage disposal facilities. Refuse and sewage disposal facilities shall be designed and sufficient to safely handle the type and volume of refuse and sewage that can reasonably be anticipated will be generated by the Uses proposed for the site.
- g) Location, adequacy, type and arrangement of trees, shrubs, fences and other landscaping constituting visual and/or noise buffers between the site and adjoining lands, including the extent of retention of existing vegetation. The scale, type and quality of the landscaping and screening on site shall be harmonious with the character of the neighborhood.
- h) Location and adequacy of fire lanes and other emergency zones and the provision of fire hydrant or other fire protection facilities.
- i) Environmental matters, including the impact of site Structures, Ways, Driveways and landscaping in areas with susceptibility to ponding, flooding and/or erosion. All bodies of water, wetlands, steep slopes, major stands of trees and areas of major scenic, ecological or historic value shall be preserved insofar as possible.
- j) Adequacy and safety of snow clearance and removal plan.
- k) Impact on infrastructure. The proposed Use shall not place an undue burden on the capacity of the existing infrastructure (e.g. Roads, utilities, drainage). If infrastructure capacity is inadequate to support the Use, the applicant shall provide the necessary infrastructure improvements or mitigate the impact of the Use on the infrastructure.
- l) Overall impact on the neighborhood including compatibility of design and impact on open space. Neighboring properties shall be protected against noise, glare, unsightliness or other objectionable impacts.

#### **4. Additional Information Required for Site Plan Review**

The following information and documents shall be submitted in connection with any Site Plan review:

- a) Vicinity Map:** This map shall be drawn at the scale of two thousand (2,000) feet to the inch or larger, and show the relationship of the site and the proposed Use to existing community and infrastructure facilities that may affect or serve it, such as Roads, shopping areas, schools, municipal facilities and utilities. It shall also show all properties, subdivisions, Roads, Ways, and easements in or within five hundred (500) feet of the site. The map may be superimposed on a U.S. Geological map of the area.
- b) Topographical Map:** This map of the site described in the application shall be drawn at the scale of one hundred (100) feet to the inch or larger if requested by the Planning Board and shall show existing topography at a contour interval of not more than five (5) feet. The map shall also show the location of pertinent natural features that may influence the design of the proposed Use, such as watercourses, swamps, wetlands, rock outcrops and any other

features referred to in subparagraph (i) of subsection 3 above.

**c) Site Plan:** This map of the site shall be drawn to the same scale as the topographic map required by subsection (b) above and shall show the location and extent of all existing and proposed Structures, Automobile Parking Spaces, parking and loading spaces for commercial vehicles, the location and width of all Ways, Driveways, exits and entrances, the location, extent and type of all storage areas, utilities, the location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences and shall provide a description and the location of sewage, refuse disposal and water facilities, the location and size of all signs, the location, type and extent of proposed buffer areas, the design and location of lighting facilities, and the location and other relevant information regarding all other matters required to be considered by the Planning Board pursuant to subparagraphs (a) through (k) of subsection 3 above.

**d) Grading and Other Plans:** The application shall include proposed grading plans and the width and depth of gravel or other paving of all Roads, Ways, Driveways and parking and loading areas as well as plans for drainage of surface and/or sub surface storm and other water and erosion and sedimentation control and detailed information regarding any blasting that the applicant anticipates will be necessary, including the impact that any proposed blasting will have on adjacent properties, wells and water sources.

**e) Elevation, footprint and section:** The site plan shall include elevations, footprints and sections at the same or, at the request of the Planning Board, a larger scale than that required for the site plan, drawn in sufficient detail to delineate clearly the bulk square footage and height of all Buildings and Structures included in the proposed Use.

5. **Changes in Use or layout:** A site plan approval granted in accordance with this Article shall authorize only the particular Use, Lot layout and configuration depicted on the approved plan. No change in such Use, layout or configuration shall be permitted to be created or maintained without an amendment to such site plan approved by the Planning Board pursuant to this Article as if such amendment were a new site plan subject to all of the requirements of this Article.
6. **Expiration:** Site plan approval shall expire if a Building Permit is not issued within a period of one (1) year from the date of such approval.
7. **SEQRA:** The applicant must also comply with all requirements of the New York State Environmental Quality Review Act (SEQRA).

## ARTICLE VIII - ZONING BOARD OF APPEALS

**A. Establishment and Duties:** A Zoning Board of Appeals, herein called the ZBA, is hereby established to interpret the provisions of this Zoning Law and to review any order, requirement, decision, or determination made by the Zoning Enforcement Officer (ZEO). The ZBA shall consist of five (5) members, appointed by the Town Board, and have the duties, rights, powers, and functions conferred upon it by Article 16 of the Town Law, including, but not limited to, the following:

**1. Meetings:** Meetings of the ZBA shall be held at the call of the Chairman, or on the written request of two or more ZBA members, and at such other times as the ZBA may determine. The



Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the ZBA shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Clerk of the ZBA shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

**2 Records:** All decisions of the ZBA shall be in writing, and a copy of each decision shall be sent to the applicant and to the ZEO. Every ruling, regulation, amendment, or repeal thereof, and every order, requirement, decision, determination of the ZBA shall be filed in the Office of the Town Clerk, and shall be a public record. Each decision of the ZBA shall set forth the reason for the decision and the findings of fact on which the decision was based.

**3 Appeal:** The ZBA shall hear and decide appeals from and review any order, requirement, decision or determination made by the ZEO. It shall also hear and decide upon all matters referred to it upon which it is required to pass under this Zoning Law. The concurring vote of a majority of the ZBA shall be necessary to reverse any order, requirement, decision or determination of the ZEO, or to decide in favor of the applicant on any matter upon which it is required to pass under this Zoning Law or to affect any variation in this Zoning Law. An appeal may be initiated by any aggrieved person, or by any officer, department, or bureau of the Town. Such appeal shall be taken within thirty (30) days after the decision of the ZEO. Such appeal is taken by filing a Notice of Appeal with the ZBA, specifying the grounds therefore. If there is an appeal, the ZEO shall transmit to the ZBA all of the documents constituting the record in the matter.

**4 Interpretation:** The ZBA shall, upon appeal, decide any appeal from a determination of the ZEO on questions where it is alleged there is an error in any order, requirement, decision, or determination made by the ZEO involving the interpretation of any provision of this Zoning Law.

**5 Variances:** The ZBA may grant Use Variances and/or Area Variances in accordance with the criteria, provisions and requirements set forth in Section 267-b of the NYS Town Law, now existing and same may be amended from time to time hereafter. In granting such Use Variances and/or Area Variances, the ZBA may specify appropriate conditions and standards that may include approval, conditional approval, or disapproval as required to carry out the provisions of this Zoning Law.

**6 Special Permits:** Upon application, supplementing an application to the ZEO for a Zoning Permit, the ZBA shall hear and decide applications for Special Permit uses where approval of the ZBA is required under this Zoning Law. In granting such a Special Permit, the ZBA may specify appropriate conditions and standards that may include approval, conditional approval, or disapproval as required to carry out the provisions of this Zoning Law.

**7. Public Hearings and Determination:** The ZBA shall fix a reasonable time for the hearing of appeals or of applications for special permits or variances and give due notice thereof to the applicants. It shall publish notice of the proposed hearings at least once in the official newspaper of the Town at least five (5) days before the date of the hearing. At the hearing, any party may appear in person or by agent or attorney. The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made upon the basis of the information available, and to that end, shall have all the powers of the officer from whom the appeal is taken. The ZBA shall file its decision with the Town Clerk within five (5) business days after the decision is rendered.

**8 Notice to Neighboring Landowners:** Applicants for a variance shall give written notice to all owners of property within five hundred (500) feet of the property affected by the application. Such written notice shall state that a public hearing will be held on the application, as well as the place, time, and date of the public hearing. Such written notice shall be mailed or delivered by hand at least fifteen (15) days prior to the date of the public hearing and the applicant shall submit adequate proof of such notice to the ZBA at the time of the hearing. The Board may decline to proceed with the application if such proof is not presented.

**9 Referral:** Any application for a variance or Special Permit shall be referred by the ZBA to the Planning Board for site plan review when required by Article VII and also to the Columbia County Planning Department for recommendation or report if required by the General Municipal Law.

**10 Alternate Members:** Alternate members of the Zoning Board of Appeals may be appointed by the Town Board for a term of two years, with the term to expire on December 31 of the second year after the date of their appointment. The number of alternate members appointed pursuant to this section shall not exceed two in number. The Chairperson of the Zoning Board of Appeals shall designate an alternate to substitute for a regular member of the Zoning Board of Appeals when such regular member is absent or unable to participate on an application or matter before the Board for reasons of conflict of interest. When so designated, the alternate member shall possess all of the powers and responsibilities of such regular member of the Zoning Board. Such designation shall be entered into the minutes of the Zoning Board meeting at which the substitution is made. Any determination by the Zoning Board of Appeals consisting of alternate members shall have the same force and effect at law as a determination made by the Zoning Board of Appeals consisting of only regular members.

a. Alternate members appointed by the Town Board shall regularly attend the scheduled meetings and/or work sessions of the Zoning Board so as to be available for designation when required and in order to be familiar with the applications and/or matters pending before such Board.

b. All provisions of State law pertaining to Zoning Board of Appeals member eligibility, compensation, attendance, conflict of interest, vacancy in office, removal, continuing education, and service on other boards shall apply to alternate Zoning Board members appointed pursuant to this section.

## **ARTICLE IX - SPECIAL PERMIT USES**

### **A. General Procedure and Conditions**

1. Prior to taking action on any special permit use; the ZBA shall hold a public hearing after public notice. No final action shall be taken respecting such matter until the Planning Board has forwarded approval of any required site plan to the ZBA. All interested parties shall be given an opportunity to be heard at the ZBA public hearing.

2. All matters which are subject to mandatory referral or notice to other agencies shall be transmitted to the appropriate agencies for their review.

3. A special permit authorization by the ZBA for the issuance of a Building Permit shall expire ninety (90) days after such authorization in the event that such permit shall not be applied for within that period. Extension of such authorization may be granted by the ZBA for an additional ninety (90) day period due to a determined hardship condition. Expiration of a special permit authorization shall be stayed in the event failure to apply for a Building Permit is due to related legal proceedings.

4. Any violation of the limitations or special conditions and safeguards established by the ZBA with respect to a specific authorization for a Special Permit shall be deemed a violation of this law, punishable under the provisions of Article X.

5. All applications for a Special Permit Use shall be subject to the provisions of the New York State Environmental Quality Review Act (SEQRA).

## **B. General Standards**

1. For every such Special Permit Use, the ZBA shall determine that:
  - a) Such Use will be in harmony with and promote the general purposes and intent of this law as stated in Article I.
  - b) The plot area is sufficient, appropriate and adequate for the Use and the reasonably anticipated operation and expansion thereof.
  - c) The proposed Use will not prevent the orderly and reasonable use of adjacent properties or adjacent zoning districts.
  - d) The site is particularly suitable for the location of such Use in the community.
  - e) The characteristics of the proposed Use are not such that its proposed location would be unsuitable near to a church or other house of worship, school, Theater, recreational area or other place of public assembly.
  - f) Access facilities are adequate for the estimated traffic from public Roads, Ways and sidewalks, so as to assure the public safety and to avoid traffic congestion.
  - g) All proposed curb cuts have been approved by the road or highway agency that has jurisdiction.
  - h) The proposed use of the land and/or Buildings will not have a detrimental effect upon the value of other land and/or Buildings in the district.
  - i) The location, size of the Use, nature and scope of the operations, site layout, and its relation to Roads and Ways giving access to it shall be such that traffic to and from the Use and the assembly of persons will not be hazardous, inconvenient or detrimental to the neighborhood.

In applying this standard, the ZBA shall consider, among other things, convenient and safe routes of pedestrian traffic, particularly of children, relation to main traffic thoroughfares and to intersections, and the general character and intensity of the

development of the neighborhood.

j) The applicant has secured all necessary permits from any Federal, State or local authority.

2. The use of land for a Gravel Bank, Quarry or Mine shall be subjected to compliance with all New York State Rules and Regulations related to mining excavation and mined land reclamation.

3. In addition to all of the other rules and regulations as set forth in this Zoning Law for Uses authorized by Special Permit, the following specific criteria apply for consideration and approval by the ZBA for the issuance of a Special Permit, and by the Planning Board for consideration and approval of a site plan for, a Multi-Family Dwelling in the C-2 and C-3 districts:

a) The intent of the Zoning Law in allowing such Use in these zones by Special Permit is to:

1) Establish a choice of available living units that will provide residential land use of quality and affordability to Canaan residents and guarantee a permanent and long-term asset to the Town.

2) Encourage open space and recreation areas as needed for high- density living.

3) Create efficient use of land resulting in smaller networks of utilities and streets.

4) Insure an environment in harmony with surrounding existing and anticipated Uses.

b) The following specific requirements apply to such proposed Use:

1) A minimum Lot size of two (2) acres.

2) The combined Building Area of all Buildings, including Accessory Buildings, shall not exceed ten percent (10%) of the total Lot area.

3) There shall be a minimum Lot frontage of 275 feet.

4) In each Building, every Dwelling Unit under seven hundred (700) square feet shall require an equal number of Dwelling Units over eight hundred (800) square feet. In no event may a Dwelling Unit be less than six hundred (600) square feet.

5) There shall be a minimum Front Yard Setback of one hundred (100) feet from the centerline of any Road and fifty-five (55) feet from the centerline of any Way within the site boundaries

6) The Side Yard Setback minimum shall be fifty (50) feet between any Building and abutting properties or seventy-five (75) feet from the centerline of any abutting Road and a minimum of thirty (30) feet between each Building.

7) The Rear Yard Setback minimum shall be fifty (50) feet to the rear abutting property line. For through Lots, the rear yard minimum shall be one hundred (100) feet to the centerline of any Road and fifty-five (55) feet to the centerline of any Way.

8) No parking area shall be closer than ten (10) feet from any boundary line and fifteen (15) feet from any Buildings on the site.

9) No permit for the construction of a Multi-Family Dwelling shall be issued until the applicant shall have first received site plan approval from the Planning Board in accordance with Article VII.

10) The Site Plan shall in any event include a landscaping plan that will show existing natural features to be preserved as well as those landscaped features to be installed. The Site Plan shall also show open space, recreational facilities, refuse areas, screening and other amenities.

11) All vehicle paving (gravel or asphalt) shall provide for safe, convenient, durable and economical all-weather access. The owner shall provide a plan showing a program of maintenance and repair of all Ways and utilities.

12) A staged development plan may be approved at the discretion of the Planning Board providing that a completion bond in an amount deemed adequate by the Planning Board is posted with the Town prior to beginning work and throughout the project development.

13) Each Multi-Family Dwelling shall incorporate within its front elevation varying offsets and facades to the extent required by the Planning Board.

14) For all Multi-Family Dwelling projects of more than 12 units, the ZBA shall refer the application to the Town Board for its approval or disapproval of the project based upon consideration of the purposes set forth in Article I of this Zoning Law.

### **C. Notice to Neighboring Landowners**

Applicants for a special permit shall give written notice to all owners of property within five hundred (500) feet of the property line affected by the application. Such written notice shall state that a public hearing will be held by the ZBA on the application, as well as the place, time, and date of the hearing. Such written notice shall be mailed or delivered by hand at least fifteen (15) days prior to the date of the hearing and the applicant shall submit adequate proof of such notice to the ZBA at the time of the hearing. The ZBA may decline to proceed with the application if such proof is not presented.

### **D. Telecommunication Facility Regulations**

#### **1. Purpose**

The purpose of this Subsection is to provide standards for the provision of wireless communications services within the Town of Canaan consistent with applicable Federal, State and Local laws and regulations while also protecting the health, safety and general welfare of the residents of the Town and the natural and historical features and aesthetic character of the

Town, and to these ends to:

a) minimize the adverse visual effects and undue proliferation of Telecommunication Facilities by providing locational priorities, requiring careful siting, visual impact assessment and appropriate landscaping and camouflaging and by requiring shared use of Telecommunication Towers whenever possible;

b) protect the scenic, historic, environmental and natural resources of the Town;

c) preserve property values in the Town to the greatest extent possible;

d) continue the promotion of tourism within the Town; and

e) avoid potential harm to persons and property from tower failure, noise, falling objects and attractive nuisances.

This Subsection is intended to be consistent with the Telecommunications Act of 1996 in that, as required by such Act:

a) it does not, and is not intended to be used to, prohibit, or have the effect of prohibiting, the provision of Personal Wireless Services;

b) it is not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and

c) it does not regulate Personal Wireless Services on the basis of the environmental effects of RF emissions when such Services comply with FCC regulations and guidelines concerning such emissions.

## 2. Definitions

For the purposes of this Subsection D the following terms shall have the meanings indicated:

**ADEQUATE CAPACITY:** With respect to all Personal Wireless Service Facilities of a Personal Wireless Service Provider providing or intended to provide Personal Wireless Services within the Town of Canaan, capacity is considered to be "Adequate" if the Grade of Service is PO5 or better for the busiest hour averaged over a preceding month, based on the Erlang B traffic model where call blocking is due to frequency contention at a facility already operating at maximum available capacity. Grade of Service is a measure of the percentage of attempted calls which are able to connect to the base Telecommunication Facility during the busiest hour of the day. Grade of Service is expressed as "PXX" where x=the percentage of unsuccessful call attempts. Thus, PO5 means that 5 out of 100 calls fail to connect on the first try. A lower number (e.g., PO3) indicates a better Grade of Service.

**ADEQUATE COVERAGE:** With respect to all Personal Wireless Service Facilities of a Personal Wireless Service Provider providing or intended to provide Personal Wireless Services within the Town of Canaan, coverage is considered to be "Adequate" if the predicted or measured median field strength of the transmittal signal is greater than or equal to -90 dbm for at least 75% of the area intended to be covered by such Facilities, whether or not there are holes within such area where the signal is less than -90 dbm, as long as the signal regains its strength to not less than -90 dbm beyond such holes. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage

within such holes. The outer boundaries of the area of Adequate Coverage, however, are those locations past which the signal does not regain a strength of at least -90 dbm. If at the time an application for a Personal Wireless Service Facility is filed a different definition of "Adequate Coverage" shall be in effect in FCC regulations or guidelines, such definition shall be applicable to such application.

**ANTENNA:** A device, including a Repeater, for transmitting or receiving RF or other electromagnetic communication signals including, without limitation, broadcast, shortwave, citizens band, cellular communications, mobile radio, paging microwave, AM, FM and television signals.

**AVAILABLE SPACE:** A space on a Telecommunication Tower on which an Antenna is mechanically able to be attached without causing electromagnetic or other interference with the signals of Antennas already attached thereto.

**CO-LOCATION and CO-LOCATED:** The addition by a provider of communications services of one or more Antennas to any Telecommunication Tower which is owned or leased by another provider of communication services.

**CONCEALED TOWER:** Any structure, such as a steeple, building or silo, which is, or is intended to be used as, a Telecommunication Tower and which wholly encloses and conceals all Antennas and any other equipment mounted thereon and is not more than 50 feet in height

**DBM:** Unit of measurement of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**EQUIPMENT SHELTER:** A structure, located on a Facility Site, designed principally to enclose equipment and supplies used in connection with Personal Wireless Service or other communications systems.

**EMF:** Electromagnetic field.

**FACILITY SITE:** The property on which any Telecommunication Tower, and any associated Equipment Shelter, is or are located or to be located.

**FCC:** The Federal Communications Commission or any successor Federal government agency responsible for regulating telecommunications in the United States.

**FCC OET BULLETIN 65:** FCC OET Bulletin 65, Edition 97-01, August 1997, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields", as the same may from time to time be amended or replaced by the FCC.

**FCC RF EXPOSURE GUIDELINES:** The policies, guidelines, requirements and limits with regard to human exposure to RF fields adopted by the FCC on August 1, 1996, which amended Part I of Title 47 of the Code of Federal Regulations and which were further amended by action of the FCC on August 25, 1997 (47 CFR, Sections 1.1307(b), 1.1310 2.1091 and 2.1093, as amended), as the same may from time to time be amended or replaced by the FCC.

**MODIFICATION and MODIFIED:** (a) Any upgrade or replacement of an existing Antenna or the addition (except Co-Location) to any Telecommunication Tower of any new Antenna or any change, addition or modification to a Telecommunication Facility which deviates from the

approved site plan for the Facility, or (b) any change in the structure, dimensions, height, signage or lighting of an existing Telecommunication Tower or Equipment Shelter. Routine adjustments of Antennae and routine maintenance of structures and/or equipment shall not be deemed to be Modifications.

**PERSONAL WIRELESS SERVICES:** Commercial mobile services and common carrier wireless exchange access services. These services include cellular services, personal communications services, specialized mobile radio services and paging services.

**PERSONAL WIRELESS SERVICE FACILITY:** A Telecommunication Facility used by a Personal Wireless Service Provider to broadcast and receive the RF signals which provide its services. A Personal Wireless Service Facility may be sited on a Telecommunication Tower owned or leased by another entity.

**PERSONAL WIRELESS SERVICE PROVIDER:** An entity licensed by the FCC to provide Personal Wireless Services.

**PLANNING BOARD or BOARD:** The Town of Canaan Planning Board.

**RADIATION PROPAGATION STUDIES OR RADIAL PLOTS:** Computer generated estimates of the EMF emanating from Antennas sited on a specific Telecommunication Tower. The height above ground and above mean sea level, power input and output, frequency output, type of Antenna and its gain, and the topography of the Facility Site and its surroundings are all to be taken into account to create these estimates. They are a primary tool for determining whether a Telecommunication Facility or Facilities will provide Adequate Coverage for a proposed Personal Wireless Service Provider.

**REPEATER:** A receiver/relay transmitter or microcell of not more than 20 watts output designed to extend service to areas which are not able to receive Adequate Coverage directly from a Telecommunication Tower (a Donor Site), using the same channels as the Donor Site.

**RF:** Radiofrequency

**RF EMISSIONS CERTIFICATION:** A written certification by a professional engineer licensed to practice in New York specializing in electrical engineering and with an expertise in radio communication transmitters and facilities, that the operation of a proposed Telecommunication Facility complies (if it is already in operation) or will comply with the FCC RF Exposure Guidelines, showing all calculations in accordance with FCC OET BULLETIN 65.

**SHORT TOWER:** Any Telecommunication Tower which is less than 35 feet in height above ground level.

**STRUCTURALLY ABLE:** A determination that a Telecommunication Tower is capable of carrying the load imposed by the Antenna(s) (or, in the case of Co-Location, the additional Antenna(s)) and any other equipment mounted or proposed to be mounted on it under all reasonably predictable conditions and without diminishing its structural integrity or safety, as determined by a professional structural engineering analysis.

**STRUCTURAL CERTIFICATION:** A written analysis of the structure of a Telecommunication Tower by a professional structural engineer licensed to practice in New York, certifying that it is Structurally Able and that the Tower is designed to withstand winds and icing conditions in accordance with the ANS I/E1 A/T IA 222 standards (latest revision), as



the same may be amended from time to time. If the Certification is for a proposed rather than an existing Tower, such analysis shall also describe the extent to which the Tower will be Structurally Able to support additional Antennas in the future at different heights without material Modifications and the extent to which it would be possible safely and economically to shorten the Tower if communications facilities utilizing it in the future do not require the original height.

**TELECOMMUNICATION FACILITY:** Any Antenna, Equipment Shelter or Telecommunication Tower, or any combination of one or more of the foregoing, together with all accessory and associated equipment, designed, used, or intended to be used for, or to facilitate, transmission or reception of electromagnetic or RF communications signals. A Telecommunication Facility shall not include police, fire or other Federal, State or local governmental communications facilities, or facilities used exclusively for private radio or television reception or private citizen's band, amateur ham radio and similar private residential communications systems, provided that such facilities are not located on a structure (other than a Short Tower or a Concealed Tower) on which Telecommunication Facilities (other than Repeaters) are also located and provided that any such private facilities do not exceed 50 feet in height above ground level.

**TELECOMMUNICATION TOWER:** Any structure, whether a building or attached to a building or not so attached, designed to be used as, or for the support of, one or more Antennas.

**ZONING OFFICER:** The Town of Canaan Zoning and Building Code Enforcement Officer

### 3. Applicability

(a) Notwithstanding anything to the contrary that may be contained elsewhere in this Zoning Law and except as otherwise expressly provided in this in this Subsection D, no Telecommunication Facility shall hereafter be erected, moved, reconstructed or Modified and no existing structure shall be modified to serve as a Telecommunication Tower or Equipment Shelter except after approval by the Planning Board of a site plan and approval of a Telecommunication Facility Special Permit by the Board and unless in conformity with such Permit and this Subsection.

(b) Telecommunication Facility Special Permit applications shall be subject to the specific procedures, conditions and standards set forth in this Subsection D and the general procedures and conditions set forth in Subsection A shall not apply where inconsistent with the provisions of the Subsection.

(c) Telecommunication Facility Special Permit applications shall be subject to all the requirements and standards set forth in the New York State Environmental Quality Review Act, as amended from time to time or replaced, and such applications and the Telecommunication Facilities covered thereby shall also be subject to all other Federal, State and local laws, ordinances, and regulations relating to the siting, construction, and/or regulation of such Facilities.

(d) Notwithstanding the foregoing provisions of this paragraph 3, and application for a special permit for a private communications tower described in the second sentence of the definition of Telecommunication Facility which is a Telecommunication Facility solely because it exceeds 50 feet in height shall be reviewed under the provisions of Subsections A, B and C of Article IX and Subsection I of Article V of the Zoning Law rather than this Subsection D: provided, however, that such application shall nevertheless be subject to the provisions of

subparagraphs (a)(iii)(G)(IV), (a)(iv) and (a)(xi) of paragraph 8, subparagraph (e) of paragraph 9, subparagraphs (e), (f) and (k) of paragraph 10, paragraph 17, paragraph 18 and paragraph 19.

#### 4. Public Necessity

The applicant shall have the burden to demonstrate that the proposed Telecommunication Facility or Facilities is or are a public necessity (which shall mean, if the application is for a Personal Wireless Service Facility, that it is required in order to achieve Adequate Coverage and Adequate Capacity within the applicant's FCC licensed coverage area), and that there are compelling reasons which necessitate the use of the proposed Facility or Facilities and Facility Site or Sites rather than alternative sites or facilities that would likely result in a less severe negative impact on the Town of Canaan and its residents.

#### 5. Telecommunication Facility Zoning Districts

The following two special telecommunication facility zoning districts within the Town of Canaan are hereby created:

District TF-1, consisting of the C-III (Light Industrial) zoning district of the Town plus a strip of land (to the extent not included in the C-III district) including and on both sides of the entire portion of the New York State Thruway which is within the Town of Canaan, the northern boundary of which is a distance of 250 feet northerly from the northern boundary line of the New York State Thruway and the southern boundary of which is a varying distance southerly from the southern boundary line of the New York State Thruway as set forth hereafter. This district runs east to west beginning on the eastern boundary line of the town, thence westerly to a point which is 5000 feet east of the center line of Columbia County Route 5 where it crosses the Thruway. From this point the district continues in a westerly direction, but the southern boundary line of the district is changed to a distance which is 1250 feet southerly from the southern boundary of the New York State Thruway, thence westerly to a point which is 3000 feet west of the centerline of Columbia County Route 5 and at which point the southern boundary line of the district again changes to a distance of 1000 feet southerly from the southern boundary line of the New York State Thruway, thence westerly to the western boundary line of the Town of Canaan. The TF-I Zone shall also include any parts of sub-districts TF-IA and TF-1B referred to herein which would not otherwise be included in District TF-I. The TF-I District shall also include a portion of the RA-3 Zone which is bounded on the north by an extension of the northerly boundary line of the C-III Zone is a westerly, directions for 750 feet, thence running southerly on a line parallel to and 750 feet distant from the westerly boundary line of the

C-III Zone to a point of Peaceful Valley Road; thence in an easterly direction 750 feet to the current western boundary of the C-III Zone; thence in a northerly direction along the current western boundary of the C-III Zone to the point and place of beginning, and constituting a 750 feet westerly extension of the current TF-I Zone in the described area.

District TF-II, consisting of the area includes the location at an elevation of one thousand one hundred eighty nine feet (1,189') above sea level approximately three thousand four hundred feet (3,400') south southwest of the intersection of New York State Route 295 and Barnegat Road and approximately six thousand six hundred feet (6,600') east of the intersection of Route 295 and Frisbee Street, plus the entire area surrounding such 1,189' location which is over one thousand thirty feet (1,030') above sea level, all as shown on the U.S. Geological Survey East Chatham Quadrangle (7.5 Minute Series) and the boundaries of which are also shown on such Telecommunication Facility Zoning Map.

District TF-I and District TF-II are both shown on a map entitled "Telecommunication

Facility Zoning Map, Town of Canaan, New York," which map and the description of boundaries with the explanatory matters thereon, is attached as a supplement to the Town of Canaan Zoning Law. Such map also shows the boundaries of two areas within District TF-I which are identified therein and referred to in the Subsection D as sub-districts TF-IA and TF-IB.

## 6. Priorities for Siting of Telecommunication Facilities

The location for a Telecommunication Facility shall be subject to the following priorities and preferences:

(a) Co-Location is preferred to construction of a new Telecommunication Tower. Accordingly:

(i) a Telecommunication Facility Special Permit for a new Telecommunication Tower or Towers (except a Concealed Tower or Towers) shall not be granted unless the applicant has sufficiently demonstrated that Co-Location is not possible because either (A) there are no existing Telecommunication Towers (or Telecommunication Towers under construction or for which a building permit has been issued) in, or within 5 miles of the municipal boundaries of the Town of Canaan, or (B) if one or more such Towers exist (or are under construction or for which a building permit has been issued), (I) there is no Available Space on any such Tower, or (II) the applicant has attempted in good faith but has been unable to obtain an agreement (or agreements) for Co-Location on any Available Space(s) from the owner(s) and/or lessee(s) of the relevant Tower(s) on reasonable terms, or (III) Co-Location on any Available Space or any combination of Available Spaces would not enable the applicant to provide its intended service or, if the application is for a Personal Wireless Service Facility, would not enable it to achieve Adequate Coverage and Adequate Capacity in the intended service area within the Town (with, if necessary, the use of a reasonable number of Repeaters for which a site or sites are available for purchase or lease by the applicant on reasonable terms);

(ii) for the purposes of this subparagraph (a), it shall be deemed reasonable for the owner of lessee of a Telecommunication Tower on which there is Available Space to require the applicant to pay a pro rata share of the costs of planning, site selection and acquisition, project administration, site design, maintenance, financing, and depreciation, a commercially reasonable return on equity and all of the costs of adapting the Tower to accommodate Co-Location by the applicant without causing electromagnetic or other interference with the signal of Antennas already located on such Tower; and

(iii) if the applicant considers that other terms required by the owner of a Tower on which there is Available Space are unreasonable, the application shall include a detailed written description of such terms and of the reasons the applicant considers them to be unreasonable.

(b) The Town has determined that Telecommunication Towers located in the TF-I district and the TF-II district will have the least adverse visual, environmental and economic impact on the Town, its residents and visitors. Moreover, the engineering study referred to in the preamble to the Local Law which enacted this Subsection D (copies of which study are available for inspection at the office of the Canaan Town Clerk) shows that Adequate Coverage of those portions of the New York State Thruway and New York State Routes 22 and 295 within the Town as well as its principal commercial and industrial areas should be

obtainable by the construction of Telecommunication Towers in sub-districts TF-IA and TF-IB and, in the case of Route 295, the TF-II district. Accordingly, if the applicant has satisfactorily demonstrated that Co-Location cannot be achieved in accordance with the provisions of Subsection (a) herein, then the second priority for location of a Telecommunications Tower shall be in the TF-I district, or in the TF-II district. Accordingly:

(i) no application for a Telecommunication Facility Special Permit for a proposed Telecommunication Tower or Towers outside the TF-I district or the TF-II district shall be approved unless the applicant has also sufficiently demonstrated that (A) it has attempted in good faith but has been unable to obtain a site or sites for location of such Tower(s) on reasonable terms from owner(s) (including the New York State Thruway Authority) of such site or sites for one or more Telecommunication Towers in the TF-I district and/or the TF-II district which site or sites would enable it to provide the service it proposes or, if the application is for a Personal Wireless Service Facility or Facilities, would enable it to achieve Adequate Coverage and Adequate Capacity in the intended service area within the Town with, if necessary, the use of one or more Repeaters located on property available for purchase or lease by the applicant on reasonable terms, or (B) the additional costs of locating its proposed Telecommunication Tower or Towers on such a site or sites are unreasonable;

(ii) any application which asserts that a site or sites available from the Thruway Authority or other property owners cannot be obtained on reasonable terms shall include a detailed written description of the terms the applicant considers unreasonable and of the reasons it considers they are unreasonable;

(iii) any application which asserts unreasonable additional costs as the reason for inability to locate within the TF-I and/or TF-II districts shall include a written estimate of such additional costs of locating in such district or districts and of locating on the alternative Facility Site or Sites proposed by the applicant, prepared by an expert in such matters who or which is independent of the applicant;

(iv) this subparagraph (b) shall not be applicable to any Telecommunication Facility Special Permit application to the extent it covers only a Concealed Tower and/or a Short Tower and any associated Equipment Shelter; and

(v) notwithstanding anything in the Subsection D to the contrary, (A) the lot size for a Telecommunication Facility in districts TF-I and TF-II may be less than five acres and

(B) any Telecommunication Tower included in such Facility need not be set back from any property line, structure or above ground utility line more, on a horizontal plane, than (i) its height in feet if located in district TF-I or (ii) two and one half its height if located in district TF-II, provided that in either case it must nevertheless comply with the setback requirements of paragraph 9(b) of this Subsection D with respect to dwelling places, schools and day-care centers.

(c) If, in order to provide the service it intends in the Town of Canaan or, if the application is for a Personal Wireless Service Facility, to achieve Adequate Coverage and Adequate Capacity in the intended service area within the Town, the applicant proposes or in fact will be required to utilize a Telecommunication Facility or Facilities in addition to that or those covered by the application then, for purposes of paragraphs (a)(i)(B)(III) and (b)(i)(A) of this section 6, the coverage and capacity of all such additional Facilities (whether or not located in the Town of Canaan and whether or not then in existence) shall be included in the

determination of whether or not Adequate Coverage and Adequate Capacity could be obtained by Co-Location and /or siting of a Telecommunication Tower or Towers in the TF-I and/or TF-II districts, as the case may be.

(d) If in order to provide the service it intends in the Town of Canaan or, if the application is for a Personal Wireless Service Facility, to achieve Adequate Coverage and Adequate Capacity in the intended service area within the Town, the applicant (i) proposes or in fact will be required to construct more than one Telecommunication Tower in the Town and (ii) has demonstrated pursuant to paragraphs (a) and (b) of this Section 6 that its Antennae on all such Towers cannot be Co-Located and that all such Towers cannot be located in the TF-I and/or TF-II districts, the applicant shall also be required to demonstrate, before a Telecommunication Facility Special Permit shall be approved for any Tower outside the TF-I or TF-II district, that a combination of Co-Location and siting of Towers in such districts is not feasible for one or a combination of the reasons set forth in paragraphs (a) and (b). Moreover, if the applicant makes such demonstration as required herein, it shall also be required to provide adequate information setting forth the extent to which it could provide its service or achieve such Adequate Coverage and Adequate Capacity, as the case may be, by a combination of (i) Co-Location, (ii) siting of a Tower or Towers in the TF-I and/or TF-II districts and (iii) siting of the minimum possible number of Towers outside such districts and, in such case, no Telecommunication Facility Special Permit or Permits shall be approved for any Towers outside such districts, except such minimum possible number of Towers necessary to provide such service or achieve such Adequate Coverage and Adequate Capacity.

(e) Any term required by the Thruway Authority (other than lease rates and other financial terms) for a lease of Available Space or a site for a Telecommunication Tower which is included in an agreement with the Authority by another major provider (whether or not in the Town of Canaan) of the same kind of service as is proposed by an applicant shall not be deemed unreasonable for the purposes of this Section 6.

(f) Location of Co-Location of a Telecommunication Facility on Thruway property shall not be subject to site plan review or the issuance of a Telecommunication Facility Special Permit or any other special permit.

(g) Notwithstanding anything in this Subsection D to the contrary, any Repeater which will not be on Thruway property and which is to be located or Co-Located on a Concealed Tower or a Short Tower which in either case is not less than a distance, on a horizontal plane, equal to two and one half times the height of the Tower from any property line (other than that of the Thruway Authority), dwelling place, school, day-care center or above ground utility line (other than one on the Thruway right-of-way), shall not be subject to the provisions of subparagraph (b) and the first sentence of subparagraph (a) of paragraph 9, the provisions of subparagraphs (c) and (m) of paragraph 10 or the provisions of subparagraphs (a) and (b) of paragraph 11 of this Subsection D and if the Telecommunication Facility Special Permit application for such a Repeater includes the information and documents required by paragraph 7 or 8, as the case may be, it shall be approved, after site plan approval, without further review or hearings.

(h) Concealed Towers and Short Towers shall be used whenever feasible and Telecommunication Towers shall, whenever possible, be sited off ridge lines and where their visual impact is least detrimental to scenic areas and residential properties. Notwithstanding anything in this Subsection D to the contrary, (i) the lot size for a Concealed Tower or a Short Tower may be less than five acres, (ii) only the setback requirements of this Zoning Law with

respect to the structure in which it is located shall be applicable to a Concealed Tower and (iii) a Short Tower need not be set back from any property line, other structure or above ground utility line more, on a horizontal plane, than two and one half times its height in feet.

## 7. Application for Co-Location

(a) An application for a Telecommunication Facility Special Permit for Co-Location shall be in such form as shall be established by the Planning Board from time to time and, except as otherwise expressly provided in this Subsection D, shall include or be accompanied by the following:

(i) the legal name, address, principal place of business, telephone number and name of a contact person of the applicant. If the applicant is not a natural person, it shall also identify the jurisdiction in which it was created or organized.

(ii) a site plan (or, if Co-Location on more than one Telecommunication Tower is proposed, site plans) showing the proposed location of the applicant's Antenna(s) on the Tower and containing the information required by sub-clauses (B), (C) and (G)(X) of subparagraph (a)(iii) of paragraph 8 except that the Planning Board may waive any such requirements it determines are not necessary for its review or where the required information has previously been furnished to the Planning Board (in connection with site plan review of any Telecommunication Tower on which Co-Location is proposed or otherwise), provided that any changes since such information was originally furnished shall be shown in the Co- Location site plan (or plans);

(iii) the names, addresses, telephone numbers and name of a contact person of, and written consents to the proposed Co-Location from, the owner(s) and, if applicable, the lessee(s) of, and each other Co-Locator on, the Telecommunication Tower(s) on which Co-Location is proposed;

(iv) the information and documents specified in subparagraphs (iv), (vi), (vii), (viii), (ix), (x) and (xi) of paragraph 8(a);

(v) a Structure Certification with respect to each Telecommunication Tower on which Co-Location is proposed (which shall take into consideration any Modifications referred to in (vii) below), or a written analysis by a professional structural engineer licensed to practice in New York specifying what Modifications are required in order to permit the issuance of such Structure Certification(s) and, if any such Modifications are required, a written undertaking by the owner(s) of such Tower(s) that Co-Location will not be permitted until such Modifications have taken place; and

(vi) Detailed information regarding any other proposed Modifications of the Telecommunication Facility or Facilities with respect to which Co-Location is proposed.

(b) If an applicant proposing Co-Location submits complete application materials complying with the requirements of this Subsection D, and if the proposed Co-Location and any related Modifications are deemed by the Planning Board to have an insignificant adverse visual impact, and after the Board conducts a public hearing and completes the environmental review requirements of State and local law and after site plan approval, the Board shall approve a Telecommunication Facility Special Permit for such Co-Location without further review. If the Board determines that the impact is significant, it may subject the application to any or all of the standards, conditions and procedures applicable to a new Telecommunication

Tower. Unless the Board makes an express finding to the contrary, any Modification which would result in an increase in the height of a Telecommunication Tower shall be considered to involve a significant adverse visual effect and the application shall be deemed in all respects to be an application for a new Telecommunication Tower.

(c) An applicant for C-Location shall not be required to pay any fees pursuant to paragraph 10(a) except the usual and customary fees for review of the application by one engineer or engineering firm retained by the Planning Board in order to evaluate the design of and need for the proposed Co-Location.

## 8. Application for New Communication Tower

(a) An application for a Telecommunication Facility Special Permit for a new Telecommunication Tower or Towers shall be in such form as shall be established by the Planning Board from time to time and, except as otherwise expressly provided in this Subsection D, shall include or be accompanied by the following:

(i) the legal name, address, principal place of business, telephone number and name of a contact person of the applicant. If the applicant is not a natural person, it shall also identify the jurisdiction in which it was created or organized.

(ii) such information and documentation as shall be necessary to make the showings required of applicant by paragraphs 6(a) and 6(b) of this Subsection D;

(iii) a site plan for each proposed Telecommunication Facility which shall show all existing and proposed structures and improvements including the proposed Telecommunication Tower, Equipment Shelter, if any, Antennas, roads, utilities, supports, guy wires and anchors, parking areas and landscaping and shall include all related grading and building plans and specifications in detail. Any methods used to conceal the Telecommunication Tower and Equipment Shelter shall be indicated on the site plan. In particular, and without limiting the generality of the foregoing, the site plan shall include the following:

(A) a copy of the portion of the most recent U.S.G.S. Quadrangle Map, 7.5 Minute Series, at a scale of 1:24,000 or 1:25,000, showing the area within a radius of at least two miles from the proposed Facility Site. Such copy shall show the location of the proposed Telecommunication Tower and any Equipment Shelter.

(B) a vicinity map at a scale of 1"=200', with contour intervals no greater than 10 feet, showing the entire area within a 500 foot radius from the property lines of the Facility Site. Such map shall show the Facility Site boundaries, existing utilities, property lines, buildings or other structures and wooded areas and the boundaries of any wetlands, flood plains, and watercourses within the area covered by the map. Such map shall also show the horizontal and radial distances of all proposed Antennas to the nearest dwelling place, school, day-care center or other inhabited or occupied structure, if any, within the area of the map and shall include the names, addresses and tax lot number of the owners of record of all parcels located wholly or partially within 500 feet of the Facility Site.

(C) a Facility Site map at a scale of 1"=50' with contour intervals no greater than five feet, showing the location and the exact latitude and longitude (degrees, minutes and seconds) of the proposed Telecommunication Tower and any Equipment Shelter. Such map shall also show:

- (I) the locations of any supports, anchors and guy wires;
- (II) setback distances from the Facility Site boundaries to the nearest corner of the base of the Telecommunication Tower, any Equipment Shelter and each anchor (if any);
- (III) spot elevations at the base of the proposed Tower and at the base of any guy wires and the corners of any Equipment Shelter;
- (IV) proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground;
- (V) limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alterations;
- (VI) any proposed direct or indirect wetlands alteration, and justification for such alteration;
- (VII) locations and specifics of proposed screening, landscaping, ground cover, fencing, and any exterior lighting or signs; and
- (VIII) the horizontal and radial distances of all proposed Antennas from the nearest boundary of the Facility Site.

(D) a map at a scale of 1"=50', with contour intervals no greater than five feet, showing the proposed access road to the Facility Site from the point at which it joins an existing road or driveway to and within the Facility Site. Such map shall also show the parking area on the Facility Site and shall include proposed grading plans and the width and depth of gravel or surface materials of both the access road and the parking area.

(E) plans for drainage of surface and /or sub-surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.

(F) detailed information regarding any blasting which the applicant proposes to permit the installation of the proposed Telecommunication Tower and the effect that the blasting will have on any abutting properties, including the effect on wells and any other water sources.

(G) details of the proposed Telecommunication Tower and appurtenances including:

- (I) plans, elevations, sections and details at appropriate scales, but no smaller than 1"=10', of the proposed Tower and any Equipment Shelter;
- (II) plans for the foundation of the proposed Telecommunication Tower and any ground attachments such as guy wire anchors;
- (III) details of the proposed exterior finish and any camouflaging of the Tower;
- (IV) the height of the proposed Telecommunication Tower above the general height of surrounding trees as they presently exist and the height to which they are expected to grow in ten years;
- (V) a description of the modular structure, if any, of the proposed Tower indicating sections (and their heights) which could be removed or added in the future to adapt to changing communications technology or demands or to accommodate Co-Location;
- (VI) a Structure Certification with respect to the proposed Tower;
- (VII) a description of Available Space on the proposed Tower, including illustrations and examples of the type and number of Personal Wireless Service Facilities and other communication facilities which could be mounted on the Tower without material Modification; and
- (VIII) the make and model of the proposed Telecommunication Tower and of all proposed Antennas, together with manufacturer's specifications.



(H) building plans and specifications of any Equipment Shelter to be located on the Facility Site.

(I) a view-shed map showing all locations within a three mile radius from the Facility Site from which the proposed Telecommunication Tower may be seen and including view lines beginning at true north and continuing clock-wise at forty-five \ degree intervals.

(J) photographs of a large balloon or other object fixed at the height and location of the proposed Telecommunication Tower. The balloon or other object shall be of such size, color and shape as to be visible from all locations within a three mile radius of the Facility Site from which the proposed Tower will be visible. The photographs shall be taken from a reasonable number of key viewpoints within the Town, specified by the Planning Board (after consultation with the applicant, preferably prior to the filing of the application), including but not limited to state highways and other major roads, state and local parks, preserves and historic sites and other locations where the site is visible to residents, visitors or travelers.

(K) simulated tower photographs created by superimposing an image of the proposed Tower onto photographs taken from the same locations as the photographs provided for in clause (J).

(iv) a written irrevocable agreement by the applicant that representatives of the Town may enter each proposed Facility Site at any time for all lawful purposes consistent with the provisions of this Subsection D.

(v) If the applicant will not be the owner of any proposed Facility Site,

(A) the name, address and telephone number of the property owner and, if the owner is not a natural person, the name of the contact person;

(B) a copy of the applicant's lease or other agreement with the owner of such Facility Site for the applicant's use of the same; and

(C) a written irrevocable consent by the Facility Site owner to the application, to future Co-Location on the Site if required by the Telecommunication Facility Special Permit and to an irrevocable right on the part of the Town to have its representatives enter the Facility Site at any time for all lawful purposes consistent with the provisions of the Subsection D.

(vi) copies of FCC Form 854 and FAA Form 7460-1 (Notice of Proposed Construction or Alteration) – Aeronautical Studies and of the FAA's response thereto, and, unless provided pursuant to clause (xi) below, all data, assumptions and calculations relating to service coverage and power levels of the proposed Facility or Facilities.

(vii) if applicable, copies of FCC licenses for the communication operations to be conducted by applicant on the Facility Site or Sites.

(viii) a completed long Environmental Assessment Form for each Facility and Facility Site as such Form is prescribed in chapter 6, part 617 of the New York Codes Rules and Regulations or any revisions or replacements thereof in effect at the time of the application.

(ix) if the application is for a Personal Wireless Service Facility or Facilities, a certification by a professional engineer, licensed to practice in New York, with an expertise in telecommunication and radio frequency engineering, to the effect that each such proposed Telecommunication Facility is needed by the applicant to provide Adequate Coverage and

Adequate Capacity to an area within the applicant's licensed service area that currently has inadequate coverage or capacity, including a scaled graphical depiction of any inadequate coverage area.

(x) if the application is for a Personal Wireless Service Facility or Facilities, such Radiation Propagation Studies or Radial Plots and information as to capacity as the Planning Board shall reasonably request to enable any engineer engaged by it pursuant to paragraph 11(a) of this subsection D to evaluate the need for such Facility or Facilities.

(xi) an RF Emissions Certification with respect to each proposed Telecommunication Facility.

(xii) a written, irrevocable commitment of the applicant (and, if the applicant will not be the owner of the proposed Tower or Towers, the owner or owners thereof) valid for the duration of the existence of the proposed Tower or Towers, to rent or lease Available Space for Co-Location on such Tower or Towers, at fair-market prices and terms (including those described in paragraph 6(b)(ii) of this Subsection D) and without discrimination, to other Personal Wireless and/or other communications service providers. Such commitment shall obligate the applicant to respond within fifteen (15) days to a request for information from a potential applicant for Co-Location.

(xiii) a written analysis by a professional engineer licensed to practice in New York specializing in electrical engineering and with an expertise in radiocommunication transmitters and facilities as to whether or not there are alternatives to the proposed Telecommunication Facility or Facilities which would enable the applicant to provide its intended service (with, in the case of a Personal Wireless Service Facility, Adequate Coverage and Adequate Capacity), such as (A) the use of one or more Concealed Towers, Short Towers or any other lower Telecommunication Tower or Towers on the proposed Facility Site or Sites with, in any such case, the use, if necessary, of one or more Repeaters, or (B) by the locations of one or more Towers (specifying whether or not they could be Concealed Towers, Short Towers or other lower Towers) on any site or sites within the TF-I or TF-II Districts which might be available for the location of such towers with the use, if necessary, of one or more repeaters. Where there are alternate means and/or sites available which in the opinion of the Planning Board would result in less adverse effects on the environment, property values or the aesthetic character of the Town but which the applicant considers would involve unreasonable additional cost, the application shall also include a written estimate of the costs of each such alternative and of the Telecommunication Facility or Facilities proposed by the applicant, prepared by an expert in such matters who or which is independent of the applicant.

(xiv) if at the time of the application or at any time prior to the issuance of the Telecommunication Facility Special Permit there is in effect any agreement or understanding by the applicant for Co-Location on the proposed Tower or Towers of any Antenna(s) of another provider or providers of communication services, the application shall include the names, addresses, telephone numbers and name of a contact person of, and written consents to the application and to future Co-Location on Available Space by, each such other provider. In addition, each such Antenna shall be deemed to be part of the applicant's proposed Telecommunication Facility, and each such other provider shall be deemed to be an applicant for the purposes of clauses (ii), (iv), (vii), (ix), (x), (xi) and (xiii) of this subparagraph (a).

(b) The provisions of clauses (ii), (iii)(A), (iii)(G)(IV), (iii)(G)(V), (iii)(I), (iii)(J), (iii)(K), (xiii) and, in the case of any Tower on which only one or more Repeaters are to be located,

(ix) and (x) of subparagraph (a) of this paragraph 8 shall not be applicable to a Telecommunication Facility Special Permit application to the extent it covers a Concealed Tower and/or a Short Tower or Towers and any associated Equipment Shelter.

(c) The provisions of clauses (iii)(A), (iii)(G)(IV), (iii)(I), (iii)(J), (iii)(K) and (xiii) of subparagraph (a) of this paragraph 8 shall not be applicable to a Telecommunication Facility Special Permit application for a Facility to be located in district TF-I or district TF-II.

(d) A public hearing shall be required in connection with site plan review of an application filed pursuant to this paragraph 8. Such hearing shall not be scheduled until a complete application, including all information and documents required by the paragraph or otherwise by this Zoning Law shall have been filed with the Planning Board and SEQR review shall have been completed. Notwithstanding the provisions of Article VII, Subsection B, 2 b, the Planning Board shall only be required to approve, approve with modifications or disapprove the site plan and to approve or disapprove the related Telecommunication Facility Special Permit within 62 days after such hearing.

#### 9. Lot Size, Setbacks and Prohibited Areas.

(a) Except as otherwise expressly set forth in this Subsection D, the minimum lot size for any Telecommunication Facility shall be 5 acres. Whether or not subject to such 5 acre minimum, the lot shall be of a size appropriate and adequate for all reasonable anticipated operations of the proposed Telecommunication Facility to be located thereon. The applicant shall have the limited right to seek an area variance with respect to the 5 acre minimum requirement set forth in this subsection (a) from the Zoning Board of Appeals pursuant to the provisions of Article VIII, subdivision A, paragraph 5 of the Town of Canaan Zoning Law.

(b) Except as otherwise expressly set forth in this Subsection D, a Telecommunication Tower shall be set back at least 400 feet from the nearest property line, at least 500 feet from any dwelling place, school or day-care center and at least 400 feet from any other structure, including any above ground utility lines, and any Equipment Shelter shall comply with the setback requirements of this Zoning Law for comparable structures. The applicant shall have the limited right to seek an area variance with respect to the setback requirements set forth in this subsection (b) from the Zoning Board of Appeals pursuant to the provisions of Article VIII, subdivision A, paragraph 5 of the Town of Canaan Zoning Law.

(c) Subject to the other provisions of this paragraph 9, Telecommunication Facilities shall be allowed on parcels which are already occupied by a separate primary principal use. When a Telecommunication Facility is located on a parcel already improved with another primary principal use, such Facility shall be so located as to permit setback requirements to be achieved for all uses in the event of a future subdivision of said parcel.

(d) Except in the C-III district of the Town, no more than one Telecommunication Tower may be located on a single lot, but this restriction shall not be construed so as to prevent Co-Location on any Telecommunication Tower.

(e) No Telecommunication Facility shall be permitted:

(i) within, or less than 100 feet from, the boundaries of any New York State Department of Environmental Conservation or federally regulated wetland;

(ii) if it will adversely affect any New York State or federally listed endangered wildlife or plant species;

- (iii) within, or less than 500 feet from, any historic district or property listed on the New York State or Federal register of historic places;
- (iv) within, or less than 500 feet from, any known archeological site; or
- (v) which would be a "hazard" or "obstruction" to air navigation within the meaning of applicable regulations of the Federal Aviation Administration.

#### 10. Other Telecommunication Tower and Facility Site Requirements

(a) Telecommunication Towers, including masts, Antennas and other equipment mounted thereon, shall not exceed the minimum height necessary to enable the applicant for the related Telecommunication Facility Special Permit and any then proposed Co-Locators to provide their intended service or services within the Town of Canaan or, in the case of a Personal Wireless Service Facility, to achieve Adequate Coverage and Adequate Capacity; provided, however, that the Planning Board may approve a taller Tower if it finds that any adverse visual impact of the additional height is more than offset by the likelihood that additional Available Space for Co-Location made possible by the taller Tower will reduce the overall adverse visual and other impacts of Telecommunication Facilities in the Town. However, in no event shall any Telecommunication Tower be constructed to a height greater than 199 feet above the ground on which the Tower is to be located.

(b) Subject to the provisions of subparagraph (a) of this paragraph 10, a Telecommunication Tower (other than a Concealed Tower or a Short Tower) shall be designed to accommodate future Co-Location and, if the Planning Board shall make the finding described in subparagraph (a), an applicant for a Telecommunication Facility Special Permit authorizing a Telecommunication Tower (other than a Concealed Tower or a Short Tower) shall be required to construct such Tower to be of a height, and otherwise Structurally Able, to accommodate future Co-Location.

(c) To minimize the extent of adverse visual and other impacts, monopole Telecommunication Towers without guy wires, and particularly monopole Towers camouflaged to appear to be trees, are preferred to lattice or guyed Telecommunication Towers and all Telecommunication Towers (other than such camouflaged monopoles and Concealed Towers) shall have a galvanized finish or shall be painted light gray unless other standards are required by the Federal Aviation Administration.

(d) No accessory structure for a Telecommunication Tower other than an Equipment Shelter (and any guy wire anchors) shall be allowed on any Facility Site, and the Equipment Shelter shall not be any larger than what is reasonably necessary to store equipment and supplies required to operate and maintain the Telecommunication Facility. Unless it is within a taller building existing at the time of the relevant application, the Equipment Shelter shall not be greater than one story in height and shall maximize the use of building materials, colors and textures designed to blend with its natural surroundings.

(e) No portion of any Telecommunication Facility shall contain any sign or be used for advertising purposes except that each such Facility shall include a sign of no greater than two square feet indicating the name of the Facility owner(s) and a 24 hour emergency telephone number adjacent to the entry gate. In addition, "No Trespassing" or "Danger" signs may be posted on the Facility fence.

(f) Unless required by the Federal Aviation Administration, no night lighting of any part of a Telecommunication Facility shall be permitted, except for manually operated emergency lights for use only when operating personnel are on site.

(g) Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) on a Facility Site shall take place prior to the approval of the related Telecommunication Facility Special Permit. If the Facility Site is in a wooded area, a vegetated buffer strip of undisturbed trees shall be retained for at least 50 feet in width around the entire perimeter of the Site except where the access road is located.

(h) Deciduous or evergreen tree plantings may be required to screen all or portions of a Telecommunication Facility (except a Concealed Tower) from nearby residential property as well as from public sites known to include important views or vistas. Where a Facility Site (other than one on which only a Concealed Tower and any associated Equipment Shelter is or are located) abuts a residential property or public property, including streets, highways (other than the New York Thruway) or roads, the following vegetative screening shall be required:

(i) at least one row of native evergreen shrubs or trees capable of forming a continuous edge at least ten feet in height within two years of planting shall be provided to effectively screen the Tower base and any Equipment Shelter.

(ii) in the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Shrub or tree height in these cases shall include the height of any berm.

(i) Adequate emergency and service access to a Facility Site shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall minimize ground disturbance and vegetation cutting to within the top of fill, the top of cuts or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(j) Sufficient parking shall be provided on a Facility Site to assure adequate emergency and service access.

(k) All proposed curb cuts and/or driveways must be approved by the appropriate agency or agencies having jurisdiction before construction of a Telecommunication Facility or any part thereof pursuant to a Telecommunication Facility Special Permit may be commenced.

(l) The location and size of a proposed Facility Site and the nature and intensity of the operations thereon, the Site layout, and its relationship to streets and highways giving access to the Site, shall be such that the proposed Telecommunication Facility will not be hazardous with respect to traffic to and from the Site.

(m) The area around any Telecommunication Tower and associated Equipment Shelter shall be completely fenced for security to a height of ten feet and gated. The design of such fence must be approved by the Planning Board.

## 11. Applications – Additional provisions

In connection with any application for a Telecommunication Facility Special Permit:

(a) The Planning Board may, in its discretion, retain the services of (i) independent qualified structural and/or electrical (with expertise in radio communication transmitters and facilities) engineers or engineering firms of its choice and reasonably deemed by the Board to be necessary in order to evaluate the design of and need for the proposed Telecommunication Facility or Facilities and (ii) other consultants of its choice, including legal counsel with

expertise in communication law, reasonably deemed necessary by the Board to assist it in its review of the application and State Environmental Quality Review. The applicant shall be required to pay the usual and customary fees for review of applications of the same kind by such engineers and other consultants and such Telecommunication Facility Special Permit shall not be issued before the applicant pays all such fees. The Board may require the applicant to establish an escrow account on the Town's behalf for this purpose and may deny the application where the applicant fails to do so within a reasonable time. Further, the Board shall not proceed with any application until a required escrow account is established and funded:

(b) the applicant shall include with the application a certificate by a financially responsible insurer naming the Town as an additional insured under the applicant's liability policy with coverage of at least \$1,000,000.00 against all claims of damages for personal injury and property damage arising from the construction, operation or removal of the proposed Telecommunication Facility or Facilities, and all related legal and other expenses. Failure by the applicant to maintain such insurance coverage until the Facility is completely removed from the Facility Site shall result in immediate termination of the Telecommunication Facility Special Permit and shall also be a violation of the Town of Canaan Zoning Law.

(c) Before a Telecommunication Facility Special Permit is issued, the applicant shall post with the Town a surety bond issued by a surety company satisfactory to the Planning Board in an amount sufficient (in the opinion of any structural engineer engaged by the Board pursuant to paragraph (a) in connection with the application or, if no such engineer has been engaged, in the opinion of the Board) to cover all expenses that could reasonably be expected to be incurred by the Town for the complete or partial removal when required (and any related remediation of the Facility Site) of each proposed Telecommunication Facility (including any Co-Located communication facilities) should be applicant, its successors in interest, any Co-Locator or the owner of the Facility Site or of the Tower fail to effect such removal. The applicant and any successors in interest shall maintain such bond in effect with a surety company satisfactory to the Town at all times until each such Facility is completely removed from its Facility Site and all necessary remediation of such Site has been completed, and any failure to maintain such Bond in effect shall result in immediate termination of the related Telecommunication Facility Special Permit.

(d) The holder of a Telecommunication Facility Special Permit shall furnish to the Zoning Officer proof of renewal of each insurance policy certificate and surety bond required by subparagraphs (b) and (c) not less than 60 days before the same would otherwise expire or terminate.

(e) The applicant shall provide eight copies of the application and all supporting documents and information required by paragraph 7, paragraph 8, or paragraph 17, as the case may be, to the Secretary of the Planning Board at least ten days prior to the date of the meeting of the Board at which the applicant wishes the application to be considered. The Planning Board may establish a reasonable time frame within which all documents and evidence required in connection with an application must be submitted, and the application may be denied if the applicant fails to provide this information to the Planning Board within the time frame established by the Board.

## 12. State Environmental Quality Review Classification

Notwithstanding anything to the contrary contained in the New York State Environmental Conservation Law, the rules and regulations promulgated thereunder, or any local laws,

ordinances, rules and regulations, any Telecommunication Facility Special Permit application for Co-Location or for construction of a Concealed Tower, a Short Tower or a Telecommunication Tower in districts TF-I or TF-II shall be considered and "Unlisted Action" for the purposes of environmental review and any application for construction of any other Telecommunication Tower shall be considered a "Type I Action" for purposes of environmental review.

### 13. Segmentation

An application for a Telecommunication Facility Special Permit or Permits shall include all Telecommunication Facilities which the applicant, at the time of the application, proposes to install in the Town of Canaan or which will be necessary to enable it to provide its proposed service within the Town or, if the application is for a Personal Wireless Service Facility or Facilities, to achieve Adequate Coverage and Adequate Capacity. The application shall include the overall plan of the applicant for the installation of Telecommunication Facilities in the region within a 5-mile radius of the Town.

### 14. Notification

(a) An application proposing a new Telecommunication Tower shall mail notice of the filing of the application and of all public hearings directly to all landowners whose property is located wholly or in part within 500 feet of the property line of the Facility Site. Notification, in all cases, shall be made by certified mail, return receipt requested.

(b) Documentation of such notifications shall be submitted to the Planning Board with the application or, in the case of notice of a public hearing, prior to such public hearing.

### 15. Approval Criteria

In addition to meeting all other approval criteria for special permits set forth in this Subsection D and elsewhere in this Zoning Law (including, without limitation, the provisions of paragraph 6 of this Subsection), no Telecommunication Facility Special Permit shall be granted unless it has been demonstrated:

(a) if the application is for a Personal Wireless Service Facility, that the applicant is not already achieving Adequate Coverage and Adequate Capacity within the FCC licensed coverage area it proposes to cover with such Facility;

(b) if the application is subject to the provisions of clause (xiii) of paragraph 8(a), that there are no alternative Facility Sites and/or Telecommunication Facilities as contemplated by such clause(s) which could be utilized by the applicant to provide its proposed service or, in the case of a Personal Wireless Service Facility, to achieve Adequate Coverage and Adequate Capacity except at unreasonable additional cost;

(c) that the proposed Facility will not have an undue adverse impact on historic or tourist resources, scenic views, residential property values and/or natural or man-made resources;

(d) that the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the Facility; and

(e) that the proposed Facility will strictly comply with FCC regulations regarding RF emissions.

## 16. Decision

Any decision of the Planning Board to approve or disapprove the site plan or plans included in an application filed pursuant to this Subsection D, or to approve or disapprove an application filed pursuant to paragraph 7, paragraph 8 or paragraph 17 of this Subsection, shall be in writing and supported by substantial evidence in the record of its proceedings.

## 17. Modifications

No Telecommunication Facility located in the Town of Canaan (other than on property of the New York State Thruway Authority) shall be Modified unless a building permit for the Modification has been issued in accordance with the following procedures and requirements:

(a) An application for any Modification shall initially be filed with the Zoning Officer and shall be accompanied by a revised site plan showing the plans, elevations and details of such Modification, and an RF Emissions Certification and Structure Certification, each dated within ten days prior to the filing of the application.

(b) If the Modification consists only of the upgrade or replacement of an existing Antenna with an Antenna of like kind and/or structural reinforcement of a Telecommunication Tower that does not affect the height of the Tower, no further review shall be required and the Zoning Officer shall issue a building permit for the proposed Modification provided that after any such reinforcement the Tower will continue to comply with applicable building codes, rules and regulations.

(c) All other applications for proposed Modifications shall be immediately forwarded by the Zoning Officer to the Planning Board for amended site plan review and approval as if the application were a new Telecommunication Facility Special Permit application filed under paragraph 7 or paragraph 8 of this Subsection D, whichever is appropriate. The Planning Board shall process any such application on an expedited basis and, in so doing, may waive any of the requirements of paragraph 7(a)(ii) or 8(a)(iii), as the case may be, no reasonably necessary for adequate review of the application. If the amended site plan is approved, the application shall be immediately referred back to the Zoning Officer for the issuance of a building permit provided that all affected structures will, after the Modification or Modifications, continue to comply with applicable building codes, rules and regulations.

(d) To encourage the use of Repeaters, the installation of one or more Repeaters on an existing Telecommunication Tower by the holder of the Telecommunication Facility Special Permit for such Tower shall be deemed to be a Modification of such Tower and not a new Telecommunication Facility requiring another such Permit.

(e) In the event of an emergency which results in danger to persons or property or a disruption of service, an Antenna may be replaced in kind without prior issuance of a building permit provided that application is made, as soon as practicable, to the Zoning Officer for a building permit.

## 18. Inspections

(a) It shall be a condition of each Telecommunication Facility Special Permit for a Telecommunication Tower that the owner of the Tower shall file with the Zoning Officer:



- (i) a Structure Certification on or before June 30 of each year in the case of a guyed Tower, or, in the case of any other Tower, on or before June 30 of every third year (beginning with the second calendar year after the year in which the Permit was issued); and
- (ii) on or before June 30 of each year, and RF Emissions Certification.

(b) It shall also be a condition of each Telecommunication Facility Special Permit for a Telecommunication Tower that the Zoning Officer and his agents and/or representatives, including engineers engaged by him, shall be given access to the Facility Site and such Tower at any time to inspect the Tower and measure the RF emissions from the Site. All entities having Telecommunication Facilities on the Site shall be responsible for the reasonable costs of one such inspection and one such measurement during any one-year period.

(c) Should any Structure Certification or RF Emissions Certification or inspection provided for in subparagraph (a) or (b) reveal (i) any structural defect(s) which, in the opinion of the inspecting engineer, render(s) the Tower unsafe, or (ii) that RF emissions do not comply with the FCC RF Exposure Guidelines, the following actions must be taken:

- (i) within 10 business days after it learns that a Tower is unsafe, the owner or, if applicable, lessee of the Tower shall submit a plan to repair the structural defect(s) to the Zoning Officer and repairs shall be initiated within 10 business days of the submission of the plan or within 20 business days after the owner or lessee learns that a Tower is unsafe, whichever is earlier, and shall be completed within a reasonable period, but not more than 30 days, thereafter.

- (ii) within 10 business days after it learns (whether or not as a result of an inspection pursuant to subparagraph (b)) that the RF emissions from a Telecommunication Facility do not comply with the FCC RF Exposure Guidelines, the owner of such Facility shall initiate such actions as may be necessary to bring the emissions into compliance with such Guidelines and shall complete such actions, and furnish a RF Emissions Certification to the Zoning Officer, within 20 business days thereafter.

Failure to furnish any RF Emissions Certification or Structure Certification required by this Section 18 or to accomplish compliance with the FCC RF Exposure Guidelines or complete required repairs of structural defect(s) within the period provided for in this subparagraph without good cause shall be a violation of the relevant Telecommunication Facility Special Permit and shall be grounds for revocation of the Permit by the Planning Board, after a hearing, and shall also subject the owner of the Tower or Facility to other enforcement and penalty provisions provided in this Zoning Law.

## 19. Removal

An application for a Telecommunication Facility Special Permit for a new Telecommunication Tower or for Co-Location shall include an agreement committing the applicant and its successors in interest to:

- (a) remove any of its Telecommunication Facilities covered by the Permit (I) when they cease to operate or (II) when repairs required by paragraph 18 are not completed within the period specified in such paragraph or (III) if the Facilities are not adequately maintained (including repainting of a painted Tower) or (IV) when the Permit is terminated, and, if the applicant is the Tower owner or lessee, to remove the Tower, any Telecommunication Facilities then located thereon and any associated Equipment Shelter, and otherwise to remediate the Facility Site, when all Facilities located on the Tower cease to operate or when the Permit for the Tower is terminated:

(b) notify the Zoning Officer within 10 business days after any such cessation of operation;

(c) complete any such required removal of a Facility (other than a Tower) within 30 days after removal is required by this paragraph 19; and

(d) complete any required removal of a Telecommunication Tower and Telecommunication Facilities located thereon and remediation of a Facility Site within 90 days after such removal is required by this paragraph 19.

For the purposes of this paragraph 19, "cease to operate" shall mean not performing the normal functions associated with a Facility on a continuous and ongoing basis for more than 90 days, and "remediation" shall include re-vegetation and removal of a Tower base and all guy wire anchors. However, the Zoning Officer may permit the Tower base to be buried, covered with dirt, graded, and seeded in lieu of removal in such instance where removal would be difficult because of the size and weight of the Tower base. Failure to notify the Zoning Officer or to affect any removal or remediation in accordance with this paragraph shall be a violation of the Town of Canaan Zoning Law and shall be punishable pursuant to the provisions of Article X hereof. Failure to effect any required removal or remediation shall also permit the Town and its agents and representatives to enter the Facility Site without notice and effect such removal and/or remediation at the expense of the holder of the relevant Permit and/or the owner of the relevant Tower and/or the owner of the relevant Facility Site, and to enforce the surety bond provided for in paragraph 11(c) of the Subsection D in order to enable the Town to recover all expenses incurred by it.

#### 20. Assignment of Special Permit

A Telecommunication Facility Special Permit may not be assigned without the approval of the Planning Board. Any request for assignment of a Special Permit must include a copy of the proposed assignment and an agreement by the assignee to perform all of the obligations of the assignor under the Permit and this Subsection D, and the assignor must demonstrate to the satisfaction of the Board that the assignee has sufficient knowledge, experience, and financial ability to continue the operation of the Telecommunication Facility covered by the Permit and to carry out the obligations of the assignor under the Permit and this Subsection D, and that all surety bonds and insurance policies required to be maintained in effect by the assignor will remain in effect notwithstanding such assignment. No assignment shall release the assignor from any of its obligations with respect to such Permit or under this Subsection D. No assignment will be approved while there is any violation of any of the provisions of this Subsection D or of the conditions to the Permit by the assignor. If the provisions of this subparagraph 20 are satisfied, the Board shall approve the requested assignment.

#### 21. Application Fees

The application fees for Telecommunication Facility Special Permits, and for Modifications, shall be established from time to time by the Canaan Town Board.

### **ARTICLE X - ADMINISTRATION AND ENFORCEMENT**

#### **A. Relation of Zoning Regulations to Other Provisions of Law and to Private Covenants and Agreements**

1. Nothing contained in this Zoning Law shall be taken to repeal, abrogate, annul or in any way impair or interfere with the New York State Fire and Building Code or any rules or regulations adopted or issued there under, or any other provisions of Federal, State or local law, ordinance, or regulations, existing or as may be adopted in the future. Nor is it intended by this Zoning Law to interfere with or abrogate or annul any easements, covenants or other agreements between parties. However when this Zoning Law imposes a greater restriction upon the use of Buildings, Structures, premises, Lots or land, or upon the height of Buildings or Structures, or requires larger Lots, yards, or other open spaces than imposed or required by such other provision of law, ordinance or regulations, or by such easements, covenants or agreements, the provisions of this Zoning Law shall control unless otherwise required by such other provisions of law, ordinance or regulations.
2. Wherever the provisions of any other Federal, State or local law or ordinance or regulation impose a greater restriction than this Zoning Law, the provisions of such other law or ordinance or regulation shall control.
3. No provision contained in this Zoning Law shall be construed as justifying the encroachment of any Building or Structure within any Road or Way now or hereafter laid down on any subdivision plat filed in the office of the County Clerk or within any Federal, State, County or municipal Road.

## **B. Permits and Enforcement**

1. **Zoning Enforcement Officer:** This Zoning Law shall be administered and enforced by a person designated by the Town Board as the Zoning Enforcement Officer (ZEO), who is also the Building Code Enforcement Officer, and whose duty it shall be to:
  - a) Issue temporary permits, building permits, use permits and occupancy permits as described herein.
  - b) Enforce the provisions of this Zoning Law.

In order to carry out the foregoing duties, the ZEO shall have, and is hereby given, the power to make such inspections of premises and Structures under construction and, completed Structures, as may be necessary to carry out his duties. No permit required hereunder shall be issued by the ZEO except in compliance with the provisions of this Zoning Law, or as provided in any variance granted by the ZBA. The ZEO shall submit monthly reports of his activities and issued permits to the Town Board.

2. **Permits:** No Structure shall be erected, enlarged, altered or moved, and no Use shall be established or changed in the Town of Canaan unless a permit for such activity has been issued by the ZEO pursuant to the provisions set forth herein. The ZEO may require such information as, in his sole discretion, may be necessary to determine if the proposed Structure or Use is in accordance with the provisions of this Zoning Law.

**a. Building Permit:** No Structure (including a sign) shall be erected, altered, moved, or enlarged, and no excavation for any construction shall be started unless a Building Permit for such work has been issued by the ZEO. Applications for a Building Permit shall be submitted in duplicate on a form provided by the ZEO. Each application shall set forth the purpose for which the proposed Structure is intended to be used and

shall be accompanied by a plot plan showing the locations and dimensions of the Lot and of the Structure.

**b. Use Permit:** A Use Permit shall be required for all uses established or changed in the Town of Canaan. No use shall be established or changed in the Town of Canaan unless a permit for such use has been issued by the ZEO.

**c. Temporary Permits:** The ZEO is hereby authorized to issue a Temporary Permit for the following activities:

1. The temporary placement of a Storage Container used for storage in the Rear Yard of any residential Lot for a period not to exceed sixty (60) days in any one calendar year.
2. Structures used temporarily in conjunction with construction for up to one (1) year. If the construction project is being actively pursued, the permit may be renewed by the ZEO for an additional one (1) year period. Temporary Structures must be removed within thirty (30) days of the completion of the project.
3. The temporary placement and use of a Mobile Home or Recreational Vehicle on any residential Lot for a period not to exceed one (1) year in the event of major destruction of a residence situated on that Lot.
4. All temporary Uses must comply with Setback and other relevant provisions of this Zoning Law.
5. Any additional temporary Use that may be specified under this Zoning Law.

### **C. Interpretations**

1. Should the ZEO be in doubt as to the meaning or intent of any provision of this law, or as to the location of any district boundary line on the Zoning Map, or as to the propriety of issuing a use permit, building permit or a Certificate of Occupancy in a particular case relating to the provisions of this law, he shall refer the matter to the ZBA or in the case of a Telecommunication Facility, the Planning Board for interpretation and decision.

2. The ZEO shall adopt standards, consistent with this law, for the purpose of assuring efficient and uniform administration of its provisions.

3. If the ZEO should mistakenly issue a Building or Use Permit that is not in accordance with the provisions of this law, that Building or Use Permit shall be invalid, and the ZEO shall give prompt written notice of such invalidity to the permittee.

4. No Building Permit or Use Permit shall be issued herein unless and until the owner can demonstrate full compliance with the regulations concerning Flood Area Overzone, if applicable, and compliance with the regulations of the New York State Department of Environmental Conservation with regard to construction within a wetlands area, if applicable.

### **D. Reimbursement of Expenses**

1. In addition to any fees required by an applicant appearing before the ZBA or Planning Board in connection with a request for a Special Permit, variance or interpretation of the

Zoning Law, or any fees required of an applicant appearing before the Planning Board or ZBA in connection with a request for Site Plan review, subdivision approval or in connection with any application made for a Building or Use permit which is a Permitted Use, but which requires Site Plan approval, the applicant shall also be required to pay all expenses incurred by the ZBA or Planning Board in connection with the processing of such application including any reasonable fees and expenses incurred by either Board for the retention of a planner, engineer, attorney, architect, or other expert as provided for in paragraph 2 herein.

2 In connection with any application before the ZBA or the Planning Board, such Boards are hereby authorized and empowered to retain a planner, engineer, attorney, architect, or other deemed necessary by the ZBA or Planning Board to review and evaluate an application. The reviewing Board may require related fees and expenses to be paid in advance and may suspend review of an application until such payment is made.

#### **E. Completion of Building for Which a Permit Has Been Issued**

1. Nothing in this law shall require any change in the plans, construction or designated use of a Building or Structure for which a lawful Building Permit has been issued prior to the effective date of this Zoning Law provided that:
  - a) The construction of any Building or Structure for which a permit has been issued shall have begun within one (1) year after the date of issuance of such permit and thereafter diligently pursued.
  - b) The entire Building or Structure shall be completed according to the plans, which have been approved by the ZEO and upon which the issuance of such permit was based, within two (2) years from the effective date of this Zoning Law. A further extension of one (1) year may be granted for an additional permit fee of fifty percent (50%) of the original fee.
  - c) In the event that any of the above conditions is not complied with, the Building Permit shall be void.

#### **F. Certificates of Occupancy**

1. It shall be unlawful to use or occupy or to permit the use or occupancy of any Building, Structure, premises, Lot or land, or part thereof, hereafter erected or altered, enlarged or moved, or put into use, in whole or in part, after June 10, 1985, or of any building, Structure, premises, Lot or land, or part thereof of which the use is changed, until a Certificate of Occupancy has been obtained by the owner.
2. No Certificate of Occupancy shall be issued for any Building, Structure, premises, Lot or land unless the erection, construction, reconstruction, structural alteration, restoration, repair or moving of such Building or Structure or part thereof and the intended use thereof are in conformity in all respects with the provisions of this Zoning Law, including compliance with any site plan approval and with any conditions imposed by the ZBA or Planning Board, and also in conformity in all respects with the New York State Fire Prevention and Building Code, full compliance with the regulations concerning the Flood Area Overzone, if applicable, and compliance with the regulations of the Department of Environmental Conservation, if applicable, and in the case of Certificates of Occupancy issued after January 01, 2003, septic system approval by the Columbia County Department of Health, if

required.

## **G. Fees**

The fees for Building and Use Permits issued under the term of this Zoning Law shall be such as are determined by Resolution of the Town Board from time to time. The current effective schedule of fees will be on file at all times with the Town Clerk from whom a copy is available upon request.

## **H. Violations**

1. Any person or corporation, whether as owner, contractor, lessee, agent or employee, who shall violate any of the provisions of this Zoning Law, or fails to obtain a permit before commencing any Use or construction, alteration or change when a permit is required or who fails to comply with a Notice, Order or regulation made hereunder or authorized by any New York State law or regulation, or with regard to any conditions imposed for any Use or Building Permit hereunder, or who erects, alters, moves or uses any Building, Structure or land in violation of any statements or drawings submitted by him and approved under the provisions of this Zoning Law, shall be guilty of a violation and, upon conviction, shall be punished by a fine not exceeding \$350.00 or imprisonment not to exceed fifteen (15) days, or both, for a first offense, for conviction of a second offense committed within a five (5) year period by a fine not exceeding \$700.00 or imprisonment not to exceed fifteen (15) days, or both, and for conviction of each further violation within a five (5) year period by a fine not exceeding \$1,000.00 or imprisonment not to exceed six (6) months, or both. For the purposes of this subsection, a penalty for a violation may be assessed as of the date that the ZEO sends a Notice of Violation, by certified mail, return receipt requested, to the applicable party advising of such violation, at which time the applicable penalties referred to herein shall apply. Each and every week such violation continues thereafter shall be deemed a separate and distinct violation without the necessity of the ZEO sending any further notices in this regard.
2. The ZEO may take action with respect to any alleged violation of this Zoning Law that he has discovered himself or which is the subject of a complaint of any person.
3. Any person may file a complaint with regard to an alleged violation of this Zoning Law. All such complaints must be in writing and filed with the ZEO who shall record, investigate and report on the same to the Town Supervisor within fourteen (14) days after receiving the complaint.
4. There shall be a presumption that the owner of any Building, Structure, or Lot has control over the same and with regard to what is occurring thereon and there shall be a presumption that such owner has knowledge of the existence of a violation occurring in or with respect to such Building or Structure or upon such Lot and has the power to remedy same. The owner of any Building, Structure or Lot in or with respect to which a violation exists may, when notified of such violation, provide the ZEO with evidence that such owner has no possession or control over same and has, in no way, caused or permitted such violation. Such submission must be in writing and must also set forth to the best of the owner's knowledge the person or party who has possession and/or control of the premises and/or who has caused or permitted the violation to exist. If the ZEO is satisfied that the owner has, by clear and convincing evidence, established that

such owner is in no way responsible for the violation, the ZEO shall not proceed against the owner, but shall instead proceed against the party or parties who have caused the violation. The failure of the owner to notify the ZEO within fourteen (14) days after notice of the violation is given that such owner has no control over the Building, Structure or Lot involved and has in no way caused the violation, shall be presumptive evidence that such owner has, in fact, caused, or is responsible for such violation, and upon the trial of the matter, the ZEO need only establish the ownership of the premises and the facts constituting the violation.

5. Upon a violation of this Zoning Law, the ZEO may charge any person, or organization, violating this Zoning Law with such violation before an appropriate Court and may file all appropriate documents in connection therewith. If a party served with such violation does not voluntarily appear before the appropriate Court, a warrant for arrest may be issued pursuant to the provisions of the Criminal Procedure Law.
6. In addition to all of the other remedies provided by law or provided for herein, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken by or on behalf of the Town to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use of any Building, Structure or Lot, to restrain, correct or abate any violation of this Zoning Law, to prevent the occupancy of such Building, Structure or Lot, or to prevent an illegal act, conduct, business or use in or about any premises. With respect to any such proceedings taken by or on behalf of the Town as set forth herein, the Town shall be entitled to reimbursement from the violator for all costs, expenses and reasonable attorney's fees incurred.
7. In addition to all of the other remedies provided by law or provided for herein, the ZEO may serve upon a violator a Cease and Desist Order from any conduct prohibited herein. If the violator continues such conduct at the subject premises after service of such Notice, this shall constitute a distinct and separate violation of this Zoning Law and shall be punishable pursuant to the provisions of Paragraph "H", Subparagraph "1". Service of a Cease and Desist Order may be made by personal service upon the violator(s) or may be made by certified mail, return receipt requested, to the violator's address, with an additional copy being mailed by regular mail.

## **ARTICLE XI - VALIDITY**

If any section or subsection, paragraph, clause, phrase or provision of this law, or the location of any district boundary shown on the Zoning Map that forms a part hereof shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this law or Zoning Map as a whole or in any part or provision hereof other than the part so adjudged to be invalid or unconstitutional.

## **ARTICLE XII - RELIEF FROM DECISIONS**

Any person or persons jointly or severally aggrieved by a decision of the ZBA, ZEO or the Planning Board hereunder may apply to the Supreme Court for relief by proceeding under section 282 of the General Municipal Law of the State of New York or any applicable provision of Article 78 of the Civil Practice Laws and Rules of the State of New York within thirty (30) days after the filing of a decision in the Office of the Town Clerk.

**ARTICLE XIII-**  
**REPLACEMENT OF EXISTING LOCAL LAW REGARDING ZONING**

This Zoning Law replaces in its entirety the existing Local Law Regarding Zoning for the Town of Canaan which was enacted on or about June 10, 1985 and which was referred to as Local Law No. 1 of 1985 and supersedes any and all other local laws and ordinances of the Town of Canaan to the extent that same may be inconsistent with the provisions hereof.



## APPENDIX I -

### **A. Residential Areas**

#### **1. RA-1**

a) From the New Lebanon-Canaan Town line, a strip of land along Columbia County Route 5 for a distance of one thousand (1,000) feet on each side of the centerline of said Road, extending to the northern boundary of the C-1 zone.

b) Continuing on the southern boundary of the C-1 District, a strip of land along Columbia County Route 5 for a distance of one thousand (1,000) feet on each side of the centerline of said Road, extending to Warner's Crossing Road at Canaan Center.

c) From the junction of Columbia County Route 5 and Columbia County Route 24 east of Red Rock, a strip of land along Columbia County Route 24 for a distance of one thousand (1,000) feet on each side of the centerline of said Road, proceeding west along County Route 24 through Red Rock to the Canaan-Chatham town line.

#### **2. RA-2**

All portions of the Town of Canaan not included under RA-1, RA-3, RA-4, or C-1, C-2, and C-3 districts, are zoned in this district.

#### **3. RA-3**

Beginning at the New York State Thruway southeastern boundary with the Commercial Districts (C-2 and C-3) located in the southeastern part of the town and proceeding northerly approximately 3,700 feet along the westerly boundary of said commercial districts, which is also 1,000 feet west of New York State Route 22, to the southern boundary of the CSX (formerly the Boston and Albany Railroad) right of way; proceeding thence westerly along the railroad tracks approximately 3,800 feet to the crossing of Tunnel Hill Road (railroad tunnel); proceeding thence southerly for a distance of 5,000 feet in a straight line, ending at the northern boundary of the New York State Thruway right of way, proceeding approximately 5000 feet to the point of beginning along such northern boundary of the New York State Thruway.

#### **4. RA-4**

All portions of the Town of Canaan more than 1,850 feet from the centerline of a Road, which exists on the date of this Zoning Law

### **B. Commercial Areas**

#### **1. C-1 (General Business)**

On the north side of New York State Route 295, the westerly boundary line is located at the westerly boundary of tax map #38.-1-33.112 which is located west of the intersection of Bristol Road and New York State Route 295, only including parcels fronting on the north side of New York State Route 295. On the south side of New York State 295 the westerly boundary is the westerly boundary of the Canaan Town Highway Garage property, tax map #38.-1-42, at that point the zone continues easterly along New York State Route 295 with a depth of three hundred (300) feet to the north and with a depth running to the Stonykill Creek on the south to a point where the creek intersects with New York State Route 295 for a depth of three hundred (300) feet on the north side only for a distance of one thousand (1,000) feet. This zone shall also include the Town Hall property (tax map #49.2-1-4) with the boundary line to be the centerline of Walker Lane.

## **2. C-2 (General Commercial):**

The northern sector of this zone commences at the intersection of New York State Route 22 and New York State 295 and proceeds northerly on both sides of New York State 22 to the northern boundary of tax map #50.-1-29.120 and the westerly side of New York State Route 22 to the northern boundary of tax map #50.-1-1-32 running thence southerly at a uniform depth of seven hundred fifty feet (750') on each side of New York State Route 22 to a point fifteen hundred feet (1,500') north of the intersection of New York State Route 22 and Tunnel Hill Road. The southern sector of this zone commences at Flint's Crossing Road just southerly from its intersection with the railroad tracks and marked by the boundary of tax map #70.-1-6.1 to the north to tax map #70.-1-4.200 and #70.-1-5 to the south, running thence along Flint's Crossing Road on the northeast side of said roadway at the uniform depth of one thousand (1,000) feet, southeasterly to the State line; on the southwest side of Flint's Crossing Road commencing at its intersection with the Massachusetts State line, thence southerly to Interstate 90, thence continuing southerly to a point which is seven hundred fifty (750) feet south of Interstate 90, running thence in a northwesterly direction a uniform distance of 750 feet south of Interstate 90 to a point at Roaring Brook, running thence in a southwesterly direction along Roaring Brook to a point which is twelve hundred (1,200) feet westerly of New York State Route 22, running thence along the southeast boundary of the C-3 zone to Flint's Crossing Road, running thence along Flint's Crossing Road in a southeast direction to the Massachusetts State Line.

## **3. C-3 (Light industrial):**

This zone shall be located in the area of the intersection of New York State Route 22 and the New York State Thruway. The zone shall extend from the C-2 boundary at the northerly intersection of Flint's Crossing Road and the CSX Tracks, at a uniform depth of one thousand (1,000) feet on the northeast side of Flint's Crossing Road in a northwesterly direction to a point which is located approximately 1,000 feet northeasterly from the intersection of Peaceful Valley Road and New York State Route 22, running thence in a straight line toward such intersection, but only so far as the intersection of such straight line and the CSX Tracks; running thence in a northerly direction along the CSX Tracks to a point marking the intersection of the CSX Tracks and New York State Route 22 a uniform distance on one thousand (1,000) feet in a southerly direction to Peaceful Valley Road, continuing thence on the south side of Peaceful Valley road at a depth of twelve hundred (1,200) feet on the southerly side of New York State Route 22, to a point which is on a straight line forming a right angle with Flint's Crossing Road, said right angle being approximately eight hundred (800) feet southeasterly from the point of beginning of the C-3 zone. The boundary shall then proceed along said straight line to Flint's Crossing Road, thence along the southwest side of Flint's Crossing Road approximately eight hundred (800) feet to the point and place of beginning.

