



## **Draft Environmental Impact Statement – Volume 3 Cricket Valley Energy Project**

**Dover, Dutchess County, New York**

**April 2011**

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## **Appendix 6-A: Town of Dover Zoning Code**

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## Chapter 145

### ZONING

[HISTORY: Adopted by the Town Board of the Town of Dover 4-28-1999 by L.L. No. 2-1999. Amendments noted where applicable.]

#### GENERAL REFERENCES

Architectural design review — See Ch. 37.  
Building construction — See Ch. 47.  
Environmental quality review — See Ch. 61.  
Fees — See Ch. 73.  
Flood damage prevention — See Ch. 81.  
Greenway connections — See Ch. 88.  
Subdivision of land — See Ch. 125.

#### ARTICLE I Title, Scope and Purposes

##### § 145-1. Title.

This chapter shall be known and may be cited as the “Zoning Law of the Town of Dover.”

##### § 145-2. Scope.

This chapter regulates the location, design, construction, alteration, occupancy, and use of structures and the use of land in the Town of Dover, dividing the town into land use districts.

##### § 145-3. Authority and purposes.

This chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, § 10 et seq., and Chapter 62, Article 16, of the Consolidated Laws,<sup>1</sup> in conformance with the Town of Dover Master Plan, adopted by the Planning Board on September 21, 1993, to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

A. To conserve the natural resources and rural character of the town by encouraging development in appropriate locations and by limiting building in areas where it would conflict with the town’s predominantly rural pattern and scale of settlement;

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1. Editor’s Note: See the Town Law.

B. To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as East and West Mountain, the Swamp River, along the Ten Mile River and its tributaries, in aquifer and aquifer recharge areas, and on steep slopes, erodible soils, wetlands and their buffers, floodplains, active farmlands, and other designated open space resources;

C. To encourage a range of business activities in appropriate locations which are compatible with the town's rural character and scale, concentrating retail businesses in and near hamlets, and allowing large-scale business and industry in well-buffered locations with good transportation access;

D. In recognition of the economic value of Dover's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, agricultural land, existing and potential recreation areas, waterways, ground and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, and to maintain environmentally significant open space in its predominantly undeveloped state, in order to preserve the open and rural character of the town;

E. To preserve and protect lands and buildings that are historically significant and enhance the aesthetic and architectural quality of the entire community;

F. To encourage the continuation of agriculture and the preservation of open space, and to avoid regulating agricultural uses in a manner that unreasonably restricts or regulates farm structures or farming practices;

G. To encourage other economic activities that require large areas of contiguous open space, such as forestry, tree farming, and recreation, as well as the support services and industries that add value to these uses, such as wood products and tourist facilities;

H. To regulate building density in order to concentrate population in appropriate locations where municipal infrastructure is available, and to ensure access to light and air, conserve open space, facilitate the prevention and fighting of fires, minimize the cost of municipal services, and accomplish the other purposes enumerated in § 263 of the Town Law of New York State;

I. To integrate harmoniously different types of housing and varied land uses in hamlet centers to encourage pedestrian activity and reduce automobile traffic;

J. To provide a range of housing opportunities for all segments of the local population with due consideration for regional housing needs;

K. To protect residences from nonagricultural nuisances, odors, noise, pollution, and unsightly, obtrusive, and offensive land uses and activities;

L. To improve transportation facilities in areas designated for intensive settlement and to maintain a network of smaller country roads in areas designated for low-density development and the protection of open space, agriculture, steep slopes, and rural character;

M. To reduce traffic congestion on major roads by establishing a pattern of settlement and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling, and the use of commuter rail and other forms of public transportation;

N. To encourage the conservation of energy and the appropriate use of solar and other renewable energy resources;

O. To provide a flexible system of land use regulation that enables the town's economy and population to grow, while preserving the most important natural, historic, scenic, architectural, and cultural features; and

P. To base such flexible land use regulations on the unique characteristics of the landscape, the needs of the people of the Town of Dover, the rights of landowners to make economically beneficial use of their land, and the impact of proposed land uses on the natural and human environment, and to avoid patterns of development that adversely affect the scenic, historic, rural, and natural character of the town.

#### § 145-4. Interpretation of provisions.

All provisions of this chapter shall be construed to fulfill the purposes stated in § 145-3 above.

#### § 145-5. Architectural review; siting and design guidelines.

The Town of Dover encourages development that is compatible with the existing character of the town. To that end, the Town Board has adopted Local Law Number 3 of 1997,<sup>2</sup> which provides for architectural design review by the Architectural and Community Appearance Board of Review for all structures subject to site plan review by the Planning Board and/or greater than 1,000 square feet in gross floor area. Single-family and two-family residences and accessory structures are exempt from architectural review unless such structures are referred for architectural review by the Building Inspector pursuant to that local law. In addition, the Town Board hereby adopts as advisory guidelines the illustrated design guidelines published by the Dutchess County Department of Planning in 1994, titled "Hamlet Design Guidelines and Rural Development Guidelines" (hereinafter the "Guidelines"). Where this chapter specifically requires that the Guidelines be followed, they shall be mandatory. The Guidelines shall be adapted to the specific requirements of this chapter as the reviewing board deems appropriate.

#### § 145-6. Effect on other laws and agreements.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that when this chapter imposes a greater restriction on the use of structures or land or on the height of structures, or requires

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2. Editor's Note: See Ch. 37, Architectural Design Review.

larger open spaces, or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule, or regulation or by any easement, covenant, or agreement, the provisions of this chapter shall control. Where the requirements of this chapter differ from the requirements of another statute, law, ordinance, rule, or regulation, the more restrictive shall govern.

§ 145-7. Greenway connections. [Added 7-26-2000 by L.L. No. 1-2000]

By Local Law Number 1 of the year 2000 the Town of Dover has adopted the “Greenway Connections: Greenway Compact Program and Guides for Dutchess County Communities,” as amended from time to time, as a statement of land use policies, principles and guides.<sup>3</sup> In its discretionary actions under this chapter, the reviewing agency shall be guided by said statement of policies, principles and guides.

ARTICLE II  
Land Use and Overlay Districts

§ 145-8. Establishment of districts.

A. Land use districts. For the purpose of this chapter, the Town of Dover is hereby divided into the following land use districts:

(1) Rural District (RU). The purpose of this district is to promote agriculture and compatible open space and rural uses by discouraging large-scale residential development.

(2) Resource Conservation District (RC). The purpose of this district is to encourage forestry, recreation, land conservation, and very-low-density residential uses where agriculture is not a significant use and intensive residential development is undesirable.

(3) Hamlet Mixed-Use District (HM). The purpose of this district is to maintain the traditional scale, density, and mixed-use character of existing hamlet core areas and to allow them to expand and become more economically viable.

(4) Hamlet Residential District (HR). The purpose of this district is to maintain the traditional scale, density, and character of hamlet residential neighborhoods surrounding the hamlet cores and to allow expansion into surrounding land areas that are within walking distance from the hamlet centers.

(5) Suburban Residential (SR). The purpose of this district is to maintain the character of existing suburban-density residential developments and to allow a limited extension of suburban growth patterns.

(6) Highway Commercial District (HC). The purpose of this district is to allow commercial uses that rely heavily on automobile and truck access and that would not be compatible with a hamlet mixed-use area.

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3. Editor's Note: See Ch. 88, Greenway Connections.

(7) Commercial/Industry/Office Mixed-Use District (CO). The purpose of this district is to allow areas for light industrial, service commercial, office, and research facilities. Such districts may also include, where compatible, housing and limited retail commercial development intended to support the primary uses or to provide adaptive reuses for existing commercial or industrial buildings.

(8) Industrial/Manufacturing District (M). The purpose of this district is to allow industrial and related uses and adult entertainment, uses that are not compatible with most commercial, office, or residential uses, in isolated and well-buffered locations.

B. Overlay districts.

(1) In addition to these land use districts, the following overlay districts are hereby created:

(a) Floodplain Overlay District (FP). The purpose of this overlay district is to control development within the one-hundred-year floodplain in order to minimize flood damage and protect water resources. This district also incorporates by reference the town's existing Floodplain Protection Local Law.<sup>4</sup> See § 145-13.

(b) Stream Corridor Overlay District (SC). The purpose of this overlay district is to protect the scenic character and water resource values of the Ten Mile River and its tributaries. See § 145-14.

(c) Aquifer Overlay District (AQ). The purpose of this overlay district is to protect groundwater resources that provide both public water supplies and drinking water for private wells. See § 145-15.

(d) Mixed-Use Institutional Conversion Overlay District (MC). The purpose of this overlay district is to provide use and design flexibility to encourage productive reuse of the Harlem Valley Psychiatric Center campus. This district provides greater use flexibility and a procedure for master planned development of this property in a manner that advances the town's development goals. See § 145-16.

(e) Soil Mining Overlay District (SM). The purpose of this overlay district is to provide appropriate locations for soil mining to occur where it can encourage commercially viable agriculture by enabling farm operators to supplement their farm income. See § 145-17.

(2) Overlay districts do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this chapter. On any given parcel of land, more than one overlay district may apply.

§ 145-9. Zoning Maps.

The boundaries of the land use and overlay districts are hereby established on maps titled "Town of Dover Zoning Map — Land Use Districts and Soil Mining Overlay District" (hereinafter the "Land Use District Map"); "Town of Dover Zoning

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4. Editor's Note: See Ch. 81, Flood Damage Prevention.

Map — Overlay Districts” (hereinafter the “Overlay District Map”); and “Town of Dover Aquifer Overlay Districts” (hereinafter the “Aquifer Overlay District Map”), adopted and certified by the Town Clerk, which accompany and are hereby declared to be a part of this chapter. Unofficial photo-reductions of these maps are appended to this chapter for reference purposes only.<sup>5</sup>

A. Zoning Map amendments. The Official Zoning Maps shall be kept in the office of the Town Clerk and shall be reviewed for accuracy and updated at least once annually by the Town Board or its designee. Changes may be made in district boundaries or other matter portrayed on the Zoning Maps only by a zoning amendment adopted by the Town Board pursuant to Article X of this chapter. Such changes shall be noted by the Town Clerk on the Official Zoning Maps promptly after the Town Board adopts an amendment.

B. Final authority. Each local law adopting an amendment shall be the final authority as to the current zoning status of lands, structures and uses in the town.

C. Readoption of maps. At least once every 10 years the Town Board shall readopt the Official Zoning Maps as an amendment to this chapter, which shall become the final authority as to all map amendments preceding such readoption.

D. Unauthorized map changes. An unauthorized map change made by any person shall be considered a violation of this chapter, punishable under § 145-57 of this chapter.

E. Interpretation of district boundaries. Where uncertainty exists as to the boundaries of districts shown on the Zoning Maps, the following rules shall apply:

(1) Boundaries indicated as approximately following the center lines of streets, highways, or railroad tracks shall be construed to follow such center lines.

(2) Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.

(3) Boundaries indicated as following shorelines of ponds and lakes shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.

(4) Boundaries indicated as following center lines of streams shall be construed to follow such center lines and, in the event of change in the center line, shall be construed as moving with the actual center line.

(5) Boundaries indicated as parallel to or extensions of features indicated in Subsection E(1) through (4) shall be so construed. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.

(6) Where overlay district boundaries are based upon natural features such as topographic contour lines or aquifer and aquifer recharge areas,

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5. Editor's Note: The Zoning Maps are on file at the Town Clerk's office.

such boundaries may be more precisely established through field investigation by a qualified professional.

**ARTICLE III  
Land Use District Regulations**

**§ 145-10. Allowable uses.**

A. Purpose. The use regulations in this article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of Dover's hamlets, neighborhoods, and rural areas. In reviewing applications for special permits and site plan approval, the Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The Planning Board shall deny any proposed use which does not satisfy the criteria in this chapter.

B. Use restrictions and Use Table. No structure or land shall be used except as provided in the Use Table below. See § 145-74 for definitions of the use categories. In the event that a particular proposed use does not fit into one of the categories shown on the Use Table and is not prohibited by § 145-10C, it may be allowed by special permit issued by the Town Board.

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C. Prohibited uses. Any use, whether or not listed in the Use Table, is prohibited if it does not satisfy the standards and criteria in §§ 145-40 and 145-63. The following uses are prohibited under all circumstances (existing uses may be

continued pursuant to the nonconforming use provisions of Article VI): heavy industry, asphalt plants, new mobile home courts, facilities for the disposal of hazardous or radioactive material, and, except as provided in § 145-50, solid waste management facilities as defined in Article XII, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a beneficial use designation from the Department of Environmental Conservation) as fill. Any such specifically prohibited use which when commenced was not listed as a permitted or special permit use in the Town of Dover Zoning Law (and was therefore commenced in violation of the Zoning Law) shall not be protected as a nonconforming use by the provisions of Article VI.

D. Accessory uses. Uses customarily incidental and subordinate to principal uses shown on the Use Table shall be allowed on the same terms as the principal uses, whether or not on the same lot, unless otherwise indicated on the Use Table. Noncommercial recreational use shall be permitted as an accessory use in all districts.

E. Mixed use. The Town of Dover encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all special permit and/or site plan reviews for the same project shall be consolidated into one proceeding before the Planning Board (unless the Town Board has jurisdiction over a special permit).

F. Change of use or structure. A change of use is the initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the change would result in the enlargement or addition of a sign or an increase of more than 10% in vehicle trip generation as indicated in current trip generation rates published by the Institute of Transportation Engineers.

(1) Uses by right. Any change of use of land or existing structures to a use permitted by right (without site plan review) shall not require approval from the Planning Board or the Code Enforcement Officer. This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Code Enforcement Officer under Chapter 47 of the Dover Town Code.

(2) Uses by right subject to site plan review. Any change of the use of an existing structure to a use permitted by right subject to site plan review shall require site plan review only if it involves the construction or enlargement of a structure, the clearing, excavation, or grading of more than 1,000 square feet of land, the addition of four or more parking spaces, or the enlargement or addition of signs.

(3) Uses by special permit.

(a) A special permit shall be required for any change of use from a use that does not require a special permit to a use that does require a special permit.

(b) Once a special permit has been granted, it shall apply to the approved use, as well as to any subsequent use of the property in the same use category, provided that it has no greater impact on adjoining properties, complies

with all terms and conditions of the special permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by special permit shall require the granting of a new special permit or a special permit amendment.

G. Rebuilding, replacement and expansion of structures. The rebuilding or replacement on the same footprint of any structure for a use which requires site plan review and/or a special permit shall require site plan review, even if it is a continuation of the same use.

H. Special site design and operational considerations in the CO District. The purpose of the CO District is to allow larger-scale nonresidential uses that contribute to the town's tax base and provide jobs for local residents, while protecting the town's treasured scenic and rural qualities using open space buffers. Impervious surfaces are limited to 40% of the total project area, requiring 60% to be maintained as open or undeveloped green space. This green space shall be arranged in a manner that adequately buffers buildings and parking areas from public roads and neighboring properties, while protecting wetlands, watercourses, and scenic views.

#### § 145-11. Density and dimensional regulations.

A. Purpose. The regulations in this section are intended to encourage the preservation of Dover's open space, while providing opportunities for needed housing and business uses. This is accomplished by clustering development in nodes surrounded by open space and, where practical, in the traditional compact pattern found in the town's hamlets. This chapter contains flexible regulations for density and lot dimensions and encourages the use of open space development (including flexible subdivision) as an alternative to conventional subdivision to preserve significant amounts of open space. See Article V for standards for open space development.

B. Dimensional Table. The following table is hereby adopted and will be referred to as the "Dimensional Table."

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C. Minimum floor area. The minimum floor area of a dwelling unit shall be 800 square feet, and the minimum for an accessory apartment shall be 500 square feet.

D. Minimum lot sizes in the HM and HR Districts. Minimum lot sizes in the HM and HR Districts shall be as shown below, provided that such lots comply with all applicable public health requirements and that all common water and sewage disposal facilities are managed by entities which the Planning Board deems adequate to protect public health on a long-term basis. Minimum lot sizes for such lots shall be:

(1) With common or municipal water supply but no common or municipal sewage disposal services: one acre.

(2) With common or municipal sewage disposal services only: 1/2 acre.

(3) With common or municipal water supply and sewage disposal: 8,000 square feet; 6,000 square feet if 20% of the parcel is maintained as common or public open space such as a green, park, or streamside trail.

(4) Without common or municipal water supply or sewage disposal services: one acre.

#### § 145-12. Multiple and accessory dwellings.

##### A. Two-family dwellings.

(1) In the HM and HR Districts, two-family dwellings shall be permitted by right on all conforming lots (with County Health Department approval).

(2) In all other districts, lots containing two-family dwellings shall be at least twice the minimum lot size in the district, except as provided in Subsection A(3) below.

(3) On lots created as part of a flexible subdivision, two-family dwellings may be approved as part of the approval process for the flexible subdivision, consistent with the overall density requirements for the flexible subdivision in Article V.

##### B. Multifamily and senior citizen dwellings.

(1) Buildings in existence as of September 1, 1998, may be converted to multifamily use if permitted in the Use Table. Maximum density shall be established by the Planning Board based upon applicable review criteria and the characteristics of the existing building. Conversions to mixed residential and compatible nonresidential uses are encouraged.

(2) For congregate senior citizen housing and residential care facilities, each bedroom shall be treated as 1/2 of a dwelling unit.

(3) The maximum density for new multifamily dwellings in the HR and HM Districts shall be four units per acre with common or municipal water or sewer, eight units per acre with both common or municipal water and sewer, or two units per acre with no common or municipal water or sewer. These densities may be increased by 50% for age-restricted senior citizen housing. In the HM and HR

Districts, multifamily dwellings shall face an existing or new street, with parking behind the buildings or off site.

(4) The maximum density for multifamily dwellings in the CO District shall be determined in each case by the Planning Board based upon all relevant special permit and site plan review criteria. New residential development shall not exceed 20% of the total floor space in any development project in the CO District.

(5) Apartments located above nonresidential uses shall be allowed at the same density as multifamily dwelling units, except that for each lot one apartment not exceeding 1,000 square feet may be located above a nonresidential use by right as an accessory apartment pursuant to Subsection C below.

C. Accessory apartments and accessory residential structures. One accessory apartment per single-family dwelling may be located in an accessory structure or a principal building as provided in the Use Table. The lot containing the accessory apartment must contain the minimum acreage required by the Dimensional Table, unless it is located in an approved flexible subdivision. The accessory apartment shall not be counted as a residential unit for purposes of determining density. No special permit shall be granted for an accessory apartment without approval or certification from the Dutchess County Department of Health of the adequacy of the septic system.

D. Multiple residences on a lot. A lot may contain more than one principal residential structure and accessory apartment, provided that the lot has sufficient acreage to comply with applicable density requirements. Such a lot may not be later subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed.

#### ARTICLE IV **Overlay District Regulations**

##### § 145-13. Floodplain Overlay District (FP).

A. General. The provisions of Local Law Number 2 of 1987, Flood Damage Prevention, are incorporated herein by reference and shall apply in addition to any other applicable zoning or building regulations.<sup>6</sup>

B. Boundaries. The Floodplain Overlay District shall be the one-hundred-year floodplain, as defined in Article XII. The boundaries shown on the Overlay District Map are approximate.

C. Restrictions. In addition to any restrictions, requirements, or permits imposed or required by Local Law Number 2 of 1987, no new structure intended for human habitation and no new septic tank, leach field, or other sanitary sewage system shall be located within the Floodplain Overlay District. This shall not prevent the replacement of existing facilities.

##### § 145-14. Stream Corridor Overlay District (SC).

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6. Editor's Note: See Ch. 81, Flood Damage Prevention.

A. Findings and purpose. The Town of Dover finds that special protection of the town's stream corridors is necessary to preserve their scenic character and water quality. The purpose of this section is to regulate land uses within stream corridors to protect water quality, scenic resources, and the overall appearance of the community, as well as to reduce the risk of damage from flooding.

B. Boundaries. The Stream Corridor Overlay District includes all land lying within 150 feet of the mean high water line of the Ten Mile River, the Swamp River, and all other streams classified by the New York State Department of Environmental Conservation, as shown on the Overlay District Map.

C. Effect of district. Within the Stream Corridor Overlay District, all of the underlying land use district rules remain in effect, except as they are specifically modified by this § 145-14.

D. Setbacks. No principal structure shall be located within 100 feet of a watercourse, and no accessory structure 200 square feet or larger shall be located within 50 feet of a watercourse.

E. Site plan approval requirement.

(1) Within the SC District, site plan approval shall be required for the following:

(a) Construction of any structure greater than 500 square feet in footprint area.

(b) Within any one-year period:

[1] Filling or excavation of an area in excess of 5,000 square feet.

[2] Clear-cutting of more than 10,000 square feet of vegetation on any parcel.

[3] Grading or other alteration of more than 10,000 square feet of the natural landscape.

(2) Within the SC District, the site plan approval requirement shall not apply to:

(a) Agricultural uses existing as of September 1, 1998.

(b) The repair and maintenance of existing structures.

(c) Activities carried out pursuant to a site plan or special use permit approved prior to the enactment of this § 145-14.

(3) Within the SC District, the Planning Board may grant site plan approval only if it finds that, with appropriate conditions attached, the proposed activity:

(a) Will not result in degradation of scenic character and will be aesthetically compatible with its surroundings.

(b) Will not result in erosion or stream pollution from surface or subsurface runoff. In making such determination, the Planning Board shall consider slopes, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors.

(c) Will comply with other applicable provisions of this chapter.

(4) If a special permit, site plan, variance, or subdivision approval is required in connection with a project subject to this § 145-14, the requirements of this section shall be considered in such proceeding and no separate site plan approval shall be required.

F. Erosion and stormwater control plan requirement. For any special permit, site plan, or subdivision application in which the area to be disturbed lies partially within the SC District, an erosion and sediment control permit shall be required pursuant to Chapter 65 of the Dover Town Code if the total disturbed area (including portions outside the SC District) exceeds 10,000 square feet.

#### § 145-15. Aquifer Overlay District (AQ).

A. Findings and purpose. The Town of Dover finds that its water supply is at risk from certain land uses and has therefore determined that special protection of the town's water supply is necessary to preserve its purity and quality. The aquifer recharge areas lie generally within the town limits and are concentrated, for the most part, in one valley. The purpose of these regulations is to protect groundwater resources that support both public water supplies and drinking water for private wells.

B. Effect of district. Within the Aquifer Overlay District (AQ) as described in § 145-15C, all of the underlying land use district rules shall remain in effect except as specifically modified by this § 145-15. In case of a conflict between this § 145-15 and the underlying use regulations, the more restrictive shall control.

C. Delineation and description of the Aquifer Overlay District. The Aquifer Overlay District is divided into two zones, the Principal Aquifer Zone (PAZ) and the Upland Aquifer Zone (UAZ), and shall include all land, existing structures, and improvements within the boundaries delineated on the Aquifer Overlay District Map. Because the recharge areas for many public water systems and private wells in the Town of Dover overlap, the boundaries of the AQ are defined broadly to ensure maximum protection in applying these regulations.

(1) The PAZ includes the Valley Bottom Aquifer System as defined in § 145-15G, all locations within 150 vertical feet of the Wappinger group geologic formation (including mountainside areas on Dover's west valley wall, well penetrations, and quarry excavations), and additional existing and future wellhead protection areas surrounding community water systems within the Upland Aquifer Zone.

(2) The UAZ includes all upland portions of the town where runoff flows toward the PAZ either directly or via stream systems.

(3) Within both the PAZ and the UAZ, any wells for identified and declared public water systems shall be protected by a circular wellhead buffer with

a two-hundred-foot radius. These areas shall be designated “wellhead buffers” and shall be protected as detailed below.

D. General provisions for the Aquifer Overlay District.

(1) The manufacture, use, storage, or discharge of any products, materials or by-products subject to these regulations, such as wastewater, solid waste, hazardous materials, or any pollutant, must conform to the requirements of these regulations.

(2) Any person or entity preparing an environmental assessment form or an environmental impact statement per 6 NYCRR 617 shall file a copy with the nearest public water system owners (as identified to the applicant by the Secretary of the Town of Dover Planning Board), the Town of Dover Planning Board, and the Town of Dover Conservation Advisory Commission.

(3) Any person who is responsible for a discharge of a hazardous substance, hazardous waste, petroleum product, or radioactive material shall immediately notify the Town Clerk of such discharge.

E. Aquifer Overlay District specific regulations by zone.

(1) Wellhead buffers.

(a) Wellhead buffers at all public water systems, including community water systems, installed after the effective date of this § 145-15 shall be protected and controlled through direct ownership of the land or through the acquisition of protective easements or other appropriate measures by the supplier of water in order to prevent contamination. Within wellhead buffers, all systems, facilities, and activities are prohibited except for physical pumping and treatment facilities and controls. The wellhead buffer area shall not be used for any purpose other than public water supply, except when a permit has been issued by the appropriate local board for nonintrusive recreation uses such as hunting, fishing, picnicking, nature study, or hiking. The wellhead buffer area shall be posted prohibiting trespass for any purpose except as permitted in this Subsection E(1)(a).

(b) The development of new water supply sources for public water systems installed and operated after the effective date of this § 145-15 shall be designed, constructed and maintained subject to the approval and enforcement authority of the Dutchess County Health Department, New York State Department of Environmental Conservation and New York State Department of Health so as to eliminate the opportunity for pollution to enter the water sources.

(c) The physical pumping facilities and controls for all public water systems shall be protected against damage from tampering by fencing or other enclosures or by their manner of construction and installation.

(2) Principal aquifer and upland aquifer zones.

(a) Wastewater treatment systems.

[1] All wastewater treatment systems, including residential septic systems for domestic use, which discharge to groundwater and receive wastewater without the admixture of industrial or other wastes, as those

terms are defined in 10 NYCRR 100, Subpart 112.5, in quantities of less than 1,000 gallons per day, shall be designed, installed and maintained in accordance with the standards established in 10 NYCRR 75 (Appendix 75A). The operation of these wastewater treatment systems shall also comply with all wastewater disposal standards promulgated by the Dutchess County Health Department where such standards are more stringent than those defined in 10 NYCRR 75 (Appendix 75A).

[2] All other wastewater treatment systems, including design, installation and maintenance, are subject to and must comply with permits issued by the New York State Department of Environmental Conservation.

(b) Point source discharges. Point source discharges, other than discharges authorized by permits issued by the New York State Department of Environmental Conservation, are prohibited.

(c) Animal waste, fertilizer and pesticides.

[1] The storage or stockpiling of manure and other animal waste for use in agricultural operations, agricultural use of fertilizers and land application of manure, and pesticide (including herbicide) storage and use shall comply, to the extent practicable, with the practices detailed in the most current versions of "Controlling Agricultural Nonpoint Source Water Pollution in New York State — A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality" published by the Bureau of Technical Services and Research, Division of Water, or "Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State." These documents are available for public inspection and reference at the office of the Town Clerk. Assistance in applying these standards is available from the Dutchess County Soil and Water Conservation District and the Natural Resources Conservation Service at the Dutchess County Farm and Home Center.

[2] Open storage of fertilizers is prohibited.

[3] Fertilizers, pesticides, and herbicides shall not be applied in a manner or at a rate which contributes to or causes a contravention of the water quality standards set forth in 6 NYCRR 700 to 705.

[4] Pesticide storage and use (including herbicides) are subject to the approval of, and shall comply with the regulations of, the New York State Department of Environmental Conservation.

[5] Disposal of pesticides, including herbicides, is prohibited unless authorized by permit issued by the New York State Department of Environmental Conservation.

[6] Disposal of water used for pesticide makeup water or for washing of pesticide equipment is prohibited unless authorized by permit issued by the New York State Department of Environmental Conservation.

[7] Use of streams as sources of water or for the washing of equipment used in conjunction with pesticide or herbicide application is prohibited.

[8] Lawn chemicals (pesticides and herbicides) shall not be applied within 25 linear feet of any watercourse.

[9] Individuals responsible for oversight of the land uses on private lands are encouraged to consult with the Dutchess County Soil and Water Conservation District and the Natural Resources Conservation Service for proper selection, implementation, and funding of Best Management Practices referred to in Subsection E(2)(c)[1] above.

(d) Sediment generation.

[1] Farm tillage practices shall comply to the extent practicable with the most current versions of "Controlling Agricultural Nonpoint Source Water Pollution in New York State — A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality," published by the Bureau of Technical Services and Research, Division of Water, or "Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State," referred to in Subsection E(2)(c)[1] above.

[2] Land disturbing activities which may result in deterioration of the quality or quantity of private and public water supply sources, including but not limited to general construction, highway construction, access road construction and maintenance, are prohibited except where measures have been put in place to manage stormwater runoff during and after construction and to prevent erosion and sediment production.

[3] Practices detailed in the most current edition of "Reducing the Impacts of Stormwater Runoff from New Development," published by the Bureau of Water Quality Management, Division of Water, shall be followed to the greatest extent practicable.

[4] Site plans submitted to the Town of Dover Planning Board shall clearly describe all land disturbing activities and sediment reduction measures to be implemented during all phases of construction, and the plans for ground disturbance shall be in accordance with Chapter 65 of the Town Code and shall be approved by the Town Engineer before any construction is to begin or permit is issued.

[5] Individuals responsible for oversight of the land uses on private lands should consult with the Dutchess County Soil and Water Conservation District and the Natural Resource Conservation Service for proper selection and implementation of Best Management Practices.

(e) Petroleum storage.

[1] Aboveground or underground petroleum storage tanks, including design, installation and maintenance, are subject to the approval of and must comply with the regulations of the New York State Department of Environmental Conservation.

[2] Abandoned aboveground or underground petroleum storage tanks must comply with the closure requirements of 6 NYCRR 613.9.

[3] Any storage tank(s) installed or replaced after the effective date of this section, where storage capacity is less than 1,100 gallons, must be above ground or fully visible for inspection within a basement or other interior space. Delivery lines must be as short as practicable and in good condition.

[4] Aboveground or underground petroleum storage tanks over 1,100 gallons and subject to New York State Department of Environmental Conservation (DEC) regulations must comply with DEC's regulations, including those pertaining to berms, dikes, and other appropriate secondary containment construction to prevent the ingress of stored materials into the ground in the event of a tank leak or discharge.

(f) Hazardous substance bulk storage. The storage of hazardous substances in bulk must comply with the regulations set forth in 6 NYCRR 596 and permits, orders, and approvals issued pursuant thereto by the New York State Department of Environmental Conservation.

(g) Stockpiles.

[1] Storage of chloride salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low-permeability pads designed to control seepage and runoff; and

[2] Storage of coal and/or cinders is prohibited except in structures designed to minimize contact with precipitation and constructed on low-permeability pads designed to control seepage and runoff.

(h) Chloride salt application. Deicing chloride salt use is restricted to the minimum amount needed for public safety as determined by the Town Highway Superintendent.

(i) Construction and closure of wells.

[1] Oil and gas well construction, use, maintenance and abandonment are subject to the approval of and must comply with the regulations of the New York State Department of Environmental Conservation; and

[2] Water system and other well construction, maintenance and abandonment are subject to the approval of and must comply with the regulations of the Dutchess County Health Department and the New York State Department of Health as set forth in standards and procedures contained in Section 5-1.22 of the State Sanitary Code and the New York State Department of Environmental Conservation under 6 NYCRR 601.

(j) Cemeteries, veterinary hospitals and offices and funeral parlors. All cemeteries, veterinary hospitals and offices and funeral parlors shall be operated to prevent contamination of the public water supply per the New York State Environmental Conservation and Public Health Laws.

F. Inspection and enforcement. The Code Enforcement Officer, or any persons charged with the maintenance or supervision of public water supply systems by their officers or their duly appointed representatives, shall make regular and thorough inspections of the identified protection zones to ascertain compliance with the rules and regulations set forth in this § 145-15. It shall be the duty of such

officials to cause copies of any rules and regulations violated to be served upon the persons found to be in violation, together with notices of such violations. If such persons served do not immediately comply with the rules and regulations, the Code Enforcement Officer or the Town Board shall take enforcement action as provided in § 145-57.

G. Definitions of terms used in Aquifer Overlay District regulations. As used in this section, the following terms shall have the meanings indicated:

**AGRICULTURAL ASSOCIATED ANIMAL WASTE** — Manure obtained from agricultural activities.

**AQUIFER** — A consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant or economically useful amount of groundwater to wells, springs or infiltration galleries.

**AQUIFER OVERLAY DISTRICT** — The areas delineated on the Aquifer Overlay District Map.

**AQUIFER RECHARGE AREAS** — Areas that have soils and geological features that are conducive to allowing significant amounts of surface water to percolate into groundwater.

**CHLORIDE SALT** — Any bulk quantities of chloride compounds and other deicing compounds intended for application to roads, including mixes of sand and chloride compounds in any proportion where the chloride compounds constitute over 8% of the mixture. A bulk quantity of chloride compounds means a quantity of 1,000 pounds or more but does not include any chloride compounds in a solid form, including granules, which are packaged in waterproof bags or containers which do not exceed 100 pounds each.

**COMMUNITY WATER SYSTEM** — A public water system which serves at least five service connections used by year-round residents or regularly serves at least 25 year-round residents.

**DECLARED WELLHEAD** — The exact, described location where a public water supply well can be accessed from the ground surface.

**DISCHARGE** — Any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the waters of the state or onto lands from which the discharged substances or materials might flow or drain into said waters, or into waters outside the jurisdiction of the state, when damage may result to the lands, waters, or natural resources within the jurisdiction of the state.

**FERTILIZER** — Any commercially produced mixture generally containing phosphorous, nitrogen, and potassium which is applied to the ground to increase nutrients to plants.

**GROUNDWATER** — Water contained in interconnected pores and fractures located below the water table in an unconfined aquifer or in a confined aquifer.

**HERBICIDE** — Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, and being those substances defined as herbicides pursuant to Environmental Conservation Law § 33-0101.

**MANURE** — Animal feces and urine.

**NONAGRICULTURAL ASSOCIATED ANIMAL WASTE** — Manure obtained from nonagricultural industries.

**NONCOMMUNITY WATER SYSTEM** — A public water system that is not a community water system.

**NONPOINT DISCHARGE** — Discharges of pollutants not subject to SPDES (State Pollutant Discharge Elimination System) permit requirements.

**NONTRANSIENT NONCOMMUNITY WATER SYSTEM** — A public water system that is not a community water system but is a subset of a noncommunity water system that regularly serves at least 25 of the same persons, four or more hours per day, for four or more days per week, for 26 or more weeks per year.

**OPEN STORAGE** — The holding of a material in a way that the material is exposed to the elements of nature.

**PEST:**

(1) Any insect, rodent, fungus or weed; or

(2) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or microorganisms on or in living man or other living animals) which the Commissioner of Environmental Conservation declares to be a pest as provided by Environmental Conservation Law § 33-0101.

**PESTICIDE** — Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant, and being those substances defined as pesticides pursuant to Environmental Conservation Law § 33-0101 et seq.

**POINT SOURCE DISCHARGE** — Pollutants discharged from a point source as defined in Environmental Conservation Law § 17-0105.

**POLLUTANT** — Any material or by-product determined or suspected to be hazardous to human or environmental health.

**PRINCIPAL AQUIFER ZONE** — The area delineated as the Principal Aquifer Zone on the Aquifer Overlay District Map.

**PUBLIC WATER SUPPLY** — The groundwater resources of the Town of Dover.

**PUBLIC WATER SYSTEM** — A community, noncommunity or nontransient noncommunity water system which provides piped water to the public for human consumption, if such system has at least five service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:

- (1) Collection, treatment, storage, and distribution facilities under control of the supplier of water of such system and used with such system; and
- (2) Collection or pretreatment storage facilities not under such control which are used with such system.

**RECYCLABLES HANDLING AND RECOVERY FACILITY** — A solid waste management facility, other than pickup and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected, for collection, storage, and off-site shipment.

**STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM or SPDES** — The system established pursuant to Article 17, Title 8 of the Environmental Conservation Law for issuance of permits authorizing discharges to the waters of the State of New York.

**STORMWATER RUNOFF RECHARGE BASIN** — A man-made device capable of retaining surface water runoff to induce groundwater infiltration.

**STRUCTURE** — A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin, or wall.

**SUPPLIER OF WATER** — Any person who owns, operates, or formally takes part in the protection of a public or private water supply.

**UPLAND AQUIFER ZONE** — The area delineated as Upland Aquifer Zone on the Aquifer Overlay District Map.

**VALLEY BOTTOM AQUIFER SYSTEM (VBAS)** — The integrated aquifer system and its immediate recharge areas found in the valley bottom in the Town of Dover.

- (1) The VBAS includes the following:
  - (a) All locations where outcrops of the Wappinger group geologic formation are present at grade.
  - (b) All locations where the Wappinger group geologic formation is the first bedrock formation found under unconsolidated soil materials.
  - (c) All overburden soils (sand, gravel, clay, till, etc.) overlying the Wappinger group geologic formation.
  - (d) All locations which do not overlie the Wappinger group geologic formation but where moderately or highly permeable overburden soils ( $K > 10^{-5}$  cm/sec), including stratified silt, sand, and/or gravel, are hydraulically

connected to, and contiguous to, overburden soils overlying the Wappinger group geologic formation.

(2) Further explanation of the VBAS is published in a 1998 water resources report prepared for the Town of Dover by the Chazen Companies.

**WAPPINGER GROUP GEOLOGIC FORMATION** — The Cambrian-Ordovician carbonate shelf sequence in the Hudson Valley, equivalent to the Stockbridge formation in Connecticut. The Wappinger group formation includes the Stissing Dolostone, the Pine Plains Formation, the Briarcliff Dolostone, the Halcyon Lake Formation, the Rochdale Limestone, and the Copake Limestone, or equivalent units to these same. As an easy geologic test, any rock formation which, when scraped, will provide bubbles in the presence of muriatic acid (0.1M HCl) is probably a member of the Wappinger group geologic formation.

**WASTEWATER** — Aqueously carried waste, including but not limited to dredge spoil, solid waste, hazardous waste, incinerator ash and residue, septage, garbage, refuse, sludge, chemical waste, infectious waste, biological material, radioactive materials, heat, and industrial, municipal and agricultural waste.

**WASTEWATER TREATMENT SYSTEM** — Any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, collection and distribution pipes, on-site disposal systems and seepage units, constructed drainage ditch or surface water intercepting ditch, or other systems not specifically mentioned in this definition, installed for the purpose of transport, treatment, neutralization, stabilization, storage, or disposal of wastewater.

**WATERCOURSE** — Every spring, stream, wetland, marsh, water channel, or water body from which water may flow in the Town of Dover.

**WATERSHED** — That land area which contributes water to a specific stream, aquifer, or aquifer recharge area or portion(s) thereof and which includes the Aquifer Overlay District Zones II and III.

**WELL** — Any present or future artificial excavation used as a source of public or private water supply which derives water from the interstices of the rocks or soils which it penetrates, including bored wells, drilled wells, driven wells, infiltration galleries, and trenches with perforated piping, but excluding ditches or tunnels, used to convey groundwater to the surface.

**WELLHEAD BUFFER ZONE** — The area within a radius of 200 feet from any identified or declared well within the Aquifer Overlay District.

**WELLHEAD PROTECTION ZONE** — A protective zone or region surrounding or near a wellhead through which aquifer recharge enters the subsurface and flows toward a public water system well. For purposes of this section, an area which allows normal infiltration equaling the daily water requirements of the water system may be considered an adequate wellhead protection zone.

§ 145-16. Mixed-Use Institutional Conversion Overlay District (MC).

A. Findings and purpose. The purpose of this overlay district is to facilitate the redevelopment of the former Harlem Valley Psychiatric Center as a mixed-use community that fulfills the goals of the Town of Dover Master Plan and the purposes of this chapter as expressed in Article I. The Town wishes to attract development to this site because it contains serviceable buildings and water and sewer infrastructure, as well as excellent highway and commuter rail transportation access. This overlay district is the most appropriate area of the Town for intensive mixed-use development. The provisions of this overlay district are intended to streamline permitting and allow greater use flexibility. The regulations that follow require the preparation of a conceptual site plan that shall be subject to review and approval by the Town Board with input from the Planning Board. Upon approval of the conceptual site plan, an applicant shall be required to secure site plan approval for the various phases of the development from the Town Board in accordance with Article IX of this chapter, as applicable. As part of its review of the site plan, the Town Board shall refer the site plan to the Planning Board for its input and recommendation. [Amended 2-27-2008 by L.L. No. 1-2008]

B. Boundaries. The boundaries of the MC District are shown on the Overlay District Map.

C. Effect of district. Within the MC District, all uses listed on the Use Table as requiring a special permit shall be permitted by right subject to site plan approval only. Any use not listed on the Use Table and not prohibited by § 145-10C may be allowed by special permit. Dimensional and density regulations and requirements for buffers between uses may be modified by the Town Board in the course of site plan approval to fit the unique characteristics of the district. Buffer requirements intended to protect residential uses adjoining the MC District shall not be modified. Total allowable development of the district or any portion thereof under review shall not exceed 50% more than would be otherwise permitted in the underlying districts, except that in the portion of the MC Overlay District which is zoned SR a density bonus of 100% shall be allowed. In addition, land use district classifications may be changed in the following ways: [Amended 9-27-2006 by L.L. No. 4-2006; 2-27-2008 by L.L. No. 1-2008]

(1) The Town Board may, in its sole discretion, by zoning amendment granted at the request of an applicant, reclassify any portion of the overlay district to any other land use district, except for the M District. In so doing, the Town Board shall make a finding that the reclassification is consistent with the purposes of the Town of Dover Master Plan and this chapter. The reclassification shall entitle the applicant to approval by right subject to site plan approval of all specially permitted uses in the district to which the use has been classified. The Town Board may attach such conditions as it finds necessary to ensure that the reclassification of land in the district will be in harmony with surrounding land uses and the purposes of the overlay district.

(2) The Town Board may, by zoning amendment in its sole discretion, rezone all or a portion of the MC District and rezone lands substantially contiguous to the MC District pursuant to a comprehensive development plan for a portion of the property that includes at least 40 acres. Such rezoning shall be in the form of a planned development district and shall be consistent with the Town of Dover Master Plan and any other master plan for the site adopted by the Town Board. A conceptual site plan shall be approved by the Town Board as part of the comprehensive development plan rezoning application approved pursuant to Article X. The conceptual site plan shall show street layouts, an open space system, and

density and general use classifications within the planned development district and shall indicate dimensional regulations that will apply within or substantially within the district. The Town Board may attach such conditions as it finds necessary to ensure that the planned development district will be in harmony with surrounding land uses and the purposes of the overlay district. The Town Board shall refer any comprehensive development plan and conceptual site plan submitted by an applicant to the Town Planning Board for review and comment as part of the environmental review process. The Planning Board shall provide written comments within 62 days from its receipt of the conceptual site plan and an accompanying draft environmental impact statement ("DEIS") deemed complete pursuant to the requirements of the New York State Environmental Quality Review Act. The conceptual site plan approved by the Town Board shall provide the development framework for subsequent site plan review by the Town Board, which shall be undertaken by the Town Board in accordance with Article IX of this chapter, as applicable. The Town Board shall refer the subsequent site plan to the Planning Board, which shall provide written comments to the Town Board within 62 days from its receipt of the site plan. No site plan or site plan amendment shall be approved by the Town Board unless the Town Board determines that such site plan (or site plan amendment) complies in all material respects with the conceptual site plan adopted by the Town Board. In an effort to facilitate the Planning Board's review and comment on any comprehensive development plan and conceptual site plan submitted to the Town Board and in an effort to keep the Planning Board apprised of the various revisions to such plans prior to the referral provided for above, five copies of any comprehensive development plan and conceptual site plan and any revision thereto submitted to the Town Board shall also be simultaneously submitted to Planning Board. The DEIS shall be submitted to the Planning Board in accordance with SEQRA and the referral provided for above.

D. Applicability of design guidelines. In reviewing any site plan application in the MC Overlay District, the Town Board and the Architectural and Community Appearance Board of Review shall apply the Dutchess County Hamlet Design Guidelines, Rural Development Guidelines, and Building Form Guidelines as appropriate to ensure that development is compatible with the character of the Town. Where the specific historic character of existing buildings on the site justifies divergence from the recommendations of the Guidelines, the Architectural and Community Appearance Board of Review may permit such divergence with a written explanation in its decision. Architectural compatibility with existing post-1950 architecture may not be the basis for such divergence. However, architectural excellence may provide the basis for divergence from the Guidelines. [Amended 2-27-2008 by L.L. No. 1-2008]

E. Limitation on residential development. No more than 30% of the gross floor area of all development in the MC Overlay District may consist of residential dwelling units containing three or more bedrooms. No more than 50% of the gross floor area of all development in the MC Overlay District may consist of residential development, except that age-restricted senior citizen housing shall be excluded from this calculation.

F. Protection of open space resources. All development in the MC District shall protect open space of conservation value by clustering development to the maximum extent practical. Particular open space resources designated for protection include the existing golf course, the Great Swamp wetlands, and the area on the east side of the district that includes steep slopes, the reservoir, and the Appalachian Trail.

§ 145-17. Soil Mining Overlay District (SM).

A. Findings and purpose. The purpose of this overlay district is to provide appropriate locations for soil mining. Soil mining has historically been an important source of income to Dover's farms, providing financial stability and enabling them to continue operating during downturns in the farm economy. As the Town of Dover develops residentially, conflicts between mining and residential uses have been occurring with increasing frequency. The Town Board seeks to balance the need for soil mining to support bona fide agricultural operations while protecting the rural peace and quiet enjoyed by Town residents. The Town of Dover will therefore allow commercial mining only in those locations where it will help promote the Town's goals of maintaining rural character and a viable agricultural sector with minimum disturbance to residential neighbors. The SM District has been delineated to include mineral resources located on existing commercial farm operations that have adequate highway access and sufficient buffering from nearby residences.

B. Boundaries. The boundaries of the SM District are shown on the Land Use District Map.

C. Effect of district. The land within the SM District is the only land in the Town of Dover, other than the M Industrial District, where new soil mines may be permitted and where existing soil mines will be allowed to renew their permits from the New York State Department of Environmental Conservation. All new soil mining operations or expansions of existing soil mining operations shall require a special permit from the Town Board, subject to all applicable special permit requirements in §§ 145-60 through 145-64 and to the supplementary regulations in § 145-42.

**ARTICLE V**  
**Open Space Development**

§ 145-18. General provisions.

A. Purpose. The purpose of open space development is to preserve large tracts of intact open space land in order to maintain the rural appearance and environmental resources of the Town of Dover. There are three types of open space development permitted in the Town of Dover: flexible subdivision, conservation density subdivision, and rear (flag) lots. Conventional subdivisions are subdivisions that comply with the minimum lot size requirements shown on the Dimensional Table and do not set aside land as permanently protected open space. The Town wishes to discourage this type of subdivision where it may detract from the Town's rural landscape and natural resources.

B. Flexible subdivisions. The Town wishes to encourage the use of flexible subdivisions as an alternative to conventional subdivisions. Flexible subdivisions allow units to be clustered on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Flexible subdivisions also may include a variety of lot sizes, ranging from large farm or estate lots to small hamlet-size lots. Flexible subdivision results in the preservation of contiguous open space and important environmental resources, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions. Flexible subdivisions must satisfy the standards in §§ 145-19 and 145-20. In cases where the Planning Board finds that a

proposed conventional subdivision may adversely affect the Town's rural landscape or natural resources, the Planning Board may require an applicant to submit a plan for a flexible subdivision and may require that such a plan be implemented as an alternative to a conventional subdivision.

C. Conservation density subdivisions. Conservation density subdivisions are very-low-density subdivisions in which the average lot size is 15 acres or more. These help to preserve open space by keeping large amounts of land undeveloped. As an incentive to creating such subdivisions, Town road construction requirements and frontage requirements may be waived, as provided in § 145-21.

D. Rear (flag) lots. Rear lots are lots where most of the land is set back from the road and access is gained through a narrow access strip. Where carefully planned, rear lots can enable landowners to develop interior portions of parcels at low density and low cost, preserving roadside open space, and avoiding the construction of expensive new Town roads (see § T45-22).

#### § 145-19. Standards for flexible subdivisions.

Flexible subdivisions are permitted in the RU, RC, and SR Districts and are intended to allow design flexibility while preserving important natural attributes of the land. The provisions in this § 145-19 apply only in the RU, RC, and SR Districts.

A. Density calculation. The maximum density allowed for residential units is calculated either by a formula based upon the net acreage of the property or by preparing a conventional

subdivision plan. An applicant may elect to use either method to determine allowable density.

(1) Net acreage method.

(a) To determine net acreage, subtract from the total (gross) acreage of the site the total acreage of all wetlands, floodplains, and slopes over 30% (5,000 square feet or more of contiguous sloped area), as well as 50% of the acreage of fifteen-percent to thirty-percent slopes.

(b) To determine the number of allowable residential units on the site, multiply this net acreage by 0.9 and then divide by the allowable flexible subdivision density shown on the Dimensional Table (one in the RU, two in the RC, and one in the SR Districts).

(2) Conventional subdivision method. To enable the Planning Board to determine the number of allowable residential units on a parcel using a conventional subdivision plan, the applicant shall submit a sketch plan or preliminary plat of the parcel showing a conventional subdivision with the minimum lot area of one acre in the RU District, two acres in the RC District, and one acre in the SR District, and minimum road frontages of 200 feet in the RU District, 250 feet in the RC District, and 100 feet in the SR District. This plan shall comply with all applicable requirements of this chapter, the Town of Dover Subdivision Regulations,<sup>7</sup> the County Department of Health, and all state and

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7. Editor's Note: See Ch. 125, Subdivision of Land.

federal agencies with jurisdiction over such a subdivision. The Planning Board shall evaluate the conventional plan to determine its probable compliance with all applicable regulations, taking account of soils, slopes, wetlands, and other environmental constraints, as well as the physical and economic feasibility of constructing roads that satisfy maximum grade requirements and of siting wells and septic systems on each lot (unless public water and/or sewers are available). The Planning Board may disallow any roads or lots which, in its judgment, would not be buildable under applicable regulations. After reviewing the conventional subdivision plan, the Planning Board shall adopt a resolution establishing the permissible maximum density under this conventional subdivision method.

(3) Applicant's election. The applicant may submit density calculations under Subsection A(1) or (2) above, or both, provided that if the applicant elects to use the conventional subdivision method, the applicant shall reimburse to the Planning Board the costs of consultant review of the conventional subdivision plan pursuant to § 145-58. The applicant may elect to proceed using the density calculated and approved by the Planning Board under either method.

(4) Parcels in more than one district. For parcels that are located within more than one residential district, calculations shall be made separately for the portion of the parcel in each district. This density may then be combined and distributed anywhere within the parcel, provided that the plan protects open space with conservation value.

B. Types of residential development. The allowable residential units may be developed as single-family, two-family, or multifamily residences, provided that applicable special permit requirements are satisfied. The subdivision and special permit/site plan reviews shall occur concurrently in one proceeding to the extent practical.

C. Minimum lot sizes and road frontage in flexible subdivisions.

(1) The minimum lot size in a flexible subdivision shall be one acre for lots with individual wells and septic systems. For lots that are connected to municipal or other common water and/or sewage disposal facilities (which may include individual septic tanks with common leach fields), minimum lot sizes shall be as provided in § 145-11D(2) for the HR and HM Districts.

(2) The minimum lot sizes in Subsection C(1) above may be increased by the Planning Board where on-site wells are used and documented groundwater shortages have occurred in the vicinity and/or where on-site septic facilities are used and the Planning Board or County Health Department determines that larger lots are necessary due to soil conditions or the presence of an aquifer resource.

(3) The minimum average road frontage per lot in a flexible subdivision shall be 70 feet, and the minimum individual lot frontage shall be 50 feet, except for rear lots that comply with § 145-22.

D. Front, side and rear setbacks. Appropriate minimum setbacks in a flexible subdivision will depend upon the lot sizes, the type of road frontage (state, county, town, or private) and the character of the subdivision (hamlet, suburban, or rural). Accordingly, setback requirements shall be established at the time of plat approval and shall be shown in a chart on the plat.

E. Impermeable surface coverage. The amount of pavement and building area is a major factor in determining the impact of a development. Therefore, limiting impermeable surface coverage (including all roofed areas and areas covered with impermeable pavement) is critical in maintaining environmental integrity. The limitation on impermeable surface coverage shown on the Dimensional Table applies to the entire area to be subdivided, including open space areas. Individual lots may be allowed higher coverage allotments, as long as the total coverage is within the limits prescribed. Flexible subdivision plats shall show on a table the impermeable surface coverage limit for each building lot in order to establish compliance with this Subsection E.

F. Minimum preserved open space. Since one of the major purposes of a flexible subdivision is to preserve open space, all flexible subdivisions shall preserve at least 50% of the parcel(s) as open space. The requirements for preserving such open space are described in § 145-20 below.

G. Partial flexible subdivision. Flexible subdivision does not require planning for full-scale development of land. In order to encourage small subdivisions to follow flexible subdivision principles, there is no minimum tract size or number of lots required for a flexible subdivision. In approving a subdivision of fewer than 20 lots on a parcel of land which may be further subdivided in the future, the Planning Board shall require the applicant to execute a conservation easement that sets aside as open space an amount of land equal to or greater than the acreage being subdivided. Such open space land must be in a configuration that will preserve land of conservation value and allow for subsequent extension of the flexible subdivision. It therefore does not need to be contiguous with the building lots. The Planning Board may require a conservation easement to limit future development of the parcel to the lot count permitted by § 145-19A above. The Planning Board may waive submission of documentation of the full lot count where, in the Planning Board's judgment, the number of lots proposed is substantially less than the total allowable lot count.

H. Open space land. Preserved open space may be included as a portion of one or more large lots or may be contained in a separate open space lot. Such open space may be owned by a homeowners' association, private landowner(s), a nonprofit organization, or the town or another governmental entity, as provided in § 145-20, as long as it is protected from development by a conservation easement. The required open space land may not include private yards within 50 feet of a principal structure.

I. Mixed uses.

(1) Residential and nonresidential uses may be combined in a flexible subdivision provided that all required special permits are obtained and that the applicant complies with all residential density, impermeable surface, and open space requirements.

(2) For every 5,000 square feet of industrial or warehouse floor space, or 2,000 square feet of other commercial floor space, the number of allowable residential units shall be reduced by one dwelling unit. Lot sizes and setbacks for nonresidential development shall be established at the time of plan approval based upon the type of use proposed, its space needs, and its size, scale, and impact (see special permit criteria, § 145-63).

(3) An applicant for a mixed-use flexible subdivision may submit one application for both subdivision and special permit/site plan approval, which shall be reviewed as a comprehensive development plan by the Planning Board.

J. Arrangement of lots. Lots shall be arranged in a manner that protects land of conservation value and facilitates pedestrian and bicycle circulation. Lots gaining access from an existing state or county highway shall comply with the minimum road frontage requirements for a conventional lot in the district as shown on the Dimensional Table. The lot layout shall generally follow applicable portions of the Rural Design Guidelines and Hamlet Design Guidelines referred to in § 145-5. Such Guidelines shall be adapted to conform to the requirements of this chapter.

#### § 145-20. Permanent open space.

Open space set aside in a flexible subdivision or as a condition of any special permit or site plan approval [see §§ 145-62G(2) and 145-66F(2)] shall be permanently preserved as required by this section. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land pursuant to § 145-20C below, and provided that the Planning Board approves such configuration of the open space as part of its subdivision, special permit, or site plan approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land.

A. Conservation value of open space. The open space protected pursuant to this § 145-20 must have conservation value, which may include recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value. Examples of lands with conservation value include active agricultural land, large areas of contiguous mature forest, wetlands, water bodies, golf courses, stream corridors, and scenic areas, including important vistas or viewsheds seen from public places. Land in a critical environmental area (CEA), in the FP or SC Overlay District, in the Principal Aquifer Zone of the Aquifer Overlay District, or identified as open space worthy of preservation in the town's Master Plan or Open Space Plan shall be deemed to be land of conservation value. Land of conservation value shall be included for purposes of calculating density in § 145-19A, unless it is discounted in that section as wetland, floodplain, or steep slopes. Whenever the Planning Board approves a plan with protected open space, it shall make written findings identifying the specific conservation values protected and the reasons for protecting such land.

B. Notations on plat or site plan. Preserved open space land shall be clearly delineated and labeled on the final subdivision plat or site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of other lots in the subdivision to such land. The plat or site plan shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a notation indicating the liber and page of any conservation easements or restrictive covenants required to be filed to implement such restrictions.

C. Permanent preservation by conservation easement.

(1) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, recreation, protection of natural resources, or similar conservation purposes, pursuant to § 247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such conservation easement shall be approved by the Planning Board and shall be required as a condition of subdivision plat approval. The Planning Board may require that the conservation easement be enforceable by the town if the town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk's office. In the case of subdivisions of fewer than five lots and minor projects, a restrictive covenant enforceable by the town may be substituted for a conservation easement.

(2) The conservation easement or restrictive covenant shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry, and recreation) and shall not be amendable to permit such use. Access roads, driveways, local utility distribution lines, trails, temporary structures for outdoor recreation, and agricultural structures shall be permitted on preserved open space land, provided that they do not impair the conservation value of the land. The conservation easement may allow dwellings to be constructed on portions of parcels that include preserved open space land, provided that the total number of dwellings permitted by the conservation easement in the entire subdivision is consistent with applicable density limitations of this chapter.

#### D. Ownership of open space land.

(1) Open space land may be owned in common by a homeowners' association (HOA), dedicated to town, county, or state government, transferred to a nonprofit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value.

(2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(a) The HOA must be set up before the final subdivision plat is approved and must comply with all applicable provisions of the General Business Law.

(b) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(c) The open space restrictions must be in perpetuity.

(d) The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.

(e) Property owners must pay their pro rata share of the costs in Subsection D(2)(d) above, and the assessment levied by the HOA must be able to become a lien on the property.

(f) The HOA must be able to adjust the assessment to meet changed needs.

(g) The applicant shall make a conditional offer of dedication to the town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

(h) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

(i) The attorney for the reviewing board shall find that the HOA documents presented satisfy the conditions in Subsection D(2)(a) through (h) above and such other conditions as the Planning Board shall deem necessary.

#### E. Maintenance standards.

(1) Ongoing maintenance standards shall be established, enforceable by the town against an owner of open space land as a condition of subdivision approval, to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.

(2) If the Town Board finds that the provisions of Subsection E(1) above are being violated such that the condition of the land constitutes a public nuisance, it may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

#### § 145-21. Conservation density subdivisions.

Within the RU, RC, and SR Districts, the Planning Board may encourage the preservation of large tracts of open space by affording flexibility to landowners in road layout and design (including the use of unpaved private roads) and road frontage requirements, provided that such landowners permanently preserve significant open space resources. The following standards shall be applied by the Planning Board in reviewing applications for a conservation density subdivision.

A. Modification of road frontage and construction requirements. Minimum road frontage requirements and otherwise applicable road construction requirements may be modified by the Planning Board pursuant to § 145-21B, provided that all of the following requirements are met:

(1) The average lot size in the proposed subdivision is the greater of 15 acres or five times the minimum lot size required for a conventional subdivision by the Dimensional Table. In the RC District the average lot size shall be at least 25 acres.

(2) A perpetual conservation easement is placed on the land to be subdivided, to maintain its natural and scenic qualities, to restrict building in locations deemed by the Planning Board to be environmentally or visually sensitive, and to ensure that the land will not be subdivided to a density higher than that permitted in Subsection A(1) above.

(3) Adequate access to all parcels by fire trucks, ambulances, police cars and other emergency vehicles can be ensured by private roads and/or common driveways. No common driveway shall provide access to more than four lots, except as provided in § 145-21B(9) below. Private roads serving more than four lots shall comply with applicable private road standards in the town's highway specifications.<sup>8</sup>

B. Private road requirements. The Planning Board may approve unpaved private roads to provide access to lots in conservation density subdivisions, provided that the Planning Board finds that the proposed subdivision will protect the rural, scenic, and natural character of the town.

(1) The maximum number of lots gaining access through any portion of a private road shall be 20.

(2) Written approval from the Town Superintendent of Highways and the town's Engineer shall be secured before approval of any private roads.

(3) A homeowners' association (HOA) must be created to own and provide for the perpetual care and maintenance of the private road. Such HOA shall meet all requirements for an open space HOA set forth in § 145-20D(2) above. The HOA must have the power to assess the subdivision lot owners for their share of the maintenance costs of the private road. The HOA shall contract with a qualified road contractor to ensure that the road will always be maintained and kept open to permit emergency vehicle access. In the event that a private road contractor does not properly maintain the road, the Town of Dover may assume maintenance responsibilities and charge the HOA for all reasonable costs thereof. Such costs, if unpaid for more than 60 days, shall, along with attorneys' fees for their collection, become a lien on the property and enforceable in the same manner as a property tax lien. The Planning Board shall have discretion to determine whether the applicant should be required to establish a maintenance fund at the time of approval and, if so, how much of a deposit should be required. The Planning Board shall also have discretion to determine whether a performance bond must be posted by the applicant to ensure the proper completion of the private road and, if so, how much the performance bond shall be and what form it shall take.

(4) The HOA shall provide at regular intervals (not to exceed five years) a written certification from a licensed professional engineer that the physical integrity of the private road is adequate to meet its present needs and the needs which can reasonably be anticipated in the future.

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8. Editor's Note: See Ch. 93, Highway Standards.

(5) The private road may never be offered for dedication to the Town of Dover unless it conforms to town highway specifications for rural streets in effect on the date of the offer of dedication. However, the Town Board shall be under no obligation to accept such an offer of dedication, even if the road conforms to town highway specifications. In the event such dedication becomes necessary to ensure public safety, the cost of bringing the road up to town highway specifications shall be borne by the HOA.

(6) The lots in the conservation density subdivision shall be restricted by conservation easement so that they may never be subdivided beyond the number of lots permitted in § 145-21A, regardless of whether the private road remains a private road.

(7) The subdivision plat shall show the road clearly labeled "Private Road."

(8) Road design shall comply with the standards for private roads in the Subdivision Law.<sup>9</sup>

(9) The Planning Board may waive the requirement of a private road maintained by a HOA if it finds, after consulting with the attorney for the Planning Board or the Town Attorney, that a common drive maintained pursuant to a recorded maintenance agreement, executed by the applicant as a condition of subdivision approval, will provide the same protections to lot owners and the town as would a private road owned by a HOA, and that all of the requirements and HOA functions described in Subsection B(3) through (5) above and § 145-20D of this chapter will be properly fulfilled by such a common drive and maintenance agreement.

C. Allowable density. No conservation density subdivision shall contain more lots than would be allowed in a conventional subdivision of the same parcel or parcels. The Planning Board may require an applicant for a conservation density subdivision to submit a conventional subdivision plan if the Planning Board has reason to believe that the proposed conservation density subdivision plan may contain more lots than would be permitted in the case of a conventional subdivision of the same property.

#### § 145-22. Rear (flag) lots.

It is the policy of the Town of Dover to encourage flexibility for development which is screened from public view. Accordingly, it is desirable to locate development on rear lots without requiring compliance with otherwise applicable road frontage requirements in the Dimensional Table. All land use districts are hereby declared an open development area under § 280-a, Subdivision 4, of the Town Law. Building permits may be issued for structures on lots that have no public or private road frontage and gain access by right-of-way easement over other lands, under the conditions contained in this section. Rear lots with or without access strips running to public or private roads may be created where they will not endanger public health and safety and will help preserve natural, historic, and scenic resources. The following requirements apply to rear lots:

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9. Editor's Note: See Ch. 125, Subdivision of Land.

A. Each rear lot must have either a minimum frontage of 25 feet on an improved public or private road and an access strip as defined in this chapter, or a deeded right-of-way easement over other lands, providing legally adequate and physically practical access to a public or private road. In the HR District, rear lots must have a minimum road frontage of 15 feet or a deeded right-of-way easement at least 15 feet wide.

B. Minimum lot sizes for rear lots shall be twice the minimum lot size for a conventional subdivision in the district. The area of the access strip shall not be counted in the calculation of minimum lot size. This Subsection B shall not apply to flexible subdivision.

C. Except as indicated in Subsections A and B above, rear lots must meet all other requirements for a lot in the applicable land use district. Minimum lot width shall be the same dimension as the minimum road frontage otherwise required in the land use district. For purposes of determining front yard setbacks, the front yard shall be the yard area lying between the principal building and the public or private road from which access is obtained.

D. There shall be no more than four adjoining access strips, which must share one common driveway. No more than four lots may be served by a common driveway. Subdivisions of five or more rear lots must satisfy the requirements for conservation density subdivisions in § 145-21.

E. All rear lots must have safe access for fire, police, and emergency vehicles.

F. The proposed rear lots must not result in degradation of important natural resource and landscape features, including but not limited to ponds, streams, steep slopes, ridgelines, and wetlands.

G. When necessary to satisfy the criteria in Subsection F above, the Planning Board may require the applicant to grant a conservation easement or restrictive covenant enforceable by the town that limits the area within which the house and driveway may be constructed on the rear lot.

## ARTICLE VI **Nonconforming Uses, Structures and Lots**

### § 145-23. Continuation of nonconforming uses and structures.

Any structure or use which was legal when built or commenced and which was in existence at the time of enactment or amendment of this chapter, which becomes nonconforming as a result of such enactment or amendment, may be continued, except that:

A. A sign which is nonconforming under this chapter or under any previous ordinance or local law shall be subject to the provisions of § 145-39D(6).

B. Outdoor storage areas shall be required to comply with § 145-51.

### § 145-24. Discontinuance and reestablishment.

A. Discontinuance. If a nonconforming use of land or structures is discontinued for a period of one year, it shall not thereafter be reestablished except as provided in Subsection B, and any future use shall be in conformity with this chapter.

B. Reestablishment. The Planning Board may issue a special permit for the reestablishment of the use after the one-year period has expired if the applicant has been prevented from continuing the use during the one-year period due to strikes, acts of God, disability, or other similar hardship beyond the applicant's control.

#### § 145-25. Restoration, expansion and repair.

A nonconforming use or structure shall not be extended, enlarged, or structurally altered except as provided below. The extension of a conforming use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming structure or use.

A. A nonconforming structure or use may be rebuilt in the event of its total or partial destruction, to occupy the same or a lesser amount of footprint, but may not exceed the original height of the totally or partially destroyed structure. Such rebuilding shall require site plan review by the Planning Board.

B. The Planning Board may issue a special permit allowing an expansion of a nonconforming use or structure by up to 50% of its area at the time of the adoption of this chapter, provided that all other requirements can be met, and that such expansion does not reduce any nonconforming setbacks by more than 20%. Expansion or introduction of uses prohibited by § 145-10C shall not be permitted.

C. A nonconforming soil mining operation may expand by mining within the boundaries of the original parcel on which the mine was legally permitted only to the extent allowed by an existing Department of Environmental Conservation (DEC) permit or as otherwise provided by the laws of New York State. A soil mining operation commenced in violation of the Dover Zoning Law after September 1, 1991, shall be permitted to continue mining under a valid DEC permit but shall not be permitted to expand or otherwise benefit from the legal protections afforded under state law for a nonconforming use that was commenced in full compliance with applicable local laws and regulations. Such an operation may not process materials mined off site by crushing, screening, sorting, washing, drying, or otherwise. This shall not prevent the continuation of any nonconforming industrial use of a property where soil mining products mined off site are used as a raw material.

D. A nonconforming use or structure may be repaired or restored to a safe condition.

#### § 145-26. Change of nonconforming use.

A nonconforming use of a structure or parcel of land may, upon issuance of a special permit by the Planning Board, be changed to another nonconforming use which is of the same or lesser impact, except that no use prohibited by § 145-10C shall be permitted under any circumstances. No structure in which a nonconforming use has been changed to a use of lesser impact shall again be devoted to a

nonconforming use with greater impact. In determining whether a use is of greater or lesser impact, the Planning Board shall consider the impact criteria listed in § 145-63.

§ 145-27. Special permit uses.

Any preexisting legal use which is allowable by special permit under this chapter, but which has not been issued a special permit, shall be considered a nonconforming use until it is granted a special permit by the Planning Board. The expansion of such a use, other than a single-family or two-family residence, shall require site plan approval.

§ 145-28. Construction started prior to effective date.

Any structure for which construction was begun prior to the effective date of this chapter, or of any amendment thereto, may be completed and used in accordance with the approved plans and specifications for such structure. Any structure for which construction has not begun pursuant to approved plans shall be subject to the provisions of this chapter and any amendments thereto, even if all preconstruction approvals have been granted. For purposes of this § 145-28, "beginning construction" shall mean excavation and pouring of footings or the installation of any other means of permanently attaching a structure to the ground.

§ 145-29. Existing nonconforming lots.

A. Any lot of record created prior to April 28, 1999, which does not comply with the area, density, or dimensional requirements of this chapter shall be deemed to comply with such requirements, and no variance shall be required for its development or for any addition to or other alteration of a structure, provided that the following conditions are satisfied:

(1) At the time the lot became nonconforming, it did not adjoin other lots held in the same or related ownership with which it can be merged to create a conforming or less nonconforming lot.

(2) The following minimum area and dimensions are maintained, unless smaller dimensions are permitted in the district:

(a) Lot area: 8,000 square feet.

(b) Front setback: 15% of lot depth but not less than 30 feet from the center line of the road.

(c) Side setback: 20% of lot width but not less than eight feet per side.

(d) Rear setback: 15% of lot depth but not less than 25 feet.

(3) All Health Department regulations are satisfied.

(4) Any residential use of such a nonconforming lot shall be limited to one single-family dwelling.

B. A nonconforming lot may be subdivided only if the subdivision plat shows that every subdivided portion of such lot will be merged with adjoining properties to increase the area of such properties, thereby eliminating the nonconforming lot.

C. Notwithstanding the foregoing provisions, any undeveloped lot in a subdivision which was not properly approved by the Planning Board or Town Board or not filed in the office of the County Clerk, and whose area or dimensions do not comply with the requirements of this chapter, shall be considered a violation of this chapter and shall not be protected under § 145-29A.<sup>10</sup>

## ARTICLE VII Supplementary Regulations

### § 145-30. Supplementary dimensional regulations.

A. Wetlands in lot area calculations. In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from total acreage in the lot area calculation.

B. Corner lots and through lots. Wherever a side or rear yard is adjacent to a street, the front setback shall apply to such side or rear yard. Corner lots shall be deemed to have two front yards, two side yards, and no rear yard.

C. Projections into required yards.

(1) The following projections into required yards shall be permitted:

(a) Steps and stairs: four feet into required side or rear setback area.

(b) Awnings or movable canopies: six feet into any required setback area.

(c) Cornices, eaves, and other similar architectural features: three feet into any required setback area.

(2) Carport. An open or enclosed carport shall be considered a part of the building in determining compliance with setback requirements.

(3) Porch. An open or screened porch may project eight feet into a front setback area.

(4) Driveways. Driveways on lots with 100 feet or more of road frontage shall be set back at least 20 feet from side lot lines, except that common driveways may occupy any part of a side yard adjoining the lot of another user of

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10. Editor's Note: Former Sec. 6.7-4, which immediately followed this subsection, was repealed 3-28-2001 by L.L. No. 1-2001.

the common driveway. On lots with less than 100 feet of frontage, no side yard setback shall be required.

D. Height exceptions.

(1) The height limitations in the Dimensional Table shall not apply to any flagpole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet or railing, water tank, or any similar nonhabitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than 10% of the roof area.

(2) Barns, silos, solar energy systems, communication towers, and wind energy conversion systems may exceed height limits in the Dimensional Table, provided that they comply with applicable sections of this Article VII, and provided that for every one foot by which such structures exceed the height limit, the minimum setback requirements are increased by one foot.

(3) This Subsection D shall not be construed to permit any structure that is not allowed elsewhere in this chapter.

E. Setbacks for accessory structures and uses.

(1) Any accessory structure attached to a principal building and any detached barn, garage, stable, tennis court, or swimming pool shall comply with the minimum setback requirements of this chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas provided that they:

- (a) Are not used for human habitation;
- (b) Have a footprint no larger than 200 square feet;
- (c) Do not exceed 16 feet in height;
- (d) Do not occupy more than 10% of a rear setback area;
- (e) Are set back at least 10 feet from side or rear lot lines;

(f) Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, bus shelters, and similar roadside structures with less than 100 square feet of footprint, as well as ornamental structures such as entry pillars and statues; and

- (g) Are not used for housing animals.

(2) For corner lots, the setback from all streets shall be the same for accessory structures as for principal buildings.

(3) For watercourse setbacks, see § 145-14D.

F. Setbacks involving irregular buildings and lot lines. Where structures or lot lines are irregular or unusual in configuration, all points on the structure

shall satisfy the minimum setback requirements from that point on the lot line which is the shortest distance from the structure.

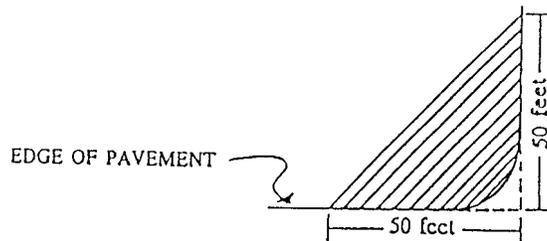
**G. Fences (including hedges) and walls.**

(1) The setback requirements of this chapter shall not apply to retaining walls of any height or to fences less than six feet high in any side or rear yard, except where corner clearances are required for traffic safety.

(2) The setback requirements of this chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher.

**H. Corner clearance/visibility at intersections.** Where necessary to provide visibility for traffic safety, the Highway Superintendent or the Planning Board may require all or a portion of any corner lot which is shown shaded in Sketch A to be cleared of all growth (except isolated trees) and other obstructions that block visibility of traffic on an intersecting street. The Planning Board may require excavation to achieve visibility. This provision shall not apply to intersections with traffic signals or four-way stop signs.

**SKETCH A**



**I. Reduction in lot area.** No conforming lot shall be reduced in area in a manner that violates the dimensional requirements of this chapter.

**§ 145-31. Rural siting principles.**

The following guidelines shall apply to the siting of nonresidential uses that are subject to site plan or special permit approval. They are recommended but not required for the siting of individual residences.

**A.** Wherever feasible, retain and reuse existing old farm roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls.)

**B.** Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.

C. Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.

D. Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner historically found in the town. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape in a sprawl pattern.

E. Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.

F. Site buildings so that they do not protrude above treetops and crest lines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.

G. Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multilevel structures with entrances on more than one level (e.g., walkout basements and garages under buildings) rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

#### § 145-32. Erosion and sediment control.

All activities regulated by Chapter 65, Erosion and Sediment Control, of the Dover Town Code shall obtain a permit from the Planning Board as required by Chapter 65.

#### § 145-33. Sanitary disposal and water supply.

A. Sanitary disposal. No person shall construct any structure in the town without meeting applicable requirements of the town, the Dutchess County and New York State Departments of Health, the New York State Department of Environmental Conservation, and other governmental authorities that regulate water supply and sewage disposal systems. Issuance of a certificate of occupancy shall be subject to sanitary system inspection and certification by the Dutchess County Department of Health and compliance with all conditions imposed by any other governmental authority.

B. Water supply. The Planning Board may require an applicant for any subdivision, special permit, or site plan approval to provide evidence of water availability and may require test wells and professional hydrological studies sufficient to establish that a proposed development will have adequate supplies of potable water and will not adversely affect any aquifer resource or the supply or quality of drinking water in the surrounding area. (See § 145-15.)

#### § 145-34. Excavation, grading and clear-cutting.

A. Excavation and grading necessary for the construction of a structure for which a building permit has been issued shall be permitted, provided that it does not adversely affect natural drainage or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety.

B. In the event that construction of a structure is stopped prior to completion and the building permit expires, the premises shall be promptly cleared of any rubbish or building materials by the property owner, and any open excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

C. The Planning Board may, in connection with a major project site plan or major subdivision, require an applicant to furnish an irrevocable letter of credit, certified check, or other form of security to guarantee reclamation of areas to be excavated or graded if a project is abandoned. Such security shall be for an amount reasonably related to the potential cost of such reclamation and shall be in a form deemed acceptable by the Town Attorney.

D. For regulation of soil mining, see § 145-42 of this chapter.

E. No excavation or grading and no clear-cutting of 10,000 square feet or more in preparation for site development shall be undertaken prior to the grant of any special permit, site plan, or subdivision approval required for such development.

F. Excavation of any area exceeding 2,000 square feet and/or clear-cutting of any area exceeding three acres shall require a zoning permit from the Code Enforcement Officer, unless such excavation or clear-cutting is performed pursuant to an approved site plan, special permit, subdivision, or building permit or as a normal and customary activity in conjunction with commercial logging or a farm operation (as defined in Article XII).

G. Excavation and grading activities shall comply with applicable permit requirements of Chapter 65, Erosion and Sediment Control, of the Dover Town Code.

#### § 145-35. Wetland and watercourse protection.

The town finds that protection of its wetlands and watercourses helps to maintain water quality and the health of natural ecosystems, reduces flooding, erosion, and sedimentation, and protects important wildlife habitat areas. The town also recognizes that both the state and federal governments regulate wetlands and desires to avoid duplicating regulatory programs while cooperating with state and federal agencies. To ensure that development minimizes damage to wetlands and watercourses, the town establishes the following requirements in addition to the Stream Corridor Overlay District provisions of § 145-14.

A. State and federal wetland permit coordination. All applicants for any town permit or approval that might result in disturbance to a wetland or watercourse shall, as early as possible in the application process, apply to the New York State Department of Environmental Conservation (DEC) and/or the United

States Army Corps of Engineers (ACOE), as appropriate, for any applicable permits. The applicant shall submit copies to the town of any application to or correspondence with ACOE and DEC concerning required wetland permits for the project.

B. Required watercourse and wetland mapping and delineation. Any site plan, plot plan, building permit or zoning permit application, variance application, subdivision plat, preliminary subdivision plat, or other plan submitted to a town regulatory board or official shall show the location and stream classification of all watercourses and the location of any DEC-regulated wetlands and wetland buffers on the parcel, as determined by a DEC field delineation, if available, or from current DEC wetland maps. If the proposal requires that a wetland delineation be performed for the ACOE, the applicant shall submit a copy of such delineation to the reviewing board or official. If no delineation is submitted and the reviewing board or official has reason to believe that the proposal would involve disturbance to wetlands, the applicant may be required either to submit a wetland delineation or to obtain a certification from a qualified wetlands expert that there are no wetlands within the area proposed to be disturbed. A wetland delineation may also be required if necessary to determine allowable maximum density for a flexible development pursuant to § 145-19A.

C. Imposition of conditions to protect wetlands and watercourses. The reviewing board or official shall ensure that applicants comply with the requirements of DEC and ACOE and shall impose appropriate conditions to minimize damage to wetlands and watercourses. Such conditions may include modifications in the size and scope of a proposed project, as well as changes in the location of structures or other improvements on the parcel.

#### § 145-36. Steep slope regulations.

The town finds that the alteration of steep slope areas poses potential risks of erosion, sedimentation, landslides, and the degradation of scenic views. Accordingly, the following requirements are hereby imposed in areas with slopes exceeding 15%. Where a soil erosion and stormwater control plan is required by § 145-32, such plan shall provide the information needed to comply with this § 145-36.

A. For any subdivision, special permit, site plan, building permit, zoning permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:

(1) Adequate erosion control and drainage measures will be in place so that erosion and sedimentation do not occur during or after construction.

(2) Cutting of trees, shrubs, and other natural vegetation will be minimized, except in conjunction with logging operations performed pursuant to applicable guidelines of the New York State Department of Environmental Conservation.

(3) Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding, or avalanches.

(4) Proper engineering review of plans and construction activities will be conducted by the town to ensure compliance with this section, paid for by escrow deposits paid by the applicant.

(5) No certificate of occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

B. Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as a reviewing board or official shall reasonably require or the applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the town, at the applicant's expense, shall determine the location of regulated slopes.

C. For purposes of determining the location of steep slope areas, only contiguous slopes containing at least 5,000 square feet of steep slopes, as defined above, shall be considered. Within the HM and HR Districts, contiguous slopes containing at least 1,500 square feet shall be considered.

#### § 145-37. Protection of agriculture.

A. Agricultural buffers. Wherever agricultural uses and other uses unrelated to the agricultural operations abut, the applicant for the nonagricultural use shall provide buffers to reduce the exposure of these abutting uses to odors, noise, and other potential nuisances associated with the agricultural operation. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features.

B. Required disclosure. In the case of any proposed residential development that abuts agricultural uses, the Planning Board shall require the applicant to issue a disclosure to potential purchasers of lots or dwelling units as follows: "This property adjoins land used for agricultural purposes. Farmers have the right to apply approved chemical and organic fertilizers, pesticides, and herbicides and to engage in farm practices which may generate dust, odor, smoke, noise and vibration." This disclosure shall be required as a note on a subdivision plat or site plan and may also be required to be made through other means reasonably calculated to inform a prospective purchaser, such as by posting, distribution of handbills, inclusion in an offering plan or real estate listing information sheet, or letter of notification. This section may also be applied to any commercial development at the discretion of the Planning Board.

C. Agricultural data statement. Any application for a special permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the Town Board, Planning Board, or Zoning Board of Appeals that would occur on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in § 145-74. The reviewing board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

D. Keeping livestock as an accessory use. Subsections A through C shall not apply where farm animals are kept on residential properties as an accessory use and are not part of a farm operation. See § 145-49.

§ 145-38. Off-street parking and loading.

A. Off-street parking.

(1) Purpose. The town finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots damage the historic layout and architectural fabric of hamlet areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. However, the town also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards, and inconvenience. The town therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking and to avoid the negative impacts of excessive parking lot construction.

(2) Minimum parking required for residential uses.

(a) For a single-family or two-family dwelling: two spaces per dwelling unit.

(b) For a multifamily dwelling: 1 1/2 spaces per dwelling unit.

(c) These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed-use development, or other appropriate circumstances if the Planning Board determines that such reductions are warranted.

(3) Parking requirements for nonresidential uses. The number and layout of parking spaces for nonresidential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic, and scenic resources. Since nonresidential uses vary widely in their need for off-street parking, parking requirements shall be based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection A(3)(a) below shall be applied and may be varied by the Planning Board according to the criteria in Subsection A(3)(b) below.

(a) Provisional parking standards.

[1] Retail or service business uses: four spaces per 1,000 square feet of enclosed floor space.

[2] Industrial/warehouse uses: two spaces per 1,000 square feet of enclosed floor space or one space per employee.

[3] Office uses: three spaces per 1,000 square feet of floor space.

[4] Lodging facility: one space for each bedroom plus one space for each nonresident employee and one space for every 200 square feet of floor space for meetings and functions.

[5] Restaurants, theaters, and other places of public assembly: one space for every three seats.

[6] Uses not listed above: as appropriate to the circumstances.

(b) Criteria for applying provisional standards. In applying or modifying the provisional parking standards for any proposed use, the Planning Board shall consider:

[1] The maximum number of vehicles that would actually be parked at the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking, bicycling, or carpooling to the proposed use shall be taken into consideration.

[2] The size of the structure(s) and the site.

[3] The environmental, scenic, or historic sensitivity of the site (including applicable limitations on impermeable surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning Board may require a reduction in the size of the structure so that the available parking will be sufficient.

[4] The availability of safely usable on-street parking.

[5] The availability of off-site off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant dedicates such off-site land for public parking or demonstrates a legal right to shared use.

[6] The requirements for parking for the disabled as prescribed by the Americans with Disabilities Act.

(c) Set-aside for future parking. The Planning Board may, as a condition of reducing the provisional parking standards, require an applicant to set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped but may not be used in a manner that would prevent it from being developed for parking in the future.

(d) Parking lot as accessory use to residential dwelling. Parking spaces may be made available for nonresidential uses on residential lots in the HM District by special permit. Such spaces shall be screened from adjoining properties and roads and shall not exceed five spaces per lot.

(e) Fee in lieu of parking space. Where the required spaces cannot be provided on site and are not currently available on the street and/or in municipal parking lots, the applicant shall pay a fee in lieu of one or more required spaces in an amount established by the Town Board sufficient to cover the estimated cost of providing additional public parking spaces. Such fee shall be kept in a dedicated fund for municipal parking purposes and shall be used for such

purposes within three years or returned to the applicant (or the applicant's successor).

(4) Design, layout and construction of parking areas.

(a) Location and screening.

[1] All off-street parking shall be located behind or to the side of the principal building, except as provided in Subsection A(4)(a)[2] and [3] below. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.

[2] Within any district, parking may be located anywhere on the site if it is screened from public roads and adjoining properties.

[3] Within the HC District only, a maximum of one row of on-site parallel, perpendicular, or diagonal parking may be located in front of the principal building but not within the required front yard. If any parking spaces are located in front of the principal building, the minimum front yard setback shall be increased by 30 feet and shall be planted with alternating double rows of trees or, if wooded, left in its natural state.

[4] If a parking lot containing 10 or more spaces lies within or borders the SR, RU, or RC District, a buffer zone at least 50 feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in the HC, CO, or M District or contain a nonresidential use.

[5] Parking layouts in the HM and HR Districts shall follow the Hamlet Design Guidelines cited in § 145-5.

(b) Construction of parking areas. Parking areas shall be surfaced with a suitable durable surface appropriate for the use of the land, with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impermeable pavement and runoff. Overflow or peak period parking surfaces shall be permeable. Oil traps may be required for larger paved parking lots.

(c) Landscaping. Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles by breaking them into separate parking lots divided by tree lines, alleys, pedestrian areas, or buildings. Parking lots containing more than 40 spaces shall be divided into smaller areas by landscaped islands at least 15 feet wide located no more than 120 feet apart. All islands shall be planted with three-inch minimum caliper shade trees at a density of at least one tree for every 20 linear feet of island. Parking lots containing fewer than 40 spaces shall provide at least one three-inch minimum caliper shade tree per eight spaces.

(d) Lighting. Lighting within parking lots shall be on low poles of 12 feet to 15 feet maximum height, with color-corrected lamps and cutoff luminaires designed to minimize glare and light pollution. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining

streetscape treatment. Sidewalks leading from parking lots shall be lit with bollard lighting and indirect illumination of buildings and vegetation.

(e) Nonconforming parking lots shall be brought into conformity with this Subsection A(4) to the extent practical whenever a site plan or special permit application is filed for an expansion or change of the use.

B. Off-street loading.

(1) General requirement. Loading docks and service access areas shall be located in a manner that minimizes visual intrusion on public spaces and ensures pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features designed to blend them with the architecture of the building. Adjacent buildings shall be sited to allow shared access to loading docks through the use of common loading zones or service alleys.

(2) Exception for Hamlet Mixed-Use District. The need to maintain the traditional layout and historic character of the town's hamlets may preclude the establishment of modern loading facilities in some older buildings in the HM District. In such situations, the requirements of Subsection B(1) above shall not apply and on-street loading shall be permitted.

§ 145-39. Signs.

A. Purpose. The purpose of this section is to control the location, size, quantity, character, and lighting of signs in order to maintain the attractive appearance of the town and avoid conditions of clutter and unsightliness. Through these regulations the town seeks to:

(1) Protect public health and safety by ensuring that signs do not create dangerous conditions, obstruct vision necessary for traffic safety, or confuse, distract, or mislead motorists, bicyclists, or pedestrians; and

(2) Promote the general welfare by creating a more attractive visual environment that preserves the town's historic and rural character, protects property values, encourages economic growth, and minimizes negative impacts of signs on adjoining properties.

B. Exempt signs. The following types of signs may be erected and maintained without zoning permits, board review, or fees, provided that these signs comply with the general regulations in § 145-39D and with all other requirements of this chapter. As used in this Subsection B, the term "residential uses" shall include mixed-use lots on which at least 50% of the floor space is residential.

(1) Permanent signs.

(a) Signs not exceeding one square foot in area and bearing only property numbers, postal route box numbers, or names of occupants of premises.

(b) One sign, not exceeding 24 square feet in area, designating a farm.

(c) Flags and insignia of any government, except when displayed in connection with commercial promotion.

(d) Noncommercial information signs. Signs providing noncommercial information to the public, including community service information signs, public utility information signs, safety signs, danger signs, no trespassing signs, signs indicating scenic or historic points of interest, traffic control signs, directional parking signs, and all signs erected by a public officer in the performance of a public duty.

(e) One on-premises sign, either freestanding or attached, in connection with any residential building, for permitted home occupations, not exceeding two square feet and set back at least 10 feet from the highway right-of-way. Such signs shall state name and occupation only and shall not be illuminated.

(2) Temporary signs.

(a) Temporary nonilluminated "For Sale" or "For Rent" real estate signs and signs of similar nature, concerning the premises upon which the sign is located. For residential uses, one sign per lot, not exceeding six square feet per side. For business or industrial uses, one sign per lot, not exceeding 12 square feet, set back at least 15 feet from all property lines. All such signs shall be removed within three days after closing of the sale, lease, or rental of the premises.

(b) Temporary nonilluminated window signs and posters not exceeding 25% of each window surface. (Such signs are normally used to advertise specific products or sales and are removed or replaced on a regular basis.)

(c) Two temporary signs for a roadside stand selling agricultural produce grown on the premises in season, provided that such signs do not exceed 32 square feet each, are set back at least five feet from the public right-of-way, and are removed at the end of the selling season.

(d) On-premises signs for garage sales and auctions, not exceeding four square feet, for a period not exceeding seven days.

(e) Political posters, banners, and signs, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, provided that:

[1] Display shall not exceed 60 days prior to any primary or general election but may continue during the period between a primary and a general election.

[2] The names and addresses of the sponsor and/or the person responsible for removal are identified on the sign.

(f) One sign, not exceeding six square feet on residential uses or 16 square feet on nonresidential uses, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation, or repair is in progress.

(g) Signs, portable or otherwise, advertising special events for nonprofit organizations, such as firemen's field days, church bazaars, bake sales, etc. Such signs shall not exceed 24 square feet in area and shall not be displayed for more than 30 days.

(h) Signs required to be posted in connection with hearings on development applications, as provided in § 145-62F(3).

(i) Signs marking areas of highway or utility construction, repair, or maintenance.

#### C. Prohibited signs.

(1) No off-premises commercial signs shall be allowed, except that signs not exceeding four square feet directing the public to specific establishments may be allowed with site plan approval by the Planning Board.

(2) No exterior sign shall be illuminated internally, and no sign shall contain flashing, intermittent, rotating, or moving lights, except that one neon sign not exceeding three square feet may be allowed inside the window of a business establishment.

(3) Portable signs that are mounted on wheels, including motor vehicles or trailers parked in one location on a long-term basis and functioning primarily as signs, shall be prohibited.

(4) No permanent sign or any part thereof shall contain or consist of any moving, rotating, or revolving device.

D. General sign regulations. All signs that are not prohibited by Subsection C above are regulated by this section. Signs that are not exempt under Subsection B shall require building permits. However, if signs are proposed in connection with any special permit or site plan application, such signs shall be reviewed and approved under applicable criteria for the principal uses and shall not require a separate building permit if constructed pursuant to an approved plan. All signs erected in connection with nonresidential or multifamily structures larger than 1,000 square feet gross floor area and/or in connection with a site plan approval shall also be subject to review by the Architecture and Community Appearance Board of Review as provided in Local Law Number 3 of 1997.<sup>11</sup>

(1) Permit applications. Applications for new signs or proposed changes in existing signs shall include a scaled drawing showing the type of lettering, sign dimensions, colors, materials, and method of illumination, if any, and a plan showing the location of the sign on the building or property. A building permit shall be required for any change in the size, shape, lighting, materials, or location of an existing sign. No building permit shall be required if only the words or images on the sign are changed.

(2) Location and maintenance.

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11. Editor's Note: See Ch. 37, Architectural Design Review.

(a) Signs shall be erected, constructed, and maintained in a manner that does not obstruct traffic movement or visibility or cause any hazard to public safety.

(b) No signs shall be placed, painted, or drawn on utility poles, bridges, culverts, or other road or utility structures or signposts, or on trees, rocks, or other natural features, except that signs not exceeding one square foot posting property boundaries may be placed on trees. No signs shall be placed on municipally owned property without permission of the Town Board.

(c) All signs shall be kept in good repair. Painted surfaces shall be kept neatly painted at all times.

(3) Sign area and height.

(a) Freestanding signs. Individual freestanding signs shall not exceed 16 square feet in area nor 10 feet in height. Freestanding signs that are grouped together on one sign structure shall not exceed a cumulative total of 50 square feet per structure, and the individual components of such groupings shall be large enough to be read safely by passing motorists traveling at the speed limit.

(b) Projecting signs. Projecting signs shall not exceed 12 square feet in area and shall not project more than four feet from the side of the building. The bottom of such signs shall be no lower than 10 feet and no higher than 15 feet above the finished grade.

(c) Wall-mounted signs. Wall-mounted signs shall not exceed 32 square feet, extend more than one foot from the surface of the wall, cover more than 10% of the front surface of a building, cover a window, obscure architectural detailing, interrupt a roofline, or be placed on the roof of a structure.

(d) Window signs. Signs placed in windows shall not cover more than 25% of the window area.

(e) Awning signs. The valance portion of an awning may be used as a sign, with a maximum of 12 square feet of sign area. The bottom of the awning shall be at least eight feet above the finished grade.

(f) Sign area bonuses. To encourage design excellence, the maximum sizes for individual signs specified above may be increased if the criteria below are satisfied. Sign bonuses shall not apply to exempt signs or to freestanding signs that exceed six feet in height. Although a separate increase is granted for compliance with each of the criteria and the total is cumulative, each percentage increase is based on the original sign size limitation. Maximum sign sizes shall be allowed to increase as follows:

[1] Fifteen percent when the sign is made of wood.

[2] Fifteen percent if the sign is designed to contain only the identification of the establishment without advertising any products sold on the premises.

[3] Twenty percent if the sign is the only sign identifying the establishment or its principal product.

[4] Twenty percent if the sign is not designed or used with illumination.

[5] Thirty percent if the Architectural and Community Appearance Board of Review finds that the sign has special aesthetic merit or that additional size is necessary or appropriate due to such circumstances as the sign's distance from the road, the design speed of the road, or the size of the building on which the sign is placed. In order to take advantage of this Subsection D(3)(f)[5], an applicant not otherwise subject to site plan or special permit review may file a site plan application with the Planning Board. The content and review of such application shall be limited to consideration of signs.

(g) Maximum cumulative sign area per lot. The maximum amount of total sign area per lot shall be one square foot of total sign area for every two linear feet of lot frontage on a public street. For flag lots, this computation shall be based upon lot width at the building line, rather than lot frontage.

(h) Maximum area per sign. Notwithstanding any provision of this section to the contrary, no sign or grouping of signs shall be greater than 100 square feet in size.

(4) Illumination. No illuminated sign or lighting device shall be placed or directed so that its light is directed or beamed:

(a) Toward a residence; or

(b) Upon a public street, highway, sidewalk, or adjacent premises in a manner that causes glare or reflection sufficient to constitute a nuisance or a traffic hazard.

(5) Sign design manual. The Town Board may adopt a sign design manual developed specifically for the Town of Dover or published for the general public or for another municipality. If such a sign design manual is adopted, it shall be incorporated by reference into this chapter.

(6) Nonconforming signs. Signs that do not conform with this § 145-39 and that were in existence prior to March 1, 1999, shall be permitted to continue for an amortization period that terminates March 1, 2004, at which time they must either be replaced by conforming signs that have valid permits or be removed. Such signs may be altered only if the alterations increase their conformity with this section. This five-year amortization period may be extended by a temporary variance granted by the Zoning Board of Appeals, provided that the applicant demonstrates that the five-year amortization period is confiscatory as applied to the specific sign. The period of the variance shall be the minimum reasonably necessary to avoid confiscation. Signs that were not in compliance with the sign regulations of the Town of Dover existing prior to the enactment of this § 145-39 shall not be considered protected nonconforming structures and shall be treated as violations.

#### E. Removal of signs.

(1) Signs advertising an establishment or institution that has permanently closed shall be removed within one month of such closure.

(2) The Code Enforcement Officer shall notify in writing the owner of any sign which no longer serves the purpose for which it was erected or which poses a safety hazard to the public or is otherwise in violation of this section. The Code Enforcement Officer shall order such owner to remove or correct the unsatisfactory condition of such sign within 20 days from the date of such notice.

(3) Upon failure to comply with such notice within the prescribed time, the Code Enforcement Officer is hereby authorized to secure, repair, remove, or cause the removal of such sign. All costs of securing, repairing, or removing such sign, including related legal fees and expenses, shall be assessed against the land on which the sign is located and shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of a special ad valorem levy.

(4) Emergency provisions. Where it reasonably appears that there is imminent danger to life, safety, or health or imminent damage to property unless a sign is immediately repaired, secured, or demolished and removed, the Town Board may, by resolution, authorize the Code Enforcement Officer to immediately cause the repair, securing, or demolition of such unsafe sign. The expense of such remedial actions shall be a charge against the land on which the sign is located and shall be assessed, levied, and collected as provided in Subsection E(3) above.

#### § 145-40. Environmental performance standards.

A. Compliance with performance standards. No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy. This § 145-40 shall not apply to farm operations engaged in customary agricultural practices, except where necessary to protect public health and safety.

B. Purpose of performance standards. Consistent with the general purposes of this chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:

(1) Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollutants outside the building in which the use is conducted.

(2) Control noise and light perceptible beyond the boundaries of the site of the use.

(3) Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.

(4) Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.

(5) Limit physical hazard by reason of fire, explosion, radiation or any similar cause.

(6) Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion and excessive noise in the streets.

C. Noise. No noises shall be emitted in violation of Chapter 107 of the Dover Town Code. In addition, the following specific standards apply to noise:

(1) Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.

(2) No person, firm or corporation shall allow the emission of sound which, as measured at the property lines, has a sound level in excess of:

(a) Sixty decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; and

(b) Fifty decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.

(3) Sounds emitted at levels lower than those prohibited by Subsection C(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.

(4) Exemptions. The following shall be exempt from the noise level regulations:

(a) Noises not directly under the control of the property user.

(b) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.

(c) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.

(d) Bells or chimes from a church or other place of worship.

D. Vibration.

(1) Method of measurement. For the purpose of measuring vibration, a three-component measuring system approved by the Town Engineer shall be employed.

(2) Maximum permitted steady-state and impact vibration displacement. No activity shall cause or create a steady-state or impact vibration displacement by frequency bands in excess of that indicated in the following table:

**Vibration Displacement**

<b>Frequency (cycles per second)</b>	<b>Steady-State (inches)</b>	<b>Impact (inches)</b>
Under 10	0.0005	0.0010
10 to 19	.0004	.0008

20 to 29	.0003	.0006
30 to 39	.0002	.0004
40 and over	.0001	.0002

E. Smoke, dust and other atmospheric pollutants.

(1) General control. The emission of smoke and other particulate matter shall not be permitted in violation of applicable regulations of the New York State Department of Environmental Conservation (DEC), including but not limited to 6 NYCRR 201. Pollutants that are not regulated by DEC shall not be emitted if they pose a substantial risk to public health, safety, or welfare.

(2) Method of measurement of smoke. For the purpose of grading the density of smoke, the Ringelmann Smoke Chart or EPA Method 9 or 22 shall be used to determine the total smoke emitted. Where the Ringelmann method is used, a reading shall be taken every minute for an hour or, if less than an hour, until the total smoke emitted exceeds that allowed by these regulations. Each reading shall be multiplied by the number of minutes during which it was observed and the product added.

(3) Maximum permitted emission of smoke. There shall be no measurable emission of smoke, gas or other atmospheric pollutant, except as authorized by a permit granted pursuant to applicable state and federal regulations. The emission of one smoke unit per hour and smoke with discernible density of No. 1 on the Ringelmann Smoke Chart shall be prohibited.

(4) Maximum permitted emission of dust.

(a) The emission of dust related to combustion for indirect heating from any source shall not exceed 0.30 pound of dust per 1,000 pounds of flue gas adjusted to fifty-percent excess air for combustion.

(b) There shall be no measurable emission of dust or other particulate matter not related to combustion for indirect heating.

(c) Properties shall be suitably improved and maintained with appropriate landscaping, paving, or other materials to minimize windblown dust and other particulate matter.

F. Odor. No land use shall be permitted which emits any discernible obnoxious odor outside the lot on which the use is conducted.

G. Toxic or noxious matter. No use shall be permitted which will cause the release of toxic or noxious fumes or other matter outside the building in which the use is conducted.

H. Radiation. The handling, storage or disposal of radioactive materials or waste by-products shall be conducted strictly in accordance with applicable federal and state standards.

I. Electromagnetic interference. No operation shall be permitted which produces any perceptible electromagnetic interference with normal radio or

television reception in any area, unless federal or state regulation requires such operation to be permitted.

J. Fire and explosion hazard. All activities involving the use or storage of flammable or explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion, with adequate fire-fighting and fire-suppression equipment and devices standard in the industry. Such activities shall comply with all applicable requirements of the New York State Uniform Fire Prevention and Building Code, DEC regulations, and the National Fire Protective Association (NFPA) Code. Copies of SARA forms filed with the Dutchess County Emergency Response Agency shall also be filed with the Code Enforcement Officer.

K. Heat. There shall be no emission of heat which would cause an air temperature increase in excess of 1° F. along any adjoining lot line.

L. Exterior illumination and glare. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of 0.5 footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties. The Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.

M. Liquid and solid wastes. The discharge of any or all wastes shall be permitted only if in complete accordance with all standards, laws and regulations of the Dutchess County Health Department, New York State Department of Environmental Conservation or any other regulatory agency having jurisdiction. Facilities for the storage of solid waste shall be so located and designed as to be screened from the street or from any adjoining property and so as to discourage the breeding of rodents or insects.

N. Traffic. For the purpose of preventing congestion in the streets, promoting the safe and efficient use of public transportation, protecting air quality, promoting fuel conservation, and otherwise protecting the public health, safety and welfare, the following specific traffic standards are hereby established to serve as a guide for town officials and agencies in the review of applications for development approvals:

(1) No decision shall be made to approve the construction of any development which would contain in excess of 20,000 gross square feet of new nonresidential floor space or 50 or more new residential dwelling units if the reviewing board, acting on the advice of a qualified traffic engineer, determines that the result of such development will be to create one or more of the following peak-hour traffic impacts within two miles of any vehicular access point to the subject site during the first year of operation of the proposed project or, in the case of phased construction, during the first year of operation of any phase for which approval is sought:

(a) A reduction in level of service to less than Level D at any street intersection.

(b) A significant adverse impact on the operation of streets or intersections projected to be operating during the target year, at Level of Service E or below.

(c) Traffic volumes significantly over the capacity of the mainline (nonintersection) highway sections.

(2) In projecting future levels of service and the capacity of mainline highway sections, accepted traffic engineering procedures, as determined satisfactory by the reviewing board, shall be utilized, using the following requirements as a guide:

(a) Base-year traffic conditions, including peak-hour traffic volumes and turning movements, must be documented either through direct field surveys or from other available current data sources.

(b) Projected volumes must include estimated traffic generation from the proposed development during peak hours of on-site traffic activity as well as peak hours of street system activity.

(c) Daily trip generation estimates must be provided. Information published by the Institute of Transportation Engineers (ITE) will generally be relied upon as a basis for estimating trip generation, although the reviewing board may allow or require a departure from the use of specific ITE averages where the board determines that such departure is warranted by unique characteristics which may be present in the proposed project.

(d) Allowance shall also be made for traffic which is expected to be generated by other projects already approved or under construction within the town or within neighboring communities, as well as an additional allowance for general regional traffic volume changes.

(e) Estimated traffic generation must be distributed throughout the access network in accordance with clearly stated distribution assumptions determined acceptable by the reviewing board.

(f) The capacity analysis of the intersections or mainline highway section roadway system shall be calculated both with and without site-generated traffic. In analyzing such capacity, the applicant shall use methods generally recognized by national authorities, such as the Transportation Research Board of the National Academy of Sciences, and/or methods accepted by the New York State Department of Transportation. Traffic capacity estimates may take into account improvements planned by the applicant or by others, provided that, in either case, a specific commitment to construct such improvements has been made.

(g) In determining overall intersection level of service at signalized intersections, optimum practical signal timing may be assumed. Overall intersection level of service shall be determined, for both signalized and unsignalized intersections, based upon a volume-weighted average of each intersection approach level of service.

O. Review procedures. As a part of site plan review of an application for the establishment of a use which, in the reviewing board's judgment, could have potentially objectionable external aspects and therefore be subject to these

performance standards, the reviewing board may require the applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

§ 145-41. Home occupations.

A. Purpose and intent. The conduct of small-scale, low-impact business and professional uses on residential properties shall be permitted under the provisions of this section. It is the intent of this section to:

- (1) Ensure the compatibility of home occupations with other uses;
- (2) Maintain and preserve the rural and historic character of the town; and
- (3) Allow residents to engage in gainful employment on their properties while avoiding excessive noise, traffic, nuisance, fire hazard, and other possible adverse effects of nonresidential uses.

B. Criteria and standards.

(1) Home occupation as use permitted by right. Home occupations shall be permitted uses if they are in compliance with the following criteria and standards:

(a) The home occupation may be conducted only by residents of the dwelling unit plus no more than two nonresident assistants or employees at any one time. A home occupation may be conducted within a dwelling unit and/or within accessory structures. An area no larger than 30% of the floor space of the primary dwelling unit may be occupied by the home occupation, up to a maximum of 1,000 square feet.

(b) A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes. It shall be conducted in a manner which does not give the outward appearance of a business, does not infringe on the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units, and does not alter the character of the neighborhood.

(c) Signs used in conjunction with a home occupation shall not be animated or illuminated and shall not exceed three square feet.

(d) Parking shall be adequate for nonresident employees and customers or clients. No business vehicle larger than 10,000 pounds' gross vehicle weight may be parked regularly in a location visible from a public road or neighboring properties.

(e) Automobile and truck traffic generated shall not be greater than the volume of traffic that would normally be generated by a residential use, unless the residence is located on New York State Route 22, 55 or 343.

(f) There shall be no exterior storage of materials, equipment, vehicles, or other supplies used in conjunction with a home occupation, unless screened from the road and from other properties.

(g) No offensive appearance, noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances in a manner which may endanger public health or safety or which pollute the air or water shall be prohibited.

(h) More than one home occupation may be conducted on a lot, provided that the combined impact of all home occupations satisfies these criteria and standards.

(2) Home occupation by special permit.

(a) A home occupation occupying an area greater than that permitted in Subsection B(1)(a) above or employing more than two nonresident employees may be allowed by special permit, provided that it satisfies all criteria for granting of special permits as well as the criteria and standards in Subsection B(1)(a) through (h) above. Such criteria shall become standard conditions of the special permit. In no case shall the area occupied by a home occupation allowed by special permit exceed the lesser of 40% of the floor space of the primary dwelling unit or 2,000 square feet.

(b) A special permit granted for a home occupation shall include a condition requiring the operator to obtain an annual operating permit from the Code Enforcement Officer at a cost of \$75 per year beginning in the second year of operation. Such operating permit shall be granted after the Code Enforcement Officer inspects the premises and finds the home occupation to be in compliance with all conditions of the special permit.

#### § 145-42. Soil mining.

A. Soil mining shall be allowed within the SM Overlay District (see § 145-17) and the M District only, subject to a special permit by the Town Board, provided that the operator complies with all applicable requirements of the New York State Department of Environmental Conservation.

B. Any application for a soil mining special permit shall be deemed a major project if it also requires approval of a mining permit from the New York State Department of Environmental Conservation (DEC). Proposed soil mining that does not require a DEC permit shall be deemed a minor project.

C. An applicant for a major project special permit for soil mining shall submit copies of all applications and other materials submitted to the DEC in connection with its soil mining application.

D. In determining whether to grant or deny a special permit application for soil mining, the Town Board shall consider all applicable special permit criteria, including but not limited to the environmental performance standards in § 145-40. If the Town Board grants a major project special permit subject to conditions, such conditions shall be limited to the following, unless the laws of New York State allow the imposition of additional conditions:

(1) Ingress from and egress to public thoroughfares controlled by the town.

(2) Routing of mineral transport vehicles on roads controlled by the town.

(3) Requirements and conditions specified in the permit issued by the DEC concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control, and hours of operation.

(4) Enforcement of reclamation requirements contained in any DEC permit.

E. If the Town Board finds that the imposition of the above conditions in Subsection D(1) through (4) will not be sufficient to enable the proposed soil mining operation to comply with applicable special permit criteria, it shall deny the special permit application.

F. In issuing a minor project special permit for soil mining, the Town Board may impose any conditions it deems necessary, including but not limited to those in Subsection D(1) and (2) above.

G. For nonconforming soil mining operations, see § 145-25C.

#### § 145-43. Driveways and drive-up windows.

A. New driveway entrances (including the conversion of farm roads into residential or commercial driveway entrances) shall require permission from the Town Superintendent of Highways for town roads, the Dutchess County Department of Public Works for county roads, or the New York State Department of Transportation for state roads.

B. Drive-up windows shall require site plan review. Street access points and queuing areas shall be sited in a manner that does not create safety hazards to pedestrians or motorists and that does not increase traffic congestion on existing streets.

#### § 145-44. Mobile homes and construction trailers.

A. Mobile home courts. New mobile home courts shall be prohibited. Existing mobile home courts may be continued as provided in Article VI, and new mobile homes may be installed pursuant to plans approved before the enactment of this § 145-44. The expansion of an existing conforming mobile home park shall be allowed by special permit, consistent with the zoning in effect prior to the adoption of this chapter (1999), provided that a special permit application is submitted before the effective date of this chapter.

B. Individual mobile homes outside of mobile home courts. Individual mobile homes outside of mobile home courts shall be prohibited. Nonconforming mobile homes may be replaced by mobile homes that comply with currently applicable federal and state building standards.

C. Temporary mobile homes. Temporary mobile homes may be placed on any lot for a period not to exceed one year only in the event of major damage to or

destruction of a residence located on such lot. To the extent practicable, such temporary mobile homes shall comply with the provisions of this section, except that such homes may be installed without permanent footings. After one year, the Code Enforcement Officer shall send notice to remove the temporary mobile home or to apply for an extension not to exceed one additional year in the event that repair or reconstruction of the residence has not been completed.

D. Construction trailers. Construction trailers may be placed temporarily (without permanent footings) on construction sites for a period not to exceed the construction period, if allowed pursuant to a special permit, site plan, variance, or subdivision approval. Such trailers may be used for office, storage, or workshop space and shall not be used for residential purposes.

#### § 145-45. Camps.

A. In Type 1 camps (as defined in Article XII), the number of tents, trailers, houseboats, or other portable shelters shall not exceed the number of single-family dwellings which could be erected on such premises in a flexible subdivision. Camp structures shall be set back at least 250 feet from property lines, unless the property line is the shoreline of a stream or lake, in which case the setback requirements of § 145-14D shall apply.

B. Type 2 camps (as defined in Article XII) shall contain at least 50 acres.

#### § 145-46. Communication towers.

Installation or operation of a communication tower (including accessory facilities) shall require a special permit from the Town Board and site plan approval from the Planning Board. The Town Board and Planning Board shall not approve a communication tower application unless it satisfies the special use permit criteria contained in § 145-63 as well as the following additional requirements:

A. Shared use.

(1) Shared use of existing communication towers and use of other existing tall structures shall be preferred to the construction of new towers. Where shared use of an existing validly approved tower occurs, the new user shall be exempt from the provisions of this § 145-46, except that any ground-level site alterations shall require site plan review. Alterations to an existing tower, including the installation of new equipment, shall require a building permit only, provided that the height of the tower is not increased and no lights are added more than 35 feet above average grade level.

(2) Where shared use of an existing tower is a technically feasible alternative, the applicant may be denied a special permit for a new tower. In determining feasibility, the Town Board shall consider the costs to the applicant of adapting an existing facility to shared use, including structural reinforcement, preventing transmission or receiver interference, additional site screening and other physical changes to the tower and/or the site, as well as acquisition of a lease to accommodate shared use. Costs associated with this Subsection A(2) shall be considered unreasonable if they exceed the cost of the proposed new tower at a new location by more than 10%.

(3) In approving any new communication tower, the Town Board shall require that:

(a) The proposed tower be structurally capable of accommodating shared use; and

(b) The applicant shall make the tower available to other users at a reasonable charge, based on generally accepted accounting principles. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation and all the costs of adapting the tower and ancillary equipment to accommodate a shared user in a manner that complies with the provisions of this § 145-46. This Subsection A(3)(b) may be waived by the Town Board when a communication tower is not owned, leased, or operated by a wireless communications company or any other company which might be competing against other potential users of the tower.

**B. Dimensional regulations.**

(1) The minimum lot size shall be five acres.

(2) The minimum setback from any property line shall be the height of the tower to be erected plus 30 feet and shall apply to all tower parts, guy wires, guy wire anchors, and accessory facilities.

**C. Site planning considerations.** In reviewing a site plan application for a communication tower, the Planning Board shall consider the following factors, in addition to the standards contained in § 145-65:

(1) Communication towers shall not be artificially lighted or marked except to ensure public safety if required by the Federal Aviation Administration (FAA). However, they shall be sited and designed to be the minimum height necessary to fulfill their purposes and to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall be an appropriate color to harmonize with the surroundings, as approved in advance by the Planning Board.

(2) Communication tower structures shall not contain any signs other than safety warning signs.

(3) Communication towers and related accessory facilities shall be enclosed by a fence not less than eight feet in height above ground level.

(4) All towers and accessory facilities shall be sited to minimize any adverse visual effect on the environment. Accessory facilities shall use building materials, colors, and textures designed to blend with the natural surroundings.

(5) Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured four feet from the ground) shall take place prior to approval of the special permit and site plan approval. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited, except as may be necessary for construction of an access road.

(6) Adequate emergency and service access and parking shall be provided, making use of existing roads, public or private, to the maximum extent feasible. Road construction shall minimize disturbance and cutting of vegetation to within the toe of fill, the top of cuts, and no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal adverse visual impact and reduce soil erosion potential.

D. Application requirements. Special permit and site plan approval applications for a communication tower shall include, in addition to other submission requirements for special use permits and site plans, the following information:

(1) The location of all structures and trees on the site and on any adjacent property within 30 feet of the subject property lines.

(2) All information prepared by the manufacturer of the tower and associated apparatus for which a special permit is being sought, including but not limited to the following:

(a) Make and model of tower to be erected.

(b) Design data, installation instructions, and construction plans.

(c) Identification of levels of radiation emitted by or from the communication tower.

(d) Identification of the effects the communication tower's operation will have on existing communication towers, antennas, or other electromagnetic devices within 1,000 feet of the proposed structure.

(3) Applicant's proposed tower maintenance and inspection procedures and records system.

(4) In the case of new towers, the applicant shall be required to submit a report documenting the following:

(a) Good faith efforts to secure shared use from existing towers as well as capacity for future shared use of the proposed tower. An applicant shall inventory existing communication towers within reasonable distance of the proposed site and outline opportunities for shared use of existing facilities as an alternative to the new tower. Written requests to and responses from other tower owners for shared use shall be provided.

(b) A technical and visual impact analysis of reasonable alternative new tower sites which could serve the needs of the applicant in different locations, including the installation of antennas on existing structures.

(c) Documentation of the local and regional need for the tower in the specific location selected, showing that the tower in the proposed location is a public necessity and is essential to the safe and adequate provision of service and that shared use of existing towers will not be adequate.

(d) Alternative designs for the communication tower, including those that minimize adverse visual impact by enclosing the communication apparatus in a silo, belfry, steeple, cupola, turret, or other traditional building design element or by attaching such apparatus to structures that look like or blend in with trees.

(5) A report by a qualified engineer and/or health physicist which calculates the maximum amount of non-ionizing electromagnetic radiation (NIER) which will be emitted from the tower and demonstrates that the facility will comply with the applicable NIER standards set forth below:

(a) The standards for public exposure to NIER established by the Institute of Electrical and Electronics Engineers/American National Standards Institute.

(b) Standards for NIER by the Federal Communications Commission, if a regulation establishing such standards has been promulgated.

(6) A statement agreeing to defend and indemnify the Town of Dover and any of its agents or employees from any and all claims made in connection with the installation, construction, use, or operation of the communication tower.

(7) A completed visual environmental assessment form (visual EAF) as part of the SEQRA documentation. The Planning Board may require a more detailed visual analysis based on the results of the visual EAF.

(8) Landscaping and screening. The landscape plan required for site plan review shall pay particular attention to visibility from key publicly accessible viewpoints within and outside the town as identified in the visual EAF. At least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet high within two years of planting shall be provided and maintained to effectively screen the tower base and accessory facilities from adjoining property.

E. Abandonment and removal. In the event a communication tower ceases operations and is abandoned for a period of six months, the tower, structures, and facilities shall be dismantled by the owner and removed from the site within 60 days of receipt of written notice to do so from the Town Board. In order to secure this obligation to remove the tower, the Town Board may require the applicant to post a bond or other security at the time of approval of the communication tower.

F. Conflict with other requirements. Where these regulations conflict with other applicable laws and regulations, the more restrictive shall apply, except for tower height restrictions which are governed by this § 145-46.

#### § 145-47. Antennas as accessory uses.

Antennas and other transmission or receiving facilities that are mounted on structures principally used for purposes other than receiving or transmitting radio, television, microwave, cellular telephone, or similar electromagnetic signals shall be permitted in all districts as an accessory use with site plan review by the Planning Board. Site plan review shall not be required for receive-only antennas and satellite dishes accessory to a residential use.

§ 145-48. Adult entertainment.

The Town of Dover finds that adult entertainment businesses, as defined in Article XII, may have negative impacts upon the neighborhood and surrounding area where they are located. Such impacts include physical deterioration, disinvestment, and increased crime. Adult uses shall be allowed by special permit in the M District only. In addition to all applicable special permit and site plan criteria in Article IX, such uses shall satisfy the following additional standards:

- A. No adult use shall be located within 1,000 feet of any single-family, two-family, or multifamily residence, or of any school, day-care center, library, religious institution, park or other public recreation area, or recreational business.
- B. No adult use shall be located within 1,000 feet of any other adult use.
- C. No more than one freestanding sign, not exceeding 12 square feet, shall be permitted for an adult use in a location visible from a public street. Such sign shall be limited to the name and address of the business. One wall-mounted sign, not exceeding 12 square feet, shall be permitted on the building, provided that it complies with Subsection D.
- D. Adult uses shall be set back at least 200 feet from all public rights-of-way and shall be screened from view by a buffer at least 50 feet wide consisting of trees and shrubs.

§ 145-49. Keeping of animals.

- A. Pig farms. Pig farms shall require a minimum land area of 150 acres. Pens or feeding areas shall not be located within 1,000 feet of any property line.
- B. Cage-type poultry farms. Buildings housing cage-type poultry operations containing 5,000 or fewer birds shall not be erected within 500 feet of any property line. In addition:
  - (1) For each 1,000 birds over 5,000, an additional setback of 50 feet shall be provided from any property line.
  - (2) Cage-type poultry houses shall be equipped with odor suppressors of the hydraulic-pit type (or equivalent) with sufficient capacity to permit a lapse of not more than four months between cleanings.
  - (3) Cage-type poultry house odor suppression devices shall not be cleaned during the months of June, July, August, or September.
- C. Maintenance of animals. The following regulations shall apply to the maintenance of animals on land in any district:
  - (1) In the absence of a special permit as provided below, the maintenance of large animals such as horses, ponies, cattle, goats, pigs, sheep, etc., shall require at least one acre of open land for each animal, unless contiguous open space in excess of four acres is used for such maintenance, in which event this requirement shall be inapplicable.

(2) The maintenance of small animals, such as raccoons, mink, rabbits, birds, snakes, geese, ducks, chickens, monkeys, dogs, cats, etc., in a total number greater than 10 on one lot of less than two acres shall be prohibited in the absence of a special permit as provided below.

(3) The Planning Board may issue a special permit for maintenance of animals in greater numbers than the maximum set forth above, provided that the applicant meets all conditions and satisfies applicable special permit criteria and that the Planning Board finds that adequate open space and facilities for the proper care of such animals are available and will be established and that maintenance of such animals will not interfere with the reasonable use and enjoyment of the property of others.

(4) Buildings, pens, or other structures housing animals shall be located 20 feet from any lot line and 35 feet from any road or highway. No manure may be stored within 250 feet of any property boundary line or watercourse.

(5) In maintaining animals on a property, no person shall knowingly interfere with the reasonable use and enjoyment of the property of others.

#### § 145-50. Solid waste management facilities and industrial uses.

A. Limitations on solid waste management facilities. Solid waste management facilities, as defined in Environmental Conservation Law § 27-0701 and 6 NYCRR 360-1.2(b)(158), with the sole exception of municipally owned and operated facilities, shall be prohibited in the Town of Dover.

B. Standards and enforcement. All industrial uses and municipal solid waste management facilities shall satisfy the following requirements. Nonconforming solid waste management facilities shall comply with these standards to the extent practicable.

(1) All operations, including loading and unloading, shall occur within fully enclosed buildings with an impermeable floor system. Any leachate shall be collected in an impermeable collection system and hauled off site for disposal as required by applicable laws. There shall be no outdoor storage of hazardous materials or of materials regulated under 6 NYCRR 360 in a manner that could allow them to become airborne, leach into the ground, or flow into any watercourse.

(2) No materials shall be disposed of into the ground, air, or into any watercourse, except pursuant to applicable permits and approvals issued by state and county health and environmental agencies.

(3) Procedures shall be in place to inspect all materials upon arrival at the facility to ensure that they are appropriate to the permitted operation and to ensure that deliveries of materials that cannot be safely handled and processed at the facility are not accepted.

(4) The operation shall comply with all applicable provisions of this chapter, including the environmental performance standards in § 145-40 and the aquifer protection provisions in § 145-15 if the use is located within the Aquifer Overlay District.

(5) The applicant may be required to furnish an irrevocable letter of credit, certified check, bond, or other form of security guaranteeing to the Town of Dover compliance with the standards in this Subsection B as well as any other standards, requirements, or conditions of any permit issued by federal, state, county, or local government agencies. The amount of such performance guaranty shall be based upon the potential cost of remediation in case of a violation.

(6) In addition to the requirements of Subsection B(5) above, the applicant may be required to pay annually into an environmental inspection fund to enable the town to monitor the facility's performance and compliance with applicable standards using qualified technical experts.

#### § 145-51. Junkyards and outdoor storage.

A. Junkyards. Junkyards, as defined in Article XII, and any activities licensed under Chapter 97 of the Dover Town Code shall be prohibited except within the M District. All junkyards and other activities licensed under Chapter 97 which were in existence as of September 1, 1998, shall be permitted to continue and shall be subject to the provisions of Chapter 97. Junkyards shall be screened from public view and from adjoining properties and shall also be subject to the standards contained in § 145-50B.

#### B. Outdoor storage.

(1) Outdoor storage areas shall be screened from public view and from adjoining properties.

(2) Boats, trailers, and seasonal or other recreational vehicles may be stored, maintained, or parked only in side or rear yards. Construction equipment and other heavy equipment may not be stored, maintained, or parked in any location visible from adjoining properties or public roads, except for purposes of loading and unloading. The restrictions of this Subsection B(2) shall not apply in the M, HC, and CO Districts.

(3) No motor vehicle of any kind for which registration would be required for its use on public highways may be stored, maintained, or parked on any lot in a residential district longer than five days while such vehicle is not so registered, unless such vehicle is maintained or stored in an enclosed structure. Inoperable motor vehicles shall be subject to the provisions of Chapter 139 of the Dover Town Code.

(4) Unless authorized by a special permit or site plan approved in connection with a business use, no commercial vehicle exceeding 10,000 pounds' gross vehicle weight or 20 feet in box length shall be parked overnight in a residential district where it is visible from adjoining properties or public roads. This shall not apply to trucks used in connection with commercial agriculture, provided that parked trucks are set back at least 100 feet from all property lines.

#### § 145-52. Residential care facilities.

In addition to generally applicable special permit and site plan review requirements, the applicant shall comply with the following:

A. Supervision. Every residential care facility shall provide qualified supervisory personnel on the premises 24 hours a day, seven days a week. Such personnel shall have sufficient education and experience and shall be present in sufficient numbers to meet all standards of any agency responsible for the licensing or regulation of the residential care facility. Where no standards exist, the applicant shall present evidence establishing the minimum qualifications and number of personnel necessary for the operation of the residential care facility, and the Planning Board shall specifically establish minimum standards.

B. Other required approvals. An applicant for a residential care facility shall demonstrate compliance with all applicable regulations, standards, and licensing requirements of public or private agencies.

C. Required information for application. An application for a special permit for a residential care facility shall satisfy the submission requirements of Article IX and shall also include the following:

(1) A list of all agencies which must license or otherwise approve the establishment of operation of the facility.

(2) A list of regulations established by the public or private agencies listed in Subsection C(1) above.

(3) Copies of applications submitted to the agencies.

(4) A written statement explaining the status of such applications stating any facts known to the applicant which might result in the denial or delay of any required approval.

(5) A written statement addressing the requirements of Subsection A and demonstrating that the facility will comply with applicable regulations of licensing agencies and state law relating to minimum required floor area, bathroom facilities, and open space.

(6) A map identifying the location of all other residential care facilities in the Town of Dover at the time of the special permit application.

D. Findings. In making its determination upon a special permit for a residential care facility, the Planning Board shall, in addition to making the findings required by § 145-63, make the following specific findings:

(1) That the proposed facility, given its unique nature, will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, and other matters affecting public health, safety, and general welfare.

(2) That the proposed facility will be provided with or have ready access to facilities and services necessary and appropriate to the needs of its residents for active and passive recreation, medical care, education, cultural and religious activities, and public transportation.

(3) That the proposed facility will not generate a level of traffic which would be burdensome to the neighborhood, considering the number of visitors its

residents may expect, truck delivery and loading requirements, and the availability and nature of public or private transportation.

(4) That the proposed facility will not result in an undue concentration of residential care facilities in the Town of Dover or in the neighborhood of the proposed facility. This requirement shall not apply within the MC Overlay District.

(5) That the decision made by the Planning Board represents a reasonable accommodation to the needs of persons protected under the Federal Fair Housing Act, if applicable.

## ARTICLE VIII Administration and Enforcement

§ 145-53. Enforcement officer.

The provisions of this chapter shall be administered and enforced by the Code Enforcement Officer, who shall issue building permits and zoning permits. No building permit, zoning permit, certificate of occupancy, or other permit or license shall be issued if it would be in conflict with the provisions of this chapter, Chapter 47 of the Dover Town Code, or any other applicable local, state, or federal law or regulation.

§ 145-54. Building permits and zoning permits.

A. Building permit.

(1) A building permit shall be required for the erection, construction, enlargement, alteration, replacement, or removal of any building or structure.

(2) No building permit shall be required for any alteration of or ordinary repair to an existing building or structure which is not structural in nature and which is not intended to or does not provide for a new or extended use of the building, structure or premises.

(3) In the case of emergency action to deal with damage from fire or other casualty, the applicant may commence construction required to stabilize a structure without a building permit. In order to protect the safety of persons entering such a structure to stabilize it, a permit shall be applied for as soon as possible and in no event more than one week following such fire or casualty.

B. Zoning permit. A zoning permit shall be required for the conversion or change in use of any existing building, structure, or parcel of land where no new construction is involved, except that no permit is required for a change of use to a use permitted by right as provided in § 145-10F.

C. Application for building or zoning permit. All applications for a building or zoning permit shall be made on prescribed forms and shall contain the following information:

(1) Land. A description of the land on which the proposed use or construction will occur.

(2) Use and occupancy. A statement of the existing and proposed use of all parts of the land and the location, character and existing and proposed use of any existing or proposed buildings or structures, including the number of floors, entrances, rooms, type of construction and the kind and extent of any exterior horizontal extension proposed toward any boundary or street line of the lot.

(3) Identity of owner and applicant. The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations.

(4) Description of work or changes in use. A brief description of the nature of the proposed work or change in use.

(5) Valuation of work. The valuation of the proposed construction work, if any.

(6) Plans and specifications.

(a) Each application for a building or zoning permit shall be accompanied by two copies of plans and specifications, including a map, survey (if applicable), and site development or plot plan, drawn to scale, showing the courses, dimensions and detail of all the boundary lines of the proposed lot of occupancy and the street boundaries adjacent thereto, if any, and the location and size of any proposed new construction and all existing buildings, structures, parking areas, traffic access and circulation drives, open spaces and landscaping on the site, the nature and character of any work to be performed and the materials to be incorporated, distance from lot lines, the relationship of structures on adjoining property, widths and grades of adjoining streets, walks, and alleys, and such additional information as may be required by the Code Enforcement Officer to determine compliance with the provisions of this chapter.

(b) Plans and specifications shall bear the signature of the person responsible for the design and drawings and, where required by the Education Law or any other applicable statutes, laws, rules or regulations of the State of New York, the seal of a licensed architect or a licensed professional engineer.

(c) The Code Enforcement Officer may waive one or more of the requirements of this Subsection C for minor alterations, as defined in the New York State Uniform Fire Prevention and Building Code.

(7) Additional information. Such other information as may reasonably be required by the Code Enforcement Officer to establish compliance of the proposed work or change in use with the requirements of this chapter.

#### D. Action upon application.

(1) The Code Enforcement Officer shall promptly review the application and approve or deny it, giving the reason for any denial. A copy of the approved or disapproved application shall be delivered or mailed to the applicant forthwith.

(2) An application with the approval of the Code Enforcement Officer endorsed thereon shall constitute the building permit or zoning permit, which shall become effective when the Code Enforcement Officer has filed written approval of the permit application in the office of the Town Clerk.

E. Invalid approval. No building or zoning permit shall be valid unless it complies with all provisions of this chapter. Any application approved or acted upon in violation of this chapter shall be void.

F. Termination of building or zoning permit. An approved building or zoning permit shall terminate and become void if there is no construction or commencement of the new use within 12 months of the date of approval.

#### § 145-55. Steps to obtain permits.

The steps to obtain necessary permits to erect, occupy, or change the use of a permitted structure or lot are as follows:

A. Any person intending to undertake new construction, structural alteration, or change in the use of a building or lot shall apply to the Code Enforcement Officer for a building permit or zoning permit by submitting the appropriate application form and paying the required fee. For rules governing changes of use, see § 145-10F.

B. The Code Enforcement Officer shall grant or deny the permit as provided in § 145-54 or refer the application to the Planning Board (or Town Board if appropriate) if a special permit and/or site plan approval is required.

C. If a building or zoning permit is issued, the applicant may proceed to undertake the action permitted. Upon completion of any construction, the applicant shall apply to the Code Enforcement Officer for a certificate of occupancy (for building permits only).

D. If the Code Enforcement Officer finds that the applicant's action has been taken in accordance with the building permit, the Code Enforcement Officer shall issue a certificate of occupancy as provided in § 145-56, allowing the structure to be occupied.

E. If the Code Enforcement Officer denies a building or zoning permit and does not refer the application to the Planning Board or Town Board, the applicant may appeal to the Zoning Board of Appeals.

#### § 145-56. Certificates of occupancy.

No building or structure hereafter erected, constructed, enlarged, altered, or moved and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a certificate of occupancy has been issued by the Code Enforcement Officer in accordance with the provisions of Chapter 47 of the Town Code, this chapter, and any other applicable laws and regulations.

A. Exception for minor alterations. No certificate of occupancy shall be required for any alteration of or ordinary repair to an existing building or structure which is not structural in nature and which does not require a zoning permit or a building permit pursuant to the provisions of this chapter or of Chapter 47 of the Town Code.

B. Issuance of certificate of occupancy.

(1) The Code Enforcement Officer shall examine the location of any new structures or improvements to existing structures and shall determine whether or not such new structures or improvements comply with the setback and other requirements of this chapter, including the terms and conditions of any site plan approval, special permit, variance, subdivision approval, or conservation easement granted. The Code Enforcement Officer shall maintain complete records of the dates of inspections conducted hereunder, the names of all persons attending such inspections, the extent of completion of the work on each date, and any other observations relevant to determining compliance with this chapter.

(2) After work has been completed, inspected, and found to be in full compliance with the building permit, the Code Enforcement Officer shall issue a certificate of occupancy.

C. Effective date of certificate of occupancy. A certificate of occupancy shall become effective upon filing in the office of the Town Clerk, together with the building permit and all previous applications and approvals granted.

D. Failure to complete construction. Any structure for which a building permit has been issued which remains partially complete with no substantial progress over a twelve-month period shall be considered a violation of this chapter to be remedied pursuant to § 145-57.

#### § 145-57. Violations and enforcement; penalties for offenses.

A. Inspection. In order to determine compliance with this chapter, the Code Enforcement Officer is authorized, to the extent permitted by law, to enter, inspect, and examine any building, structure, place, premises, or use in the Town of Dover.

B. Notice of violation.

(1) Upon finding any new construction, improvements, or uses to be in violation of this chapter, the Code Enforcement Officer shall transmit a written notice of violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation, with a copy to the Town Board. The notice of violation shall require an answer or correction of the alleged violation to the satisfaction of the Code Enforcement Officer within a reasonable time

limit set by the Code Enforcement Officer. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of the Code Enforcement Officer within the time limit constitutes admission of a violation of this chapter. The notice shall further state that, upon request of those to whom it is

directed, technical determinations of the nature and extent of the violation as alleged will be made and that, if a violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate, and that, if it is determined that no violation exists, costs of determination will be borne by the town.

(2) If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Code Enforcement Officer, the notation "Violation Corrected" shall be made on the Code Enforcement Officer's copy of the notice.

(3) If there is no reply within the time limit set (thus establishing admission of a violation of this chapter) and the alleged violation is not corrected to the satisfaction of the Code Enforcement Officer within the time limit set, the Code Enforcement Officer shall take action in accordance with Subsection C of this section.

(4) A permanent record of all notices of violation and their disposition shall be kept in the offices of the Code Enforcement Officer.

C. Abatement of violations. The Code Enforcement Officer or the Town Board may issue a stop-work or cease and desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this chapter, to prevent the occupancy of premises, or to prevent any activity, business, or use that violates this chapter. Such legal action may include the issuance of an appearance ticket pursuant to the Criminal Procedure Law, § 150.20.

D. Penalties.

(1) A violation of this chapter is an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense. Conviction of a second offense, committed within five years of the first offense, is punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed 15 days, or both. Conviction of a third or subsequent offense committed within a period of five years is punishable by a fine of not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six months per violation.

(2) In addition, any person who violates any provision of this chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$100. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.

(3) The imposition of penalties for any violation of this chapter shall not excuse the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this chapter shall not prevent the abatement of a violation pursuant to Subsection C. The expenses of the town in enforcing such removal, including legal fees, may be chargeable (in addition

to the criminal and civil penalties) to the offender and may be recovered in a civil court of appropriate jurisdiction.

E. Complaints of violations. Whenever a suspected violation of this chapter occurs, any person may file a signed written complaint reporting such violation to the Code Enforcement Officer. The Code Enforcement Officer may also investigate any oral complaint made to his/her office. All complaints, written or oral, shall be properly recorded, filed, and promptly investigated by the Code Enforcement Officer and reported to the Town Board.

F. Taxpayer action. Upon the failure or refusal of the Code Enforcement Officer or Town Board to institute an appropriate legal action or proceeding for a period of 10 days after written request by a resident taxpayer of the town to do so, any three taxpayers of the town residing in the district in which such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in the same manner as the Code Enforcement Officer or Town Board.

G. Accountability. For every violation of the provisions of this chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists shall be punishable according to the provisions of this chapter.

H. Existing violations. No application shall be received nor shall any application, if received, be reviewed or be granted for any variance, zoning change, special use permit, site plan, subdivision, building permit, license, certificate of occupancy or any other change set forth in this chapter if there are any existing violations of this chapter for the lot or lots contained in said application, unless said application is required by the Building Inspector, Town Attorney, or the reviewing agency in settlement of the outstanding violation. [Added 9-27-2006 by L.L. No. 3-2006]

§ 145-58. Escrow deposits. [Amended 4-3-2002 by L.L. No. 1-2002]

A. Escrow deposits.

(1) In connection with any application for a special permit, site plan or subdivision approval, zoning amendment, variance, or other appeal, the reviewing board may require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of reviewing the particular type of application before it. The reviewing board may consider the professional review expenses incurred by neighboring municipalities in reviewing similar applications. The reviewing board may also consider the Town's survey of professional review expenses in determining the initial sum of money to be deposited in an escrow account by an applicant.

(2) Use of funds.

(a) Said sum of money shall be used to cover the reasonable and necessary costs of reviewing an application. Costs may include staff costs or consultant fees for planning, engineering, legal, and other professional and

technical services required for the proper and thorough review of an application. The reviews governed by this section shall include all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act (SEQR).

(b) The review expenses provided for herein are in addition to application or administrative fees required pursuant to other sections of the Dover Town Code. Monies deposited by applicants pursuant to this section shall not be used to offset the Town's general expenses of professional services for the several boards of the Town or its general administrative expenses.

(c) Fees charged strictly as a result of a SEQR review shall in no event exceed the maximum amounts that can be charged pursuant to the SEQR regulations by the lead agency.

B. Upon receipt of monies requested for an escrow account, the Town Supervisor shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.

C. Upon receipt and approval by the Town Board of itemized vouchers from consultants for services rendered on behalf of the Town regarding a particular application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall debit the separate record of such account accordingly. The consultant shall make copies of such vouchers available to the applicant at the same time the vouchers are submitted to the Town.

D. Review of vouchers; payment.

(1) The Town Board shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a similar application. In auditing the vouchers, the Town Board may take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the Town Board may deem relevant. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, and protect public or private property from damage.

(2) In no event shall an applicant make direct payment to any Town consultant.

E. If at any time during the processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board that such monies will be insufficient to meet vouchers yet to be submitted, the reviewing board shall cause the applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.

F. In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy may be withheld or suspended by the reviewing board, officer or employee of the Town until such monies are deposited.

G. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within sixty days after the applicant's request.

#### § 145-59. Zoning Board of Appeals.

Pursuant to the provisions of § 267 of the Town Law, there is hereby established a Zoning Board of Appeals consisting of five members appointed by the Town Board. The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this chapter, generally the Code Enforcement Officer. An appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the town.

A. Appeals of orders, requirements, decisions, interpretations or determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order,

requirement, decision, interpretation, or determination appealed from and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this chapter. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

B. Appeals for variance.

(1) Where there are practical difficulties or unnecessary hardships imposed by the strict letter of this chapter, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Code Enforcement Officer and after public notice and hearing, to vary or modify the application of any of the provisions of this chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.

(2) All applications for variances shall be submitted to the Code Enforcement Officer at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. An application for a use variance may require submission of an agricultural data statement pursuant to § 145-37C.

(3) Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within one year of the date of issuance shall automatically lapse.

C. Use variances.

(1) The Zoning Board of Appeals, on appeal from a decision or determination of the Code Enforcement Officer, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this chapter.

(2) No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant.

(a) In order to prove unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under this chapter for the district in which the applicant's property is located:

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

[2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;

[3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] The alleged hardship has not been self-created.

(b) Failure to demonstrate any one of the foregoing {Subsection C(2)(a)[1] through [4] above} is sufficient to justify the denial of a use variance.

(3) The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to § 145-37C.

(4) The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

(5) In addition to the grounds for granting a use variance in Subsection C(2) above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property. In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.

(6) If the use variance is granted for a nonresidential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

D. Area variances.

(1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, to grant area variances from the area or dimensional requirements.

(2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making its determination the Board shall also consider:

(a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(c) Whether the requested area variance is substantial;

(d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(e) Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board but which shall not necessarily preclude the granting of the area variance.

(3) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

E. Imposition of conditions. The Zoning Board of Appeals shall, in granting use variances and area variances, impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

F. Procedures.

(1) Application. Appeals shall be taken by filing a written notice of appeal and any required plans with the Code Enforcement Officer and the Zoning Board of Appeals within 60 days after the filing of the order, requirement, decision, interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Code Enforcement Officer shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.

(2) Referral to County Planning Board.

(a) Requests for variances that require referral to the County Planning Board shall be so referred pursuant to the General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

(b) No action shall be taken on variances referred to the County Planning Board until its recommendation has been received or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the county and town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

(c) County disapproval. A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

G. Hearing and public notice.

(1) If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of the variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.

(2) The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.

(3) The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.

(4) At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to the Planning Board and to contiguous property owners.

(5) At the hearing, any party may appear in person or by agent or by attorney.

(6) The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal.

H. Action. The Zoning Board of Appeals may, in conformity with the provisions of this chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this chapter.

(1) Any such action shall be decided within 62 days after the close of the hearing.

(2) Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by resolution which contains a full record of the findings of the Zoning Board of Appeals in the case. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the County Planning Board, it shall give written reasons for such action.

I. Filing. Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered and shall be a public record. A copy thereof shall be mailed to the appellant within the same five-day period.

J. Court review of Board decisions. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules and § 267-c of the Town Law.

K. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within 12 months of the date of such decision.

L. Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Code Enforcement Officer's opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Officer, for due cause shown.

## ARTICLE IX **Special Permits and Site Plan Review**

§ 145-60. Purpose and applicability.

A. It is the policy of the Town of Dover to allow a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the rural and historic character of the town. Many uses are therefore permitted only upon issuance of a special permit by the Planning Board, in order to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this chapter. Some uses are allowed by right, subject only to site plan approval (see Use Table in § 145-10B). Communication towers, junkyards, adult entertainment uses, and uses not listed on the Use Table (if not prohibited by § 145-10C) require a special permit issued by the Town Board, which shall follow the procedures and standards established for the Planning Board in this Article IX.

B. Accessory uses or structures used in connection with a special permit or site plan use shall be subject to the same approval requirements as the principal structure or use.

C. Minor and major projects.

(1) A minor project is a special permit or site plan application that falls within all of the following thresholds (over a three-year period):

(a) Construction of four multifamily dwelling units or a lodging facility with six bedrooms.

(b) Construction of facilities or structures for a nonresidential use covering 3,000 square feet of building footprint.

(c) Alteration of existing structures or expansion of such structures by 1,000 square feet.

(d) Conversion of existing structures totaling 5,000 square feet to another use.

(e) Alteration and active use of 10,000 square feet of land, with or without structures.

(f) Soil mining that does not require a Department of Environmental Conservation permit.

(g) Construction of a structure that is 80 feet or higher above average grade level.

(2) A major project is a special permit or site plan application exceeding any of the minor project thresholds.

#### § 145-61. Required submissions for special permit applications.

Because the impact of special permit uses varies, the review procedure and information required to be submitted for a special permit varies depending upon whether it is a major or minor project.

A. Major project special permit. An applicant for a major project special permit shall submit the following:

(1) A major project application form.

(2) A site plan, containing the information listed in § 145-65B, unless submission of certain information has been waived at a preapplication meeting.

(3) A narrative report describing how the proposed use will satisfy the criteria set forth in § 145-63, as well as any other applicable requirements relating to the specific use proposed.

(4) A long-form environmental assessment form or draft environmental impact statement.

(5) An agricultural data statement as defined in § 145-74, if required by § 145-37C.

(6) The major project special permit application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

B. Minor project special permits. An applicant for a minor project special permit shall submit the following:

(1) A minor project application form.

(2) A plot plan providing information sufficient to enable the reviewing board to make an informed decision (which may include some of the site plan information listed in § 145-65B).

(3) A brief narrative describing the proposed use.

(4) A short-form environmental assessment form (EAF) (unless the Planning Board determines that the proposed special permit is a Type I action, in which case a long-form EAF shall be required).

(5) An agricultural data statement as defined in § 145-74, if required by § 145-37C.

(6) The minor project application fee as established by the Town Board and an escrow deposit (if required).

#### § 145-62. Procedure.

A. Preapplication meetings. Before filing an application, a preliminary conference with the Code Enforcement Officer is required to discuss the nature of the proposed use and to classify it as a major or minor project. If the Code Enforcement Officer classifies the project as a major project, a preliminary meeting with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the site plan.

B. Mediation option. At any point in a project review process the Planning Board may, if it deems it appropriate and the parties consent, appoint a mediator to work informally with the applicant, neighboring property owners, and other interested parties to address concerns raised about the proposed special permit use. Any party may request mediation. Such mediation may be conducted by any qualified and impartial person acceptable to the parties and the Planning Board. The mediator shall have no power to impose a settlement or bind the parties or the Planning Board, and any settlement reached shall require Planning Board approval to assure compliance with all provisions of this chapter. The cost, if any, of such mediation may be charged to the applicant as part of the cost of project review, with the applicant's written consent. Such cost may also be paid by the town, or shared by other parties with their written consent.

C. Application.

(1) Application for a special permit shall be made to the Planning Board in the manner prescribed by the Board.

(2) If an application is for a parcel or parcels on which more than one use requiring a special permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining whether the application is a major or minor project, and for SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.

(3) Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special permit contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 145-59F without a decision or determination by the Code Enforcement Officer.

D. State Environmental Quality Review Act (SEQRA) compliance. Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decisionmaking in this chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

E. Referral to County Planning Board.

(1) Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the County Planning Board any application for a special permit affecting real property within 500 feet of the boundary of the Town of Dover, the boundary of any existing or proposed county or state park or other recreational area, the boundary of any existing or proposed county or state roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the county for which the county has established channel lines, the boundary of any existing or proposed county- or state-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to the General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

(2) No action shall be taken on applications referred to the County Planning Board until its recommendation has been received or 30 days have elapsed after its receipt of the complete application, unless the county and town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

(3) County disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any special permit which receives a recommendation of disapproval from the County Planning Board before the Planning Board takes action. The Planning Board shall by resolution set forth its reasons for such contrary action.

F. Notice and hearing.

(1) If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the special permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

(2) The Planning Board shall hold a public hearing on a complete special permit application within 62 days of its submission. The Board shall give public notice of such hearing by causing publication of a notice of such hearing in the official newspaper at least five days prior to the date thereof. The Board shall also send notices of the hearing to owners of contiguous properties. The cost of giving all notices shall be charged to the applicant.

(3) For all major projects, the applicant shall also be required to post a notice on a sign purchased from the Town Clerk stating that there is a pending application on the property, and providing the date, time, and place of the hearing, the place and times the application may be reviewed by the public, and a telephone number to call for further information. This sign shall be posted in public view in a conspicuous location within three days after the Planning Board establishes a public hearing date, shall be updated if more hearing dates are scheduled, and shall remain in place until the day after the hearing is closed.

#### G. Action.

(1) The Board shall grant, deny, or grant subject to conditions the application for a special permit within 62 days after the hearing for a major project and within 31 days for a minor project. Any decision on a major project shall contain written findings explaining the rationale for the decision in light of the standards contained in § 145-63 below.

(2) In granting a special permit, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to § 145-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring action by the applicant, including the posting of performance bonds and furnishing of guaranties to insure the completion of the project in accordance with the conditions imposed.

(3) The special permit and accompanying site plan shall be implemented as provided in § 145-68.

#### H. Expiration, revocation and enforcement.

(1) A special permit shall expire if the special permit use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the special permit within 12 months of its issuance, or if its time limit expires without renewal.

(2) A special permit may be revoked by the Planning Board if the permittee violates the conditions of the special permit or engages in any construction or alteration not authorized by the special permit.

(3) Any violation of the conditions of a special permit shall be deemed a violation of this chapter and shall be subject to enforcement action as provided in § 145-57.

§ 145-63. Findings required. [Amended 12-29-1999 by L.L. No. 3-1999]

In granting or denying special permits, the Planning Board shall take into consideration the scale of the proposed project, the possible impact of the proposed project on the functioning of nearby farm operations, and, in rural areas, the tradition of freedom of land use where such use does not interfere with or diminish the value of adjoining property. The Planning Board shall also take account of any proposed conservation easements, architectural restrictions, or other measures that would tend to mitigate potential adverse impacts and preserve or enhance the scenic and historic character of the town. No special permit shall be granted for any property on which there exists a violation of this chapter, including a violation of any condition of a previous municipal approval, unless the Planning Board finds that the applicant has no legal right or ability to remedy the violation or that the grant of a special permit is necessary to remedy a condition that poses a risk to public health or safety.

A. Minor projects. A minor project shall be presumed to be acceptable if it complies with applicable health laws and other specific provisions of this chapter. In order to grant a minor project special permit, the Planning Board must determine that none of the criteria for major projects listed in Subsection B below will be violated. The Planning Board shall deny a minor project special permit if it determines that one or more of these criteria will be violated.

B. Major project criteria. Before granting or denying a major project special permit, the Planning Board shall make specific written findings establishing whether or not the proposed major project:

(1) Will comply with all land use district, overlay district, and other specific requirements of this chapter and other local laws and regulations and will be consistent with the purposes of this chapter and of the land use district in which it is located.

(2) Will not result in excessive off-premises noise, dust, odors, solid waste, or glare or create any public or private nuisances.

(3) Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.

(4) Will be accessible to fire, police, and other emergency vehicles.

(5) Will not overload any public water, drainage, or sewer system, or any other municipal facility.

(6) Will not materially degrade any watercourse or other natural resource or ecosystem or endanger the water quality of an aquifer.

(7) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.

(8) Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the town.

(9) Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering nonresidential uses that are incompatible with residential use.

(10) Will not adversely affect the availability of affordable housing in the town.

(11) Will comply with applicable site plan criteria in § 145-65D.

(12) If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

#### § 145-64. Special permit amendments.

The terms and conditions of any special permit may be amended in the same manner as required for the issuance of a special permit, following the criteria and procedures in this article. Any enlargement, alteration, or construction of accessory structures not previously approved shall require site plan review only, provided that the use does not change.

#### § 145-65. Site plan review.

##### A. Applicability.

(1) Site plan approval by the Planning Board shall be required for all permitted uses listed on the Use Table as requiring site plan approval only. Site plan review shall be included as an integral part of the special permit approval process, and no separate site plan approval shall be required for uses requiring a special permit.

(2) The procedures for review of major and minor site plans (as defined in Article XII) are described in §§ 145-66 and 145-67.

B. Required information for site plan. An application for site plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the applicant. Minor project site plans shall contain only such information listed below as the Planning Board deems necessary to conduct an

informed review. Major project site plans shall be prepared by a licensed professional engineer, architect, or landscape architect and shall include the following (unless waived):

(1) A vicinity map drawn at the scale of 2,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. The map shall also show all properties, subdivisions, streets, and easements within 500 feet of the property. Such a sketch may be superimposed on a United States Geological Survey or New York State Department of Transportation map of the area.

(2) An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use, such as rock outcrops, single trees eight or more inches in diameter located within any area where clearing will occur, forest cover, soils (including prime and statewide important agricultural soils), and ponds, lakes, wetlands and watercourses, aquifers, floodplains, and drainage retention areas.

(3) A site plan, drawn at a scale and on a sheet size appropriate to the project. The information listed below shall be shown on the site plan and continuation sheets.

(4) Name of the project, boundaries, date, North arrow, and scale of the plan, name and address of the owner of record, developer, and seal of the engineer, architect, or landscape architect. If the applicant is not the record owner, a letter of authorization shall be required from the owner.

(5) The location and use of all existing and proposed structures within the property, including all dimensions of height and floor area, all exterior entrances, and all anticipated future additions and alterations.

(6) The location of all present and proposed public and private ways, off-street parking areas, driveways, outdoor storage areas, sidewalks, ramps, curbs, paths, landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.

(7) The location, height, intensity, and bulb type (sodium, incandescent, etc.) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.

(8) The location, height, size, materials, and design of all proposed signs.

(9) The location of all present and proposed utility systems, including:

(a) Sewage or septic system;

(b) Water supply system;

(c) Telephone, cable, and electrical systems; and

(d) Storm drainage system, including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes, and drainage swales.

(10) Erosion and sedimentation control plan required by Chapter 65 of the Dover Town Code to prevent the pollution of surface or ground water, erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table, and flooding of other properties, as applicable.

(11) Existing and proposed topography at two-foot contour intervals, or such other contour interval as the Board shall specify. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the one-hundred-year floodplain, the area will be shown and base flood elevations given. Areas shall be indicated within the proposed site and within 50 feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards.

(12) A landscape, planting, and grading plan showing proposed changes to existing features.

(13) Land use district boundaries within 200 feet of the site's perimeter shall be drawn and identified on the site plan, as well as any overlay districts that apply to the property.

(14) Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and within 100 feet of the site. The Planning Board may, at its discretion, require a detailed traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of § 145-40N.

(15) For new construction or alterations to any structure, a table containing the following information shall be included:

- (a) Estimated area of structure intended to be used for particular uses such as retail operation, office, storage, etc.;
- (b) Estimated maximum number of employees;
- (c) Maximum seating capacity, where applicable; and
- (d) Number of parking spaces existing and required for the intended use.

(16) Elevations at a scale of 1/4 inch equals one foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.

(17) Where appropriate, the Planning Board may request soil logs, percolation test results, and storm runoff calculations.

(18) Plans for disposal of construction and demolition waste, either on site or at an approved disposal facility.

(19) Long-form environmental assessment form or draft environmental impact statement.

(20) Where appropriate, a cultural resource survey of resources with historic or archaeological significance.

(21) Other information that may be deemed necessary by the Planning Board.

C. Waivers. The Planning Board may waive or allow deferred submission of some of the information required in Subsection B above, as it deems appropriate.

D. Criteria. In reviewing site plans, the Planning Board and Architectural and Community Appearance Board of Review shall consider the criteria set forth below. The Planning Board may also use as approval criteria the three-volume set of illustrated design guidelines published by the Dutchess County Department of Planning in 1994, titled "Hamlet Design Guidelines," "Building Form Guidelines," and "Rural Design Guidelines," and may adapt the recommendations of those documents to the requirements of this chapter.

(1) Layout and design.

(a) All structures in the plan shall be integrated with each other and with adjacent structures and shall, where practical, be laid out in the pattern of a traditional hamlet.

(b) Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, and placement and shall harmonize with traditional elements in the architectural fabric of the area.

(c) Architectural design shall be in keeping with the small-town architectural character of Dover. In general, the design shall avoid flat roofs, large expanses of undifferentiated facades, and long, plain wall sections.

(d) Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

(e) The Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.

(f) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of Dover or the Building Form Guidelines.

(g) Impacts on historic and cultural resources shall be minimized.

(2) Landscaping.

(a) Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers

may include planted trees and shrubs, hedgerows, berms, existing forest land or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property but shall normally be between 50 feet and 200 feet.

(b) Landscaping shall be an integral part of the entire project area and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.

(c) Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape plants selected should generally be native to the region and appropriate to the growing conditions of the town's environment.

(d) Insofar as practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan.

(e) If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall and two-inch caliper shall be planted and maintained at twenty- to forty-foot intervals along roads, at a setback distance acceptable to the Highway Superintendent.

(f) For landscaping parking lots, see § 145-38A(4)(c).

(3) Parking, circulation and loading.

(a) Roads, driveways, sidewalks and off-street parking and loading space shall be safe and shall encourage pedestrian movement.

(b) Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.

(c) Off-street parking and loading standards in § 145-38 shall be satisfied.

(d) Access from and egress to public highways shall be approved by the appropriate highway department, including town, county, and state.

(e) All buildings shall be accessible by emergency vehicles.

(4) Reservation of parkland. Before the Planning Board may approve any site plan containing residential units, such site plan shall also show, when required by such Board, a park or parks suitably located for playground or other recreational purposes. [Amended 7-8-2004 by L.L. No. 4-2004]

(a) The Planning Board shall not require land for park, playground or other recreational purposes until it has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an

evaluation of the present and future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute. Such findings shall provide an individualized determination that such required dedication or reservation is related both in nature and extent to the impact of the proposed site plan.

(b) In the event the Planning Board makes a finding pursuant to the preceding subsection that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purpose, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof. In making such determination of suitability, the Board shall assess the size and suitability of lands shown in the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate community. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited in the Town of Dover Trust Fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property. Such payment shall be a condition of site plan approval and shall be assessed in accordance with the site plan recreation fee schedule established under Chapter 73, Fees, in the Dover Town Code. No site plan shall be signed by the Chairman of the Planning Board until such payment has been received by the Town and receipt therefor provided to the Planning Board.

(c) Notwithstanding the foregoing provisions, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to § 276 of the Town Law, the Planning Board shall credit the applicant with any land set aside or money donated in lieu thereof under such subdivision approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

(5) Miscellaneous standards.

(a) Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.

(b) Exterior lighting fixtures shall be shielded to prevent light from shining directly onto neighboring properties or public ways. Light standards shall not exceed 20 feet in height.

(c) Drainage of the site shall recharge groundwater to the extent practical. The peak rate of surface water flowing off site shall not increase above predevelopment conditions and shall not adversely affect drainage on adjacent properties or public roads.

(d) Applicable requirements for proper disposal of construction and demolition waste shall be satisfied, and any necessary permits or agreements for off-site disposal shall be obtained.

(e) No materials shall be placed below the finished grade of a site other than sand, gravel, rocks, and soil that are uncontaminated by any solid

waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection D(5)(e), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.

§ 145-66. Procedure for major project site plan approval.

A. **Applicability.** This § 145-66 applies to major project site plan approval applications where no special permit is required. See § 145-67 for minor project site plan applications.

B. **Preapplication meetings.** Before filing an application, a preliminary conference with the Code Enforcement Officer and one person designated by the Planning Board Chair is required to discuss the nature of the proposed use and to classify it as a major or minor project. If the Code Enforcement Officer classifies the project as a major project, a preliminary conference with the Planning Board is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the site plan. The applicant is also encouraged to meet with the Architectural and Community Appearance Board of Review prior to submitting a site plan approval application.

C. **Submission.** All major project site plans shall be submitted, with multiple copies as required by the Planning Board, to the Planning Board Secretary, who shall distribute them to the Planning Board, the Architectural and Community Appearance Board of Review, and such other municipal boards, officials, and consultants as the Planning Board deems appropriate. In addition to the site plan drawings, the applicant shall submit:

(1) A long-form environmental assessment form or draft environmental impact statement.

(2) An agricultural data statement as defined in § 145-74, if required by § 145-37C.

(3) The site plan application fee, as established by the Town Board, and any required escrow deposit for review costs, as required by the Planning Board.

D. **Application for area variance.** Where a proposed site plan contains one or more features which do not comply with the dimensional regulations of this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 145-59F without a decision or determination by the Code Enforcement Officer.

E. **SEQRA compliance.** Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decisionmaking in this chapter shall begin to

run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

**F. Public hearing and decision.**

(1) The Planning Board shall hold a public hearing on the site plan and shall follow the provisions on notice, agricultural data statements, county review, and time limits for special permits in § 145-62E through G.

(2) Criteria for decisions on site plans shall be limited to those listed in § 145-65D. In granting site plan approval, the Planning Board may impose any conditions which it considers necessary to fulfill the purposes of this chapter. These conditions may include increasing dimensional or area requirements, requiring the set-aside of perpetual open space land pursuant to § 145-20, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities, and requiring performance guaranties to insure the completion of the project in accordance with the conditions imposed.

(3) A copy of the decision shall be immediately filed in the Town Clerk's office and mailed to the applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the Planning Board Chairman to stamp and sign the site plan upon the applicant's compliance with applicable conditions and the submission requirements stated herein.

(4) If the Planning Board's resolution includes a requirement that modifications be incorporated in the site plan, conformance with these modifications shall be considered a condition of approval. If the site plan is disapproved, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

**§ 145-67. Procedure for minor project site plan approval.**

The procedure for minor project site plan approval by the Planning Board shall be the same as prescribed in § 145-66 for major projects, except for the following:

A. A short-form environmental assessment form (EAF) will normally be required. If the application is classified as a Type I action under the State Environmental Quality Review Act, a long-form EAF shall be required. The Planning Board, at its discretion, may require the long-form environmental assessment form for any application categorized as unlisted under SEQRA.

B. A minor project application fee established by the Town Board shall be paid, and an escrow deposit may be required to cover review costs at the discretion of the Planning Board.

C. The requirements of § 145-65B may be waived as deemed appropriate by the Planning Board.

D. No public hearing shall be required for a minor project site plan. The Planning Board may, in its sole discretion, hold a public hearing following the procedures in § 145-66F. If no public hearing is held, the Planning Board shall give notice to the County Planning Board and to farm operators, as required in § 145-62E and F, and render a decision within 62 days of its receipt of a complete site plan application.

§ 145-68. Implementation, revision and enforcement of approved site plans.

A. Within six months after receiving approval of a site plan, with or without modifications, the applicant shall submit multiple copies of the site plan to the Planning Board for stamping and signing.

(1) The site plan submitted for stamping shall conform strictly to the site plan approved by the Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:

(a) Record of application for and approval status of all necessary permits from federal, state, and county officials.

(b) Detailed sizing and final material specification of all required improvements.

(c) An estimated project construction schedule. If a performance guaranty pursuant to Subsection B is to be provided by the applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.

(d) Proof of payment of the Planning Board's reasonable review costs.

(2) Upon stamping and signing the site plan, the Planning Board shall forward a copy of the approved site plan to the Code Enforcement Officer and the applicant. The Code Enforcement Officer may then issue a building permit or certificate of occupancy if the project conforms to all other applicable requirements.

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

C. As-built plans and inspection of improvements. No certificate of occupancy shall be granted until the applicant has filed a set of as-built plans with the Code Enforcement Officer, indicating any deviations from the approved site plan. The Code Enforcement Officer shall be responsible for the inspection of site improvements, including coordination with the town's consultants and other local officials and agencies, as may be appropriate, and shall grant a certificate of

occupancy upon a finding that the project as built complies in all material respects with the site plan.

D. Site plan amendments. An approved site plan may be amended by filing an application with the Planning Board for a site plan amendment.

(1) If the Planning Board finds that such proposed amendment is consistent with the terms of any applicable special permit approval (or if no special permit is required) and does not represent a substantial change from the approved site plan, it shall grant the amendment without a hearing.

(2) If the Planning Board determines that the proposed amendment is consistent with the terms of the applicable special permit approval (or if no special permit is required) but is a substantial change from the approved site plan, it shall follow the procedures for site plan approval contained in § 145-66F and hold a public hearing if the amendment would be considered to be a major project.

(3) If the Planning Board determines that the proposed amendment is inconsistent with the terms of any special permit approval, it shall consider the application to be one for a special permit amendment and proceed pursuant to § 145-62.

E. Expiration, revocation and enforcement.

(1) A site plan approval shall expire if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the site plan approval within 18 months of its issuance or if the special permit with which it is associated expires. The Planning Board may grant a one-time six-month extension.

(2) A site plan approval may be revoked by the Planning Board that approved it if the permittee violates the conditions of the site plan approval or engages in any construction or alteration not authorized by the site plan approval.

(3) Any violation of the conditions of a site plan approval shall be deemed a violation of this chapter and shall be subject to enforcement action as provided herein.

## **ARTICLE X Amendments**

§ 145-69. Procedure.

A. Initiation. The Town Board, from time to time, upon its own motion or upon application by one or more property owners, or resolution of the Planning Board or Zoning Board of Appeals, may amend this chapter as provided herein. A property owner or authorized agent may apply for amendment to this chapter by filing three complete sets of an application with the Town Board and two complete sets with the Planning Board. The application shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee. In the case of a proposed amendment which would apply only to properties which are not immediately identifiable or to a class of properties

including six or more identifiable properties, no properties need be identified as affected.

B. Review by planning agencies. As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town Planning Board and to the County Planning Department as required by §§ 239-l and 239-m of the General Municipal Law.

(1) Referral to County Planning Board. No action shall be taken on proposals referred to the County Planning Board until its recommendation has been received or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the county and town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

(2) Referral to Town Planning Board. Every proposed amendment or change initiated by the Town Board or by petition (but not if initiated by the Planning Board) shall be referred to the Town Planning Board for report thereon prior to public hearing. If the Planning Board does not report within 30 days of such referral, the Town Board may take action without the Planning Board report. This period of time may be extended by agreement of the Town Board and Planning Board.

C. Public hearing and notice. No proposed amendment shall become effective until after a public hearing thereon at which the public shall have an opportunity to be heard. The Town Board shall set, by resolution at a duly called meeting, the time and place for a public hearing on proposed amendments and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities, if necessary.

(1) Publication of notice in newspaper. Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.

(2) Notice to adjacent municipalities. Written notice of any proposed amendment affecting property lying within 500 feet of an adjacent town shall be served in person or by mail upon the clerk of such municipality at least 10 days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon but shall not have the right to review by a court.

D. Adoption. The Town Board may adopt amendments to this chapter by a majority vote of its membership, except in the case of local protest or disapproval by the County Planning Board as noted below.

(1) Local protest. The favorable vote of 3/4 (i.e., four) of the Town Board members shall be required for passage of any amendment which is subject to

a written protest signed by 20% or more of the owners of land in any of the following areas:

- (a) The land area included in the proposed amendment.
- (b) The land area immediately adjacent to the area proposed to be changed and extending 100 feet therefrom.
- (c) The land area directly opposite the area proposed to be changed and extending 100 feet from the road frontage of such opposite land.

(2) County disapproval. A majority-plus-one vote of all Town Board members shall be required to pass any proposal which receives a recommendation of disapproval from the County Planning Board prior to Town Board action, along with a resolution setting forth the reasons for such contrary action.

E. Effective date. Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

## ARTICLE XI General Provisions

### § 145-70. Severability.

If any provision of this chapter or the application thereof to any person, property, or circumstances is held to be invalid, the remainder of this chapter and the application of each provision to other persons, property, or circumstances shall not be affected thereby.

### § 145-71. Conflict with state laws.

To the extent that any provisions of this chapter are inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, §§ 261 through 268 and §§ 274-a through 281, the Town Board of the Town of Dover hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under the Municipal Home Rule Law, Article 2, § 10 et seq., of the Consolidated Laws of the State of New York. In particular, to the extent that Article V may be inconsistent with § 278 of the Town Law, the Town Board hereby declares its intent to supersede § 278.

### § 145-72. When effective; transition provisions.

This chapter shall take effect upon filing with the New York State Secretary of State; provided, however, that applications for special use permits, site plan review, variances, subdivisions, and building permits filed prior to the effective date shall be reviewed as follows:

A. No new application shall be required if the applicant has filed an application, prior to the effective date of this chapter, which has been determined by

the reviewing board or official to include substantially all required information under the zoning law in effect at the time of filing.

B. All use regulations (including special permit and site plan review requirements) and review criteria and standards of this chapter shall apply to such applications. On preexisting lots, dimensional regulations of the zoning law in effect at the time of the filing of the application may be applied if, in the opinion of the reviewing board, the application of such regulations would not derogate from the purposes of this chapter. Dimensional regulations for newly created lots in a subdivision shall comply with the requirements of this chapter, provided that the procedural requirements for the creation of open space developments under Article V may be waived by the Planning Board.

C. If additional information is required from the applicant to enable the reviewing board to apply the review standards of this chapter, such board may require the submission of additional information as necessary to make an informed decision based upon the requirements of this chapter. The maximum time periods for board decisionmaking under this chapter and under state law shall be extended by the amount of time it takes an applicant to supply such additional information.

D. If the application requires a public hearing and such hearing has been held prior to the adoption of this chapter, no additional hearing shall be required. However, an additional hearing may be held by mutual agreement between the applicant and the reviewing board.

E. If the board to which the original application was submitted does not have jurisdiction over such application under this chapter, the application shall be forwarded to the appropriate board for review under this chapter; provided, however, that if a public hearing has been duly held in accordance with the zoning law in effect prior to the adoption of this chapter, the board to which the original application was submitted shall be deemed to have continuing jurisdiction under this chapter for a period not to exceed six months. Such board shall apply this chapter to the application as though it were the reviewing board designated under this chapter.

F. Subdivision applications that have received preliminary, final, or conditional final approval shall be subject to the zoning law in effect at the time they received such approval.

## ARTICLE XII Word Usage and Definitions

### § 145-73. Word usage.

A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. The word “shall” is always mandatory. The word “may” is permissive. “Building” or “structure” includes any part thereof. The word “lot” includes the word “plot” or “parcel.” The word “person” includes an individual person, a firm, a corporation, a partnership, and any other agency of voluntary action. The word “he”

shall include “she” or “they.” The phrase “used for” includes “arranged for,” “designed for,” “intended for,” “maintained for,” and “occupied for.”

B. In § 145-74, where two words are separated by a slash mark (/), they shall have the same meaning.

#### § 145-74. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY APARTMENT** — A dwelling unit occupying the lesser of 1,000 square feet or 30% of the floor space of an owner-occupied structure containing a principal use that is single-family residential or nonresidential, or a dwelling unit no larger than 1,000 square feet located in an accessory structure on an owner-occupied property.

**ACCESSORY STRUCTURE** — A structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use, including accessory apartments.

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

**ACCESS STRIP** — A strip of land abutting a public or private road, providing access to a rear lot (see § 145-22).

**ADULT ENTERTAINMENT BUSINESS** — A bookstore, video store, nightclub, movie theater, retail store, or other establishment which prominently features entertainment or materials with sexually explicit content. An establishment which sells such materials as an incidental part of its business or which presents such material or entertainment primarily as a form of legitimate artistic expression shall not be considered an adult entertainment business.

**AGRICULTURAL DATA STATEMENT** — An identification of farm operations within an agricultural district located within 500 feet of the boundary of property upon which a subdivision is proposed, as provided in § 305-a of the Agriculture and Markets Law. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

**AGRICULTURE** — The commercial utilization of land, water, and structures for the raising, production, preservation, processing, storage, and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, poultry, fish, shellfish, honey, Christmas trees, or dairy products, not including light industry or use of land primarily for the disposal of offal or garbage. A produce sales facility not exceeding 600 square feet in footprint area and a boarding stable operated in conjunction with a farm operation (as defined herein)

shall be deemed to be agricultural accessory uses. Agricultural activities on residential parcels of less than 10 acres shall be deemed to be a residential accessory use.

**ALTERATION** — As applied to a structure, a change to or rearrangement of the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

**APPLICANT** — Any person, corporation, or other entity applying for a building permit, certificate of occupancy, special permit, site plan or subdivision approval, variance, or zoning amendment.

**AUTOMOBILE SERVICE STATION** — Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning, servicing, or repairing such motor vehicles.

**BED-AND-BREAKFAST** — A dwelling in which overnight accommodations not exceeding four bedrooms and breakfast are provided for transient guests for compensation. A bed-and-breakfast must be the primary residence of the owner/proprietor.

**BOARDING STABLE** — See “riding academy.”

**BUILDABLE LAND** — That portion of a lot which is suitable for building structures and locating septic disposal facilities, i.e., all land excluding wetlands and watercourses, slopes exceeding 15%, and flood hazard areas as mapped on the Federal Emergency Management Agency’s Flood Insurance Rate Map.

**BUILDING** — A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

**BUILDING HEIGHT** — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof. When a lot fronts on two or more streets of different levels, the lower street level shall be taken as the base for measuring the height of the building.

**BUILDING, PRINCIPAL** — A building or structure in which is conducted the main or principal use of the lot on which it is located.

**CAMP, TYPE 1** — Any area of land or water on which are located two or more cabins, tents, recreational travel vehicles, shelters, houseboats, or accommodations designed for seasonal or other temporary living purposes, regardless of whether or not such structures or accommodations are occupied seasonally.

**CAMP, TYPE 2** — Any land or building used for what are commonly known as “day camp” purposes, where no regular overnight accommodations are provided, occupied by adults, children, or any combination of individuals, families, or groups.

**CEMETERY** — Land used or intended to be used for the burial of dead human beings and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

**CHANGE OF USE** — The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use. See § 145-10F.

**CHARITABLE ORGANIZATION** — A not-for-profit corporation or association organized for charitable purposes, including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

**CLEAR-CUTTING** — Any cutting of all or substantially all trees over six inches in diameter at breast height.

**CLUB, MEMBERSHIP** — Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

**CODE ENFORCEMENT OFFICER** — The town official charged with the administration and enforcement of this chapter and/or Chapter 47 of the Dover Town Code, also referred to as the “Zoning Administrator” or “Building Inspector.”

**COMMERCIAL LOGGING** — The cutting and sale of 10 acres or more of standing timber.

**COMMON DRIVEWAY** — A driveway serving no more than four lots, owned in common or created by reciprocal easements.

**COMMUNICATION TOWER** — A structure used primarily for transmitting and/or receiving radio, television, microwave, cellular telephone, or similar electromagnetic signals. Any communication tower exceeding 35 feet in height above average grade level shall be deemed to be a principal use, not an accessory use. The following shall not be considered to be communication towers:

- A. Receive-only antennas and satellite dishes designed for residential use.
- B. Any other antenna less than 15 feet in height, no part of which exceeds five feet in width or 10 feet in diameter, when mounted on buildings, telephone poles, or other preexisting structures as an accessory structure or use.

**COMPLETE APPLICATION** — An application for a special permit, site plan or subdivision approval, zoning amendment, or variance found by the reviewing board to satisfy all information requirements of this chapter and of the New York State Environmental Quality Review Act, for which either a negative declaration has been issued or a draft environmental impact statement has been accepted as satisfactory pursuant to 6 NYCRR 617.8(b)(1).

**CONFORMITY/CONFORMING** — Complying with the use, density, dimensional, and other standards of this chapter, or permitted to deviate therefrom by special permit, site plan approval, or variance.

**CONSERVATION EASEMENT** — A perpetual restriction on the use of land, created in accordance with the provisions of Article 49, Title 3 of the Environmental Conservation Law or § 247 of the General Municipal Law, for the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

**CONSTRUCTION TRAILER** — A mobile home unit used for nonresidential purposes associated with on-site construction.

**CORNER LOT** — See “lot, corner.”

**CRAFT WORKSHOP** — A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products, including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving.

**DEVELOPMENT** — Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as mining, dredging, filling, paving, excavations, or drilling operations.

**DRIVEWAY** — A private way providing vehicular access from a public or private road to a residence or to a commercial or noncommercial establishment.

**DWELLING** — A building designed or used exclusively as living quarters for one or more families.

**DWELLING, MULTIFAMILY** — A dwelling containing separate living units for three or more families.

**DWELLING, SINGLE-FAMILY** — A detached building designed for the use of one household, including one or more persons living as a family, and wherein not more than three boarders are sheltered and/or fed for compensation.

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

**DWELLING UNIT** — A building or portion thereof providing complete housekeeping facilities for one family.

**EROSION** — The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

**FAMILY** — One person, or a group of two or more persons living and cooking together in the same dwelling unit as a single housekeeping entity.

**FARM OPERATION** — Land used in agricultural production, farm buildings, equipment, and farm residential buildings.

**FENCE** — A hedge, structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

**FLOODPLAIN/ONE-HUNDRED-YEAR FLOODPLAIN** — Land subject to a one-percent or greater chance of flooding in any given year; same as the “area of special flood hazard” defined in Local Law Number 2 of 1987.<sup>12</sup>

**FLOOR SPACE** — The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, and hallways that are part of a dwelling unit or inside a commercial building, excluding cellars or unfinished basements.

**FOOTPRINT** — Area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered by roofing. In the case of party-wall buildings, each unit shall be considered a separate structure for purposes of measuring footprint area.

**FORESTRY** — Use or management, including commercial logging, of a forest, woodland, or tree plantation, and related research and educational activities, including the construction, alteration, or maintenance of roads, skidways, landings, fences, forest drainage systems, barns, sheds, garages, and research, educational, or administrative buildings or cabins directly and customarily associated with forestry use.

**FRONT** — The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

**GAZEBO** — An unenclosed structure not exceeding 12 feet in height without solid walls, screens, electricity, or plumbing.

**GLARE** — Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

**GRADING** — Any excavation, alteration of land contours, grubbing, filling, or stockpiling of earth materials.

**HAZARDOUS SUBSTANCE/MATERIAL** — Includes any of the following:

- A. Petroleum.
- B. Any substance or combination of substances designated as a hazardous substance under Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321).
- C. Any substance listed by the New York State Department of Environmental Conservation which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly

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12. Editor's Note: See Ch. 81, Flood Damage Prevention.

contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

**HAZARDOUS WASTE** — All materials or chemicals listed as hazardous wastes pursuant to Article 27 of the Environmental Conservation Law and all toxic pollutants as defined in Subdivision 19 of § 17-0105 of the Environmental Conservation Law.

**HEALTH CARE FACILITY** — A hospital, nursing home, medical clinic, or office building for doctors and other medical personnel.

**HEAVY INDUSTRY** — Manufacture, assembly, treatment, processing, or packaging of products in a manner that emits or is likely to emit objectionable levels of smoke, noise, dust, odor, glare, water pollution, or vibration beyond the property boundaries.

**HOME OCCUPATION** — An occupation, trade, profession, or other business activity resulting in a product or service for compensation, conducted wholly or partly in a dwelling unit or accessory structure.

**HOTEL** — See “lodging facility.”

**IMPERMEABLE/IMPERVIOUS SURFACE** — Any material covering the ground through which water does not readily penetrate, including but not limited to roofed structures, compacted soil, and pavement consisting of concrete, oil and stone, tar, or asphalt.

**IMPERMEABLE/IMPERVIOUS SURFACE COVERAGE** — The ratio between impermeable surface and total land area of a lot (excluding wetlands, watercourses, and floodplains) expressed as the percentage of land covered by impermeable surfaces.

**INTERIOR ROAD** — A road constructed off of an existing public street that provides access to the interior of a parcel.

**JUNK** — Any worn-out, castoff, discarded, or neglected article or material which is ready for destruction or has been collected or stored for salvage, sale, or conversion to another use. “Junk” does not include any article or material which unaltered or unchanged and without further reconditioning can be used for its original purposes as readily as when new, or any article stored for restoration or display as part of a bona fide hobby (such as antique automobiles, antique farm machinery, antique engines, special interest automobiles, etc.).

**JUNK CAR** — Any vehicle not operable on the public highway system, unless such vehicle is an antique or special interest automobile stored for restoration and/or display as part of a bona fide hobby.

**JUNKYARD** — The use of 400 square feet or more of area on any lot outside a fully enclosed structure for the storage or collection of junk or junk cars.

**KENNEL** — Any establishment including cages, dog runs, and structures wherein more than three dogs which are over six months old are kept for sale, boarding, care, or breeding, for which a fee is charged.

**LIGHT INDUSTRY** — Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

**LODGING FACILITY** — Any hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests, with or without a dining room or restaurant, excluding bed-and-breakfast establishments.

**LOT, CORNER** — A lot at the junction of and abutting on two or more intersecting roads.

**LOT LINES** — The property lines that bound a lot as defined herein.

**LOT OF RECORD** — Any lot which has been established as such by plat, survey record, or deed prior to the date of this chapter as shown on the records in the office of the County Clerk.

**LOT/PARCEL** — An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established either by the filing of an approved subdivision plat or by the recording of a deed prior to the adoption of Subdivision Regulations of the Town of Dover on June 17, 1968.<sup>13</sup>

**LOT, REAR** — A lot on which the buildable area is located generally to the rear of other lots having frontage on the same road as such lot and having access to the road via a strip of land that does not have the minimum road frontage ordinarily required in the land use district.

**LOT, THROUGH** — A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

**MAJOR PROJECT** — A proposed use that requires a special permit or site plan approval and that exceeds any of the thresholds for a minor project.

**MASTER PLAN** — The Master Plan adopted by the Town Board for the future preservation and development of the Town of Dover pursuant to § 272-a of the Town Law, including any part of such plan separately adopted and any amendment to such plan.

**MEMBERSHIP CLUB** — See “club, membership.”

**MINOR PROJECT** — A use or combination of uses on a lot or a series of adjoining lots that requires either site plan review or a special permit and that, over a three-year period, falls within the following thresholds:

A. Construction of four multifamily dwelling units or a lodging facility with six bedrooms.

B. Construction of facilities or structures for a nonresidential use covering 3,000 square feet of building footprint.

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13. Editor's Note: See Ch. 125, Subdivision of Land.

C. Alteration of existing structures or expansion of such structures by 1,000 square feet.

D. Conversion of existing structures totaling 5,000 square feet to another use.

E. Alteration and active use of 10,000 square feet of land, with or without structures (excluding soil mining).

F. Soil mining that does not require a Department of Environmental Conservation permit.

G. Construction of a structure that is 80 feet or higher above average grade level.

**MIXED USE** — Any combination of residential, commercial, or industrial uses on the same lot or in the same building.

**MOBILE HOME** — A transportable living unit used or designed to be used year round as a permanent residence and containing the same types of water supply, waste disposal, and electrical systems as immobile housing. Recreational vehicles designed to be driven or towed by an automobile or pickup truck, units designed for use principally as a temporary residence, or prefabricated, modular, or sectionalized houses transported to and completed on a site are not considered to be mobile homes.

**MOBILE HOME COURT** — Any court, part, place, lot, or parcel under single ownership which is improved for the placement of two or more mobile homes to be used as permanent residences.

**MULTIFAMILY DWELLING** — See “dwelling, multifamily.”

**NONCONFORMING LOT** — A lot of record which does not comply with the area, shape, frontage, or locational provisions of this chapter for the district in which it is located.

**NONCONFORMING STRUCTURE** — A structure which does not satisfy the dimensional requirements of this chapter for the district in which it is located but which was not in violation of applicable requirements when constructed.

**NONCONFORMING USE** — Any use lawfully existing prior to and at the time of the adoption or amendment of this chapter or any preceding zoning law or ordinance, which use is not permitted by or does not conform to the permitted use provisions of this chapter for the district in which it is located. A preexisting lawful use which is allowed only by special permit under this chapter shall be considered a conforming use. See § 145-27.

**OFFICE** — A business, professional, or nonprofit workplace in which most activities are conducted by employees seated at desks or tables, excluding health care facilities.

**OFFICIAL NEWSPAPER** — The newspaper or newspapers designated by the town for the publication of official notices of meetings and public hearings.

**ONE-HUNDRED-YEAR FLOODPLAIN** — See “floodplain.”

**OPEN SPACE** — An area of land not developed with structures.  
(Permanent open space is defined and discussed in § 145-20.)

**OUTDOOR STORAGE AREA** — Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

**PETROLEUM** — Oil or petroleum of any kind and in any form, including but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

**PLAT** — A map or plan submitted to the Planning Board as part of an application for subdivision approval (see Subdivision Law<sup>14</sup>).

**PLOT PLAN** — A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions, and submitted with an application for a minor project special permit or a variance.

**PREMISES** — A lot, together with all the structures and uses thereon.

**PRINCIPAL BUILDING** — See “building, principal.”

**PRIVATE ROAD** — A privately owned road held in common ownership or easement by a homeowners’ association.

**PUBLIC UTILITY FACILITY** — An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high-voltage transmission lines, pump stations, water supply wells, water towers, communication towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

**RADIATION** — Ionizing radiation; that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

**RADIOACTIVE MATERIAL** — Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials whose receipt, possession, use and transfer are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or United States Nuclear Regulatory Commission.

**REAR LOT** — See “lot, rear.”

**RECREATIONAL BUSINESS** — A business which, for compensation, offers recreational services, including but not limited to public stables, golf courses

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14. Editor’s Note: See Ch. 125, Subdivision of Land.

and driving ranges, miniature golf, movie theaters, and other places of public or private entertainment.

**RELIGIOUS INSTITUTION** — A church, synagogue, or other place of religious worship, as well as a monastery or other place of religious retreat.

**RESIDENTIAL CARE FACILITY** — Any building used as a group residence or extended care facility for the care of persons, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services.

**RESIDENTIAL DISTRICTS** — The Suburban Residential, Hamlet Residential, Rural, and Resource Conservation Districts.

**RESIDENTIAL UNIT** — See “dwelling unit.”

**RESIDENTIAL USE** — A use of land and structures in which people live and sleep overnight on a regular basis.

**RETAIL BUSINESS** — An establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drugstore, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, convenience store, and variety store.

**REVIEWING BOARD OR OFFICIAL** — The board that grants a special permit, site plan, variance, subdivision approval, or zoning amendment, or the Code Enforcement Officer reviewing a building permit or zoning permit application.

**RIDING ACADEMY** — Any establishment where more than four horses are kept for riding, driving, horseback riding lessons, or stabling for compensation, or incidental to the operation of any club, association, resort, riding school, ranch, or similar establishment. A riding academy operated in conjunction with a farm operation shall be deemed to be an agricultural accessory use.

**ROAD FRONTAGE** — The distance along a street line measured at the front of a lot.

**ROAD/STREET** — A public or private way for pedestrian and vehicular traffic, including avenue, lane, highway, or other way, excluding a driveway or common driveway.

**SCREEN/SCREENING** — The location of structures in such a manner that they are not visible (as defined herein) from a public road or any other public place during the summer months and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

**SERVICE BUSINESS** — A business or nonprofit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, automobile service station, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. “Service business” does

not include retail business, restaurants, warehouses, or other uses separately listed in the Use Table. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered a retail business.

**SERVICE ROAD** — A local road running generally parallel to a through road, providing vehicular access points for individual lots, constructed to reduce the number of access points on the through road.

**SETBACK** — The distance in feet between a structure and a property line, the center line of a road, or an identified natural feature such as a watercourse.

**SIGN** — Any billboard, signboard, inscription, pennant, or other material, structure, exterior painting, or device composed of lettered or pictorial material that is intended for outdoor viewing by the general public (including inside a window) and used as an advertisement, announcement, or direction.

**SIGN AREA** — The total area on each side of a sign within which all written and graphic material is contained.

**SIGN, COMMERCIAL** — A sign advertising a product, use, service, or activity sold or conducted for private financial gain.

**SIGN, FREESTANDING** — A sign and sign support structure not attached to or part of a building.

**SIGN, ILLUMINATED** — A sign lighted by electricity, gas, or other artificial light, including reflective or phosphorescent light, paint, or tape.

**SIGN, INTERIOR** — A sign located within the exterior walls of a building which is readily readable from outside the building through a window, door, or other opening.

**SIGN, INTERNALLY ILLUMINATED** — An illuminated sign that is made of translucent material with internal artificial lighting.

**SIGN, PROJECTING** — Any sign which extends from the exterior of any building more than nine inches.

**SINGLE-FAMILY DWELLING** — See “dwelling, single-family.”

**SOIL MINING** — Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in § 23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which a zoning permit has been issued.

**SOLID WASTE** — All putrescent and nonputrescent materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, and being those wastes defined as solid waste in 6 NYCRR 360-1.2. Any solid waste which receives a beneficial use determination

(BUD) from the New York State Department of Environmental Conservation is still considered a solid waste for the purposes of these regulations.

**SOLID WASTE MANAGEMENT FACILITY** — Any facility employed to manage solid waste beyond the initial waste collection process, including but not limited to transfer stations, bailing facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolysis of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities, as defined in 6 NYCRR 360-1.2.

**STRIP COMMERCIAL DEVELOPMENT** — The layout of a commercial use or uses in separated structures more than 50 feet apart along a highway, with parking, gasoline pumps, or other drive-up facilities located between the highway and the commercial building(s), where such parking or drive-up facilities are visible from the road.

**STRUCTURE** — A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin, or wall.

**THIS CHAPTER** — See “Zoning Law.”

**TOWN LAW** — The Town Law of the State of New York, Chapter 62 of the Consolidated Laws.

**TWO-FAMILY DWELLING** — See “dwelling, two-family.”

**USE** — The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on a premises.

**USE, ACCESSORY** — A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

**USE, CHANGE OF** — See “change of use.”

**VARIANCE, AREA** — The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**VARIANCE, USE** — The authorization by the Zoning Board of Appeals for the use of land for a purpose which 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.

**VISIBLE/VISIBILITY** — Able to be seen by a person of average height and with normal vision on a clear day.

**WAREHOUSE** — A structure or structures in which materials, goods, or equipment is stored.

**WATERCOURSE** — Any stream, pond, lake, drainage channel, or other area of land that is normally or seasonally filled with water.

**WETLAND** — An area of land that is characterized by hydrophytic vegetation, saturated soils, or periodic inundation which is classified as a wetland by either the New York State Department of Environmental Conservation or the United States Army Corps of Engineers. See § 145-35.

**WIND ENERGY CONVERSION SYSTEM** — A mechanized system which converts wind energy into electrical or mechanical power.

**YARD** — An open space on the same lot with a structure.

**YARD, FRONT** — An open space extending across the full width of the lot between the front of the principal building and the street line.

**YARD, REAR** — An open space extending across the full width of the lot between the rear lot line and the wall of the principal building nearest the rear lot line.

**YARD, REQUIRED/SETBACK AREA** — That portion of any yard required to satisfy minimum setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

**YARD, SIDE** — An open space between a principal building and the side line of the lot and extending from the front yard to the rear yard.

**ZONING LAW/THIS CHAPTER** — The officially adopted Zoning Law of the Town of Dover, together with any and all amendments thereto, in accordance with Article 16 of the Town Law and Articles 2 and 3 of the Municipal Home Rule Law.