

ZONING LOCAL LAW
VILLAGE OF SOUTH NYACK
ROCKLAND COUNTY, NEW YORK

Adopted

September 13, 2005

SOUTH NYACK ZONING LOCAL LAW

This South Nyack Zoning Law of 2005 was drafted by the Zoning Code Review Commission with the assistance of the consulting firm of Robert Geneslaw Company.

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Amendments noted where applicable.

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ARTICLE I: PREAMBLE AND PURPOSES

§110-1.1 PREAMBLE

The Village of South Nyack, incorporated in 1878, enjoys a long tradition as a community of mostly residential neighborhoods. It is a village where people can take root and grow amidst the quiet and pleasant beauties of its unique setting alongside the Hudson River. The purpose of this local law is to provide for the continuing maintenance of this tradition, while at the same time providing means for reasonably accommodating the changing land use needs of the people and institutions housed in the village. Such accommodations may occur only insofar as they are in harmony with the long term best interests of the whole community of present and future residents.

§110-1.2 PURPOSES

There is hereby established a new comprehensive zoning local law for the Village of South Nyack, New York, which law is set forth in the text and maps that constitute this local law. Said law is adopted for the purposes set forth in Chapter 7 of the Village Law of the State of New York, Section 10 of the Municipal Home Rule Law, and the Statute of Local Governments, and all power and authority granted therein are hereby adopted, in the interest of the protection and promotion of the public health, safety and welfare and shall be deemed to specifically include the following policies for land use, among others:

- A. The facilitation of the efficient and adequate provision of public facilities and services.
- B. The provision of an environmental setting conducive to the private, quiet and safe nurturing and enjoyment of residential life. This shall be facilitated by various reasonable means, including the setting of population density limits, minimum space and area standards for buildings and properties, off-street parking requirements, and limitations on activities or uses that may create noise, disturbance or nuisance.
- C. The prevention and reduction of traffic congestion and the provision of safe and adequate traffic access to uses generating large volumes of vehicles.
- D. The maximum protection of residential areas, including the protection of property values.
- E. The gradual elimination of nonconforming uses.
- F. The registering of pre-existing nonconforming uses.
- G. The protection of business areas by prevention of over congestion caused by automobile traffic and parking.

- H. The preservation of historic and natural features and the provision of new facilities in such a way as to maintain and enhance the desirable aesthetic qualities of the village.
- I. The accommodation of solar energy systems and equipment, and the protection of access to the sunlight necessary for those systems.
- J. The development of individual sites in a manner that is consistent with the character of nearby properties and the built character of the neighborhood and the Village.
- K. The encouragement of the private provision of affordable housing for people of moderate income, such as young adults starting their working careers, students, single parents with children, and senior citizens in retirement.

ARTICLE II: DEFINITIONS

§110-2 DEFINITIONS

Unless otherwise expressly stated, the following terms shall, for the purpose of this local law, have the meaning herein indicated. Words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word "person" includes a corporation or partnership as well as individual; the word "lot" includes the words "plot" and "parcel". The term "occupied" or "used" as applied to any building shall be construed as though followed by the words "or intended, arranged or designed to be occupied or used." Words not defined shall carry their customary and dictionary meanings.

ACCESSORY BUILDING, STRUCTURE OR USE - A building, structure or use clearly incidental or subordinate to, and customarily in connection with, the principal building or use on the same lot.

ALTERATIONS - As applied to a building or structure, a change or rearrangement in the structural parts or in the entrance or exit facilities or an addition requiring a building permit, whether by extending on a side or by increasing in height, or the moving from one location to another.

APARTMENT, HIGH RISE - An apartment house of six (6) or more stories.

APARTMENT, MID RISE - An apartment house of two (2) through five (5) stories.

AREA, BUILDING - The maximum horizontal area of a building and its accessory buildings at the ground level.

AREA, SURVEY – The survey area of a lot is the horizontal area determined by measurements along its boundaries by a Land Surveyor licensed in the State of New York.

ARCHITECTURAL REVIEW BOARD - Such board as established by enactment of a local law by the Village Board. Until such enactment, all functions and authority attributed herein to an Architectural Review Board shall be exercised by the Planning Board.

ATTIC - The portion of a building between the top of uppermost floor construction and the underside of the roof construction.

AWNING - A roof-like covering of canvas, metal or similar material attached to a metal frame no less than seven feet above grade, extending not more than ten (10) feet from a building, not protruding into the right-of-way, not more than two hundred (200) square feet in area, and attached to or supported entirely from a building.

BASEMENT - A portion of a structure, partly underground but having at least one-half (½) of its clear height above the average grade level of the adjoining ground. A

basement shall be counted as a story for the purposes of height measurement. (See definition of CELLAR.)

BED AND BREAKFAST -- A building intended, designed, and used as a private residence within which rooms are rented from time to time for the overnight accommodation of guests.

BUILDABLE ENVELOPE - The area bounded by the required yard setbacks and allowed height of building, within which a building may be constructed, and which shall not include any easement unless specifically allowed by the easement. Where subdivision or site plans show the buildable envelope, its outline shall conform to this definition.

BUILDING - A structure wholly, or partly, enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property. The term "building" shall also include but not be limited to the following:

1. Fences and walls exceeding six feet in height ;
2. Retaining Walls;
3. Radio and television antennae or dishes, microwave antennae or satellite antennas that exceed eight feet above the highest point of a roof;
4. Pergolas, pagodas, bins, gazebos, and other similar "structures";
5. Sheds that exceed 80 square feet and/or contain gas, electricity or other utilities;
6. Decks or porches that exceed 25% of the total square footage of the first floor of the structure;
7. Swimming pools and swimming pool structures;
8. Docks.

BUILDING ACCESSORY - See "Accessory Building, Structure or Use."

BUILDING, ALLOWED HEIGHT OF - The height of a building shall be measured from the average elevation of the proposed finished grade or the existing grade on all sides of the building, whichever is lower, to the highest point of the roof, exclusive of any chimneys.

BUILDING, DETACHED - A single building surrounded by open space.

BUILDING, FRONT LINE OF - The line of that face of a building nearest the street line of the lot. This face includes sun parlors and covered or uncovered porches and decks whether enclosed or unenclosed but does not include steps.

BUILDING INSPECTOR - The individual charged by the village with the enforcement of the Village Code, the Zoning Law, the New York State Uniform Fire Prevention and Building Code, and other applicable codes.

BUILDING, PRINCIPAL - A building in which is conducted the main or principal use of the lot on which said building is situated, including any externally attached mechanical equipment related to the building's operational systems (i.e. air conditioning compressors, electric power generators, etc.).

CELLAR - A portion of a structure partly or fully underground and having more than one-half (½) of its clear height below the average level of the adjoining ground. A cellar shall not be used for habitable purposes. (See definition of BASEMENT.)

CERTIFICATE OF USE - An annually renewable written authorization from the building inspector for a use allowable under this certificate category.

CLUB, LODGE, OR NON-PROFIT ORGANIZATION - A group which is organized for fraternal social, religious, educational, recreational or charitable purposes and which carries on no activity for profit or gain.

CODE ENFORCEMENT OFFICER - Same as code inspector.

CODE INSPECTOR - The individual or designee charged by the village with the enforcement of the Minimum Housing Standards Code of the village, the Zoning Law, and other applicable laws.

COMMERCIAL VEHICLE - Any motor vehicle used for commercial purposes, such as the transportation of goods, wares and merchandise or passengers for hire or having a load capacity in excess of one (1) ton; or any type of vehicle used as a place in which any business or commercial enterprise is conducted; or which has a commercial name, logo, or advertising message painted on the vehicle (*see also §110-6.3 Parking Of Commercial Vehicles.*)

CONVERSION (see ALTERATION).

COVERAGE - That percentage of the plot or lot area covered by the principal building, accessory buildings, decks, porches, and any surface impervious to water including but not limited to concrete, asphalt, brick, macadam, asphalt or paving stone.

CRITICAL ENVIRONMENTAL AREA(S) ("CEA") A specific geographic areas designated by the Board of Trustees of the Village of South Nyack, having exceptional or unique environmental characteristics.

DAYCARE – See *FAMILY DAYCARE HOME* and *GROUP-FAMILY DAYCARE HOME*

DECK - An outdoor floor structure with no roof attached to a principal or accessory building, at least five (5) feet in width and five (5) feet in length, accessible directly from the building to which it is attached, and which does not serve primarily as a walkway

from one part of the property to another. The dimensions of a deck shall be included in the dimensions of the building to which it is attached.

DISCONTINUANCE OF NONCONFORMING USE - The termination, or interruption for a period of one (1) year or more, of a use not presently permitted in the zoning law of the village, but which was a legal use prior to the adoption of this local law.

DWELLING - A building designed or used as the living quarters for one (1) or more families.

DWELLING, MULTIPLE - A building containing three (3) or more dwelling units.

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

DWELLING, ONE-FAMILY SEMI-DETACHED - a building which comprises one (1) dwelling unit and which is attached or connected to another dwelling unit for one (1) family at their common property line by means of a party wall, the length of which represents at least fifty percent (50%) of the total sidewall length of which the party wall is a part, and which is separated from any other building or structure by open space between the building and the side lot line opposite the party wall and by open space between the building and the front and rear lot lines. Each dwelling unit must be on its own lot. One-Family semi-detached dwellings are subject to specific approval of the Planning Board in conjunction with cluster development approval as set forth in Section 110-7.14 F.

DWELLING, TWO-FAMILY, - A detached building having single ownership and containing two (2) dwelling units.

DWELLING, TWO FAMILY, TYPE B - A detached building having single ownership and containing two (2) dwelling units, one of which contains no more than one-third (1/3) of the floor space of the building, so that the appearance of the building is similar to a single-family house, and where the second unit is designed to have less density of use than the primary dwelling unit.

DWELLING UNIT - A building or entirely self-contained portion thereof, with independent access, containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other "dwelling unit." A boarding or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home or other similar structure shall not be deemed to constitute a dwelling unit.

FAMILY - Two or more persons living together as a single housekeeping unit, sharing the real property, dwelling unit, fixtures, furniture, appliances and food as a single housekeeping unit, none of whom makes payment for the use thereof separately from any other member of the housekeeping unit.

FAMILY DAYCARE HOME – A dwelling unit in which care is provided by a resident of the dwelling unit for at least three and not more than six children (two additional children may be cared for after school, bringing the total after school to eight) away from their home when such care is provided for more than 5 hours a week and is less than twenty-four hours per day. Registration to operate is required pursuant to the provisions of Social Services Law Section 309, and Part 417 of Title 18 of the New York Code of Rules and Regulations.

FLOOR AREA - The sum of the gross horizontal areas of the several floors of the buildings or structures on a lot measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, including basements, but excluding cellar and attic areas used only for storage, provided said areas are not habitable space.

FLOOR AREA RATIO - The floor area in square feet of all buildings on a lot divided by the area of such lot in square feet.

FRONTAGE, STREET - The lineal footage actually abutting a street.

GARAGE, PRIVATE - An enclosed space, including carport, for the storage of one (1) or more motor vehicles, provided that no bathing or toilet facilities and no sleeping quarters or habitable area is provided therein.

GENERAL OFFICE - An office for a business or non-profit organization that provides goods or services to the general public or to other businesses/organizations, but which does not involve the use of machinery other than typical office equipment or specialized equipment similar in size and noise to typical office equipment, and which does not involve the use of toxic chemicals. Examples include real estate sales office, computer programming or Internet marketing business, management consulting firm, or similar operations.

GRADE, ESTABLISHED - The elevation of the center line of a street as officially established by the Village Engineer.

GRADE, FINISHED - The elevation of completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GROUP CARE FACILITY (Non-Padavan) - A residential facility, owned and/or operated by a non-profit agency licensed by the New York State Department of Mental Hygiene or the New York State Department of Social Services, in which a group of unrelated persons live on a permanent basis, together with one or more adults who serve in a supervisory capacity. The number of occupants of such facility shall not exceed two for each bedroom within the dwelling unit.

GROUP-FAMILY DAYCARE HOME – A dwelling unit in which care is provided by an individual in his or her primary residence with an assistant for up to ten children of all ages (four additional children may be cared for after school, bringing the after school total to fourteen), when such care is provided for more than 5 hours a week and is less

than twenty-four hours per day. Registration to operate is required pursuant to the provisions of Social Services Law Section 309, and Part 416 of Title 18 of the New York Code of Rules and Regulations.

HOME OCCUPATION - A use of a service nature customarily carried out within a residence by the residents, which is incidental to the residential use. Home occupation does not include catering, printing, high speed reproduction facilities, animal hospital or kennel, barber or beauty shop, restaurant, bar, store, mortuary, auto rental or livery service, or other uses similar to the foregoing. Home occupation includes, for example, such activities as artist, musician, tutor, secretarial services, notary public, dressmaking, the office of a building contractor, realtor, insurance agent, computer programmer, website designer or similar with not more than two students, customers, etc. at a time. Home occupation also includes Family Daycare Home and Group-family Daycare Home as defined herein. (see §110-6.12 *HOME OCCUPATIONS*.)

LINE, STREET - The established dividing line between the street and the lot.

LOCAL CONVENIENCE RETAIL AND SERVICE - The provision of retail sales of convenience goods (food, drugs and sundries) and such personal services as laundry, hair styling, shoe repair and upholstery.

LODGE - See "Club."

LOT - A parcel of land occupied or capable of being occupied by one (1) building or group of buildings where so permitted, and the accessory buildings or uses customarily incident to them, and including such open spaces as are required by this code. Unless otherwise defined, a lot has frontage on one (1) street.

LOT AREA - The total horizontal area included within the property lines of a lot, except that for any minimum lot area specified in this local law, the area shall be adjusted as set forth in §110-7.3 (*Development of Hillsides*).

LOT AREA, ADJUSTED - The lot area reduced by the percentage set forth in §110-7.3 (*Development of Hillsides*), if any. Adjusted lot area shall be used for the minimum lot area and maximum lot coverage bulk requirements.

LOT, CORNER - A parcel of land at the junction of, and fronting on, two (2) or more intersecting streets. (See also, *LOT LINE, FRONT*.)

LOT, DEPTH OF - The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side line(s) of the lot.

LOT, INTERIOR - A lot having no street frontage.

LOT, THROUGH - A lot, other than a corner lot, having frontage on two (2) or more streets.

LOT LINE, FRONT - The lot line facing the public or private road that provides the primary means of access to the property. Thus, in the case of a lot abutting only one (1) street, the line separating the lot from the street; in the case of a corner or through lot, both yards abutting streets shall meet the requirements for **YARD, FRONT** unless one of those yards is designated in a variance ruling by the Zoning Board of Appeals as a side or rear yard. (See **YARD, FRONT**; also **BUILDING, FRONT LINE OF**; **LOT, CORNER**..)

LOT LINE, REAR - The lot line which is generally opposite the front lot line; if the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

LOT LINE, SIDE - The property line or lines extending from the front lot line to rear lot line.

LOT WIDTH - The average distance between side lot lines measured along two lines parallel to a line connecting the end points of the front lot line, and drawn through those two points of the principal building closest to and farthest from the street.

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

NONCONFORMING BUILDING OR LOT - A building or lot that was legal prior to the adoption of this Local Law, but does not conform to the General Bulk Requirements herein for the district in which it is situated.

NONCONFORMING USE, PERMITTED - A use of a building or land that does not conform to the permitted use of the district in which it is situated, but which is permitted due to the use having legally existed on the property prior to the adoption of this Local Law, and having been registered with the Village under an application for nonconforming use permit no later than sixty (60) days after the adoption of this Local Law. Nonconforming use permits must be renewed upon transfer of ownership or occupancy. After the adoption of this Local Law, nonconforming uses shall be permitted to continue provided a valid nonconforming use permit is in effect

NONCONFORMING USE PERMIT - A permit issued by the Zoning Inspector or Board of Appeals allowing the continuation of a nonconforming use.

NONPROFIT ORGANIZATION - An organization of one (1) or more persons, other than a church, constituted for the purpose of rendering public, religious, social or humanitarian service without compensation, profit or gain. (See **CLUB**).

OPEN SPACE - That ground area open to the sky and on the same lot with a building or buildings, and which is landscaped and/or devoted to outdoor recreation or sitting space.

PRINCIPAL BUILDING - See "Building, Principal,"

PARKING SPACE - An off-street space, enclosed or un-enclosed, available for the parking of one (1) motor vehicle and having direct access to a street via a curb cut, not inhibited by another parking space.

PATIO - An outdoor floor structure built at ground level with no permanent roof, constructed mostly of stone, bricks or cement, at least five (5) feet in width and five (5) feet in length, and which does not serve primarily as a walkway from one part of the property to another. The dimensions of a patio are not included in the dimensions of any building that it may adjoin.

PORCH - A structure attached to a principal or accessory building, consisting of a floor covered by a roof and with at least one side mostly open to the adjoining yard, that is at least five (5) feet in width and five (5) feet in length, accessible directly from the building to which it is attached, and which does not serve primarily as a walkway from one part of the property to another. The dimensions of a porch shall be included in the dimensions of the building to which it is attached.

PRIVATE EDUCATIONAL CAMPUS - An institution not "public" which offers to its students formal education in arts, sciences or humanities, and is chartered by the Board of Regents of the University of the State of New York, and which is composed of multiple structures and land uses on a lot or lots aggregating more than five (5) acres.

PROFESSIONAL OFFICE - An office for person or persons whose vocation or occupation requires advanced training in a liberal art or science and whose work is usually nonmanagerial in nature.

PUBLIC SAFETY MANAGER – An employee of a private educational campus who is registered with the Village as responsible for the implementation of zoning compliance and public safety implementation and compliance on the property of the campus.

RECREATION VEHICLE - A vehicle, towed or self-propelled on its own chassis or attached to the chassis of another vehicle, designed or used for temporary living, recreation, or sporting purposes.

ROOMER - A person who renders services, rent, or other compensation in consideration of occupancy in or upon the premises, is not a member of the resident family of the dwelling unit, as defined in this Local Law, has the exclusive use of only a bedroom within the dwelling unit and shall have use of the kitchen, dining room, living room and other facilities of the dwelling unit in common with other residents.

SCHOOL, ART, DANCING and/or MUSIC - An establishment operated for instruction of art, and/or dancing, and/or music only.

SCHOOL, NURSERY and/or KINDERGARTEN - A private establishment operated primarily for the care and instruction of preschool children. See also, "Day care, family" this article.

SCHOOL, PRIVATE - An institution not "public" which offers to its students formal education in arts, sciences or humanities, and is chartered by the Board of Regents of the University of the State of New York and which is located on a lot or lots aggregating five or less.

SCHOOL, PUBLIC - An institution under the jurisdiction of a school district and legally constituted by the State of New York to offer free formal education to residents of the district.

SIGN - Any structure or part thereof , free-standing or attached to a building, or any device attached thereto or painted or represented thereon, which shall display or include any word, letter, model, flag, pennant, insignia, device or representation used as or in the nature of an announcement, direction or advertisement. The word "SIGN" does not include the flag, pennant or insignia of any national, state, village, city or other political unit, or a temporary structure of any political, educational, charitable, philanthropic, civic, professional, religious or similar campaign, drive, movement or event, or private house numbers meeting 911 requirements..

SIGN AREA - Shall include all faces of a sign measured as follows:

1. When such sign is a plate or framed or outlined, all of the area of such plate or the area enclosed by such frame or outline shall be included.
2. When such sign consists only of letters, designs or figures engraved, painted, projected or in any manner affixed on a wall, the total area shall be considered to be that of the smallest regular geometric shape which encompasses all of the letters, designs, figures or symbols.

SITE DEVELOPMENT PLAN - An illustrative plan that indicates proposed use and/or development of land and/or structures prepared in accordance with Section 110-12.3 of this zoning local law. A Site Plan shall include a survey by a NYS Licensed Surveyor showing all current structures. The Site plan must accurately show the scale used, dimensions and setbacks of all proposed construction or structures, and a bulk table showing the minimum required dimensions and the dimensions provided. Plans shall also show topographical gradients. (See also, §110-14.3 C. *PLAN REQUIREMENTS*.)

SPGA – the Special Permit Granting Authority. See *below*.

SPECIAL PERMIT GRANTING AUTHORITY – For most Special Permits, this authority is the Zoning Board of Appeals. But, for such uses as Private Educational Campus or Bed and Breakfast, as stated in the regulations for those uses, the Village Board is the SPGA.

SPECIAL PERMIT USE - A use of property that is permitted in a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted by right everywhere within such district. Special Permit Uses shall be subject to approval by the SPGA, and shall be subject to such conditions as may be reasonably necessary to conform to requirements of the district in which it is situated.

STORY - That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or, if there be no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.

STORY, HEIGHT OF - The vertical distance from a floor to the top surface of the floor next above. The height of the topmost story is the maximum distance from the top surface of the floor to the top surface of the ceiling joists.

STREET - A public road, including the right-of-way, which provides the principal means of access to a lot. For purposes of this Local Law, the Hudson River shall not be considered to be a "Street".

STRUCTURE - A combination of materials constructed, assembled or erected on, above or below the ground or attached to something having location on, above or below the ground, including, but not limited to buildings, fences and walls not exceeding six feet in height, sheds not exceeding 80 square feet, decks having a total square footage not exceeding 25% of the total square footage of the first floor of the building or structure to which it is attached, tanks, towers, awnings and swimming pools.

SWIMMING POOL - Any permanent, non-portable pool, installed above or below ground, which contains water to be used for swimming or bathing. As used herein, the word "pool" shall be synonymous with the words "swimming pool."

1. **SWIMMING POOL, PRIVATE** - A swimming pool, and its incidental apparatus and equipment, located on a lot as an accessory use to a residence, and maintained by an individual for the sole use of his household and guests, without charge and with no purpose of profit.

2. **SWIMMING POOL, OTHER** - A swimming pool regularly used by several families who pay a fee or charge, directly or indirectly; or a pool operated by a private club for its members; or any commercial or community pool; or a pool serving dwelling groups or multiple dwellings.

SWIMMING POOL STRUCTURE - Any type of construction or equipment used in connection with or surrounding a swimming pool, including a deck or paved area.

TRAILER - Any vehicle mounted on wheels movable either by its own power or by being drawn by another vehicle, and equipped to be used for living or sleeping quarters or so as to permit cooking. The term "trailer" shall include such vehicles if mounted on temporary or permanent foundations with the wheels removed, and shall include, but not be limited to, travel trailer, utility trailer, pick-up campers, camping trailer, converted trucks and buses, boat and skimobile trailers, and similar vehicles.

UNNECESSARY HARDSHIP - A term used in connection with use variances. (See §110-13.2).

USE - The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use or any use not specifically permitted herein.

VARIANCE, AREA - Shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE - Shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

YARD - An unoccupied space open to the sky, on the same lot with a building.

YARD, FRONT - Generally, the open space between the front lot line and the principal building. Specifically, an open unoccupied space on the same lot with the principal building, extending the full width of the lot measured from the front lot line, along a line perpendicular to a line starting at the front lot line and traveling horizontally to the front line of the building and extending to the side lot lines. Porches and decks, whether enclosed or unenclosed, shall be considered to be part of the building to which they are attached and shall not project into a required front yard. (see also *LOT LINE, FRONT; YARD, REQUIRED; STREET*; also *FRONTAGE, STREET*.)

YARD, REAR - An open unoccupied space on the same lot with the principal building, between the rear line of the principal building and the rear line of the lot.

YARD, REQUIRED - That minimum open unoccupied space between a property line and a building or structure required by this local law. Porches, whether enclosed or unenclosed, any structure or exterior equipment attached to the principal building (except stairs and walkways) shall be considered as part of the principal building and shall not project into a required yard. Walkways, driveways, stairways and patios may be placed within a required yard. Driveways and walkways may extend to the lot line, subject to Planning Board approval.

YARD, SIDE - An open unoccupied space on the same lot with the principal building, situated between the principal building and the side line of the lot. Any lot line not a rear or front line shall be deemed a side line. (See also, *YARD, REQUIRED*.)

ARTICLE III: INTERPRETATION

§110-3 INTERPRETATION

- A. In their interpretation and application, the provisions of this local law shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except where specifically provided to the contrary, it is not intended by this local law to repeal, abrogate, annul or in any way to impair or interfere with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings, structures, shelters or premises; nor is it intended by this local law to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this local law imposes a greater restriction upon the use of a building or premises, or requires larger open spaces than are imposed or required by any other local law, statute, ordinance, rule, regulation or permit, or by any easement or agreement, the provisions of this local law shall control. In the event of conflict in the terminology of any section or part of this local law, the more restrictive provision shall control.
- B. Any uses not specifically permitted shall be deemed to be prohibited. Any list of prohibited uses contained in any section of this local law shall be deemed to be not an exhaustive list, but to have been included for the purposes of clarity and emphasis, and to illustrate by example some of the uses frequently proposed that are deemed undesirable and incompatible in the particular district.

ARTICLE IV: ZONING DISTRICTS AND ESTABLISHMENT OF ZONING MAP

§110-4.1 LIST OF DISTRICTS

The Village of South Nyack is hereby divided into the following zoning districts:

Title	Symbol
One Family Residence District, 18,000 sq.ft.	R-18
One-Family Residence District, 12,000 sq.ft.	R-12
Hillside Residential District, 8000/12000 sq.ft.	RG-8H/R-12H
Cluster Subdivision	R-12HC
General Residential District, 6,000 sq.ft.	RG-6
General Residential District, 4,000 sq.ft.	RG-4
High Rise Apartments District	HRA
General Residential and Apartments District	RG-A
Residential and Professional Office District	R-O
Residential, General and Professional Office and Sale of Arts, Crafts and Antiques District	RG-OA
Local Retail Business District	B-1
One Family Historic Residence	R-4A

Each such district may be designated on the Zoning Map referred to in §110-4.2 in the District Lot and Bulk Regulations in Article V, the Off-Street Parking Requirements in Article X and elsewhere in the text of this local law by its symbol only.

§110-4.2 ZONING MAP

The boundaries of the said districts are hereby established as shown on the "Zoning Map, Village of South Nyack," dated June 28, 2005, which accompanies, and which, with all explanatory matter thereon, is hereby adopted and made a part of this local law. Said map, shown in Article VI, indicating the latest amendments, shall be kept up-to-date in the offices of the Building Inspector and the Village Clerk for the use and benefit of the public.

§110-4.3 DISTRICT BOUNDARIES

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

- A. Unless otherwise shown, the district boundaries shall be construed to coincide with the property lines, center lines of streets, alleys and highways, as they are indicated on the Zoning Map.
- B. Where such boundaries are indicated as following the property lines of parks or other publicly owned lands, such lines shall be construed to be such boundaries.
- C. In all cases where a lot in one ownership is divided by a district boundary and more than 50% of the area of such lot lies in a less restricted district, the regulations prescribed by this local law for the more restricted district shall apply to such portion of the less restricted area. For purposes of this section, the more restricted district shall be deemed that district which is subject to regulations which either prohibit the particular uses permitted in the district covering the remaining portion of said lot, or which regulations require higher standards with respect to setback, coverage, yards, screening, landscaping and similar requirements.
- D. In all cases where a district boundary line is located not farther than 15 feet away from a lot line of record, such boundary shall be construed to coincide with such lot line.
- E. Any boundary shown extended into the Hudson River shall be deemed to extend to the boundary of the village, unless otherwise indicated.
- F. In all other cases, where dimensions are not shown on the Zoning Map, the location of boundaries shall be determined by the Building Inspector utilizing the scale appearing on such map.
- G. All air space above the land and water within the village boundaries shall be construed to be within the boundaries of, and zoned the same as, the districts immediately below.

§110-4.4 EFFECT OF ESTABLISHMENT OF DISTRICTS

Following the effective date of this local law:

- A. All general regulations affecting the use of land or buildings are in the affirmative and no other or further use is to be made of land or buildings except that shown in the local law as applying to the district in which the land or building is located.
- B. No land or building shall hereafter be used or occupied and no building or any part thereof shall be erected, relocated, altered, used or occupied unless in conformity with the regulations herein specified for the district in which such land or building is located.

- C. No building shall hereafter be erected, altered, relocated, used or occupied:
1. To be of greater height,
 2. To accommodate a greater number of families,
 3. To occupy a greater percentage of lot area,
 4. To have narrower or smaller front yards, rear yards, side yards or courts, than is specified herein for the district in which such building is located.
- D. No part of a street frontage, yard or other open space required by or about any building for the purpose of complying with the provisions of this local law shall be included or considered as part of a street frontage, yard or other open space required by or about any other building to comply with the provisions of this local law.
- E. No building shall hereafter be erected by right on a lot having less frontage on a street or less setback from that street than that required for the district in which it is located.
- F. No lot shall be formed from part of a lot already occupied by a building if a non-conformity of lot, yard or open space is thereby created or increased, and the remaining lot shall comply with all requirements prescribed by this local law for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this local law.
- G. Nothing contained in this local law shall require any change in the plans, construction or designated use of a building complying with existing law, a permit for which shall have been duly issued and the construction of which shall have been started before the date of first publication of notice of the public hearing on this local law, and the ground-story framework of which, including the second tier of beams, shall have been completed within six months of the date of the permit, and which the entire building shall have been completed in accordance with such plans as have been filed within one year from the date of passage of this local law.

§110-4.5 CRITICAL ENVIRONMENTAL AREAS

In addition to the above-referenced districts, the following areas are designated as critical environmental areas pursuant to the provisions of the New York State Environmental Quality Review Act ("SEQRA") regulations at 6 NYCRR 617.14(g):

A. CEA 1 - Hudson River Area

1. The area designated as CEA 1 on the "Critical Environmental Area Map of the Village of South Nyack" generally is the part of the Village east of Broadway. More specifically, it is the area bounded by the entire easterly length of the

Village along the Hudson River, by the northern boundary of the Village, on the western side by the centerline of So. Broadway, and by the southern boundary of the Village of South Nyack."

2. CEA 1 possesses specific environmental characteristics which are exceptional and unique and it is the specific goal of this designation to identify and protect those characteristics which are set forth below:
 - a. this area includes unusual proximity to the Hudson River and the protection, preservation and enhancement of the important aesthetic and scenic qualities associated with such proximity is a primary goal.
 - b. the historic significance of this area, including its architecture should be protected for future generations.
 - c. the Hudson River's ecological, geological and hydrological sensitivity may be adversely affected by any change, development or disturbance in the area and must be scrutinized carefully and thoroughly so as to protect and preserve not only the environmental integrity of the riverfront area, but the appearance of the shoreline from the river itself.

B. CEA 2 - Run-Off Area

1. The area designated as CEA 2 on the "Critical Environmental Area Map of the Village of South Nyack" shall include the area to the west of the centerline of So. Broadway and east of the westerly line of Route 9-W within the Village of South Nyack.
2. CEA 2 possesses specific environmental characteristics which are exceptional and unique to this area. Its proximity to the steep hillsides to the west makes it subject to significant water run-off and drainage concerns. Additionally, this area is particularly affected by the pollution, noise and traffic generated by the New York State Thruway and it is the goal of this designation to address the characteristics which are set forth below:
 - a. in order to benefit and protect human health, this designation should address the specific issues associated with the noise and air pollution associated with the area's proximity to the New York State Thruway; and,
 - b. the inherent ecological, geological and hydrological sensitivity of this area due to its susceptibility to drainage and water run-off problems must be scrutinized carefully and thoroughly so as to protect against erosion and damage caused by water and drainage problems.

C. CEA 3 - Mountainous Area

1. The area designated as CEA 3 on the “Critical Environmental Area Map of the Village of South Nyack” shall include the area to the west of Route 9-W to the western boundary line of the Village.
2. CEA 3 possesses specific environmental characteristics which are exceptional and unique to this area due to the steepness of the slopes on the mountainside and the area’s natural beauty, particularly in light of its importance as the gateway to Rockland County and the entire Ramapo and Catskill Mountain regions to the west and north. This designation is intended to address the characteristics which are set forth below:
 - a. due to its natural setting, this area possesses unique and important aesthetic and scenic qualities and value which must be preserved and enhanced for both the residents of South Nyack and visitors to the area.
 - b. the historic, archeological and recreational significance of the mountainside can never be replicated and must be preserved.
 - c. the steepness of this area produces inherent ecological, geological and hydrological sensitivity to the environment that may be adversely affected by any change and, consequently, any development or disturbance in this area must be scrutinized carefully and thoroughly so as to protect and preserve this area, including but not limited to its visual and aesthetic qualities, its vegetation, and the control of water drainage and run-off.

§110-4.6 CEA MAP

The boundaries of the CEAs are hereby established as shown on the “Critical Environmental Area Map of the Village of South Nyack,” which accompanies, and which, with all explanatory matter thereon, is hereby adopted and made a part of this local law. Said map shall be kept updated in the Offices of the Building Inspector and the Village Clerk for the use and benefit of the public.

ARTICLE V: DISTRICT USE, AREA AND BULK REGULATIONS

§110-5 SCHEDULES OF RESTRICTIONS AND CONTROLS

- A. The restrictions and controls intended to regulate development in each district are set forth in the attached Schedule 1 which is supplemented by other sections of this chapter.
- B. This chapter shall not interfere with or abrogate or annul any easement, covenant or other agreement between parties; provided, however, that when this chapter imposes a greater restriction on the use of buildings or land or on the height of buildings or requires larger open spaces, or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule or regulation, or by any easement, covenant or agreement, the provisions of this chapter shall control. Where the requirements of this chapter differ from the requirements of another statute, law, ordinance, rule or regulation, the more restrictive shall govern.
- C. Any land use not specifically listed for a zoning district shall be deemed to be a prohibited use for that zoning district.

ARTICLE VI: SUPPLEMENTARY USE REGULATIONS

§110-6.1 SCREENING OF MECHANICAL EQUIPMENT

All mechanical equipment necessary to operate building services, which equipment is located on the roof of a structure, shall be screened in a manner approved by the Planning Board.

§110-6.2 TRAILERS AND RECREATION VEHICLES

The storage or parking and use of a trailer or a recreation vehicle by any person or persons, except as hereinafter provided, is prohibited in all residential districts, except that:

- A. The keeping or storing of one camp-type travel trailer or recreation vehicle is permitted on the premises provided that:
 1. It is owned or rented by the owner of such premises, or it is owned or rented by a gratuitous guest visiting the owner of such premises.
 2. It shall not be occupied on the premises as permanent living quarters, but may be used as short-term temporary living quarters for any gratuitous guest visiting the owner of such premises, for a period not to exceed ten (10) days in any six month period.
 3. It shall be secured in place not nearer to a side or rear lot line than the distance required for an accessory structure in the district, and not closer to the front lot line than the front wall of the principal building, and when unoccupied, the doors thereof shall be kept securely locked;
 4. Such vehicle may not be parked within ten (10) feet of a one or two family dwelling or fifteen (15) feet of a multiple dwelling.
- B. One boat may be parked on any improved lot not nearer to the street than ten (10) feet.
- C. Any recreational vehicle or boat that is parked or stored on a property more than three (3) months in any twelve (12) month period shall be screened from view from the street and neighboring properties in a manner approved by the Planning Board through site plan review.
- D. A temporary permit for the placing and use of a trailer on a lot may be issued by the Building Inspector in connection with any construction for which a Building Permit has been issued. Such permit shall be for a period of not greater than six (6) months, but may be renewed at the discretion of the Building Inspector if work on said construction is processed diligently.

- E. No storage trailer may be kept on residential property for longer than two (2) weeks unless completely screened from view from outside the lot in a manner approved by the Planning Board, except if no larger than 7' X 7' X 12' and parked behind the front line of the principal building.

§110-6.3 PARKING OF COMMERCIAL VEHICLES

Commercial vehicles, excluding vans, station wagons, compact type bus vehicles and pick up trucks used for private transportation, shall not be parked or stored in an R-18, R-12, , RG-8H/R-12H, RG-6, RG-4 or HRA district, except in a completely enclosed private garage. However, temporary daytime parking is allowed for commercial vehicles making service or pickup/delivery calls.

§110-6.4 FENCE AND RETAINING WALL REGULATIONS

- A. Except at street intersections, a fence or wall no more than three and one-half feet in height is permitted along any lot line bounding a required front yard, and no more than six feet in height along that part of any lot line behind the required front yard. A fence or wall over the six foot height may be permitted in the side and rear yards, subject to Planning Board site plan review and approval, and provided that it is set back from the lot line a distance equal to two-thirds its height. Fence height shall be measured from average finished grade in the adjacent area to the top of the tallest fence post as determined by the Building Inspector.
- B. All fence construction shall require a fence permit issued by the Building Inspector or Code Inspector unless a building permit is required.
- C. If the fence has just one finished side, it shall face outward toward the neighboring street or adjoining properties.
- D. All swimming pools shall be surrounded by a substantial fence or wall not less than 4 feet nor more than 6 feet in height. Such fence or wall shall have a self locking gate, and is subject to the requirements of §110-6.5.
- E. All retaining walls and masonry walls shall require a building permit, to be applied for with a site plan acceptable to the Building Inspector. Any retaining or masonry walls above two (2) feet in height shall require site plan review by the Planning Board before the granting of a building permit.

§110-6.5 SWIMMING POOLS

The following restrictions and regulations apply to the construction of all swimming pools:

- A. All swimming pools and their associated structures shall be subject to a Site Development Plan approval from the Planning Board.

- B. A private pool structure and deck shall conform to setback regulations for an accessory building in the district in which it is located. The water container part of the pool structure shall be setback a minimum of 10 feet from all property lines. All other pools shall be set back not less than 20 feet from all property lines. The pool shall be screened from the neighboring property by use of shrubs, trees and other appropriate screening material.

- C. Each application for Site Development Plan approval to construct or erect a swimming pool, and/or a structure surrounding it, shall be accompanied by plans drawn to scale, large enough and in sufficient detail to show:
 - 1. Plot plan of property on which pool and/or structure is to be placed, showing location in reference to side lines, rear lines and other buildings on the lot.
 - 2. Pool dimensions, including depth.
 - 3. Specifications and plans of structure.
 - 4. Waste-water disposal and electrical wiring.
 - 5. Estimate of cost of pool and/or structure.
 - 6. Location of fence.
 - 7. Whether pool is for "private" or "other" use.
 - 8. Lighting plans, if any.
 - 9. Grading plan.

- D. No swimming pool or related structure shall be constructed or erected unless a building permit has been issued therefore by the Building Inspector.

§110-6.6 USE OF WATER RIGHTS

- A. The Hudson River bounded by the shoreline of the village between the north and south village limits and within the fifteen-hundred foot jurisdiction of the village, measured perpendicular to the general flow of the river, shall be used only for boating, fishing, swimming, the operation of private seaplanes and similar water activities. Construction within this area shall be limited to piers, docks and similar structures which are commonly used for the above activities. No building or accessory building of any kind shall be permitted. In no case shall it be permissible to fill the Hudson River beyond five (5) feet of the present shoreline and then only in order to round out the existing shoreline. Where applicable, all construction and filling shall require approval of the United States Corps of Engineers or any other governmental agency having jurisdiction.

- B. No dock, wharf or pier shall be erected or constructed without first being subject to site development plan review by the Village Planning Board according to §110-14.3.

§110-6.7 BUSINESS HOURS OF OPERATION

- A. All truck deliveries in districts that allow business activities shall be conducted between the hours of 7:00 AM and 7:00 PM only.
- B. All other business activities involving public patrons or visitors, except as provided in §110-7.11J, shall be conducted between the hours of 7:00 AM and 11:00 PM on Sunday through Thursday and between 7:00 AM on Friday and 1:00 AM Saturday and 7:00 AM Saturday and 1:00 AM Sunday.

§110-6.8 SCHOOL HOURS OF OPERATION

- A. No art, dancing, martial arts or music-school classes shall be permitted between the hours of 10:00 PM and 9:00 AM and not more than four (4) students shall be instructed at one time.
- B. No nursery school or kindergarten classes shall be permitted between the hours of 7:00 PM and 7:00 AM.

§110-6.9 SALE OF ARTS, CRAFTS AND ANTIQUES

Any premises used in whole or in part for the sale of arts, crafts and antiques shall be subject to the following regulations:

- A. Only the first floor of the premises shall be used for the sale of arts, crafts and antiques.
- B. There shall be no substantial change in the external appearance of the premises, and the premises shall be continuously maintained in good condition and repair.
- C. The outdoor display either on the porch, sidewalk or in the yard of premises used for the sale of arts, crafts and antiques shall be prohibited.
- D. If a portion of the premises is used as a dwelling, the dwelling units shall have an unobstructed access to the outdoors completely independent from the area of the building used for the sale of arts, crafts and antiques.
- E. That portion of the premises used for the sale of arts, crafts and antiques shall not be used for cooking or for the sale of food. No vending machines shall be permitted on the premises.
- F. No loose refuse shall be stored outdoors at any time.
- G. There shall be no manufacturing, brazing, soldering, welding, storage or use of inflammable liquids or use of open flames on the premises.

- H. All signs shall be small, dignified and in compliance with the Zoning Law.
- I. Any overnight occupancy of the area of the premises used for the sale of arts, crafts and antiques, or as a professional office, shall be prohibited.
- J. The sale of arts, crafts and antiques shall be permitted only as follows: between the hours of 10:00 AM and 6:00 PM on Monday through Thursday and Saturday; between the hours of 10:00 AM and 9:00 PM on Friday; between the hours of 1:00 PM and 6:00 PM on Sunday.
- K. No premises shall be used for the sale of arts, crafts and antiques, or as a general or professional office, unless an annual certificate is obtained from the Building Inspector stating compliance with the New York State Uniform Fire Prevention and Building Code and the Village Zoning Law. All storage areas shall be inspected annually by the Building Inspector or Code Inspector to ensure clear access to all means of egress and full compliance with all relevant codes and laws.
- L. If the first floor of such premises ceases to be used for the sale of arts, crafts and antiques, or as a general or professional office, it shall thereafter be used to house only one (1) family.
- M. Off-street parking for employees and/or tenants shall be provided, in the rear and/or one-side yards, behind the front building line, and shall be screened from adjoining properties.

§110-6.10 DISCARDED MATERIALS AND GRAFFITI

In no district shall it be permissible to dump, deposit, store, collect or permit to collect, any used or discarded materials, trash or wrecked, broken-down or unregistered or unlicensed vehicles or parts thereof on any property, nor shall the property owner allow graffiti to remain on any wall, fence or other property for more than 72 hours without being removed or covered by paint the same color as the background area.. (see also §110-10.1 B. of *Off-Street Parking Requirements*)

§110-6.11 SOLID WASTE RECEPTACLES AND GARBAGE CANS

Except for one-family or two-family dwellings, solid waste receptacles or garbage cans shall be entirely screened from any street or neighboring property and secured so as to prevent them from being opened or accessed by animals.

§110-6.12 HOME OCCUPATIONS

- A. Not more than two (2) persons outside the family in residence shall be employed on the premises at any time, except in the R-4A District where up to seven (7) nonresident employees shall be allowed.

- B. There shall be no exterior display, no exterior sign (except as permitted in §110-9), no exterior storage of materials and no other exterior indications of the "home occupation" or variation from the residential character of the property and its building.
- C. No noise, vibration, smoke, dust, odors, heat, glare or similar nuisance shall be produced which can be perceived at any adjacent street or property.
- D. The repairing of automobiles, engines, motors or any other vehicles in private driveways, yards and private garages in residential zones shall not be considered a "home occupation." This is not intended to prevent the vehicle owner from making any repairs to his/her own personal vehicle.
- E. Such home occupation is incidental to the residential use of the premises and is carried on by a resident therein with not more than two (2) nonresident assistants, except in the R-4A District where up to seven (7) nonresident employees shall be allowed.
- F. The home occupation, wherever located, shall not occupy an area equal to more than 35% of the area of the largest floor of the principal building, except in the R-4A District where an area may be used for home occupation up to that which is equal to the square footage of the largest floor of the principal building.
- G. The use does not alter the residential character of the property, has no exterior evidence other than a permitted nameplate and does not involve the use of any commercial vehicles or construction equipment, or the keeping of goods for on premises sale, or the use of any chemical, mechanical or electrical equipment which is not a customary household appliance or light office equipment.
- H. Off-street parking shall be provided as required in §110-10.

§110-6.13 PROTECTION FROM GLARE

No lamp, light or other luminescent device shall individually or collectively cast glare or significant amounts of light beyond the boundaries of the lot on which it is located or to the night sky. Based on the circumstances under consideration, the Planning Board may set specific lumens limits for all new applications. Generally, no more than 1/2 lumen of light shall be allowed to spill beyond any lot line.

§110-6.14 EXTERNAL EQUIPMENT NOISE LIMITS.

External equipment noise shall be no greater than 73 d.b.a. measured 3' from the unit and no greater than 50 d.b.a. measured from the nearest lot line. Sound level measurements shall be taken during startup and high speed operation. This rule applies to all types of equipment, whether window-mounted, ground-mounted, roof-mounted or portable, and supersedes any prior noise limits established by variance. Equipment may be made to comply by the use of approved enclosures and

soundproofing. One year from enactment of this requirement is allowed for existing units to comply. (See also definition of YARD, REQUIRED.)

§110-6.15 COMMUNITY RESIDENCE FACILITY

Community residence facilities shall be subject to Village Board approval as to site selection, pursuant to Section 41.34 of the Mental Hygiene Law (Padavan).

§110-6.16 RENTING OF ROOMS

A. In order to help residents on fixed incomes bear the costs of keeping their homes, and in order to help provide affordable housing to young people just starting their careers, while at the same time preserving the type of property maintenance and low density usage generally experienced with owner-occupied homes, the renting of rooms shall be permitted as follows. The renting of rooms to roomers shall be permitted only by issuance of a Certificate of Use for this purpose by the Building Inspector, and said Certificate shall be renewed each year to remain valid, subject to the following requirements:

1. The renting of rooms shall be permitted only in owner-occupied one-family dwellings to non-transient roomers, except in District R-4A where renting of rooms shall also be permitted in accessory structures.
2. Occupancy by roomers shall be limited to not more than two roomers in a one-family dwelling. In addition, in District R-4A, accessory buildings may have not more than two roomers per 300 square feet and in this district the total number of roomers shall not exceed eight.
3. Except in District R-4A, occupancy by roomers is allowed only in the principal building of the property, and only if this building and the property conform to the bulk and use regulations for the district.
4. Roomers shall not be permitted in two or more family dwellings. Except in District R-4A, no roomer shall be allowed to occupy a mixed use building, such as a dwelling containing a professional office, home occupation, antiques store, school, etc.
5. No roomer shall be allowed to occupy a cellar, unfinished attic or a finished attic with a ceiling height of less than four feet in any area or less than seven feet six inches average height.
6. Each roomer shall be provided with a minimum of 100 square feet of clear-floor-area bedroom space that is in compliance with the New York State Building Code for bedrooms. In addition, a Certificate of Use shall be granted for this purpose only for a dwelling unit where the bedroom space per occupant-in-residence averages at least 100 square feet of clear-floor-area exclusive of areas for kitchen, bathroom, dining room and living room uses.

7. No refrigerator or cooking facilities of any kind shall be allowed in the roomer's bedroom. Except in three accessory buildings of District R-4A, no kitchen facilities separate from those primarily used by the family of the principal building dwelling shall be provided to the roomer, and the configuration of the principal building dwelling unit shall allow the roomer access to its main entrance and common rooms. In no way shall the configuration of the principal building dwelling unit be subdivided so as to make the roomer's quarters a de-facto separate dwelling unit.
8. One off-street parking space shall be provided per roomer, in addition to the minimum parking requirement for one-family dwellings.
9. No signs advertising the renting of rooms shall be allowed.
10. Any alterations or construction to enable or facilitate the renting of rooms shall be reviewed and approved by the Planning Board.
11. The premises shall be inspected by the Building Inspector prior to issuance of a Certificate of Use, and is subject to inspection for each annual renewal. If a Certificate of Use has been issued, and the Building Inspector subsequently has reason to believe that these regulations are not being complied with, the Building Inspector may re-inspect the premises, and if a violation is found, revoke the Certificate of Use. In the case of any two-family dwelling for which a Certificate of Use for the renting of rooms had previously been granted, limited to one roomer per dwelling unit, the Certificate of Use may continue, will be subject to annual inspection and will expire with a change of ownership of the property. If a Certificate of Use has been previously issued for a two-family dwelling and the Building Inspector subsequently has reason to believe that these regulations are not being complied with, the Building Inspector may re-inspect the premises, and if a violation is found, revoke the Certificate of Use.
12. Except for District R-4A, fee shall be paid to the Village for a Certificate of Use and for each renewal thereof in accordance with the schedule of fees adopted by the Board of Trustees.

§110-6.17 MERGING OF LOTS

In the R-12 Zoning District, merging of two (2) or more contiguous lots into one (1) lot shall not be permitted except where all of the original lots to be merged are less than the minimum area required, in which case the proposed merger may be allowed upon site plan approval, but only for those original lots necessary to provide the minimum required area to the merged property.

§110-6.18 GENERAL AND PROFESSIONAL OFFICES, FUNERAL PARLORS AND SALE OF ARTS, CRAFTS AND ANTIQUES LOCATED IN AN RG-OA DISTRICT:

- A. The office and/or retail use shall not occupy more than two floors of a building.
- B. Off-street parking shall be wholly provided in the rear and/or one side yard, behind the front building line, and shall be screened from adjoining properties.
- C. All signs and nameplates shall be in accordance with §110-9.

ARTICLE VII: SUPPLEMENTARY BULK REGULATIONS

§110-7.1 OBSTRUCTION TO VISION AT STREET INTERSECTIONS

(refer also to S.N. Village Law sections 93-13 and 103-23)

At all street intersections, or at the discretion of the Building Inspector, no obstructions to vision exceeding 30 inches in height above curb level shall be erected or maintained on any lot within the triangle formed by the street lines of such lot and a line drawn between points along such street lines 30 feet distant from their point of intersection, except, however, that the Planning Board may modify this requirement because of topographic considerations.

§110-7.2 BULK STANDARDS FOR DEVELOPMENT OF UNSUITABLE LAND

- A. Land which the Planning Board finds to be unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, utility easements or other features which will reasonably be harmful to the safety, health and general welfare of inhabitants of the land and surrounding areas shall not be subdivided or developed unless adequate methods are formulated by the developer and approved by the Planning Board upon recommendation of the Village Engineer, to solve the problems created by the unsuitable land conditions.
- B. As part of any minimum lot area requirement and maximum lot coverage requirement, not more than fifty percent (50%) of any land underwater, subject to or within the one-hundred-year-frequency floodplain, or designated wetlands shall be counted. In addition, at least fifty percent (50%) of the minimum lot area shall be unencumbered by land underwater, the one-hundred-year-frequency floodplain or designated wetland. Any construction on such land shall be limited to the maximum lot coverage calculated on the amount of countable square footage, if any.

§110-7.3 DEVELOPMENT ON HILLSIDES

- A. The future development of the hillside areas in South Nyack is a problem of increasing urgency. The hillsides bypassed until now as too costly on which to build, are virtually the last substantial areas for residential development in the Village of South Nyack, and proposals for their use are beginning and can be expected to increase in the future. In the past, a large amount of cutting and filling was frequently done to get the maximum number of lots from a hilly piece of land. In the Village of South Nyack, where steep hills are also characterized by droughty and shallow to bedrock soils, filling operations often entail the destruction of a great deal of the natural vegetation, disrupt the natural drainage pattern and cause excessive amounts of erosion. To prevent these problems and to preserve the present character of the Village's hillside areas, the Planning Board shall use the following slope formula, based upon the existing contours of the land, to determine the lot

area credit toward the minimum area requirement. (See Subdivision Of Land §110-17.4 for additional requirements applicable to subdivisions.)

- B. Based upon the following table, the application of the minimum lot area requirements in Article VI herein shall be limited by the percentage factors shown below:

Slope* of Area Prior to Cut and Fill Operations (percent)	Percent of Lot Survey Area to be Credited to Meet Bulk Regulations for each Lot
0-15	100
16-25	60
26-35	40
36 and over	0

*Note: Degree of slope to be certified by the applicant's licensed engineer, subject to review by the Village Engineer.

§110-7.4 BULK REQUIREMENTS APPLICABLE TO R-18, R-12, R-8H/R-12H, RG-6, RG-4, RG-A, RG-OA, AND R-O RESIDENCE DISTRICT

A. ACCESSORY BUILDINGS. An accessory building may be located in any required side or rear yard required for the principal building, but shall not occupy more than 30% of the area of such required rear or side yard. Accessory buildings constructed at the same time may be located in pairs or groups in the required rear or side yard along the common side-lot line or rear-lot line of contiguous lots. No accessory use shall be located closer than 10 feet to any principal use.

B. RELATION OF ACCESSORY BUILDINGS TO STREETS. No accessory building shall project nearer to the street on which the principal building fronts than such principal building. Should topographic conditions be such that practical difficulties would be caused by this requirement with respect to the location of a garage, the Planning Board, as part of site development plan approval, may authorize the erection of such garage within not less than ten (10) feet of the street line where the natural slope of the ground within twenty-five (25) feet of such line is between twelve percent (12%) and twenty percent (20%) and within not less than five (5) feet of the street line where such slope within twenty-five (25) feet of such line exceeds twenty percent (20%).

C. CORNER LOTS. On a corner lot, front yards are required on both street frontages, and one yard other than the front yard shall be deemed to be a rear yard, and the other or others, side yards. The minimum district requirements for each shall be complied with.

D. EXCEPTIONS TO LOT DEPTH REQUIREMENTS. The minimum lot depth at any point may be decreased by the Planning Board through site plan review to 75

percent of the minimum requirement if the average depth conforms to the minimum requirement.

E. EXCEPTIONS TO YARD REQUIREMENTS.

1. PERMITTED ENCROACHMENTS. Cornices or cantilevered roofs may project not more than two (2) feet into a required yard. Belt courses, window sills and other ornamental features may project not more than six (6) inches into a required yard. Fences or walls not over six (6) feet in height may be erected anywhere on the lot, except as set forth in §110-7.6. Walls with a height in excess of six (6) feet shall conform to the requirements set forth herein for buildings. Paved terraces, steps and walks (other than such as are needed for access to the buildings on the lot) shall not project within fifteen (15) feet of a street line or four (4) feet of a property line.
2. EXISTING SETBACK. No proposed one-family or two-family dwelling need have a front yard greater than the average setback of the two (2) adjacent existing dwellings if they are located within fifty (50) feet on each side of the said proposed dwelling, on the same side of the street and within the same block and the same district.
3. STEEP SLOPES. Where the presence of steep slopes would produce extraordinary site clearance, blasting, or removal of hillsides to meet yard requirements, the Planning Board may modify any yard requirement, up to fifty percent (50%) for any yard, provided that an equivalent area is provided in other yards on the same lot. In making a determination with respect to this sub-section the Planning Board shall give consideration to the preservation of views from adjoining residences. Where the Planning Board has thus modified the yard requirement, any such yard shall thereafter be deemed to conform to the bulk and area requirements.

F. CLUSTER DEVELOPMENT. The Planning Board is authorized and empowered, simultaneously with the approval of a plat or plats in any district zoned for residential purposes pursuant to the Zoning local law of the Village of South Nyack, to modify applicable provisions of the said Zoning local law pursuant to Section 7-738 of the Village Law of the State of New York, subject to the conditions therein provided. However, the approval of the Village Board must be secured with regard to the establishment of any park, recreational area or open space as shown on such plat or plats; and the purpose of this provision is to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities and to preserve the natural and scenic qualities of open land.

1. The Planning Board may allow or require cluster development where it is said Board's judgment that the application of such technique would benefit the village.

2. This procedure shall be applicable only to lands zoned for residential purposes and its application shall result in a permitted number of dwelling units which shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning applicable to the district or districts in which such land is situated and conforming to all other applicable requirements.
3. The dwelling units permitted may be, at the discretion of the Planning Board and subject to the conditions set forth by the Board of Trustees, in detached, semi-detached, attached, or multistory structures.

G. TREE CUTTING. The cutting of trees on private property is regulated by the South Nyack Tree Preservation Local Law, which shall be consulted by the property owner before doing any tree cutting.

§110-7.5 PROTECTION OF RIGHT TO SUNLIGHT

In order to protect access to sunlight for neighboring properties, along the northern-facing lot line of any parcel, for a minimum continuous distance of twenty-five (25) feet, no structure, fence or building shall be built within fifteen (15) feet of the lot line with any part of it having a height greater than six (6) feet above ground level.

§110-7.6 BULK REQUIREMENTS APPLICABLE TO PLACES OF WORSHIP (WITH OR WITHOUT PARISH HOUSES)

- A. A place of worship may have a tower, steeple or similar structure extending above the roof to no higher than 50 feet provided that no part of this tower shall be closer than 40 feet to any adjoining non-public property line.
- B. A side yard adjoining any dwelling's property shall be minimum of 30 feet. Otherwise it shall be equal to that required for a one-family dwelling.
- C. A rear yard adjoining any dwelling's property shall be minimum of 40 feet. Otherwise it shall be equal to that required for a one-family dwelling.

§110-7.7 SIDE YARD ADJUSTMENT FOR LOTS PROVIDING MORE THAN THE MINIMUM REQUIRED STREET FRONTAGE

In order to provide for a desirable proportion of side yard space in relation to the size of the principal building, for properties with greater street frontage than the base minimum required, the total side yard requirement is increased as determined by the base ratio between total minimum required side yards and minimum required frontage for the district. Thus, as frontage increases beyond the base minimum required, the total side yards requirement also increases. For example, if the minimum required frontage in a district is 100 feet, and the total minimum required side yards is 40 feet, then the base ratio is .4 to 1 (total side yards divided by frontage), so that if the actual frontage of a

property is 120 feet, then the required total side yards for that property is 48 feet (.4 times 120 feet).

ARTICLE VIII: SPECIAL PERMITS

§110-8.1 SPECIAL PERMIT GRANTING AUTHORITY

The Special Permits Granting Authority ("SPGA") shall be the Zoning Board of Appeals except in cases of Special Permits for the Bed and Breakfast use or for the Private Educational Campus use, for which the SPGA shall be the Village Board of Trustees. When acting as SPGA, the SPGA shall have the subpoena power granted by New York state law to the Zoning Board of Appeals.

§110-8.2 POWERS AND DUTIES

- A. The SPGA may, on application and after public notice and hearing, according to the same notice requirements as for a Variance application, issue a special permit for any of the uses which this local law requires, in the district in which such use is proposed to be located. In considering the issuance of a special permit, the SPGA shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to insure the accomplishment of such objectives.

§110-8.3 PROCEDURE FOR GRANTING SPECIAL PERMITS

- A. The SPGA shall follow the procedure outlined in §110-11.3 herein. The SPGA shall render a decision on the Special Permit application within sixty-two (62) days following the close of said hearing. If an application for a special permit is for property in an area covered by Section 110-13 herein, it shall be referred to the Rockland County Department of Planning in accordance with Section 239 l and m of the General Municipal Law.
- B. The SPGA may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and hearing, and may be withheld only upon a determination by the Building Inspector or the SPGA to the effect that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been, or are being no longer, complied with. In such cases a period of sixty (60) days shall be granted the applicant for full compliance prior to the revocation of the said permit. Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that:
1. The provision in this local law under which such permit was issued is still in effect.
 2. Such permit was issued in conformity with the provisions of this local law.
 3. Such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.

§110-8.4 REQUIREMENTS APPLICABLE TO ALL SPECIAL PERMIT USES

- A. All proposed structures, equipment and material shall be readily accessible for fire and police protection
- B. The proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- C. All special permit uses are subject to the provisions of Article 6 and 7 (Supplementary Use Regulations and Supplementary Bulk Regulations).
- D. In addition to the above, in the case of any use located in, or directly adjacent to, a Residential District:
 - 1. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets, shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, the said Residential District or conflict with the normal traffic of the neighborhood.
 - 2. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
 - 3. In authorizing the issuance of a special permit it shall be the duty of the SPGA to attach such conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the general objectives of this local law.
 - 4. One (and only one) special permit use may be permitted on any lot that complies with the minimum area and bulk requirements for a single-family dwelling in the district, except on a lot exceeding three (3) acres in area after application of any slope formula, where two (2) special permits uses may be permitted at the discretion of the SPGA upon favorable recommendation by the Planning Board. However, regardless of lot size, if any of the following uses is to be implemented, then only one of these types of permitted uses shall be allowed on the lot: Private Educational Campus §110-8.9; Group Care Facility §110-8.7; Bed-And-Breakfast §110-8.13; Renting of Rooms §110-6.16.

§110-8.5 REQUIREMENTS APPLICABLE TO PRIVATE SCHOOLS; PLACES OF WORSHIP WITH PARISH HOUSES; AND PHILANTHROPIC AND CHARITABLE INSTITUTIONS

- A. Any private school for more than 100 students shall occupy a lot which shall have an area of not less than two acres.
- B. No building or part thereof shall be erected nearer than 20 feet to any street or property line. Any sports or athletic facility building or part thereof shall not be erected nearer than 150 feet to any street or property line which abuts another use.
- C. The sum of all areas covered by all principal and accessory buildings shall not exceed 35% of the area of the lot.
- D. Access, circulation and parking shall be subject to site plan review by the Planning Board in regard to the physical relationship and impact upon adjacent uses.
- E. Buildings shall be so located on the site as to allow for adequate access for emergency vehicles.

§110-8.6 REQUIREMENTS APPLICABLE TO MASS TRANSIT AND PUBLIC-UTILITY RIGHTS-OF-WAY AND STRUCTURES

- A. Only rights-of-way or structures necessary to serve areas within the village will be permitted.
- B. The SPGA may impose such conditions as it deems necessary in order to protect and promote the health and safety and general welfare of the community and the character of the neighborhood in which the proposed structure is to be constructed.

§110-8.7 REQUIREMENTS APPLICABLE TO GROUP CARE FACILITY (NON-PADAVAN)

- A. Said home shall be set up in size, appearance and structure to bear the general character of a family unit in a relatively permanent household. As such it shall not permit transients or transient living.
- B. Said home shall conform with, and shall be maintained in accordance with the overall character and appearance of the surrounding neighborhood. No sign that advertises the use or occupancy of said home shall be erected.
- C. Said home shall be provided with an outdoor recreation area, suitably enclosed with a fence or hedge. Said area shall be a minimum of twenty-five (25) square feet per each occupant of the home and shall not be located nearer than fifteen (15) feet to any lot line or street line.
- D. No home shall be permitted within 3000 feet of any other similar type home.

- E. The following information shall be submitted to the Board of Trustees at the time of the application for the Special Permit:
 - 1. The governmental authorization to operate such facility;
 - 2. A complete statement of the proposed number, age and permanency of residence of the persons proposed to reside in the facility and the number and qualifications of resident and non-resident supervisory personnel.
- F. Special Permit shall expire immediately upon any change in the nature or type of operation of any approved home.

§110-8.8 REQUIREMENTS APPLICABLE TO PROFESSIONAL OFFICE OR STUDIOS

- A. Professional offices or studios include but are not limited to those of an architect, artist, dentist, engineer, lawyer, musician, teacher, therapist or physician.
- B. Veterinarian's offices shall not be considered a Professional Office or Studio.
- C. Except in District R-4A, R-O and R-OA, such office or studio is incidental to the residential use of the premises and is carried on by a resident therein with not more than two nonresident assistant assistants/associates/employees.
- D. Except in District R-4A, such office or studio, wherever located, shall not occupy an area equal to more than 35% of the area of the largest floor of the principal building.
- E. Studios where dancing, music, or martial arts instruction is offered to groups in excess of four pupils at one time, are prohibited.
- F. Adequate off-street parking and loading exist. (See §110-10) However, the parking requirements for professional office or studios in §110-10 shall not apply to District R-4A due to the large overall lot size in this district that inherently provides adequate off-street parking space for these uses.
- G. Any signs are as limited in §110-9.
- H. No noise, vibration, smoke, dust, odors, heat, glare or similar nuisance shall be produced which can be perceived at any adjacent street or property.
- I. **§110-8.9 RESERVED.**

§110-8.10 REQUIREMENTS APPLICABLE TO PRIVATE BOAT OR YACHT CLUBS

Private Boat or Yacht Clubs shall be restricted to properties with a minimum of 300 feet of continuous river frontage, and with the minimum required parking spaces.

§110-8.11 REQUIREMENTS APPLICABLE TO CONVERSION OF AN EXISTING BUILDING TO A MULTIFAMILY DWELLING IN R-O OR RG-OA.

- A. The structure shall be in existence on the effective date of this chapter.
- B. The building shall not be enlarged.
- C. Dwelling units shall not be placed on any floor of a building containing a professional office.
- D. Dwelling units shall have unobstructed access to the exterior without affecting professional offices.
- E. Dwelling units shall have a minimum of three hundred (300) square feet, and a maximum occupancy of one person per 150 square feet within each dwelling unit.
- F. All parking shall be in the rear yard.
- G. Not more than 40 percent of the rear yard shall be covered with an impervious surface.

§110-8.12 REQUIREMENTS APPLICABLE TO PROFESSIONAL OFFICES IN DISTRICTS R-O OR RG-OA.

All of the requirements of § 110-8.8 shall apply, and in addition the following:

- A. No more than one story or one suite, whichever is less, may be devoted to such use.
- B. The building shall front on South Broadway.
- C. Professional offices shall be limited to a floor at the South Broadway level.
- D. All parking shall be in the rear yard.
- E. Not more than eighty (80) percent of the rear yard shall be covered with an impervious surface.
- F. All vehicular access for properties with frontage on South Broadway shall be from South Broadway.
- G. There shall be no substantial change in the external appearance of the premises.
- H. Solid waste receptacles shall be in enclosures not visible from a public street.

§110-8.13 REQUIREMENTS APPLICABLE TO BED AND BREAKFAST ESTABLISHMENTS

- A. Signage identifying the establishment shall be limited to one indirectly illuminated identification sign with an area no larger than 6 square feet on a side and located no less than 7 feet from the street line unless attached to the building or to a fence. Illumination of the sign shall not cast glare onto a public right-of-way or onto adjacent residential lots and illumination of the sign shall be prohibited after 10:30 PM.
- B. Parking areas for guests shall be left unpaved and covered with decorative stones, semi-pervious pavers, or reinforced grass areas. Where parking is provided on a lot other than that of the principal use, an area shall be provided on the lot of the principal use that is dedicated to persons checking in and unloading or loading luggage. Lighting of parking areas shall be supplied by decorative freestanding lamps. Flood lamp illumination of parking areas is prohibited except by motion sensing security lamps. No lamp shall cause any significant glare beyond the property lines. Illumination of parking areas shall be prohibited after 10:30 PM. (See §110-10.1E)
- C. All bed-and-breakfast establishments shall be occupied year round as the domicile and primary residence of the owner. Accessory apartments, boarding of non-transient guests, and home occupations shall be prohibited on lots occupied by a bed-and-breakfast use.
- D. Bed-and-breakfast establishments shall only be located within a structure and lot already in existence for five years prior to issuance of the special permit and that are currently in conformance with all zoning regulations.
- E. The maximum length of stay of any 1 guest shall be limited to 15 days in any 30-day period. The owner of the Bed and Breakfast shall maintain a guest registry logging the arrival and departure of all guests. The guest registry shall be available for review at any time by the Building Inspector, or any properly identified law enforcement officer.
- F. The serving of meals to non-residents shall be limited to breakfast and snack service for overnight guests. The establishment shall receive all required permits from the Rockland County Health Department. No special kitchen equipment such as fans, hoods, or chimneys not customarily associated with a residential structure may be located within view from any public right-of-way or adjacent residential property.
- G. The number of non-resident persons employed by the bed-and-breakfast shall be limited to two persons on-site at any one time, not including persons performing landscaping or repair services. However, in District R-4A the number of non-resident persons employed by the bed-and-breakfast shall be limited to twelve

persons on-site at any one time, not including persons performing landscaping, repair services or other temporary activities.

- H. No more than ten guests including children shall occupy any bed and breakfast during any overnight period, except that in District R-4A the total number of guests may be as many as 24 with approval by the Planning Board of a site plan including all buildings and environmental design factors related to this use. Further, each guest room shall be occupied by no more than two persons over the age of twelve, except that in District R-4A the number of guests allowed per room may be increased to no more than 4 over the age of twelve upon the recommendation of the Planning Board after site plan review. The number of guest rooms shall be limited to a total of five, except in District R-4A in which up to 10 rooms may be used as guest rooms with Planning Board approval of a site plan including all building and environmental design factors related to this use. A minimum of one bathroom per two bedrooms shall be provided and no facility regularly used by residents shall be considered to serve a guest room.
- I. The applicant shall provide an internal floor plan that shows the locations of fire extinguishers, smoke detectors, fire escapes, fire doors, and any other fire suppression element required by the zoning code, or the NYS Uniform Fire Prevention and Building Code. This plan shall be submitted for comment to the Fire Chief and Building Inspector and improvements may be required as a condition of permit issuance. Upon issuance of a special permit, an as-built floor plan shall be provided to the fire department to insure the safety of all occupants.
- J. The Board of Trustees shall issue no more than 2 permits for a bed and breakfast establishment within 3 years of the effective date of this local law. Subsequently, if the Village Board of Trustees determines that a greater demand for these types of uses exists, and finds that these types of uses do not have a deleterious effect on the community or neighborhood, such Board may issue additional permits.
- K. Where two or more bed and breakfast establishments exist on adjacent lots, such uses may be required to share off-street parking facilities.
- L. Recreational activities and entertainment shall only be offered to overnight guests. Outdoor recreational activities shall be screened from public view and from the view of neighboring residential lots.
- M. Use of the site as a bed-and-breakfast shall not cause any noise, odor, or vibration not customarily associated with a single-family residential use to be observable beyond the property lines. No cooking or food storage shall be allowed in any of the bedrooms.
- N. The Board of Trustees may require reasonable additional landscape screening to limit views of the use from the adjoining streets and residences.
- O. Annual inspections of the establishment shall be conducted by the Building Inspector as a requirement of continuing conformance. Such inspections shall

document any violation of the requirements contained in the Zoning Code, Health Code, or Uniform Fire Prevention and Building Code. Special permits shall be issued to the owner and the structure/lot(s) as a unit and are non-transferable to another owner or structure/lot(s). Permits shall be considered valid for a term of two years. No special permit for a bed-and-breakfast shall be issued or renewed where the lot or building is not in conformance with the Zoning Code, Health Code, or Uniform Fire Prevention and Building Code. The applicant shall continue to meet all the special permit criteria of the zoning code as a condition of permit renewal. At the time of renewal, the Building Inspector shall issue a report detailing any changes to the floor plan, or site plan of the use and shall include in such report a list and summary of complaints and/or violations received by the use over the last permit period. The Board of Trustees shall consider such report in their decision to reissue or renew the special permit.

- P. Adequate Water and Sewer – The applicant shall document that adequate water supply and sewer treatment capacity exist to handle the fully occupied use. All such uses shall be served by public water and sewer.
- Q. No bed-and-breakfast establishment shall cause a change in the residential character of any neighborhood.
- R. The Board of Trustees may require additional criteria where it finds that such criteria is required in order to maintain the health, safety, and general welfare of the Village of South Nyack.

ARTICLE IX: SIGN REGULATIONS

§110-9.1 SIGN REGULATIONS

No sign, advertising display or structure, poster or device shall be erected, moved, enlarged or reconstructed without a permit first having been obtained from the Building Inspector, except for political campaign signs and real estate sale signs mounted on private property. Herein, all square footage limits refer to the square footage of only one side of the sign.

§110-9.2 ACTIVITIES EXCLUDED

Painting, cleaning and other normal maintenance and repair of a sign or a sign structure shall not be considered creating a new sign and therefore shall not require a sign permit unless a structural change is made or there is a change in message.

§110-9.3 PERMIT PROCEDURE

- A. Application for a sign permit shall be made on a form provided by the Building Inspector, which application shall include:
1. Name, address and telephone number of the applicant.
 2. Name, address, telephone number and insurance coverage of sign maker.
 3. Location of building, structure or land to which or upon which the sign is to be erected.
 4. Color photo of building upon which sign is to be erected.
 5. Size of sign.
 6. A description of the construction details of the sign, showing the lettering and/or pictorial matter composing the sign; position of lighting or other extraneous devices.
 7. Rendering drawn to scale and supporting information indicating location of sign, colors, size and types of lettering or other graphic representation and materials to be used, electrical or other mechanical equipment, details of its attachment and hanging. Samples of materials should accompany the application, where required by the Building Inspector.
 8. The written consent of the owner of the property upon which such sign or signs is or are to be erected and maintained. In addition, such sign application shall be accompanied by a fee as established by the Board of Trustees of the Village of South Nyack.

9. Such other pertinent information as the Building Inspector may require to insure compliance with this section.
- B. Following formal submission to the Building Inspector, he/she shall refer all applications for signs to the Planning Board. The Planning Board shall approve, disapprove or approve with conditions, within 62 days of receipt of the application, except where a sign application is part of a site plan or special permit application in which case the sign shall be reviewed as part of that application. The Planning Board may decrease the setback requirements for a sign upon site plan review.

§110-9.4 PERMITTED SIGNS - RESIDENCE DISTRICTS.

- A. The following signs are permitted in the R-18, R-12, R-12H, R-12HC, RG-8H, RG-6, RG-4, R-4A and HRA Districts provided that they are accessory to a principal use on the premises. (See regulations for temporary signs.)
1. One nonilluminated nameplate or professional sign with an area on one side of not over two square feet; In the HRA District, up to three nonilluminated property organization identification signs with an area on a side of not over nine square feet.
 2. One indirectly illuminated bulletin board or other announcement or identification sign for educational or religious institutions, with an area on one side of not over 12 square feet, provided that such sign is located not nearer than 20 feet to any street or property line or is attached to the building if closer.
 3. No-trespassing signs. Each nonilluminated no-trespassing sign no closer than fifty (50) feet to any other such sign may be mounted on the property on a tree trunk or fence below the top of the fence, provided that the area of each such sign shall not exceed one hundred (100) square inches, and provided that the design and colors of each sign shall be approved by the Architectural Review Board ("ARB"). However, limitations imposed by the ARB shall not compromise the legal viability of the no-trespassing notice. Any such signs that are nonconforming upon enactment of this local law shall be changed to conforming signs with ninety (90) days of enactment.
 4. Any nonconforming signs shall be eliminated or replaced with conforming signs within one year of the effective date of this local law.

§110-9.5 PERMITTED SIGNS - SEMI-RESIDENTIAL DISTRICTS.

- A. The following signs are permitted in the RG-A, R-O and RG-OA Districts, provided that they are accessory to a principal use on the premises.
1. One nonilluminated nameplate or professional sign per office with an area of not over two square feet.

2. One indirectly illuminated bulletin board or other announcement or identification sign for educational or religious institutions, with an area on a side of not over 12 square feet, provided that such sign is located not nearer than 20 feet to any street or property line or is attached to the building if closer.
3. One indirectly illuminated identification sign, with an area on a side of not over 12 square feet, or in the RG-O district, two nonilluminated identification signs with an area on a side of not over 24 square feet, provided that such sign is located not nearer than 20 feet to any street or property line or is attached to the building if closer.
4. Directional signs.
5. Any nonconforming signs shall be eliminated or replaced with conforming signs within one year of the effective date of this local law.

§110-9.6 PERMITTED SIGNS - NON-RESIDENTIAL DISTRICTS.

- A. The following signs are permitted in the B-1 District, provided that they are accessory to a principal use on the premises and that content is limited to the name of the business, product sold or service provided and logo.
 1. Not more than one identification sign for each tenant on the premises on each wall fronting on a street, provided that:
 - a. The area, in square feet, of any signs on any wall shall not be greater than two times the width in feet of the storefront or commercial establishment to which the sign refers.
 - b. Such sign or signs shall be parallel to the face of the building, and no part thereof, including any illuminating devices, shall project more than 12 inches beyond the face of the wall to which applied nor any distance beyond or above the building in any other direction.
 2. Directional signs.

§110-9.7 PROHIBITED SIGNS

- A. The following types of signs or artificial lighting are prohibited:
 1. Billboards.
 2. Flashing signs, including any sign or device on which the artificial light is not maintained stationary, and constant in intensity and color, at all times when in use.
 3. Signs which project more than 15 inches over a street.

4. Signs which compete for attention with or resemble a traffic signal.
5. Temporary signs made of cardboard, paper, canvas or similar impermanent material.
6. Directly illuminated signs producing glare visible on adjoining residential property.
7. Lighting that creates a distraction for motor vehicle drivers.

§110-9.8 AWNING SIGNS.

A sign may not be suspended from or attached to an awning. Signs may be painted on or made a part of an awning. Such signs painted on an awning shall be computed in the allowable sign area, except for painted signs on awning valances solely identifying the store name with a letter-size not exceeding six inches in height. Signs painted on the awning at a date later than the original erection of the awning shall be subject to approval of the Building Inspector.

§110-9.9 PERMANENT INTERIOR SIGNS - GROUND FLOOR LEVEL.

Permanent interior signs are permitted only in the B-1 and RG-OA districts, and in no instance may such a sign cover more than 20% of the aggregate storefront window area.

§110-9.10 TEMPORARY SIGNS

The following regulations shall apply to temporary signs (for purposes of these regulations, portable signs shall be considered temporary signs):

- A. The Building Inspector may grant special permission for the maintenance of a temporary sign or signs to a charitable or non-profit organization for a period not to exceed 30 days. No fee is to be charged for such.
- B. Temporary signs announcing grand opening of premises shall be permitted in the RG-OA and B-1 districts for a period not to exceed fifteen (15) days before the date of opening and fifteen (15) days after the date of opening. Such sign shall not be hung from public utility poles, trees or other public property. Special event, holiday signs, grand openings and announcement signs heralding special sales or events may be permitted in these districts for a period not to exceed fifteen (15) days.
- C. No signs other than signs placed by agencies of the government shall be placed on any public property, unless written consent is first obtained from the Village Board of South Nyack. No sign shall be placed on any private property without the consent of the owner thereof. No sign shall be placed or painted on any tree or rock. No sign shall be placed on any utility pole except for utility identification or similar purposes.

- D. One contractor sign per frontage, with a maximum size of sixteen (16) square feet for a general contractor on a construction site or four (4) square feet for all other types of contractors shall be permitted provided that such signs are located at ground floor level and shall be erected no more than five (5) days prior to the beginning of construction for which a valid permit has been issued and shall be removed within five (5) days after completion of the project.
- E. A temporary sign announcing the anticipated occupancy of a site or building may be permitted for a period not to exceed three months without the Building Inspector's approval. Such sign shall not exceed twenty-four (24) square feet if it is affixed to a building or wall, and not more than 40% of the window area, if an interior sign.
- F. One temporary non-illuminated sign advertising the sale or rental of the premises on which such sign is situated, with an area of not over four square feet, provided that such sign is located on the front wall of the building or, if freestanding, then not nearer than 10 feet to any street line and 10 feet to any side property line. Any such sign, or "sold" sign, must be removed no later than 10 days after the real estate closing date.
- G. Political campaign signs may be mounted on private property only, and shall be removed within ten days after the Election Day to which they are related.

§110-9.11 IDENTIFICATION AND DIRECTIONAL SIGNS

Identification and directional signs for parking and loading areas shall not exceed an area of three (3) square feet each and shall be limited to such as are essential for the particular use.

§110-9.12 UNSAFE SIGNS.

- A. The owner of a sign and the owner of the premises on which such sign is located shall be jointly liable to maintain such sign, including its illumination sources, in a neat and orderly condition and good working order at all times and to prevent the corrosion, rotting or other deterioration in the physical appearance or safety of such sign.
- B. If the Building Inspector shall find that any sign regulated herein is unsafe, insecure, damaged, deteriorated or a menace to the public or has been erected in violation of the provisions of this section, he shall give written notice to the sign owner or the owner of the premises on which such sign is located. Said sign and all appurtenances shall be taken down and removed by the owner, agent or person having the beneficial use of the building or structure upon which such sign may be found within a period of time specified by the Building Inspector, but not to exceed thirty (30) days, after written notification from the Building Inspector. Upon failure to comply with such notice within the time specified in such order, the Building Inspector is hereby authorized to cause removal of such sign, and the expense of said removal, when certified by said Building Inspector to the Village Board, shall be

paid by the Village and such amount shall thereupon be and become a lien upon the premises in question and shall be levied and collected in the same manner and under the same penalties as an assessment for a public improvement.

- C. If in the determination of the Building Inspector a sign is an immediate peril to persons or property he may cause such sign to be removed summarily and without notice.

§110-9.13 NONCONFORMING SIGN.

- A. A nonconforming sign may not be enlarged, changed, replaced, or altered.
- B. The maintenance of such nonconforming signs may be permitted, but any sign once removed for purposes other than maintenance, shall be deemed permanently removed and may be replaced only in accordance with the provisions of this local law.

§110-9.14 MULTIPLE OCCUPANCY - OVERALL SIGN PLAN

When there are two or more occupants of a premises, an overall plan for signage shall be required prior to installation or replacement of any individual sign. The overall plan shall satisfy all requirements and guidelines of this local law. Individual signs shall be the same with regard to materials and color, but letter size and style may vary, subject to approval of the Planning Board.

ARTICLE X: OFF-STREET PARKING AND LOADING FACILITIES AND DRIVEWAYS

§110-10.1 OFF-STREET PARKING REQUIREMENTS

A. SCHEDULE OF REQUIREMENTS. Accessory off-street parking spaces, open or enclosed, shall be provided for the particular uses listed below for each use in any district. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these regulations.

Required Off-Street Parking Spaces

One-Family Detached Residence	2 spaces per dwelling unit
Two-Family Residence	2.0 spaces per dwelling unit
Roomers, One-family or Two-family Residence	1.0 space per roomer
Multi-Family Residence	2.5 spaces per dwelling unit
Apartments	1.0 space per dwelling unit of not more than 300 square feet 1.5 space per dwelling unit of not more than 301-500 square feet 2.5 space per dwelling unit of more than 501 square feet
Professional Office in a Residence	3 spaces per permitted professional office or 2 spaces for each professional maintaining office hours, whichever is greater, in addition to that required for the residential use.
Home Occupation	2 spaces in addition to that which is required for the residential use.
Office Building other than Medical or Dental Offices	1 space for each 300 square feet of gross floor area.
Medical or Dental Offices	1 space for each 150 square feet of gross floor area, but not less than 4 spaces per practitioner.
Schools, private music, art, and martial arts and dancing, etc.	1 space per four students

Local Retail and Service Establishment	1 space for each 200 square feet of gross floor area.
Public and Quasi-Public Uses	To be determined by the Planning Board based on maximum use at any one time.
Places of Worship	1 space for each 8 seats.
Day Care Center, Nursery School	1 space for each staff member plus one space for each classroom.
Agency Group Home	1 space for each full-time staff member plus one space for each five residents.
Bed and breakfast	3 spaces plus 1 space for each guest bedroom
All other uses not mentioned	Reasonable and appropriate off-street parking variations of above requirements for structures and land uses which do not fall within the categories listed above shall be determined by the Planning Board.
Private boat or yacht club	1 space per every 3 boats associated with the club.

B. **DISALLOWED VEHICLES.** No unlicensed or unregistered automobile or truck may be parked out of doors on any property. The number of vehicles allowed to park on any property shall be limited to the number of parking spaces legally provided on the property. (see also §110-6.10 Discarded Materials and Graffiti and §110-6.3 Parking Of Commercial Vehicles)

C. **AREAS COMPUTED AS PARKING SPACES.** Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than a street or a driveway. However, a driveway within a required front yard for a one-family or two-family residence may count as two parking spaces, subject to the dimensional requirements in §110-10.1.E.

D. **NO PARKING IN FRONT YARD.** No off-street parking is permitted within a required front yard, except on a driveway, which shall not be more than eighteen (18) feet wide. No vehicle parked in an off-street parking area shall project onto a sidewalk or into a public street.

E. **LOCATION AND OWNERSHIP OF REQUIRED ACCESSORY PARKING FACILITIES.** Required accessory parking spaces, open or enclosed, may be provided upon the same lot as the use to which they are accessory, or elsewhere, provided all spaces therein are located within 300 feet walking distance of such lot. In all cases such parking spaces shall conform to all the regulations of the district in

which they are located; and in no event shall such parking spaces be located in any residence district unless the uses to which they are accessory are permitted in such district, or by special permission of the Board of Appeals. Such spaces shall be in the same ownership as the use to which they are accessory and shall be subject to deed restriction, filed with the County Clerk, binding the owner and his heirs and assigns to maintain the required number of spaces available either (a) throughout the existence of such use to which they are accessory or (b) until such spaces are provided elsewhere.

- F. **SIZE OF SPACES AND AISLE WIDTH.** A parking space shall be considered a space nine (9) feet wide and eighteen (18) feet long exclusive of standing area and aisles for maneuvering. Entrance and exit roadways shall not be computed as parking space except for one-family and two-family residences. Aisle width shall be not less than twenty (20) feet for sixty (60?) degree parking or twenty-two (22) feet for ninety (90?) degree parking.
- G. **ACCESS.** Unobstructed access to and from a street shall be provided. Such access shall consist of at least one ten-foot lane for parking areas with less than twenty (20) spaces, and at least two ten-foot lanes for parking areas with twenty (20) spaces or more. No access shall exceed a total width of eighteen (18) feet for one and two-family dwellings or twenty-four (24) feet for all other uses.
- H. **JOINT FACILITIES.** Required parking spaces, open or enclosed, may be provided in spaces designed to serve jointly two or more establishments whether or not located on the same lot, provided that the number of required spaces in such joint facilities shall be not less than the total required for all such establishments.
- I. **COMBINED SPACES.** When any lot contains two (2) or more uses having different parking requirements, the parking requirements for each use shall apply to the extent of that use. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when other use or uses is not or are not in operation, the Planning Board as part of site plan approval may reduce the total parking spaces required for the use with the least requirement.
- J. **SCREENING.** Where permitted off-street parking areas abut or lie within twenty-five (25) feet of street or property lines, landscaped shrubbery of a minimum height of four feet and a width of three feet shall be provided.

§110-10.2 DRAINAGE AND SURFACING

All parking areas of over five (5) spaces shall be provided with a dustless surface, except for parking spaces accessory to a one-family or two-family residence. All open parking areas covered with an impervious surface shall have drainage, drywell or other devices for handling rainwater sufficient to absorb a rainfall rate of 3 inches per hour and a volume of 4 inches per 6 hours, or to convey it into the public storm drain system without overflowing onto any neighboring property.

§110-10.3 OFF-STREET LOADING FACILITIES

- A. PERMITTED ACCESSORY LOADING BERTHS. Off-street loading berths, open or enclosed, are permitted accessory to uses in non-residence districts. No off-street loading berth shall be located in a front yard.
- B. USES REQUIRING OFF-STREET LOADING BERTHS. Open or enclosed accessory off-street loading berths shall be provided for any lot or any use required by the Planning Board. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purposes of such requirements.
- C. SIZE, LOCATION AND ACCESS. Unless otherwise permitted by the Planning Board each required loading berth shall be at least 15 feet wide, 45 feet long and 14 feet high if enclosed. Unobstructed access at least 15 feet wide to and from a street shall be provided. Such access may be combined with access to a parking lot. All permitted or required loading berths shall be on the same lot as the use to which they are accessory.
- D. SHARED FACILITIES. Permitted or required loading berths, open or enclosed, may be provided in spaces designed to serve jointly two or more adjacent establishments, provided that the number of required berths in such joint facilities shall not be less than the total required for all such establishments.

§110-10.4 SUPPLEMENTARY REGULATIONS FOR PARKING AND LOADING FACILITIES

- A. ACCESS NEAR STREET CORNERS. No entrance or exit for any accessory off-street parking area with over ten (10) parking spaces nor any loading berth shall be located within 50 feet of the intersection of any two street lines, except that the Planning Board, in granting site development plan approval, may provide for a lesser distance between the entrance or exit for accessory off-street parking area and the intersection of any two (2) street lines.
- B. TRAFFIC STORAGE. All uses shall provide sufficient space on the same lot so that any storage lanes for traffic will be provided for and will not obstruct traffic or utilize public rights-of-way.
- C. DRIVEWAYS. No driveway shall provide access to a lot located in another district, which lot is used for any use prohibited in the district in which such driveway is located.

ARTICLE XI: NONCONFORMING BUILDINGS AND USES

§110-11.1 NONCONFORMING BUILDINGS AND USES

The following provisions shall apply to all buildings and uses existing on the effective date of this local law which do not conform to the use and bulk requirements set forth herein and to all buildings and uses that become nonconforming as to use or bulk by reason of any subsequent amendment to this local law and the Zoning Map which is a part hereof and to all conforming buildings housing nonconforming uses:

- A. Any nonconforming use and any building that is nonconforming as to bulk may be continued but:
1. **RECONSTRUCTION OR EXTENSION.** Neither a nonconforming use nor a building that is nonconforming as to bulk shall be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such use nor shall any external evidence of such use be increased by any means whatsoever.
 2. **CHANGES.** A nonconforming use shall not be changed to another nonconforming use, except by variance granted in accordance with Section 110-13.2B3, or a change to a less-dense/less-intense use as determined by the Building Inspector in accordance with Section 110-11.2, Nonconforming Use Permit.
 3. **DISCONTINUANCE.** A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to re-establish a nonconforming use shall not confer the right to do so.
 4. **VEHICLES, MACHINERY, HOME OCCUPATIONS AND SOLID WASTE RECEPTACLES.** On any property used for residential purposes, the parking of nonconforming vehicles and the storage of nonconforming equipment or materials and the engaging in home occupations shall attain compliance within six (6) months of the effective date of this local law. On any applicable property under §110-7.17, solid waste receptacles and garbage cans shall attain compliance within three (3) months of the effective date of this law.
- B. Except as provided in Paragraph C below, no building which houses a nonconforming use or which is nonconforming as to bulk shall be:
1. Structurally altered or enlarged.
 2. Moved to another location where such use would be nonconforming.
 3. Restored for other than a conforming use after damage from any cause exceeding fifty percent (50%) of the replacement cost of such building, exclusive

of foundations, as determined by the Village Assessor. Any such building damaged to a lesser extent may be restored but not enlarged if application for a building permit is made within six (6) months of such damage and the nonconforming use reinstated within one year thereafter. If the restoration of such building is not completed within the said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such non-conforming use is carried on without interruption in the undamaged portion of such building. A nonconforming use in a building damaged to a lesser extent than fifty percent (50%) of replacement cost shall not be expanded if the building is restored.

- C. Normal maintenance and repair of a building which houses a nonconforming use or is nonconforming as to bulk is permitted provided such maintenance or repair does not increase the degree of, or create any new non-conformity.
- D. Any use unlawfully established in violation of this or any previously existing Zoning local law of the Village of South Nyack shall continue to be deemed an illegal use under this local law.

§110-11.2 NONCONFORMING USE PERMIT (Not required for nonconforming bulk.)

The purpose of this permit is to factually establish and document each nonconforming use that predates the zoning law and that is therefore authorized to continue until abandoned or phased out by legislative action.

- A. Initial registration and permit application. Each nonconforming use that may be permitted to continue due to its having predated this Local Law, except those granted by variance and not abandoned, and except those previously granted a Nonconforming Use Permit that remains current shall be registered by the owner with the Building Inspector. Any such continuing uses permitted by law prior to the effective date of this local law shall be registered no later than sixty (60) days after this date. Any previously permitted nonconforming use not registered by this date shall be deemed to have been intentionally abandoned. The processing fee to be paid by the owner for each registration/permit application shall be established by the Board of Trustees. The application for a nonconforming use permit shall recite the history of the use on the property with respect to the zoning regulations of the Village of South Nyack accompanied by copies of all supporting documentation. Upon receipt of each registration/permit application, permit application and processing fee, the Building Inspector shall review the facts of the case, may inspect the premises of the use and shall examine all relevant supporting documentation in order to determine the validity of the application under this law. Within sixty (60) days after the registration deadline with the concurrence of the Village Attorney, the Building Inspector shall decide to grant or deny all Nonconforming Use Permits applied for, shall notify each applicant of the respective decision, and shall file a written report on all of these decisions with the Village Clerk. Upon receiving the report, the Clerk shall immediately post it in public, announce its availability to the

press, and make copies available to any members of the public requesting it. Unless appealed, each decision shall take effect thirty-one (31) days after its first public posting. Within thirty (30) days of the public posting of the decisions, any applicant, anyone owning property within two hundred (200) feet of a subject property, or any member of the Board of Trustees can file an appeal of any of these decisions with the Zoning Board of Appeals. The Board shall hear and decide these appeals in accordance with the procedures and fees for hearing requests for variances, except that Board of Appeals members shall receive no compensation for deciding Nonconforming Use Permit cases, and the Village shall bear the cost of any third party appeal brought by a member of the Board of Trustees. In considering these cases, the Board of Appeals shall consider only the question of the existence of a legal nonconforming use. All decisions of the Board of Appeals shall contain written findings of fact.

- B. Notice. No later than thirty (30) days after the effective date of this local law, the Village Clerk shall mail a notice of the requirements of this section to each property owner of the Village, and no more than 50 days nor less than 40 days after this law's effective date, the Village Clerk shall have a legal notice printed in the newspaper of record to further notify the public of these requirements.
 - 1. Renewal. The issuance of each Nonconforming Use Permit shall be subject to renewal requirements that may be enacted at a later date by the Board of Trustees or in the case of a change to a less-dense/less-intense use as determined by the Building Inspector; a revised Nonconforming Use Permit may be issued by the Building Inspector.
- C. Change of ownership. In order to eventually phase out nonconforming uses, nonconforming use permits shall cease to be in effect upon the change of ownership of the use. To continue the nonconforming use, new owners shall apply for a new nonconforming use permit within 90 days of real estate closing in order to continue the nonconforming use. Upon timely application, the new permit shall be granted if the Board of Trustees has not enacted legislation to phase out the use applied for, and if abandonment of the use for more than one year has not occurred during the two years prior to the application. If application to renew a nonconforming use permit is made by a new owner after the 90-day deadline, then upon appeal to the Board of Appeals the burden of proof is on the landowner to demonstrate that there has been no abandonment of the nonconforming use since gaining ownership of the land. Upon submission of proof satisfactory to the Board, the Building Inspector may grant renewal of the prior owner's Nonconforming Use Permit.
- D. Nonconforming uses that became nonconforming by the adoption of the 1988 Local Zoning Law, and which did not receive a Nonconforming Use Permit during the time specified in that law, may not be granted a Nonconforming Use Permit under this law.

Two-family residences in the R-12 district that predated the 1988 law are exempt.

ARTICLE XII: ENFORCEMENT AND PENALTIES

§110-12.1 ZONING-BUILDING PERMITS

No person or entity shall erect alter or change, in whole or in part, any building or other structure, begin any excavations, or change the permitted land use, including professional office and home occupation use, without first obtaining a zoning-building permit duly issued upon application to the Building Inspector. No zoning-building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of this local law. Any zoning-building permit issued in violation of the provisions of this local law shall be null and void and of no effect, without the necessity for any proceedings for revocation or nullification thereof; and any work undertaken or use established pursuant to any such permit shall be unlawful. Every application for a zoning-building permit shall be first submitted to the Building Inspector who shall review it for compliance with this local law. The Building Inspector shall then take the necessary action on the application or transmit it to the appropriate board as required herein.

- A. Every application for a zoning-building permit shall be accompanied by a fee in accordance with a schedule adopted by the Board of Trustees and by a plot plan and building plans drawn to scale showing:
1. A survey made by a licensed surveyor showing the actual shape, dimensions, radii, angles and area of the lot on which the building is proposed to be erected, or of the lot on which it is situated if an existing building, except in the case of alterations of a building which do not affect the exterior thereof.
 2. The block and lot numbers as they appear on the official Village tax map.
 3. The exact size and locations on the lot of the proposed building or buildings or structural alteration of an existing building and of other existing buildings on the same lot.
 4. The dimensions of all yards in relation to the subject building and the distances between such building and any other existing buildings on the same lot and adjacent lot.
 5. The existing and intended use of all buildings, existing or proposed, the use of land and the number of dwelling units the building is designed to accommodate; and the necessary computations to establish conformity to the bulk and density regulations.
 6. Such topographic or other information with regard to the building, the lot or neighboring lots, as may be necessary to determine that the proposed construction will conform to the provisions of this local law.

- B. No zoning-building permit shall be issued for the construction or alteration of any building upon a lot without frontage upon or legal permanent access to a public street, or without access to a public sewer, unless it is issued with the approval of the Planning Board upon site plan review.
- C. No zoning-building permit shall be issued for any building where the site plan of such building is subject to approval by the Planning Board except in conformity with the plans approved by the said Board.
- D. No zoning-building permit shall be issued for a building to be used for any use in any district where such use is allowed by special permit of the SPGA unless and until such special permit has been duly issued by the said Board.
- E. The application and all supporting documentation shall be submitted to the Building Inspector. . On the issuance of a zoning-building permit, the Building Inspector shall return one copy of all documents filed to the applicant.
- F. The Building Inspector shall, within ten (10) days after the filing of a complete and properly prepared application, either issue or deny a zoning-building permit or refer the application to the appropriate Village agency for any action required prior to the issuance of a zoning-building permit. If a zoning-building permit is denied, the Building Inspector shall state in writing the reasons for such denial, and the section of the local law that would be violated.
- G. Every zoning-building permit shall expire if the work authorized has not commenced within twelve (12) months after the date of issuance or has not been completed within twenty-four (24) months from such date. If no zoning amendments or other Village regulations affecting subject property have been enacted in the interim, the Building Inspector may authorize in writing the extension of the latter period by an additional six (6) months, following which no further work is to be undertaken without a new zoning-building permit.
- H. Applications for a zoning-building permit for a private swimming pool or FOR ANYTHING OTHER THAN a permitted accessory structure (except private swimming pool), or permitted fence SHALL BE REFERRED to the Planning Board for its review and approval. The decision of the Planning Board may be appealed as provided by this local law.

§110-12.2 BUILDING PERMITS

All applications shall be in accordance with the requirements set forth in "An Ordinance Establishing a Local Building Department with Grant of Powers to Local Building Officials," adopted November 1957, and amendments thereto, and which is hereinafter referred to as "Building Department Ordinance."

§110-12.3 FENCE PERMITS

In accordance with the requirements of §110-6.4, the Building Inspector or Code Inspector may issue Fence permits.

§110-12.4 SIGN PERMITS

In accordance with the requirements of §110-9, and subject to approval by the Planning Board, the Building Inspector may issue sign permits.

§110-12.5 TEMPORARY PERMITS

Temporary sales offices, construction trailers and signs necessary or incidental to construction of a development may be allowed by application to the Building Inspector for a temporary permit, which shall authorize only one (1) particular temporary use and shall expire one (1) year after date of issuance. A temporary permit may be extended by the Building Inspector for one (1) six-month period upon approval by the Planning Board.

§110-12.6 SPECIAL PERMITS

The Zoning Board of Appeals or Board of Trustees may grant special permits, within the categories assigned to each board, according to the requirements of Article V (Schedule 1) and according to the requirements of Article VIII.

§110-12.7 VARIANCES

The Board of Appeals may grant variances according to the requirements and procedure stated in Article XIII.

§110-12.8 CERTIFICATE OF OCCUPANCY

- A. The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Building Inspector:
1. Occupancy and use of a building hereafter erected, structurally altered or moved or any change in the use of an existing building.
 2. Occupancy, use or any change in the use of any land or building.
 3. Any change in use of a nonconforming use.
 4. Any change in ownership, or change in tenancy for any non-residential use.
- B. No certificate of occupancy shall be issued for any use of a building or of land allowed by special permit of the Special Permit Granting Authority as specified in Article V of this local law unless and until such special permit has been duly issued by the said Board. Every certificate of occupancy for which a special permit has

been issued or in connection with which a variance has been granted shall contain a detailed statement of such special permit or variance and of any conditions to which the same is subject.

- C. Application for a certificate of occupancy on a form furnished by the Building Inspector for a new building, or for an existing building which has been altered, shall be made after the erection of such building or part thereof has been completed in conformity with the provisions of this local law and with the requirements set forth in the South Nyack Building Department Ordinance, and in the case of a new building shall be accompanied by an accurate survey prepared by a licensed surveyor showing the location of all buildings and improvements as built. Such certificate shall be issued within ten (10) days after receipt of said application, but only provided all requirements of all applicable codes or ordinances in effect are complied with.
- D. If the proposed use is in conformity with the provisions of this local law and of all other applicable laws and ordinances, a certificate of occupancy for the use of vacant land, or for a change of use of a non-conforming use, shall be issued by the Building Inspector within ten (10) days after receipt of a written application.
- E. Every application for a certificate of occupancy or a temporary certificate of occupancy shall be accompanied by a fee in accordance with a schedule adopted by the Board of Trustees. Copies of such certificate will be made available upon payment.
- F. Every application for a certificate of occupancy shall state that the building or the proposed use of a building or land complies with all applicable provisions of this local law, and if applicable, all provisions of any variance or requirements for any special permit.
- G. A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies.
- H. Upon written request by the owner, and upon payment of a fee as per a schedule adopted by the Board of Trustees, the Building Inspector shall, after inspection, issue a certificate of occupancy for any building or use thereof or of land existing at the time of the adoption of this local law, certifying such use (including the number of employees), and whether or not the same and the building conform to the provisions of this local law.
- I. Any certificate of occupancy issued in violation of the provisions of this local law shall be null and void and of no effect, without the necessity for any proceedings for revocation or nullification thereof; and any occupancy undertaken, work performed or use established pursuant to any such permit shall be unlawful.
- J. A temporary non-renewable certificate of occupancy may be issued by the Board of Appeals, upon receipt of advice from the Building Inspector and Village Engineer for a period not to exceed six months, when weather or other conditions not under the

control of the owner occur. A bond or other surety shall be required to ensure that funds are available to complete items unfinished at the time the application for a temporary certificate of occupancy is made.

- K. Upon the granting of a certificate of occupancy, a copy shall be posted on the property within view of the street, and shall remain posted for thirty (30) days thereafter.

§110-12.9 CERTIFICATE OF USE

Upon payment by the applicant of a fee in accordance with a schedule adopted by the Board of Trustees, the Building Inspector may issue an annually renewable Certificate of Use, in accordance with the requirements of §110-6.16.

§110-12.10 DUTIES OF THE BUILDING INSPECTOR AND CODE INSPECTOR

- A. The Building Inspector and the Code Inspector are authorized to enforce the provisions of this local law and of all rules, conditions and requirements adopted or specified pursuant thereto. Either the Building Inspector or Code Inspector shall be present at all hearings before the Board of Appeals. Supplementary to enforcement by the Building Inspector and Code Inspector, at the direction of the mayor, members of the police department may be authorized and required to perform the enforcement functions of the Code Inspector according to paragraphs E and F of this section.
- B. The Building Inspector, or the Code Inspector, shall have the right to enter any building or enter upon any land at any reasonable hour in the course of his duty. The Building Inspector shall maintain files of all applications for building permits and plans submitted therewith and for certificates of occupancy and records of all building permits and certificates of occupancy issued by him, which files and records shall be open to public inspection.
- C. The Building Inspector and the Code Inspector shall comply with and enforce all decisions of the Zoning Board of Appeals. Where a Board of Appeals decision disallows the continuance of any nonconforming use or bulk, then within ten (10) days of the filing of the decision with the Village Clerk, the Building Inspector shall notify the property owner that the property must comply with the Board of Appeals decision within thirty (30) days, after which time a property that does not comply shall be in violation of this local law.
- D. The Building Inspector shall keep a record of every identifiable complaint of a violation of any of the provisions of this local law, and of the action taken consequent on each such complaint, which records shall be public records. He shall report to the Board of Trustees, at intervals of not greater than one month, summarizing for the period since his previous report all building permits and

certificates of occupancy issued by him and all complaints of violations and the action taken by him consequent thereon.

- E. The Building Inspector or Code Inspector shall make the necessary inspections, subject to the requirements of law, for the purpose of ascertaining whether or not existing conditions comply with the provisions of this local law. The Building Inspector or Code Inspector shall, where it is determined a violation exists, issue an "Order to Remedy Violation." Said order shall set forth the violation and a date by which the violation shall be corrected or remedied, as determined by the Building Inspector or Code Inspector.
- F. At the request of the Board of Trustees, the Building Inspector or Code Inspector shall inspect any premises for the purpose of ascertaining whether or not existing conditions comply with the provisions of this local law and report, in writing, to said Board the results of his findings.
- G. The Building Inspector shall review all plans submitted for subdivision, site plan, special permit, variance, and nonconforming use applications and advise the appropriate Village agency whether said plans conform to this local law and any other applicable Village regulations. For the purpose of ensuring compliance with the foregoing on any construction on properties within the Village having grades greater than six (6%) percent, the owner or applicant shall supply the Building Inspector with spot topographical elevations from the top of the foundation on each building corner, any proposed paved areas and any retaining walls. Failure to supply such data may result in revocation of the building permit and other enforcement action as provided by law. (see also §110-6.4 E. Retaining Walls)
- H. The Building Inspector or Code Inspector are authorized to issue and post notices of violations. The Building Inspector may issue and post notices of stop work orders, revocation of building permits and certificates of occupancy, and shall order the remedying of any condition or omission that the Building Department or the Zoning Board of Appeals finds to be in violation of this local law. In addition, by resolution, the Board of Trustees may direct the Building Inspector to revoke such building permits and certificates of occupancy, issue such stop work orders, make such inspection and reports, initiate and take such court proceedings and perform all other actions as required by the Board of Trustees as may be necessary to enforce this local law or to invoke penalties for its violation.
- I. Whenever the Building Inspector or Code Inspector determines upon reasonable grounds that work on any building, structure or lot is being or has been conducted in violation of any of the provisions of the Building Code, State or Federal laws, building laws, ordinances, local laws, regulations, rules or specifications of the Village of South Nyack or other applicable laws or regulations, or the requirements of any approved site plans, or subdivision plat, or variance, or special permit or nonconforming use permit or not in conformity with the provisions of any application, plans or specifications upon which a building permit was issued, or that such work is being conducted in a dangerous or unsafe manner, then the Building Inspector may

notify the owner of the property, or the owner's agent or the person performing the work to suspend such remaining work on any building or structure which is or could be affected by the violation. If work remains to be performed on such buildings or structures, such persons shall forthwith stop such work and suspend all building activities on the affected buildings or structures until the stop order has been rescinded. Such stop order shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same conspicuously upon the building or structure under construction and sending a copy of said order by certified mail. Any person aggrieved by such a stop order may appeal to the Board of Appeals within 30 days to review the same, and the Board of Appeals on such review may affirm, modify or reverse the action of the Building Inspector as the facts may warrant.

- J. Where the determination of violation concerns a building or structure for which a certificate of occupancy has already been issued, the Building Inspector may revoke the certificate of occupancy by service of a notice of revocation. Such notice may be served upon the person to whom it is directed either by delivering it personally to him or by posting the same in a conspicuous location on the building, structure or property to which the notice applies, and mailing a copy of said notice by certified mail. Any person aggrieved by such a revocation may appeal to the Board of Appeals within 30 days to review the same, and the Board of Appeals on such review may affirm, modify or reverse the action of the Building Inspector as the facts may warrant.

§110-12.11 VIOLATIONS AND PENALTIES

A. Persons liable

1. The owner, general agent, chief executive or contractor of a building or premises or part thereof where a violation of this Local Law has been committed or shall exist shall be chargeable with a violation as set forth herein.
2. Any general agent, architect, builder, contractor or other person who commits, takes part or assists in such violation or who maintains any building or premises in which any violation shall exist shall be chargeable with a violation as set forth herein.

B. Violations as disorderly conduct

1. Any liable individual who permits a violation of this Local Law to exist after five days following receipt of written notice of such violation by the Building Inspector or the Village Clerk (either by personal service or certified mail) shall be guilty of disorderly conduct.

C. Penalties

1. Each violation shall be subject to a penalty not to exceed \$1,000.00 and/or fifteen days imprisonment for each violation.
2. Each and every day that this violation continues shall constitute a separate offense and shall be punishable as such, provided that the alleged violator has been given proper notice of said separate offenses.
3. Penalties shall be collected and violations of this local law shall be prosecuted in the manner proscribed by local ordinance effective in the Village of South Nyack.

D. No abatement of other remedies

1. Nothing in this local law shall prevent any property owner or resident of the Village, or the Village itself, or other agency of the Village, or any person residing on or owning property outside the Village from availing themselves of any lawful remedy in preventing or abating any violation of any provision of this local law.

ARTICLE XIII: BOARD OF APPEALS

§110-13.1 CREATION, APPOINTMENT AND ORGANIZATION

There shall be a Board of Appeals of five members pursuant to the provisions of Section 7-712 of the Village Law of the State of New York. Utilizing the Village's Municipal Home Rule Law authority to amend the application to the Village of the provisions of Village law 7-712, two alternate members shall be appointed for a term of one year. The function of an alternate member is to serve in place of a regular member, with all of the powers and duties thereof, in the absence of a regular member. If an alternate member serves during the public hearing of a case, then the alternate member shall serve in place of the regular member during the deliberations and decision process for that case. Alternate members shall be called to serve in the absence of regular members in order of seniority since first appointed as an alternate member. Any alternate member in attendance at a meeting, but who is not serving at that time in the place of a regular member, shall have the official function of an observer only, with no vote during that meeting. Notwithstanding the provisions of Section 7-712 of the Village Law, the members of the Board of Appeals shall be appointed for a term of three (3) years each. The terms of members initially appointed shall be staggered so that at least one such term shall expire at the end of each official year. Regular and alternate members of the Board of Appeals shall be appointed by the Mayor, subject to the approval of the Board of Trustees. The Mayor shall appoint a Chairperson and a Deputy Chairperson each year, subject to the approval of the Board of Trustees. Each member shall be compensated for each case that the member hears and acts upon, including any case that an applicant moves to withdraw after commencement of the hearing. The Board of Trustees shall determine the fee to be paid to the members. The Board of Appeals may adopt procedures for the conduct of its business.

§110-13.2 POWERS AND DUTIES

The Board of Appeals has no legislative authority to enact or amend zoning laws or regulations, as that power under law, is reserved to the Village Board of Trustees. The Board of Appeals shall have all the powers and duties prescribed by the Village Law of the State of New York, including the authority to reverse or affirm, wholly or partly, or to modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken. The powers and duties of the Board of Appeals are further prescribed by this local law specified as follows, provided that none of the following provisions shall be deemed to limit any power of said Board that is conferred by law:

- A. INTERPRETATION. The Board of Appeals may, on appeal from an order, requirement, decision, determination or interpretation made by the administrative

official charged with the enforcement of this local law, or upon referral by any official, board or agency of the Village, decide any of the following questions:

1. Determination of the meaning of any portion of the text of this local law or of any condition or requirement specified or made under the provisions of this local law
2. Determination of the exact location of any district boundary shown on the Zoning Map

B. VARIANCES. The Board of Appeals may authorize, upon appeal in specific cases, an area or use variance from the terms of this local law, such as will not be contrary to the public interest where the balancing of benefits supports the appeal (area variance) or unnecessary hardships (use variance) which require relief from the strict letter of this local law, subject to terms and conditions that may be imposed by the Board.

1. Use Variances.

- a. The Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, as defined herein.
- b. No such variance shall be granted by the Board of Appeals 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 to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
 - i. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - ii. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - iii. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - iv. That the alleged hardship has not been self-created.
- c. The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

2. Area Variances.

- a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.
 - b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:
 - i. 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;
 - ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - iii. Whether the requested area variance is substantial;
 - iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - v. 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 an area variance.
 - c. The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. [This para replaces prior paragraph 3.]
3. Imposition of conditions. The 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. Such conditions shall be consistent with the spirit and intent of the zoning local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- C. PUBLIC INFORMATION. Every three years, the Village Board of Trustees shall appropriate necessary funding for the preparation, publication and distribution to property owners of a non-technical summary of the Zoning Law, with emphasis on those regulations most frequently encountered by the public. This summary shall be prepared subject to the direction and approval of the Zoning Board of Appeals. The review and updating of this summary shall be completed by March 31st of the years

when due, and a copy of it shall be mailed by the Village Clerk to each property owner by July 31st of each such third year.

§110-13.3 PROCEDURE

The powers and duties of the Board of Appeals shall be exercised in accordance with the following procedure:

- A. Appeal by Applicant. Within sixty (60) days after the date of the order, requirement, decision, interpretation or determination appealed from, the applicant may appeal to the Board of Appeals from such ruling by serving upon the Village Clerk a written Notice of Appeal on forms prescribed by the Board of Appeals together with such other documents as may be required by the Board of Appeals and a fee in accordance with the Fee Schedule adopted by the Board of Trustees. If a case involves a request for a variance, or if some other provision of law requires a review by the Planning Board, then the applicant shall appear before the Planning Board prior to appearance before the Board of Appeals in order to facilitate the Planning Board's advisory capacity to the Board of Appeals. However, the applicant may be permitted to appear before the Board of Appeals first if the following conditions are met:
 - 1. The applicant has submitted a written request explaining how waiting for prior review by the Planning Board would significantly delay the correction of an unsafe situation, or that the circumstances of the case are so simple, clearly evident and unlikely to change;
 - 2. The Building Inspector and the Chairperson of the Board of Appeals agree that the request is justified and that prior review by the Planning Board is unlikely to influence a decision by the Board of Appeals.
- B. But any Board of Appeals decision in such a case shall not take effect until after any required Planning Board approval of the site plan, and the Planning Board may refer the case back to the Board of Appeals for reconsideration (see paragraph L). In any case, the applicant shall not commence work until after a building permit has been issued.
- C. Third Party Appeal. Within sixty (60) days after the date of an order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of this local law, the Board of Trustees, or any person owning property or residing within two hundred (200) feet of the property that is the subject of the decision, may appeal such ruling to the Zoning Board of Appeals by serving upon the Village Clerk a written Notice of Appeal on forms prescribed by the Board of Appeals, together with such other documents as may be required by the Board of Appeals and a fee in accordance with the Fee Schedule adopted by the Board of Trustees.

- D. Each application for a variance shall contain a survey, current as to the placement of all structures, certified by a licensed engineer or surveyor and a site plan (see §110-4.3 C. PLAN REQUIREMENTS) showing the size and location of the lot, the location of all buildings and proposed facilities including access drives, parking areas and dimensions thereof, landscaping and all streets within two hundred (200) feet of the subject property. Every appeal or application shall state the specific provision of law involved, the interpretation that is claimed, the details of the variance applied for and the grounds on which the applicant relies for the granting of the variance or interpretation of the law. For simple projects, any site plan requirements that the Building Inspector deems to be unnecessary for accurate consideration of the case by the Board of Appeals, may be waived at the Building Inspector's discretion.
- E. Upon receipt of a Notice of Appeal, the Building Inspector shall transmit to the Board of Appeals copies of all documents relating to said appeal. A copy of the appeal shall also be sent to the South Nyack Planning Board. The Planning Board may submit to the Board of Appeals an advisory opinion of said appeal.
- F. Within sixty (60) days after receipt of a Notice of Appeal, the Board of Appeals shall hold a public hearing on such appeal. Notice of such hearing shall be published in the official newspaper of the Village at least five (5) days prior to the date of such hearing. The cost of publication shall be borne by the appealing party. In addition, the applicant shall mail such Notice to owners of all property within two hundred (200) feet of the exterior boundaries of the subject property as shown on the last completed assessment roll of the Village at least ten (10) calendar days prior to the date of such hearing. The applicant shall obtain a Certificate of Mailing for each notice mailed, and provide these Certificates to the Board of Appeals Secretary prior to the public hearing as proof of the required timely mailings. The applicant shall post at least two (2) notices of the public hearing on the property. These notices shall face the front lot line, shall be mounted on the property at least three (3) feet above ground on sticks driven into the ground or on a fence, shall be located within three (3) feet of the front lot line and shall be visible from the street.
- G. If the subject property lies within five hundred (500) feet of the boundary of any other municipality, the applicant shall, at least ten (10) days prior to the date of the public hearing, transmit a copy of the publication notice to the Clerk of such municipality. Applicant shall also be required to transmit a copy of said Notice to the Rockland County Department of Planning and such other agencies as may be required pursuant to the provisions of Section 239-l and m of the General Municipal Law.
- H. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter.

- I. The Board of Appeals shall decide upon the appeal or variance within sixty-two (62) days following the close of the public hearing. Any expenses for consultants necessary to adequately inform the Board regarding issues related to the hearing the extent allowed by law, shall be borne by the applicant.
- J. The Board of Appeals shall keep minutes of its proceedings. All decisions shall be by resolution approved by a majority of the entire Board. Upon approval of the Board of the text of the complete minutes of a meeting, the minutes and any decisions therein shall be filed with the Village Clerk, who shall send a copy of the pertinent decision to the respective appellant.
- K. Upon motion initiated by any member and adopted by unanimous vote of the members present, but not less than a majority of all members, the Board shall review, at a re-hearing held upon notice as given upon an original hearing, any order, decision or determination of the Board not previously reviewed. Upon such re-hearing and provided that it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon the concurring vote of all of the members then present, reverse, modify or annul its original order, decision or determination.
- L. The Board of Appeals shall comply with the provisions of the New York State Environmental Quality Review Act pursuant to Article Eight of such Act and its implementing regulations as codified in Title Six, Part 617 of the New York codes, rules and regulations.
- M. Upon motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all members, or upon the request of the Planning Board if the case was heard by the Board of Appeals prior to Planning Board Review, the Board of Appeals shall review, at a re-hearing held upon notice as given upon an original hearing, any order, decision or determination of the Board not previously reviewed. Upon such re-hearing and provided that it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon the concurring vote of all of the members then present, reverse, modify or annual its original order, decision or determination.
- N. When considering a front yard setback variance for any structure, allowable roof height to the topmost extremity shall not extend above a line drawn from 5 1/2 feet above the nearest point on the front lot line to a point 30 feet above the required front yard setback. An exception to this limit may be granted only if there is no other feasible alternative and if the balancing of benefits to the applicant if granted, versus benefits to the community if not granted, weigh strongly in favor of the applicant. (See Figure N.1)

Figure N. 1. Maximum Building Height Envelope For Front Yard Setback Variance.

- O. In accord with Freedom Of Information Law (FOIL) Sec. 87-2(g)(iii), tape recordings of any ZBA meeting shall not be made available for listening or copying by anyone outside the ZBA or its staff until after the minutes of the meeting have been transcribed and then approved by the ZBA. Thereafter, anyone who wishes to listen to or make a copy of any such tapes shall be allowed to do so only upon having made a written application on an appropriate FOIL form, and only after such application has been duly processed according to FOIL procedures.
- P. Any requests by members of the public for copies of zoning-related documents, except for copies of the South Nyack Zoning Law and application forms, shall be handled in strict accordance with FOIL procedures. However, this procedure shall not apply to requests from the Village Board, the Planning Board or any other governmental authority involved with zoning and planning, whose requests shall be handled in the normal course of business. Each such request from a member of the public shall be made on an appropriate FOIL form, and the requested document copy(ies) shall be made available only after such request has been duly processed according to FOIL procedures.
- Q. Public access to rooms within Village Hall where zoning records are filed shall be only upon the invitation and supervision of an authorized Village official, and such access shall be controlled in accordance with FOIL procedures
- R. Unless work is commenced and diligently prosecuted within one year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void.

ARTICLE XIV: PLANNING BOARD

§110-14.1 CREATION, APPOINTMENT AND ORGANIZATION

Pursuant to Section 7-718 of the Village Law of the State of New York there shall be a Planning Board consisting of five (5) members, each to be appointed for a term of five (5) years. Utilizing the Village's Municipal Home Rule Law authority to amend the application to the Village of the provisions of Village law 7-718, two alternate members shall be appointed for a term of one year. The function of an alternate member is to serve in place of a regular member, with all of the powers and duties thereof, in the absence of a regular member. If an alternate member serves during the public hearing of a case, then the alternate member shall serve in place of the regular member during the deliberations and decision process for that case. Alternate members shall be called to serve in the absence of regular members in order of seniority since first appointed as an alternate member. Any alternate member in attendance at a meeting, but who is not serving at that time in the place of a regular member, shall have the official function of an observer only with no vote, but may ask questions and participate in planning board discussions of the case being considered. Regular and alternate members of the Planning Board shall be appointed by the Mayor, subject to the approval of the Board of Trustees. The mayor shall appoint a Chairperson, a Deputy Chairperson, a Secretary and an Attorney for the Planning Board each year, subject to the approval of the Board of Trustees. The Planning Board may appoint experts, and may pay for the services of said experts, but not in an amount exceeding the budgetary appropriation for the Planning Board made by the Board of Trustees. The Planning Board already established shall continue to function under the provisions of this local law, and the members thereof may continue in office until their respective terms expire. Each member shall be compensated for each meeting attended according to a schedule determined by the Board of Trustees. The Planning Board may adopt procedures for the conduct of its business.

§110-14.2 POWERS, DUTIES AND PROCEDURE

A. **POWERS AND DUTIES.** The Planning Board shall be empowered to:

1. Review site plan applications pursuant to the requirements of this local law.
2. Review subdivision applications pursuant to the subdivision regulations of the Village of South Nyack.
3. Recommend on its own motion, or by referral from the Board of Trustees, matters relating to proposed amendments to the South Nyack Zoning Law.
4. Prepare and change the master plan of the Village.
5. Make investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the Village.

B. PROCEDURE. The Planning Board shall determine its own rules of conduct and procedure consistent with the applicable provisions of the Village Law of the State of New York and this local law. The Planning Board shall keep minutes of its proceedings, which shall be filed with the Village Clerk and distributed to the Board of Trustees. The decision on whether to approve or disapprove each site development plan shall be by resolution approved by a majority of the entire board, and any case shall remain open until such a majority decision is attained. A written notice of every decision shall be filed as part of the minutes with the Village Clerk, and shall be distributed to the Board of Trustees and mailed to the applicant.

C. REFERRAL TO ROCKLAND COUNTY COMMISSIONER OF PLANNING

1. Matters to be Referred. In accordance with Section 239 of the General Municipal Law of the State of New York, any application for subdivision approval or site plan approval for property in an area covered by Section 110-13E herein, or any condominium conversion or construction anywhere within the village pursuant to New York State Real Property Law S339-F as amended by Chapter 705 of the Laws of 1980, shall be referred to the Rockland County Commissioner of Planning.
2. County Department of Planning Recommendation. Failure of the Rockland County Commissioner of Planning to report its recommendations within thirty (30) days after receipt of a full statement of such referred material or such longer period as may have been agreed upon by it and the Village Planning Board shall be construed as approval.
3. Effect of Negative Report. If the Rockland County Commissioner of Planning disapproves the proposed subdivision or site plan, or recommends modification thereof, the proposal shall not become effective except by a vote of a majority plus one of all members of the Village Planning Board and after adoption by such Board of a resolution fully setting forth the reasons for such contrary action.
4. Report Filing. A report of the decisions of the Planning Board shall be filed with the County Commissioner of Planning if referral was initially required.

§110-14.3 APPROVAL OF SITE DEVELOPMENT PLANS BY THE PLANNING BOARD

A. Site Development Plan Approval by the Planning Board shall be required for:

1. The erection or enlargement or conversion or exterior alteration (other than repainting) of all buildings (as defined herein) in all districts, except Site Development Plan approval shall not be required for a storage shed accessory to a single family residential building, provided said shed meets the following additional requirements:
 - a. It shall not exceed 80 square feet in total;

- b. It shall not be affixed into the ground;
 - c. It shall not contain heat, electricity or other utilities.
 2. All uses of land where no building is proposed and where a building permit or certificate of occupancy is not required.
 3. Any change in use or intensity of use, except to a less-dense/less-intense use as governed by Section 110-11.1 Nonconforming Buildings and Uses.
 4. Any application for a Special Permit.
 5. Swimming pools.
 6. Change of tenant or use in the B-1 district.
 7. Docks, wharves or piers.
 8. The conversion of any driveway, parking area, patio, walkway, or grassed/pervious yard with more than 150 square feet into an impervious surface.
- B. In all cases where any amendment of any such Plan is proposed, the applicant must also secure the approval of the amendment by the Planning Board. No building permit may be issued for any building within the purview of this section until an approved Site Development Plan or amendment of any such Plan has been secured by the applicant and presented to the Building Inspector. No Certificate of Occupancy may be issued for any building or use of land within the purview of this section unless the building is constructed or used, or the land is developed or used, in conformity with an approved Site Development Plan; or an amendment of any such plan. The Building Inspector shall certify on each Site Development Plan or amendment to a Site Development Plan whether or not the plan meets the requirements of the zoning local law other than those enumerated in sections of this local law regarding Site Development Plan approval.
- C. PROCEDURE. No certificate of occupancy may be issued for any building or use of land within the purview of this section unless the building is constructed or used or the land is developed or used in conformity with an approved Site Development Plan.
 1. Presubmission. Prior to the submission of a formal Site Development Plan, the applicant shall meet in person with the Planning Board and/or its designated representative and/or the Architectural Review Board and/or its designated representative, to discuss the proposed Site Development Plan in order to determine which of the subsequent requirements may be necessary in developing and submitting the required Site Development Plan.

2. Upon findings by the Planning Board that, due to special conditions peculiar to a site, certain of the information normally required as part of the Site Development Plan is inappropriate or unnecessary, or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may vary or waive the provision of such information, provided that such variance or waiver will not have detrimental effects on the public health, safety or general welfare, or have the effect of nullifying the intent and purpose of the Site Development Plan submission, Official Map, Master Plan or this local law. Final submissions. After presubmission and at least fifteen (15) days in advance of the Planning Board meeting at which a Site Development Plan, or an amendment of it, is to be presented, the information enumerated in §110-14.3B must be submitted as required with a completed "Application To The Planning Board" form to the Secretary of the Planning Board with the number of copies specified by the Application instructions.. All maps submitted must be at a scale of not more than fifty (50) feet to the inch.
3. Architectural Review. After final submission, the Planning Board shall refer the application to the Architectural Review Board, when required, for approval. The Architectural Review Board may request a voluntary meeting with the applicant in order to discuss the application.
4. Public Hearing. The Planning Board may authorize the setting of a public hearing for consideration of final Site Development Plan approval.. In the event that a public hearing is held, the hearing shall be closed upon a motion passed by a majority of the Board membership, and the Planning Board shall make a determination within forty-five (45) days of the close of the public hearing.
5. Notice. The applicant shall mail copies of the Notice of Submission/Hearing no later than 10 calendar days prior to the hearing to neighbors with properties that are adjoining, across the street or within 60 feet of any part of the applicant's property. The applicant shall obtain a Certificate of Mailing for each notice mailed, and provide these certificates to the Planning Board Secretary prior to the meeting/public hearing as proof of the required timely mailings. The applicant shall post at least two (2) notices of the meeting/public hearing on the property. These notices shall face the front lot line, shall be mounted on the property at least three (3) feet above ground on sticks driven into the ground or on a fence, shall be located within three (3) feet of the front lot line and shall be visible from the street.
6. Alternate members of the Planning Board shall be called to serve in the absence of regular members in order of seniority of date of appointment. Any alternate member in attendance at a meeting, but who is not serving at that time in the place of a regular member, shall have the official function of an observer only with no vote, but may ask questions and participate in planning board discussions of the case being considered.

7. In accord with Freedom Of Information Law (FOIL) Sec. 87-2(g)(iii), tape recordings of any Planning Board meeting shall not be made available for listening or copying by anyone outside the Planning Board or its staff until after the minutes of the meeting have been transcribed and then approved by the Planning Board. Thereafter, anyone who wishes to listen to or make a copy of any such tapes shall be allowed to do so only upon having made a written application on an appropriate FOIL form, and only after such application has been duly processed according to FOIL procedures.

D. PLAN REQUIREMENTS. The information which is to be submitted and which in total constitutes a Site Development Plan, follows:

1. LEGAL DATA.

- a. The names of all owners of record of all adjacent property.
- b. Existing school, zoning and special district boundaries.
- c. Boundaries of the property; building or setback lines, if different from those required in this local law, and lines of existing streets and lots as shown on the Village's Official Map. Reservations, easements and areas dedicated to public use, if known, shall be shown.
- d. A statement from the Building Inspector as to whether the proposed building and use conform to all legal requirements of this local law.
- e. A survey showing all lengths in feet and decimals of a foot, and all angles, shall be given to the nearest 10 seconds or closer if deemed necessary by the surveyor. The error of closure shall not exceed one to 10,000.
- f. A copy of any covenants or deed restrictions that are intended to cover all or any part of the tract.

2. EXISTING BUILDINGS. A drawing showing the location of existing buildings.

3. TOPOGRAPHIC DATA.

- a. Existing contours with intervals of two feet or less, referred to a datum satisfactory to the Board.
- b. Location of existing watercourses, marshes, wooded areas, rock outcrops, single trees with a diameter of 8 inches or more, measured three feet above the base of the trunk, and other significant existing features.

4. DEVELOPMENT DATA.

- a. Title of development, date, north point, scale, name and address of record owner, engineer, architect, land planner or surveyor preparing the Site Development Plan.
- b. The proposed use or uses of land and buildings and proposed location of buildings.
- c. All means of vehicular access to and egress from the site onto public streets.
- d. The location and width of streets, curbs and sidewalks abutting the lot.
- e. The location and design of any off-street parking areas or loading areas.
- f. The location of all existing and proposed water lines, valves and hydrants depth, grade and pipe size, all sewer lines or alternative means of water supply and sewage disposal and treatment.
- g. The proposed location, direction, power and time of proposed outdoor lighting.
- h. Existing and proposed storm-water drainage system including culverts; data shall include depth, grades, and pipe size and calculations.
- i. Proposed electric and telephone lines.
- j. Location of all uses not requiring a structure.
- k. The necessary computations to establish conformity with bulk and density regulations.
- l. All proposed lots, easements and public community areas. All existing and proposed streets with (a) profiles indicating grading and (b) cross sections showing width of roadway, location and width of sidewalk, and location and size of utility lines. All lengths shall be in feet and decimals of a foot, and all angles shall be given to the nearest ten (10) seconds or closer.
- m. All proposed grades.
- n. The proposed screening and/or landscaping as shown on a planting plan by a registered landscape architect or architect.
- o. Where the applicant wishes to develop in stages, a site plan indicating ultimate development shall be presented for approval.
- p. Elevations of all principal and accessory buildings incorporating the design or screening of any projection from the roof and a clear indication of material and colors to be utilized on the exterior of any structure.

E. AUTHORITY OF THE PLANNING BOARD.

1. In approving the Site Development Plan for any particular use, the Planning Board shall give specific consideration to the design of the following:
 - a. Traffic access. That all proposed traffic access and ways are adequate but not excessive in number; adequate in width, grade, alignment and visibility; not located too near street corners or other places of public assembly; and other similar safety considerations. On any lot or development with a driveway or dead-end street directly accessing a county or state road, an adequate vehicle turn-around shall be provided for motorist safety so that vehicles will not be forced to back onto the county or state road.
 - b. Circulation and parking. That off-street parking and loading spaces are designed so as to prevent parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking.
 - c. Landscaping and screening. That all playground, parking and service areas are reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is in character with that generally prevailing in the neighborhood. Preservation of existing trees over 8 inches in diameter measured 3' above the root system will be attained to the maximum extent possible. (See also: South Nyack Tree Preservation Local Law.)
 - d. Utilities. That all utilities, including electric service, shall be underground.
 - e. Character and appearance. That the character and appearance of the proposed use, buildings and/or outdoor signs will be in general harmony with the character and appearance of the surrounding neighborhood and the Village of South Nyack and will not adversely affect the general welfare of the inhabitants of the Village of South Nyack. Such considerations shall include the scale of proposed buildings, the color and texture of materials, and the relation of buildings on the site to each other and to buildings on adjacent lots.
 - f. Environmental impact. That adequate drainage and water absorption is provided to manage runoff, and that the potential for adverse effect on the environmental factors of the neighborhood is minimized.
2. Noise from land clearing or construction. On-site work time shall be permitted only between the hours of 8 AM and 7 PM. The Planning Board may reasonably further regulate the hours and methods of construction operations, in order to minimize noise disturbance to the neighborhood, while enabling the construction to proceed on a practical basis. Saturday, Sunday and legal holidays shall be quiet days on the site with no noise emanating from it in excess of 40 d.b.a. as measured at the property perimeter.

F. APPROVAL.

1. In considering and approving the plan, the Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular, and may attach such reasonable conditions and safeguards as a precondition to approval of the said plan which will further the general purpose and intent of this local law and be in harmony therewith. The Planning Board shall issue a decision within sixty-two (62) days of the receipt of an application, or within forty-five (45) days of the closing of the public hearing, if held.
2. The Planning Board shall include such conditions of approval as are required. The Board may require that on or off-site improvements be installed, on property that may be granted to the Village by fee, easement or otherwise, as determined by the Planning Board. The Board may condition the issuance of building permits or certificates of occupancy on the provision of off-site improvements, or by the provision of a cash deposit or letter of credit.

§110-14.4 LAND CLEARING OPERATIONS AND DRAINAGE CONTROL

A. No parcel of land or portion thereof shall be cleared, graded, filled, stripped of topsoil, land cover or otherwise disturbed from its natural state including the removal of trees and other landscaping material unless or until a plan is submitted to and approved by the Planning Board. Such plan shall show the area proposed to be disturbed with existing and final contours, the location of all major trees, streams and watercourses, proposed final development plans and such other information as may be necessary for the Planning Board to properly consider the application. In addition to any other requirements, the Planning Board shall require compliance with all the provisions of Subsection (B) herein. The Planning Board may request the advice and assistance of all other departments and agencies of government that will or may become involved in the parcel of land by reason of the proposed clearing operation.

B. SPECIAL CONSIDERATIONS.

1. The proposed operation shall not adversely affect soil fertility, drainage and lateral support of abutting land of other properties, nor shall it contribute to soil erosion by water or wind.
2. Hours of operation. There shall be no operation between 7:00 PM and 8:00 AM, nor on Saturdays, Sundays or legal holidays.
3. Fencing and screening. Where any open excavation will have a depth of eight (8) feet or more and create a slope of more than thirty (30) degrees there shall be a substantial fence, at least six (6) feet high with suitable gates where necessary, effectively blocking access to the area in which such excavation is located. Such fence shall be located, when possible, fifty (50) feet or more from

the edge of the excavation. All operations shall be screened from nearby residential uses.

4. SLOPE. The slope of material in any excavation shall not exceed the normal angle of repose or forty-five degrees (45°), whichever is less.
5. ACCESS ROADS. That portion of access roads within the area of the permit shall be provided with a temporary surface of screenings, stones or gravel and maintained at all times.
6. CONTROL MEASURES. The following control measures shall be used for effective control of drainage and erosion and sediment.
 - a. The smallest practical area of land shall be exposed at any one time during construction.
 - b. When land is exposed during construction, the exposure shall be kept to the shortest practical period of time.
 - c. Where necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during construction.
 - d. Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained to remove sediment from runoff waters and protect land undergoing change.
 - e. Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after construction.
 - f. The permanent final vegetation and structures shall be installed as soon as practical in the construction.
 - g. The development plan shall be fitted to the topography and soils so as to create the least erosion potential.
 - h. Wherever feasible, natural vegetation shall be retained and protected.
7. REHABILITATION OF THE SITE. Before approval is granted, a plan for rehabilitation showing both existing and proposed final contours shall be submitted and approved. All topsoil shall be set aside for retention on the premises and shall be respread over the premises after the operation. The area shall be brought to final grade by a layer of earth of two (2) feet or original thickness, whichever is less, capable of supporting vegetation. Fill shall be of a suitable material approved by the Planning Board.
8. PERFORMANCE BOND. Before the issuance of any permit, the owner shall execute a bond sufficient in the opinion of the Village Engineer to secure the rehabilitation of the site in accordance with the plan filed. Such bond shall be

approved by the Village Board as to form, sufficiency and manner of execution, and shall run for the same term as the term of the special permit. The amount of such bond may be reduced when, in the opinion of the Village Board after a public hearing on due notice, a lower amount will be sufficient to accomplish its purposes. In the event the operator does not fulfill the conditions of the bond, the village shall, after due notice to the operator and to his bonding or surety company and upon their failure to comply with the terms of the permit, proceed to rehabilitate the premises in accordance with the plan prescribed, either with its own forces or by contract, and shall charge the costs to the operator or the bonding or surety company.

§110-14.5 ADVISORY TO ZONING BOARD OF APPEALS

The Planning Board shall be afforded an opportunity to provide an advisory opinion to the Board of Appeals in accordance with Section 110-13.3.

§110-14.6 REVIEW OF ZONING LAW CHANGES

The Planning Board shall be afforded an opportunity to provide an advisory opinion to the Board of Trustees in accordance with Section 110-15.

ARTICLE XV: AMENDMENTS

§110-15 AMENDMENTS

This local law or any part thereof may be amended, supplemented or repealed, from time-to-time, by the Board of Trustees on its own motion or on petition, as provided in Sections 7-706 and 7-708 of the Village Law. Every such proposed amendment shall be referred by the Board of Trustees to the Planning Board for a report before the public hearing. The Board of Trustees shall not take action on any such amendment without a recommendation from the Planning Board unless the Planning Board fails to render such report within sixty (60) days after the next regularly scheduled meeting of such Board following the time of such referral.

A. REPORT OF PLANNING BOARD. In making such report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below:

1. Concerning a proposed amendment to or change in text:
 - a. Whether such change is consistent with the aims and principles embodied in the local law as to the particular districts concerned.
 - b. Which areas and establishments in the Village will be directly affected by such change and in what way they will be affected.
 - c. The indirect implications of such change in its effect on other regulations.
 - d. Whether such proposed amendment is consistent with the aims of the comprehensive plan of the Village.
2. Concerning a proposed amendment involving a change in the Zoning Map:
 - a. Whether the uses permitted by the proposed change would be appropriate in the area concerned.
 - b. Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residence likely to be constructed as a result of such change.
 - c. Whether the proposed change is in accord with any existing or proposed plans in the vicinity.
 - d. The effect of the proposed amendment upon the growth of the Village as envisaged by the comprehensive plan.
 - e. Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the Village and the probable effect thereof.

B. PETITION AND FEE. Each petition for a zoning amendment shall be accompanied by a fee in accordance with a schedule adopted by the Board of Trustees, payable to the Village Clerk upon the filing thereof. No fee shall be required for petitions filed in favor of, or against, a pending application.

C. PUBLIC HEARING. By resolution adopted at a stated meeting, the Board of Trustees shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given in accordance with the provisions of Section 7-708 of the Village Law.

D. NOTICE TO NEIGHBORING MUNICIPALITIES. Should any proposed amendment consist of or include:

1. Any change in the boundaries of any district, which change would occur within a distance of five hundred (500) feet of the boundary of any other municipality;
2. Any change in the regulations prescribed for any district, any portion of which is located within five hundred (500) feet of such boundaries;

The Village Clerk shall transmit to the municipal clerk of such other municipality a copy of the official notice of the public hearing thereon not later than the day after such notice appears in the official newspaper of the Village.

E. REFERRAL TO THE ROCKLAND COUNTY COMMISSIONER OF PLANNING

1. Matters to be referred. Any change in the district classification of, or the regulations applying to, real property lying within a distance of five hundred (500) feet of the following shall be referred to the Rockland County Commissioner of Planning prior to final action in accord with Sections 239 l and m of the General Municipal Law.
 - a. The boundary of any other municipality (also requires referral to adjoining municipality).
 - b. The boundary of any existing or proposed county or state park or other recreation area.
 - c. The right-of-way of any existing or proposed county or state road, parkway, or other controlled access highway.
 - d. The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines.
 - e. The existing or proposed boundary of any county or state-owned land on which a public building or institution is located.
2. County Commissioner of Planning recommendation. If the Rockland County Commissioner of Planning fails to report its recommendations within thirty (30)

days after receipt of a full statement of such referred material, the Board of Trustees may construe such inaction as approval of the proposed zoning action and may act the Board of Trustees may extend the time period for the receipt of such recommendation.

3. Affect of negative report. If the Rockland County Commissioner of Planning disapproves the proposed amendment, or recommends modification thereof, the proposed amendment shall not become effective except by a vote of a majority plus one of all members of the Board of Trustees and after the adoption of a resolution fully setting forth the reasons for such action.

F. CONTENT OF HEARING NOTICE. All notices of public hearings shall specify:

1. The nature of any proposed amendment.
2. The land or district affected.
3. The date when, and the place where, the public hearing will be held.

G. PROTEST. In the case of a protest against any amendment, such amendment shall not become effective except in accordance with the provisions of Section 7-708 of the Village Law.

ARTICLE XVI: SEPARABILITY

§110-16 SEPARABILITY

Should any section or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

ARTICLE XVII: EFFECTIVE DATE

§110-17 EFFECTIVE DATE

This local law shall be effective immediately upon its being adopted by the Board of Trustees of the Village of South Nyack and published pursuant to the provisions of the Village Law.

ARTICLE XVIII: TELECOMMUNICATION TOWERS

§110-18.1 ENABLING AUTHORITY

The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove site plans consistent with Village Law §7-725-a & 7-725-b. The Zoning Board of Appeals is designated as the Special Permit Granting Authority under this law for Telecommunications Towers, and as such, upon referral and recommendation by the Planning Board, shall review and approve or disapprove special permit use applications. If the SPGA determines that an application should be modified, it shall refer it back to the Planning Board for further consideration before taking action.

§110-18.2 DEFINITIONS

ACCESSORY FACILITY - An accessory facility serves the principle use, is subordinate in area, extent and purpose to the principle use, and is located on the same lot as the principle use. Examples of such facilities include transmission equipment and storage sheds.

ANTENNA - A system of electrical conductors that transit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, television, wireless and microwave communications. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

SPECIAL PERMIT USE - definition contained in Section 110-2 of the Zoning Law of the Village of South Nyack.

TELECOMMUNICATION TOWER OR EQUIPMENT - Any structure or equipment on which transmitting and/or receiving antenna (e) are located.

§110-18.3 PURPOSE

The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Village of South Nyack, to provide standards for the safe provision of telecommunications consistent with applicable Federal and State regulations, and to protect the natural features and aesthetic character of the Village with special attention to the aesthetic qualities of this Hudson River front residential community.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

§110-18.4 APPLICATION OF SPECIAL USE REGULATIONS

- A. No tower or antenna shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a tower or antenna unless in conformity with these regulations.
- B. These regulations shall apply to all property within the following zones: All Zoning Districts contained in the Village of South Nyack.
- C. Exceptions to these regulations are limited to (i) new uses which are accessory to residential uses and (ii) lawful or approved uses existing prior to the effective date of these regulations.
- D. Where these regulations conflict with other laws and regulations of the Village, the more restrictive shall apply, except for tower height restrictions which are governed by these special standards.

§110-18.5 PROCEDURE - FEE

- A. All applications shall be accompanied by a facility service plan which shall include information necessary to allow the Planning Board to understand the existing, proposed and long-range plans of the applicant. The facility service plan shall include at least the following information:
 - 1. The location, height and operations and characteristics of all existing facilities of the applicant in South Nyack, Orangetown and Clarkstown.
 - 2. A commitment to co-locate or allow co-location wherever possible on all existing and proposed facilities.
- B. The applicant shall provide funds to an escrow account to allow the Building Inspector or the Planning Board to retain such technical experts involving radio frequency as may be necessary to review the proposal, provided that no funds shall be deposited until a scope of work is agreed upon among the applicant, the expert and the Board.
- C. Application to the Planning Board for site plan approval and to the SPGA for a special permit under this article shall be accompanied by the fees as set forth in the Village's fee schedule.
- D. Prior to or concurrent with the filing of a formal application to the Planning Board to obtain site plan approval under this article, the applicant shall submit information needed to meet the requirements of the New York State Environmental Quality Review Act (SEQRA) to the Planning Board, which Board shall determine whether the requirements of SEQRA have been met. The Planning Board may hold a joint public hearing under the provisions of SEQRA and this article whenever practicable.

In the event that a final SEQRA determination has not been made, no application for a special permit under this article shall be granted.

- E. The Planning Board shall hold a public hearing on due notice within 62 days after submission of a formal completed application, including such technical information from the applicant as may be required by the Planning Board for site plan approval under the provision of this article.
 - 1. Notice of the public hearing shall be by publication in the official newspaper of the Village at least five (5) days in advance of the hearing and may be continued from time to time to a specific adjourned date.
 - 2. The hearing notice shall indicate that the application may be examined and further information is available from the Planning Board office during regular business hours.
 - 3. Copies of the publication order shall be mailed by the applicant at least 10 days prior to the hearing to the owners of property within 1000 feet of the property which is the subject of the application, and a certificate of mailing for each mailed notification shall be filed with the Planning Board due on or before the date of the hearing. Failure of any addressee to receive such notice shall not in any manner affect the jurisdiction of the Planning Board or any action taken on the application.
 - 4. The Planning Board may approve, approve with conditions or disapprove the application for site plan approval permit under the provisions of this section within 62 days after a public hearing.
 - 5. The decision shall be made at a meeting of the Planning Board with a quorum present and not less than a majority of the total membership voting "aye" on the resolution as a requirement for passage.
 - 6. A supermajority vote of the Planning Board will be required for any approval of an application for site plan approval to erect or operate a wireless communications facility in any residentially zoned park lands. A supermajority is 50% of the constituency of the Board plus one additional vote.
 - 7. The period in which the Board may take action may be extended with the consent of the applicant.

§110-18.6 INFORMATION REQUIRED FOR WIRELESS COMMUNICATION ANTENNA

For all proposed wireless communication antennas the following additional information shall be provided.

- A. Name and address of the property owner and the applicant;

- B. Address, lot and block and/or parcel number of the property;
- C. Zoning District in which the property is situated;
- D. Name and address of person preparing the plan;
- E. Size of the property and the location of all lot lines;
- F. Approximate location of nearest residential structure;
- G. Approximate location of nearest occupied structure;
- H. Location of all structures on the property which is the subject of the application;
- I. Location, size and height of all proposed and existing antennas and all appurtenant structures on the property;
- J. Type, size and location of all proposed landscaping;
- K. A report by a New York State licensed professional engineer, documenting compliance with applicable structural standards and describing the general structural capacity of any proposed installation;
- L. A description of the proposed antennas and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color and lighting;
- M. A description of the antenna's function and purpose;
- N. The make, model and manufacturer of the antenna;
- O. The frequency, modulation and class of service;
- P. Transmission and maximum effective radiated power;
- Q. Direction of maximum lobes and associated radiation and compliance with FCC regulations;
- R. If the name or address of the owner or operator of the antenna facility is changed, the Building Department of the Village of South Nyack shall be notified of the change within 90 days;
- S. Within 90 days of operating any transmitting antenna, the owner or operator shall submit to the Building Inspector a written certification by a New York State licensed professional engineer (for monopole or tower installations) that the antenna complies with the Village of South Nyack Code and all other applicable governmental regulations;

T. Consent to allow additional antennas (for purposes of co-locating) on any new antenna towers, if feasible.

NOTE: Items 6(12) through 6(17) [**Editor's Note: this refers to §110-16.6 (L-Q)**] shall be included in a report prepared by a radio frequency engineer, health physicist or other qualified professional.

§110-18.7 REQUIREMENTS APPLICABLE TO ALL WIRELESS COMMUNICATION ANTENNAS

For all proposed wireless communication antennas the following requirements are applicable:

- A. For proposed sites within 100 feet of other sources of RF energy, emanating from other wireless communication facilities, the applicant shall provide an estimate of the maximum total exposure from all nearby stationary sources and comparison with relevant standards. This assessment shall include individual and ambient levels of exposure. It shall not include residentially based facilities such as cordless telephones.
- B. All obsolete or unused wireless communication antennas (including tower supports) shall be removed within 60 days of cessation of operations at the site. The Village may remove such facilities after 60 days and treat the cost as a tax lien on the property.
- C. All wireless communications facilities shall be identified with signs not to exceed six square feet, listing the owner or operator's name and emergency telephone number, and shall be posted in a conspicuous place.
- D. New wireless communications facilities may not be sited within 500 feet of any existing wireless communication antenna, except as specified in 110-18.7A.
- E. No source of NIER (nonionizing electromagnetic radiation), including facilities operational before the effective date of this section, shall exceed the federal or state NIER emission standard.
- F. New antennas and supporting towers shall be designed to accommodate additional antennas and supporting towers shall be designed to accommodate additional antennas for purposes of co-locating.

§ 110-18.8 ANTENNA LOCATIONS WHERE PUBLIC EXPOSURE IS LIKELY

For roof-mounted, co-located or other situations wherein a special permit is required hereunder, the application shall include:

- A. An assessment of potential public exposure to radio frequency (RF) energy from the proposed facility indicating the facility's compliance with applicable federal or state standards. The applicant shall identify the maximum exposure level, the locations at which this occurs and the estimated RF levels at specific locations of community interest, such as schools, residences or commercial buildings. Assumptions used in the calculations shall be stated, including building heights and topography.
- B. A multiple source exposure impact assessment shall be prepared if the wireless communication facility is to be situated on the same site as existing facilities, such as a tower or roof.
- C. Evidence that the maximum exposure to the general public will not exceed federal or state standards.
- D. An identification of rooftop areas to which the public may have access. The exposure in these areas shall be in compliance with the standards established by any federal or state agencies.
- E. An identification of how much of the roof, if any, should be designated a "controlled environment" due to RF field levels in accordance with the applicable federal or state standard.
- F. Notification to the building management if any portion of the roof needs to be identified as a "controlled environment" due to RF levels in excess of the guidelines in the applicable federal or state standards.

§110-18.9 REQUIREMENTS APPLICABLE TO ROOF-MOUNTED ANTENNAS

- A. Antennas shall not be placed more than 15 feet higher than the height limitation for buildings and structures within the zoning district in which the antenna is proposed to be erected.
- B. Antennas may be set back from the outer edge of the roof a distance equal to or greater than 10% of the rooftop length and width, or such antennas may be attached directly to the roof parapet wall, whichever, in the Planning Board's opinion, will have the minimal visual impact while achieving signal coverage requirements.
- C. If the Planning Board requests, antennas shall be the same color as the predominant color of the exterior of the top floor or parapet of the building except to the extent required by law.

§110-18.10 REQUIREMENTS APPLICABLE TO NEW WIRELESS COMMUNICATION TOWERS

- A. The applicant shall demonstrate to the Planning Board that no tower exists on which the antenna may co-locate; or co-location is not feasible for any of the following reasons.
1. The applicant has been unable to come to a reasonable agreement to co-locate on another tower. The names and addresses of other service providers approached shall be provided, accompanied by a written statement as to the reason an agreement could not be reached.
 2. The applicant's network of antenna locations is not adequate to properly serve its customers, and the use of facilities of other entities is not suitable for physical reasons.
 3. Adequate and reliable service cannot be provided from existing sites in a financially and technologically feasible manner consistent with the service providers system requirements.
 4. Existing sites cannot accommodate the proposed antenna due to structural or other engineering limitations (e.g. frequency incompatibilities).
- B. Any application for the approval of a site plan for a wireless communication facility shall include a report by a qualified radio frequency engineer, health physicist or other qualified professional as determined by the Planning Board which calculates the maximum amount of nonionizing electromagnetic radiation (NIER) which will be emitted from the proposed wireless communication facility upon its installation and demonstrates that the facility will comply with the applicable federal or state standards.

§110-18.11 NIER MEASUREMENTS AND CALCULATIONS

All applicants for wireless communication antennae in any district shall submit calculations of the estimated NIER output of the antenna(e). The calculations shall be provided to the Planning Board at the time of making the application for a site plan NIER levels shall be measured and calculated as follows:

- A. Measuring equipment used shall be generally recognized by the Environmental Protection Agency (EPA), National Council on Radiation Protection and Measurement (NCRPM), American National Standards Institute (ANSI) or National Bureau of Standards (NBA) as suitable for measuring NIER at frequencies and power levels of the proposed and existing sources of NIER.
- B. Measuring equipment shall be calibrated as recommended by the manufacturer in accordance with methods used by the NBS and ANSI, whichever has the most current standard.

- C. The effect of contributing individual sources of NIER within the frequency range of a broadband measuring instrument may be specified by separate measurement of these sources using a narrowband measuring instrument.
- D. NIER measurements shall be taken based on maximum equipment output. NIER measurements shall be taken or calculated when and where NIER levels are expected to be highest due to operating and environmental conditions.
- E. NIER measurements shall be taken or calculated along the property lines at an elevation six feet above grade at such locations where NIER levels are expected to be highest and at the closet occupied structure.
- F. NIER measurements shall be taken or calculated following spatial averaging procedures generally recognized and used by experts in the field of RF measurement or other procedures recognized by the FCC, EPA, NCRPM, ANSI and NBS.
- G. NIER calculations shall be consistent with the FCC, Office of Science and Technology (OST) Bulletin 65 or other engineering practices recognized by the EPA, NCRPM, ANSI, NBS or similarly qualified organization.
- H. Measurements and calculations shall be certified by a New York State licensed professional engineer, health physicist or a radio frequency engineer. The measurements and calculations shall be accompanied by an explanation of the protocol, methods and assumptions used.

§110-18.12 NIER MONITORING AND ENFORCEMENT

- A. The owner and/or operator of the antenna shall perform a NIER level reading as set forth above and shall submit the results of the test to the South Nyack Building Department within 90 days of initially operating the antenna system and annually thereafter. The owner or operator shall provide a report from a qualified professional who shall certify, under penalties of perjury, that the installation does not expose the general public to NIER standards in excess of those of any federal or state agency regulating RF energy.
- B. The town may measure NIER levels as necessary to ensure that the federal or state standards are not exceeded.
- C. If the standards of any federal or state agency are exceeded at the location of a proposed transmitting antenna, the proposed facility shall not be permitted.

§110-18.13 BULK REGULATIONS AND HEIGHT

- A. In residential districts all wireless communication facilities shall comply with yard requirements of the zoning ordinance for principal buildings. No wireless

communication facilities may be located between the principal structure and the street.

- B. In nonresidential districts wireless communication facilities may be in side or rear yards as established in the zoning ordinance as acceptable to the Planning Board, but not in buffers shown on an approved site plan or in a conservation or similar easement. No wireless communication facilities may be located between the principal structure and the street.
- C. Wireless communication facilities shall not exceed 45 feet in height unless the requirements of Subsection (4) below are met.
- D. In the event that applicants propose a height greater than that listed in Subsection (3) above, the applicant must demonstrate to the satisfaction of the Planning Board that:
 - 1. Alternative means of mounting the antenna have been considered and are not feasible for the applicant; and,
 - 2. Alternative locations for the antennae have been investigated both in and out of the Village and are not feasible; and,
 - 3. The proposed height is the minimum height necessary for adequate operation to meet the applicants' communication need and the aesthetic intrusion has been minimized to the greatest extent practicable; and,
 - 4. The site or building on which the facility is proposed to be installed does not become nonconforming or increase in nonconformity by reason of the installation of wireless communication facilities. This includes but is not limited to yard, buffer, height, floor area ratio for equipment buildings, parking, open space and other requirements. Height requirements of the zoning ordinance shall apply to buildings and equipment shelters.
- E. Notwithstanding anything stated herein, the Planning Board shall be permitted to increase the height of any tower beyond any limitations set forth herein in order to accommodate additional users. In reviewing a request for greater height, the Planning Board shall balance the effect of a greater height against the provision of one or more additional towers, co-locating or other alternatives.
- F. In residential districts wireless communication towers and monopoles shall be separated from residential buildings on adjacent or abutting properties for a distance by not less than two times the height of the tower or monopole. This provision shall apply to the proposed use for wireless communication facilities of towers or monopoles existing at the time of adoption of this article.

§110-18.14 VISUAL IMPACT

- A. For all new wireless communication towers, the applicant shall provide to the Planning Board graphic information that accurately portrays the visual impact of the proposed tower from various vantage points selected by the Planning Board, such as but not limited to parks, designated historic sites or districts or designated scenic areas. This graphic information may be provided in the form of photographs or computer-generated images with the tower superimposed, as may be required by the Planning Board.
- B. The use of innovative technologies and designs shall be encouraged whenever possible and the Planning Board may require the applicant to use prevailing technologies and innovative designs, including but not limited to flagpoles and artificial trees so as to minimize the visual impact of any telecommunications equipment.
- C. For all buildings or equipment shelters to be located in a residential zoning district, the equipment shelter shall be treated in an architectural manner compatible with the homes in the vicinity.

§110-18.15 LANDSCAPING REQUIREMENTS

For any new wireless communication towers, landscaping shall be provided as follows:

- A. In determining the most appropriate landscaping to be provided, the Planning Board shall consider the visual impact of the proposed facility in its setting with regard to immediate proximity of observers and the sight lines from major viewing points.
- B. The area surrounding the installation shall be landscaped and maintained with trees, shrubs and ground cover to maximize screening.
- C. Any buildings or other equipment shelters associated with the antenna facility shall be landscaped with evergreen trees or shrubs of sufficient size and density to screen, in whole or part, and effectively mitigate the appearance of the structures and buildings. Any antenna facility requiring a tower or pole shall plant trees around the facility of a minimum height of 10 feet at planting that will, over time, reduce the visual impact from the tower or pole.
- D. When a security fence is required, the outside of such fencing shall be landscaped with evergreen shrubs, trees or climbing evergreen material on the fencing or may contain wooden slats woven into the fence so as to mitigate and minimize the industrial character of the fence.
- E. An existing natural vegetative buffer which meets or exceeds the above requirements may be substituted to meet the landscape requirements set forth above.

§110-18.16 COLOR AND LIGHTING STANDARDS

Except as specifically required by the Federal Aviation Administration (FAA) or the FCC, antennas, including the supporting structure and all related appurtenances, shall:

- A. Be colored to reduce the visual impact to the greatest degree possible;
- B. Not be illuminated, except buildings may use lighting required by the New York State Fire Prevention and Building Code or when required for security reasons. When lighting is used, it shall be compatible with the surrounding neighborhood to the greatest degree practicable.

§110-18.17 FENCING AND NIER WARNING SIGNS

The area surrounding the facility shall:

- A. Be fenced or otherwise secured in a manner which prevents unauthorized access by the general public.
- B. Contain appropriate signage to warn of areas of the site where:
 - 1. NIER standards are exceeded; and
 - 2. High risks for shocks or burns exists.
- C. For wall mounted antenna, the signage shall be placed no more than five feet off the ground below the antenna.
- D. For antenna mounted on the roof, signage shall be placed on all doors which provide access to said roof. The signage shall be placed no more than five feet off the ground.

§110-18.18 NIER EXPOSURE STANDARDS

No antenna or combination of antennas shall expose the general public to NIER levels exceeding the standard of any federal or state agencies having jurisdiction. In addition, no antenna facility shall emit radiation such that the general public will be exposed to shock and burn in excess of the standards contained in ANSI C-95.1.

§110-18.19 REGISTRATION

The Building Department shall keep a list of the names, addresses, type and maximum emissions of all antenna operators in the town. This list shall be maintained from applications to the Planning Board and Building Department and from FCC or similar inventories of facilities in the town.

§110-18.20 PERFORMANCE BOARD FINDINGS

New antennas must comply with the following performance standard that the estimated or measured NIER from a proposed antenna, when added to existing radio frequency electromagnetic radiation from existing sources, will not exceed the guidelines set forth in the applicable federal and state standards.

§110-18.21 PLANNING BOARD FINDINGS

The Planning Board shall make written findings that the issuance of site plan approval is in compliance with all of the requirements of this chapter.

§110-18.22 EXPIRATION - ISSUANCE OF SPECIAL PERMIT

- A. The special permit shall be issued to the user and shall expire upon the termination of the use.
- B. The Building Inspector shall require issuance of a revised or new special permit prior to the issuance of a building permit use where the proposal requires a special permit.
- C. The applicant shall provide a report to the Building Inspector prepared by a New York State licensed professional engineer certifying that any monopole or tower has been constructed in accordance with the plans approved by the Building Inspector.

§110-18.23 EXISTING INSTALLATIONS

The operator of any wireless communication facility existing at the time that this section takes effect shall be permitted to remain in operation, provided that the operator submits proof within six months of the enactment of this section that the facility complies with the standards adopted by the Federal Communications Commission and all requirements of this section, as certified by a professional engineer with qualifications acceptable to the Village of South Nyack. Operating antennas or towers that are legally nonconforming with respect to area regulations of this section shall be permitted to remain until such time as a request is made to modify the antenna or tower. Any facility for which emission, structural and security compliance documentation is not received shall cease operations within six months of the enactment of this section and be immediately removed thereafter in accordance with the provisions of this section. Any facility (antenna or tower) in a residential zoning district which is not operating as of the effective date hereof, shall be considered to be nonconforming and shall be removed within six months of the enactment of this section.

§110-18.24 EXCLUSION AND EXEMPTIONS

- A. The Village of South Nyack as a municipality shall be exempt from the provision of this section and may operate a wireless communication facility or permit the operation of a wireless communication facility on nonresidentially zoned Village

property without obtaining a permit and without being subject to the conditions set forth in this section.

- B. This section acknowledges the interest of the Federal Communications Commission in promoting amateur radio operations as expressed in FCC Order PRB-1 by imposing the minimum practicable regulation on amateur radio antennas necessary to accomplish the town's legitimate zoning purposes.

§110-18.25 INVALIDITY

Should any section, paragraph, sentence, clause, word or provision of this article be declared void, invalid or unenforceable, for any reason, such decision shall not affect the remaining provisions of this article.

§110-18.26 INCONSISTENCY

Pursuant to New York Municipal Home Rule Law §22, the provisions of this section are intended to supersede any inconsistent provision of law.