

**Note: This is a draft version of the proposed zoning code for public comment. It has not undergone a final review from the Village's Legal Counsel.**

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## ARTICLE 1. GENERAL PROVISIONS

### 1.1 Title

This Chapter 205 is known, cited, and referred to as the “Zoning Code of the Village of Ballston Spa, New York,” “Zoning Code,” or “Code,” and incorporates the Village of Ballston Spa Zoning Map(s).

### 1.2 Purpose

The purpose of this Code is to:

- A. Promote public health, safety, and general welfare.
- B. Help implement the shared community vision and goals of the recently adopted Village of Ballston Spa Comprehensive Plan.
- C. Guide and regulate the growth, development, and redevelopment of the Village.
- D. Enhance the social and economic well-being of the community.
- E. Protect property values.
- F. Prevent adverse impacts to neighborhood character.
- G. Promote, in the public interest, the utilization of land for the purposes for which it is most desirable and best adapted.
- H. Divide the Village into districts, according to use of land and structures, height, location, and bulk of structures, intensity of the use of the lot, or other classification, as deemed best suited to carry out the purposes of this [Code Ordinance](#).
- I. Regulate uses or structures incompatible with the character of development or intended uses within zoning districts.
- J. Promote community sustainability and resiliency.
- K. Protect the natural resources of the community including, but not limited to trees, ~~and open space, and waterfronts.~~
- L. Provide relief where appropriate from the requirements and restrictions of the Code, including variances, and other administrative approvals.
- M. Provide administrative bodies, officials, and procedures as necessary to implement, enforce, and amend this Code.

### 1.3 Scope

#### A. Territorial Application

This Code applies to all land, uses, and structures within the corporate limits of the Village of Ballston Spa.

#### B. Required Conformance

Any part or whole of a building or structure must be used, occupied, erected, constructed, reconstructed, moved, and enlarged in conformance with the requirements of this Code. All land must be used in conformance with the requirements of this Code. Any building, structure, or land must be used and occupied in conformance with the requirements of this Code.

#### C. Relation to Private Agreements

This Code does not nullify any private agreement or covenant. However, where this Code is more restrictive than a private agreement or covenant, this Code shall govern. The Village is not bound by and will not enforce any private agreement or covenant.

#### D. Relation to Other Village Code Provisions

Unless otherwise specifically provided, this Code controls over less restrictive sections of Village codes, ordinances, or regulations, and more restrictive Village codes, ordinances, or regulations control over the provisions of this Code.

#### E. Graphic Inconsistencies

This Code contains graphics to assist the user in understanding and applying the Code. However, where there is any inconsistency between the text of this Code and any such graphics, the text controls unless otherwise specifically stated.

## ARTICLE 2. DEFINITIONS

### 2.1 Use and Interpretation of Words

- A. For the purposes of this chapter certain words and terms used herein shall have the meanings given in this Article. Except where specifically defined herein, all words shall carry their customary meanings. Words used in the present tense include the future tense, words used in the singular include the plural, and the plural the singular unless the context clearly indicates the contrary.
- B. The words "shall" and "must" are mandatory and not permissive.
- C. The word "building" includes the word "structure" and refers to all other structures of every description except fences and walls, regardless of dissimilarity to conventional building forms.
- D. The word "lot" includes the word "plot" or "parcel."
- E. The word "person" includes a corporation as well as an individual.
- F. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for" and "occupied for."

### 2.2 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY DWELLING UNIT** — ~~A subordinate dwelling unit added to, created within, or detached from a principal dwelling and located on the same lot or parcel as that principal dwelling. The ADU provides living, sleeping, cooking, and sanitation facilities. ADUs are not recreational vehicles, travel trailers, campers, or any other type of motor vehicle.~~

**ACCESSORY STRUCTURE** — A detached structure located on the same lot as the principal building that is subordinate to the area and purpose of the principal structure and the principal use of the structure or lot.

**ACCESSORY USE** — A term applied to a use, building, or other structure, clearly incidental or subordinate, but customary to the principal use, located on the same lot with the principal use.

**ALLEY** — A service way which affords generally a secondary public means of vehicular access or pedestrian access to abutting property.

**ALTERATION**— Any change to a structure which is not merely a repair or replacement of an existing part, or any change which would:

- A. Enlarge or diminish the livable area of the structure or any part thereof.
- B. Change the number of dwelling units contained in any structure.
- C. Cause a change in the location of, or the height of, the exterior walls or roof of the structure.
- D. Cause a change in any exit or entrance facilities.
- E. Cause a change in use.

**ALTERATION, STRUCTURAL** — Any change in the supporting members of a building, including but not limited to, ~~such as~~ bearing walls, columns, beams, or girders.

**AREA, BUILDING** — See "building area."

**ASSISTED LIVING FACILITY** — any dwelling used for the accommodation and care of persons needing assistance with the activities of daily living.

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**AWNING** - A roof-like cover designed for protection from the weather or as a decorative embellishment, which projects from a wall or roof of a structure over a window, walkway, or door, with no supports that extend to the ground.

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**ATTIC** – That space of a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as ½ story in determining the permissible number of stories.

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**AUTOMOBILE SALES** – s Storage and display for sale of more than two motor vehicles or any type of trailer provided the trailer is unoccupied, and where repair or body work is incidental to the operation of the new or used vehicle sales. Motor vehicles sales includes motor vehicle retail or wholesale sales.

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**BANK AND FINANCIAL INSTITUTION** — An establishment where the primary purpose is for the custody, loan, exchange, or issue of money, for the extension of credit, and for facilitating the transmission of funds.

**BASEMENT** — A story partly below ground by having at least ½ of its height above the average grade of the adjoining ground. A basement shall be counted as one story in determining the permissible number of stories.

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**BED-AND-BREAKFAST** — Owner-occupied dwelling unit, originally designed as a residential structure, used for providing overnight accommodations and a morning meal.

**BUILDER OR CONTRACTOR, CARPENTER, AND THE LIKE** — A general contractor or builder engaged in the construction or reconstruction of buildings or portions of buildings.

**BUILDING** — Any roofed structure permanently affixed to the land intended for the shelter, housing, or enclosure of persons, animals, or chattel.

**BUILDING AREA** — The total floor area of each building, including open or enclosed porches or carports, but excluding steps, uncovered porches, open fire escapes, awnings and canopies, bay windows, window sills, cornices, eaves, and other similar architectural features.

**BUILDING, COMPLETELY ENCLOSED** — A building separated on all sides from adjacent open space or other buildings by fixed interior walls or party walls, pierced only by windows and doors, and covered by a permanent roof.

**BUILDING COVERAGE** — The lot area or percentage of lot area covered by the building area, including accessory buildings and structures.

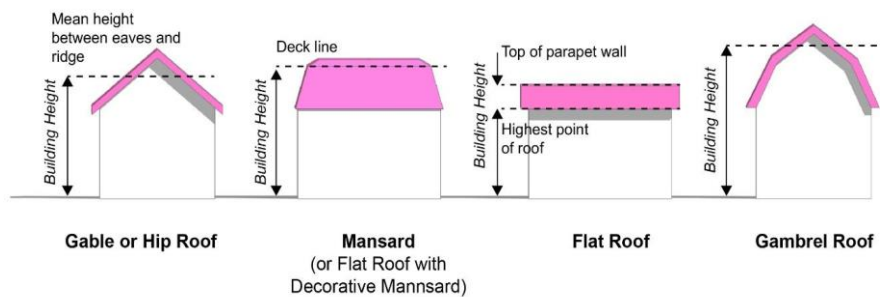
**BUILDING, DETACHED** — A building entirely surrounded by open space on the same lot.

**BUILDING HEIGHT** — Maximum building height is measured from the average elevation of the finished grade at the front lot line to:

- A. The mean height between eaves and ridge for gable and hip roofs.
- B. The deckline for mansard roofs.
- C. The midpoint of the highest pitched section of a gambrel roof.
- D. The highest point of the roof for flat roofs with parapet walls of 48 inches in height or less. When parapet walls exceed 48 inches in height, the highest point of the parapet wall.



-Building appurtenances such as chimneys, parapet walls up to 48 inches in height, skylights, steeples, flag poles, smokestacks, cooling towers, elevator bulkheads, monuments, stacks, ornamental towers and spires, water tanks and standpipes, or penthouses to house mechanical equipment and the like are exempt from maximum height limitations.



**BUILDING LINE** — The closed traverse upon a lot which exactly encloses the exterior limits of a building or other structure, including bay windows, covered porches, or any projections thereof which are in aggregate over 50 square feet in area.

**BUILDING, PRINCIPAL** — A building in which the primary use of the lot on which the building is located is conducted.

**BULK** — A term used to describe the size, volume, area, and shape of buildings and structures and the physical relationships thereof.

**CANOPY, NON-STRUCTURAL** - ~~Canopy - Non-Structural~~. A roofed structure attached to a building, which is not integral to the structure, that is made of durable, weather-resistant material such as canvas, canvas-like material, nylon, or vinyl-coated fabric, placed to extend outward from the building and is supported both by mountings on the structure wall and by supports that extend to the ground.

**CANOPY, STRUCTURAL** - ~~Canopy - Structural~~. A roofed structure constructed of permanent building materials, such as metal, brick, stone, wood or similar building materials, that is constructed as part of and attached to a building, extends outward from

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the building, and is supported both by the structure and by supports that extend to the ground.

~~**CANNABIS DISPENSARY** – A brick and mortar store in New York State with posted hours of operation to be authorized to sell cannabis products and related items to cannabis consumers by in-person sale, over the internet or via a digital application pursuant to applicable New York State laws.~~

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**CARPORT** — A roofed structure, with or without enclosing walls, used for the storage of one or more ~~automobiles~~ vehicles.

**CELLAR** – A story partly below ground but having greater than at least ½ of its height below the average grade of the adjoining ground. A cellar shall not be counted in determining the permissible number of stories.

**CLUB OR LODGE, SOCIAL, RECREATIONAL, OR FRATERNAL** — A building or portion thereof, or premises, owned or operated by a corporation, association, person or persons for social, recreational, or athletic activities, but not primarily for profit or to render a service which is customarily carried on as a business.

~~**COMMERCIAL PARKING LOT** — An area where the principal use is a location where motor vehicles are stored for the purpose of temporary, daily, or overnight off-street parking.~~

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**CONDOMINIUMS (CONDOS)** — A multifamily dwelling development containing individually owned dwelling units, a homeowners association, and wherein the real property title and ownership are vested in an owner, who has an undivided interest with others in the common usage areas and facilities which serve the development. ~~Individually owned dwelling units within the development are also referred to as condos.~~

**COVERAGE**- The lot area of percentage of lot area covered by the building area, including accessory buildings and structures.

~~**DECK** – A flat, floored, roofless area attached or adjacent to a building.~~

**DUPLEX** — A building containing two dwelling units. See "dwelling, two-family."

**DRIVE-THROUGH** — The use of land, buildings or structures, or parts thereof, to provide or dispense products or services, either wholly or in part, through an attendant or a window or an automated machine, to customers remaining in motorized vehicles t

**DWELLING** — A building designed or used principally as the living quarters for one or more families.

**DWELLING, MIXED-USE** — A building or buildings on the same lot, which includes dwelling units in addition to nonresidential uses.

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**DWELLING, MULTIPLE-FAMILY** — A building or portion thereof containing three or more dwelling units.

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

**DWELLING, TWO-FAMILY** — A building containing two dwelling units. See, "duplex."

**DWELLING UNIT** — A building or portion thereof providing complete housekeeping facilities for one family, including provisions for sleeping, eating, cooking, and sanitation, other than a mobile home trailer.

**EATING AND DRINKING ESTABLISHMENT** — A structure in which the principal use is the preparation and sale of food and beverages.

**FACADE** — The exterior wall of a building which fronts the street and is exposed to public view.

**FAMILY** — One or more persons who live together as a single housekeeping unit and maintain a common household. A "family" may consist of a single person or of two or more persons, whether or not related by blood, marriage, or adoption.

**FENCE** — Any artificially constructed barrier made of wood, metal, or similar solid material, or a vegetation that provides a full or partial visual barrier in all seasons of the year.

**FILLING STATION** — See "gasoline service station."

**FINANCIAL INSTITUTION** — An establishment where the primary purpose is for the custody, loan, exchange, or issue of money, for the extension of credit, and for facilitating the transmission of funds.

**FINISHED GRADE** — Elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade, for purposes of computing height of buildings and other structures or for other purposes, shall be the mean elevation at which the finished surface of the surrounding lot intersects the front walls or supports of the building or structure or intersects those walls or supports facing the street.

**FLOOR AREA** — The aggregate sum of the gross horizontal areas of the several floors of the building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

**FUNERAL HOME** — building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation

**GENERAL SERVICES** — An establishment providing general services for maintenance and repair of consumer goods, such as upholstery, appliance repair, and furniture refinishing.

**GARDEN NURSERY OR GREENHOUSE** — Any land or structure used to raise trees, shrubs, flowers, and other plants for sale or for transplanting.

**GARAGE, COMMERCIAL** — Any building or part thereof used for the storage, hiring, renting, selling, greasing, washing, servicing, or repair of motor vehicles, which is operated for financial gain.

**GARAGE, PRIVATE** — A structure or portion of a structure, used for the private, noncommercial storage of motor vehicles, in and about which no business or industry is conducted

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**GASOLINE SERVICE STATION** — Any area of land, including structures thereon, that is used for the sale of gasoline, oil, or other motor vehicle fuel and which may include facilities for washing, lubricating, cleaning, or otherwise servicing motor vehicles, but not for painting.

**GENERAL SERVICES** — An establishment providing general services for maintenance and repair of consumer goods, including but not limited to electronics, upholstery, appliance repair, and furniture refinishing.

**HISTORIC PROPERTY** — ~~TBDA~~ district, site, building, structure, or object significant in American history, architecture, engineering, archeology, or culture at the national, state, or local level.

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**HOME OCCUPATION** — Also known as a home-based business, an accessory use of an owner-occupied dwelling unit for gainful employment which is clearly incidental and subordinate to the use of the dwelling unit as a residence, is carried on solely within the main dwelling, and does not alter or change the exterior character or appearances of the dwelling, and is created and operated by the owner-occupant with no more than one outside employee.

**HOSPITAL OR HEALTHCARE FACILITY** — An institution providing health services primarily for human inpatient or medical or surgical care for the sick or injured, and including the related facilities such laboratories, outpatient departments, training facilities, central service facilities, and staff offices which are integral parts of the facilities.

**HOTEL OR INN** — A building or any part thereof which contains living and sleeping accommodations for transient occupancy and has a common exterior entrance or entrances.

**HOUSE OF WORSHIP** — A structure owned and/or used by a religious organization for worship, religious training, and/or accessory religious education.

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**LIBRARY** — A public or non-profit facility for the use, but not sale, of literary, musical, artistic, or reference materials.

**LIGHT MANUFACTURING** — A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products

or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, provided that the process and products do not involve hazardous materials, noxious fumes or odors, or excessive noise (i.e., noise levels exceeding OSHA's permissible exposure limit (PEL) of 90 decibel A-weighted for an 8-hour workday) or vibration.

**LOT** — A parcel of land considered as a unit, occupied or capable of being occupied by one building and accessory buildings or uses or by a group of buildings united by a common use, interest and ownership; and including such open spaces, parking and loading spaces as are required by this chapter; and having its principal frontage upon a public/private street.

**LOT, CORNER** — A lot abutting more than one street. "Corner lots" will have a minimum of frontage on all streets on which the lot abuts. There will be front setbacks from all streets on which the lot abuts and sideline setbacks from all remaining property lines.

**LOT COVERAGE** — See "coverage."

**LOT FRONTAGE** — A lot line which is coincident with a street line. Lot frontage is calculated as the horizontal distance between side lot lines measured at the required front yard setback line.

**LOT LINE** — A line dividing one lot from another lot or from a street or alley.

**LOT, THROUGH** — A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

**LOT WIDTH** — The horizontal distance between side lot lines measured at the required front lot line.

**MOBILE HOME** — A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required facilities.

**MOBILE HOME PARK** — Any parcel of land or portion thereof which is used or offered for use as a location for one or more mobile homes.

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**MOTEL** — A building or group of buildings containing individual living and sleeping accommodations primarily consisting of one-bedroom-and-bath units, each of which is provided with a separate exterior entrance and a parking space, and is offered principally for rental on a transient basis.

**MOTOR VEHICLE REPAIR SHOP** — A building or portion of a building arranged, intended, or designed to be used for making repairs to motor vehicles.

**MURAL** — Any lawfully created picture, scene, or diagram painted on any exterior wall or fence not intended as advertising.

**MUSEUM** — An institution devoted to the procurement, care, study, and display of objects of lasting interest or value.

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**NEWSPAPER, PUBLISHER, OR PRINTER** — A printing establishment either serving customers or place where a publication is published and/or printed.

**NONCONFORMING BUILDING** — A building or structure lawfully existing as of the effective date ~~at the time of enactment~~ of this chapter which does not conform to the area regulations of the district or zone in which it is situated.

**NONCONFORMING BULK** — A building or structure lawfully existing as of the effective date ~~at the time of enactment~~ of this chapter which does not conform to the bulk regulations of the district or zone in which it is situated.

**NONCONFORMING LOT** — A lot lawfully existing as of the effective date ~~at the time of enactment~~ of this chapter which does not conform to the area and other dimensional regulations of the district or zone in which it is situated.

**NONCONFORMING USE** — Any use of a building, other structure, or tract of land otherwise lawfully established but which does not conform to the use requirements for the district in which such use is located either at the effective date of this chapter or as a result of subsequent amendments thereto, and which use has not been abandoned for more than one year at the time of the effective date of this chapter.

**NURSING OR CONVALESCENT HOME** — Any dwelling used for the accommodation and care of persons for whom nursing services are available, but not including hospitals.

**OFFICE** — A building or portion of a building used for conducting the affairs of a business, profession, or government.

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**OPEN SPACE** — Land not covered by buildings or parking lots, open storage, mining operations, or any other use that visually obscures the natural or improved landscape, except for recreational facilities.

**OWNER OCCUPANCY** — The true owner as listed on the Village assessment rolls is required to physically occupy the property.

**PARKING SPACE** — An off-street space available for the parking of one motor vehicle, exclusive of passageways and driveways thereto, and having direct access to a street or alley.

**PAVED AREA SETBACK** — The distance between the property line and paved areas on the site.

**PERSONAL SERVICES** — A facility providing personal services, including but not limited to hair salon, barber shop, tanning beds, dry cleaning, massage parlors, aesthetician services, print shop, photography studio, and the like.

**PERVIOUS COVERAGE** — Area maintained in its natural condition, or covered by a material that permits infiltration or percolation of water into the ground.

**PORCH** — A roofed, open, or enclosed structure projecting from the outside wall of a building which is not fit for human habitation on a year-round basis.

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

**PROFESSIONAL AND PERSONAL SERVICE USES** — Business activities carried on directly between individuals within the following categories:

A. Business functions auxiliary to production and distribution (e.g. real estate, insurance, bookkeeping).

B. Labor that does not produce a tangible commodity (e.g. beauty/barber shops, musical and dance instruction, ~~doctors~~ medical, ~~law~~ law, ~~vet~~ vets and accounting offices and other professional offices).



**PUBLIC PARKS OR PLAYGROUND** — A land use designed principally to offer recreation, passive or active, to the public.

**PUBLIC UTILITY** — Any public service device governed under the jurisdiction of the Public Service Commission and Cable Television Commission, as well as including water, sewer, gas, telephone, television, and electric. Also including public utility structures such as electric lines and poles, gas mains, water mains, telephone and telegraph lines and poles and transmission towers.

**RECREATIONAL VEHICLE** — A mobile unit designed and built for recreational travel, camping or vacation use on land, water, or air, which is equipped to provide portable, temporary shelter. The term includes, but is not limited to, campers, motor homes, travel trailers, and truck-mounts.

**RETAIL** — Any commercial enterprise involved in the sale of goods or merchandise on-site to members of the public who are generally intended to be the consumers of these goods. This definition excludes any sexually-oriented uses.

**SCHOOL** — A regularly organized institution of learning, other than a college or university, approved by the Education Department of the State of New York and/or board of regents

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**SELF-SERVICE STORAGE FACILITY** — A building consisting of individual, self-contained units that are leased or owned for the storage of business and household goods.

**SENIOR LIVING RESIDENCES** — Any dwelling not providing assisted living or nursing home services that is limited to seniors age 62 and older.

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**SETBACK** — The required minimum horizontal distance between the principal building line and lot line. The distance between the street line, rear or side lines of the lot, and the front, rear and side lines of the building. All measurements shall be made at right angles to or radially from the lot lines to the nearest portion of the building lines. Setbacks from street lines to building lines are defined as "front setbacks." Setbacks from side lot lines are "side setbacks." Setbacks from rear lot lines are "rear setbacks." The required front setbacks exclude entrance steps or porches which are not more than seven feet in depth and which are not enclosed.

## SEXUALLY ORIENTED BUSINESSES

**ADULT ARCADE** — Any business enterprise that offers or maintains one or more adult video viewing booths.

**A. Adult Video Viewing Booth.** Coin- or slug-operated, or electronically or mechanically controlled, still- or motion-picture machines, projectors, or other image-producing devices which present visual or audio material of any kind which is characterized by its emphasis on the description or depiction of specified anatomical areas or specified sexual activities and which are designed to be viewed by five or fewer persons per machine at any one time or are located in a room or booth of less than 150 square feet. No part of this definition shall be construed to permit more than one person to occupy an adult video viewing booth at any time.

**ADULT CABARET** — Any cabaret, restaurant, tavern, bar or similar establishment which features "go-go" dancers, exotic dancers, strippers, nude, "topless" or "bottomless" or similar entertainers, employees or proprietors.

**ADULT ENTERTAINMENT CENTER** — Any commercial or business establishment which, by the nature of its product, service, displays or the like, either by prevailing practice or by state or federal statute, excludes minors, or any other business that sells or displays sexually provocative adult-oriented products and/or clothing, or any business engaged in the sale of exotic smoking accessories.

**ADULT MOVIE THEATER** — Any business enterprise which regularly features or offers to the public the presentation of motion-picture films, movies or sound recordings which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities and which are presented to a common audience of more than five persons in an enclosed common area or are presented in a common area of more than 150 square feet

**ADULT RETAIL STORE** — Any retail establishment which has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, or provide for viewing, off the premises, any sexually oriented product(s).

**ESCORT AGENCY** — A person or business enterprise that furnishes, offers to furnish, or advertises to furnish, for consideration, escorts who perform any escort services in the Village. An escort agency that advertises or holds itself out in signage visible from the public right-of-way as "X...", "adult", or "sex" are considered an adult retail store.

**PREMISES** — A lot, plot, or parcel of land, together with the buildings and structures thereon. When used in the context of sexually oriented businesses, premises means the building in which a sexually oriented business is conducted as well as its surrounding yard and parking areas and any additional required parking areas.

**SHORT-TERM RENTAL** — A Dwelling Unit, which may or may not be inhabited by the owner of record or their immediate family, that is rented, in whole or in part, for a period of less than thirty (30) consecutive days to any person or entity, but not including a Hotel, Motel, Inn, Campground or Bed and Breakfast

**SIGN** — A lettered, numbered, symbolic, pictorial, or illuminated visual display designed to identify, announce, direct, or inform that is visible from a public right of way.

**SIGN, A-FRAME** — A ~~temporary~~ sign ordinarily in the shape of the letter "A" or some variation thereof, which is displayed on the ground, not permanently attached to the ground, and usually two-sided, generally connected at the top and separated at the bottom.

**SIGN, ANIMATED** — A sign that uses moving or changing lights to depict action, movement, or the optical illusion of movement of part of the sign structure, sign, or pictorial segment, or including the movement of any illumination or the flashing or varying of light intensity to create a special effect or scene. Animated signs do not include electronic message signs.

**SIGN, AWNING** — An awning is a roof-like cover designed for protection from the weather or as a decorative embellishment, which projects from a wall or roof of a structure over a window, walkway, or door, with no supports that extend to the ground. An awning sign is a sign printed or displayed upon an awning.

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**SIGN, BALLOON** — A sign or advertising device designed to be airborne, or inflated and tethered to the ground or other structure. This includes any air-inflated signs and any signs that inflate and move via air inflation.

**SIGN, BLADE** — A sign that is attached to a rigid structure that extends more than 12 inches beyond the surface of the structure to which it is attached.

**SIGN, CANOPY** — A canopy sign is a sign printed, mounted, or installed upon a canopy. ~~A sign canopy may be one of two types:~~

~~**A. Canopy - Non-Structural.** A roofed structure attached to a building, which is not integral to the structure, that is made of durable, weather-resistant material such as canvas, canvas-like material, nylon, or vinyl-coated fabric, placed to extend outward from the building and is supported both by mountings on the structure wall and by supports that extend to the ground.~~

~~**B. Canopy - Structural.** A roofed structure constructed of permanent building materials, such as metal, brick, stone, wood or similar building materials, that is constructed as part of and attached to a building, extends outward from the building, and is supported both by the structure and by supports that extend to the ground.~~

**SIGN, DRIVE-THROUGH** — A sign constructed as part of drive-through facilities.

**SIGN, ELECTRONIC** — A sign designed where a portion of the sign area uses changing light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the electronic display panel(s) to form a message or messages in text and/or image from where the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes.

**SIGN, FLASHING** — A sign with an intermittent or sequential flashing light source used primarily to attract attention. Flashing signs do not include electronic message signs.

**SIGN, FLAG** — A freestanding attention-getting device, vertical in orientation, typically constructed of cloth held taut by a single post.

**SIGN, FREESTANDING** — A sign that is placed on or supported by the ground, independent of the principal structure on the lot.

**SIGN, GATEWAY** — A sign that is installed over a pedestrian entryway and supported by the ground, independent of the principal structure on the lot, designed as an entryway feature to the property.

**SIGN, MOVING** — A sign where the entire sign structure or a portion of which rotates, moves, elevates, or in any way alters position or geometry. A tri-vision sign where triangular prisms rotate inside a frame to show a new message and/or information are considered moving signs. Moving signs do not include clocks or barber poles.

**SIGN, PORTABLE** — A sign whose principal supporting structure is intended, by design and construction, to rest upon the ground for support and may be easily moved or relocated for reuse. Portable signs include, but are not limited to, signs mounted upon a trailer, wheeled carrier, or other non-motorized mobile structure, with wheels or with wheels removed. Portable signs do not include a-frame signs.

**SIGN, ROOF** — A sign that is erected, constructed, or maintained on and/or extending above the roof structure or parapet of any building with the principal support attached to the roof structure.

**SIGN, TEMPORARY** — Any sign, including a display, banner or other advertising device constructed of cloth, canvas, fabric, wood or other temporary material, with or without a structural frame and intended for a limited period of display of no more than 60 days, including decorative displays for holidays or public demonstrations.

**SIGN, WALL (STANDARD)** — A sign that is attached directly to an exterior wall of a building or dependent upon a building for support and projects 18 inches or less from the wall of a structure with the exposed face of the sign in a plane substantially parallel to the face of the wall. Window signs are not considered wall signs.

**SIGN, WALL (PAINTED)** — A sign that is painted, applied, or affixed directly on the exterior wall of a building or structure. A painted wall sign is not limited to only the application of paint, but includes other methods of application and/or material, including, but not limited to tiles or screen-printing.

**SIGN, WALL (PROJECTED)** — A sign that is projected by an optical device that projects an image directly onto the exterior wall of a building or structure by light or other technological means.

**SIGN, WINDOW** — A sign that is attached directly to, placed directly upon, or printed directly on the interior or exterior of a window or door of a building, or a sign placed on the interior within three feet of a window intended for viewing from the exterior of such a building. A window sign may be either permanent or temporary. Shadowbox design within display windows, where the window display is designed with a background enclosure against which signs are mounted that blocks view into the establishment, is considered a window sign and the entire area of the shadowbox is subject to the maximum sign area limitation.

**SOLAR ENERGY SYSTEM** — A complete design or assembly consisting of a solar energy collector and other components for the transformation, processing, storage, transmission, and/or distribution of photovoltaic solar energy for the purposes of space heating and cooling, electricity supply, and/or water heating.

**STORY** — That portion of a building, other than the cellar, included between the surface of any floor and the surface of the next floor above it, or, if there be no floor above it, then the space between any floor and the ceiling next above it. See "attic" or "basement."

**STREET** — An existing public thoroughfare which affords the principal means of vehicular access to abutting properties.

**STRUCTURE** — Anything constructed or erected with the exception of fences and walls, the use of which requires location on the ground or attachment to something having location on the ground.

**SWIMMING POOL** — Any body of water or receptacle for water having a depth at any point greater than two feet ~~and which~~ is used or intended to be used for swimming or bathing, and constructed, installed or maintained in or above the ground outside any building.

**TOWNHOUSE** — A building consisting of a series of two or more one-family attached residential dwelling units having common party walls between each dwelling unit.

**USE** — The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained or occupied, or any occupation, business activity, or operation conducted or intended to be conducted in a building or other structure or on land.

~~**VEHICLE FUELING STATION** — Any building, land area or other premises, or portion thereof, used or intended to be used for retail dispensing or sales of automobile fuel~~

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~~**YARD, FRONT** — An open unoccupied space extending the full width of the full lot and situated between the front line of the principal building and the property line. On a corner lot, a "yard" shall be provided on each street equal in depth to the required front yard on such streets.~~

~~**YARD, REAR** — An open space extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory buildings and open porches.~~

~~**YARD, REQUIRED** — An open space on the same lot with a building, extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located<sup>5</sup>.~~

~~**YARD, SIDE** — An open space on the same lot situated between the principal building and the sideline of the lot and extending from the front yard (or from the front lot line if there is no required front yard) to the rear yard (or rear lot line if there is no required rear yard).~~

## ARTICLE 3. ZONING DISTRICTS

### 3.1 Establishment of Districts

In order to carry out the purposes and provisions of this Code, the Village of Ballston Spa is hereby divided into the following districts:

- R-1A: Residential 1-A
- R-1B: Residential 1-B
- R-2: Residential 2
- ~~M: Mohican Hill~~ R-2S: Residential 2-Seniors
- D: Downtown
- ~~DT: Downtown Transition~~
- HB: Highway Business
- I: Industrial
- OS: Open Space

The Village also contains the following overlay district(s), identified on the zoning map:

- Adult Use District

### 3.2 Zoning Map

#### A. Map Incorporated

The boundaries of the zoning districts hereby established are shown on a map titled “Village of Ballston Spa Zoning Map.” The Zoning Map and all notations, references, and other information shown thereon shall have the same force and effect as if fully set forth or described herein, and such map is hereby made part of this Code. The Zoning Map shall be properly attested and kept on file in the office of the Planning Board.

#### B. District Boundaries

1. Where uncertainty exists with respect to the boundaries of the various districts, as shown on the Zoning Map, the following rules apply:

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- a) The district boundaries are the centerlines of the streets, alleys, waterways, and rights-of-way. Where designation of a boundary line on the Zoning Map coincides with the location of a street, alley, waterway or right-of-way, the centerline of such street, alley, waterway, and right-of-way shall be construed to be the boundary of such district.
- b) Where the designation on the Zoning Map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary.
- c) Distances shown on the Zoning Map are perpendicular distances from road centerlines measured to the district boundary, which boundaries in all cases where distances are given are parallel to the road centerline.

## ARTICLE 4. DISTRICT STANDARDS

### 4.1 Residential Districts



#### A. Description and Purpose

The intent of the residential districts is to maintain a cohesive aesthetic, reflecting the characteristics found in the Village's various residential neighborhoods. These neighborhoods consist of a range of housing types, including ~~single-family, two-family, and multifamily,~~ *as well as accessory dwelling units.*

Dimensional and lot characteristics vary by neighborhood and each district seeks to preserve the area's physical character and ensure compatibility among the district's buildings without promoting uniformity. These neighborhoods often contain complementary uses such as open spaces and schools.

## RESIDENTIAL DISTRICTS - LOT STANDARDS

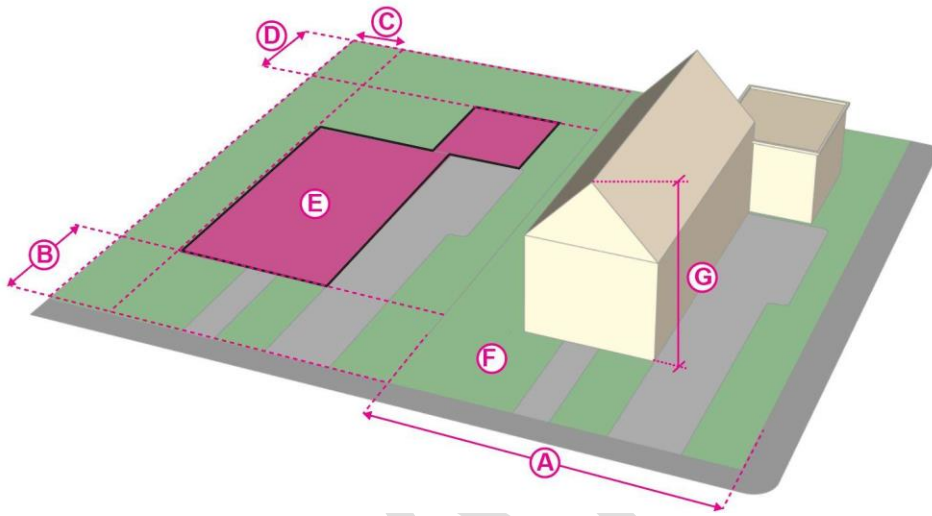


Table 1: Residential Lot Standards		R-1A	R-1B	R-2	R-2S
<b>Lot Standards</b>					See Appendix.
Minimum Lot Area	-	10,000 sq ft	4,000 sq ft	3,000 sq ft	
Minimum Width	A	50 ft	50 ft	40 ft	
Minimum Front Setback	B	25 ft min	10 ft min	10 ft min	
Minimum Side Setback	C	10 ft min	10 ft min	10 ft min	
Minimum Rear Setback (principal structure)	D	50-25 ft min	50-25 ft min	30-25 ft min	
Minimum Rear Setback (accessory structure)	D	25-10 ft min	25-10 ft min	25-10 ft min	
Maximum Building Coverage (% of area)	E	20	20	30	
Minimum Pervious Coverage (% of area)	F	30	30	30	
<b>Height Standards (Stories/Feet)</b>					
Residential Dwelling	G	2.5 / 36	2.5 / 36	3 / 36	
Non-Residential Uses	G	3 / 40	3 / 40	3 / 40	

#### 4.2 D: Downtown



##### A. Description

The Downtown district consists primarily of commercial and mixed-use buildings that accommodate retail, offices, and homes on upper floors. It has a network of streets designed to encourage walkability and to encourage active ground-floor uses. New development reflects and complements the downtown's historic development patterns.

##### B. Purpose

- To accommodate mixed-use and commercial buildings within the downtown that provide local and regional access to a variety of uses.
- To promote housing, especially on the upper floors of mixed-use buildings.
- To provide the community with a predictable outcome from development and redevelopment that reflects community character, historic preservation, and a vibrant walkable downtown that enhances quality of life for residents.

## DOWNTOWN - LOT STANDARDS

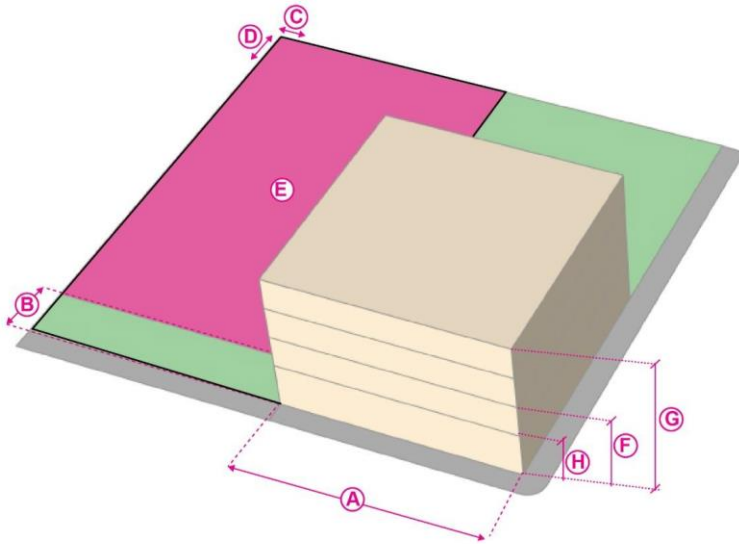


Table 2: Downtown Lot Standards		D
<b>Lot Standards</b>		
Minimum Lot Area	-	No minimum
Minimum Width	A	25 ft
Front Setback	B	No minimum; maximum 15 ft
Minimum Side Setback	C	None
Minimum Rear Setback	D	None
Maximum Building Coverage (% of area)	E	100
Minimum Pervious Coverage (% of area)	-	None
<b>Height Standards</b>		
Minimum Building Height	F	20 ft
Maximum Building Height	G	50 ft
Minimum First Floor Height	H	14 ft

### C. Design Standards

1. The design standards of Table 3: District Design Standards apply to mixed-use and non-residential developments for new buildings. For the purposes of Table 3, when standards indicate that they are applicable when facing a street, this does not apply to alleys. For applications related to existing buildings, refer to Section 11.5 Façade Review.
  - a) Recognizing that the Development Standards cannot anticipate all circumstances or innovative approaches, a waiver may be requested to the Planning Board from the development standards in this section 4.3.C to provide the ability to create appropriate variations.
  - b) Renovations of the first floor of existing buildings within 60 feet of a street right-of-way shall not decrease the existing area of windows.

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**Table 3: Downtown District Design Standards**

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Orientation	
1	All buildings must be oriented toward a street.
2	The front building line must be oriented parallel to the street.
3	At least one prominent entrance along the main building façade must include a direct pedestrian connection to the adjacent public sidewalk. On a corner lot, only one façade along a street must have a prominent entrance connected to the public sidewalk or such entrance may be located at the corner.
Façade Design	
4	Building façades that face a street must not contain blank wall areas that exceed 25 linear feet.
5	Building façades of 100' in length or greater that face a street must include a repeating architectural pattern with a minimum of two of the following elements: color change; texture change; material change; a wall articulation change, such as a reveal, recess, offset, or pilaster; or building recesses or projections. This includes patterns made by structural components visible through glass curtain walls.
6	Buildings must be designed with consistent building materials and treatments that wrap around all façades.
7	For structures three stories or more in height, façades must express a visual distinction between the ground floor and upper stories through architectural features or detailing, or change in materials. This includes patterns made by structural components visible through glass curtain walls.
8	Building façades that face a street must include windows, projected or recessed entrances, overhangs, and other architectural features.

<b>Window Design</b>	
9	The ground floor of a facade facing a public street must maintain a minimum area of windows of 40%, measured between two and eight feet in height of the ground floor facade.
10	Upper floors of a facade facing a public street must maintain a minimum area of windows of 20% of the wall area of the story.
11	All windows shall be clear or lightly tinted.
12	The use of opaque materials such as plywood, brick, metal, or sheet rock to cover or fill a window opening is prohibited.
<b>Roof Design</b>	
13	Rooflines of 100' in length or more must be varied through the use of architectural design elements such as dormers, gables, or projected wall features. Such elements of variation may be no wider than 50'.
14	Where parapet walls are used, they must feature three-dimensional cornice treatments or other shadow-creating details along the top.
15	Reflective roof surfaces that produce glare are prohibited, except for cool roofs intended to radiate absorbed or non-reflected solar energy and reduce heat transfer to the building.

## 2. Building Height

- a) The applicant may apply for a building height in excess of the Downtown Lot Standards in the circumstances identified in (b) below.~~following circumstances.~~ The Planning Board may issue a Special Permit for additional building height in these cases; however, if the Board believes allowing additional height will be detrimental it has sole discretion to deny the request, even if the following minimum requirements are met.
- b) Requirements
  - i. Buildings proposed to have height beyond that listed in the Downtown Lot Standards Table must not abut an existing single-family or two-family residential structure.
  - ii. Buildings proposed to have additional height beyond that listed in the Downtown Lot Standards Table must be effectively screened from the public right-of-way to reduce the visual impacts of the building(s). This may be accomplished through topographic changes on the site, ~~being~~ largely concealed by the building(s) along the frontage, or other means proposed by the applicant.

- iii. In no case shall Building Height be greater than 60 feet as part of the Special Permit request.

### 3. Front Yard Setbacks

Where a primary street setback is greater than 0 ft, the following standards shall apply:

- a) Within the front setback, the space shall be used for one or more combination of:
  - i. Outdoor seating associated with a ground-floor establishment.
  - ii. Publicly available open space, such as a plaza or the like.
  - iii. Stoops leading to the building's entryway. In such cases the area outside of the stairs and associated walkway, if any, shall be highly landscaped with a variety of native plants, shrubs, grasses, and trees.
  - iv. An enclosed extended shopfront occupying a portion of the building.
  - v. Front garden space.
- b) The Planning Board may allow a waiver for greater front yard setbacks whereby in its judgment, doing so will contribute to an improved public realm. Space within the additional front setback shall not be used for parking purposes.
- c) Parking is prohibited within the front setback, unless a waiver is granted by the Planning Board. Consideration will be given only in situations where locating parking beyond the front setback is considered impractical or infeasible.

#### 4.4-DT: Downtown Transition





#### **A. Description**

The Downtown Transition District serves as a buffer between the vibrant, commercial-focused Downtown district and the quieter residential areas. This district supports a mix of lower-intensity commercial and residential uses, such as small offices, townhouses, and live-work spaces. Buildings are moderately scaled, with setbacks that ease the transition from the downtown core. Streets in this district are designed for walkability, featuring tree-lined sidewalks, pedestrian-friendly crossings, and limited on-street parking.

#### **B. Purpose**

- To address transitional areas at the edges of more intense mixed-use centers defined by a mix of homes and commercial spaces.
- To allow instances of lower intensity commercial uses in formerly residential buildings

#### DOWNTOWN TRANSITION DISTRICT – LOT STANDARDS

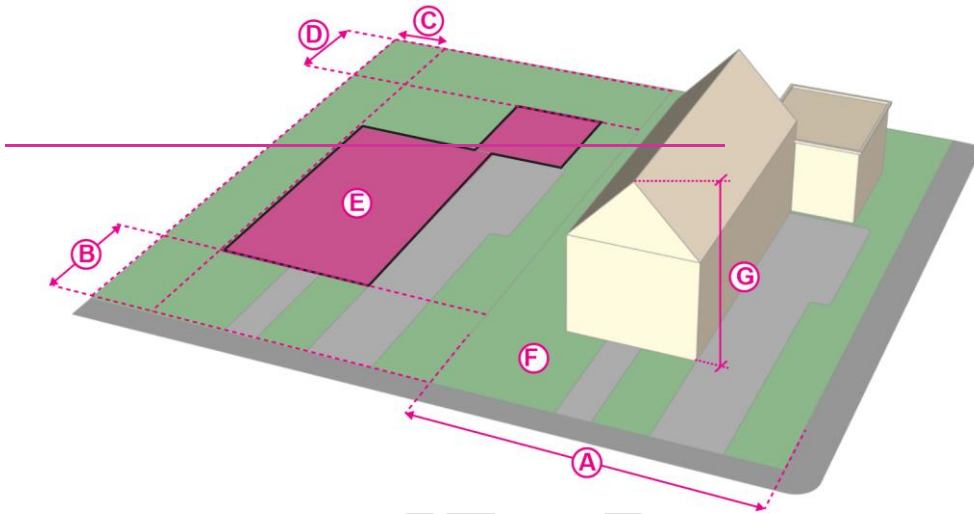


Table 4: Downtown Transition Lot Standards		DT
<b>Lot Standards</b>		
Minimum Lot Area	-	Residential: 10,000 sq ft Non-Residential: 4,000 sq ft
Minimum Width	A	35 ft
Minimum Front Setback	B	25 ft min
Minimum Side Setback	C	15 ft min
Minimum Rear Setback	D	15 ft min
Maximum Building Coverage (% of area)	E	30
Minimum Pervious Coverage (% of area)	F	30
<b>Height Standards (Stories/Feet)</b>		
Residential Uses	G	3 / 40
Non-Residential / Mixed-use	G	3 / 45

#### 4.5-3 HB: Highway Business

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##### A. Description

The Highway Business District is designed for auto-oriented commercial uses, offering convenient access for both local and through traffic. It accommodates larger retail, service, and other commercial spaces along with the potential for residential uses as part of mixed use development. High quality landscaping along the frontage makes for an attractive gateway to the Village.

##### B. Purpose

- To provide accessible commercial services to both residents and visitors, as well as to support businesses that benefit from high visibility and easy access to major roadways.
- To accommodate larger-scale retail, service, and hospitality establishments.
- To ensure safe and efficient traffic flow with sufficient parking.
- To maintain aesthetic standards with appropriate signage, landscaping, and buffering from adjacent residential districts.

HIGHWAY BUSINESS DISTRICT - LOT STANDARDS

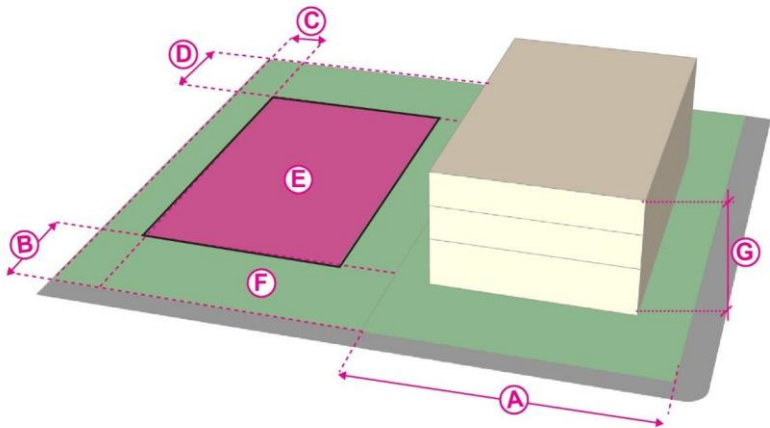


Table 54: Highway Business Lot Standards		HB
Lot Standards		
Minimum Lot Area	-	4,000 sq ft
Minimum Width	A	40 ft
Minimum Front Setback	B	25 ft min
Minimum Side Setback	C	15 ft min
Minimum Rear Setback	D	15 ft min
Maximum Building Coverage (% of area)	E	75
Minimum Pervious Coverage (% of area)	F	25
Height Standards (Stories/Feet)		
Commercial-Only Uses	H	3 / 30
Mixed-use / Residential	H	3 / 40

### C. Design Standards

**Table 35: Downtown Highway Business District Design Standards**

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Orientation	
1	Buildings along frontage must be oriented toward the street.
2	The front building line must be oriented parallel to the street.
3	At least one prominent entrance along the main building facade must include a direct pedestrian connection to the adjacent public sidewalk. On a corner lot, only one facade along a street must have a prominent entrance connected to the public sidewalk or such entrance may be located at the corner.
Façade Design	
4	Building facades that face a street must not contain blank wall areas that exceed 25 linear feet.
5	Building facades of 100' in length or greater that face a street must include a repeating architectural pattern with a minimum of two of the following elements: color change; texture change; material change; a wall articulation change, such as a reveal, recess, offset, or pilaster; or building recesses or projections. This includes patterns made by structural components visible through glass curtain walls.
6	Buildings must be designed with consistent building materials and treatments that wrap around all facades.
7	For structures three stories or more in height, facades must express a visual distinction between the ground floor and upper stories through architectural features or detailing, or change in materials. This includes patterns made by structural components visible through glass curtain walls.
8	Building facades that face a street must include windows, projected or recessed entrances, overhangs, and other architectural features.
Window Design	
9	The ground floor of a facade facing a public street must maintain a minimum area of windows of 40%, measured between two and eight feet in height of the ground floor facade.
10	Upper floors of a facade facing a public street must maintain a minimum area of windows of 20% of the wall area of the story.
11	All windows shall be clear or lightly tinted.
12	The use of opaque materials such as plywood, brick, metal, or sheet rock to cover or fill a window opening is prohibited.
Roof Design	

13	<u>Rooflines of 100' in length or more must be varied through the use of architectural design elements such as dormers, gables, or projected wall features. Such elements of variation may be no wider than 50'.</u>
14	<u>Where parapet walls are used, they must feature three-dimensional cornice treatments or other shadow-creating details along the top.</u>
15	<u>Reflective roof surfaces that produce glare are prohibited, except for cool roofs intended to radiate absorbed or non-reflected solar energy and reduce heat transfer to the building.</u>

#### **E.D. Frontage Landscape Standards**

Attractive, high-quality landscaping along the frontage of lots in the Highway Business district is desired to create an attractive gateway to the Village, while still allowing for the types of larger footprint commercial spaces conducive to this district.

##### **1. Applicable Area**

For areas not occupied by driveway access, 20 feet from the front lot line shall consist of well-manicured open space. This requirement may be reduced or waived by the Planning Board Permit Granting Authority only if it is determined that meeting such requirement is not feasible due to specific site constraints.

##### **2. Selection**

- a) All plants must meet minimum quality requirements and be free of defects, of normal health, height, leaf density, and spread as defined by the American Standard for Nursery Stock (latest available edition), American Horticulture.
- b) All plant materials must be capable ~~to of withstanding~~ withstand the seasonal temperature variations of the region, as well as the individual site microclimate.
- c) The use of native or naturalized vegetation is required. Invasive species are prohibited. Any species classified as invasive by the New York State Department of Environmental Conservation (NYSDEC) is prohibited. Salt tolerant landscape is encouraged where adjacent to salted infrastructure.

##### **3. Design**

- a) All landscaping plans must include plant materials ~~used must be~~ appropriate for the site and climate.

##### **4. Installation**

- a) All landscaping must be installed according to sound horticultural practices in a manner designed to encourage quick establishment and healthy growth, and per the ANSI A 300 Standard Practice for Tree, Shrub, and other Woody Plant Maintenance, most current edition and parts.
- b) Placement of plant material should be designed to help insulate and shade development, and create an attractive gateway to the village.
- c) Parking lot landscape is encouraged to coordinate with the design of parking lot lighting, to avoid conflicts between lighting and plant material that may result in the need for pruning or topping of required plant material.

5. Existing Trees and Shrubs

All existing trees and shrubs that are maintained on a site and in good health may be counted toward any required onsite landscape of this Article.

6. Minimum Planting Sizes

- a) Shade trees shall have a minimum trunk caliper of 2 inches at planting.
- b) Evergreen trees shall have a minimum height of six feet at planting. Single stem ornamental trees shall have a minimum trunk size of two inches in caliper at planting. Multiple stem ornamental trees shall have a minimum height of seven feet at planting.

#### 4.4 I: Industrial



##### A. Description

The Industrial District is ~~home-intended for to~~ a range of light industrial uses, research laboratories, technology companies, breweries, and other related enterprises. The district's infrastructure is designed to accommodate the needs of industrial operations, ensuring efficiency and accessibility for businesses of all sizes.

##### B. Purpose

- To promote and preserve this industrial area as an employment generator for the Village.
- To facilitate the necessary infrastructure to accommodate a wide variety of industries within the district.
- To facilitate the accommodation of existing traditional industries, while anticipating new technologies, ~~and~~ business service uses, and other uses conducive to the district.



INDUSTRIAL DISTRICT - LOT STANDARDS

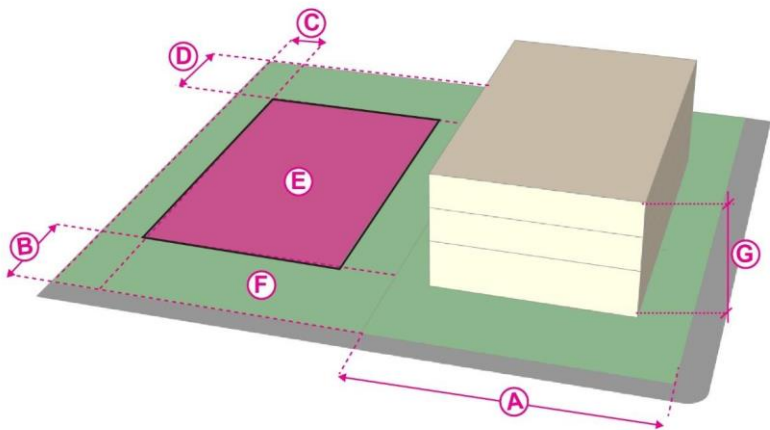


Table 6: Industrial District Lot Standards		I
Lot Standards		
Minimum Lot Area	-	9,000
Minimum Width	A	None
Minimum Front Setback	B	15 ft min
Minimum Side Setback	C	15 ft min
Minimum Rear Setback	D	15 ft min
Maximum Building Coverage (% of area)	E	60
Minimum Pervious Coverage (% of area)	F	None
Height Standards		
Stories / Feet	G	3/ 50

C. Design Standards

1. The design standards of Table 7: Industrial District Design Standards apply to facades or expansions located along frontages. The standards apply to development of new buildings. For the purposes of Table 7, when standards indicate that they are applicable when facing a street, this does not apply to alleys.

2. Renovations of the first floor of existing buildings within 60 feet of a street right-of-way shall not decrease the existing area of transparency. Where feasible, renovations shall increase the area of transparency to that required for new construction unless the original historic character of the building requires less transparency area.
3. Renovations of existing buildings shall not decrease the number of entrances. Where feasible, renovations shall include entrances and entrance design to that required for new construction unless this is incompatible with the original historic character of the building.

**Table 7: Industrial District Design Standards**

Orientation	
1	At least one prominent entrance along the main building facade must include a direct pedestrian connection to the adjacent public sidewalk. On a corner lot, only one façade along a street must have a prominent entrance connected to the public sidewalk or such entrance may be located at the corner.
Façade Design	
2	Building faeçades of 100' in length or greater that face a street must include a repeating architectural pattern with a minimum of two of the following elements: color change; texture change; material change; a wall articulation change, such as a reveal, recess, offset, or pilaster; or building recesses or projections. This includes patterns made by structural components visible through glass curtain walls.
3	Buildings must be designed with consistent building materials and treatments that wrap around all faeçades.
Landscaping	
1	Development must provide a buffer from adjacent residential areas through inclusion of trees, hedges, and other landscaping to minimize the visual impacts of the building.
Roof Design	
4	<del>Reflective roof surfaces that produce glare are prohibited, except for cool roofs intended to radiate absorbed or non-reflected solar energy and reduce heat transfer to the building.</del>

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#### **4.7 Planned Development District**

##### **A.—Purpose**

The PD Planned Development Districts recognize a defined area for unified and integrated development and are intended to create more flexible development opportunities than would be possible through the strict application of the land use and development regulations of this Code. Planned Development Districts allow diversification in the uses permitted and variation in the relationship of uses, structures, and open spaces and are conceived as cohesive unified projects with unique standards and regulations. The Zoning Map may be amended from time to time, by ordinance duly enacted by the Village Board of Trustees, to provide for planned development districts upon approval of a development concept plan as set forth herein. Planned Development Districts (PDD) shall achieve the following objectives:

- 1.—An alternative development pattern in harmony with the objectives of the comprehensive plan and other relevant Village plans.
- 2.—A creative use of land and related physical development allowing an orderly transition from one land use to another.
- 3.—Diversification in the uses permitted and variation in the relationship of uses, structures, open spaces and height of structures in developments conceived as cohesive unified projects.
- 4.—Unique standards for site and building design.
- 5.—The preservation and enhancement of desirable site characteristics, such as open space, natural topography, vegetation and geologic features and the prevention of soil erosion.
- 6.—Provision of public benefits to the Village.

##### **B.—Location**

The Planned Development District shall be applicable to any area of the Village of Ballston Spa where the applicant can demonstrate that the characteristics of the development will satisfy the intent and objectives of this Code and applicable requirements can be met. Existing single- and two-family homes are not permitted

sites for a PDD. Where a planned development is deemed appropriate, the rezoning of land to a Planned Development District will replace all use and dimensional specifications contained elsewhere in this Code, unless otherwise stated.

**C. District Ownership and Size**

1. All owners of the tract shall be included as joint applicants on all applications, and all approvals shall bind all owners. The violation of any owner as to any tract shall be deemed a violation as to all owners and all tracts.
2. No PD District shall be established having an area of less than six contiguous acres.

**D. Requirements and Standards**

1. The requirements and standards for a Planned Development District shall be determined for each individual project. At a minimum, the Planned Development District application shall include:
  - a) Purpose statement that includes how the project meets the objectives of Section 4.7.A.
  - b) The categories of permitted and/or special permit uses.
  - c) Lot frontage, coverage, and setback dimensions.
  - d) Building size and height limitations, including accessory structures.
  - e) Building design and frontage requirements.
  - f) Open space.
  - g) Parking and access.
  - h) For residential uses, whether the proposed development will include condominiums.
  - i) Unless otherwise addressed in the development concept plan, the general development standards of Article 6 shall apply to the Planned Development District.
  - j) The proposed ownership and management of the Planned Development District, including the buildings, landscaped areas, and open spaces.
2. Planned Development Districts shall be served adequately by, and shall not impose an undue burden upon, essential public facilities and services, including

but not limited to streets, traffic control signals and devices, public parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools. The burden of proof lies with the applicant and will be assessed by the Board of Trustees. A traffic impact study completed no more than one year prior to application must be included as part of this evidence must be included as part of this evidence. The Board may also request proof that the district will not place undue burden on additional public facilities and services it deems relevant. Where any such facility or service is not available or adequate to service the Planned Development District, the applicant shall be responsible for establishing their ability, willingness, and binding commitment to provide such facilities and services.

3. ~~All covenants, deed restrictions, easements, and similar restrictions to be recorded in connection with a Planned Development District shall provide that they can not be modified, removed, or released without the express consent of the Village of Ballston Spa Board and shall provide that they may be enforced by the Village of Ballston Spa in addition to the landowners within the Planned Development Districts. Additionally, such documents shall require expiration and language to remedy nonperformance.~~

4. ~~Nothing in the Development Concept Plan shall override, contradict, or invalidate any discretionary review procedures authorized by Article 11.~~

#### **E. ~~Procedures for Planned Development Districts~~**

##### **1. ~~Development Concept Plan Approval and Amendments~~**

a) ~~The development concept plan is any plan hereinafter adopted by the Village Board of Trustees, after a community forum, notice, and a public hearing, for the development or redevelopment of an area with specific geographic boundaries, which clearly identifies the purposes of the development or redevelopment and involves one or more elements of land acquisition, site clearance, rehabilitation or construction of buildings, construction or reconstruction of public improvements, and land disposition and which is~~

specifically designated a "development concept plan" for purposes of this Code:

- b) Prior to the scheduling of the public hearing, the applicant must participate in an advertised public forum hosted by the Planning Board where the applicant will present draft concepts, plans, and background information. Community participants must have the opportunity to provide feedback and ask questions about the proposed district. A public posting of the proposal in large format visible to public must be posted at the site of the proposed PDD with dates of meetings and opportunities for public input at minimum 30 days prior to each meeting.
- c) Along with the requirements and standards listed in Section 4.7, the applicant shall provide a development concept plan for the proposed Planned Development District or amendment of a previously approved development concept plan. The development concept plan or amendment to a development concept plan shall include:
  - i. District boundary lines and any proposed property boundaries.
  - ii. Existing and proposed principal and accessory buildings with proposed use.
  - iii. Existing and proposed parking areas, including bicycle parking.
  - iv. Vehicular, bicycle, and pedestrian circulation systems.
  - v. Lot coverage and building size (maximum gross square footage) calculations.
  - vi. Public and private open space.
  - vii. Existing and proposed utilities.
- d) The applicant may, at their option, submit an incremental development plan in accordance with item B below for the Planned Development District simultaneously with the submission of the development concept plan. In such case, the applicant shall comply with all provisions of this Code applicable to submission of the development concept plan and to submission of the incremental development plan.

e) The development concept plan for proposed Planned Development Districts, amendments to existing Planned Development Districts, and incremental development plans shall be subject to site plan review in accordance with Section 11.4:

f) Action by Planning Board:

i. Review by the Planning Board of Planned Development Districts or amendments shall follow the procedures set forth in Section 11.4:

ii. In considering the development concept plan and formulating its recommendations, the Planning Board shall specifically address the objectives and standards applicable to the proposed Planned Development District in this Article:

g) Action by Village Board:

Within 40 days following the receipt by the Village Board of the report of the Planning Board, or its failure to act as above provided, the Village Board shall conduct a public hearing. The Village Board shall:

i. Deny the development concept plan;

ii. Refer it back to the Planning Board for further consideration of specified matters; or

iii. By ordinance duly adopted, approve the development concept plan; with or without modifications to be accepted by the applicant as a condition of such approval, and amend the Zoning Map of the Village to designate the area included in the approved plan as "Planned Development District Number \_\_\_\_."

a. If the development concept plan is approved with conditions, the Zoning Map shall not be amended until the applicant has filed with the Planning Board written consent to such conditions:

b. In the event that a development concept plan is approved, or approved with conditions acceptable to the applicant, no development shall be permitted unless and until an incremental

development plan has been submitted and approved in accordance with the provisions of this Code.

2.—Incremental Development Plan Approval

- a) The incremental development plan is a plan showing development occurring wholly within the boundaries of an approved Planned Development District which complies with all of the standards and requirements of the development concept plan approved for the district.
- b) All incremental development plan approvals shall require site plan approval as set forth in Section 11.4.
- c) In addition to the requirements of site plan approval, if the Planning Board finds substantial conformity with the development concept plan and finds the incremental development plan to be in all other respects complete and in compliance with any conditions imposed by approval of the development concept plan, the Planning Board shall approve the incremental development plan. An incremental development plan shall be deemed not to be in substantial conformity with an approved development concept plan if one or more of the following occur:
  - i. Exceeds by more than 10% the maximum parking, building height, lot coverage, or setback requirements approved for the Planned Development District.
  - ii. Decreases by more than 10% the area approved for public and private open space or significantly changes the general location of such areas.
  - iii. Substantially relocates approved public circulation elements to any extent that would significantly decrease their functionality, adversely affect their relation to surrounding lands and circulation elements, or significantly reduce their effectiveness as buffers or amenities.
  - iv. Significantly alters the arrangement of land uses within the Planned Development District.
  - v. Provides for uses not included in the approved development concept plan.



- vi.—Exceeds by more than 10% of the maximum gross square footage and massing for residential uses and nonresidential uses;
- vii.—Relies on a development characteristic that is insufficiently provided for in the development concept plan;

d)—An approved incremental development plan may be amended or varied by submitting a new site plan to the Planning Board in accordance with Section 11.4. In the case that the adjustments exceed the thresholds established for the Planning Board by the development concept plan, the development concept plan must be amended as provided in this Article for original development concept plan approval.

### 3.—Limitations to Approvals

- a)—An approved PDD shall become null and void twenty-four months after the filing date with the Village Clerk, and the zoning district shall revert to the prior zoning district unless a building permit is obtained and maintained;
- b)—An incremental development plan approval shall become null and void six months after the date on which it was issued unless a building permit is obtained and maintained;

### 4.—Appeals

- a)—After a decision by the Planning Board on an incremental development plan application, an appeal of the application may be submitted to the Zoning Board of Appeals within 30 days of Planning Board's decision. A public hearing shall be set, advertised, and conducted by the Zoning Board of Appeals. The Zoning Board of Appeals shall review the Planning Board's decision. The Zoning Board of Appeals shall render a decision within 30 days following the conclusion of the public hearing to either approve, approve with conditions, or deny the application. The failure of the Zoning Board of Appeals to act within 30 days shall be deemed an endorsement of the decision of the Zoning Board of Appeals;

b) An appeal from any final decision of the Planning Board may be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or Board of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

**F.—Current Plan Submission**

- 1.—The current plan is a complete, comprehensive, and permanent public record of a Planned Development District. The current plan is intended only to put in final form the information contained in the development concept plan and shall conform to all prior approved and all approved conditions thereof resulting from the Planned Development District process. The current plan shall consist of a site map that reflects all approved incremental development as well as the development concept plan for all areas not yet approved through an incremental development plan. It shall also contain references to all development concept plan components outlined in this Article.
- 2.—A current plan must be submitted prior to any applications for amendments to the approved development concept plan or with request for approval of incremental development plans.

#### 4.5 Open Space District

##### A. Description

1. The Open Space District preserves and enhances the Village's open spaces and recreational areas by protecting these natural amenities and restricting development that does not respect these environmentally sensitive areas.

##### B. Purpose

1. To recognize the value and importance of these resources for local and regional residents.
2. To conserve, preserve, and enhance open spaces for passive and active recreational purposes.

##### A. Allowed Uses

1. The Open Space District is intended for passive and active recreational uses.
2. Uses permitted by-right include parks, playgrounds, trails, and the like.
3. Uses permitted by a special permit issued by the Planning Board include outdoor sports facilities, cemeteries, and the like.
4. Accessory uses, including parking facilities, require a special permit issued by the Planning Board.

##### B. Dimensional Standards

1. There is no minimum lot size.
2. Accessory structures may be permitted through a special permit issued by the Planning Board.
3. For accessory structures, heights are limited to 25 feet maximum.
4. For accessory structures, minimum front, side, and rear setbacks is 25 feet.

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#### 4.6 Residential Cluster Development

##### A.C. Purpose

- 1.3. A residential cluster development allows for an alternative to conventional residential subdivisions by allowing for homes set in a more compact setting, thus preserving open spaces for community use and increasing the Village's limited housing stock of ~~single-family~~ single-family homes.

2-4. Residential cluster developments are intended to promote community cohesion and quality of life in a development that complements the existing neighborhood context.

**B-D. Applicability**

A residential cluster development requires a Special Permit and may be proposed in all Residential districts.

**C-E. Minimum area size**

The minimum size ~~of~~ for a residential cluster development is 30,000 square feet comprised of a single lot or adjacent lots under common ownership.

**D. General Development Standards**

1. Housing types. Residential dwelling units shall be single-family structures.  
~~Duplexes~~ Two-family dwellings may be allowed ~~by Special Permit and at the discretion of the Planning Board and~~ must resemble single-family homes.
2. Residential cluster development may take one of two forms:
  - a) A development may be designed on individual lots of record.
  - b) A development may also be designed with multiple dwellings on a single lot of record.

**E. Use Limitations**

1. No principal uses other than ~~Only~~ single-family detached and two-family dwellings are permitted in a residential cluster development.
2. Buildings for common facilities for use by the residents, such as laundry facilities, communal kitchens, and common rooms, are also permitted.

**F. Development Standards**

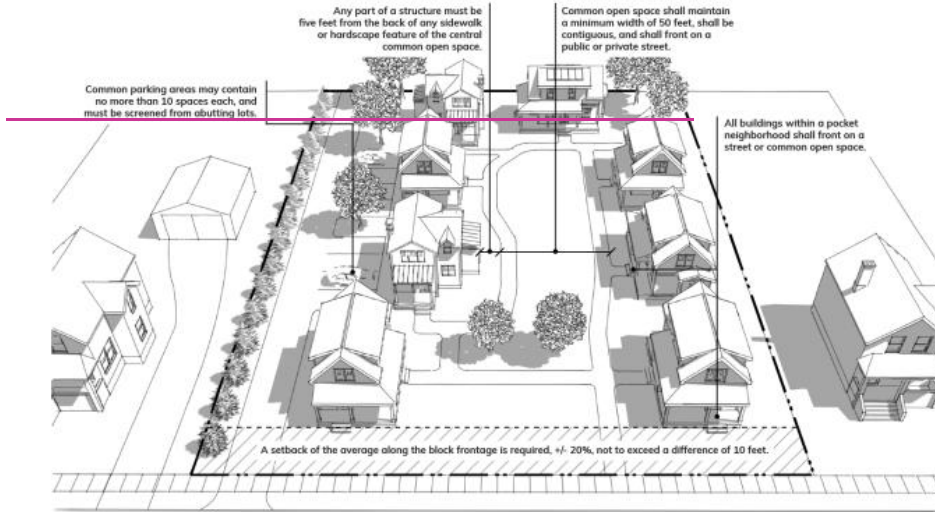
1. The following standards apply to the ~~pocket neighborhood residential cluster~~ development as a whole:
  - a) Along the lot lines of the development as a whole, a minimum setback of 15 feet is required.

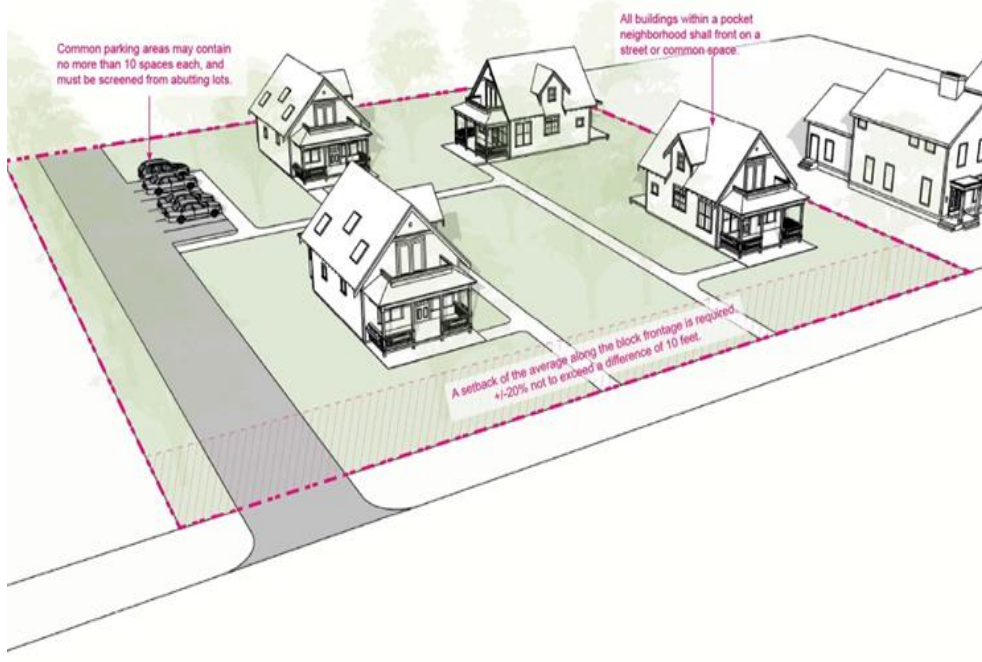
- b) Along the front lot line of the development as a whole, a setback of the average frontage of lots on the block is required. This setback may be adjusted up or down 20% from the average, but cannot exceed a difference of ten feet.
  - c) The development as a whole is limited to a maximum impervious surface coverage of 65%.
- 2. All buildings within the ~~pocket neighborhood~~ residential cluster development shall front on a street or a common open space.
  - 3. Central common open space is required and shall meet the following standards:
    - a) The minimum size of the central common open space is ~~3,000 square feet~~ 10% of total area feet, or 500 -square feet per dwelling unit, whichever is greater.
    - b) The central common open space shall maintain a minimum width of 50 feet, shall be contiguous and centrally located, and shall front on a public or private street.
    - c) A maximum of 30% of the central common open space may be hardscape.

#### **G. Other Development Standards**

- 1. Once central common open space requirements are met, additional common open space within the development is permitted.
- 2. Any part of a structure must be five feet from the back ~~from of~~ any sidewalk or hardscape feature of the central common open space. This does not include steps, access ramp, and similar access features.
- 3. Vehicular access to a parking area for a ~~pocket neighborhood~~ residential cluster development shall meet the following standards:
  - a) Required off-street parking may be provided on individual development sites for each dwelling within the ~~pocket neighborhood~~ residential cluster development or in a shared parking area serving multiple dwellings on-site. Common parking must be screened from abutting lots that are not part of the development. Parking may not be located between principal structures and the street, between a common area and a street, or within any required common area.

# POCKET NEIGHBORHOOD RESIDENTIAL DEVELOPMENT





#### 4.7 Adult Use Overlay District

- A. **Purpose.** The purpose of the Adult Use Overlay district is to comply with Federal law while minimizing potential harm and adverse conditions associated with sexually-oriented uses.
- B. **Applicability.** The Adult Use Overlay shall be construed as an overlay district, providing an alternative to the base zoning district upon which it is superimposed. The property within such district shall be controlled by the regulations of the underlying zoning district except as hereunder specified.
- C. **Dimensional Standards.** The dimensional standards of the Downtown District apply.

D. **Uses.** See Article 5 for applicable Uses and Use Standards.

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## ARTICLE 5. USE STANDARDS

### 5.1 Purpose of Use Standards

- A. The purpose of these use standards is to place restrictions on specific uses, both permitted and ~~by~~ special permit, because of potential impacts to surrounding properties. These restrictions are applied to a project to mitigate impacts including noise, off-site parking, traffic, unsightliness, odors, dust, and fumes. These standards promote the public health, safety, and character of the immediate neighborhood and the larger community.
- B. For uses listed in this Article that require a special permit, the Planning Board may waive any of the standards imposed by this Article when it finds such action is warranted by reason of the unique physical conditions of the particular property or by reason of the particular character of surrounding properties. When a use listed in this Article is a permitted use, ~~a special permit, a waiver~~ from the Planning Board is required to waive any of the requirements imposed by this Article. Prior to making a waiver determination, the Planning Board shall evaluate the following factors when applying their respective standards:
1. The size and intensity of such use.
  2. The capacity of adjacent and feeder streets to handle peak traffic loads and hazards created by the use.
  3. The obstruction of light or air or the emission of noise, light, smoke, odor, gas, dust, or vibration in noxious or offensive quantities, and the distance between offensive processes and abutting properties.
  4. The overall effect on property values and utilization of neighboring properties.
  5. Unusual topography of the location, and the nature, location, and height of buildings, walls, stacks, fences, grades, and landscaping on the site.
  6. The extent, nature, and arrangement of parking facilities, entrances, and exits.
  7. Problems ~~of regarding fire, and police, and emergency services protection.~~
  8. Preservation and/or upgrading of the neighborhood character.
  9. The ~~availability of ability to adequate sewer manage wastewater r~~ and ~~availability of~~ water supply.
  10. All other standards prescribed by ~~these regulations is code.~~

## 5.2 Use Table

- A. Table 8 identifies uses allowed in each zoning district.
- B. Certain use provisions have additional requirements identified in Section 6.2. If the use does not meet the requirement, a use variance is required.
- C. Any uses not identified in the Table of Uses are prohibited and would require a use variance.

### Residential Districts

Residential 1A	R-1A
Residential 1B	R-1B
Residential 2	R-2
Residential 2-S	R-2S (See Appendix for allowed uses.)

P = Permitted  
SP = Special Permit  
[-] = Prohibited

### Commercial and Mixed-Use Districts

Downtown	D
Downtown Transition	DT
Highway Business	HB

### Industrial District(s)

Industrial	I
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### Open Space District(s)

Open Space	OS. See 4.7 for allowed uses
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### Overlay District(s)

Adult Use	AD
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TABLE 8: TABLE OF USES							
Use Category	R-1A	R-1B	R2	D	HB	I	AD
<b>Residential Uses</b>							
One-family dwelling	P	P	P	SP	-	-	-
Two-family dwelling	-	-	P	SP	-	-	-
Multiple-family dwelling	-	-	P	SP	SP	-	-
Townhouse	-	-	P	-		-	-
Mixed-Use	-	-	P	P	P	-	-
Senior Living Residences	SP	SP	SP	SP	SP	SP	-
Mobile home park	-	-	-	-	-	-	-
<b>Commercial Uses</b>							
Bed-and-breakfast	-	-	P	SP	P	-	-
Cannabis Dispensary	-	-	-	SP	SP	-	-
Hotel	-	-	-	P	P	-	-
Motel	-	-	-	-	P	-	-
General Services	-	-	-	P	P	P	-
Professional and personal service uses	-	-	SP	P	P	-	P
Retail	-	-	-	P	P	-	P
Eating and drinking establishment	-	-	-	P	P	P	P
Office	-	-	-	P	P	P	-

TABLE 8: TABLE OF USES							
Use Category	R-1A	R-1B	R2	D	HB	I	AD
Bank and Financial Institution	-	-	-	P	P	-	-
Electronic repair, electrician, appliance sales	-	-	-	P	P	SP	-
Automobile sales	-	-	-	SP	P	P	-
Commercial parking lots / garage	-	-	-	P	P	P	-
Vehicle Fueling Station	-	-	-	SP	P	P	-
<b>Institutional Uses</b>							
House of worship	SP	SP	SP	P	SP	-	-
Funeral home or undertaker	SP	SP	SP	-	SP	-	-
Hospital or health care facility	SP	SP	SP	-	SP	-	-
Nursing or convalescent home	SP	SP	SP	-	SP	-	-
Offices (state, federal or county)	SP	SP	SP	P	-	-	-
Offices (village)	-	-	-	P	-	-	-
School	SP	SP	SP	-	SP	-	-
<b>Recreational Uses</b>							
Public parks or playground	SP	SP	SP	P	P	SP	-
Club or lodge, social, recreational or fraternal	-	-	-	SP	SP	-	-
Library or museum	-	-	-	P	SP	-	-
<b>Industrial Uses</b>							
Automotive repair	-	-	-	-	P	SP	-

TABLE 8: TABLE OF USES							
Use Category	R-1A	R-1B	R2	D	HB	I	AD
Builder or contractor, carpenter, and the like	-	-	-	-	P	SP	-
Light Manufacturing	-	-	-	-	-	P	-
Newspaper, publisher or printer	-	-	-	P	P	P	-
Garden nursery or greenhouse	-	-	-	-	P	P	-
<b>Adult Uses</b>							
Sexually-oriented uses	-	-	-	-	-	-	SP
<b>Accessory Uses</b>							
Accessory Dwelling Unit	SP	SP	SP	-	-	-	-
Home-based business Occupation	SP	SP	SP	-P	-	-	-
Short-term rental	TBD	TBD	TBD	TBD	TBD	TBD	
Drive-through window	-	-	-	-	P	P	-
Solar energy system	SP	SP	SP	SP	P	P	-
Wind energy conversion system	SP	SP	SP	SP	SP	SP	-

The following uses are prohibited in all districts:

- Mobile homes
- Mobile home park
- Short-term rentals

## 5.3 Use Standards

### A. Use Standards: Mixed-Use

#### 1. General

- a) Mixed-use may refer to a single building with multiple uses or multiple buildings on the same lot. The standards below provide use requirements based upon the district.

#### 2. Downtown District

- a) In the Downtown ~~District~~, the ground-floor of all buildings must be occupied by non-residential uses. Residential and other uses are limited to upper stories only with the exception of entryways leading to upper floors.
- b) Refer to Section 4.3.D for design standards associated with mixed-use development.

#### ~~3. Residential Transition~~

- ~~a) In the Downtown Transition residential uses are permitted on the ground floor along with commercial uses.~~

#### ~~4.3.~~ Highway Business

- a) The ground-floor area of any building along the frontage must contain commercial uses. Residential uses are permitted on the ground floor only when located to the rear of commercial uses, either in the same building or as a separate building. Residential uses are also permitted on upper floors of any building.

### B. Use Standards: Commercial and Industrial Uses

#### 1. Bed and Breakfast

- a) No alteration to ~~either the exterior or the interior~~ of any principal or accessory structure shall be made which changes the character and appearance of the residential premises.
- b) Cooking equipment is prohibited in individual guestrooms, with the exception of minor appliances such as mini-refrigerators, coffee makers, and/or microwaves.

## 2. Light industrial

In the Industrial District:

- a) The portion of the building used for ~~the~~ light industrial shall be designed and maintained to prevent noise, vibration, odor, dust, smoke, observable gas or fumes, or other observable atmospheric pollutants emanating from the use onto abutting uses, including as necessary to prevent such impacts, closing window and doors, screening window and doors, and installing proper ventilation or noise reduction equipment.

## 3. Vehicle Body Work

- a) Vehicle body work establishments shall be located at least 100 feet from the lot line of an abutting residential district or residential use, as measured from the lot lines of the vehicle body work establishment.
- b) All repairs shall be performed within an enclosed principal building on the premises.
- c) The portion of the building used for the body work repair shall be designed and maintained to prevent light, noise, vibration, odor, dust, smoke, or other emissions emanating from the use onto abutting uses, including as necessary to prevent such impacts, closing windows and doors, screening windows and doors, and installing proper ventilation or noise reduction equipment.
- d) Sufficient screening shall be provided along all lot lines abutting a residential district or residential use as follows:
  - i. A solid fence or wall, a minimum of six feet and a maximum of eight feet in height.
  - ii. One evergreen shrub must be planted for every three linear feet ~~and spaced sufficiently~~ to form a continuous linear hedgerow at plant maturity; plantings must be placed inside the fence oriented to the interior of the lot.
  - iii. ~~Chain-link fences are prohibited~~ prohibited
- e) No partially dismantled or wrecked vehicle shall be stored for more than 72 hours outside of a completely enclosed building.

#### 4. Vehicle Fueling Station

- a) Vehicle fueling station may also include any of the following activities:
- i. Electric vehicles charging stations.
  - ii. Retail dispensing or sales of automobile lubricants, including oil changing and chassis lubrication where substantial disassembly is not required.
  - iii. Retail dispensing or sales of automobile coolants.
  - iv. Hand or machine washing in a fully enclosed single bay auto wash.
  - v. Incidental repair or replacement of parts, such as windshield wiper blades, light bulbs, air filters, oil filters, batteries, belts, fuses, and the like. Vehicle wrecking, vehicle repair, parking or storing of vehicles for hire, and the operation of more than one towing vehicle are not permissible incidental uses of a vehicle fueling station.
- b) No outdoor storage of materials, merchandise, ~~and/or~~ equipment shall be permitted during nonbusiness hours. Storage of materials, merchandise and equipment during nonbusiness hours shall take place within the principal building or within closed, secure containers such as outdoor storage cabinets.
- c) Refuse and trash may be stored outdoors at all times only if placed in closed containers located in an area screened from view at all points on any public or private property or street when viewed from ground level.
- d) No partially dismantled or wrecked vehicle shall be stored outside of a completely enclosed building for any length of time.

#### 5. Vehicle Repair

- a) Vehicle repair establishments shall be located at least 100 feet from the lot line of an abutting residential district or residential use, as measured from the lot lines of the vehicle body work establishment.
- b) All repairs shall be performed within an enclosed principal building on the premises.



- c) A fence that is a minimum of 60% open shall be located along any street lot line, with the exception of ingress/egress points. Such fence shall be a minimum of four feet to a maximum of six feet in height.
- d) Sufficient screening shall be provided along all lot lines abutting a residential district or residential use as follows.
  - i. A solid fence or wall, a minimum of six feet and a maximum of eight feet in height.
  - ii. As an alternative to d.i above, one evergreen shrub must be planted for every three linear feet and spaced sufficiently to form a continuous linear hedgerow at plant maturity; plantings must be placed inside the fence oriented to the interior of the lot.
  - iii. Chain-link fences are prohibited
- e) No partially dismantled or wrecked vehicle shall be stored for more than 72 hours outside of a completely enclosed building.

### C. Use Standards: Accessory Uses

#### 1. Miscellaneous Accessory Uses

- a) Miscellaneous accessory uses and structures including private garages, carports, sheds, gazebos, pools, and the like, are permitted in all districts, subject to dimensional and lot standards.

#### 2. Accessory Dwelling Unit (ADU)

- a) Only one ADU is permitted per lot per single-family dwelling.
- b) The owner of the property on which the ADU is located shall be required to reside in either the primary dwelling unit or in the ADU.
- c) A proposed change of tenancy of the ADU renders the existing Special Permit null and requires application of a new Special Permit.
- d) An attached ADU must be fully attached to or within the principal structure on the lot. A minimum of 25% of the total wall area or the floor or ceiling of the ADU must be fully connected to a wall, floor, or ceiling of the principal residential structure.

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- e) A detached ADU must be located in the rear yard.
- f) An ADU is limited to a maximum of two bedrooms.
- g) The maximum size of an ADU is 1,000 square feet.
- h) The maximum height of a detached ADU is 24 feet or the height of the principal building, whichever is less.
- i) The addition of an attached ADU to an existing structure cannot extend past the existing building's front building line.
- j) ADUs are prohibited from being used as short-term rentals

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### 3-2. Solar Energy Systems

- a) Solar Energy Systems must comply with all State regulations. In cases where the standards of this section conflict with State regulations, the State regulations shall apply.
- b) Siting of solar energy systems are limited to the roofs of structures, pole-mounted systems, or incorporated into parking lot design.
- c) The application for any approval of a solar energy system shall include:
  - i. A screening/landscaping plan that specifies the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system; and
  - ii. A detailed safety plan specifying the measures that will be used to prevent public access to unsafe areas and to provide for emergency response, including but not limited to the location, height, materials, and colors of fencing and other barriers to access and a safety signage plan that contains the locations, sizes, and text of signs that will be used to warn the public away from unsafe areas and that shall include the name and phone number of an official of the owner or operator who can be contacted in the event there is an emergency or any question about safety.

ii. A decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the Solar Energy System, which Plan shall include an estimate of the anticipated operational life of the system, identification of the party responsible for decommissioning, the time required to decommission and remove the system and any ancillary structures including non-utility owned equipment, conduit, fencing, roads, and foundations, the time required to restore the property following removal of the system to the condition prior to site development, and the provision of a decommissioning security of the deposit, executions, or filing with the Village Clerk of cash, bond, or other form of security reasonably acceptable to the Village Attorney and/or Engineer to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto regarding decommissioning of the Solar Energy System, and to provide for the removal of the system and restoration of the site.

- d) No element of the system shall reflect sunlight or glare onto a neighboring property, public right-of-way, or aircraft flight path.
- e) All solar energy systems shall meet the district setbacks. Where a lot used for a solar energy system abuts the lot line of a residential district, residential use, or street, it must be setback a minimum of 50 feet from that lot line.
- f) No grid-tied solar energy system shall be installed until evidence is provided that the owner is approved by the utility company to install the system.
- g) The solar energy system shall be removed, at the owner's or operator's expense, within 180 days of determination by the Planning Board that the system is no longer being maintained in an operable state of good repair or no longer supplying solar power.
  - i. Removal shall be in accordance with the decommissioning plan and shall include, but not be limited to include solar collectors, cabling, electrical components, accessory structures, and any associated facilities below grade.

- ii. Disturbed earth shall be graded and reseeded with perennial grass seed and mulched, according to the Erosion and Sediment Control Model Ordinance recommendations.

- h) Solar energy projects that generate over 25 MW are subject to review and permitting by the New WYork Office of Renewable Energy Siting.

#### 4.3. Swimming Pools

- a) Swimming pools must comply with all State regulations. In cases where the standards of this section conflict with State regulations, the State regulations shall apply.
- b) Swimming pools, hot tubs, and the like are allowed in the rear yard only.
- c) Swimming pools must meet the applicable yard setback requirements for the district except that the pool may be a minimum of five feet from the principal structure.
- d) Swimming pools are subject to the requirements of the Building Code.

#### 5. Wind Energy Conversion System

##### a) Setbacks for Wind Turbines

###### i. General

A ground-mounted wind turbine shall be set back from all lot lines and overhead utility lines a minimum distance equal to one and one-tenth times the height of the wind turbine. Turbine setbacks shall be measured from the center of the wind turbine base. With respect to an overhead utility line that provides service only to a single building or a single parcel of land, the setback requirement shall be met if the turbine is placed so that no portion of a rotor blade extends closer than five feet to the utility line.

###### ii. Residential

With respect to residential districts, a wind turbine, including a wind turbine located in a residential district, shall be set back from any abutting residential district lot line a minimum distance equal to two times the height of the wind turbine. In the case of a wind turbine that does not exceed 35 feet

in height that is located in a residential district, the wind turbine shall be set back at least 15 feet from all lot lines, and no portion of a rotor blade shall extend closer than five feet to any lot line.

b) ~~Height~~

~~The height of a ground-mounted wind turbine shall be limited by the setback requirements of this section. The height of a rooftop or other building-mounted wind turbine shall not exceed the maximum permitted building height for the property by more than 20%.~~

c) ~~Lighting~~

~~Wind turbines shall not be illuminated except as required by the Federal Aviation Administration or other applicable governmental entities.~~

d) ~~Structural Design~~

i. ~~Wind turbines shall be designed to meet all requirements of the Building Code of the State of New York and the Village of Ballston Spa and all other applicable state and federal regulations.~~

ii. ~~To prevent unauthorized climbing, climbing pegs must be removed from the lower ten feet of the turbine, or ladder access must be restricted. All access doors to wind turbines and electrical equipment must be locked or fenced, as appropriate, to prevent entry by unauthorized persons.~~

e) ~~Aesthetic Design~~

~~Wind turbines must be a non-obtrusive and non-reflective color, such as white or off-white. The facility owner or operator must maintain the paint on wind turbines at all times in good repair. Non-essential appurtenances may not be affixed to any wind turbine, including, but not limited to, wireless or radio~~

f) ~~Signs~~

~~No signs shall be located on or around a wind turbine except for necessary warning signs or informational signs located at or near ground level.~~

g) ~~Operation~~

- i. ~~During normal operation, wind turbines may not exceed five dBA over ambient sound as measured at the closest neighboring inhabited dwelling in existence at the time of application for the wind farm. This sound level may be exceeded during short-term events, such as utility outages and storms.~~
- ii. ~~A wind turbine may not cause shadow flicker to fall upon any window of an inhabited dwelling that exists at the time of application for the wind farm.~~
- iii. ~~A wind turbine must employ preventive measures to eliminate any deleterious effects of ice throw.~~

~~h) Termination of Use~~

~~A wind energy system that has reached the end of its useful life must be removed within six months of such determination. A wind energy system is considered to have reached the end of its useful life when it has been inoperable for six consecutive months. Foundations must be removed and the site restored.~~

6-4. Home Occupation

- a) The purpose of this section is to allow home occupations in residential districts while still maintaining the residential character of the districts.
- b) Home occupations must meet the following criteria:
  - i. Home occupations must clearly be accessory to the use of the dwelling unit as a residence, the extent of which may not exceed 25% of the gross floor area of the dwelling unit.
  - ii. Stock-in-trade shall be contained within the permitted portion of the floor area for the home occupation and shall not be visible from the street.
  - iii. There shall be no outdoor storage of equipment or materials used for the home occupation.
  - iv. No mechanical, electrical or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisance outside the residential or accessory structure shall be used.

- v. No home occupation shall be permitted which is noxious, offensive, or hazardous by reason of hours of operation, vehicular traffic, generation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation, or other objectionable emissions.
- c) Not more than one person who is not a member of the family residing on the premises shall be employed in the home occupation.
  - i. Sexually Oriented Businesses are prohibited as a home occupation.

#### **D. Sexually Oriented Business.**

This section regulates sexually oriented businesses.

##### **1. Purpose**

The purpose of this section is to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Village. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any speech, including sexually oriented speech. Similarly, this section is not intended to ~~effect~~[affect](#) the restriction or denial of access by adults to speech protected by the First Amendment and New York Constitution, or to deny access by the distributors and exhibitors of sexually oriented speech to their intended market. Neither is the intent nor effect of this section to condone or legitimize the distribution of obscene material.

##### **2. Single Adult Use Per Location**

There shall only be one sexually oriented business permitted on a single premises.

##### **3. Measurement**

- a) Stock-In-Trade. The number of items in stock in the sales and display area at the time of a site inspection. The number of sexually oriented items shall be calculated as a percentage of total items.
- b) Sales and Display Area. The entire interior floor space of a business establishment devoted to sales and display, including aisles, measured in

square feet at the time of a site inspection. The floor space devoted to sales and display of sexually oriented materials shall be calculated as a percentage of total sales and display area.

- i. Where sexually oriented materials are physically separated from other materials by an eight-foot wall, the separate sales and display area (including any aisles) shall be compared to the total sales and display floor area.
- ii. Where floor area includes a mixture of sexually oriented material with any other material, it shall be counted as sexually oriented. Any such area shall include 1/2 of the area of any aisles adjacent to the display or sales of sexually oriented materials.

#### 4. Supplemental Standards

- a) **Adult Arcade, Adult Cabaret, or Adult Retail Store.** An adult arcade, adult cabaret, or adult retail store shall be licensed by the Village of Ballston Spa.
- b) **Adult Movie Theater.** An adult movie theater shall be licensed by the Village of Ballston Spa. All aisles shall have theater runway and aisle lighting that illuminates the entire floor surface of the aisle.
- c) **Adult Retail Store.** The store shall separate all sexually oriented material from other sales and display areas using an opaque wall at least eight feet in height. Such an area shall incorporate a management-controlled system of access to ensure that only persons over the age of 18 years are allowed to enter. The owner or operator shall have the affirmative duty to prevent the public display of sexually oriented material at or within the portions of the business open to the general public.



## ARTICLE 6. GENERAL SITE DEVELOPMENT STANDARDS

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### 6.1 On-Site Development Standards

#### A. Purpose

The requirements of this section and this Article regulate activities, uses, structures, conditions, and treatments that may be present on a property, whether or not a principal structure or use is present. These requirements contribute to and promote the health, safety, comforts, conveniences and/or necessities of the property's occupants, the immediate neighborhood, and/or the entire Ballston Spa community.

### 6.2 Pedestrian Facilities

#### A. Applicability

The following standards apply to all developments subject to site plan review.

#### B. Sidewalk Requirement

1. In all districts, as part of site plan approval, if a sidewalk does not exist along the frontage of the property at time of application, the applicant must construct a sidewalk along said frontage.
2. Construction of sidewalks must abide by all local, state, and federal laws.

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### 6.23 Exterior Lighting

#### A. Applicability

The following standards apply to all nonresidential, mixed-use, ~~and~~ multi-family, and residential cluster developments.

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#### B. Lighting Standards

- No use shall produce a strong, glaring light or reflect a strong light or glare that is visible from any point along a lot line.
- Lighting for pedestrian areas and sidewalk shall not exceed 15 feet in height.
- All light fixtures shall be concealed source fixtures except for pedestrian-oriented accent lights.
- Security lighting fixtures shall not project above the facade or roofline of any building and are to be shielded. Security lighting fixtures shall not be substituted for parking lot or walkway lighting fixtures and are restricted to only lighting ~~only~~ loading and storage locations or other similar areas requiring security lighting.

5. Service-area lighting shall be contained within the service yard boundary. No light spillover shall occur outside the service area; the light source shall not be visible from the street.
6. Exterior wall-mounted floodlights shall be prohibited except for security lighting in enclosed service courtyards.

**C. Exceptions to Lighting Standards**

1. All temporary emergency lighting required by public safety agencies, other emergency services, or construction are exempt from the requirements of this Code.
2. Because of their unique requirements for nighttime visibility and limited hours of operation, outdoor recreational fields (public or private) such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, driving ranges, and other similar uses are exempt from the lighting standards of Item B above.
3. Temporary holiday and seasonal lighting designs are exempt from the requirements of this Code.
4. Certain temporary uses may use lighting that does not meet the requirements of this section. When such temporary uses are allowed, approval of the lighting plan is required as part of the temporary use permit.

**D. Prohibited Lighting**

1. Flickering, animated, or flashing lights.
2. Signs with video screens incorporated.
3. Searchlights, laser source lights, or any similar high intensity.
4. Any light fixture that can be confused with or construed as a traffic control device.

**6.34 Refuse and Recycling Containers**

These provisions do not apply to standard personal refuse and recycling bins, approximately 96 gallons or less in size.

- A.** Refuse and recycling containers are prohibited in the front or corner side yard.
- B.** Enclosures are required as follows as practicable:
  1. All refuse and recycling containers must be fully enclosed on three sides by a solid fence, wall, or wall extension of the principal building a minimum of six feet and a maximum of eight feet in height. The wall or wall extension must be constructed as an integral part of the building's architectural design.

2. The enclosure must be gated. Such gate must be solid and a minimum of six feet and a maximum of eight feet in height. This requirement does not apply to refuse containers located adjacent to an alley.
3. The gate must be maintained in good working order and must remain closed except when refuse/recycling pick-ups occur.
4. Refuse and recycling containers must remain in the enclosure with the gate closed and/or locked.

#### **6.45 Mechanical Equipment and Aboveground Utility Equipment**

Mechanical equipment, such as heating, ventilation, and air conditioning (HVAC) equipment, heat pumps, electrical generators, power storage, pool pumps, and above ground utility equipment is subject to the following standards.

##### **A. Ground-Mounted Equipment**

1. Equipment is prohibited in the front and corner side yard. Equipment is allowed in the interior side or rear yard.
2. For multi-family and nonresidential uses, ground-mounted equipment must be screened from public view by a decorative wall, solid fence, or evergreen landscaping that is compatible with the architecture and landscaping of a development site. The wall, fence, or plantings, at maturity, must be of a height equal to or greater than the height of the equipment being screened.

##### **B. Roof-Mounted Equipment**

1. All roof equipment, excluding roof-mounted solar energy systems,† must be set back from the edge of the roof a minimum distance so as not visible from the ground view of the public way.
2. Where it is not feasible for roof equipment to meet the requirement of item 1 above, there must be either a parapet wall to screen the equipment or the equipment must be housed in a screening structure that is architecturally integrated with the principal structure to shield from both views from the street and adjacent neighbors.

#### **6.56 Performance Standards**

All uses must comply with the performance standards established in this section unless any federal, state, or local law, code, ordinance, or regulation establishes a more restrictive standard, in which case, the more restrictive standard applies.

##### **A. Noise**

All uses shall be subject to Chapter 147 of the Municipal Code.

#### **B. Glare and Heat**

Any activity or the operation of any use that produces glare or heat must be conducted so that no glare or heat from the activity or operation is detectable at any point off the lot on which the use is located. Flickering or intense sources of light must be controlled or shielded so as not to cause a nuisance across lot lines.

#### **C. Vibration**

No vibration from the operation of any use may be detectable at any point off the lot on which the use is located.

#### **D. Air Quality**

1. Emissions to the outdoor atmosphere, including but not limited to any dust, fumes, gas, mist, odor, smoke, vapor, toxic or deleterious emission, either alone or in combination with others, are subject to the specific air quality standards and emissions limits set forth in the Federal Clean Air Act and the New York State Air Pollution Control Rules and Regulations as administered by the New York State Department of Environmental Conservation (NYSDEC).
2. Notwithstanding the existence of any New York State or federal permits or approvals, no use or structure shall emit smoke, dust, heat or heated air, noxious odors, odorous gases or other matter in such quantities as to be readily discernible on neighboring property and detrimental to the use and enjoyment of such neighboring property.

#### **E. Water Pollution**

Storage of materials must include all proper precautions to protect any surface water or groundwater sources, whether natural or manmade, from contamination.

#### **~~F. Radioactive and Hazardous Waste~~**

~~Radioactive and hazardous material waste must be transported, stored, and used in conformance with all applicable federal, state, and local laws.~~

#### **~~G.F.~~ Odors**

Any condition or operation which results in the creation of odors of such intensity and character as to be detrimental to the public health and welfare ~~, or which interferes unreasonably with the comfort of the public,~~ must be removed, stopped, or modified so as to remove or reduce the odor.

#### **~~H.G.~~ Fire and Explosion Hazards**

Materials that present potential fire and explosion hazards must be transported, stored, and used only in conformance with all applicable federal, state, and local regulations.

#### **H. Drainage**

No stormwater which originated on the property, or water generated by an activity, such as swimming pools, may be drained across property lines. No natural drainage may be diverted to cross property lines unless transported in an approved or existing drainage system.

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## ARTICLE 7. OFF-STREET PARKING AND LOADING

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### 7.1 General

Each off-street space shall consist of at least 162 square feet per car with a minimum width of nine feet. In addition, space necessary for aisles, maneuvering, and drives shall be provided.

- A. For uses not specified in Section 7.2 the Planning Board shall establish parking requirements consistent with those specified in Section 7.2.
  - 1. For any building having more than one use, the applicant may propose whether a portion of the spaces required for each individual use can be counted as part of a “shared parking” arrangement. The Planning Board will make a determination for whether such a proposal is acceptable, to meet the required parking.
  - 2. Required parking spaces for residential uses other than multifamily and mixed-use shall be located on the same lot as the principal use.
  - 3. Parking spaces required for other uses may be located within 41,000 feet of the principal use to which they are accessory, and such spaces shall conform to all regulations of the district in which they are located.
  - 4. Where permitted, parking or storage of unregistered or inoperative road vehicles for a period of more than seven days shall be in the rear yard only.
  - 5. In no event shall any part of the parking lot areas, lawn or other required open space be used for the storage or abandonment of any articles or goods or the storage of trucks or trailers.
- B. Development and maintenance of off-street parking and loading areas for uses other than single-family, two-family, or three-family dwellings.
  - 1. All off-street loading areas shall be located on the same lot as the use for which they are permitted or required.
  - 2. Each required loading berth may be open or enclosed and shall have the following minimum dimensions: 35 feet long, 12 feet wide, and 14 feet high. Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area or accessway.
  - 3. Screening. Off-street parking or loading areas shall be screened from adjoining residential lots by walls, fences or evergreen hedges of sufficient height as determined by the Planning Board.

4. Every parcel of land hereafter used as a public or private parking area or loading area, including a commercial parking lot, shall be developed and maintained in accordance with the following requirements:
- a) **Minimum distances and setbacks.** No off-street parking areas for more than five vehicles or off-street loading area shall be closer than 10 feet to any dwelling, school, hospital or any other institution for human care located on an adjoining lot. If the off-street parking area is located adjacent to a residential district, a minimum ten-foot paved area setback from the property line shall be required.
  - b) **Surfacing.** With the exception of properties used solely for residential dwellings, any off-street parking or loading area shall be surfaced with an asphaltic or portland cement binder pavement or similar durable and dustless surface which shall be so graded and drained as to dispose of all surface water accumulated within the area and shall be so arranged and marked as to provide for the orderly and safe loading, parking and storage of vehicles.
  - c) **Lighting.** Any lighting used to illuminate any off-street parking or loading area shall be so arranged as to reflect the light away from the adjoining premises in any residential district.
  - d) **Modification of requirements.** The ~~Zoning Board of Appeals~~ Planning Board may authorize, on appeal, a modification, reduction or waiver of the foregoing requirements if it should find that in the particular case appealed the peculiar nature of the use or the exceptional situation or condition justifies such action.
5. Planning Board may waive a portion of the following parking requirements based upon the following considerations:
- a) Neighborhood characteristics, based on a physical evaluation of the streetscape.
  - b) Adjacent intersection and traffic conditions
  - c) Impact on available on-street parking, including parking that will be eliminated by a curb cut.
  - d) Impact on trees and other vegetation.
  - e) Impact on the historic and/or architectural integrity of the streetscape.
6. The Planning Board shall approve the design of proposed parking areas.

## 7.2 Minimum Off-Street Parking Requirements

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**Table 9: Parking Requirements**

Use	Minimum Off-Street Parking Required	Parking Spaces Required in the Downtown District
Dwelling (one, two, three-family)	2 spaces for each dwelling unit	1.5 spaces for each dwelling unit
Multifamily dwelling / Residential uses included as part of mixed-use (4+ units)	1 for each dwelling unit	1 for each dwelling unit
Office: municipal/government offices	2 for each 1,000 square feet of gross floor area	1 for each 1,000 square feet of gross floor area
Club, lodge, social, fraternity (by special use permit)	2 for each 1,000 square feet of gross floor area	1 for each 1,000 square feet of gross floor area
Hotel	1 space for every 2 hotel rooms	1 for every 2 hotel rooms
Professional and personal services uses	1 for each 200 square feet	1 for each 1,000 square feet of gross floor area
Financial institution	1 space for each 150 square feet of total floor area	1 for each 1,000 square feet of gross floor area
Restaurant (clubs and restaurants)	1 space for each 50 square feet of floor area	2 for each 1,000 square feet of gross floor area. For restaurants less than 3,000 gross floor area, no parking is required.
Cannabis dispensary	1 space for each 50 square feet of floor area	1 space for each 50 square feet of floor area
Church or temple	1 space for each 3 seating spaces in main assembly room	1 for each 3 seating spaces in the main assembly
Rooming house, tourist home, motel, bed-and-breakfast	1 space for each guest room, plus 1 space for every 2 employees	
Administrative, professional, personal service, governmental or utility office	1 space for each 200 square feet of floor area	
Funeral home	8 spaces per viewing room, plus 1 space for each employee and resident personnel car	
School	3 spaces for each classroom	
Theatre or other place of assembly	1 space for each 3 seating spaces	
Nursing or Convalescent home	1 space for each 3 beds	
Bowling establishment	5 spaces for each lane	
Wholesale, storage, freight terminal or utility use	1 space for each 1,000 square feet of floor area	
Industrial or manufacturing use	1 space for each 1.5 employees on the maximum working shift	
Home occupation	1 space for each 100 square feet of floor area devoted to such use	
Medical, dental offices or clinics	3 spaces for each doctor or dentist, plus 1 additional space for every 2 employees	
ADU	One space	



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Table 9: Parking Requirements		
Use	Minimum Off-Street Parking Required	Parking Spaces Required in the Downtown District
Other uses	Approved by Planning Board	Approved by Planning Board

## ARTICLE 8. SIGN REGULATIONS

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### 8.1 Purpose

- A. The purpose of this chapter is to provide comprehensive time, place, and manner restrictions on signs, including but not limited to controls on size, height, quantity, location, spacing, shape, lighting, motion, design, and appearance, toward the end of promoting community aesthetics, traffic safety, economic development, ~~and~~ the protection of property values, all in accordance with the First Amendment right to Freedom of Speech.
- B. Intent
  1. Protect and enhance Village character.
  2. Encourage appropriate and compatible signs and graphics.
  3. Lessen objectionable competition in sign size and placement.
  4. Reduce the hazards of sign obstructions and distractions to motorists, cyclists, and pedestrians.

### 8.2 General Standards

All signs constructed, erected, modified, relocated, or altered must comply with the following standards.

#### A. Exceptions

All signs constructed, erected, modified, relocated, or altered must comply with the standards of this Article, whether such signs do or do not require a building permit, with the exceptions listed in this section. The following signs are not regulated by this Code:

1. Signs within a building or enclosed space within a development that are not visible from a park or a public right-of-way.
2. Signs installed by federal, state, or local governments.
3. Logos and labels on mechanical equipment, recycling bins, trash containers, and similar equipment, which are part of the equipment as manufactured and/or installed.
4. Decorative flags, flags of nations, states, and cities, or flags for fraternal, religious, and civic organizations.

## B. Location Restrictions

1. No sign may be erected in a location that violates the building code, fire code, and other applicable Village codes or ordinances.
2. Only signs that have been placed by or authorized by federal, state, or the Village may be installed on public property. Any sign installed on public property, including rights-of-way, without prior authorization, may be removed by the Village without notice and disposed of at the Village's sole discretion. Temporary signs are exempt from this requirement.
- ~~1.—~~
- ~~2.— Only signs that have been placed by or authorized by federal, state, or the Village may be installed on public property. Any sign installed on public property, including rights-of-way, without prior authorization, may be removed by the Village without notice and disposed of at the Village's sole discretion.~~
3. No sign may be erected on private property without the consent of the property owner or their authorized agent.
4. No building-mounted sign shall be installed on a building in such a manner as to obstruct windows or cover architectural details.
5. No sign shall be attached to any tree, utility pole, or street appurtenances or be painted upon or otherwise affixed to any rock, ledge, or other natural feature.

## C. Audio Components

Audio components are prohibited as part of any sign, except for the following:

1. Signs owned and/or operated by a government agency.
2. Gas station pump video screens. The audio component of a gas pump video screen is limited in volume so that it is only audible at the pump. In no case may the audio component be audible at the property line.

## D. Construction Standards

1. Supports and braces must either be designed as an integral part of the overall sign or obscured from public view to the greatest extent feasible.
2. Conduits, raceways, and other components of a sign illumination system must be designed as an integral part of the overall sign structure and obscured from public view to the greatest extent feasible.

3. Permanent sign structures must be constructed of weather-proof, durable materials suitable for the conditions present at the mounting location.
4. Solid awnings and structural canopies must be constructed of permanent building materials.
5. Other Awnings, canopies, blade signs, light pole banners, banners, and wall signs must be constructed of durable weather resistant material, such as canvas, nylon, or vinyl-coated fabric.

#### **E. Digital Signs**

1. Digital / animated signs are prohibited, unless otherwise allowed via applicable law.

#### **F. Permitted Materials for Signs**

1. Permanent sign structures must be constructed of brick, wood or simulated wood, stone, concrete, metal, plastic, or high-density urethane (HDU) foam board or similar durable foam construction.
2. Awning, canopy, and banners must be constructed of durable weather resistant material such as canvas, nylon, or vinyl-coated fabric. Such material must be mounted within a frame so that they it is are held taut between all support posts. In the case of banners, all ties must be secured so that the banner is held taut.
3. Reflective materials that create glare, either from sign illumination or from outside sources such as street lights or vehicle headlights, are prohibited.

#### **G. Required Maintenance**

1. All signs must be kept in a safe and well-maintained condition and appearance, and must be repainted or otherwise maintained by the property owner or business owner to prevent corrosion or deterioration caused by the weather, age, or any other condition.
2. All signs must be maintained to prevent any kind of safety hazard, including faulty or deteriorated sign structures, a fire hazard, or an electrical shock hazard.
3. If a sign is maintained in an unsafe or unsecured condition, it must be removed or the condition corrected pursuant to Article 13 of this Code.
4. All unused sign hardware or wiring must be removed.
5. No sign frame may remain unfilled and no internal part or element of the sign structure shall be visible.

6. The Village may summarily repair or remove any sign that is an immediate health or safety threat to persons or property without notice pursuant to Article 13 of this Code. The owner of such sign shall be responsible for all costs of repair, removal, storage, or disposal of the sign as determined to be necessary by the Village and the Village shall not be liable for any damage to the sign or any other costs whatsoever.
7. Painting, cleaning, and other normal maintenance and repair of a sign shall not require any approvals. However, any design or structural changes, including the removal or replacement of electrical components, change of the sign face, and any substantive increase in the size, dimensions, height, or location of the sign shall require a building permit.

### **8.3 Illumination**

- A. Any sign illumination, including gooseneck reflectors, external illumination, and internal illumination, must be designed, located, shielded, and directed to prevent the casting of glare or direct light upon roadways and surrounding properties, and to prevent the distraction of motor vehicle operators or pedestrians in the public right-of-way.
- B. The sign face of internally or backlit illuminated signs must function as a filter to diffuse illumination. The sign face must cover all internal illumination components so that no exposed bulbs are visible. The full number of illuminating elements of a sign shall be kept in working condition and immediately repaired or replaced.
- C. All external illumination of a sign must concentrate the illumination upon the sign face.
- D. No sign illumination may be combined with reflective materials, such as mirrors, polished metal, or highly-glazed tiles, which would increase glare.
- E. Strobe lights, moving or fixed spotlights, floodlights/searchlights are prohibited.

### **8.4 Abandoned Signs**

- A. Unless specifically allowed by this Article, any sign which is located on property which becomes vacant and unoccupied for a period of three months or more, or any sign and structure which pertains to a time, event or purpose that no longer applies, is deemed abandoned.
- B. Abandoned signs and structures are prohibited and shall be removed. If a sign on a shared support structure is abandoned, the sign and any structure particular to that sign shall be removed.

## 8.5 Prohibited Signs

All signs not expressly permitted by this Code are prohibited unless approved as part of a comprehensive sign plan. In addition, the following sign types are specifically prohibited.

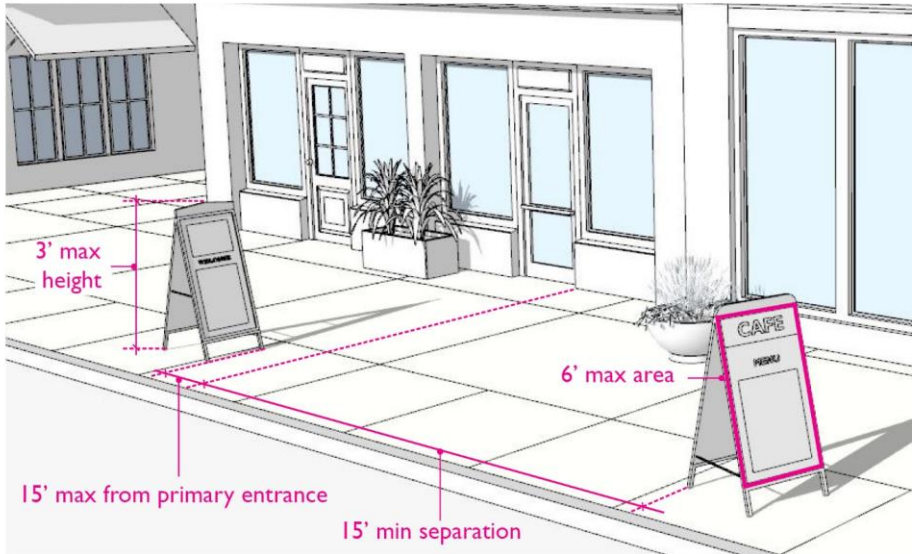
- A. Animated signs, digital signs and signs with video.
- B. Banners wrapped around a permanent sign structure, such as a monument sign or blade sign.
- C. Balloon signs or other inflatable signs including displays designed to inflate or move by use of a fan or blower.
- D. Feather flags/sails.
- E. Flashing or moving lights signs.
- F. Moving signs. However, analog clocks and barber poles are permitted.
- G. Portable reader-board signs.
- H. Projected signs onto a wall or ground
- I. Signs that constitute a traffic hazard, including signs that:
  - 1. Interfere with, obstruct the view of, or may be confused with any authorized traffic sign, signal, or device because of its position, shape, or color.
  - 2. May be confused with any public safety lighting.
  - 3. Mislead, interfere with, or confuse traffic.
- J. Temporary and permanent off-premise advertising signs. Also known as push signs, bandit signs, and snipe signs.
- K. Vehicle signs placed, mounted, installed, or painted on a vehicle for the primary purpose of attracting attention to an occupant's presence within a building at which the vehicle is being parked.
  - 1. This prohibition does not include signs painted on or applied to vehicles, trucks, or buses that are being operated and stored in the normal course of business, such as signs located on delivery trucks, moving vans, and rental trucks, provided that the primary purpose of such vehicles is not the display of such sign, and that they are properly parked or stored in areas related to their use as vehicles and all such vehicles are in operable condition.
- L. Video display screens, except video display screens on gas pumps.

## 8.6 Exempt Signs

The following signs are permitted without a building permit, subject to the standards of this section. If an exempt sign does not meet these standards, an area variance is required.

### A. A-Frame Sign

1. A-frame signs are permitted in non-residential districts.
2. One A-frame sign is permitted per establishment. A minimum 15 foot separation is required between all A-frame signs.
3. An A-frame sign must be placed within 15 feet of the primary entrance of the business and must not interfere with pedestrian traffic or violate standards of accessibility as required by the ADA or other accessibility codes.
4. A-frame signs are limited to six square feet in area per side and three feet in height.
5. A-frame signs must not be used outdoors when high winds, heavy rain, snow, or other weather conditions exist.
6. Illumination of A-frame signs is prohibited.
7. No A-frame sign may have any type of electronic component.



## B. Construction Activity

On a lot where active new construction is taking place to improve the structure or site, a temporary sign is permitted subject to the following.

1. Temporary signs are permitted in all districts on all sites with construction activity.
2. One sign is permitted per street frontage.
3. Temporary signs may be constructed as either freestanding signs, wall signs, or a sign mounted on a fence.
4. Temporary signs in residential districts are limited to six square feet in area. Freestanding temporary signs are limited to four feet in height and shall be located a minimum of five feet from any lot line and ten feet from any abutting residential lot line.
5. Temporary signs in nonresidential districts are limited to 32 square feet in area. Freestanding temporary signs are limited to six feet in height and shall be located a minimum of five feet from any lot line and ten feet from any abutting residential lot line.



6. Signs cannot be illuminated.
7. In the non-residential districts, in lieu of a freestanding, wall, or fence-mounted sign, a building wrap sign may be used to wrap the fence or the structure under construction. A wrap sign requires review and approval by the Planning Board. Such wrap sign must be made of mesh or similar material that is not completely opaque. There is no maximum square footage limitation.
8. Signs may be installed only after approval of a building permit for such activity. Signs shall be removed within 14 days of completion of construction or the expiration of the building permit, whichever occurs first.

#### **C. On-Site Repair or Rehabilitation Activity**

For lots where on-site repair or rehabilitation of an existing structure or site is taking place, a temporary sign is permitted. Such temporary signs are subject to the following:

1. Such temporary signs are permitted in all districts on sites with active repair or rehabilitation projects. One temporary sign per lot is permitted.
2. Such temporary signs must be removed once the repair or rehabilitation is complete.
3. Such temporary signs are limited to six square feet in area.
4. Freestanding signs shall be limited to four feet in height and must be located a minimum of five feet from any lot line and ten feet from any abutting residential lot line.
5. Signs cannot be illuminated.

#### **D. Parking Lot and Parking Structure Circulation Points**

1. Parking lots and structures in all districts are permitted permanent signs at parking lot and/or structure circulation points in accordance with this section.
2. Circulation points include, but are not limited to, entrances/exits, driveway intersections, fire zones, and parking lot drive aisles.
3. Signs for parking lot and structure circulation points may be internally or externally illuminated.
4. Signs are limited to four square feet in area and four feet in height.
5. Freestanding signs shall be located a minimum of five feet from any lot line and ten feet from any abutting residential lot line.

6. Signs shall not be used for off-premises advertising.

**E. Real Estate Activity**

When a structure or lot is offered for sale, lease, or rent in all districts, such lot is permitted a temporary sign as follows:

1. Temporary signs are permitted in all districts and must be located on the site of the property for sale, lease, or rent.
2. Signs are limited to one per street frontage.
3. Signs may be constructed as either freestanding, wall, or window signs.
4. Signs are limited to six square feet in area for commercial and three square feet for residential.
5. Freestanding signs shall be limited to four feet in height and must be located a minimum of five feet from any lot line and ten feet from any abutting residential lot line.
6. Signs cannot be illuminated.
7. Signs shall be removed within 14 days of final closing, lease, or rental.

**F. Residential District Specific Sign Standards: Non-residential uses**

1. In cases where non-residential uses occur in residential districts, signs at such uses are limited to two square feet in area.
2. Signs cannot be illuminated and must be mounted near the first-floor entryway and cannot be mounted above the first floor.
3. No additional signs are permitted.
4. Local, state, and federal offices are exempt from these requirements.

**G. Window Sign**

1. Window signs are permitted for all nonresidential uses in all districts.
2. All window signs cumulatively, whether temporary or permanent, are limited to no more than 25% of the surface of each window area. The total of all window signs may not exceed 100 square feet per tenant.

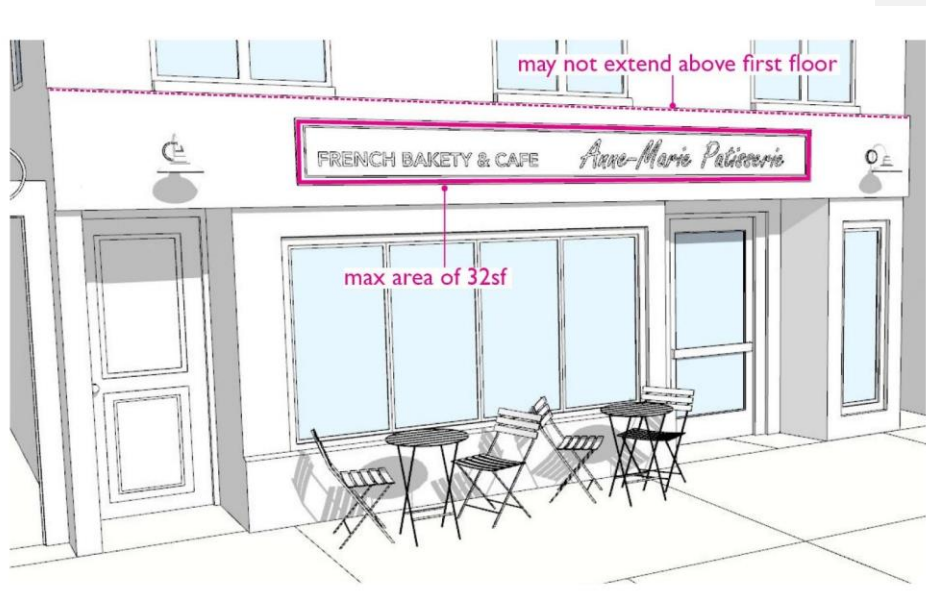


### 8.7 Permit Required

This section describes the types of signs allowed with a building permit.

#### A. Banner

1. A banner is permitted for nonresidential uses in all districts prior to installation of a permanent sign. A permit for a banner must be submitted as part of the permit for the permanent sign.
2. Banners are allowed prior to the opening day of a use. Banners must be removed 30 days from opening day or when a permanent sign is installed, whichever comes first.
3. One banner is permitted per business, including one for each tenant in a multi-tenant development.
4. Banners are limited to a maximum area of 32 square feet or the size of the permanent sign to be installed, whichever is less.
5. Banners must be securely attached to a building wall. No banner may extend above the first floor of a building.



## B. Building-Mounted Signs

### 1. General Regulations

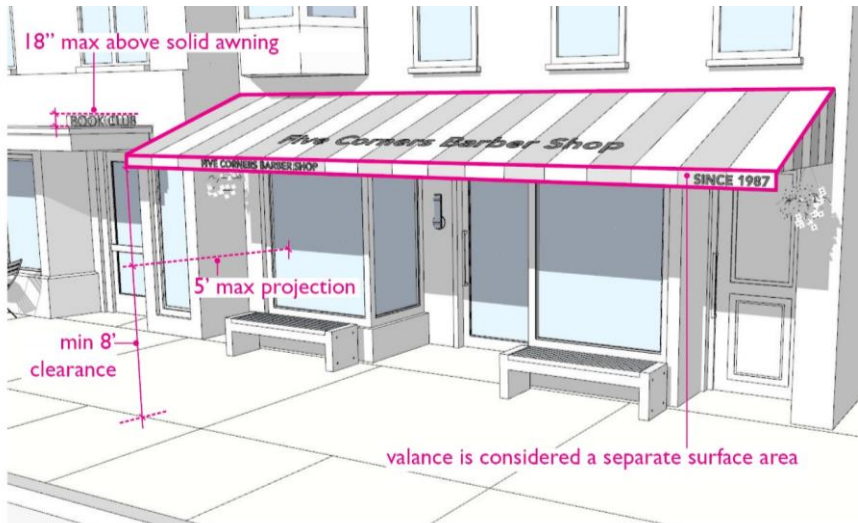
- a) The following are building-mounted signs: permanent awning signs, blade signs, canopy signs, standard wall signs, and painted wall signs.
- b) Each structure is permitted one building-mounted sign per business with a maximum of two per façade.
- c) All building-mounted signs are subject to any restrictions on uses and/or districts permitted to install such signs per the specific sign provisions below.

### 2. Awning Sign

- a) Awning signs are permitted for multi-family dwellings and nonresidential uses in any district.
- b) When located entirely on private property, awning signs must maintain a minimum vertical clearance of eight feet.
- c) The awning may extend a maximum of five feet.
- d) Solid awnings are permitted lettering attached to and located either above or below the awning to a maximum height of 18 inches. If attached

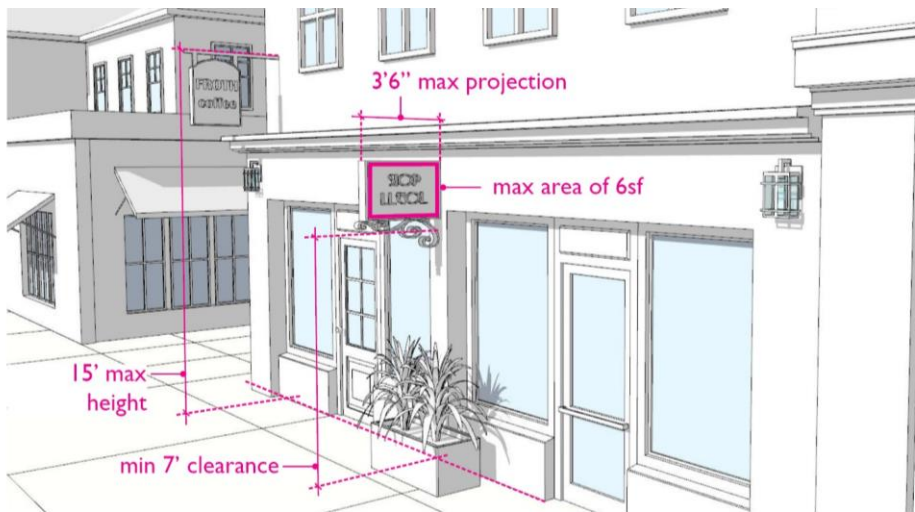
below the awning, the minimum vertical clearance of eight feet must be maintained from the bottom of such lettering.

- e) Awning signs may be externally illuminated.



### 3. Blade Signs

- a) Blade signs are permitted in the commercial and mixed-use districts.
- b) Blade signs are limited to six square feet.
- c) One blade sign is permitted per establishment with frontage on a street, public pathway, or alley. For a corner lot, one blade sign is permitted for each street frontage.
- d) Blade signs may project a maximum of 3 feet 6 inches from the facade.
- e) Blade signs must maintain a minimum vertical clearance of seven feet. No blade sign affixed to a building may project higher than the first floor, including the sign support structure.
- f) Blade signs may be internally or externally illuminated. If externally illuminated, all lighting must be directed onto the sign face from above.
- g) The method of installation of the blade sign must be approved by the Building Inspector.



#### 4. Wall Sign – Standard

- a) Standard wall signs are permitted for all nonresidential uses in any district.
- b) Wall signs are permitted on all facades of a structure.
- c) The maximum total wall sign area is 1.5 square feet per one linear foot of building wall where the wall sign(s) will be mounted or 40 square feet, whichever is greater. The square footage from different facades cannot be combined to create a larger sign on anyone facade.
- d) The number of individual wall signs on a facade is not limited, however the cumulative sign area of all signs on a facade cannot exceed the maximum allowable total wall sign area per facade.
- e) Wall signs may be internally or externally illuminated. If externally illuminated, all light must be directed onto the sign face.
- f) Wall signs must be safely and securely attached to the building wall.
- g) Wall signs must be mounted below the second floor of multi-story buildings. No wall sign affixed to a building, including sign support structure, may project beyond the ends or top of the wall or higher than the roofline of the structure to which it is attached.
- h) On existing buildings, a parapet wall must not be constructed for the sole purpose of increasing the allowable height of a wall sign. For new buildings,

when a sign is mounted on a parapet wall, that parapet wall must be consistent with the architectural design of the building, including building materials.



#### 5. Wall Sign – Painted

- a) Painted wall signs are permitted for all nonresidential uses in any district.
- b) Painted wall signs are permitted on each facade of a structure.
- c) Painted wall signs are limited to 1.5 square feet per one linear foot of building wall where the wall sign(s) will be painted or 20 square feet, whichever is greater.
- d) Painted wall signs cannot be painted on or obscure architectural features such as windows, doors, pilasters, or cornices.
- e) Painted wall signs may be externally illuminated. If externally illuminated, all light must be directed onto the sign face.
- f) The property owner, or their authorized representative, is responsible for ensuring that a permitted painted wall sign is maintained in good condition and is repaired in the case of vandalism or accidental destruction.
- g) For purposes of this Code, a mural shall abide by the requirements of this section.



### 3.2. Multiple Tenant Building Entryway

Multi-family dwellings and nonresidential developments with multiple tenants, are permitted a permanent sign at the entryway subject to the following.

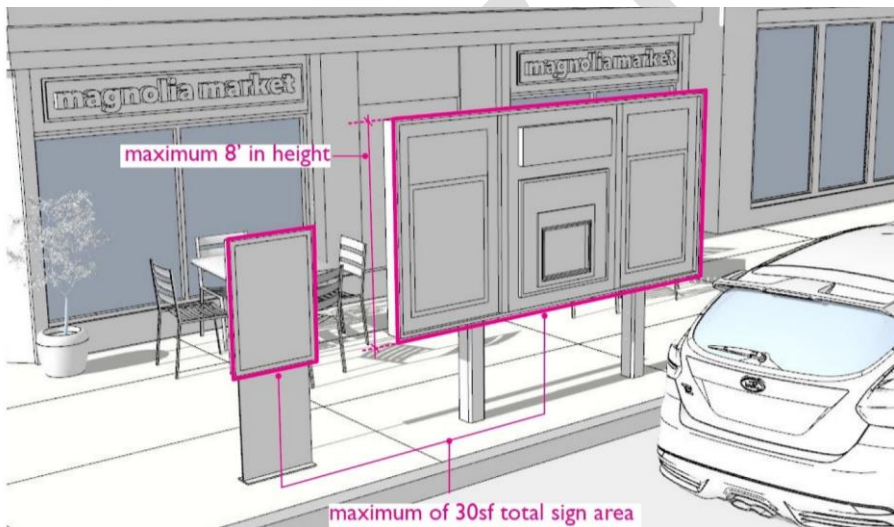
- a) Signs may be constructed as either freestanding or wall signs.
- b) Signs are limited to six square feet in area.
- c) Freestanding signs are limited to five feet in height and must be located within five feet of the building entry and a minimum of five feet from any lot line.
- d) Wall-mounted signs must be installed at the building entryway.
- e) Freestanding signs must be installed so that they are primarily viewable at the building entryway.
- f) Signs are limited to one per building entry.

### 4.3. Drive-Through Sign

- a) Drive-through signs are permitted for all drive-through facilities in any district.



- b) Drive-through signs are limited to a maximum of two per drive-through lane.
- c) Drive-through signs are limited to 30 square feet in sign area and eight feet in height.
- d) Drive-through signs are permitted an additional ten square feet of sign area for temporary signs attached to the top or sides of the drive-through sign.
- e) Drive-through signs must be located a minimum of 15 feet from any residential or residential mixed-use district lot line. This is measured from sign face to lot line, including any public right-of-way.
- f) Drive-through signs may be internally illuminated. Drive-through signs may also contain an electronic screen for interaction with each customer.



5-4. Additional Sign Types

- a) For all other signs not described in this section, the Planning Board will issue approval if it determines in its discretion that the proposed signage will not be detrimental to the community.

## ARTICLE 9. REVIEW AUTHORITIES

### 9.1 Responsibility for Administration

Direct responsibility for the administration of the provisions of this Code shall be vested in the Village Board, Planning Board, Zoning Board of Appeals, and Building Inspector, all in accordance with the provisions of this Article. All other officials, departments and agencies of the Village shall cooperate in such administration and enforcement, as specified below.

### 9.2 Village Board

In addition to the jurisdiction conferred on it by other provisions of the codes and ordinances of the Village, the Village Board shall have the following jurisdiction and authority:

#### A. Text Amendments

The Village Board shall be responsible for reviewing Zoning Ordinance text amendment applications and for taking final action to approve, approve with conditions, modify, or deny such applications.

#### B. Map Amendments

The Village Board shall be responsible for reviewing map amendment (rezoning) applications and for taking final action to approve, approve with conditions, modify, or deny such applications.

#### ~~C. Planned Development Designation~~

~~The Village Board shall be responsible for reviewing planned development designation applications and for taking final action to approve, approve with conditions, modify, or deny such applications.~~

#### ~~D. Historic District Designation~~

~~The Village Board shall be responsible for reviewing preservation district designation applications and for taking final action to approve, approve with conditions, modify, or deny such applications.~~

### 9.3 Planning Board

This section supplements Chapter 50 of the ~~Municipal~~ Village Code which governs the Planning Board.

#### A. Membership

##### 1. Appointment and Terms

See Chapter 50 of the Municipal Code.

##### 2. Vacancies

Permanent vacancies on the Zoning Board of Appeals shall be filled by the Mayor and subject to Village Board approval.

##### 2-3. Mandatory Training

The members of the Planning Board shall be required to attend at least eight hours of training regarding land use issues by the end of their initial full term on the Board. For each subsequent term, the Planning Board members shall be required to attend four hours of training.

##### 2-4. Removal

Considerations for removal of any Planning Board member shall adhere to Chapter 27 of the Village's municipal code, Code of Ethics, as well as any applicable State statutes.

#### B. Chairperson and Vice Chairperson.

1. The Chairperson, appointed by the Mayor, may appoint a Vice Chairperson. The Chairperson and Vice Chairperson may administer oaths.
2. In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers and duties as may from time to time be provided by the rules of the Planning Board.
3. In the absence of both the Chairperson and the Vice Chairperson, the members present shall vote to establish a temporary Chairperson.

#### C. Staff Secretary and Public Record

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1. The Village of Ballston Spa ~~Building~~ Clerk shall be the ~~Secretary~~ Staff Secretary of the Planning Board and shall attend all meetings and hearings, its proceedings and, upon request, the proceedings of any of its committees.
2. The ~~Staff~~ Secretary shall provide for the keeping of minutes of the proceedings of the Board showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact and shall maintain all state-mandated permanent records of Board meetings, hearings, and proceedings and all correspondence of the Board. The ~~Staff~~ Secretary shall provide for keeping a file of all records of the Board, and such records shall be public records open to inspection at reasonable times and upon reasonable notice.

#### **D. Voting Procedures and Quorum**

1. As to any matter requiring a hearing ~~vote before~~ of the Planning Board, no business shall be transacted ~~by the Board~~ without a quorum. Unless otherwise stated in local, state, or federal law, t~~The~~ concurring vote of a majority of the members of the fully-constituted Board, and not just the members present, shall be necessary to approve an application. Failure to obtain the concurring vote shall be deemed a denial. If less than a quorum is obtainable, the hearing shall be adjourned to the next scheduled meeting or to a special meeting as determined by the Planning Board. However, the Planning Board may hear testimony~~comments~~ from members of the public who are present and such may be presented to the applicant, for the scheduled hearing. In such case, the applicant shall have the opportunity to review the meeting minutes, and if available listen to a recording and/or transcript of the testimony and shall have the ability to rebut the testimony at the next scheduled hearing or meeting. T~~The~~ Staff Secretary shall provide notice ~~notify in writing all members~~ of the date of the adjourned hearing and shall also notify such other interested parties as may be designated in the vote of adjournment).
2. A member absent from any portion of a hearing or meeting shall be qualified to vote at a subsequent hearing or meeting upon the matter heard provided they shall first certify on the record that they have reviewed the entire record of any such portion of the hearing or meeting during which they were absent and has

been fully informed of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

#### **E. Meeting and Hearing**

~~Meetings~~ Regular meetings of the Planning Board shall be held at the call of the Chairperson or as provided by rules of the Board. Special meetings shall be called by the Chairperson. Public hearings shall be held where required by local, state, or federal law.

#### ~~Hearings~~

All meetings and hearings of the Planning Board are subject to the Open Meetings Law, shall be open to the public

#### **F. Rules and Procedures**

The Planning Board shall adopt its own rules of procedure for the conduct of its business consistent with this Code and the statutes of the State of New York, including establishing meeting times and related procedures. Such rules shall be filed with the ~~Staff~~ Secretary of the Board and the Village Clerk.

#### **G. Conflicts**

No member of the Planning Board shall participate in the hearing or disposition of any matter in which they have an interest. Conflicts of interest ~~is~~ are governed by Article 18 of the New York State General Municipal Law and Chapter 27 of the ~~municipal~~ Village Code.

#### **H. Alternate Members**

The mayor is hereby authorized to appoint, ~~subject to confirmation with approval of the Board of Trustees by Village Board,~~ subject to confirmation with approval of the Board of Trustees by Village Board, up to two alternate members to the Planning Board for purposes of substituting for a regular member in the event such regular member is unable to participate in such Board's consideration of any application or other matter.

##### **1. Substitution**

The Chairperson of the Planning Board may designate an alternate member to substitute for a regular member when such regular member is unable to participate in the consideration of any application or other matter before the

Board due to a conflict of interest, illness, or any other reason that causes the regular member to be absent or otherwise unable to participate. When so designated, the alternate member shall possess all the powers and responsibilities of such regular member of the Board for the application or matter so designated by the Chairperson. Such designation shall be entered into the minutes of the Board meeting at which the substitution is made. Each alternate member shall be a resident of Ballston Spa and shall be appointed for a two-year term.

2. Other Requirements

All other provisions of this section and the ~~rest of the Municipal Village~~ Code relating to the eligibility, compensation, ethics, conflicts of interest, vacancies, mandatory training, reappointment, and removal of regular Board members shall also apply to alternate members.

**I. Records**

The Planning Board shall maintain a copy of all official records pertaining to the official duties as outlined in this Code. Such records shall be filed with the Village Clerk, as required by law.

**J. Applications: Receipt, Processing, and Notification**

1. Processing

Upon receipt of any application required to be sent to the Planning Board, the Board shall see to its processing, including its referral to and retrieval from each official, department, bureau, board, commission, or agency of the Village, or other government, with any interest in or duty with respect to such application.

2. Notification

Within ten business days following the ~~decision final disposition~~ of any application submitted to the Planning Board pursuant to this subsection, the ~~Planning Secretary Board~~ shall file the decision with the Village Clerk and shall notify in writing:

a) The applicant.

b) Any other department, bureau, board, commission, or officer of the Village whose duties may be affected by such action.

~~a) In any case where an application has been denied, such notice shall inform the applicant of any right to appeal such denial that may exist pursuant to this Code.~~

#### **K. Failure to Act**

In any case where this Code provides that the failure of the Planning Board to act within a fixed period shall be deemed a denial of an application, such failure shall, notwithstanding the absence of required findings and conclusions, be considered to be a decision of the Planning Board rendered on the day following the expiration of such fixed period. ~~Such a decision may be appealed in the same manner as any other decision.~~

#### **L. Jurisdiction, Authority, and Duties**

1. In addition to the jurisdiction, authority, and duties conferred on the Planning Board by other provisions of the codes and ordinances of the Village of Ballston Spa, the Planning Board, or a designee, shall be charged with the administration of this Code and shall have all powers necessary to such administration and, in particular, shall have the following jurisdiction, authority and duties:

a) Site Plan Review

Subject to the procedures, standards and limitations set forth in Section 11.4, the Planning Board shall review or cause to be reviewed all site plans and approve, approve with conditions, or deny such applications.

b) Special Permits

Unless otherwise specified in the Table of Uses (Article 5), the Planning Board will act as the Special Permit Granting Authority to review and administer applications for a Special Permit. See Section 11.7.

c) Administrative Adjustments

Subject to the procedures, standards and limitations set forth in Section 11.3, the Planning Board shall review or cause to be reviewed applications

for administrative adjustments and shall approve, approve with conditions, or deny such applications.

d) Interpretations

Pursuant to the provisions of Section 11.8, the Planning Board shall issue written interpretations of the meaning and applicability of specific provisions of this Code unless otherwise stated.

~~e) Planned Development Modifications~~

~~f) The Planning Board shall have the authority to approve certain planned development district modifications (Article 5). In addition, the Planning Board shall have authority to permit minor adjustments to final plans for planned developments.~~

~~g) Certificate of Nonconformity~~

~~h) The Planning Board shall issue all certificates of nonconformity subject to the requirements of Section 11.6.~~

~~i) Extensions of Time~~

The Planning Board may, upon written request by an applicant or a permittee prior to the expiration date of the approval, for reasonable cause shown ~~and without notice of hearing~~, extend the original time limit imposed on an applicant or permittee by this Code or, ~~unless a resolution shall expressly provide otherwise, by any resolution of any body acting pursuant to this Code~~, for a period not to exceed the length of the original period, ~~unless a prior resolution shall expressly provide otherwise. For any additional time limit extensions, the Planning Board shall notify the appropriate approval body that shall make a recommendation for or against the extension.~~ A nonrefundable fee, as may be established from time to time by the Village Board to defray administrative costs, shall accompany each extension request.

~~j) Input From Other Departments and Consultants~~



~~The Planning Board may request technical and legal aid, assistance, and expertise from appropriate Village departments for the various boards and commissions as they may reasonably require in the performance of their duties. In its discretion, the Planning Board may determine that it requires the advice of outside consultants in connection with the Board's review of an appeal or application. Upon such determination, the Planning Board shall inform the Applicant of the funds that the Applicant shall be required to deposit in an escrow account with the Village to cover the Board's anticipated professional fees. To continue the review process, the Applicant shall deposit with the Village the funds requested by the Planning Board for its consultant review. If the escrow becomes insufficient to reimburse the Planning Board for its consultant fees, the Applicant may be required by the Planning Board to deposit additional funds with the Village. All escrowed fees shall be deposited prior to the Planning Board's issuance of an approval. Surplus funds deposited by the Applicant shall be refunded to the Applicant within 30 days of a final determination.~~

#### 9.4 Zoning Board of Appeals

This section supplements Chapter 70 of the Municipal Code which governs the Zoning Board of Appeals.

##### A. Membership

1. Appointment and Terms
  - a. See Chapter 70.

##### ~~3.2.~~ Vacancies

Permanent vacancies on the Zoning Board of Appeals shall be filled by the Mayor and subject to Village Board approval.

##### ~~4.3.~~ Mandatory Training

The members of the Zoning Board of Appeals shall be required to attend at least eight hours of training regarding land use issues by the end of their initial full term on the Board. For each subsequent term, the Zoning Board of Appeals members shall be required to attend four hours of training.

#### 5.4. Removal

Considerations for removal of any ~~Planning Board~~ Zoning Board of Appeals member shall adhere to Chapter 27 of the Village's municipal code, Code of Ethics, as well as any applicable State statutes.

#### **B. Chairperson and Vice Chairperson.**

1. The Chairperson, appointed by the Mayor, may appoint a Vice Chairperson. The Chairperson and Vice Chairperson may administer oaths.
2. In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers and duties as may from time to time be provided by the rules of the Zoning Board of Appeals.
3. In the absence of both the Chairperson and the Vice Chairperson, the members present shall vote to establish a temporary Chairperson.

#### **C. ~~Staff~~ Secretary and Public Record**

1. ~~A member of the Zoning Board of Appeals, or a designee, shall be the Staff Secretary of the Zoning Board of Appeals and shall attend all its proceedings and, upon request, the proceedings of any of its committees. The Village of Ballston Spa Building Clerk shall be the Secretary of the Zoning Board of Appeals and shall attend all meetings and hearings.~~
2. The ~~Staff~~ Secretary shall provide for the keeping of minutes of the proceedings of the Board showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact and shall maintain all state-mandated permanent records of Board meetings, hearings, and proceedings and all correspondence of the Board. The Staff Secretary shall provide for keeping a file of all records of the Board, ~~and such records shall be public records open to inspection at reasonable times and upon reasonable notice.~~

#### **D. Voting Procedures and Quorum**

1. As to any matter requiring a ~~hearing before~~ vote of the Zoning Board of Appeals, no business shall be transacted by the Board without a quorum. Unless

~~otherwise stated in local, state, or federal law.~~ The concurring vote of a majority of ~~the~~ members ~~of the fully-constituted Board, and not just the members present,~~ shall be necessary to approve an application or appeal. Failure to obtain the concurring vote shall be deemed a denial. If less than a quorum is obtainable, the hearing shall be adjourned to the next scheduled meeting or to a special meeting as determined by the Board. However, the ~~Zoning Board of Appeals~~ may hear testimony from members of the public who are present for the scheduled hearing. In such case, the applicant shall have the opportunity to listen to a recording and/or transcript of the testimony and shall have the ability to rebut the testimony at the next scheduled hearing or meeting. The ~~Staff~~ Secretary shall ~~provide notice notify in writing all members~~ of the date of the adjourned hearing and shall also notify such other interested parties as may be designated in the vote of adjournment.

2. A member absent from any portion of a hearing or meeting shall be qualified to vote at a subsequent hearing or meeting upon the matter heard provided they shall first certify on the record that they have reviewed the entire record of any such portion of the hearing or meeting during which they were absent and has been fully informed of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

#### **E. Meeting and Hearing**

##### Meetings

Regular meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson or as provided by rule of the Board. Special meetings shall be called by the Chairperson. ~~Public hearings shall be held where required by local, state, or federal law.~~

##### ~~1. Hearings~~

All meetings and hearings ~~are subject to the Open Meetings Law of the Zoning Board of Appeals and~~ shall be open to the public.

#### **F. Rules and Procedures**

The Zoning Board of Appeals shall adopt its own rules of procedure for the conduct of its business consistent with this Code and the statutes of the State of New York, including establishing meeting times and related procedures. Such rules shall be filed with the ~~Staff~~ Secretary of the Board and the Village Clerk.

#### **G. Record and Decisions**

##### **1. Record**

The following shall constitute the record:

- a) The transcript of testimony, if any.
- b) The minutes of the ~~Staff~~ Secretary, ~~if any~~.
- c) All applications, staff reports, requests, exhibits, and papers filed in any proceeding before the Zoning Board of Appeals.
- d) The decision of the Board.

##### **2. Decisions**

- a) The Board may rely on the personal knowledge of its members, on testimony at the public hearing, on its inspections of the property and on any reports available to it; provided, however, that reliance on such matter shall not be allowed unless the Board shall have made the particular knowledge, inspection, or report a matter of record at the public hearing and afforded every party reasonable time to respond to it at the hearing.
- b) Every decision of the Zoning Board of Appeals shall be by resolution which shall include findings of fact, shall refer to all the evidence in the record and to the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief approved or denied, and shall expressly set forth any limitations or conditions imposed on any relief approved or work or use authorized.

### 3. Final Action

In taking final action, the Zoning Board of Appeals shall first state its findings and conclusions at a meeting open to the public and shall, in addition, state the special circumstances warranting such action.

### 4. Failure to Act

- a) In any case where this Code provides that the failure of the Zoning Board of Appeals to act within a fixed period shall be deemed a denial of an application, such failure shall, notwithstanding the absence of required findings and conclusions, be considered to be a decision of the Board rendered on the day following the expiration of such fixed period. Such a decision may be appealed in the same manner as any other decision but, on such appeal, shall be entitled to no presumption of correctness.
- b) Where no decision is made by the Zoning Board of Appeals and the time period for rendering a decision has not expired, the action will be placed on the agenda of the next scheduled regular or special meeting.

### 5. Notification of Decision Within ten business days following any decision of the Zoning Board of Appeals, the ~~Staff~~ Secretary shall mail notice thereof to each person entitled to such notice and file such decision in the office of the Village Clerk. As to other matters brought before the Board, the Board ~~shall~~may prepare such report as it shall deem appropriate to the subject matter.

## H. Conflicts

No member of the Zoning Board of Appeals shall participate in the hearing or disposition of any matter in which they have an interest. Conflicts of interest are governed by Article 18 of the New York State Municipal Law and by Chapter 27 of the Village 's municipal Code.

## I. Appeals

An appeal from any final decision of the Zoning Board of Appeals may be taken within 30 days of the filing of such decision by any person aggrieved or by any

authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law.

#### J. Jurisdiction and Authority

The Zoning Board of Appeals shall have the following jurisdiction and authority:

1. Subject to the provisions of Section 11.8, to hear and decide appeals from decisions or determinations made by the ~~Planning Board~~ Building Inspector.
2. Subject to the provisions of Section 11.9, to approve or deny variances from the requirements of this Code.
3. In limited circumstances as provided in the Table of Uses (Article 5), the Zoning Board of Appeals will act as the Special Permit Granting Authority in accordance with the provisions of Section 11.6.
4. Upon reasonable written request, to make its special knowledge and expertise available to any official, department, bureau, board, commission, or agency of the Village, county, state, or federal governments to aid them in the performance of their respective duties relating to zoning and its administration in the Village.
5. In furtherance of the above jurisdiction and authority, to make such investigations, maps and reports, and recommendations in connection therewith, relating to zoning and its administration in the Village of Ballston Spa as seem desirable to it, provided, however, that the expenditures of the Board shall not exceed the amount appropriated.
6. Subject to the provisions of Chapter 76 of the Village Code hereof, to approve or deny ~~Official~~ Zoning Map variances.
7. In its discretion, the Zoning Board of Appeals may determine that it requires the advice of outside consultants in connection with the Board's review of an appeal or application. Upon such determination, the Zoning Board of Appeals shall inform the Applicant of the funds that the Applicant shall be required to deposit in an escrow account with the Village to cover the Board's anticipated professional fees. To continue the review process, the Applicant shall deposit with the Village the funds requested by the Zoning Board of Appeals for its consultant review. If the escrow becomes insufficient to reimburse the Zoning

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Board of Appeals for its consultant fees, the Applicant may be required by the Zoning Board of Appeals to deposit additional funds with the Village. All escrowed fees shall be deposited prior to the Zoning Board of Appeal's issuance of an approval. Surplus funds deposited by the Applicant shall be refunded to the Applicant within 30 days of a final determination.

#### **K. Alternate Members**

The mayor is hereby authorized to appoint, ~~subject to confirmation by Village Board,~~with approval of the Board of Trustees, up to three alternate members to the Zoning Board of Appeals for purposes of substituting for a regular member in the event such regular member is unable to participate in such Board's consideration of any application or other matter.

##### **1. Substitution**

The Chairperson of the Zoning Board of Appeals may designate an alternate member to substitute for a regular member when such regular member is unable to participate in the consideration of any application or other matter before the Board due to a conflict of interest, illness, or any other reason that causes the regular member to be absent or otherwise unable to participate. When so designated, the alternate member shall possess all the powers and responsibilities of such regular member of the Board for the application or matter so designated by the Chairperson. Such designation shall be entered into the minutes of the Board meeting at which the substitution is made. Each alternate member shall be a resident of Ballston Spa and shall be appointed for a two-year term.

##### **2. Other Requirements**

All other provisions of this section and the rest of the ~~Municipal~~Village Code relating to the eligibility, compensation, ethics, conflicts of interest, vacancies, mandatory training, reappointment, and removal of regular Board members shall also apply to alternate members.

### **9.5 Building Inspector**

#### **A. Building Permits**

1. All persons proposing to construct, erect, alter, repair, extend, relocate, remove, demolish or structurally change any building, structure or portion thereof shall apply to the Building Inspector for a building permit.
2. Unless otherwise required for approval by the relevant Board, the Building Inspector shall have the authority to make a determination in administering and providing the requested building permit.

3. All applications for such permits shall be made in accordance with the Village ~~of Ballston Spa Code~~ local law for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code. A building permit shall become void six months from the date of issuance unless substantial progress has been made by that date on the project described therein; provided, however, that the building permit may be renewed for an additional six months upon application to the Building Inspector without the payment of an additional fee. A building permit may be extended for an additional six months for the prevailing fee. In no event shall a building permit be valid for more than 18 months.

3-4. Any additional applications or inspections will require payment of a fee prorated based on the amount of work left unfinished.

4-5. For the purpose of this section, the New York State Fire Prevention and Building Code shall include the laws and regulations of the State of New York promulgated and contained within the following Codes: the Building Code of the State of New York; Energy Conservation Construction Code of New York State; Fire Code of New York State; Fuel Gas Code of New York State; Mechanical Code of New York State, Property Maintenance Code of New York State and the Plumbing Code of New York State. The Building Inspector shall apply said regulations to maintain clean, safe, and sanitary conditions within the Village as local conditions periodically require.



~~5.6.~~ The Village Board of Trustees hereby directs the collection of the fees for the issuance of a building permit as set forth from time to time by resolution of the Village of Ballston Spa.

~~6.7.~~ No permit shall be required for accessory structures under ~~125~~200 square feet; provided, however, that all local setback requirements are met.

~~7. A building permit may be extended for a period of 12 months and thereafter for an additional six months for the prevailing fee. In no event shall a building permit be valid for more than 18 months.~~

#### **B. Enforcement**

1. The Building Inspector shall act as the Code Enforcement Officer for the Village of Ballston Spa. See Article 13.

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## ARTICLE 10. GENERAL PROCEDURES

### 10.1 Applications

#### A. Initiation of Application

A property owner, or their duly authorized agent, or other persons having a contractual interest may make an application required under this Code for the subject property. The Village Board, commissions, or boards may submit applications as defined in this Code.

#### B. Compliance Required

No application for ~~any special process~~ approval shall be considered where there are existing violations or outstanding judgments pursuant to any other Village statute, ordinance, or code, except where such application is intended to cure the violation.

#### C. Actions Requiring Multiple Approvals

Whenever two or more forms of review and approval are required under this Code, unless otherwise specified elsewhere in the Village Code, state, or federal law or regulations, the Planning Board shall determine the sequence of the review, including whether the review meetings, hearings, and other review procedures may be held simultaneously.

#### D. Application Submission

Applications shall be submitted as required by this Code, state, or federal laws or regulations, or the Planning Board or Zoning Board of Appeals. The Planning Board and Zoning Board of Appeals shall have the authority to waive application requirements that are not applicable to a specific project.

#### E. Application Filing Fees

Applications shall be accompanied by the fee established by Village Board from time to time by resolution.

### 10.2 Pre-Application Meeting

- A. The purpose of a pre-application meeting with Village and/or other agency staff is to inform the applicant of applicable procedures, submission requirements, development standards, and other relevant information in an informal setting before the applicant finalizes the development proposal. Prior to the submission of an application, a pre-application meeting may be requested by the applicant or required by the Planning Board or Zoning Board of Appeals. The applicant shall be required to attend any pre-application meeting required by the Planning Board or Zoning Board of Appeals and failure to do so may result in a delay of processing the application.
- B. Village and/or agency staff opinions presented during a pre-application meeting are advisory/informational only and are not a commitment by the Village or represented agency regarding the acceptability of the development proposal.

### 10.3 Application Intake and Completeness Review

#### A. Application Intake Meeting

The purpose of an application intake meeting is to allow a review to determine whether the application meets the minimum requirements for acceptance of the application. The intake meeting shall be made by appointment with the Building Inspector and referred to the Planning Board or Zoning Board as applicable. Application intake meetings shall be required for all applications unless waived by the Planning Board or Zoning Board of Appeals. This is in addition to the Pre-Application Meeting.

#### B. Application Completeness

1. An application shall be considered complete if it is submitted in the required form, includes all mandatory information, including all exhibits, and is accompanied by the applicable fee.
2. If an application is determined to be incomplete, the official responsible for accepting the application shall provide written notice to the applicant with an explanation of the application's deficiencies. No further processing of the application shall occur, and no public hearings shall be scheduled until the

deficiencies are corrected. If the deficiencies are not corrected by the applicant within 30 days, the application shall be considered withdrawn and the application shall be returned to the applicant.

**C. Referrals to Saratoga County Department of Planning and Development and Adjacent Municipalities**

Applications subject to New York State General Municipal Law § 239-m shall be referred to the ~~Department of Planning and Development at~~ Saratoga County ~~Planning Board~~ and applications subject to New York State General Municipal Law §239-nn shall be referred to adjacent municipalities as required. ~~In addition, the Planning Board shall refer a copy of applications in the Airport Overlay District to the Department of Planning and Development of Saratoga County.~~

**10.4 Administrative Decisions, Informational Meetings, Public Hearings, and Notice**

**A. Notice for Administrative Matters Not Requiring Informational Meetings or Public Hearings**

Applicants shall provide public notice to abutting property owners for matters not requiring public hearings as required by this section. Electronic transmission may be used if feasible. Applicant must provide proof of notification.

1. ~~Certificate of Nonconformity~~, Site Plan, Administrative Adjustments, approved by the Planning Board
  - a) Within ten business days of receipt of the complete application, the applicant shall notify all property owners within ~~54~~100 feet of the property line, both within and outside the municipal boundaries of the Village of Ballston Spa.
  - b) Within ten business days of the date of notification, interested property owners shall submit any written documentation concerning the pending application to the Planning Board.

**B. Informational Meetings Required and Notice**

1. Required Informational Meetings

Informational Meetings shall be required for the following:

~~a) Planned Development Districts or amendments. Official Map adoption and amendments.~~

a) Zoning Map adoption and amendments.

b) Zoning Code text adoption and amendments.

~~c) Preservation district designation.~~

## 2. Informational Meeting Notice

### a) Mailed Notice

Within ten business days of receipt of the complete application, the applicant shall notify all property owners within 6500 feet from the property line, both within and outside the municipal boundaries of the Village of Ballston Spa.

### b) Published Notice

The Planning Board and Zoning Board of Appeals shall require notice for such meetings to be placed in an official newspaper or a newspaper of general circulation in the Village, at least five days prior to the meeting date, and posted in the Village Hall.

## C. Public Hearings Required and Notice

### 1. Public Hearings Required

Public hearings shall be required for the following:

a) Special permit.

~~b) Planned Development District or amendments.~~

~~c)b)~~ Residential cluster development.

~~d)c)~~ Adoption of neighborhood design guidelines.

~~e)d)~~ Zoning Map adoption and amendments.

~~f)e)~~ Zoning Code text amendments.

~~g)f)~~ Historic district designation ~~(placeholder - if applicable).~~

~~h)g)~~ Variances.

~~i)h)~~ Appeals of administrative decisions.

~~j)i)~~ ~~Site plan appeals~~ Subdivisions.

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## 2. Setting Public Hearing

For all matters properly brought before the Zoning Board of Appeals and the Planning Board for which a public hearing is required, the body charged with conducting the hearing shall, upon receipt of a completed application, select a reasonable time and place for such hearing; provided, however, that such time shall be not later than 62 days following the submission of the subject application, unless the applicant shall agree, in writing, to some later time and waive any defenses for untimeliness related to this section.

## 3. Public Hearing Notice

### a) Mailed Notice

- i. The applicant shall be required to mail the appropriate notices for public hearings to property owners within 6500 feet of the property line, both within and outside the municipal boundaries of the Village of Ballston Spa, at least. ~~Where notice by mail is required, it shall be given at least~~ 210 calendar days in advance of the hearing date by regular United States mail, except that notice to Village agencies or officials may be by interdepartmental memorandum or electronic transmission.

~~ii.—The Planning Board and Zoning Board of Appeals reserves the right to require notice mailed~~ Where mailed notice is required, it shall be sent to the applicant, the owner of any property subject of the application as shown in the records of the office of the Village Treasurer, and to any other person or persons deemed by the Planning Board to have a direct interest in the matter of the hearing. Notification of the official neighborhood contacts shall be made by electronic transmission where feasible.

~~iii.ii. The time and manner for mailed notices for public hearings to be held by the Village Board shall be determined by the Village Clerk.~~

### b) Published Notice

Where published notice is required, it shall be placed in an official newspaper or a newspaper of general circulation in the Village at least five calendar days prior to the date of the hearing.

- i. Published notice shall include:
  - a. The general location of land that is the subject of the application.
  - b. The legal description or street address.
  - c. The description of the application.
  - d. The current zoning district.
  - e. The time, date, and location of the public hearing.
  - f. A phone number to contact the Village.
  - g. A statement that interested parties may appear at the public hearing.

~~ii. —The time and manner of published notice for public hearings held by Village Board shall be determined by the Village Clerk.~~

#### 4. Constructive Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

#### 5. Pre-Hearing Examination of Documents

The application and all other documents on file with the Planning Board or the Zoning Board of Appeals pertaining to the application shall be posted on the Village of Ballston Spa website as soon as practicably possible, but in no event later than twenty-four (24) hours prior to the meeting or hearing at which the application will be heard. ~~In addition, hard copies of such application and documents shall be available upon request and payment of a fee as established by the Planning Board to cover the cost of such copies.~~

#### 6. Right to Submit Written Statements

Any person may at any time prior to the commencement of a hearing, or within such time as may be allowed by the hearing body following such hearing, submit written and signed statements in support of or in opposition to the

application being heard, which statements will be included in the official administrative record of that hearing.

#### **10.5 Adjournment of Meetings and Hearings**

Notification for adjourned meetings, special meetings, and hearings shall follow the process outlined in this section unless an adjourned meeting, ~~committee meeting~~ or hearing date was announced at a prior meeting or hearing. In the event the adjourned meeting or hearing date, or continued hearing date was announced verbally at a meeting, said verbal notice shall be deemed to meet all notice requirements.

#### **10.6 Successive Applications**

- A. Whenever any application, appeal, or other request filed pursuant to this Code has been finally denied on its merits or approved subject to specified conditions, a second application, appeal, or other request seeking essentially the same relief or a modification of such conditions shall not be brought within two years unless, in the opinion of the review authority, or, in the case of decisions of the Zoning Board of Appeals or Planning Board, in the unanimous opinion of all members present, at least one of the following standards has been met:
1. There is a substantial change in circumstances relevant to the issues and/or facts considered during review of the application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the application.
  2. New or additional information is available that was not available at the time of the review that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed.
  3. A new application is proposed to be submitted that is materially different (e.g., proposes new uses, or a substantial decrease in proposed densities and intensities) from the prior application.
  4. The final decision on the application was based on a material mistake of fact.



- B. Upon approval of the right to bring a successive application, the new application shall be subject to the application, notification, fee, and all other requirements listed in this Code.

#### **10.7 Decisions Based on False Information**

Any decision issued based on false information submitted by the applicant shall be null and void.

#### **10.8 Letters of Credit or Other Form of Security**

To ensure that applicants complete site improvements required as part of the approval of an application.

- A. At the discretion of the review authority, applicants may be required to provide a letter of credit, or similar security acceptable to the review authority, and a fully executed agreement in the form provided by the Village. The letter of credit or other security in favor of the Village of Ballston Spa for the estimated cost of required site improvements shall be unconditional and irrevocable for a period of not to exceed two years. The agreement shall also be irrevocable for a period of two years. The agreement shall permit the Village to draw on the security and enter the subject property to install such improvements if the applicant fails to do so within the period of time specified in the agreement.
- B. Such letter of credit or similar security, and the agreement, each in a form satisfactory to the review authority, shall be submitted prior to obtaining a building permit.
- C. Should the applicant fail to perform the required site improvements within the agreed period of time, the Planning Board [or Zoning Board of Appeals](#) shall issue a written notice of such failure to the applicant. It shall be sufficient service of such notice if it is mailed to the applicant at the address provided by them in their application. If the applicant fails to perform the required site improvements within 15 business days of the issuance of such notice, the Planning Board [or Zoning Board of Appeals](#) is authorized to draw upon the letter of credit or to access any other offered security as may be necessary to cover the costs to the Village to perform work which the applicant failed to perform. The applicant may request a

hearing before the Planning Board [or Zoning Board of Appeals](#) within five days from the issuance of the notice. The hearing will be held before the expiration of the notice period of 15 business days.

- D.** The letter of credit or other security, as described in this subsection, may be waived by the review authority where the applicant has established at least one of the following:
1. No site improvements or alterations to the site are associated with the application and no site improvement conditions have been attached to such approval.
  2. None of the proposed or required site improvements will have any discernible impact on adjacent private property or on the public right-of-way, and such improvements primarily affect the user of the property and not adjacent property owners or the general public.
  3. Evidence of the applicant's satisfactory completion of prior approval conditions is provided.
  4. Evidence of a satisfactory financing plan that guarantees completion of the required site improvements.

## ARTICLE 11. ZONING APPLICATIONS AND APPROVALS

### PART I: PROCEDURES APPROVED BY VILLAGE BOARD

#### 11.1 Amendments

##### A. Authority

This Code, the Zoning District Map, and the Comprehensive Plan may be amended ~~by ordinance duly enacted~~ by the Village Board; provided, however, that no such amendment shall be enacted except in accordance with the procedures set out in this section ~~and state and federal law and regulations~~.

##### B. Purpose

The amendment process herein established is intended to provide a means for making changes to the text of this Code ~~and~~, the Zoning District Map, ~~and the Official Map~~. It is not intended to relieve particular hardships nor to confer special privileges or rights to a particular property owner but is intended as a tool to adjust the provisions of this Code, the Zoning District Map, ~~the Official Map~~, and the Comprehensive Plan in light of changing, newly discovered or newly identified conditions, situations or knowledge.

##### C. Procedure

###### 1. Initiation

###### a) Proposal by Village

Amendments may be proposed by either the Mayor, the Village Board, the Planning Board, ~~or~~ the Zoning Board of Appeals, by transmitting such proposal, together with such supporting materials as may be appropriate, to the Planning Board for processing in accordance with the provisions of this section.

~~i. Minor text amendments addressing spelling, grammar, numerical references, and other minor modifications which are not substantive may be proposed by the Planning Board and submitted directly to Village Board for approval.~~

b) Proposal by Property Owner

A proposed amendment may be initiated by an owner of, or other person having a contractual interest in, real estate to be affected by the proposed amendment or by the owners of 50% or more of the street frontage of real estate to be affected by the proposed amendment. The application for such amendment, addressed to the Village Board, shall be filed with the Planning Board in accordance with Article 10.

2. Action by Planning Board

a) An informational meeting shall be set, advertised, and conducted by the Planning Board. Within 62 days following the conclusion of the informational meeting, the Planning Board shall make a recommendation to approve, approve subject to conditions, or deny the application. The failure of the Planning Board to act within 62 days following the conclusion of the informational hearing shall be deemed a recommendation for the approval of the proposed amendment as submitted. The recommendation of the Planning Board shall be transmitted to the Village Clerk for Village Board action.

b) In making recommendations regarding amendments to the text of the Zoning Code or to the Zoning Map, the Planning Board shall consider and make findings on the following matters regarding the proposed amendment:

- i. Consistency with the Village's Comprehensive Plan and any other adopted special area plans.
- ii. Compatibility with nearby zoning, conforming uses of nearby properties, and with the character of the neighborhood.
- iii. Suitability of uses proposed by the zoning amendment for the property affected by the amendment.
- iv. Availability of public services and infrastructure generally suitable and adequate for uses allowed within the proposed district.

### 3. Action by Village Board

- a) Within 40 days of the receipt by the Village Board of the Planning Board recommendation, or its failure to act as provided above, the Village Board shall conduct a public hearing and either approve the application by ordinance duly enacted or adopt the proposed amendment, with or without conditions, or deny the application.
- b) In the event a protest against a proposed amendment is presented to the Village Clerk no later than 24 hours before the Village Board is scheduled to consider the amendment, duly signed and acknowledged by the owners of 20% or more of the area to be affected by the proposed amendment or by the owners of 20% or more of the area of the land immediately adjacent to the subject site, or immediately across a street and extending 100 feet from the subject site, such amendment shall not be adopted except by a four-fifths vote of the Village Board.
- c) The Village Clerk shall mail or email notice thereof to all parties entitled thereto as provided by Section 10.4.C. In the event that the Village Board, prior to the expiration of the time limit herein specified for its refusal or adoption of the proposed amendment, requests further information from the Planning Board, the time limit for its refusal or adoption of the proposed amendment shall be extended to 120 days. The failure of the Village Board to act within the time limit herein specified shall be deemed a refusal of the amendment.
- d) Minor text amendments as outlined in Section 11.1.C.1.a.ii above shall be handled in the same manner as all other proposed amendments except no recommendation from the Planning Board shall be required.

## 11.2 Historic District Designation

### A. Authority

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## **PART II: PROCEDURES APPROVED BY PLANNING BOARD**

### **11.3 Administrative Adjustment**

#### **A. Authority**

The Planning Board, or a designee, shall have authority to issue administrative adjustments in accordance with the provisions of this section.

#### **B. Purpose**

For purposes of this section, carrying out the strict letter of a provision of this Code may cause a practical difficulty and an administrative adjustment is permitted to alleviate these practical difficulties.

#### **C. Administrative Adjustment Standards**

To approve an application for an administrative adjustment, the Planning Board shall make an affirmative finding that the following standards are met:

1. The benefits to the applicant of the approval of the administrative adjustment outweigh any detriments to the health, safety, community character, and environment of the neighborhood or community by such approval.
2. There is no means other than the requested administrative adjustment by which the difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject lot or parcel. Administrative action can be taken by the PB Chair, with full disclosure of action to the Planning Board as necessary, in lieu of procedural steps, if adjustment is deemed minor in nature, respecting all benefits above.

#### **D. Procedures**

##### **1. Application**

An application for an administrative adjustment shall include a brief description of the requirement to be varied and any other material necessary to ensure the criteria in this Section.

##### **2. Action by Planning Board**

Within 45 days from submission of a complete application, the Planning Board shall review the application and approve, approve with conditions, or deny the

application based upon the criteria below. A written decision including affirmative findings on the criteria set forth below shall be mailed to the applicant.

**3. Administrative Adjustment Criteria**

- a) The Planning Board shall have the authority to approve an administrative adjustment of up to 10% from any numerical standard set forth in this Code.
- b) The Planning Board may authorize replacement of an existing non-conforming sign with one substantially similar for reasons including but not limited to deterioration of existing sign or minor modifications to the content of the sign.
- c) The Planning Board shall have the authority to approve an administrative adjustment for mechanical equipment in the side yard.
  - i. A proposed unit shall be reviewed to ensure that the installation will not have a detrimental impact on the adjacent properties. Such review shall include an evaluation of the following:
    - a. Neighborhood characteristics, based on a physical evaluation of the streetscape.
    - b. Sound attenuation measures.
    - c. Screening.
    - d. Impact on the historic and/or architectural integrity of the streetscape.

**E. Limitations on Administrative Adjustments**

An administrative adjustment shall become null and void unless a building permit is obtained within one year from the date of approval except in the case where site plan approval is required, the expiration date shall be the same as that of the site plan approval.

**F. Effect of Issuance of Administrative Adjustments**

The issuance of an administrative adjustment shall authorize the preparation, filing, and processing of applications for any permits and other approvals which may be



required by the codes and ordinances of the Village, including but not limited to, a building permit.

#### **G. Appeals**

~~Appeal of a decision by the Planning Board on an administrative adjustment shall be submitted to the Zoning Board of Appeals within 60 days of the filing of the Planning Board's decision in accordance with the procedures outlined in Section 11.3.C.~~

An appeal from any final decision of the ~~Zoning Planning Board of Appeals~~ as to any matter regarding the administrative adjustment must be submitted ~~within~~ 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

### **11.4 Site Plan Review**

#### **A. Authority**

Subject to the procedures, standards, and limitations set forth in this Code, the Planning Board shall review and approve, approve with conditions, or deny applications for site plans.

#### **B. Purpose**

Site Plan Review is a means of protecting the public interest through the evaluation of potential impacts of new development and redevelopment of land and structures within the Village of Ballston Spa. Site Plan Review minimizes impacts that are otherwise permitted through the imposition of reasonable conditions.

#### **C. Actions Not Subject to Site Plan Review**

The following actions are not subject to site plan review:

1. Unless specifically required by item D below, projects involving no site alterations or external structural alterations, provided alterations comply with applicable standards.
2. Accessory structures.

#### **D. Site Plan Review Thresholds**

1. Any new residential ~~ce or residential~~ development.
2. Parking lots over ten spaces that do not meet the requirements for parking lots.

3. More than two loading spaces in any district adjacent to any residential district.
4. Any new structure or structures having a total floor area, or covering a contiguous land area, in excess of 526,000 square feet.
5. Any new construction on a vacant parcel of one acre or more.
6. Any outdoor seating/activity area accessory to a nonresidential use. This
7. New construction of mixed-use or multi-family dwellings.
8. The conversion of floor area designed for nonresidential use to a residential use and, the conversion of floor area designed for residential use to a nonresidential use.
9. Residential cluster development
10. Any proposed demolition in Downtown or Downtown Transition districts requires site plan review of a site preparation, restoration, development, and/or redevelopment plan prior to demolition.
- ~~11. Incremental development plans in a Planned Development District~~
- ~~12.11.~~ Conversion to the following vehicle-related uses or the development or redevelopment of any sites devoted to such uses or services, including:
  - a) Vehicle repair
  - b) Vehicle fueling station
  - c) Any use where outdoor places or premises where trucks, tractors, and/or trailers are parked or are assigned, stationed, fueled, stored, loaded, or unloaded.
- ~~13.12.~~ Establishment of a use or development in a residential district which is not permitted as of right by the use regulations applicable in such district.
- ~~14.13.~~ Increasing the number of residential units within an existing building in a residential district.
- ~~15.14.~~ Establishment of a sexually oriented business.

#### **E. Review Criteria**

Construction and site alterations subject to Site Plan review shall be considered in the context of the location, the proposed use, and when new construction or redevelopment of structures is involved, the design of the building. As is reasonably practicable, a proposed Site Plan shall achieve the following objectives:

1. Minimize the following:

- a) the disturbance to the natural and existing landscape;
  - b) the removal of trees of over ~~24~~12" circumference at breast height;
  - c) the volume of stormwater flow from the site, soil erosion, and the threat of air or water pollution;
2. Maximize pedestrian, bicycle, and vehicular access and safety both on site and when entering and leaving the site;
  3. Minimize the obstruction of scenic views from public locations;
  4. Minimize the visibility of parking, storage, or other outdoor service areas that could be viewed from public areas or developed residential properties;
  5. Require the use of architectural features, materials and scale so that proposed structures are in harmony with existing buildings in the immediate vicinity;
  6. Ensure lighting and signage are proper
  7. Require the use of landscaping and other outdoor features that will enhance the visual quality of the site;
  8. Minimize to the extent practicable adverse environmental impacts to adjacent properties by limiting hours of operation, noise, odor, dust and vibration, and by requiring appropriate design and materials for containment, ventilation, screening, sound proofing, and sound dampening;
  9. Provide adequate access to the site structures for fire and public safety equipment;
  10. Provide adequate utility and wastewater disposal services.
  11. Ensuring accessibility as per compliance with the American Disabilities Act

#### **F. Required Submissions**

At least 14 days prior to a regularly scheduled Planning Board meeting, an Applicant shall file with the Planning Board an Application, four copies at a scale of Standard format plan 24" x 36" sheet, 10 copies of the same site plans in an 11" x 17" format, and a PDF copy of the site plan, which conform to the Site Plan Approval Review Plans and Submittal Checklist of the Planning Board Rules and Regulations. The Planning Board shall distribute a copy of the application and four of the 24" x 36" plans, or, alternatively, distribute a single copy of each document electronically in PDF format, to each of the Building Inspector, and the Planning Board office file. The

Planning Board secretary shall distribute the remaining copies as follows to each of the Planning Board members. Alternatively, the Planning Board secretary may distribute the above described plans electronically in PDF format at its discretion.

1. Applicant other than the Property Owner

If a person who is not the owner of the subject property is the Applicant on a Site Plan Application, a signed statement from the owner of the subject property granting full authority to the Applicant must be submitted with the Site Plan Application.

2. Plan Contents

a) Construction Project Site Plan Requirements

Scaled site plans should show the following:

- i. The existing and proposed boundaries, and the lot dimensions and area;
- ii. The location of all existing and proposed buildings;
- iii. The location of existing and proposed driveways, parking areas parking spaces, including parking for disabled persons, electric charging stations if applicable, and access;
- iv. The zoning for the property and any zoning district boundaries that may intersect the site;
- v. Details of the existing and proposed open space, proposed areas of landscaping, existing trees, if 24 inches in diameter or more, and the types and size of plants and trees for proposed landscaping; and
- vi. Any mechanical equipment or storage tanks to be located at grade.
- vii. Topographic data is required on a site plan unless the applicant can demonstrate that such data is unnecessary for the review of a Level A Project.

b) Architectural Drawings.

An Applicant shall submit scaled elevation drawings that show the following:

- i. Details of major architectural elements;
- ii. Specification of materials to be used;

- iii. Dimensions of the building or addition, including the location of exterior mechanical equipment.

c) Review Procedure

The Planning Board shall review the Site Plans submitted against its Submittal Checklist to determine the sufficiency of the documentation and, if required, refer the Project to the Zoning Board of Appeals or any other board or commission that should have the opportunity to comment on the Project. The Planning Board shall hold a public hearing within 60 days from the filing date of the application or within 45 days after a Project referred to another board or commission has been returned to the Planning Board by that board or commission.

d) Waiver of Site Plan Requirement Contents

Upon written request of an Applicant, the Planning Board may waive any plan content requirement or any requirement of the Plans and Submittal Checklist in the Rules and Regulations of the Planning Board. The Applicant shall have the burden of demonstrating to the Planning Board that a requirement for which a waiver is sought is either burdensome or unnecessary for an adequate review of the Project. The Planning Board's waiver of any requirement shall be made by resolution of the Board adopted prior to the close of the public hearing, and the Planning Board shall set forth in the resolution the reason the waiver is granted.

e) Withdrawal of Waiver

If during the approval process the Planning Board discovers new information that would have caused the Board to refuse to grant a waiver already granted, the Planning Board may rescind the previously granted waiver.

~~f) Consultants~~

~~In its discretion, the Planning Board may determine that the Planning Board requires the advice of outside consultants in connection with the Board's review of a Site Plan. Upon such determination, the Planning Board shall inform the Applicant of the funds that the Applicant shall be required to deposit in an escrow account with the Town Village to cover the Board's anticipated~~

~~professional fees. To continue the review process, the Applicant shall deposit with the Town the funds requested by the Planning Board for its consultant review. If the escrow becomes insufficient to reimburse the Planning Board for its consultant fees, the Applicant may be required by the Planning Board to deposit additional funds with the Town. All escrowed fees shall be deposited prior to the Planning Board's issuance of an approval to a Site Plan Application. Surplus funds deposited by the Applicant shall be refunded to the Applicant within 30 days of a final determination on the Site Plan Application.~~

~~g)f)~~ Decision

- i. The Planning Board shall issue a decision on a Site Plan Application within 30 days of the close of the public hearing. The Planning Board's decision shall be in writing. The decision shall take one of the following actions:
  - a. Approve the Site Plan Application without conditions;
  - b. Approve the Site Plan Application with the Planning Board imposing conditions related to achieving the objectives the Review Criteria set forth in 11.4.E;
  - c. Deny the Site Plan Application because the Project did not meet the objectives of the Review Criteria set forth in 11.4.E; or,
  - d. Deny the Site Plan Application because the Applicant has not provided information or documentation required for the Planning Board to rule on the Application and the Planning Board determines that the Application remains incomplete.

~~ii.—Decisions on Site Plan Applications for Religious or Nonprofit Educational Uses. The Planning Board may impose reasonable conditions on a Site Plan Application for a Religious or Nonprofit Educational Facility, but it shall not deny such Site Plan Application.~~

~~h)—Demolition of buildings in Historic Districts~~

~~PLACEHOLDER~~

~~h)g)~~ Duration

Site Plan approval shall expire 365 days after it is granted if actual construction of the Project is not commenced within that period. “Actual construction” is hereby defined as the placing of construction materials in their permanent position, fastened in a permanent manner, except that where a basement or cellar is being excavated, such excavation shall be deemed to be actual construction; where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition and removal shall be deemed to be actual construction. Upon application made prior to the expiration of the 365 days, the Planning Board may extend the Site Plan approval for an additional 90 days.

j)h) Enforcement by the Building Inspector

Prior to the issuance of a Certificate of Occupancy, the Building Inspector shall determine that the Project has been constructed in accordance with the approved Site Plan and any conditions imposed by the Planning Board.

k)i) Appeal

An appeal from any final decision regarding Site Plan Approval from the Planning Board may be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law.

l)j) Amendment

An approved site plan may be amended at any time in the same manner and subject to the same standards and limitations as provided in this section for original site plan approval except as otherwise authorized by the Planning Board.

## 11.5 Façade Review

### A. Intent and purpose

The Board of Trustees of the Village of Ballston Spa hereby finds that excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior

appearance of buildings erected in the business districts adversely affects the desirability of the area and neighboring areas. It is the purpose of this section to prevent these and other harmful effects of such exterior appearances of buildings erected in the business districts and thus to promote the health, safety, comfort and general welfare of the community, to promote the public convenience and prosperity, to conserve the value of buildings and to encourage the most appropriate use of land.

**B. Preliminary procedure**

1. Any renovation, alteration, or change to the exterior facade of an existing structure within the Village of Ballston Spa's Downtown District shall require a building permit. Said plans shall first be reviewed with the Building Inspector to determine if the proposed facade is compatible with the surrounding buildings. In making such determination, the Building Inspector shall compare said plans with any design criteria adopted by the Village Board of Trustees, as may be amended from time to time. Said criteria may be obtained at the Village Hall for review.
2. In the event that the applicant and Building Inspector cannot agree on the design of the facade, such application shall be denied and forwarded to the Village of Ballston Spa Planning Board, which is hereby charged with the responsibility of administering and carrying out the intent of this article.

**C. Application procedures**

1. Any application referred to the Planning Board by the Building Inspector pursuant to this Section shall be made on a form provided by the Village.
2. The Board may approve, conditionally approve subject to specified modifications, or disapprove any application for a building permit referred to it by the Building Inspector.
3. The Planning Board may impose appropriate conditions and safeguards in connection with its approval.



## **11.6 Certificate of Nonconformity**

### **A. Authority**

The Planning Board shall have authority to issue a certificate of nonconformity in accordance with the provisions of this section and Article 12.

### **B. Purpose**

The certificate of nonconformity shall establish the legality of nonconforming uses, structures, lots, and signs established prior to the effective date of this Code. When necessary to establish the legality of a nonconformity, a certificate of nonconformity shall be required for any nonconforming use, structure, lot, and sign in the Village prior to the approval of any additional zoning applications that may be required.

### **C. Procedure**

#### **1. Application**

The owner of any nonconformity may at any time apply to the Planning Board for a certificate of nonconformity to establish the legality of nonconformity as of a specified date or to extend the abandonment period as outlined in Article 12. Such application shall contain such information as may be required by the Planning Board.

#### **2. Action by Planning Board**

Within 45 days following receipt by the Planning Board of a completed application or such longer time as may be agreed to by the applicant, the Planning Board shall cause such application to be reviewed for compliance with this section and shall inform the applicant whether the application has been approved or denied. The failure of the Planning Board to act within 45 days of a completed application shall be deemed a denial.

- a) Upon reviewing an application for a certificate of nonconformity, the Planning Board shall determine, through written findings, if the required documents and proof are in order and shall decide if the use, lot, structure, or sign:

- i.—Was lawfully existing at the time of the adoption of the provision creating the nonconformity in question;
  - ii.—Has been in continuous use since its establishment with no period of discontinuance causing abandonment, except as authorized pursuant to Article 12 and is not in violation of any other provisions of this Code;
  - iii.—Has not increased intensity, as set forth in Section 12.2.C;
  - iv.—Was fire damaged less than the percentages of the cost of replacement new as set forth in Article 12;
- b)—Prior to the expiration of a period of abandonment or discontinuance, the owner of any nonconformity may apply for a certificate of nonconformity to request an extension of the period of abandonment or discontinuance, in accordance with Section 12.2.E;
  - c)—In the case where the application is denied, the applicant will be provided with a written finding explaining the legalization process for the desired outcome.

#### **D.—Limitations on Certificates of Nonconformity**

A certificate of nonconformity shall become null and void one year after the date on which it was issued unless a building permit and a certificate of occupancy are obtained and maintained.

#### **E.—Appeals**

- 1.—Appeal of a decision by the Planning Board on a certificate of nonconformity shall be submitted to the Zoning Board of Appeals within 60 days of the filing of the Board's decision in accordance with the procedures found Section 11.9;
- 2.—An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the certificate of nonconformity must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

### **11.76 Special Permits**

#### **A. Authority**

1. Unless otherwise specified in the Table of Uses (Article 5), the Planning Board will act as the Special Permit Granting Authority. In this capacity it may, subject to the procedures, standards, and limitations hereinafter set out, hear, review, and finally decide special permit applications required by this Code. ~~Where the Zoning Board of Appeals is the Special Permit Granting Authority it will follow the same rules and procedures of this Section.~~
2. All applications for a special permit shall comply with all standards imposed by the particular provision of this Code, unless the Planning Board may waive the standard, authorizing such use.

#### **B. Purpose**

The special permit procedure is intended to provide a means to establish those uses having some special impact or uniqueness which requires a careful review of their location, design, configuration, and special impact to determine, ~~against fixed standards,~~ the appropriateness of permitting their establishment on any given site. They are uses that may or may not be appropriate in a particular location depending on a weighing of the public need and benefit against the local impact and effect.

#### **C. Special Permit Standards**

1. Approval Standards
  - a) A special permit shall be approved only if evidence is presented which establishes that:
    - i. The proposal will be in harmony with the general purpose, goals, objectives, where applicable, standards and implementation strategies of the Comprehensive Plan, this Code, and, where applicable, the Subdivision Code.
    - ii. The proposal will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.
    - iii. The proposed application will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the

development and use of neighboring properties in accordance with the applicable district regulations.

- iv. The proposal will be served adequately by essential public facilities and services, such as highways, streets, sidewalks, bike lanes, transit services, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools, or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.
- v. The proposal will not result in the destruction, loss, or damage of any natural, scenic, cultural, or historic feature of significant importance.

- b) In determining whether the evidence establishes that the foregoing standards have been met, the Planning Board may determine that an overriding public need mitigates certain impacts or effects of the proposed application and support approval.

#### **D. Procedure**

##### **1. Application**

An application for a special permit shall be submitted in a form and in such numbers as required by the Planning Board in accordance with Article 10.

##### **2. Public Hearing**

A public hearing shall be set, advertised, and conducted by the Planning Board.

##### **3. Action by Planning Board**

- a) Within 62 days following the conclusion of the public hearing, the Planning Board shall:
  - i. Approve the application.
  - ii. Approve the application with conditions.
  - iii. Approve the application for a specified time period, except however such specified time period shall not be applied to special permits approved for a use requiring permanent structural construction.
  - iv. Deny the application.

- b) The failure of the Board to act within 62 days shall be deemed a denial of the application.
  - c) Within 15 business days of such decision or the expiration of such period, the Board shall mail notice of such decision or failure to act to all parties entitled thereto as provided by Section 10.4, file such decision in the office of the Village Clerk, and, in the event that a permit for a special permit is authorized, the Planning Board shall issue such permit, listing therein any and all conditions imposed by the Planning Board.
  - d) Where the district regulations authorizing any special permit in a particular district impose additional standards to be met by such use in such district, a permit for such use in such district shall be approved only if evidence is presented to establish compliance with such additional standards.
4. Conditions on Special Permits
- a) The Planning Board may impose such conditions upon the premises benefited by a special permit as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood.
  - b) Such conditions shall be expressly set forth in the resolution authorizing the special permit and in any associated permit.
  - c) Violation of such conditions shall be a violation of this Code.
  - d) Such conditions may be required to be performed in a specific order.
  - e) Such conditions may be secured in accordance with Section 10.8.
  - f) Such conditions may include but shall not be limited to the following:
    - i. Modification of specific features of the site plan to improve the safety of the site for the general public.
    - ii. The hours of operation, loading, and deliveries.
    - iii. Location on a site of activities that generate potential adverse impacts on adjacent uses such as noises and glare.
    - iv. Placement of trash receptacles.
    - v. Location of loading and delivery areas.
    - vi. Lighting location, intensity, and hours of illumination.

- vii. Placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities.
- viii. Additional landscaping and buffering.
- ix. Preservation of views of unique and important features from public property and rights-of-way.
- x. Access to natural lighting and solar exposure.
- xi. Ventilation and control of odors and fumes.
- xii. Noise limitations.

5. **Renewal of Special Permits with Specified Time Periods**

Special permits that have been issued for a specific time period are subject to review for compliance with all of the conditions imposed at the time of approval of the initial permit and shall be required to apply for a new special permit.

Following a public hearing on the matter, the Planning Board may decline to reissue the special permit if the applicant has failed to substantially comply with one or more of the conditions of the original approval. The applicant shall demonstrate that the use continues to meet the special permit standards and that it has complied with all of the special permit conditions during the entire time period of the operation of the approved use.

**E. Modifications to Special Permits**

No expansion or modification of a use or its operation that is the subject of a special permit shall be permitted, except through the same process as required for initial approval of the special permit.

**F. Effect of Issuance of Special Permit**

The issuance of a special permit shall merely authorize the preparation, filing, and processing of applications for any permits and other approvals which may be required by the codes and ordinances of the Village, including but not limited to, a building permit.

**G. Limitations on Special Permit**

1. A special permit shall become null and void unless a building permit is obtained and work is commenced within one year from the date of approval except in the

case where site plan approval is required, the expiration date shall be the same as that of the site plan approval.

2. Where a violation of this Code has been cited against the property that is the subject of the special permit, the Planning Board may establish a shorter time limitation based on the nature and severity of the violation, taking into consideration the practical ability of the applicant to correct the violations in light of weather conditions, construction issues, or other relevant factors.
3. A special permit shall be deemed to authorize only the particular use or its operation for which it was issued, and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued or abandoned for a period of one year.

#### **H. Appeal**

An appeal from any final decision of the Planning Board as to any matter regarding the special permit must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

### **11.8 Interpretation**

#### **A. Authority**

~~The Planning Zoning Board of Appeals, may subject to the procedures, standards, and limitations hereinafter set out, render interpretations of any provision of this Code.~~

#### **B. Purpose**

~~Interpretations by the Planning Zoning Board of Appeals are intended to clarify the zoning text or map, district boundaries, meaning and intent of various portions of this Code, and precise location of mapped district boundary lines.~~

#### **C. Procedure**

##### **1. Application**

~~A request for interpretation of any provision of this Code shall be submitted in writing to the Planning Zoning Board of Appeals. It shall set forth the specific~~

provision or provisions to be interpreted, the facts of the specific situation concerning the request for an interpretation, and the precise interpretation claimed by the applicant to be correct. Before the rendering of any interpretation, the Planning Zoning Board of Appeals may require such further facts and information as are, in their judgment, necessary to a meaningful interpretation of the provision in question. Informal oral or written opinions, clarifications, and other statements from the Planning Zoning Board of Appeals or their designee shall not be deemed interpretations unless the procedures contained in this section have been followed.

**2.—Action by Planning Zoning Board of Appeals**

Within ten business days following the receipt of a completed request or application for interpretation, the Planning Zoning Board of Appeals shall inform the applicant in writing of the interpretation. The Planning Zoning Board of Appeals shall state the specific precedent, reasons, and analysis upon which such interpretation is based.

**3.—Interpretation Initiated by the Planning Zoning Board of Appeals**

Upon determination by the Planning Zoning Board of Appeals that clarification of the Code or reconciliation of inconsistent provisions of the Code is necessary to ensure that the meaning and intent of the Code is applied, the Planning Zoning Board of Appeals may issue an interpretation and shall subsequently submit an application for an amendment to the text of the Code.

**4.—Procedure Following Interpretation**

Following an interpretation by the Planning Zoning Board of Appeals, such interpretation shall be appended to the official project file. The interpretation shall not be applicable to any other property or project unless there is a subsequent amendment to the Code.

**D.—Effect of Interpretation**

An interpretation finding a particular use to be permitted or a special permit in a specified district shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or



structure but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the Code of the Village of Ballston Spa, including but not limited to a permit for a special permit, a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

#### **E.—Limitation on Interpretations**

If not made part of this Code, an interpretation shall remain valid for the subject property only.

#### **F.—Appeal**

— Appeals of interpretations made by the Planning Board shall be submitted to the Zoning Board of Appeals within 60 days of the filing of the decision in accordance with the procedures found in Section 11.10 and the interpretation standards set forth in item C above shall govern the Zoning Board's decision in such appeal. An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the special permit must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

1.—

2.— An appeal of an interpretation shall stay all proceedings in furtherance of the interpretation appealed, including the issuance of a building permit, unless the Planning Board certifies to the Zoning Board of Appeals after the notice of appeal has been filed that a stay would cause substantial damage to life or property. In such case, the proceedings shall not be stayed other than by a majority vote of the Zoning Board of Appeals.

3.— An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the interpretations must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

### PART III: PROCEDURES APPROVED BY ZONING BOARD OF APPEALS

#### 11.8 Administrative Appeal

##### A. Authority

- B. The Zoning Board of Appeals shall hear and decide administrative appeals relating to each decision, interpretation, or determination by the ~~Planning Board~~Building Inspector unless otherwise specified in this code. ~~In cases of administrative appeals, the Zoning Board of Appeals shall have the same powers and be subject to the same standards and limitations as the Planning Board with respect to any order, requirement, decision, interpretation, or determination being appealed.~~

##### C. Purpose

An administrative appeal provides redress for any person aggrieved or for any officer, department, board, or bureau of the Village affected by a decision of the ~~Planning Board~~Building Inspector. ~~This does not include appeals of site plan review approved by the Planning Board.~~

##### C. Procedure

###### 1. Notice of Appeal

A notice of appeal specifying the reasons for the appeal shall be submitted to the Zoning Board of Appeals within 60 days of the filing of each decision, interpretation, or determination by the ~~Planning Board~~Building Inspector. ~~The Planning Board shall transmit to the Zoning Board of Appeals the notice of~~

~~appeal, together with all documents constituting the record upon which the action appealed from was taken.~~

2. Public Hearing

A public hearing shall be set, advertised, and conducted by the Zoning Board of Appeals.

3. Action by Zoning Board of Appeals

Within 62 days following the close of the public hearing, the Zoning Board of Appeals shall render a decision on the appeal in the manner and form specified in Section 10.6. Such decision may reverse, affirm, or modify, in whole or in part, the action appealed. The failure of the Board to act within such 62 days shall be deemed a denial of the appeal. Within ten business days of such decision, or the expiration of such period, notice of such decision, or failure to act, shall be mailed by the ~~Planning Zoning~~ Board of Appeals to all parties entitled to such notice, pursuant to Section 10.4.

**D. Right to Approve Variance in Deciding Appeals**

In any case where the administrative appeal is accompanied by an application for a variance, the Zoning Board of Appeals, following the denial of the administrative appeal, shall have the authority to review and render a decision on the application for a variance.

**E. Conditions and Limitations on Use or Rights Approved by Appeal**

In any case where this Code imposes conditions or limitations upon any use or right, a decision of the Zoning Board of Appeals on an administrative appeal shall retain such conditions and limitations, unless a variance is granted removing or reducing the conditions or limitations.

**F. Stay of Proceedings**

An appeal shall stay all proceedings in the furtherance of the action appealed from, unless the ~~Planning Board~~ Building Inspector certifies to the Zoning Board of Appeals ~~after the notice of appeal has been filed with them~~ that ~~by reason of facts stated in the certificate~~, a stay would, in ~~his/her~~ their opinion, cause imminent peril

to life or property, in which case the proceedings shall not be stayed ~~other than by a restraining order, which may be granted by the Board of Appeals or by the Supreme Court on application, upon reasonable written notice to the Planning Board and on due cause shown.~~

#### **G. Appeals**

An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the administrative appeal must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

### **11.9 Variance**

#### **A. Authority**

The Zoning Board of Appeals shall have the authority, in accordance with the procedures hereinafter established, to authorize use, area or other variances within the Village. Minor deviations from this Code may be permitted under the provisions for administrative adjustment pursuant to Section 11.3.

#### **B. Purpose**

The variance procedure is intended to provide a means by which relief may be granted only when no other applicable remedy is available, pursuant to this Article.

#### **C. Area variance**

This is a variance involving dimensional deviations from the standards set forth in this chapter. When, because of the specific parcel or because of extraordinary topographic conditions or other physical conditions or location of the specific parcel, the strict application of the provisions of this chapter actually prohibit or unreasonably restrict the use of the land or building for which such variance is sought, then the granting of the variance granted by the Board shall be the minimum variance that will provide for the reasonable use of the property. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighted against the detriment to the

health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

1. 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.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

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#### **D. Use Variance**

1. A use variance shall mean the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise prohibited by the applicable zoning regulations. A use variance is required for the following:
  - a) Use of land that does not comply with the use permissions listed in Table 8.
  - b) Increase in the intensity of an existing nonconforming use.
2. The Zoning Board of Appeals shall not grant a use variance without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located:
  - a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Proof that the property cannot realize a reasonable return must include verifiable facts, which the Zoning Board of Appeals deems sufficient. The unsupported opinion of the owner or others shall not be accepted as proof. Proof that the

property could be used more profitably if not subject to the Code provision does not, alone, equate to a lack of a reasonable return.

- b) The alleged hardship relating to the property in question is unique and does not apply to other properties in a substantial portion of the district or neighborhood. The inability to realize a reasonable return must arise out of a unique circumstance related to the property, not the personal situation of the owner.
  - c) The requested use variance, if granted, will not alter the essential character of the neighborhood. The requested variance must not materially impact the enjoyment, use or development of adjacent properties or the neighborhood because of issues of noise, traffic or parking congestion or undue demands on public utilities or services.
  - d) The alleged hardship has not been self-created.
3. When a use variance application involves development or redevelopment, the Zoning Board of Appeals may review the application in two steps for the purpose of reducing administrative staff time and application costs.
- a) The applicant may submit a request for a partial determination of unnecessary hardship by submitting the required information to the Zoning Board of Appeals to establish that the proposed development or redevelopment cannot realize a reasonable return, is unique to the property, and has not been self-created as set forth in items 11.9.C.2.a, 2.b, and 2.d.
  - b) If the Zoning Board of Appeals renders a decision that the applicant has demonstrated items 11.9.C.2.a, 2.b, and 2.d, the applicant may submit the remainder of the application requirements to the Board for a final decision on the remaining standard(s) for the use variance.
  - c) Within ten business days following such decision or the expiration of such period, the Zoning Board of Appeals shall mail notice of such decision or failure to act to all persons entitled to such notice and file such decision in the office of the Village Clerk.

#### 4. Conditions on Variances

- a) The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.
- b) Such conditions or restrictions shall be consistent with the spirit and intent of the Code or local law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- c) Such conditions shall be expressly set forth in the resolution approving the variance and in the notice informing the applicant thereof and in any zoning permit based thereon.
- d) Modifications of such conditions or restrictions shall require approval of the Zoning Board of Appeals.
- e) Violation of such conditions and safeguards shall be a violation of this Code.

5. Approval of Variance Other Than Requested Variance

A variance offering less relief than that requested may be approved when the record supports the applicant's right to some relief but not to the relief requested.

**D. Modifications to Variances**

No expansion or modification that increases the intensity of a use or its operation that was originally approved by variance shall be permitted except through the same process as required for initial approval of the variance.

**E. Effect of Variance Approval**

The issuance of a variance shall merely authorize the preparation, filing, and processing of applications for any permits and other approvals which may be required by the codes and ordinances of the Village, including but not limited to a building permit.

**F. Limitations on Variances**

- 1. A variance shall become null and void unless a building permit is obtained and work is commenced within one year from the date of approval except in the case

where site plan approval is required, the expiration date shall be the same as that of the site plan approval.

2. Where a violation of this Code has been cited against the property which is the subject of the variance, the Board may establish a shorter time limitation based on the nature and severity of the violation, taking into consideration the practical ability of the applicant to correct the violations in light of weather conditions, construction issues, or other relevant factors.
3. When the active operation of all or a portion of a use variance is discontinued or abandoned for a period of one year, regardless of any intent to resume or not to abandon the use, the use variance shall be null and void. The active operation of a use shall be the typical or normal activities associated with the use.

#### **G. Appeal**

An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the variance must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village, in accordance with Article 78 of the New York Civil Practice Law and Rules.

### **11.10 Interpretation**

#### **A. Authority**

The Zoning Board of Appeals, may subject to the procedures, standards, and limitations hereinafter set out, render interpretations of any provision of this Code.

#### **B. Purpose**

Interpretations by the Zoning Board of Appeals are intended to clarify the zoning text or map, district boundaries, meaning and intent of various portions of this Code, and precise location of mapped district boundary lines.

#### **C. Procedure**

##### **1. Application**

A request for interpretation of any provision of this Code shall be submitted in writing to the Zoning Board of Appeals. It shall set forth the specific provision or provisions to be interpreted, the facts of the specific situation concerning the



request for an interpretation, and the precise interpretation claimed by the applicant to be correct. Before the rendering of any interpretation, the Zoning Board of Appeals may require such further facts and information as are, in their judgment, necessary to a meaningful interpretation of the provision in question. Informal oral or written opinions, clarifications, and other statements from the Zoning Board of Appeals or their designee shall not be deemed interpretations unless the procedures contained in this section have been followed.

**2. Action by Zoning Board of Appeals**

Within ten business days following the receipt of a completed request or application for interpretation, the Zoning Board of Appeals shall inform the applicant in writing of the interpretation. The Zoning Board of Appeals shall state the specific precedent, reasons, and analysis upon which such interpretation is based.

**3. Interpretation Initiated by the Zoning Board of Appeals**

Upon determination by the Zoning Board of Appeals that clarification of the Code or reconciliation of inconsistent provisions of the Code is necessary to ensure that the meaning and intent of the Code is applied, the Zoning Board of Appeals may issue an interpretation and shall subsequently submit an application for an amendment to the text of the Code.

**4. Procedure Following Interpretation**

Following an interpretation by the Zoning Board of Appeals, such interpretation shall be appended to the official project file. The interpretation shall not be applicable to any other property or project unless there is a subsequent amendment to the Code.

**D. Effect of Interpretation**

An interpretation finding a particular use to be permitted or a special permit in a specified district shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the Code of

the Village of Ballston Spa, including but not limited to a permit for a special permit, a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

**E. Limitation on Interpretations**

If not made part of this Code, an interpretation shall remain valid for the subject property only.

**F. Appeal**

An appeal from any final decision of the Zoning Board of Appeals as to any matter regarding the special permit must be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department, bureau, board, or commission of the Village in accordance with Article 78 of the New York Civil Practice Law and Rules.

## PART IV: PROCEDURES BY HISTORIC DISTRICT COMMISSION

### 11.11 Historic Districts

#### A. Purpose; District Boundaries

1. **Purpose and intent.** Pursuant to the provisions of § 7-700 of the Village Law of the State of New York which empowers the Village Board to regulate and restrict certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection enhancement and perpetuation of these places of natural heritage, it is hereby declared that the preservation of structures of historic, architectural and aesthetic value is a public purpose of the Village of Ballston Spa. The purpose and intent of this Article is to:

(5)a) \_\_\_\_\_ Safeguard the heritage of the Village of Ballston Spa by preserving districts and landmarks in the Village which reflect elements of its cultural, social, economic, political, artistic and architectural history.

(5)b) \_\_\_\_\_ Promote the use of Historic Districts and landmarks for the educational, pleasure and welfare of the citizens of the Village.

(5)c) \_\_\_\_\_ Stabilize and enhance property values.

(5)d) \_\_\_\_\_ Establish a Historic District Commission to help carry out the purposes of this chapter.

(5)e) \_\_\_\_\_ Create Historic Districts in the Village of Ballston Spa.

2. **Boundaries of Historic Districts.** The Zoning Map of this chapter notwithstanding, the boundaries of the Historic District shall include all parcels of land which abut East and West High Streets from the intersection of East High Street with Eastern Avenue westerly to the creek which flows under West High Street into the Gordon Creek (including the continuation of Charlton Street south of West High Street); Beach Street; Pleasant Street from its intersection with the easterly line of Beach Street westerly to Milton Avenue; Milton Avenue from its intersection with Pleasant Street southerly to its intersection with East and West High Streets; Church Avenue from its intersection with East and West High Streets southerly to 20 Church Avenue, commonly known as the "Verbeck House." Parcels of land abutting the above streets shall include all adjoining

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parcels under common ownership as of May 24, 1999. [Amended 5-24-1999 by L.L. No. 1-1999]

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#### **B. Creation and organization of Historic District Commission**

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1. There is hereby created an Historic District Commission (hereinafter called the "Commission") which shall consist of five members who shall serve without compensation, who shall be residents of the Village of Ballston Spa and of which two members shall reside in an Historic District.
2. The members of the Commission shall be appointed by the Mayor and approved by the Village Board. The term of office of each member shall be three years, except that the initial appointments of one member shall be for one year, of two members for two years and of two members for three years. The Village Board of Trustees shall have the power to remove any member for good cause shown after a public hearing. Whenever a vacancy shall occur on the Commission, the Mayor shall appoint a person with the concurrence of the Village Board to serve the unexpired term thereof.
3. The Commission shall adopt, amend or repeal rules for the transaction of its business which shall include provisions for the appointment from time to time from its members a Chairman and Vice Chairman, the holding of regular meetings, definition of quorum and manner of voting, maintenance of its records and any other rules and regulations necessary or appropriate to the performance of its functions.
4. The Commission shall prepare a list of architectural and other criteria appropriate to the development of each Historic District to serve as a guide for persons contemplating work within an Historic District and to serve as an aid to the Commission in reviewing applications.

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#### **C. Duties and powers of the Commission.**

1. Within 72 hours after filing, it shall be the duty of the Building Inspector to refer to the Commission plans for any building within an Historic District for which a permit is sought. The Commission shall review all applications for building permits relating to Historic Districts. In such review, the Commission shall give consideration to any factors it may deem pertinent, including:
  - a) The historic or architectural value and significance of any structure.
  - b) Its relationship to the historic value and architectural styles and types of buildings in the surrounding area.

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- c) The appropriateness of exterior design, arrangement, textures, nature and quality of materials and general appearance.
- d) Excessive similarity to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application, facing upon the same street and within 250 feet of the proposed site in respect to one or more of the following features of exterior design and appearance:
- e) Apparently identical facade.
- f) Substantially identical size and arrangement of either doors, windows, portico or other openings or breaks in the facade facing the street, including reverse arrangement.
- g) Other significant identical features of design, provided that a finding of excessive similarity exists, but further that it is of such a nature as to be expected to provoke one or more of the harmful effects set forth in § 205-36 above. [Amended 5-24-1999 by L.L. No. 1-1999]
- (d) Excessive dissimilarity or inappropriateness in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application, facing upon the same street and within 250 feet of the proposed site in respect to one or more of the following features:

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2. The Commission shall have the power to:

- a) Administer oaths and compel the attendance of witnesses.
- b) Call upon and compensate experts to aid it in its duties.
- c) Maintain a directory of architectural styles.
- d) Conduct surveys of Village landmarks and of buildings and areas within the Historic Districts for the purpose of acquiring data concerning historic, architectural or cultural significance of such buildings and area.
- e) Transmit to the Planning Board recommendations concerning the establishment or alteration of Historic Districts and the designation of structures or areas as landmarks.
- f) Advise owners of landmarks or buildings or areas within Historic Districts, upon request, on the preservation and restoration of historic structures.

- g) Do all other legally consistent acts to implement its functions and the purposes of this chapter.

#### **D. Standards to guide the Commission**

The Commission shall be guided by the following standards in approving or disapproving plans except where the Commission specifically finds that application of the following standards is inappropriate or would create undue hardship for the applicant:

1. Alterations, repairs and additions. Alterations, repairs and additions to existing buildings shall either be consistent with the spirit of their architectural style or shall alter the structure to render its appearance consistent with the architectural styles existing in the Historic Districts.
2. New construction. New construction shall be consistent in design with the architectural styles existing in the Historic Districts, except in such instances of new construction as the Commission shall determine to be inappropriate because structures adjoining the site of such proposed new construction are of a significantly dissimilar period of architecture. In such instances, the Commission may approve such styles and periods of architecture as it deems proper for the site and in the best interest of the Historic Districts.
3. In making its determinations under §§ 205-37A and 205-37B above, the Commission shall consider the following guidelines which shall also be considered by the applicant and included in his/her plans to the extent that they are applicable:
  - a) Materials.
    - i. Retention and/or restoration of old materials are to be utilized. Removal or covering of old materials is to be prohibited wherever practicable.
    - ii. Compatible materials which are either similar or visually quiet in relation to traditional ones used in the area should be utilized in new construction or when restoration of original materials is impossible. Inappropriate contemporary materials, including those which attempt fake antiquity or rusticity, should be discouraged or specifically excluded. When appropriate traditional materials cannot be duplicated, preference should be given to contemporary materials

used in a straightforward manner which at the same time are not conspicuous in the traditional context of the district.

iii. Material selection for new buildings should respond to the consideration for Historic Districts. In order to retain the visual integrity of the area, contemporary materials such as glass, curtain walls, concrete, etc., are acceptable, provided that the overall effect of the building facade is visually quiet and compatible with historic areas.

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b) Facade openings. Retention of original design and style of sash, doors and size of openings in a facade of an existing structure is to be accomplished wherever practicable. Restoration of such features is to be encouraged when they have formerly been altered.

c) Facade rhythm and proportion.

i. By manipulation of architectural features, the rhythm of separate building units existing on a new street is to be carried across the facade of new structures which occupy more than one house lot. Some of the ways in which such articulation may be achieved easily on extended facades include rhythmical grouping of openings in clusters, by reveals in the wall plane or by architectural expression of a structural bay.

ii. The facade of structures erected on single house lots should be proportioned so that the height is compatible with those in the area.

d) Architectural features.

i. Ornamentation in wood, masonry or metal should be preserved and repaired on all facades. In the case of missing elements, when their configuration can be established they should be restored. New infill structures may incorporate ornamental features common to the district, otherwise, decorative features should be omitted from projects of contemporary design.

ii. Indication of floor levels by means of opening placement and use of belt courses should be related primarily to those generally indicated on the entire block and secondary to the two abutting structures.

iii. Front steps and porches on existing structures should not be removed or rebuilt in a manner which may conflict with the style of the structure or neighborhood.

e) Demolition of buildings.

- i. Demolition in areas designated for new development will be permitted only after the developer of the site has submitted and obtained approval of his or her plans for new development, including an acceptable timetable and guarantees which may include performance bonds for demolition and completion of the project. In no case shall the time between demolition and commencement of new construction exceed six months.
- ii. In the case of structures of architectural or historical significance, the developer shall be required to show good cause as to why such structures cannot be preserved.
- iii. Moving of structures of historical or architectural value may be permitted as an alternative to demolition.

f) Height of new construction.

- i. Maximum building height shall not be greater than the taller of the next two abutting structures on each side of the building site.
- ii. Minimum building height of a street facade shall not be less than the lower of the next two abutting structures on each side of the building site.

**E. Regulation of structures in Historic Districts.**

1. Compliance with the requirements set forth in this Section 11.11 shall be necessary before any structure in an Historic District is constructed, altered, resurfaced, repaired, rehabilitated, restored, moved or demolished.

2. Regulatory standards.

Approval of such application will be given unless the Commission finds that the proposed modification will contribute to:

- a) Excessive uniformity;
- b) Excessive dissimilarity;
- c) Inappropriateness of design in the exterior appearance of the proposed modification as said modification relates to the immediate area;

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d) Adverse effect on the value of existing property and the benefits of occupancy in the immediate area;

e) Inconsistency with the architectural style of the existing structure or neighboring property;

f) Discouragement of the most appropriate development of the district;

g) Degeneration of the subject property of the surrounding property with attendant deterioration of conditions affecting the health, safety, comfort and general welfare of the inhabitants thereof; or

h) Failure to maintain appropriate architectural standards in the construction, modification or removal of structures located within the designated district.

3. It is the purpose of this section to prevent these and other harmful effects of such exterior appearances of buildings as may be seen from the public streets in any neighborhood and thus to promote the health, safety, comfort and general welfare of the community, to promote the public convenience and prosperity and to conserve the value of buildings and encourage the most appropriate use of land within the following designated areas.

4. The Board of Trustees of the Village of Ballston Spa hereby finds that the failure to maintain appropriate architectural standards in the construction of new buildings and projects and in the modification or removal of existing buildings and failure to provide and implement a coordinated and comprehensive plan for the preservation of Historic Districts and/or Village landmarks conflicts with the purposes set forth in § 205-34. It is the purpose of this section to minimize and prevent such conflicts, to which intent there are hereby established and designated certain Historic Districts and landmarks which shall be the areas and premises designated in this Section 11.11.

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#### **F. Actions of the Commission. [Amended 5-24-1999 by L.L. No. 1-1999]**

The Commission may approve without reservations or conditionally approve, subject to specific modifications, or may disapprove any application for a building permit referred to it by the Building Inspector as set forth herein, provided that a finding of excessive dissimilarity or inappropriateness shall state not only that such excessive dissimilarity exists, but further that it is of such a nature as to be expected to provide one or more of the harmful effects set forth in this Section 11.11, and that the finding is not based on personal preference as to taste or choice of architectural style. As speedily as possible, but within 15 days after a building plan is referred to

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the Commission by the Building Inspector as herein provided, the Commission shall meet the Building Inspector, review such plans and determine whether to approve or disapprove the issuance of a building permit.

#### **G. Effect of Commission Action**

The Building Inspector shall refuse any permit application disapproved by the Commission as provided in this Section 11.11. The Building Inspector may approve any application conditionally approved by the Commission as soon as the conditions specified in such conditional approval have been fulfilled. If the Commission shall have approved any building permit application and such application shall otherwise be in conformance with all codes and ordinances of the Village of Ballston Spa, then the Building Inspector shall forthwith issue the permit applied for. He/she shall likewise issue the permit as applied for in the case of any building permit application referred to such Commission and on which such Commission has failed to act within 15 days of such reference by the Building Inspector.

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#### **H. Appeal to Zoning Board of Appeals**

Any person aggrieved by the action of the Commission in disapproving or approving a building permit application and of the Building Inspector in acting on such permit because of such disapproval or approval may take an appeal therefrom to the duly constituted Zoning Board of Appeals in the same manner as is provided for zoning appeals, and such Zoning Board of Appeals, after proceeding in the same manner as is provided for zoning appeals and with the same power and authority therein vested in appealing upon appeals before it under the provisions of law and this chapter and in the exercise thereof, may reverse, affirm or modify and affirm the action of the Commission and of the Building Inspector.

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#### **I. Consultation with Planning Board**

Upon request of the Planning Board, the Commission shall consult with and advise the Planning Board with respect to any site plan on which the Commission is required to pass under provision of law or of this chapter.

#### **J. Exclusions**

Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior feature in an Historic District which does not involve a change in design, material or outer appearance thereof.

## ARTICLE 12. NONCONFORMITIES

### 12.1 Purpose

The purpose of this Article is to regulate nonconforming uses, structures, lots, and signs as follows:

- A. The zoning districts established by this Code are designed to guide the future use of the Village's land by encouraging the development of appropriate, compatible, and related uses and to promote and protect the public health, safety, and general welfare.
- B. Some nonconformities may continue to exist and afford adaptive reuse opportunities that can contribute to neighborhood character, diversity, and services. The continued existence of certain nonconformities may be inconsistent with the Comprehensive Plan and the gradual elimination of such nonconformities is often desirable.
- C. The regulations of this Article are intended to restrict further investments that would make certain nonconformities more permanent in their location as well as to afford opportunities for creative use and reuse of those other nonconformities that contribute to a neighborhood and are consistent with the goals of the Comprehensive Plan.

~~D. A certificate of nonconformity may be required per Section 11.5 to establish the legality of nonconforming uses, structures, lots, and signs established prior to the effective date of this Code that do not conform to the regulations of this Code applicable in the zoning districts in which such nonconformities are located.~~

### 12.2 Nonconforming Uses

#### A. Continuance

Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the regulations contained in this section. Ordinary repair and maintenance or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring, or plumbing, may be performed.

#### B. Moving

No nonconforming use shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot or structure unless the entire use conforms to all regulations of the zoning district in which the use is located.

### **C. Expansion of Use**

No nonconforming use shall be increased in intensity. Increases of intensity include, but are not limited to:

1. Expansion of such use to an additional existing structure other than that occupied by such nonconforming use on the effective date of this Code, or any amendment hereto which causes such use to become nonconforming.
2. Expansion of such use, within a building or other structure, to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Code, or any amendment hereto which causes such use to become nonconforming. This includes enlargement of an existing structure to accommodate the nonconforming use.
3. Expansion of such use to additional area of the lot that was not occupied by such nonconforming use on the effective date of this Code, or any amendment hereto which causes such use to become nonconforming.
4. An enlargement of any existing parking lot or garage.
5. An increase in the posted occupancy limit.

### **D. Change in Use**

1. A nonconforming use shall not be changed to any use other than a use allowed in the zoning district in which the property is located unless a variance is granted.
2. Once changed to a permitted use, the use shall not be changed back to the prior nonconforming use unless a variance is granted. The use is deemed changed when an existing nonconforming use is terminated and a new use commences and continues for a period of seven consecutive days, including any change of use in violation of this section.

### **E. Abandonment or Discontinuance**

1. When the active operation of all or a portion of a nonconforming use, excluding legally existing two-family dwellings in any district where they are not permitted as of right, is discontinued or abandoned for a period of 12 months, regardless of any intent to resume or not to abandon the use, the use or portion thereof shall not be reestablished or resumed. The active operation of a use shall be the typical or normal activities associated with the use.

- a) In the case of complete abandonment or discontinuance of a nonconforming use, any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such structure is located.
  - b) In the case of abandonment or discontinuance of a portion of a nonconforming use, the remaining occupied portion of the nonconforming use may continue subject to the provisions of this section.
2. Any period of discontinuance caused by government actions, strikes, material shortages, forces of nature, or declarations of disasters and/or emergencies, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this subsection, except that any period of discontinuance ordered by the Village or a court of law because of Municipal Code violations or failure to act shall be included in calculating the length of discontinuance of this subsection. Any such period of discontinuance based on this section shall be documented by the owner and an application for an extension of the abandonment period shall be submitted to the Planning Board as set forth in item 3 below.
- ~~3.—Prior to the expiration of a period of abandonment or discontinuance, the owner of any nonconformity may apply to the Planning Board for a certificate of nonconformity (Section 11.6) to document the intent to discontinue a nonconforming use for a period in excess of the period of abandonment or discontinuance. Such application shall be based on one or more of the following circumstances and shall include a plan and timetable for reuse or re-occupancy:~~
- ~~a)—Extensive rehabilitation of property, ongoing since prior to the expiration of the period of discontinuance.~~
  - ~~b)—Unique circumstances associated with repairs and alterations on designated landmarks or designated buildings of historic value.~~
  - ~~c)—Transfer of title delays caused by estate or probate issues.~~
  - ~~d)—Delay caused by serious illness or injury of any owner that may warrant special consideration on the basis of personal hardship.~~
  - ~~e)—Current and expected market conditions that impact the ability to reoccupy within the re-occupancy period for built-as-nonresidential buildings.~~
  - ~~f)—Conditions listed in item 2 above.~~

- 4.—Upon the expiration of a period of abandonment or discontinuance, the owner of any nonconformity may apply for a certificate of nonconformity (Section 11.6), which, upon denial by the Planning Board, may be appealed to the Zoning Board of Appeals. The Zoning Board of Appeals may extend the period of abandonment or discontinuance if sufficient evidence is provided substantiating that the personal and/or property circumstances set forth in item 3 above significantly affected the ability to reoccupy the property.
- 5.—The owner of any nonconformity may apply to the Planning Board for a certificate of nonconformity to establish by relevant and credible evidence that the use has not been discontinued or abandoned. For the purposes of this section, the Planning Board shall consider the following circumstances, which shall contribute towards evidence of discontinuance or abandonment of a use:
- a) Failure to maintain regular business hours, typical or normal for the use (past operations of the use and/or industry standards may be used to determine typical or normal hours); or
  - b) Failure to maintain equipment, supplies or stock-in-trade which would be used for the active operation of the use; or
  - c) Failure to maintain utilities which would be used for the active operation of the use; or
  - d) Failure to pay taxes, including but not limited to sales taxes, workers' compensation taxes, corporate taxes, etc., that would be required for the active operation of the use; or
  - e) Failure to maintain required local, state, or federal licenses or other approvals that would be required for the active operation of the use.

6.3. The legality of one or more nonconforming uses located within a property shall not affect the determination that another nonconforming use on the same property has been discontinued or abandoned.

### 12.3 Nonconforming Structures

#### A. Continuance

A nonconforming structure may continue so long as it remains otherwise lawful, subject to the restrictions in this section.

#### **B. Maintenance and Repair**

Any nonconforming structure may be maintained or repaired, provided no additional nonconformity is created or the degree of the existing nonconformity increased.

#### **C. Damage or Destruction**

- i. In the event that a nonconforming structure is damaged or destroyed, by any means, to the extent of more than 50% of the cost of replacement, such structure shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located. This does not apply to legally existing single-family dwellings, two-family dwellings, and three-family dwellings, which are addressed in item a below.

A legally existing single-family dwelling, two-family dwelling, and three-family dwelling may be rebuilt as it was after any level of destruction, in compliance with other relevant sections of New York State and Village of Ballston Spa Codes.

- ii. When a nonconforming structure is damaged or destroyed, by any means, to the extent of 50% or less of the cost of replacement of such structure, the structure may be rebuilt ~~as it was if a certificate of zoning compliance or certificate of nonconformity is obtained if and~~ restoration is begun within ~~one yet two years~~ after the date of such partial destruction and is diligently pursued to completion. No additional nonconformities may be created.

#### **D. Extension of Walls for Nonconforming Structures**

Where a structure is deemed nonconforming because of encroachment into a required rear or interior side setback, the structure may be enlarged or extended horizontally or vertically along the same plane as the existing perimeter walls, so long as the resulting structure does not violate any other district regulation. A variance is not required.

### **12.4 Nonconforming Lots of Record**

#### **A. Use of a Nonconforming Lot**

Where a parcel legally existed prior to adoption of this Code, notwithstanding the regulations imposed by any other provisions of this Code, a structure which complies with the dimensional requirements of the district in which it is located may be erected on that parcel.

### **12.5 Nonconforming Signs**

#### **A. Continuance**

Subject to the limitations and termination provisions hereinafter set forth, any lawfully existing nonconforming sign may be continued so long as it otherwise remains lawful after the effective date of this Code.

#### **B. Alteration, Expansion or Moving**

No nonconforming sign shall be:

1. Changed or altered in any manner which would increase the degree of its nonconformity.
2. Increased in size or any other sign dimension, such as height.
3. Changed or altered to prolong its useful life, except for a change solely to text or graphics on an existing background, not involving a change to any other part of the sign or sign structure. A change in the sign face is considered a change that prolongs the sign's useful life.
4. Moved in whole or in part to any other location where it would remain nonconforming.

#### **C. Termination of Nonconforming Signs**

##### **1. Termination by Abandonment**

- a) Any nonconforming sign, the use of which is discontinued for a period of 90 days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not thereafter be reestablished.
- b) Any period of such discontinuance caused by government actions, strikes, material shortages or forces of nature, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this subsection.

##### **2. Termination by Damage or Destruction**

Any nonconforming sign damaged or destroyed, by any means, to the extent of 50% of its replacement cost new shall not be restored but shall be terminated.

##### **3. Termination by Change of Business**

Any nonconforming sign advertising or relating to a business on the premises on which it is located shall be terminated upon any change of such business necessitating any change in the sign.



## ARTICLE 13. ENFORCEMENT

### 13.1 Enforcement

#### A. Enforcement officer.

This chapter shall be enforced by the Building Inspector, who shall be appointed by the Mayor, with approval of the Board of Trustees. No building permit or certificate of occupancy shall be issued by the Building Inspector for any purpose except in compliance with the provisions of this chapter.

#### B. Inspection and notice of violation.

1. The Building Inspector is authorized to enter, inspect and examine legally any building structure, place, premises or use in the Village of Ballston Spa with regard to the provisions of this chapter and to issue a written order for the proper remedying or compliance or any condition found to be in violation thereof. The Building Inspector shall give reasonable written notice to the owner(s) of his/her /their intent to examine or inspect any building or property and shall enter only with the permission of the owner. At time of entry, the Building Inspector shall have the right to enter and inspect, or cause to be entered and inspected, any building or property for the purpose of carrying out his or her duties. If the owner or occupant denies access, the Building Inspector may not enter without a warrant. The Building Inspector shall also determine the compliance with the provisions of this chapter.
2. The Village Police Department and the Fire Department Inspector, at the request of the Building Inspector, shall examine or investigate legally any building, structure, use or premises with regard to any provision of this chapter and shall transmit reports and recommendations to the Building Inspector regarding any violation thereof.
3. If technical personnel are needed to check performance standards in determining prohibited uses (Article 5) and subsequent performance after notice of violation, the Building Inspector can employ the services of such personnel with the prior approval of the Village Board of Trustees.

#### C. Legal action by the Building Inspector.

If an unlawful condition or use is found not to have been properly remedied or made to comply with the provisions of this chapter by the expiration of the time period granted by

the Building Inspector, then the Building Inspector shall take the following action to enforce the provisions of this chapter.

1. Notification of violations

Written notice of violation signed by the Building Inspector shall be served upon the person or persons committing such violation and/or the property owner either personally or by mail addressed to such person or persons at his or her last known address. Each week's continued violation shall constitute a separate additional violation.

2. Complaints

Whenever an alleged violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector who shall properly record such complaint and immediately investigate and report the issue. The person filing the complaint shall receive notice of the resolution of the complaint.

**D. Legal action by the taxpayers.**

If no action has been taken in accordance with Article 13.C within a ~~ten~~thirty-day period following written request by any person aggrieved so to proceed, then such person may appeal to the Zoning Board of Appeals.

**E. Penalties for violations.**

~~Any person or corporation, whether as owner, lessee, agent or employee who shall violate any of the provisions of this chapter or who fails to comply with any order or regulation made thereunder, who erects, alters, moves or uses any building or uses any land in violation of any detailed statement or plans submitted by him/her and approved under the provisions of this chapter shall be guilty of a misdemeanor and shall be liable to a penalty up to a maximum amount per day as kept on file with the Building Inspector and/or maintained on the Village of Ballston Spa's website. Each day or part of a day that such violation is permitted to exist after the expiration of the time period granted by the Building Inspector shall constitute a separate offense and shall be subject to the same penalty established per day. In case any building is erected, altered, moved or used or land is used in violation of the provisions of this chapter, the Building Inspector may institute any appropriate action or procedures to prevent such unlawful erection, alteration or use.~~

Violation of any provision or requirement of this chapter or violation of any statement, plan, application, permit or certificate approved under the provisions of this chapter shall be considered an offense.

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1. Conviction of a first offense is punishable by a fine of not more than \$350 and/or imprisonment for not more than six months.
2. Conviction of a second offense, committed within a five-year period of the first, is punishable by a fine of not less than \$350 nor more than \$700 and/or imprisonment for not more than six months.
3. Conviction of a third or subsequent offense, committed within a five-year period of the first, is punishable by a fine of not less than \$700 nor more than \$1,000 and/or imprisonment for not more than six months.
4. The owner, general agent or contractor of a building, premises, or part thereof where such a violation has been committed or does exist and any agent, contractor, architect, builder, corporation or other person who or which commits, takes part in or assists in such violation shall be liable for such an offense. All such penalties shall be collectible by and in the name of the Village. Each week that any such violation continues after notification that such violation exists shall constitute a separate offense. Such notice shall be given in writing by the Building Inspector and shall be served by certified mail or personal service.

#### **F. Court Action**

Court action. The imposition of penalties herein prescribed shall not preclude the Village or any person from instituting appropriate legal action or proceedings in a court of competent jurisdiction to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use or to restrain by injunction, correct or abate a violation or to furthermore prevent the illegal occupancy of any building, land or premises.

#### **G. Enforcement Costs**

Enforcement costs. All costs associated with the enforcement of specific violation(s) shall be borne by the violator. If said costs cannot be paid, a lien may be placed on the violator's property.

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## ARTICLE 14. APPLICATION OF LOCAL LAW

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### 14.1 Legislative intent and compliance

- A. The provisions of this chapter are intended and shall be considered to be the minimum requirements for the protection and promotion of the public health, safety, morals, convenience and other aspects of general welfare and beauty of the community.
- B. All applicable buildings shall hereafter be used, occupied, constructed, located, relocated, altered or enlarged, and all applicable land shall be used or occupied only in compliance with the provisions of this chapter.
- C. The provisions and the zoning district boundaries shall be established and enforced in accordance with this chapter and the Village Law and suitably amended, supplemented or changed when found necessary.

### 14.2 Conflict with other laws

This chapter is not intended to abrogate, render invalid or interfere with the application and administration of any other lawful statute, ordinance, regulation, easement, private agreement, covenant, deed restriction or other legal relationship, public or private. When this chapter imposes a greater restriction on the use of buildings or land or the heights of buildings or requires larger open spaces or makes any other greater requirement than is imposed or required by any other law, rule or regulation or by easements, covenants or agreements, the provisions of this chapter shall govern.

## APPENDIX | R-2S

### R-2S RESIDENTIAL DISTRICT SENIORS

This proposal is based upon the addition to the R-2S District of five additional eight-unit apartment buildings for seniors, along with parking:

- A.** The Village of Ballston Spa Zoning Law and the Zoning Map of the Village as set forth therein be and the same hereby is amended by changing the area described in the annexed Appendix A<sup>10</sup> from District R-1 Residential such as now zoned to a new district, Section R-2S Residential District Seniors (hereinafter R-2S).
- B.** The R-2S District will contain 15 two-story eight-unit buildings, to be used for private residential purposes, and occupancy, by persons 55 years of age or older and their spouses. Occupancy for less than 72 hours by any guest of any occupant of the property shall be allowed in any month. The approximate location of the buildings and access to the site and the location of parking shall be in accordance with the approved sketch plan, annexed hereto as Appendix B,<sup>11</sup> provided that the applicable setback in the R-2S Zone will be a twenty-five-foot front setback, a fifteen-foot side setback and a twenty-five-foot rear setback. Notwithstanding, the setback from the boundary with Brookside Museum shall substantially conform to the approved site plan and shall have at least a sixty-foot setback. In the event that common access with the owner of property immediately on the north is not possible, access shall be at the northernmost boundary of the property. A sidewalk will be installed by the applicant along the west side of Fairground Avenue as a pedestrian link to the downtown area of the Village. A sidewalk shall be provided from Fairground Avenue into the site and to each building. Parking is to be determined during the site plan review process and recommendations by the Village Engineers. Parking shall be substantially as per the design set forth in Appendix B and shall allow for emergency vehicle turnaround.
- C.** Except as herein provided, the site plan review process as set forth in this chapter will be applicable.
- D.** Water will be supplied by the Village of Ballston Spa water system. Sanitary sewerage will be provided by connection to the Village of Ballston Spa sewer system. Victorian-style streetlamps shall be installed from the beginning of the project down Fairground Avenue to its intersection with Front Street and Charlton Street in the style selected by the Village. The number of lights to be installed will be determined by the Village, and all wiring for these lights will be underground.
- E.** The architectural style of the buildings shall conform to the design and style of the Phase I structure.
- F.** The height of the structures is not to exceed two stories.
- G.** An engineering review reimbursement shall be established to cover the time already expended, as well as future expenses associated with the technical review of this project, in an amount to be established by Clough, Harbour & Associates, the Village Engineers, and replenished as required by the Village.
- H.** There shall be a buffer between the project and the museum property immediately to the east, as follows: a buffer of not less than 60 feet from the eastern shared property line, except the proposed driveway and drainage features will be allowed to encroach into the buffer per the

design set forth at the October 25, 2010, meeting, and as shown on the attached plans, and as approved by the Village Engineer.

1. The existing vegetation within the buffer shall be preserved and enhanced with additional plantings of the following species up to:
  - a) Deciduous overstory trees: sugar maple, red oak; two to 2.5 inches in caliper; 100 per acre.
  - b) Deciduous understory trees/shrubs:
    - i. Shadblow serviceberry; five feet to six feet in height; 75 per acre.
    - ii. Arrowwood viburnum; two feet to three feet in height; 50 per acre.
  - c) Evergreen overstory trees: white pine; six feet to seven feet in height; 100 per acre.
  - d) Seed mixture shall be a native upland woody seed mix.
2. Final plantings shall be pursuant to the detailed vegetation plan approved by the Engineer to ensure maximum screening of the Brookside property, including the sheep shed.
- I. No construction activity shall be allowed in Phase II until the stormwater management issues remaining in Phase I are taken care of to the satisfaction, inspection and approval of the Village Engineer.
- J. That a construction and landscaping bond or letter of credit in an amount to be determined by the Village engineering consultant be established for the project. The construction bond will cover all work within the Village right-of-way and also cover street repair/construction that may be required as a result of construction activity. The landscaping bond will cover all landscaping (plantings) proposed for the project. Bonds or letters of credit will be extended for a one-year period after completion of the work to serve as a one-year warranty.
- K. No certificates of occupancy shall be issued until landscaping is complete and sidewalks are in place for the particular building in which the COs are sought. It is anticipated that the buildings will be constructed in phases and COs issued in phases as well.
- L. All sections of prior laws not inconsistent herewith shall remain in effect.

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1. Editor's Note: Schedule B is located at the end of this chapter.
  2. Editor's Note: The Zoning Map is on file in the Village offices.
  3. Editor's Note: Appendix A is on file in the Village offices.
  4. Editor's Note: Appendix B is on file in the Village off