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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED

APR 30 2001

94

County  
City of Canajoharie  
Town of .....  
Village

MISCELLANEOUS  
& STATE RECORDS

Local Law No. 1 of the year 19 2001

A local law superceding Local Law No. 3 of the year 1992 and regulating the use, location and occupancy of land and structures in the Town of Canajoharie and providing for the enforcement thereof

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  
City of Canajoharie as follows:  
Town  
Village

(If additional space is needed, attach pages the same size as this sheet, and number each.)

# ZONING LAW OF THE TOWN OF CANAJOHARIE

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## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE I

### ARTICLE I: TITLE, SCOPE AND PURPOSE

#### A. TITLE

This local law shall be known and may be cited as "The Zoning Law of the Town of Canajoharie, New York".

#### B. SCOPE

A local law regulating the use of land and the location, siting, alteration, maintenance, and occupancy of structures in the Town of Canajoharie and for said purposes dividing the Town into districts.

#### C. ENACTING CLAUSE AND PURPOSES

This local law is enacted pursuant to Article 16 of the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, to promote public health, safety, and the general welfare, specifically including the following additional purposes:

- C.1. To allow for reasonable growth and development within the physical limitations of the land so as to assure adequate sites for housing, commercial activity, industry and public uses;
- C.2. To facilitate the efficient and adequate provision of public facilities and services;
- C.3. To promote pedestrian safety, efficient traffic circulation and adequate parking in order to support business activities in the Town;
- C.4. To promote the design and use of land and buildings to maintain the integrity of existing neighborhoods and a sense of community;
- C.5. To promote the retention and creation of local employment opportunities;
- C.6. To encourage flexibility in the design and development of land in such a way as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of the land;
- C.7. To enhance the appearance of the Town of Canajoharie as a whole;
- C.8. To permit the continued operation of non-conforming uses in the least conflicting manner;
- C.9. To encourage patterns of development which minimize the demand for energy.

#### D. RIGHT-TO-FARM

No provision of this Local Law shall be interpreted, administered, or enforced in a manner that unreasonably restricts farm operations within a State Certified Agricultural District established pursuant to Article 25AA of the New York State Agricultural and Markets Law, unless it can be shown that the public health and safety are threatened.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE II

### ARTICLE II: ESTABLISHMENT OF LAND USE DISTRICTS

#### A. ESTABLISHMENT AND NAMES

In order to fulfill the purposes of this Local law, the Town of Canajoharie is divided into the following districts:

R - Residential District

A - Agricultural/Rural Residential District

C - Commercial District

M - Manufacturing District

PWSF - Personal Wireless Service Facilities Overlay District

CE - Critical Environmental Overlay District

SR - Scenic Resources Overlay District

#### B. STATEMENT OF PURPOSE

The following statements of purpose define the spirit and intent of each land use district, and are to be used as guides in the interpretation and application of these regulations:

##### B.1. Residential District

The purposes of the Residential District are: to maintain and protect residential and neighborhood qualities while recognizing the importance of meeting the housing needs of Town residents; to provide for and encourage a mixture of housing types and opportunities; to provide for and encourage open spaces; to foster safe pedestrian and traffic circulation by establishing options for the provision of off-street parking; and to recognize the existence of non-conforming uses and to encourage their operation in an unobtrusive fashion.

##### B.2. Agricultural/Rural Residential District

The purposes of the Agricultural/Rural Residential District are: to maintain and encourage the agricultural endeavors practiced in the rural areas of the Town; to protect, enhance and encourage the preservation of open space, scenic views, wildlife habitat, and other natural resources; and to provide the opportunity for residential development on properly serviced sites while maintaining the rural atmosphere and values of the community.

##### B.3. Commercial District

The purposes of the Commercial District are: to provide general retail development in areas where appropriate services and transportation are available; to encourage commercial investment and development in appropriate areas; and to assure adequate services, parking, roadways and other services for commercial endeavors.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE II

### B.4. Manufacturing District

The purpose of the Manufacturing District is to provide for the special needs of industry for relatively flat land with access to transportation networks and utilities, while protecting the integrity of residential neighborhoods and commercial activity.

### B.5. Personal Wireless Service Facilities Overlay District

The purpose of the Personal Wireless Services Facilities Overlay District is to provide a suitable choice of locations for the establishment, construction and maintenance of Personal Wireless Services Facilities, while protecting the integrity of the established neighborhoods of Canajoharie.

### B.6. Critical Environmental Overlay District

#### B.6.1 Purpose

The purpose of the Critical Environmental Overlay District is to protect the residents of the Town and critical environmental areas in the Town. These areas may include, but are not limited to, former public dumps and private commercial/industrial dump sites.

#### B.6.2 Boundaries

In furtherance of this purpose, the Town may investigate and identify the location of former dump sites in the Town. This section shall not become effective until the Town Board adopts a map entitled "Critical Environmental Overlay District" as part of this Local Law. This map will identify the location of these critical environmental areas in the Town, and delineate the boundaries of the Critical Environmental Overlay District.

#### B.6.3 Procedure

Construction of new residential structures and wells shall not be permitted on former dump sites identified in the Critical Environmental Overlay District.

### B.7. Scenic Resources Overlay District

#### B.7.1 Purpose

The purpose of the Scenic Resources Overlay District is to preserve the visual assets of the Town, including ridgelines, scenic road corridors, viewsheds and vistas. When new development is proposed in these visually sensitive areas, the Town wishes to ensure that such development is harmonious with the scenic character of the area.

#### B.7.2 Boundaries

In furtherance of this purpose, the Town may conduct a Scenic Resources Survey to identify scenic resources worthy of preservation. This section shall not become effective until the Town Board adopts a map which delineates the boundaries of this district and which is entitled "Scenic Resources Overlay District" as part of this Local Law.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE II

### B.7.3 Procedure

No new structures larger than five hundred (500) square feet in floor area, including single-family homes, and no major exterior modification of existing structures may be constructed within the Scenic Overlay District without first obtaining Site Plan Approval from the Planning Board.

Structures to be built on a tract of land that includes mapped scenic resources shall either be sited to avoid occupying or obstructing public views of lands in the Overlay District, or shall be reviewed for architectural compatibility with the existing landscape and surrounding architectural styles. In order to grant Site Plan approval the Planning Board must find that such structures will not detract from the scenic character of the area, and may require as a condition of approval the establishment of vegetative screening.

## C. ZONING MAP

- C.1. The boundaries of districts established by this Article are shown on the map entitled "Zoning Map, Town of Canajoharie, Montgomery County, New York", as adopted by the Town Board. The Zoning Map, including all explanatory matter and amendments, are hereby adopted as an integral part of this local law. Regardless of the existence of other printed copies of this map, which from time to time may be made or published, the official map, which shall be located in the office of the Town Clerk, shall be the final authority as to the current zoning status of the land and water areas, buildings and other structures in the Town. The map shall be available in the Town Clerk's office for the use and benefit of the public.
- C.2. A copy of said Zoning Map is and shall be attached to each copy of this local law.

## D. INTERPRETATION OF DISTRICT BOUNDARIES

In applying the provisions of this local law, the following guidelines shall be used to determine the location of district boundaries:

- D.1. Where district boundaries are indicated as approximately following the center lines of streets, highways, public utility easements, waterways, or railroad rights-of-way or such lines extended, such center lines shall be construed to be district boundaries.
- D.2. Where district boundaries are indicated as approximately following a lot line, such lot line shall be construed to be the district boundary line. In all cases where a district boundary line is located no more than thirty five (35) feet from a lot line, the district boundary shall be construed to coincide with the lot line.
- D.3. In all cases where a district boundary line divides a lot which is in one ownership as of the effective date of this law, and such line is more than thirty five (35) feet from a lot line, the regulations prescribed by this law for the majority of the area of said lot shall apply to the entire lot.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE II

- D.4. In all other cases where dimensions are not shown on the map, the location of boundaries shown on the map shall be determined by the Zoning Board of Appeals, pursuant to Article XI.B.1.2 of this Law.

### **E. EXEMPTIONS FOR PRE-EXISTING PERMITS AND IMPROVEMENTS**

Nothing contained in this local law shall require any change in the plans, construction, or designated use of a building complying with local laws of the Town of Canajoharie in force prior to the effective date of this local law, if the following exist:

- E.1. A building permit shall have been issued prior to the date of the first publication of notice of the public hearing on this local law; and
- E.2. The owner and/or applicant can demonstrate that substantial improvements have been legally made and/or substantial expense has been incurred pursuant to legally issued permit or permits prior to the effective date of this local law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE III

### ARTICLE III: USE REGULATIONS

#### A. GENERAL

- A.1. After the effective date of this Local Law, no land or structure shall be used, occupied, erected, moved or altered unless in conformance with the Schedule of Use Regulations specified in this Article.
- A.2. Pursuant to Section 280-a(4) of the Town Law, the Town Board hereby establishes the R-Residential District and A-Agricultural/Rural Residential District as open development areas. Permits may be issued for structures on lots that have no public or private road frontage and gain access by right-of-way or easement over other lands, under the following conditions:
  - A.2.1. Such right-of-way or easement providing access to a public street shall not be less than fifty (50) in width.
  - A.2.2. Such right-of-way or easement shall never serve or provide access to more than four (4) uses or structures.
  - A.2.3. Such right-of-way or easement must provide safe access for fire, police, and emergency vehicles.
- A.3. The appropriate category of use to be applied to any proposed use not specifically identified and/or defined in this law shall be determined by the Code Enforcement and Zoning Officer, subject to Appeal for Interpretation pursuant to Article XI of this law.
- A.4. All uses are subject to the requirements of Article IV (Area and Bulk Regulations) and Article VI, Section A.3 (Parking Requirements).

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE III

### B. SCHEDULE OF LAND USE REGULATIONS

| LAND USE   | LAND USE DISTRICT |         |         |   |
|--|-------------------|---------|---------|---|
|  | R                 | A       | C       | M |
| <b>1. AGRICULTURE/FARM</b>   |                   |         |         |   |
| 1.1 Farm Operation   | -                 | P       | -       | - |
| 1.2 Accessory Building for Commercial Purposes   | -                 | SU/SP   | -       | - |
| 1.3 Farm Stand   | -                 | P       | -       | - |
| 1.4 Manure Storage Facility  | -                 | X       | -       | - |
| 1.5 Mobile Home as part of a Farm Operation  | -                 | X       | -       | - |
| <i>The preceding agricultural uses are permitted in any Land Use District, subject to the same regulations as those in the Ag/Rural Residential District, if the parcel is part of a State Certified Agricultural District, as set forth in the description(s) and map(s) on file with the Montgomery County Clerk and Montgomery County Director of Real Property Tax Services.</i> |                   |         |         |   |
| <b>2. RESIDENTIAL</b>  |                   |         |         |   |
| 2.1 Single Family Dwelling<br>(including Double-wide Mobile Homes)   | P                 | P       | -       | - |
| 2.2 Two-Family Dwelling or Duplex  | P                 | P       | -       | - |
| 2.3 Multi-Family Dwelling  | SP                | SP      | -       | - |
| 2.4 Mobile Home Community  | X/SU/SP           | X/SP    | -       | - |
| 2.5 Mobile Home, Temporary Residential   | X/SU/SP           | X/SU/SP | -       | - |
| 2.6 Boarding/Rooming House   | SU/SP             | SU/SP   | -       | - |
| 2.7 Campsite or Private Camp   | -                 | X/SU/SP | -       | - |
| <b>3. RESIDENTIAL - ACCESSORY</b>  |                   |         |         |   |
| 3.1 Home Occupation  | X/SU/SP           | X/SU/SP | X/SU/SP | - |
| 3.2 Customary Accessory Uses/Buildings   | P                 | P       | SP      | - |
| <b>4. COMMERCIAL</b>   |                   |         |         |   |
| 4.1 Retail Sales/Service   | SU/SP             | SU/SP   | SP      | - |
| 4.2 Personal Services  | SU/SP             | SU/SP   | SP      | - |
| 4.3 Bank   | -                 | -       | SP      | - |
| 4.4 Freestanding Drive-Thru Business   | -                 | -       | SP      | - |
| 4.5 Professional/Business Offices  | SU/SP             | SU/SP   | SP      | - |
| 4.6 Medical or Dental Clinics/Offices  | SU/SP             | SU/SP   | SP      | - |
| 4.7 Galleries/Studios  | SU/SP             | SU/SP   | SP      | - |
| 4.8 Motel or Hotel   | -                 | -       | SP      | - |
| 4.9 Bed-and-Breakfast or Tourist Home  | SU/SP             | SU/SP   | SP      | - |
| 4.10 Restaurant  | -                 | SU/SP   | SP      | - |

P Permitted  
 X Permitted Subject to Supplementary Regulations (See Article VI)  
 SU Permitted with Special Use Permit  
 SP Permitted Subject to Site Plan Review  
 - Not Permitted

R Residential District  
 A Agricultural/Rural Residential District  
 C Commercial District  
 M Manufacturing District

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE III

| LAND USE   | LAND USE DISTRICT |         |         |         |
|--|-------------------|---------|---------|---------|
|  | R                 | A       | C       | M       |
| <b>4. COMMERCIAL - CONTINUED</b>   |                   |         |         |         |
| 4.11 Bar/Tavern/Nightclub  | -                 | -       | SP      | -       |
| 4.12 Coin Operated Laundry   | -                 | -       | SP      | -       |
| 4.13 Laundry or Dry Cleaning Plant   | -                 | -       | SP      | SP      |
| 4.14 Funeral Home  | SU/SP             | SU/SP   | SU/SP   | -       |
| 4.15 Appliance Repairs   | -                 | SU/SP   | SP      | SP      |
| 4.16 Motor Vehicle Repairs   | -                 | SU/SP   | SP      | SP      |
| 4.17 Agricultural Equipment Repairs  | -                 | SU/SP   | SP      | -       |
| 4.18 Gasoline Station  | -                 | -       | SP      | SP      |
| 4.19 New/Used Vehicle Sales  | -                 | -       | SP      | SP      |
| 4.20 Mobile Home Sales   | -                 | -       | SP      | SP      |
| 4.21 Car Wash  | -                 | -       | SP      | SP      |
| 4.22 Animal Hospital or Kennel   | -                 | X/SP    | X/SP    | -       |
| 4.23 Antique, Craft, or Flea Market  | -                 | SU/SP   | SU/SP   | SU/SP   |
| 4.24 Golf Course   | -                 | SP      | -       | -       |
| 4.25 Nursery School/Day Care<br>(less than 10 children)<br>(10 or more children) | P<br>SP           | P<br>SP | -<br>-  | -<br>-  |
| 4.26 Campground/Recreational Vehicle Camp  | -                 | X/SU/SP | -       | -       |
| 4.27 Slaughterhouse or Rendering Plant   | -                 | SU/SP   | SU/SP   | -       |
| 4.28 Processing of Agricultural or Food Products                                 | -                 | SU/SP   | SP      | SP      |
| 4.29 Quarrying/Mining/Topsoil Removal  | -                 | X/SU/SP | -       | -       |
| 4.30 Private Storage Units   | -                 | SU/SP   | SP      | SP      |
| 4.31 Airport or Landing Strip  | -                 | SU/SP   | -       | -       |
| 4.32 Wholesale/Warehouse   | -                 | SU/SP   | SP      | SP      |
| 4.33 Music or Arts Festival or other Temporary<br>Public Gathering               | -                 | SU/SP   | SU/SP   | -       |
| 4.34 Outdoor Recreational Facility   | -                 | SU/SP   | -       | -       |
| 4.35 Indoor Theater/Auditorium   | -                 | -       | SP      | -       |
| 4.36 Fairgrounds   | -                 | SP      | -       | -       |
| 4.37 Indoor Recreational Facility  | -                 | SP      | SP      | -       |
| 4.38 Farm Market   | -                 | SU/SP   | SP      | -       |
| 4.39 Stable  | -                 | SP      | -       | -       |
| 4.40 Adult Oriented Business   | -                 | X/SU/SP | X/SU/SP | X/SU/SP |

P Permitted  
 X Permitted Subject to Supplementary Regulations (See Article VI)  
 SU Permitted with Special Use Permit  
 SP Permitted Subject to Site Plan Review  
 - Not Permitted

R Residential District  
 A Agricultural/Rural Residential District  
 C Commercial District  
 M Manufacturing District

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE III

| LAND USE                        | LAND USE DISTRICT |         |       |      |
|---------------------------------|-------------------|---------|-------|------|
|                                 | R                 | A       | C     | M    |
| <b>5. INSTITUTIONAL</b>         |                   |         |       |      |
| 5.1 Place of Worship            | SP                | SP      | SP    | -    |
| 5.2 School (public or private)  | SP                | SP      | SP    | -    |
| 5.3 Nursing Home                | SP                | SP      | SP    | -    |
| 5.4 Convent/Monastery           | SP                | SP      | SP    | -    |
| 5.5 Group Home                  | SP                | SP      | SP    | -    |
| 5.6 Rest Home                   | SP                | SP      | SP    | -    |
| 5.7 Parsonage/Rectory           | P                 | P       | P     | -    |
| <b>6. INDUSTRIAL USES</b>       |                   |         |       |      |
| 6.1 Manufacturing               | -                 | SU/SP   | SU/SP | SP   |
| 6.2 Research Laboratory         | -                 | SU/SP   | SP    | SP   |
| 6.3 Wholesale/Warehouse         | -                 | SU/SP   | SP    | SP   |
| 6.4 Printing/Binding/Publishing | -                 | SU/SP   | SP    | SP   |
| 6.5 Truck Terminal/Transfer     | -                 | SU/SP   | SP    | SP   |
| <b>7. CEMETERY USES</b>         |                   |         |       |      |
| 7.1 Cemetery                    | -                 | X       | -     | -    |
| 7.2 Crematorium                 | -                 | X/SU/SP | -     | X/SP |
| 7.3 Caretaker's House           | P                 | P       | -     | P    |

P Permitted

X Permitted Subject to Supplementary Regulations (See Article VI)

SU Permitted with Special Use Permit

SP Permitted Subject to Site Plan Review

- Not Permitted

R Residential District

A Agricultural/Rural Residential District

C Commercial District

M Manufacturing District

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IV

### ARTICLE IV: AREA AND BULK REGULATIONS

#### A. GENERAL

- A.1. After the effective date of this local law, no use shall be commenced, nor any building or structure or part thereof shall be erected, structurally altered, enlarged, rebuilt or moved except in conformance with the provisions of the Area and Bulk Regulations described in this Article for the District in which such use, building or structure is located.
- A.2. The area required for complying with the setback requirements or Density Standard for any Principal Building as defined herein, shall not be counted as providing required open space, land area, or setback for any other use or structure.
- A.3. A new lot or lots may be created through subdivision or combination of an existing lot or lots provided that all resulting lots comply with the area and bulk regulations established in this local law and also comply with the Town Subdivision Law, as amended.
- A.4. With the exception of Personal Wireless Service Facilities which are specifically regulated under Article VI.C.11 Personal Wireless Services Facilities, all steeples, belfries, radio or television antennae (other than dish antennae) customary to residential uses, cupolas, towers, or similar architectural features, firetowers, chimneys, elevator bulkheads, flagpoles, smokestacks, agricultural structures located within a State Certified Agricultural District, and official police and fire radio antennae shall be exempt from the height requirements of this local law provided they do not constitute a public safety hazard.

#### B. DENSITY STANDARD

- B.1. The Density Standard is the minimum land area required per principal building.
  - B.1.1. The Density Standard for all uses in the R-Residential Districts shall be three (3) acres per principal building.
  - B.1.2. The Density Standard for all uses in the A-Agricultural/Rural Residential District shall be three (3) acres per principal building.
  - B.1.3. The Density Standard for all uses in the C-Commercial Districts shall be one (1) acre per principal building if such buildings are served by municipal water and sewer, three (3) acres per principal building otherwise.
  - B.1.4. The Density Standard for all uses in the M-Manufacturing Districts shall be one (1) acre per principal building if such buildings are served by municipal water and sewer service, three (3) acres per principal building otherwise.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IV

- B.2. The density can be satisfied by either of the following:
- B.2.1. A minimum lot size sufficient to meet the density standard for the district in which the use is located independently of any other use or property; or
  - B.2.2. The commitment of land to an irrevocable conservation easement or land conservation trust, dedication to and acceptance by the state, county, town or any village as publicly owned or park land, or other legally enforceable mechanism that guarantees permanent and irrevocable removal of sufficient land area otherwise suitable for development purposes from any and all future development, such that the average area per principal building is equal to or greater than the density standard.

Such irrevocable removal of land from development shall be subject to the approval of the Planning Board as to form and substance of the legal mechanism, conditions on use of such land, and area and location of such land.

- B.2.2.1 If the conservation easement, trust, dedication or other legal mechanism subject to Planning Board review and approval involves a subdivision subject to the Town Subdivision Law, said review and approval shall be conducted simultaneously with subdivision review and approval.
  - B.2.2.2. If the conservation easement, trust, dedication or other legal mechanism subject to Planning Board review and approval involves a use subject to Site Plan Review, said review and approval shall be conducted simultaneously with Site Plan Review.
  - B.2.2.3. If the conservation easement, trust, dedication or other legal mechanism subject to Planning Board review and approval involves a use subject to neither the Town Subdivision Law nor Site Plan Review, the property owner shall apply directly to the Planning Board for independent review, and approval shall be a condition for issuance of the Certificate of Zoning Compliance pursuant to this law.
- B.3. Land irrevocably removed from any and all future development for purposes of satisfying the density standard may be used for any of the following purposes:
- B.3.1. Agriculture, farming, pasture, woodlands, or related uses not including buildings or structures.
  - B.3.2. Active or passive outdoor recreation not including buildings or structures.
  - B.3.3. Individual or combined septic systems, leach fields or other subsurface sanitary disposal systems.
  - B.3.4. Unused or vacant land, either maintained or non-maintained.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IV

- B.4. A Principal Building is a building in which the main or principal use of the lot is conducted. If more than one (1) principal building per lot is planned, the lot shall be subject to the requirements of Article IX, Site Plan Review, unless said lot is part of a Farm Operation. For the purposes of applying the Density Standards stated in Section B.1 above, the following shall constitute one principal building:
- B.4.1. All agricultural use structures and one single-family dwelling or mobile home which are part of a Farm Operation, together constitute and count as one principal building.
  - B.4.2. A single family dwelling, or mobile home located outside of a Mobile Home Community, constitutes one principal building.
  - B.4.3. Up to two (2) dwelling units of a two-family or multi-family dwelling, together constitute one principal building.
  - B.4.4. Up to twelve (12) mobile homes located within a Mobile Home Community together constitute one principal building.
  - B.4.5. A tourist cabin or similar structure for rent or hire with more than 300 square feet of net floor area constitutes one principal building.
  - B.4.6. Up to four (4) motel units, hotel units, accommodation units in a tourist home or similar structure, or tourist cabin units for rent or hire in which each individual unit encompasses less than 300 square feet of net floor area, together constitute one principal building.
  - B.4.7. Up to three (3) campsites for the parking of occupied recreational vehicles or travel trailers or the erection of tents or other shelters for temporary residential use together constitute one principal building.
  - B.4.8. For each commercial use or structure for the retail sale, rental or distribution of goods, services or commodities, each 5,000 square feet of gross floor space or portion thereof of such commercial use structure constitutes one principal building.
  - B.4.9. For any industrial or manufacturing use structure, each 8,000 square feet of gross floor area or any fraction thereof shall constitute one principal building.
  - B.4.10. A structure containing a commercial use which is also used as a single family dwelling constitutes one principal building, provided the commercial use does not exceed 2,500 square feet of net floor area.
  - B.4.11. Any other structure not defined in this section which exceeds 1250 square feet of floor space constitutes one principal building.
  - B.4.12. An accessory building or structure in any district, and any agricultural accessory building not used for residential or commercial purposes, does not constitute and shall not count as a principal building.

**ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IV**

**C. SCHEDULE OF AREA AND BULK REGULATIONS**

|   | MINIMUM LOT WIDTH | MINIMUM FRONT YARD SETBACK (a) | MINIMUM SIDE YARD SETBACK (each side) | MAXIMUM BUILDING HEIGHT |
|---|-------------------|--------------------------------|---------------------------------------|-------------------------|
| <b>C.1 R-RESIDENTIAL DISTRICTS</b>                    |                   |                                |                                       |                         |
| 1.1 All Permitted Uses                                | 300 feet (b)      | 40 feet                        | 20 feet                               | 30 feet                 |
| 1.2 Use Subject to Special Use Permit                 | 300 feet (b)      | 40 feet                        | 20 feet                               | 30 feet                 |
| <b>C.2 A-AGRICULTURAL/RURAL RESIDENTIAL DISTRICTS</b> |                   |                                |                                       |                         |
| 2.1 All Permitted Uses                                | 300 feet (b)      | 40 feet                        | 20 feet                               | 50 feet                 |
| 2.2 Uses Subject to Special Use Permit                | 300 feet (b)      | 40 feet                        | 20 feet                               | 30 feet                 |
| <b>C.3 C-COMMERCIAL DISTRICTS</b>                     |                   |                                |                                       |                         |
| 3.1 Without Municipal Water and Sewer Service         | 300 feet          | 15 feet                        | 20 feet                               | 40 feet                 |
| 3.2 With Municipal Water and Sewer Service            | 100 feet          | 15 feet                        | 15 feet                               | 40 feet                 |
| <b>C.4 M-MANUFACTURING DISTRICTS</b>                  |                   |                                |                                       |                         |
| 4.1 Without Municipal Water and Sewer Service         | 300 feet          | 15 feet                        | 20 feet                               | 40 feet                 |
| 4.2 With Municipal Water and Sewer Service            | 100 feet          | 15 feet                        | 15 feet                               | 40 feet                 |

- (a) Front yard setback shall be measured from the right-of-way line of the street on which the building or structure is located.
- (b) For flag lots, the minimum lot width at the street line shall be fifty (50) feet for the access leg providing driveway or private lane access to the public. The area of the access leg shall be excluded from area calculations for the lot.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE V

### ARTICLE V: NON-CONFORMANCE

#### A. CONTINUATION

- A.1. No use, building or structure which does not conform to all requirements of this local law shall be permitted in the Town of Canajoharie except the following:
  - a. Any non-conforming use, building or structure, other than signs, existing lawfully on the effective date of this law; or
  - b. Any lawful use, building or structure, other than signs, which becomes non-conforming because of subsequent amendment of this law;
- A.2. Certain non-conforming uses, buildings, and structures are subject to additional standards and limitations as specified in this Article.

#### B. NON-CONFORMING USES

- B.1. Discontinuance or Removal. A non-conforming use which is discontinued or removed for any reason other than fire, flood or other natural disaster for a period of one (1) year or more shall not be re-established. A non-conforming use which is discontinued due to fire, flood or other natural disaster for a period of two (2) years or more, commencing on date of said natural disaster, shall not be re-established. Any subsequent use shall conform to this law. The Zoning Board of Appeals is empowered to extend the two (2) year time period upon receipt of a written request from the owner at least thirty (30) days in advance of the expiration of this time period.
- B.2. Changes. No non-conforming use shall be changed except to a conforming use. When so changed, the non-conforming use may not be resumed.
- B.3. Extension. No non-conforming use shall be enlarged or extended beyond the area occupied by such use on the effective date of this law. A non-conforming use may be extended throughout any part of a building designed for such use if on the effective date of this law a major portion of the building was used for such non-conforming use.

#### C. NON-CONFORMING BUILDINGS OR STRUCTURES

- C.1. Alterations. A non-conforming building or structure shall not be enlarged, extended or have exterior alterations beyond the limits of the original building or structure, unless such enlargement, extension, or alteration shall be in accordance with the Article IV, Area and Bulk Regulations, for the district in which the building or structure is located.
- C.2. Reconstruction. A non-conforming building may be reconstructed to its original dimensions, subject to Site Plan Review pursuant to Article IX of this local law. The purpose of Site Plan Review is to provide the Planning Board the opportunity to reduce the level of non-conformance of the building. In no case, shall the level of non-conformance be increased, nor does this section imply any modification of this Article as to discontinuance, removal, modification or extension of a non-conforming use.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE V

### D. NON-CONFORMING SIGNS

D.1. Any sign of a type not permitted, or of a permitted type exceeding the height or area requirements of this local law shall be modified to conform thereto or removed if any of the following occurs:

- a. There is a change of use of the property where the original use was advertised by the sign; or
- b. There is a change of location of the business being advertised by the sign; or
- c. There is replacement of the sign.

D.2. Immediately upon the occurrence of any of the events described in D.1. above, such signs shall be removed or modified to comply with the requirements of this local law or be subject to all penalties and procedures of Article X, Administration and Enforcement.

### E. REPAIRS AND MAINTENANCE

Notwithstanding any of the foregoing regulations, nothing in this section shall be deemed to prevent normal maintenance and repair of any use or building, or the issuance of a Building Permit for major structural alterations or demolitions necessary in the interest of public safety, and pursuant to other applicable sections of this local law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### ARTICLE VI: SUPPLEMENTARY REGULATIONS

#### A. GENERAL STANDARDS APPLICABLE TO ALL USES

##### A.1. General Performance Standards Applicable To All Uses

In any district, the following performance standards shall apply, subject to the limitations on the regulation of Farm Operations contained in Section I:D Right-to-Farm.

A.1.1. No offensive or objectionable vibration, noise, or glare shall be noticeable at or beyond the property line.

A.1.2. No activity shall create a physical hazard by reason of fire, explosion, radiation, or other such cause, to persons or property in the same or an adjacent district.

A.1.3. No material of any nature which may contaminate any water supply shall be discharged into any stream or body of water or any public or private disposal system, or into or onto the ground surface.

A.1.4. There shall be no storage of any material either indoors or outdoors in such a manner that it facilitates the breeding of vermin, or endangers health.

A.1.5. The emission of smoke, fly ash, dust, or other airborne material which can cause damage to the health of persons, animals, plant life, or to other forms of property is prohibited. This provision is not intended to regulate or prohibit the customary use of residential fireplaces, woodburning stoves, coal burning stoves, or smokehouses.

##### A.2. Accessory Uses and Structures

A.2.1. No accessory uses or accessory structures except fences, berms, flagpoles, or wellhouses and farmstands shall be located in the established front yard.

A.2.2. In all districts, walls and fences shall be permitted except where they are of such a height or location as to interfere with sight clearances required for traffic safety.

A.2.3. Fences or walls shall be required for the enclosure of outdoor storage areas and trash dumpsters accessory to multiple family, commercial, and industrial or manufacturing uses.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### A.3. Parking Requirements

Off-street parking spaces shall be provided subject to the following provisions:

#### A.3.1. Required Off-Street Parking Spaces:

| USE   | REQUIRED PARKING SPACES   |
|---|---|
| Single Family Dwelling                            | Two (2) spaces  |
| Duplex Dwelling                                   | Two (2) spaces per dwelling unit  |
| Multiple Family Dwelling                          | 1.5 spaces per dwelling unit  |
| <b>A minimum of one (1) space for each . . .</b>  |   |
| Hotel or Inn                                      | Guest room, plus one space for every three employees for Hotels having over 10                  |
| Motel   | Guest room, plus one space for every three employees. <span style="float: right;">rooms.</span> |
| Church or other place of Public Assembly          | 3 seats or 50 sq. ft. of seating area where fixed seating is not provided.                      |
| School  | 12 classroom seats or the public assembly requirement above, which ever is greater.             |
| Home Occupation                                   | up to 150 sq. ft. of such use, plus one for each additional 100 sq. ft. or fraction thereof.    |
| Retail Sales and Service                          | 225 sq. ft. of gross floor space.   |
| Offices   | 400 sq. ft. of gross floor area.  |
| Eating and Drinking places                        | 50 sq. ft. available to patrons.  |
| Funeral Homes                                     | 20 sq. ft. of public room area.   |
| Industrial uses                                   | 1.5 employees at the largest shift.   |
| Medical Clinic                                    | Employee plus four (4) for each doctor, dentist, or other primary service provider.             |
| Coin Operated Laundry                             | Two (2) machines for customer use.  |
| Motor Vehicle Repair Facility or Gasoline Station | Employee plus two (2) spaces for each service bay.  |
| Bed-and-Breakfast                                 | Guest Room  |
| Boarding/Rooming House                            | Guest Room  |
| Nursing Home                                      | Four (4) bed capacity plus one (1) for each 1.5 employees on the largest shift.                 |
| Rest Home   | Two (2) residents plus one (1) for each 1.5 employees on the largest shift.                     |

A.3.2. Reasonable and appropriate off-street parking requirements for structures and uses not specifically designated in these regulations shall be determined by the Planning Board during Site Plan Review upon consideration of all factors entering into the parking needs of the proposed structure or use.

A.3.3. Areas which may be computed as open or enclosed off-street parking spaces include:

A.3.3.1. any private garage or carport available for parking.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

- A.3.3.2. a driveway within a front yard for a one or two-family residence may count as one (1) parking space.
- A.3.3.3. any parking area under common ownership with the principal use located within 400 ft. of the main entrance of such use. Such vehicle parking area shall be deemed to be required open space associated with the permitted use and shall not be encroached upon.
- A.3.4. Each off-street parking space shall be not less than two hundred (200) square feet in area and, if in a parking lot, shall be a minimum of ten (10) feet wide by twenty (20) feet deep and shall be served by an aisle not less than twenty (20) feet wide for a one-way circulation flow. Entrance and exit lanes shall not be computed as parking space, except for driveways of one- and two-family residences, as in Section A.3.3, above.
- A.3.5. Except in the case of a one- or two-family residence using the drive-way to provide parking, no parking shall be allowed in the established front yard of any use in the R-Residential District.
- A.3.6. Unobstructed access to and from a street shall be provided. Access drives shall be of sufficient width to permit the free flow of cars both entering and leaving the parking area. Access drives for any off-street parking area with a capacity of more than four (4) spaces shall be located in a manner which ensures traffic safety and shall be subject to Site Plan review by the Planning Board. Access drives shall not have a grade in excess of six percent (6%) within twenty-five (25) feet of any street right-of-way line nor ten percent (10%) at any other point.
- A.3.7. All parking areas shall be properly drained and all such areas, except for parking spaces accessory to a one- or two-family dwelling, shall be provided with a surface that minimizes dust, such as paving, crushed stone or gravel.
- A.3.8. One (1) camping trailer, motor home or boat trailer may be stored on a lot provided the trailer or motor home is not stored between the street line and the building line. A second such vehicle may be stored on the same lot provided it is stored in the rear yard or parking area.
- A.3.9. Except for new or used vehicle sale lots where permitted, no more than one (1) vehicle not in current registration shall be stored outdoors, and all such vehicles shall be screened from neighboring properties.

### A.4. Off-Street Loading

A.4.1. Off-street loading berths shall be provided for all uses specified herein subject to the following requirements:

- Gross Floor area less than 10,000 sq. ft. none required
- Gross Floor area between 10,000 and 25,000 sq. ft. one (1) berth

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

- Each additional 25,000 sq. ft. or fraction thereof up 100,000 sq. ft. one (1) berth
  - Each additional 50,000 sq. ft. or fraction thereof over 100,000 sq. ft. one (1) berth
- A.4.1.1. Public library, museum, or other similar quasi-public institution, community center, hospital or sanitarium, nursing home or convalescent home, institution for children or the aged, or school;
- A.4.1.2. Buildings with professional, governmental, or business offices, or laboratory establishments;
- A.4.1.3. Retail sales and service establishments;
- A.4.1.4. Motels, hotels or similar establishments;
- A.4.1.5. Manufacturing, wholesale and storage uses, and dry cleaning and rug cleaning establishments and laundries;
- A.4.2. Single structures containing multiple dwelling units shall be provided with loading berths as follows:
- Less than 50 dwelling units in one structure none required
  - More than 50 dwelling units in one structure one (1) berth
- A.4.3. Reasonable and appropriate off-street loading requirements for structures and uses which do not fall within the categories listed herein shall be determined by the Planning Board upon consideration of all factors entering into the loading needs of each such use during Site Plan Review.
- A.4.4. Each required loading berth shall be at least twelve (12) feet wide, thirty-three (33) feet long, and fourteen (14) feet high.
- A.4.5. Unobstructed access, at least ten (10) 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, except as provided in paragraph f., below. Entrances or exits for any loading area shall be located to assure safe access and shall be subject to Article IX, Site Plan Review. No off-street loading berth shall be located in any established front yard.
- A.4.6. Joint Facilities: Permitted or required loading berths may be provided in spaces designed to serve jointly two (2) or more adjacent establishments provided that the number of required berths in such joint facilities shall not be less than the aggregate of those required for participating uses.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### A.5. Signs

- A.5.1. No new billboards shall be permitted in any district.
- A.5.2. All signs shall be placed as to not obstruct the vision of motorists entering or leaving the property or adjoining properties. No sign shall project into or over the public right-of-way.
- A.5.3. No sign shall be mounted on or attached to any roof, nor shall any sign extend above the roofline of any building on the site.
- A.5.4. If a sign is illuminated, the source of light shall be shielded from view and shall not be visible from the property line.
- A.5.2. In all districts non-flashing signs are permitted as follows:
  - A.5.2.1. One nameplate, identification or professional sign, not to exceed an aggregate of ten (10) square feet of sign area, showing the name or permitted home occupation of the occupant of the premises.
  - A.5.2.2. One sign not to exceed an aggregate of thirty-two (32) square feet of sign area, during and pertaining to the sale, lease or rental of the land or building.
  - A.5.2.3. One temporary sign not to exceed an aggregate of thirty-two (32) square feet of sign area, during and pertaining to construction, repairs, or alterations to the property.
  - A.5.2.4. Institutional, religious, or community announcement signs, not to exceed thirty-two (32) aggregate feet in area.
  - A.5.2.5. Two (2) farm product signs, each not exceeding thirty-two (32) aggregate feet in area, may be displayed on the property, but only when such products are on sale.
  - A.5.2.6. A business sign or signs directing attention to a business or profession conducted, or a commodity, service or entertainment offered or sold on the premises shall be permitted. Such sign or signs shall not exceed the aggregate of thirty-two (32) square feet in area for hanging, wall and pedestal signs. In the case of a retail center or other group of related buildings, in addition to the general sign, each individual unit may display an identification sign affixed flat against the building which shall no exceed one (1) square foot of area for each foot of building frontage.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### B. GENERAL STANDARDS APPLICABLE TO ALL USES IN THE R-RESIDENTIAL AND A-AGRICULTURAL/RURAL RESIDENTIAL DISTRICTS

#### B.1. Accessory Uses and Structures

- B.1.1. No accessory use or structure except fences, flagpoles, berms, landscape plantings, wellhouses or farm stands shall be located in the established front yard.
- B.1.2. An accessory structure may be located in any required side or rear yard, provided:
  - B.1.2.1. Such a structure does not exceed thirty (30) feet in height;
  - B.1.2.2. Such a structure shall be set back no less than ten (10) feet from any lot line;
  - B.1.2.3. All such structures in the aggregate shall not occupy more than thirty (30) percent of the required rear or side yard in which located.
- B.1.3. An accessory structure on that portion of a lot not included in any required yard shall conform with the height regulations for the principal structure(s).
- B.1.4. No accessory structure or use shall project nearer to the street on which the principal structure fronts than does the principal structure except:
  - B.1.4.1. Fences, walls, berms or other landscaping devices.
  - B.1.4.2. Enclosed residential garage structurally and architecturally integrated into the principal structure.
  - B.1.4.3. Farm stands selling agricultural products predominantly produced on the premises, or by the same farm operation on whose land the farm stand is located.

#### B.2. Corner Lots

On a corner lot, front yards are required on both street frontages, and one (1) yard other than the front yard shall be deemed to be the rear yard and the other(s), the side yard(s).

#### B.3. Through Lots

On a through lot, front yards are required at all street lines.

#### B.4. Exceptions to Yard Requirements

- B.4.1. Permitted Obstructions. Cornices or cantilevered roofs may project not more than four (4) 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.
- B.4.2. Entries and Porticos. A roofed-over but completely unenclosed projection in the nature of an entry or portico, not more than eight (8) feet wide may project not more than six (6) feet into a required front, side, or rear yard when the building otherwise complies with all yard requirements of this law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### C. USES SUBJECT TO ADDITIONAL STANDARDS

#### C.1. Home Occupations

Subject to the issuance of a Special Use Permit pursuant to Article VII, individuals may conduct a business, trade or profession in their residences in those Districts where permitted, subject to the following:

- C.1.1. The activity shall be incidental to and shall not alter the primary use of premises as a residence. In no way shall the premises be altered nor shall the activity in the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, or the emission of light, noise, sounds, odors or vibration.
- C.1.2. The home occupation shall be conducted in the principal building by the resident. No more than two (2) assistants, not residing on the premises, may be employed in the home occupation.
- C.1.3. The home occupation shall be conducted in an area not exceeding thirty percent (30%) of the floor area of the structure in which it is located.
- C.1.4. The retail sale of goods or articles not produced on the premises is permitted only if they are necessarily incident to the service provided by the home occupation.
- C.1.5. Only equipment which is customary to the home occupation may be used or stored within the structure.
- C.1.6. There shall be no outdoor storage of equipment or materials used in the home occupation.
- C.1.7. In the Residential Districts, no traffic shall be generated in greater volumes than would normally be expected in a residential neighborhood.
- C.1.8. Parking required for the home occupation shall comply with the requirements of Section A.3, Parking, of this Article and shall be met on-site and not in the established front yard.
- C.1.9. No more than one sign meeting the requirements of Section VI.A.5 is permitted.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

### C.2. Mobile Homes and Mobile Home Communities

- C.2.1. Mobile Homes are subject to all regulations pertaining to detached one family dwellings, in addition to the following standards:
- C.2.1.1. Mobile homes shall be used only as single-family residential dwelling units. They shall not be used as housing for livestock or fowl, or as accessory storage buildings.
  - C.2.1.2. New double-wide mobile homes shall be permitted in all land use areas which permit single family dwellings.
  - C.2.1.3. New single-wide mobile homes shall be permitted only in Mobile Home Communities, unless they are part of a Farm Operation as defined in Article XIII.
  - C.2.1.4. New single-wide mobile homes which are placed on Farm Operations after the effective date of this local law must be removed from the premises within 3 months if the farm is sold for non-agricultural use or discontinued.
  - C.2.1.5. Existing single-wide mobile homes located outside of mobile home communities may not be replaced with new single-wide mobile homes. They may be replaced with new double-wide mobile homes, manufactured homes or single family dwellings.
  - C.2.1.5. Mobile homes shall be have a minimum size of 840 square feet of gross floor area.
  - C.2.1.6. Mobile homes shall be provided with anchors or tie-downs that meet the manufacturer's specifications. These anchors shall be attached to a concrete footing installed below the frost line, or embedded in concrete runners, a concrete slab or a suitable substitute in conformance with the New York State Uniform Fire Prevention and Building Code.
  - C.2.1.7. Mobile homes shall meet all current U.S. Department of Housing and Urban Development (HUD) standards and shall bear the seal designating this compliance, or shall be inspected by the Code Enforcement and Zoning Officer and approved as structurally sound and free of heating and electrical system hazards, in conformance with the New York State Uniform Fire Prevention and Building Code.
  - C.2.1.8. Mobile homes shall have skirting or screening securely fastened around the perimeter extending to the ground. Such skirting shall be of masonry or a permanent material similar to that sheathing the mobile home, provide adequate ventilation, have a finished exterior appearance and be capable of withstanding extreme weather conditions over extended periods of time. It shall be installed within four months from date of issuance of occupancy permit for the mobile home.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

- C.2.1.5. Any woodstove installed or operated in any such mobile home must be approved by Underwriters Laboratories for mobile home installation.
- C.2.1.6. Any additions, decks or stairs attached to the mobile home must be built in conformance with New York State Uniform Fire Prevention and Building Code Regulations. They must be built of a permanent material and have a finished exterior appearance.
- C.2.1.7. A mobile home must be made habitable and receive a certificate of occupancy within 60 days of installation on the site.
- C.2.1.8. A temporary residential mobile home, placed on a building lot during construction of a permanent residence, requires a Special Use Permit, subject to the requirements of Article VII of this local law. It must be removed from the site within 60 days from the date of issuance of the occupancy permit for the permanent residence.

### C.2.2. Mobile Home Community

- C.2.2.1. Any lot on which two or more mobile homes are located, unless such lot is part of a Farm Operation as defined in Article XIII, shall be considered a Mobile Home Community and is subject to the requirements of Article IX, Site Plan Review.
- C.2.2.2. The minimum acreage for a mobile home community is three (3) acres. A maximum of four (4) units per gross acre will be permitted, with a minimum lot size of 6000 square feet per mobile home. All lots within the community shall be pinned by a licensed land surveyor. Individual yard requirements shall be as follows:
  - Front yard -- twenty (20) feet
  - Side yard -- fifteen (15) feet
  - Rear yard -- fifteen (15) feet
- C.2.2.3. All mobile homes within the community shall have vehicular access to the interior road system only, not to an existing exterior street. Interior roads must be built to Town road specifications for minor streets, with a right-of-way of fifty (50) feet and a minimum surface width of eighteen (18) feet.
- C.2.2.4. Two (2) off-street parking spaces must be provided for each mobile home. Additional off-street guest parking areas shall be provided in the community at the rate of one (1) parking space per unit.
- C.2.2.5. Each mobile home lot must have connections for water supply and waste disposal. All water supply and sewage disposal systems must be approved by the New York State Department of Health.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

- C.2.2.6. Each mobile home lot must have an electrical power source. All electrical wiring and fixtures shall be installed and maintained in accordance with the regulations of the New York State Uniform Fire Prevention and Building Code and the local utility company. Whenever possible, electrical transmission and other utility lines shall be placed below ground. Fuel tanks, where used, shall be placed at the rear of the mobile home at least five (5) feet from any exit, and shall have a safety shut-off at the tank.
- C.2.2.7. Open space areas of at least twenty (20) percent of the total land area shall be set aside as green space suitable for recreation and play purposes.
- C.2.2.8. Sidewalks, lighting and landscaping shall be in keeping with surrounding development, the unique features of the site, and the health and safety of the residents of the mobile home community.
- C.2.2.9. All mobile home communities shall have a vegetative screening strip along public roads and property lines which is of sufficient width and height, once mature, to substantially screen the park, as deemed appropriate by the Planning Board.

### C.2.3. Construction Trailers

No more than two (2) construction trailers shall be permitted on the site of construction being pursued subject to a valid Building Permit issued pursuant to this local law, provided:

- C.5.3.1. Construction trailers are used only for office space or storage of materials and equipment and related uses; and
- C.5.3.2. No construction trailer is used for temporary or permanent residential purposes; and
- C.5.3.3. Such construction trailer(s) are removed prior to issuance of a Certificate of Occupancy pursuant to this local law.

### C.3. Animal Hospital or Kennel

- C.3.1. All animals shall be housed no closer than one hundred (100) feet from the nearest lot line.
- C.3.2. No accessory or related structures such as dog runs shall be located within one hundred (100) feet from the nearest property line.
- C.3.3. Adequate plantings and bufferings shall be provided and maintained to minimize the impact of inherent nuisances such as noise and odor.

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C.3.4. All animal excrement shall be adequately disposed of, and in no case shall any excrement be deposited or stored within one hundred (100) feet of any lot line.

### C.4. Radio and Television Antennas, Towers and Dish Antennas

All antennas, towers and dish antennas shall comply with the following regulations:

C.4.1. Any tower or antenna shall be located a distance from any lot line equal to or greater than its height.

C.4.2. No dish antenna larger than 24" shall be located within any established front yard.

C.4.3. Any guy anchorage or similar device shall be at least ten (10) feet from any property line.

C.4.4. No antenna or antenna tower shall be in excess of a height equal to the distance from the base of the structure to the nearest overhead electrical power line which serves more than one dwelling, place of business or parcel.

### C.5. Ventilation Equipment

All heating/ventilation/air conditioning (HVAC) equipment, and restaurant ventilation equipment for ovens, grills, and dishwashers shall be located and directed in a manner which will not have an adverse impact upon adjacent properties and the general public. Restaurant ventilation equipment shall be cleaned at regular intervals to eliminate odors and fire hazards.

### C.6. Cemetery, Crematoria and Related Uses

C.6.1. All cemeteries, mausoleums, and crematoria shall operate under applicable New York State, Montgomery County and Town statutes and ordinances, and all rules and regulations promulgated pursuant to those statutes and ordinances.

C.6.2. All mausoleums, crematoria, and accessory storage facilities shall be located no closer than 200 feet from any lot line, and shall be subject to Site Plan Review.

C.6.3. An accessory caretaker's house shall conform to the setback regulations set forth in the Area and Bulk Regulation, Article IV, pertaining to single family residences in the District in which it is located.

### C.7. Quarrying/Soil Mining

C.7.1. Any quarry or soil mining operation which will extract 1000 tons or more of material within any twelve consecutive months shall operate only under a valid mining permit issued pursuant to the New York State Mined Land Reclamation Law and related regulations. No further mining permit from the Town shall be required.



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C.7.2. Any commercial quarrying or soil mining operation which is not subject to the requirements of the New York State Mined Land Reclamation Law and related regulations shall apply to the Zoning Board of Appeals for a Special Use Permit pursuant to Article VII of this law. The issuance of such Special Use Permit shall be subject to the following requirements:

C.7.2.1. A time schedule for completion of either the entire operation, or, if excavation is to occur in stages, of each stage of the operation shall be submitted for approval as part of the Special Use Permit Application.

C.7.2.2. An operations plan, including the number and types of trucks and other machinery to be used on the site, shall be submitted for approval as part of the Special Use Permit Application.

C.7.2.3. A restoration and rehabilitation plan showing both existing contours and proposed final contours after operations are completed shall be submitted for approval as part of the Special Use Permit Application.

C.7.2.4. A performance bond to assure complete restoration and rehabilitation shall be posted in an amount satisfactory to the Planning Board.

C.7.2.5. A buffered area of not less than two hundred (200) feet shall be established between the operation and any residential land use within 1000 feet and shall be planted to evergreen trees.

C.7.2.6. Such Special Use Permit shall be restricted to an active working area not to exceed ten (10) acres and to a time not to exceed five (5) years.

### C.8. Campsite or Private Camp

C.8.1. Any campsite or private camp which is to be occupied for a period of more than 14 days shall require prior issuance of a Special Use Permit.

C.8.2. Such Special Use Permit shall be issued for a period not to exceed thirty (30) days, and shall be issued for no more than two non-consecutive periods in any one calendar year.

C.8.3. Such campsite or private camp shall be so located that adequate surface drainage will be provided during the period of operation.

C.8.4. Any toilet facilities or privy shall be:

C.8.4.1. Adequate to serve the number of persons to use the campsite, assuming full capacity for the period of the Special Use Permit.

C.8.4.2. Located so as to be conveniently available.

C.8.4.3. Constructed and maintained so as not to be offensive or unhealthful.

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C.8.4.4. Located, constructed, and maintained so it will not pollute a water supply, surface water, adjacent ground surface, or permit access of flies or rodents to the privy vault or holding tank.

C.8.5. All temporary structures, mobile homes, trailers, tents, and recreational vehicles shall be removed upon expiration of such Special Use Permit, except for one privy structure, which is subject to the following conditions:

C.8.5.1. The privy structure shall be located such that is screened from view from public streets and adjacent properties.

C.8.5.2. The privy vault contents shall be emptied, limed and covered with at least two (2) feet of topsoil, or otherwise adequately disposed of.

### C.9. Campground/Recreational Vehicle Campground

C.9.1. No campground or recreational vehicle camp shall be established, located, used, or occupied without prior Site Plan Review pursuant to Article IX of this law.

C.9.2. No campsite shall be closer than one hundred fifty (150) feet to any street line or fifty (50) feet to any lot line.

C.9.3. All campsites and parking areas shall be visually screened from all street and lot lines by landscape plantings, wooded areas, or fences.

### C.10. Swimming Pools

All swimming pools shall comply with the following requirements:

C.10.1. No pool shall be located in any established front yard.

C.10.2. Any pool shall be enclosed on all sides by a fence or a wall at least four (4) feet in height. An above-ground pool, with walls at least four (4) feet in height and having retractable stairs which can be locked in place or otherwise secured, does not require a fence or wall.

C.10.3. Provisions shall be made so that draining of said pool shall be accomplished without the use of any public sanitary sewer.

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### C.11. Personal Wireless Service Facilities

All Personal Wireless Service Facilities shall comply with the following requirements in addition to all requirements of the underlying zoning districts.

#### PWSF - Personal Wireless Service Facilities Overlay District

##### C.11.1. Purpose and Intent:

The PWSF is an overlay district intended to provide a suitable choice of locations for establishment, construction and maintenance of Personal Wireless Service Facilities.

##### C.11.2. Permitted Uses:

All new Personal Wireless Service Facilities, and all additions and/or modifications to currently existing Personal Wireless Service Facilities, shall be allowed only in the Personal Wireless Service Facilities Overlay District. The Personal Wireless Service Facilities Overlay District shall apply to all property within the following zoning districts: A-Agricultural/Rural Residential; C-Commercial; M-Manufacturing. The Personal Wireless Service Facility Overlay District is excluded from R-Residential district and for 1000' beyond any R-Residential boundary line. In no event shall any Personal Wireless Services Facility be allowed within any zoning district without completing the procedural and other requirements of the Personal Wireless Service Facilities Overlay District.

##### C.11.3. Underlying Zoning Regulations:

The requirements of the underlying zoning districts shall apply within the Personal Wireless Service Facilities Overlay District unless the provisions set forth in this Section are deemed more stringent than the underlying requirements in which event the provisions set forth in that section shall apply. All structures and facilities accessory to Personal Wireless Service Facilities, including but not limited to equipment sheds, parking areas, anchors, bases and pads, shall comply with the existing setback and dimensional requirements established for principal structures in the underlying zoning district, except for the height of a proposed tower or monopole.

##### C.11.4. Data Requirements:

Applicants for Site Plan Approval shall file with the Town Clerk six (6) copies, and with the Planning Board, seven (7) copies of the following documents:

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### C.11.4.1. Site Plan

A Site Plan, in conformance with applicable site plan submission requirements and procedures contained in Article IX of the Zoning Law. The Site Plan shall show elevations, height, width, depth, type of materials, color schemes, and other relevant information for all existing and proposed structures, equipment, parking, and other improvements. The Site Plan shall also include a description of the proposed Personal Wireless Service Facilities, and such other information required by Article IX or which the Planning Board may require.

### C.11.4.2. Environmental Assessment Form

A completed Environmental Assessment Form (EAF), including the Visual EAF Addendum. Particular attention shall be given to visibility from key viewpoints identified in the Visual EAF Addendum, existing treelines and proposed elevations.

### C.11.4.3. Landscape Plan

A Landscape Plan delineating the existing trees or areas of existing trees to be preserved, the location and dimensions of proposed planting areas, including the size, type and number of trees and shrubs to be planted, curbs, fences, buffers, screening elevations of fences and materials used. For towers or monopoles, the Landscaping Plan shall address the criteria set forth herein.

### C.11.4.4. Documentation of Proposed Height

Documentation sufficient to demonstrate that the proposed height is the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Town.

### C.11.4.5. Statement Regarding Co-Location

For new Personal Wireless Service Facilities, a statement by the applicant as to whether construction of the Facility will accommodate co-location of additional Facilities for future users.

### C.11.4.6. Structural Engineering Report

A report prepared by a New York State licensed professional engineer specializing in structural engineering as to the structural integrity of the Personal Wireless Service Facility. In the case of a tower or monopole, the Structural Engineering Report shall describe the structure's height and design including a cross section of the structure, demonstrates the structure's compliance with applicable structural standards and describes the structure's capacity, including the number of antennas it can accommodate and the precise point at which the antenna shall be mounted. In

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the case of an antenna mounted on a existing structure, the Structural Engineering Report shall indicate the ability of the existing structure to accept the antenna, the proposed method of affixing the antenna to the structure, and the precise point at which the antenna shall be mounted.

### C.11.4.7. Engineering Analysis of Radio Emissions

An engineering analysis of the radio emissions, and a propagation map for the proposed Personal Wireless Service Facilities. The analysis shall be prepared and signed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio-communication facilities. The results from the analysis must clearly show that the power density levels of the electromagnetic energy generated from the proposed Facility are within the allowable limits established by the Federal Communications Commission (FCC) which are in effect at the time of the application. If the proposed Personal Wireless Service Facilities would be co-located with an existing Facility, the cumulative effects of the Facilities must also be analyzed. The power density analysis shall be based on the assumption that all antennas mounted on the proposed Facility are simultaneously transmitting radio energy at a power level equal to the maximum antenna power rating specified by the antenna manufacturer.

### C.11.4.8. Map of Proposed Coverage and Existing Facilities

A map showing the area of coverage of the proposed Facility and listing all existing Personal Wireless Service Facilities in the town and bordering municipalities containing Personal Wireless Service Facilities used by the applicant, and a detailed report indicating why the proposed Personal Wireless Service Facilities is required to provide service to locations which the applicant is not able to serve with existing Facilities which are located within and outside the Town by co-location and otherwise.

### C.11.4.9. Performance Bond or other Security

Prior to Site Plan Approval, a performance bond or other security sufficient to cover the full cost of the removal and disposal of the Personal Wireless Service Facility upon abandonment of said facility shall be determined by an estimate of the Town's designated engineer. Any such security must be provided and maintained pursuant to a written security agreement with the Town, approved by the Town Board and also approved by the Town attorney as to form, sufficiency and manner of execution. The form of security shall be limited to those permissible under NYS Town Law Section 277, Subsection 9(c) I-V.

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### C.11.5. Criteria for Site Plan Applications:

Applicants for Site Plan Review for the establishment of construction of Personal Wireless Service Facilities shall meet all of the following criteria:

#### C.11.5.1. Necessity

The proposed Personal Wireless Service Facility is required to provide service to locations which the applicant is not able to serve with existing Facilities which are located within and outside the Town by co-location and otherwise.

#### C.11.5.2. Co-location

The co-location of existing Personal Wireless Service Facilities only within the Personal Wireless Service Facilities Overlay District shall be strongly preferred to the construction of a new Personal Wireless Service Facilities. If a new site for a Personal Wireless Service Facilities is proposed, the applicant shall submit a report setting forth in detail (a) an inventory of existing Personal Wireless Service Facilities within the Personal Wireless Service Facilities Overlay District which are within a reasonable distance from the proposed Facility with respect to coverage, (b) an inventory of existing Personal Wireless Service Facilities in other municipalities which can be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve, and (c) a report on the possibilities and opportunities for co-location as an alternative to a new site. The applicant must demonstrate that the proposed Personal Wireless Service Facilities cannot be accommodated on a existing Facility within the PWSF Overlay District or on an existing Facility in another municipality due to one or more of the following reasons:

- (a) The proposed equipment would exceed the existing and reasonably potential structural capacity of existing and approved Personal Wireless Service Facilities within the Personal Wireless Service Facilities Overlay District, considering existing and planned use for those Facilities.
- (b) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be prevented or mitigated.
- (c) Existing or approved Personal Wireless Service Facilities within the Personal Wireless Service Facilities Overlay District or in neighboring municipalities do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and the applicant has not been able, following a good faith effort, to reach an agreement with the owners of such Facilities.

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- (d) Other reasons make it impractical to place the proposed equipment on existing and approved Personal Wireless Service Facilities within the Personal Wireless Service Facilities Overlay District on existing Facilities in other municipalities.
- (e) Service to the locations to which the applicant seeks to provide service cannot be provided by existing facilities within or outside the Town.

### C.11.5.3. Minimum Lot Size

The minimum lot size for a tower or monopole shall be three (3) acres, or the minimum lot size required by the underlying zoning district, whichever is greater.

### C.11.5.4. Setbacks

Unless the FCC promulgates rules to the contrary, all Personal Wireless Service Facilities shall be separated from all residential dwellings by a distance of no less than five hundred (500) feet. All lot line (including lease areas) shall be at least 1000' from the road right-of-way. The setbacks from the lot lines shall equal the height of the Personal Wireless Service Facility. Setbacks from towers or monopoles shall be measured from the base of the structure.

### C.11.5.5. Security Fencing

Security fencing, showing the location, materials and height, shall be provided around each tower or monopole to secure the site. Access to the structure shall be through a locked gate.

### C.11.5.6. Architectural Compatibility

Where a Personal Wireless Service Facility is to be attached to an existing building or structure, such facility shall be integrated into such existing building or structure in such a manner which blends with the architectural characteristics of the building or structure to the maximum extent practicable.

### C.11.5.7. Placement

Unless wall-mounted on a existing roof-mounted mechanical enclosure or similar appurtenance, all antennas mounted on a roof shall be located so that visibility of the antenna is limited to the greatest extent practicable. Antennas wall-mounted on a roof mounted mechanical enclosure or similar appurtenance shall not exceed the height of the appurtenance at the point of installation.

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### C.11.6. Design Guidelines:

The proposed Personal Wireless Service Facility shall meet the following applicable design guidelines:

#### C.11.6.1. Finish/Colors

Towers or monopoles not requiring Federal Aviation Administration (FAA) painting or marking shall either have a galvanized finish or be painted gray or blue gray above the surrounding treeline and gray, green or tannish brown below the surrounding treeline.

#### C.11.6.2. Illumination

No signals, lights or illumination shall be permitted on Personal Wireless Service Facilities unless required by the FAA or other federal, state or local authority.

#### C.11.6.3. Landscaping for Towers or Monopoles

For towers or monopoles, vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one row of native evergreen shrubs or evergreen trees capable of forming a continuous hedge. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.

#### C.11.6.4. Visibility

All Personal Wireless Service Facilities shall be sited to have minimum adverse visual effect on residential areas, parks or major roadways.

#### C.11.6.5. Signage

Signage shall be prohibited on Personal Wireless Service Facilities except for signage to identify the Facility which is located along the right-of-way frontage. Except as specifically required by a federal, state or local authority, no signage shall be permitted on equipment Mounting Structures or Antennas.

### C.11.7. Construction and Maintenance:

#### C.11.7.1. Time Limit for Completion

A building permit must be obtained within six(6) months after approval of a Site Plan for a Personal Wireless Service



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Facility and construction of such Facility must be completed within twelve (12) months of such approval. The Site Plan Approval shall automatically expire in the event that the Code Enforcement and Zoning Officer has not granted such permit and construction of the Facility is not completed with the periods set forth above.

### C.11.7.2. Annual Inspections

- (a) Unless otherwise preempted by Federal or State Law, Personal Wireless Service Facilities, including towers, monopoles and antennas, shall be inspected annually at the applicants expense for structural integrity, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement and Zoning Officer. The structural inspection shall be performed by a New York State licensed professional engineer specializing in structural engineering. The structural inspection report shall describe the structural integrity of the Personal Wireless Service Facility, maintenance issues and repairs need or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Code Enforcement and Zoning Officer.
- (b) Unless otherwise preempted by Federal or State law, Personal Wireless Service Facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for radio emissions, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement and Zoning Officer. Radio emission inspection shall be performed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radiocommunication facilities. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the Facility, including the cumulative effects of co-located antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the Facility are above the allowable limits stated within applicable FCC or ANSI standards or other applicable state or federal guidelines in effect at the time of the inspection, the applicant shall cease all use of the Facility until such time as it proves to the satisfaction of the Code Enforcement and Zoning Officer that the power density levels of the electromagnetic energy to be generated at the Facility are below the applicable standards.

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### 3.11.7.3. Abandonment

In the event that the use of any Personal Wireless Service Facility has been discontinued by all operators on such facility for a period of one hundred eighty (180) consecutive days or more, the Facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Code Enforcement and Zoning Officer, who shall have the right to request documentation from the owner/operator of the Facility regarding usage threat. Upon such abandonment, the owner/operator shall remove the Facility at its own expense, and failing prompt removal, the Town may remove the Facility at the owner/operator's expense. All Site Plan Approval variances and approvals of any nature granted by the Town shall automatically expire as of the date of abandonment of the Facility.

### C.11.8. Alteration of an Existing Antenna:

Alteration of an existing antenna which results in an increase in the size or height of the antenna shall be permitted only after application to the Planning Board which shall review the matter as if the alteration were an entirely new application for a Site Plan Approval.

### C.11.9. Waivers:

The Town of Canajoharie Planning Board reserves the right to waive any section or sections based on factors related to a specific proposal(s). Factors that would be considered are (but are not limited to) co-location, height, location, etc.

### C.11.10. Exemption from PWSF:

The following are exempted from the provisions of the Personal Wireless Services Facility Overlay District:

C.11.10.1. Machines and equipment designed and marketed as consumer products, such as walkie-talkies, ham radios not used commercial purposes, remote control toys, and cellular phones;

C.11.10.2. Hand-held, mobile, marine and portable radio-communication transmitters and/or receivers;

C.11.10.3. Two-way radios utilized for temporary or emergency service communications;

C.11.10.4. Two-way radios utilized for government service communications;

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VI

C.11.10.5. Back-up wireless transmitters connected to an alarm monitoring service that transmits to a remote monitoring center in the event of an emergency when the telephone lines are inoperable, and

C.11.10.6. Over-the-air receive only devices in compliance with FCC rules and standards.

### C.12 Manure Storage Facilities

All new Manure Storage Facilities shall be designed and sited according to the recommendations and criteria contained in Natural Resources Conservation Service (NRCS) Conservation Practice Standard No. 313, Waste Storage Facility. Copies of this standard are available from the Town Clerk.

### C.13 Adult Oriented Businesses

C.13.1 Adult Oriented Businesses have secondary effects that can have a significant impact on the neighborhood and community in which they are located, particularly when concentrated in any one area. The special regulations deemed necessary to regulate these secondary effects are set forth below. The primary purpose of these regulations is to preserve the community character and quality of life in the Town of Canajoharie. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the contact of any communicative materials, or to deny access by adults to Adult Oriented Businesses.

C.13.2 No Adult Oriented Business shall be located within five hundred (500) feet of the property line of the parcel of land upon which any residence is located.

C.13.3 No Adult Oriented Business shall be located within one thousand (1,000) feet of the property line of the parcel of land upon which any school, child care facility, church or other place of religious worship, public or private park, playground or playing field, bike path, youth center or library, is located.

C.13.4 No Adult Oriented Business shall be located on the same parcel as another Adult Oriented Business, or within one thousand (1,000) feet of the property line of the parcel of land upon which any other Adult Oriented Business is located.

C.13.5 Any building or structure in which an Adult Oriented Business is located may have one exterior sign limited to text to identify the name and purpose of said business, and conforming to all sign regulations in Article VI.A.5 of this local law. In addition, no interior sign, display or advertising of any kind shall be visible from the exterior of such building.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VII

### ARTICLE VII: SPECIAL USE PERMITS

#### A. SPECIAL USE PERMITS

##### A.1. Purpose of Special Use Permits

It is the policy of the Town of Canajoharie to allow a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the rural character of the Town. Many of the uses listed in Article III.B, Schedule of Land Use Regulations are therefore permitted only upon issuance of a Special Use Permit, in order to ensure that these uses are appropriate to their surroundings.

A.2. No Certificate of Zoning Compliance or Building Permit shall be issued for any use for which a Special Use Permit is required by Article III of this law without prior issuance of a Special Use Permit by the Planning Board.

A.3. No Special Use Permit shall be issued without Site Plan review and approval by the Planning Board pursuant to Article IX.

A.4. No such Special Use Permit shall be granted by the Planning Board unless it finds that the use for which such permit is sought will not be injurious to or incompatible with the surrounding neighborhood or area, or otherwise detrimental to the public welfare. In order to grant a Special Use Permit the Planning Board shall reach a specific finding that:

A.4.1. The use for which the permit is sought will comply with the land use standards in Article VI, and will be consistent with the purposes and requirements of the land use district in which it is located, as specified in Article II.

A.4.2. Under the circumstances of the particular case and in the location for which the permit is sought, the use will not be injurious, undesirable, incompatible with the surrounding area, or unattractive in appearance.

A.4.3. The use for which the permit is sought is appropriately located with respect to transportation routes, water supply, waste disposal, fire and police protection, and related services.

A.4.4. The number of off-road parking spaces is adequate to serve the proposed use.

A.4.5. Neighborhood character and surrounding property values and land use are reasonably protected.

A.4.6. The use for which the permit is sought will not cause undue traffic congestion or create a traffic hazard.

A.4.7. The use for which the permit is requested will not result in density of development beyond the density limits defined by this local law.

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A.5. The following standards shall apply to all uses for which a Special Use Permit is required:

A.5.1. The location of all stored materials, equipment, equipment under repair, rubbish, dumpsters and related items shall be behind buildings unless screened from the public roads by fencing or landscaping.

A.6. In authorizing the issuance of a Special Use Permit it shall be the duty of the Planning Board to attach such conditions and safeguards to the Special Use Permit as it deems necessary, helpful, or appropriate to accomplish items A.4.1 to A.4.7 above, inclusive.

### B. PROCEDURE

Application for a Special Use Permit shall be made to the Planning Board. All Special Use Permits require Site Plan Review, therefore the procedure for a Special Use Permit shall be the same as that specified for Site Plan Review, Article IX, except that a public hearing is mandatory. Site Plan and Special Use Permit Review should be conducted jointly to save time, effort and repetition of information.

### C. APPLICATION, REVOCATION, AND ENFORCEMENT

C.1 A Special Use Permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Use Permit, and does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by a Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.

C.2 A Special Use Permit may be revoked by the Planning Board if the permittee violates any conditions of the Special Use Permit or engages in any construction or alteration not authorized by the Special Use Permit.

C.3 Any violations of the conditions of the Special Use Permit shall be deemed a violation of this Local Law, and shall be subject to enforcement action as provided in Article X:D Violations.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VIII

### ARTICLE VIII: PLANNED DEVELOPMENT DISTRICT

#### A. SCOPE AND PURPOSE

A Planned Development District (PDD) shall be treated as an amendment to this Zoning Law. The PDD is intended to accommodate large scale commercial, manufacturing or mixed uses that will be of benefit to the community but which could not have been anticipated, or the location of which could not have been anticipated, at the time of adoption of this Local Law. The PDD shall not be utilized for the development of solely residential uses.

#### B. PROCEDURE

##### B.1. Application for Planned Development District

The applicant for a Planned Development District shall submit the following materials to the Planning Board:

- B.1.1. All materials and information required for Site Plan Review pursuant to Article IX of this law.
- B.1.2. A written explanation of the character and purpose of the Planned Development including the type and density of any housing proposed, commercial or manufacturing uses proposed, open space to be provided, the water and sewage disposal system proposed, a general statement of proposed financing, and an indication of the expected timetable for development.

##### B.2. Review of Application

###### B.2.1. Review by Planning Board

The Planning Board shall utilize the procedure for Site Plan Review as described in Article IX of this Local Law until review of the Preliminary Site Plan has been completed, and the Preliminary Site Plan has been approved, approved with modifications, or disapproved.

###### B.2.2. Recommendation to Town Board

Within thirty (30) days of completion of Preliminary Site Plan review of the Planned Development District pursuant to Article IX of this law, the Planning Board shall recommend to the Town Board approval or disapproval of the PDD.

- B.2.2.1. Such recommendation shall be in the form of a proposed local law amending the Zoning Law and Zoning Map to create the PDD.
- B.2.2.2. Such proposed local law shall include recommended conditions, covenants and/or type and amount of performance guarantees which should be provided by the applicant as conditions of PDD approval.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VIII

B.2.2.3. One such recommended condition shall be, in all cases, Final Site Plan Review and approval by the Planning Board.

B.2.2.4. Said proposed local law shall have as its effective date that date on which the Planning Board issues a finding that all conditions specified in said local law as enacted have been satisfied.

### B.3. Approval by Town Board

Within forty five (45) days after receipt from the Planning Board of the proposed local law creating the PDD, the Town Board shall hold a public hearing on the proposal, subject to the notice requirements of Section 264 of the Town Law and Article XIV of this law. Within thirty (30) days of the completion of the public hearing, the Town Board shall approve or disapprove the proposed PDD.

B.3.1. Town Board approval of the PDD, if issued, shall constitute a fully enacted local law amending the Zoning Law and Zoning Map pursuant to the New York State Municipal Home Rule Law.

B.3.2. Upon enactment of the local law creating the PDD, the location of the PDD and the conditions attached to its enactment shall be noted on the Zoning Map, and said local law shall be filed with the Secretary of State pursuant to law.

B.3.3. The effective date of said local law shall be the date on which the Planning Board issues a finding that all conditions for the PDD included in the local law as enacted have been satisfied.

### B.4. Referral back to Planning Board

Upon enactment of the local law creating the PDD by the Town Board, said local law shall be referred back to the Planning Board for review as to compliance with the conditions included therein.

### B.5. Final Review by Planning Board

B.5.1. Upon receipt of the local law as enacted by the Town Board, the Planning Board shall utilize the procedures for Final Site Plan review pursuant to Article IX of this law.

B.5.2. For purposes of the time periods within which the applicant and the Planning Board must take actions during Final Site Plan submission and review, the date of Preliminary Site Plan Approval shall be considered to be the first regularly scheduled Planning Board meeting following enactment of the local law creating the PDD by the Town Board.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE VIII

### B.6. Planning Board Findings

- B.6.1. Planning Board review of the PDD after enactment shall be limited to determining whether all conditions included in the local law have been satisfied.
- B.6.2. Upon written Finding by the Planning Board that all conditions included in the local law creating the PDD have been fully satisfied and filing thereof with the Town Clerk, said local law shall become effective.

### C. DEVELOPMENT GUIDELINES

In reviewing proposals for Planned Development Districts, the Planning Board will be guided generally by the following standards:

- C.1. No PDD shall be approved which includes solely residential uses. Residential use shall only be permissible in a PDD when it is an integral portion of an overall PDD plan which also includes commercial or manufacturing use.
- C.2. The proposed PDD shall have minimum area as follows:
  - C.2.1. For a commercial PDD, the minimum area shall be three (3) acres.
  - C.2.2. For a manufacturing PDD, the minimum area shall be ten (10) acres.
  - C.2.3. For a mixed use PDD, the minimum area shall be ten (10) acres.
- C.3. The overall density of any residential areas within a mixed use PDD shall be no more than four (4) dwelling units per acre.
- C.4. At least 30 percent of the gross area of the district shall be devoted to open space and/or recreation areas.
- C.5. Proposed non-residential uses shall be appropriate in size and suitably located and shall not create any detrimental effects inside or outside the boundaries thereof.
- C.6. The proposed PDD shall conform to all requirements and standards of Article IX, Site Plan Review, of this law.
- C.7. Such other standards as are deemed appropriate by the Planning Board.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

### ARTICLE IX: SITE PLAN REVIEW

#### A. APPLICABILITY

- A.1. No Certificate of Zoning Compliance or Building Permit for any use subject to Site Plan Review shall be issued unless and until a Site Plan has been approved by the Planning Board in accordance with the standards and procedures of this Article.
- A.2. No Special Use Permit shall be issued by the Planning Board unless and until a Site Plan has been approved in accordance with the standards and procedures of this Article.
- A.3. The Planning Board shall not issue a recommendation for approval, with or without conditions or modifications, of any Planned Development District proposal to the Town Board unless and until the Preliminary Site Plan has been approved by the Planning Board in accordance with the standards and procedures of this Article.

#### B. PROCEDURES AND STANDARDS

##### B.1. Sketch Plan Conference

A Sketch Plan Conference shall be held between the Planning Board and applicant to review the basic site design concept, to determine the information required for inclusion on the Preliminary Site Plan, and to settle certain procedural questions relative to site plan submittal and review.

##### B.2. The following information shall be provided by the applicant for consideration at the Sketch Plan Conference:

- B.2.1. An area map showing the parcel subject to site plan review, and all properties, subdivisions, streets and easements within two hundred (200) feet of the boundaries thereof. Such area map shall be oriented to the nearest highway intersection.
- B.2.2. The general slope of the parcel under consideration and a notation giving the estimated percentage of slope on the parcel.
- B.2.3. A written statement and sketch plan describing the proposed development of the site, including any legal steps or mechanisms to remove land from future development in order to comply with the Density Standard of this law.
- B.2.4. Such additional information as needed for other reviews or submittals required under state, federal, or local laws and regulations.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

- B.3. The following shall be determined by the Planning Board at the Sketch Plan Conference:
- B.3.1. The general acceptability of the proposed Site Plan pursuant to the requirements of this law.
  - B.3.2. The information from the requirement check list to be included on or with the Preliminary Site Plan to constitute a complete submittal.
  - B.3.4. Whether an outside consultant is needed for review of the Preliminary and/or Final Site Plan:
    - B.3.4.1. The following factors shall be considered in determining the need for such services:
      - a) the complexity and scope of the proposed project;
      - b) unusual or unique conditions on the site and surrounding property;
      - c) whether the Preliminary and Final Site Plans are to be prepared by a landscape architect, architect, professional engineer, or surveyor licensed in the State of New York;
      - d) such other factors as the Planning Board considers relevant.
    - B.3.4.2. If the Planning Board determines that the services of an outside consultant are necessary for review of the Preliminary and/or Final Site Plan, the applicant shall be informed in writing of such determination and of the estimate of reimbursable costs for such services.
  - B.3.5. If requested by the applicant, whether the Sketch Plan as submitted is sufficient to meet the requirements for the Preliminary Site Plan and shall be accepted and/or approved as the Preliminary Site Plan application.
  - B.3.6. The classification of the proposed site plan/project for purposes of SEQR, and the necessary Environmental Assessment Form and supplemental environmental information to be submitted with the Preliminary Site Plan Application.
  - B.3.7. Other reviews, referrals, submittals or notifications required pursuant to federal, state or local laws or regulations.
- B.4. In order to provide for appropriate site visits by its members or consultants, to determine the necessity and/or cost of reimbursable consultant services, or to gather or receive additional information, the Planning Board may recess the Sketch Plan Conference. In such cases, the reconvening of said conference shall be considered a continuation of the same Sketch Plan Conference.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

### C. PRELIMINARY SITE PLAN

- C.1. Pursuant to Sections 7209 and 7307 of the NYS Education Law, the Preliminary Site Plan shall be stamped by an architect, landscape architect, professional engineer or land surveyor licensed in the State of New York unless:
- C.1.1. The proposed structure is a farm building to be used directly and solely for agricultural purposes; or
  - C.1.2. The proposed structure is a residential building of gross floor area of fifteen hundred (1500) square feet or less, not including garages, carports, porches, cellars, or uninhabitable basements or attics; or
  - C.1.3. The proposed project is an alteration to an existing structure, costing twenty thousand dollars (\$20,000) or less, which does not involve changes affecting the structural safety or public safety thereof.
- C.2. The Preliminary Site Plan shall include or be accompanied by such information from the following checklist as deemed necessary by the Planning Board at the Sketch Plan Conference.
- C.2.1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
  - C.2.2. North arrow, date and written and graphic scale;
  - C.2.3. Boundaries of the property plotted to scale;
  - C.2.4. Existing watercourses, flood prone areas as described by the Federal Emergency Management Administration mapping, and New York State regulated wetlands;
  - C.2.5. Description of existing vegetative cover and location of all existing trees over 8" in diameter;
  - C.2.6. Location of other significant natural or man-made features of historical, cultural or environmental importance or interest which exist on the site;
  - C.2.7. Location of existing uses and outlines of structures, drawn to scale, on the site and within one hundred (100) feet of the lot line;
  - C.2.8. Location and description of other existing development on the site, including fences, landscaping and screening;
  - C.2.9. Grading and drainage plan, showing existing and proposed contours at an appropriate interval to be specified by the Planning Board and referenced to USGS datum elevations;

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

- C.2.10. Location, proposed use and height of all structures;
- C.2.11. Location, size, and planned improvements, if any, of portions of the site to be devoted to open space or recreation areas;
- C.2.12. Location, design and construction materials of all parking and truck loading areas, with access and egress drives thereto;
- C.2.13. Provisions for pedestrian access and sidewalks;
- C.2.14. Location of outdoor storage, if any;
- C.2.15. Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences;
- C.2.16. Description of the location of all existing and proposed methods of sewage disposal;
- C.2.17. Description of the location of all existing and proposed methods of securing water;
- C.2.18. Location of fire and other emergency zones and services, including the location of fire hydrants and other sources of water for fire purposes;
- C.2.19. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- C.2.20. Location, size, design and construction materials of all proposed signage;
- C.2.21. Landscape planting plan showing planting areas and specifying plant types;
- C.2.22. Location, design and specification and proposed hours of outdoor lighting, if any;
- C.2.23. Illustrations or sketches of proposed street furniture, if any;
- C.2.24. Proposed financing and/or financial plan, schedule for development, tenure of buildings or structures after construction, and necessary political or legal steps necessary to complete the project including the proposed legal documents or agreements necessary to remove land from future development in order to comply with the Density Standard of this law.
- C.2.25. Other information as deemed necessary by the Planning Board.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

### D. PLANNING BOARD REVIEW OF PRELIMINARY SITE PLAN

The Planning Board shall review the Preliminary Site Plan and determine whether the applicant has met the following criteria for approval. Where necessary, the Planning Board shall require such modifications of the Site Plan as are determined necessary to meet the criteria for approval.

- D.1. Adequacy of layout and design of vehicular and pedestrian access and circulation including intersections, road widths, pavement surfaces, traffic controls, walkway structures, and overall pedestrian convenience.
- D.2. Adequacy of layout and design of off-street parking, loading, lighting, signage, and general relationship with proposed and existing structures.
- D.3. Adequacy of stormwater and drainage facilities, water supply, and sewage disposal facilities.
- D.4. Adequacy of type and use of trees, shrubbery and other landscape elements for aesthetic, screening or buffering purposes and the relationship with existing trees and vegetation, which shall be incorporated to the maximum possible extent.
- D.5. Adequacy of provision of open space and recreational areas, when appropriate.
- D.6. Adequacy of protection of adjacent properties from noise, glare, unsightliness or other objectionable features.
- D.7. Adequacy of provisions for emergency vehicular zones and fire fighting access.
- D.8. Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding, slippage, and/or erosion.
- D.9. For new construction, the layout and location of underground cables, such as electric, telephone, cable T.V., etc.
- D.10. Adequacy and appropriateness of legal mechanisms proposed to remove land from future development in order to comply with the Density Standard of this law.

### E. SEQRA COMPLIANCE

Upon receipt of application materials it deems to be complete, the Planning Board shall initiate the New York State Environmental Quality Review process. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this Local Law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to NYCRR Section 617.8(b)(1) or the issuance of a negative declaration.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

### F. CONSULTANT REVIEW

The Planning Board may consult with the Code Enforcement and Zoning Officer, Fire Chief, the Superintendent of Highways, the Town Attorney, the Town Board, other Local and County Officials and/or the Board's designated private consultants, in addition to representatives of federal and state agencies, including, but not limited to the Soil Conservation Service, NYS Department of Transportation, NYS Department of Environmental Conservation and NYS Office of Parks, Recreation, and Historic Preservation to assist in the review of the Preliminary Site Plan. If a consultant is retained by the board, the applicant shall agree to pay his/her fees, as specified in Article IX.K Reimbursable Costs.

### G. PUBLIC HEARING

The Planning Board, if it deems appropriate, may conduct a public hearing on the Preliminary Site Plan. Such public hearing shall be conducted within thirty (30) days of the receipt of the complete Preliminary Site Plan and application for its approval and shall be advertised in the official newspaper of the Town at least five (5) days before the public hearing.

- G.1. Time of submission shall be the date on which the Preliminary Site Plan, all supplemental materials required by the Planning Board, the final determination and finding pursuant to SEQR, the payment due on the estimated amount of reimbursable costs and all applicable fees are received by the Planning Board.
- G.2. In those cases where the Planning Board is required to refer the application for Site Plan approval to any outside planning agency for review pursuant to New York State Law, the time within which the Planning Board must take action(s) shall not begin until receipt by the Planning Board of the recommendation of said outside agency or the expiration of the allotted time for such review.

### H. PLANNING BOARD ACTION ON THE PRELIMINARY SITE PLAN

- H.1. Within sixty (60) days of said public hearing, if held, or from the date of receipt of the complete Preliminary Site Plan and application for approval, the Planning Board shall approve, approve with modifications, or disapprove the Preliminary Site Plan.
- H.2. If no action is taken on the Preliminary Site Plan within the prescribed time period, the completed Preliminary Site Plan shall be considered approved as submitted.
- H.3. If the Preliminary Site Plan is disapproved, the Planning Board shall state in writing and for the public record the reasons for such denial. In such case, the Planning Board may recommend further study of the Site Plan and resubmission to the Planning Board after revision or redesign.
- H.4. If the Preliminary Site Plan is approved with modifications, the inclusions of all such modifications in the Final Site Plan shall be considered a condition of approval, and no Final Site Plan shall be considered for approval without inclusion of such modifications.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

### I. FINAL SITE PLAN

After approval of the Preliminary Site Plan by the Planning Board, the applicant shall submit a Final Site Plan subject to the following requirements:

- I.1. The Final Site Plan shall be submitted no more than six (6) months after approval of the Preliminary Site Plan. If the prescribed time period has elapsed or conditions have changed substantially in the interim, the Planning Board may, at its sole discretion, require resubmission of the Preliminary Site Plan for further review and revision prior to accepting the Final Site Plan for review.
- I.2. The Final Site Plan shall conform substantially to the Preliminary Site Plan as approved, and shall incorporate all modifications that may have been required by the Planning Board as conditions of approval. All such required modifications shall be clearly indicated on the Final Site Plan.
- I.3. The following information, in addition to that included in or as conditions of approval of the Preliminary Site Plan, shall be included in the complete Final Site Plan submitted for approval:
  - a. Record of application for and approval status of all necessary permits from State and County Officials;
  - b. Detailed sizing and final material specifications of all required improvements;
  - c. An estimated project construction schedule.
- I.4. If the Preliminary Site Plan is approved as submitted and without modifications required and if it includes all additional information required for a complete Final Site Plan, the Planning Board may, at its sole discretion, accept the approved Preliminary Site Plan as the Final Site Plan for their review.

### J. REFERRAL TO COUNTY PLANNING BOARD

- J.1. Pursuant to General Municipal Law, Article 12B, Sections 239-m and 239-n, upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Montgomery County Planning Board any application for a Site Plan review affecting real property within 500 feet of any municipal boundary, the boundary of any existing or proposed county or state park or any other recreation area, the right-of-way of any existing or proposed county or state roadway, the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines, the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, or the boundary of a farm operation located in an Agricultural District as defined in Article 25AA of Agriculture and Markets Law.
- J.2. No action shall be taken on Site Plans referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Board's review.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE IX

- J.3. A majority-plus-one vote of the Planning Board shall be required approve any Site Plan which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

### K. PLANNING BOARD ACTION ON FINAL SITE PLAN

- K.1. Within sixty (60) days of receipt of the complete Final Site Plan and application for approval, the Planning Board shall approve or disapprove the Final Site Plan.
- K.2. The prescribed time period for Planning Board action may be extended with the mutual agreement of the Planning Board and applicant or if other reviews, referrals, submittals, or notifications required under federal, state, or local laws or regulations have not been completed.
- K.3. If no decision is made within the prescribed time period or extensions thereto, the Final Site Plan shall be considered approved as submitted.
- K.4. If the Final Site Plan is disapproved, the Planning Board shall present the reasons for disapproval in writing to the applicant and for the public record.
- K.5. Upon Planning Board approval of the Final Site Plan and payment by the applicant to the Town of all fees and reimbursable costs, the Planning Board shall forward one copy of the Final Site Plan with its approval to the Zoning Board of Appeals, Code Enforcement and Zoning Officer, and/or the Town Board, as appropriate.

### L. REIMBURSABLE COSTS

- L.1. Costs or fees incurred by the Planning Board for necessary consultant services or other extraordinary expenses in connection with the review of any application for a Special Permit, Site Plan approval, or State Environmental Quality Review, shall be paid by the applicant. Such costs may include staff costs or consultant fees covering planning, engineering, environmental analysis, legal review, and other technical services required for a proper and thorough professional review of the application.
- L.2. An estimate of these fees shall be provided to the applicant at the beginning of the project. Such reimbursable costs shall be in addition to any application fee schedule established by the Planning Board.
- L.3. The Planning Board may require that the applicant pay the estimated fees in advance into an escrow fund established to cover the reasonable costs of reviewing such application.
- L.4. The project applicant must pay all bills for reimbursable costs and estimated fees within 30 days of receipt. The Planning Board will not proceed with the review process if the applicant fails to pay outstanding bills within this deadline.
- L.5. No Certificate of Zoning Compliance or Building Permit shall be issued for any proposed construction for which fees or reimbursable costs are lawfully due to the Town and unpaid.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

### ARTICLE X: ADMINISTRATION AND ENFORCEMENT

#### A. CODE ENFORCEMENT AND ZONING OFFICER

The position of Code Enforcement and Zoning Officer is hereby created. The Town Supervisor shall appoint the Code Enforcement and Zoning Officer, subject to approval of the Town Board, to administer and enforce the provisions of this Local Law.

The Code Enforcement and Zoning Officer shall have the following powers and duties:

##### A.1. Rules, Regulations, Forms and Fee Schedules

The Code Enforcement and Zoning Officer, subject to the approval of the Town Board, shall have the authority to make and adopt such rules, regulations, forms and fee schedules as deemed necessary for the proper enforcement and administration of this Local Law and to secure its stated purposes and intent. Such rules, regulations, forms and fee schedules shall not be in conflict with the provisions of this Local Law or any other Local Law of the Town of Canajoharie nor shall they have the effect of waiving any provisions of this Local Law or any other Local Law. Such rules, regulations, forms and fee schedules shall be submitted to the Town Board by the Code Enforcement and Zoning Officer, which shall move to approve, reject, or modify such rules, regulations, forms, and fee schedules within thirty (30) days after submission. Failure to act within the prescribed time period shall be construed to constitute approval. The rules, regulations, forms and fee schedules as submitted to and approved by the Town Board shall be on file and available to the public.

##### A.2. Issuance of Permits

The Code Enforcement and Zoning Officer shall issue the following certificates and permits upon fulfillment of the requirements of this local law and of applicable federal, state or other local laws:

A.2.1. Certificates of Zoning Compliance, pursuant to this Article;

A.2.2. Building Permits, pursuant to this Article;

A.2.3. Certificates of Occupancy, pursuant to this Article;

A.2.4. Such other permits as may be established by amendment to this local law.

##### A.3. Inspections

The Code Enforcement and Zoning Officer or his duly authorized representative shall have the right to enter any building or enter upon any land at any reasonable hour as necessary in the execution of his duties, provided that:

A.3.1. The Code Enforcement and Zoning Officer shall notify, or attempt to notify, the owner and/or tenant before conducting any inspection;

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

A.3.2. The Code Enforcement and Zoning Officer or his duly authorized representative shall display identification signed by the Town Clerk upon commencing an inspection;

A.3.3. Inspections shall be conducted in the presence of the owner or his representative or tenant, unless it is deemed to be an emergency by the Code Enforcement and Zoning Officer, or the owner or his representative cannot or will not meet with the Code Enforcement and Zoning Officer.

Nothing in this section is meant to supersede any constitutional consideration.

### A.4. Records

The Code Enforcement and Zoning Officer shall maintain files, open and available to the public at the Town Office Building, of all applications for Certificates of Zoning Compliance, Building Permits, Certificates of Occupancy and other permits, along with any and all plans submitted, as well as final certificates and permits. The Code Enforcement and Zoning Officer shall also maintain records of every complaint of a violation of the provisions of this Local Law and action taken as a result of such complaints.

### A.5. Reports

The Code Enforcement and Zoning Officer shall submit to the Town Board at least quarterly, for insertion into the Board minutes, a written report summarizing all permits or certificates which have been issued, all permits and certificates which have been denied, and the number of violations recorded by him.

## B. PERMITS AND CERTIFICATES

### B.1. Certificate of Zoning Compliance

Each Certificate of Zoning Compliance issued shall state that the proposed structure and land use comply with all provisions of this local law.

B.1.1. In all Districts, a Certificate of Compliance is required whenever:

B.1.1.1. Any structure coming under the provisions of this local law is erected, reconstructed, structurally altered, moved, or demolished, except that an accessory structure may be demolished without permit;

B.1.1.2. Any change in use occurs in an existing building;

B.1.1.3. Any change in use occurs in a non-conforming building;

B.1.1.4. Any vacant land is changed in use or a use is established.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

- B.1.2. Nothing in this provision shall be interpreted to supersede the requirements of any local law enacted by the Town Board to administer the NYS Uniform Fire Prevention and Building Code.
- B.1.3. All applications for a Certificate of Zoning Compliance shall be accompanied by:
- B.1.3.1. Such sketch plans and supporting documentation as the Code Enforcement and Zoning Officer may require to determine compliance with this local law; and
  - B.1.3.2. Payment of the fee required for such certificate by the fee schedule established or to be established pursuant to Section A.1. of this Article.
- B.1.4. No less than (7) nor more than thirty (30) days after receipt of the complete application, the Code Enforcement and Zoning Officer shall either issue or deny the Certificate of Zoning Compliance. If the Certificate of Compliance is denied, the Code Enforcement and Zoning Officer shall notify the applicant in writing of the reasons for denial.
- B.1.5. If both a Certificate of Zoning Compliance and a Building Permit are required, application for each may be made simultaneously.

### B.2. Building Permit

- B.2.1. In all Districts, a Building Permit issued by the Code Enforcement and Zoning Officer or his duly authorized representative shall be required to erect, reconstruct, restore, structurally alter or demolish any structure, to add additional residential or commercial units or area, or to commence site work or excavation in preparation therefore, except that an accessory structure may be demolished without permit. Normal maintenance of any structure shall not require a Building Permit.
- B.2.2. No Building Permit shall be issued unless:
- B.2.2.1. The proposed construction, restoration, alteration, demolition, or addition conforms fully with all provisions of this local law or has received a variance from the Board of Appeals; and
  - B.2.2.2. A Certificate of Zoning Compliance has been issued pursuant to this local law; and
  - B.2.2.3. The proposed construction, restoration, alteration, demolition, or addition conforms with the requirements of the NYS Building Code, and other applicable federal, state and local laws and regulations.
- B.2.3. Every application for a Building Permit shall contain all information as required, and must be accompanied by:

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

- B.2.3.1. A plot plan showing the exact measurement from the street and lot lines to the foundation or structure;
  - B.2.3.2. Complete plans for the proposed construction, restoration, alteration, demolition, or addition.
  - B.2.3.3. Payment of the fee required for such permit by the fee schedule established or to be established pursuant to Section A.1. of this Article.
- B.2.4. The Building Permit application and all supporting documentation shall be submitted in such a number of copies as may be required by the Code Enforcement and Zoning Officer by general rule. Upon issuance of a Building Permit, the Code Enforcement and Zoning Officer shall return one copy of all filed documents to the applicant.
- B.2.5. No less than seven (7) nor more than thirty (30) day after receipt of the completed application, the Code Enforcement and Zoning Officer or his duly authorized representative shall issue or deny the Building Permit. If the permit is denied, the Code Enforcement and Zoning Officer shall notify the applicant in writing of the reasons for its denial.
- B.2.6. If both a Certificate of Zoning Compliance and a Building Permit are required, application and publication may be made simultaneously.
- B.3. Conditions for Issuance of Permits:
- B.3.1. No Building Permit or Certificate of Zoning Compliance shall be issued for the construction or alteration of any building upon a lot without access to a street or highway, except in the A-Agriculture/Rural Residential District subject to the conditions of Article III, Section A.2 of this law.
  - B.3.2. A Building Permit or Certificate of Zoning Compliance for any structure subject to Site Plan Review shall be issued only in strict conformity with the plans approved by the Planning Board.
  - B.3.3. A Building Permit or Certificate of Zoning Compliance issued for any structure permitted subject to a variance granted by the Board of Appeals shall be issued only in strict accordance with all conditions prescribed by the Board of Appeals.
- B.4. The Building Permit shall be posted conspicuously and continuously on the work site until the construction project is substantially complete.
- B.5. Every Building Permit shall expire if the work authorized has not commenced within six (6) months after the date of issuance, or has not been completed within eighteen (18) months from such date for construction costing less than one million dollars (\$1,000,000) and has not been completed within twenty four (24) months from such date for construction costing in excess of such amount.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

B.6. If no amendments to the Zoning Law or to other codes or regulations affecting the property have been enacted in the interim, the Code Enforcement and Zoning Officer may authorize in writing the extension of either of the above periods for an additional six (6) months, following which no further work is to be undertaken without a new building permit application and issuance.

### B.7. Certificate of Occupancy

In all districts, no building or structure for which a Building Permit has been issued, shall be occupied or used unless the Code Enforcement and Zoning Officer issues a Certificate of Occupancy. The Certificate of Occupancy shall state that the building or structure fully complies with the requirements of the NYS Building Code, this local law, the terms of any variance or site plan approval granted in accordance with this local law, and other applicable federal, state or local laws.

## C. REQUIRED INSPECTIONS

During the course of construction of any project subject to a Building Permit under this local law, the Code Enforcement and Zoning Officer or his authorized representative shall make on-site inspections of work in progress at least as follows:

- C.1. As soon as the foundation of a building or of any addition to an existing building is staked or marked, and before the foundation is laid, inspection sufficient to ascertain that said structure complies with the area and Bulk Regulations of Article IV of this law or any variance issued by the Board of Appeals.
- C.2. At such times during the course of construction as will permit the observation of the foundation, structural elements, electrical systems, plumbing systems, heating, ventilation and air conditioning systems, fire protection and detector systems, and exit features;
- C.3. At such other times and for such other purposes as required to comply with the NYS Building Code and its implementing regulations and other applicable federal, state or local laws and regulations.
- C.4. Upon substantial completion of the entire project and prior to issuance of a Certificate of Occupancy.

## D. VIOLATIONS

### D.1. Complaints

Any person may file a complaint with the Code Enforcement and Zoning Officer regarding a violation of this local law.

D.1.1. All such complaints shall be in writing.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

D.1.2. All such complaints shall be investigated by the Code Enforcement and Zoning Officer and a written report prepared thereon within ten (10) days.

D.1.3. One copy of such report shall be forwarded to the Board of Appeals and one copy shall be maintained in the files of the Code Enforcement and Zoning Officer and shall be available for public inspection.

### D.2. Notice of Violation

Where a violation of this local law is determined to exist, the Code Enforcement and Zoning Officer shall serve a Notice of Violation in person or by certified mail, return receipt requested, on the owner, agent or contractor of the building or lot where such violation has been committed or shall exist, and on the lessee or tenant of the part of or of the entire building, structure or lot where such violation has been committed or shall exist; and on the agent, architect, contractor or any other such person who takes part or assists in such violation or who maintains any building, structure, or lot in which any such violation shall exist.

D.2.1. Such Notice of Violation shall include the following:

D.2.1.1. The specific violation;

D.2.1.2. The time period during which such violation must be corrected;

D.2.1.3. If, in the judgment of the Code Enforcement and Zoning Officer, circumstances require it, a Stop Work Order.

D.2.2. Such Notice of Violation shall require the removal of the violation within no less than seven (7) days nor more than thirty (30) days after service of the notice.

D.2.3. In cases where the removal of the violation within thirty (30) days would be manifestly impossible, the Code Enforcement and Zoning Officer shall apply to the Board of Appeals for determination of a reasonable period of time within which such violation shall be removed.

D.2.4. If those persons notified shall fail to remove such violation within the allotted time period, the Code Enforcement and Zoning Officer shall charge them with violation of this law before the appropriate court of law.

### D.3. Stop Work Order:

D.3.1. If, in the judgment of the Code Enforcement and Zoning Officer, work in progress is in violation or will result in violation of the NYS Building Code, this local law, or terms or conditions of any permit, variance, or site plan approval issued pursuant to this local law, and continuation of such work in progress will or may result in increased violation, irreparable harm, or structures or conditions impossible or unlikely to be removed or corrected, the Code Enforcement and Zoning Officer

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

shall serve a Stop Work Order on the owner, agent, architect, contractor, and/or any other person involved or assisting in such work in progress and shall post a copy of said Stop Work Order in a conspicuous place on the subject work site.

- D.3.2. Upon service or posting of such Stop Work Order, all further work on the subject work site shall cease, except such as is necessary to secure the site and materials, until the violation causing such order has been corrected or removed and the Code Enforcement and Zoning Officer has served notice in writing that the Stop Work Order has been lifted.
- D.3.3. No person shall remove a Stop Work Order posted on a work site unless and until the Code Enforcement and Zoning Officer has served notice in writing that such Stop Work Order has been lifted.
- D.3.4. Continuation or resumption of work on a work site subject to a Stop Work Order lawfully served and/or posted by the Code Enforcement and Zoning Officer shall constitute a separate violation of this local law and shall be subject to all penalties described in this Article.
- D.3.5. In the case of an Appeal for Interpretation to the Zoning Board of Appeals intended to resolve questions of alleged violations giving rise to a Stop Work Order, the Zoning Board of Appeals may hear the appeal within seventy-two (72) hours of application for said appeal, and shall render a decision within forty-eight (48) hours of the completion of said hearing.

### D.4. Appearance Ticket

The Code Enforcement and Zoning Officer shall, where appropriate, issue an appearance ticket as provided by the Penal Law of the State of New York.

### D.5. Fines

Persons found guilty of violation of this local law shall be subject to fine not to exceed three hundred fifty dollars (\$350) for the first violation. Subsequent violations within a period of five years shall be subject to fine or imprisonment or both pursuant to Section 268 of the Town Law. Each and every week such violation continues after the allotted period of time for its removal shall be deemed a separate and distinct violation.

### D.6. Other Remedies:

In addition to other remedies provided by law, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, demolition, moving, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or lot, or to prevent an illegal act, conduct, business or use in or about such premises.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

### ARTICLE XI: BOARD OF APPEALS

#### A. CREATION, APPOINTMENT AND ORGANIZATION

##### A.1. Creation

Pursuant to Section 267 of the Town Law, the Town Board shall appoint a five (5) member Board of Appeals to interpret and judge the application of provisions of this local law and to grant or deny variance requests.

##### A.2. Term of Office

A.2.1. Pursuant to Section 267 of the Town Law, the term of each member of the Zoning Board of Appeals shall be five (5) years, expiring at the end of the official year.

A.2.2. Vacancies shall be filled by appointment by the Town Board for the unexpired term.

A.2.3. The Town Board shall designate the Chairperson of the Board of Appeals.

##### A.3. Organization

###### A.3.1. General Operations

A.3.1.1. Subject to Town Board approval, the Board of Appeals shall make, promulgate and adopt written rules, procedures, and forms necessary for the proper execution of its duties and for securing the intent of this local law.

A.3.1.2. The Board of Appeals may employ the clerical or other staff necessary for the proper function of the Board.

A.3.1.3. The Town Board shall provide operating expenses for the Board of Appeals. Board of Appeals expenditures shall not exceed the amount of appropriations.

###### A.3.2. Meetings

A.3.2.1. The Board of Appeals shall hold meetings at the call of the Chairperson or at other times the Board may determine.

A.3.2.2. All meetings shall be subject to the open meetings law.

A.3.2.3. The Chairperson or acting Chairperson in the absence of the Chairperson, has the power to administer oaths and compel the attendance of witnesses



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE X

shall serve a Stop Work Order on the owner, agent, architect, contractor, and/or any other person involved or assisting in such work in progress and shall post a copy of said Stop Work Order in a conspicuous place on the subject work site.

D.3.2. Upon service or posting of such Stop Work Order, all further work on the subject work site shall cease, except such as is necessary to secure the site and materials, until the violation causing such order has been corrected or removed and the Code Enforcement and Zoning Officer has served notice in writing that the Stop Work Order has been lifted.

D.3.3. No person shall remove a Stop Work Order posted on a work site unless and until the Code Enforcement and Zoning Officer has served notice in writing that such Stop Work Order has been lifted.

D.3.4. Continuation or resumption of work on a work site subject to a Stop Work Order lawfully served and/or posted by the Code Enforcement and Zoning Officer shall constitute a separate violation of this local law and shall be subject to all penalties described in this Article.

D.3.5. In the case of an Appeal for Interpretation to the Zoning Board of Appeals intended to resolve questions of alleged violations giving rise to a Stop Work Order, the Zoning Board of Appeals may hear the appeal within seventy-two (72) hours of application for said appeal, and shall render a decision within forty-eight (48) hours of the completion of said hearing.

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### D.6. Other Remedies:

In addition to other remedies provided by law, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, demolition, moving, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or lot, or to prevent an illegal act, conduct, business or use in or about such premises.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

### A.3.3. Minutes

- A.3.3.1. The Board of Appeals shall keep proper minutes of its meetings and records of its examinations and other official actions.
- A.3.3.2. The minutes shall show how each member voted on every question. The minutes shall also indicate if a member is absent or fails to vote.
- A.3.3.3. The Board of Appeals shall file a record of all determinations with the Town Clerk for the public record.

## B. POWERS AND DUTIES

The Board of Appeals shall have all the powers and duties prescribed by law and more particularly specified by this local law. None of the following provisions shall be deemed to limit any power of the Board that is conferred by law.

### B.1. Appeal for Interpretation

Upon appeal from a decision, order, requirement or determination made by the Code Enforcement and Zoning Officer, the Board of Appeals shall have the power to decide any of the following questions:

- B.1.1. 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.
- B.1.2. The exact location of any district boundary shown on the Zoning Map.
- B.1.3. The appropriate category of use to be applied to any use or proposed use not specifically identified and/or defined in this law.

### B.2. Appeal for Variance

Upon appeal from a decision of the Code Enforcement and Zoning Officer, the Board of Appeals shall have the power to vary or modify the application of any of the regulations or provisions of this local law relating to the use, construction or alteration of structures, or the use of land, so that the spirit of the local law shall be observed, public safety and welfare secured, and substantial justice done. Variances shall be granted only under the following circumstances:

#### B.2.1. For Area Variances

The appellant shall demonstrate the presence of exceptional physical conditions whereby strict application of the requirements of Article IV, Area and Bulk Regulations, would result in practical difficulties.

- B.2.1.1. Conditions which may demonstrate practical difficulties include an exceptionally irregular, narrow, shallow, or steep lot.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

B.2.2.2. Such conditions shall be peculiar to the land or structure for which the Area Variance is requested.

B.2.2.3. Such conditions shall not have resulted from any act of the applicant.

### B.2.2. For Use Variances

The applicant shall conclusively demonstrate that strict application of requirements of Article III, Use Regulations or Article VI, Supplementary Regulations would impose unnecessary hardship in such a way as to deprive the owner of any and all use of the land or structure for which the Use Variance is requested.

Demonstration of unnecessary hardship must include all of the following elements established on the public record before the Board of Appeals:

B.2.2.1. That the applicant is deprived of all economic use or benefit from the property or structure if used only for a purpose allowed in that zoning district without variance, which deprivation must be established by competent financial evidence;

B.2.2.2. That the use to be authorized by the variance will not alter the essential character of the locality;

B.2.2.3. That the alleged hardship relating to the property is due to unique circumstances and not to general conditions in the neighborhood; and

B.2.2.4. That the conditions creating the unnecessary hardship shall not have resulted from any act of the appellant or owner nor shall the owner have acquired the land or structure with actual or constructive knowledge that the desired use was not permitted without variance.

### B.2.3. For All Variances

In granting any variance the Board of Appeals shall be governed by the following considerations:

B.2.3.1. No variance shall be granted if the Board determines that the harm caused by such a variance is greater than the benefit to the community.

B.2.3.2. No variance shall be granted solely for reasons of additional financial gain to the owner of the land or building involved. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded, or in disrepair, or the fact that the property is then unimproved, shall not be deemed to make the plight of the property unique or to contribute thereto.

B.2.3.3. The variance, as granted by the Board of Appeals, shall be the minimum variance that will accomplish the purpose applied for.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

- B.2.3.4. The variance, as granted by the Board of Appeals, shall not substantially alter the essential character of the locality, or constitute a grant of special privilege which is inconsistent with the limitations on other properties in the district.
- B.2.3.5. The Board of Appeals shall attach such conditions and safeguards to any variance granted as may be required in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this local law.
- B.2.3.6. The Board of Appeals shall prescribe any and all additional conditions that it deems to be necessary or desirable.
- B.2.3.7. Where the Board of Appeals finds the zoning classification of a particular property to constitute deprivation of the reasonable use of the land or buildings and finds the same condition applies generally to other land or buildings in the same neighborhood or zoning district, the Board shall immediately call this condition to the attention of the Town Board.
- B.2.3.8. Unless a complete application for a Certificate of Zoning Compliance and Building Permit has been submitted within ninety (90) days of the date of the granting of a variance, such variance shall become null and void.

### B.3. Procedure

The powers and duties of the Board of Appeals shall be exercised in accordance with Section 267 of the Town Law, the procedures specified by this local law, and their own By-Laws.

- B.3.1. All appeals and applications made to the Board of Appeals shall be in writing in a form prescribed by the Board of Appeals and shall be accompanied by a fee as set forth in the fee schedule established by resolution of the Town Board on recommendation of the Board of Appeals, payable to the Town Clerk, for not less than the actual and necessary costs of advertising and holding a public hearing. The Board of Appeals may, in its discretion, recommend to the Town Board a refund to the applicant for part or all of the fee paid in the event that an appeal under Section B (1), Appeal for Interpretation, is partially or wholly successful. The fee filed in connection with application under, Section B(2), Appeal for Variance, shall not be returnable regardless of the disposition of the case by the Board.
- B.3.2. The Board of Appeals shall not decide upon any appeal for variance or interpretation of this local law without first holding a public hearing, notice of which shall include the property location for which the variance or interpretation is requested and the nature of the request for variance or interpretation and shall be given by publication in the official newspaper of the date, time and place of the

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

hearing. In addition to the published notice, the Board of Appeals shall notify by mail at least five (5) days before the hearing all owners of property which lie within two hundred (200) feet of the property for which relief is sought and to such other owners as the Board of Appeals may deem advisable.

B.3.3. The Board of Appeals shall schedule a hearing on each appeal for variance or interpretation within forty-five (45) days from receipt of the appeal. The Board of Appeals shall render its decision on each appeal within sixty-two (62) days following the public hearing.

B.3.4. Fifteen (15) days prior to the date of any public hearing, the Secretary of the Board of Appeals shall transmit to the Secretary of the Planning Board a copy of any appeal or application, together with a notice of the hearing.

B.3.5. Expedited Review

Only in the case of an Appeal for Interpretation intended to resolve questions giving rise to a Stop Work Order, the Board of Appeals shall expedite review as follows:

B.3.5.1. The Board of Appeals may, at its discretion, hear the appeal without formal public hearing or published notice and without notifying property owners within 200 feet, but shall give notice to the extent practical.

B.3.5.2. The Board of Appeals shall hear the appeal within seventy-two (72) hours of receipt of the application for appeal by its chairperson.

B.3.5.3. The Board of Appeals shall render a decision within forty-eight (48) hours of the completion of the appeal hearing.

B.3.5.4. Under no circumstances can a variance of any kind be granted under expedited review procedures.

B.4. Referral to Montgomery County Planning Department: In accordance with Section 239 (1) and (m) of Article 12 B of the General Municipal Law, unless modified by written agreement between the Town Board and the Montgomery County Planning Department, the Board of Appeals shall refer any Appeal for Variance to the Montgomery County Planning Board when the action affects property located within 500 feet of:

- Municipal boundary,
- Boundary of any existing or proposed county or state park or any other recreation area,
- Right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway,

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XI

- Existing or proposed right-of-way of any stream or drainage channel owned by the county, or for which the county has established channel lines,
- Existing or proposed boundary of any county or state-owned land on which a public building or institution is situated, or
- (If a Use Variance) the boundary of a farm operation located in an agricultural district, as defined by Article 25AA of Agriculture and Markets Law.

Such referral shall be made at least fifteen (15) days prior to the date of the public hearing.

If within thirty (30) days the Montgomery County Planning Department recommends modification or disapproval, the Board of Appeals may act contrary to the recommendation only by a vote of a majority plus one of the entire Board and by adopting a resolution fully setting forth reasons for such contrary action.

In addition, the Board of Appeals shall send notification of any pending Appeal for Variance for any property located within 500 feet of a municipal boundary to the Clerk of that municipality not later than ten (10) days prior to the date of the public hearing.

- B.5. Relief from decisions of the Board of Appeals - An appellant aggrieved by any decision of the Board of Appeals may apply to the New York State Supreme Court for relief under Article 78 of the Civil Practice Law and Rules of New York State, pursuant to Section 267 of the Town Law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XII

### ARTICLE XII: PLANNING BOARD

#### A. CREATION, APPOINTMENT AND ORGANIZATION

##### A.1. Creation

Pursuant to Section 271 of the Town Law, the Town Board shall appoint a seven (7) member Planning Board, which shall be responsible for continuing long-range planning activities and for such duties as are specified in this local law.

##### A.2. Term of Office

Pursuant to Section 271, the term of each member of the Planning Board shall be seven (7) years, expiring at the end of the official year.

Vacancies shall be filled by appointment by the Town Board for the unexpired term.

The Town Board shall designate the Chairperson of the Planning Board, or upon failure to do so, the Planning Board may select a Chairperson from its membership.

##### A.3. Organization

###### A.3.1. General Operations

A.3.1.1. The Planning Board may adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under Article 16 of the Town Law, under the Subdivision Law or Zoning Law of the Town of Canajoharie or any other statute, subject to approval by resolution of the Town Board when so provided by the Town Law.

A.3.1.2. The Planning Board may employ the clerical or other staff necessary for proper function of the Board.

A.3.1.3. The Town Board shall provide operating expenses for the Planning Board. Planning board expenditures shall not exceed the amount of the appropriations.

###### A.3.2. Meetings

A.3.2.1. The Planning Board shall hold meetings at the call of the Chairperson or at other times the Board may determine.

A.3.2.2. All meetings shall be subject to the Open Meetings Law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XII

### A.3.3. Minutes and Records

- A.3.3.1. The Planning board shall keep proper minutes of its meetings and records of its examination, official actions, advisory reports, and general studies.
- A.3.3.2. The minutes shall show how each member voted on every question. The minutes shall also indicate if a member is absent or fails to vote.
- A.3.3.3. The Planning Board shall file a record of all determinations with the Town Clerk for the public record.

### B. Powers and Duties

The Planning Board shall have all the powers and duties prescribed by law and more particularly specified by this local law. None of the following provisions shall be deemed to limit any power of the Board that is conferred by law:

#### B.1. Master Plan

The Planning Board may prepare and change a comprehensive master plan for the Town pursuant to Section 272-a of the Town Law. The master plan and all modifications shall be on file in the office of the Planning Board, and the Planning Board shall file certified copies in the offices of the Town Clerk and the Code Enforcement and Zoning Officer.

#### B.2. Investigations

The Planning Board shall have the full power and authority to make investigations, maps and reports, and all resulting recommendations of all matters relating to the planning and development of the Town, pursuant to Section 275 of the Town Law.

#### B.3. Site Plan Review

The Planning Board shall be responsible for the proper implementation of Article IX, Site Plan Review, of this local law.

#### B.4. Special Use Permits

The Planning Board shall be responsible for the proper implementation of Article VII, Special Use Permits, of this local law.

#### B.5. Subdivision Approval

The Planning Board shall be responsible for the review and approval of subdivision plats in accordance with the Town Subdivision Law and this local law.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XII

### B.5. Report on Specific Referrals from the Board of Appeals and the Town Board.

The Planning Board shall conduct a review of any matter referred to it and shall submit a written report to the referring body as required by the provisions of this Law or the Town Law.

### B.6. Periodic Review of Land Use Regulations

At intervals of not more than five (5) years, the Planning Board shall re-examine the provisions of this local law and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### ARTICLE XIII: 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 as well as an individual; the word "lot" includes the word "plot." 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". The word "shall" is mandatory and not optional. All other words used in this local law shall carry their customary meanings.

#### **Accessory Building or Use:**

A building or use clearly incidental or subordinate to, and customary in connection with, the principal building or use on the same lot.

**Adult Home:** see Rest Home.

#### **Adult Oriented Business:**

Whenever used in this local law, the words "Adult Oriented Business" or "Adult Oriented Businesses" apply to the following types of establishments, and any others which exclude or restrict minors by reason of age:

##### **Adult Bookstore or Video Store:**

An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, films, slides or video tapes and which establishment excludes or restricts minors by reason of age.

##### **Adult Entertainment Cabaret:**

A public or private nightclub, bar, restaurant, or similar establishment which presents topless or bottomless dancers, strippers, male or female impersonators, exotic dancers, or other similar entertainment, and which establishment excludes or restricts minors by reason of age.

##### **Adult Motel:**

A motel which excludes or restricts minors by reason of age, and which makes available to its patrons in their rooms films, slide shows or videotapes, which if presented in a public movie theatre would exclude or restrict minors by reason of age.

##### **Adult Theatre:**

A theater that customarily presents motion pictures, films, videotapes or slide shows, and that excludes or restricts minors by reason of age.

##### **Massage Establishment:**

Any establishment having a fixed place of business where massages are administered, including but not limited to massage parlors, sauna baths and steam baths, and which excludes or restricts minors by reason of age. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or massage therapist, or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Peep Show:**

A theatre which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, and which excludes or restricts minors by reason of age.

### **Agricultural Data Statement:**

An identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval is proposed, as provided in Section 305-a of Agriculture and Markets Law. An agricultural data statement shall include the following information: the name and address of the applicant, a description of the proposed project and its location, the name and address of any owner of land within the agricultural district whose land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed, and a tax map or other map showing the site of the proposed project relative to the location of the farm operations identified in the Agricultural Data Statement.

### **Agriculture:**

The raising of crops, animals or animal products, horticultural or nursery products for gain, including the sale of farm produce and agricultural products at the premises where produced.

### **Animal Hospital:**

Premises for the medical and/or surgical care of sick or injured animals with or without accessory boarding accommodations for convalescence. The term animal hospital shall also include veterinary clinic.

### **Alteration:**

Any change, rearrangement or addition to a building, or any modification in construction or in building equipment, excluding normal maintenance and repairs.

### **Antenna:**

A device used in communications which converts radio frequency electrical energy to radiated electromagnetic energy and vice versa in a transmitting station, an antenna is the device from which radio waves are emitted.

**Apartment:** See Dwelling, Multiple.

### **Applicant:**

The person, persons, corporations, etc. who is the owner(s) of the property, or their designated agent.

**Automobile Repair Shop:** See Motor Vehicle Repair Facility.

**Bar:** See Tavern/Nightclub.

### **Basement:**

That space of a building which is partly below grade, which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

### **Bed-and-Breakfast, Tourist Home:**

An owner-occupied private dwelling in which at least one (1) room, but not more than six (6) rooms are offered for rent for the accommodation of transient guests. In addition, meals may be served.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Billboard:**

Any sign which exceeds thirty-two (32) square feet in area, and which directs attention to a business, commodity, service, entertainment, or attraction, sold, offered, or existing elsewhere than upon the same lot where such sign is displayed, or only incidentally upon such lot.

### **Boarding or Rooming House:**

A private dwelling in which at least three (3) but not more than six (6) rooms are offered for rent, whether or not table board is furnished to lodgers, and in which no transients are accommodated and no public restaurant is maintained.

### **Building:**

Any structure of more or less permanent construction, which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing, protection, or enclosure of persons, animals, property or business activity.

### **Building Line:**

A line drawn at the front main wall of a building, excluding steps, porches, patios, eaves, cornices or other projections, and extending from lot line to lot line.

### **Campground/Recreational Vehicle Camp:**

A property providing four (4) or more sites for the parking of occupied travel trailers and/or recreational vehicles, or the erection of tents or other shelters serving as temporary residences, as defined by Part 7 of the NYS Sanitary Code, and all buildings and facilities pertaining thereto.

### **Campsite or Private Camp:**

The temporary residential use of land on which no permanent structure or mobile home is constructed, placed, or located, and not more than three (3) temporary structures, mobile homes, tents or recreational vehicles are located for a period of more than fourteen (14) days, for recreational, vacation, or hunting use.

### **Car Wash:**

Premises regularly used for washing, cleaning or polishing motor vehicles for compensation.

### **Cellar:**

Any space in a building the structural ceiling level of which is less than four (4) feet above the average finished grade.

### **Coin Operated Laundry:**

Premises equipped with individual clothes washing and drying and/or dry cleaning machines which are operated by the customers themselves.

### **Co-location:**

The mounting of Personal Wireless Service Facilities used by two or more persons, firms or corporations on the same equipment mounting structure.

### **Commercial Laundry or Dry Cleaners:**

Premises equipped with machines for washing and drying and/or chemically cleaning and pressing clothes. Commercial laundry or dry cleaners also include premises which serve only as customer drop-off and pick-up locations, and which send customer's clothes off premises for cleaning and pressing.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Conservation:**

The protection or management of land in a natural state, including management practices such as clearing and re-planting, stream channel maintenance, and erosion control, among others.

### **Coverage:**

The area covered by all buildings on a lot, expressed as a percentage of the total lot area.

### **Drive-In:**

Premises constructed to cater to the motoring public, whether or not serving pedestrians as well as the automobile trade, and providing curb and/or window counter service.

### **Drive-In Movies:**

An open lot, together with appurtenant facilities, where motion pictures are shown to paying customers seated in automobiles or on outdoor seats.

### **Dwelling:**

A building containing one or more dwelling units capable of being used for long-term, year-round human habitation. The term dwelling shall not include boarding house, hotel, nursing home, hospital, camp, etc., designed, planned or used for relatively transient occupancy.

### **Dwelling, Duplex:**

A one-family dwelling separated by a party wall from only one (1) adjacent dwelling unit.

### **Dwelling, Multi-Family:**

A building or portion thereof containing three (3) or more dwelling units, sharing common sewer and water services.

### **Dwelling, Single Family:**

A detached building containing one (1) dwelling unit only, in which no more than one (1) room is offered for rent.

### **Dwelling, Row or Attached:**

A multi-family dwelling structure with party walls separating individual dwelling units from adjacent units, each unit having separate water and sewer service.

### **Dwelling, Two-Family:**

A detached building containing two (2) dwelling units only.

### **Dwelling Unit:**

A building or an entirely self-contained portion thereof, containing complete housekeeping facilities for only one (1) family, including any domestic servants employed on the premises, having no enclosed space (other than vestibules, entrance, or other hall ways or porches) or cooking or sanitary facilities in common with any other dwelling unit and in which no more than one (1) room is offered for rent to other than family members. A boarding or rooming house, convalescent home, fraternity or sorority house, dormitory, hotel, inn, lodging, nursing, or other similar homes, or other similar structure, shall not be deemed to constitute a dwelling unit.

### **Equipment Mounting Structure:**

Any structure used primarily to support reception or transmission equipment including, but not limited to, antenna support structures, towers and monopoles.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Family:**

One (1) or more persons occupying a dwelling unit as a single housekeeping unit.

### **Farm Operation:**

The land and on-farm buildings, equipment, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.

For the purposes of Article VI.C.2 "Mobile Homes and Mobile Home Communities" a Farm Operation shall not include any farm having less than \$10,000 gross sales in the year preceding the date on which the owner applies for a building permit to erect a mobile home as an accessory use. In addition the occupant of a mobile home as an accessory use must be a full-time employee of the Farm Operation whose total documented compensation including salary, lodging, board, etc. is not less than \$10,000 per year.

### **Farm Market:**

A market outlet, located off-site of a farm operation, for the sale of produce, plants, food products, and related items to the general public.

### **Farm Stand:**

A structure, either temporary or permanent and either attached to the ground or movable, intended for the sale to the general public of agricultural products predominantly produced on the premises, or by the same farm operation on whose land the farm stand is located.

### **Fence:**

An unroofed enclosing structure erected for the purpose of preventing passage or view.

### **Flag Lot:**

A lot with access from the main portion of the building lot to the public street along a narrow strip of land, or access leg, on which an access drive or private lane is or will be constructed, said access leg to remain in the private ownership of one or more owners.

### **Flag Lot Access Leg:**

The narrow strip of land along which an access drive or private lane is or will be constructed to provide access from a public street to the building area of the flag lot, the area of said access leg to be excluded from calculations of lot area and setbacks for purposes of this local law.

### **Floor Area, Gross:**

The sum of the gross horizontal area of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings or uses.

### **Floor Area, Net:**

The actual square footage of an area used for gathering people together, not including accessory or other areas used for different purposes or the thickness of walls. Such area is normally enclosed by walls or other dividers.

### **Frontage:**

The horizontal distance between the side lot lines measured along the street line.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Fuel Oil Storage:**

Premises used for the storage of fuel oil, kerosene, or other combustible fuel in tanks for the sale by motor vehicle or other means of conveyance to purchasers at some other location, and excluding gasoline storage tanks used at gasoline stations for retail sales, or tanks used by individuals when fuel is not sold.

### **Garage:**

Premises used for storage, display, sale, rental, service or repair of motor vehicles.

### **Garage, Private:**

An accessory garage used by the occupants of a principal structure for storage of one or more vehicles or boats and within which no business, occupation, service or industry is conducted for profit.

### **Gasoline Station:**

A commercial establishment which includes the sale and delivery of gasoline or other fuel for the propulsion of motor vehicles. A gasoline station may include accessory sale and installation of oil or other substances, tires, batteries, and other motor vehicle accessories. A gasoline station may also conduct minor vehicle repairs. A gasoline station may also include a quick stop retail store provided the store is an integral part of the gasoline station.

**Gross Floor Area:** See Floor Area, Gross.

### **Group Home:**

A dwelling or facility which is occupied by unrelated persons who may be handicapped, developmentally disabled, or emotionally disturbed, or in need of special services, conditions, or circumstances for day-to-day living, and which is supervised by paid or volunteer live-in staff.

### **Home Occupation:**

A profession or occupation conducted within a dwelling or accessory structure thereto for profit by persons residing therein.

### **Hotel:**

A structure, whether owner-occupied or not, in which at least seven (7) rooms are offered for rent for the overnight accommodation of transient guests. Such hotel may or may not serve meals to such guests or include restaurant, tavern or meeting facilities.

### **Illumination, Direct:**

Illumination which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radio-activated or gaseous material or substance.

### **Illumination, Indirect:**

Illumination with an artificial light which is separated from and is not an intrinsic part of the sign itself.

### **Junk Yard:**

A lot, land, or structure, or part thereof, used primarily for the collecting, storage, and sale of waste paper, rags, scrap metal or other scrap or discarded material; or for the collecting, dismantling, storage, or salvaging of machinery or vehicles not in running condition, and for the sale of parts thereof. A junk yard shall mean and include a "junk yard" within the meaning of General Municipal Law Section 136.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

**Kennel:**

Premises used for the sale, harboring, breeding, or care of dogs for compensation.

**Landscape Planting:**

The functional and aesthetic planting and maintenance of trees, shrubbery and flowers in relationship to man-made structures and the existing natural landscape elements.

**Laundromat:** See Coin Operated Laundry.

**Livestock:**

Animals including, but not limited to, domestic animals such as sheep, goats, cattle, swine and horses which are kept on a farm.

**Lot:**

Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, together with the required open spaces appurtenant to such building or group of buildings.

**Lot, Corner:**

A lot at the junction of, and abutting on, two (2) or more intersecting streets, where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees. A lot abutting a curved street shall be deemed to be a corner lot if the tangents to the curve at the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than one hundred thirty-five (135) degrees.

**Lot Depth:**

The minimum distance from the street line of a lot, or in the case of a flag lot the front lot line excluding the access leg, to the rear lot line of such lot. (See Yard).

**Lot, Flag:** See Flag Lot.

**Lot Line:**

Any boundary of a lot other than a street line.

**Lot Line, Rear:**

The lot line generally opposite to the street line; if the rear lot line is less than ten (10) feet in length, or if the lot comes to a point in the rear, the rear lot line shall be deemed to be a line parallel to the street line not less than ten (10) feet long lying farthest from the street line. (See Yard).

**Lot Width:**

The dimension measured along the required front yard setback line at substantially right angles to the depth of the lot. (See Yard).

**Manufacturing:**

The fabrication, alteration, processing, finishing, handling or assembly of raw materials and packaging, warehousing, and storage of articles in quantity.

**Manure Storage Facility:**

A waste impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure to store animal and or other organic waste.

**Massage Establishment:** See Adult Oriented Business.



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Medical Clinic:**

Any structure or group of structures occupied by medical practitioners, including but not limited to Doctors, Dentists, Chiropractors, Opticians, Optometrists, etc. and related services for the purpose of providing health services to people on an outpatient basis.

### **Minor:**

A person less than seventeen (17) years of age.

### **Mobile Home:**

A one-family dwelling on a permanent chassis, transportable in one or more sections, which is equipped for year-round occupancy and contains the same plumbing, heating and electrical systems as immobile housing. A "single-wide" mobile home consists of one self-contained unit. A "double-wide" mobile home consists of two sections which are designed to be joined into one integral unit at the site.

### **Mobile Home, Temporary Residential:**

Any trailer or mobile home placed temporarily on an approved residential lot for residential use during construction of a permanent residence for which a building permit has been issued.

### **Mobile Home Community:**

A parcel of land which has been planned and improved for the placement of two or more mobile homes for non-transient use.

### **Manufactured Home:**

A structure made of prefabricated sections manufactured at another location, transported to the site, and assembled on a foundation to form a permanent dwelling unit, and which meets all New York State requirements concerning factory-manufactured housing. A manufactured home is constructed using building materials and techniques which are similar to conventional housing. Manufactured homes include panelized homes, modular homes, and pre-cut homes. Manufactured homes differ from mobile homes in that they are not transportable after installation and do not have a permanent axle. For the purposes of this local law, manufactured homes shall be considered to be single family dwellings.

### **Motel:**

Any building or group of buildings containing rooms or apartments that are rented or hired out for sleeping purposes for compensation primarily to a transient clientele, and which rooms have direct outside access (the term "outside access" to include access to open or screened porches); including groups designated as motor inn, tourist cabins, or roadside hotel.

### **Motor Vehicle Repair Facility:**

A commercial establishment which repairs or replaces motor vehicle engines, body parts, or electrical or mechanical systems, including but not limited to:

- body reconstruction or repair, welding, spray painting, or interior alterations or repairs;
- repair or replacement of all or part of clutch, transmission, differential, axle, springs or frame;
- repair or replacement of engines or radiator.

### **Motor Vehicle Sales Lot:**

Premises used for the display of new or used automobiles or trucks or related automobile equipment for sale.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Non-Conforming Building:**

A building which contains a use permitted in the district in which it is located, but which does not conform to the district regulations for: lot area, width, or depth; front side or rear yard dimensions; maximum height; lot coverage; or minimum habitable floor area per dwelling unit.

### **Non-Conforming Use:**

A use, whether of a building or tract of land or both, lawfully existing on the effective date of this local law which does not conform to the use regulations or supplementary regulations of the District in which it is located.

### **Non-Profit Organization:**

Any corporation or association which is organized or conducted exclusively for religious, charitable, hospital, educational, moral or mental improvement of men, women or children, or cemetery purposes, or for two or more such purposes, or which is organized or conducted exclusively for bible tract, benevolent, missionary, infirmary, public playground, scientific, literary, bar association, medical society, museum, environmental and conservation, patriotic, or historical purposes, for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association, or by another such corporation or association.

### **Nuisance:**

Any thing or act that annoys or disturbs unreasonably, hurts a person's use of his or her property, or violates the public health, safety, or welfare.

### **Nursery School:**

A premises licensed by New York State and operating under the applicable provisions of the NYS Education Law and the Social Services Law for the organized care and supervision of pre-school children. The term nursery school includes kindergarten, day care center, day school, home day care center, and the like. It shall not however, be construed to include informal child care in the home, whether for compensation or not.

### **Nursing Home:**

A facility in which persons not related to each other are housed, fed, and furnished with long-term nursing care, medical services, and related therapeutic services necessary to maintain their health, and such care is normally provided within the facility by persons paid to provide such care.

### **Occupant:**

The person in occupancy, in possession or in control of premises, or using premises.

### **Owner:**

Owner of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm or corporation in control of such building or premises.

### **Owner/Operator:**

Person, persons, corporation, etc. that owns and/or operates the business or facility.

### **Parking Lot:**

Land which is open or semi-enclosed by structures and which is used to provide off-street parking.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Parking Space, Off-Street:**

A space which is out of the public right-of-way and adequate for parking one motor vehicle.

### **Passive Recreation:**

Outdoor activities for individual relaxation and enjoyment not requiring special playing surfaces or in-place equipment. Passive recreation includes such activities as hiking, fishing, picnicking, etc.

**Peep Show:** See Adult Oriented Business.

### **Personal Service:**

Establishments to provide services related to personal care. A barber shop, beauty salon, masseur, shoe repair or tailor would be examples of personal service establishments.

### **Personal Wireless Service:**

Commercial mobile services, wireless telecommunication services using duly authorized devices which do not require individual licenses (excluding the provision of direct-to-home satellite services), and common carrier wireless exchanges including cellular radiotelephone, specialized mobile radio system and personal communication services.

### **Personal Wireless Services Facility:**

A facility for the provision of Personal Wireless Services. A Personal Wireless Service Facility includes but is not limited to, an Antenna Equipment Mounting Structure and accessory buildings and equipment. For the purposes of the Zoning Law, a Personal Wireless Service Facility shall not be included within the definition of a "Public Utility" Station or structure as specified in the Zoning Law, since Personal Wireless Service Facilities, although they are facilities operated by public utilities with certain rights under the laws of the United States and the State of New York are exclusively regulated as such by Article VI.3.11 of the Zoning Law.

### **Pets:**

Animals including customary household companions such as dogs, cats, and birds.

### **Professional Office:**

Premises used as a work place by an architect, or landscape architect, doctor, accountant, lawyer, engineer, or similar professional. A real estate broker, insurance agents or similar business person is included within this category.

### **Principal Building:**

A building in which the main or principal use of the lot on which said building is located is conducted.

### **Public Utility Station or Structure :**

A facility other than a Personal Wireless Service Facility for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage, collection of other such services to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, but shall not include offices or administration buildings. For purposes of the Zoning Law, Personal Wireless Services Facility, defined separately in the Zoning Law, shall not be governed by the Zoning regulations which apply to the broader definition of Public Utility station or structures but shall be governed by the regulations of the Personal Wireless Services Facilities Overlay District which specifically regulates this category of public utilities.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Public Water, Public Sewer:**

Sewage disposal and water supply systems owned and maintained by a municipal corporation, public sewer district, or public water district.

### **Recreational Vehicle:**

A vehicle or portable structure standing on wheels, whether or not self-propelled, and used as temporary living and sleeping accommodations for travel, camping or recreational purposes. The term recreational vehicle also includes travel trailer.

### **Residence:**

A structure or portion thereof used as a dwelling unit.

### **Rest Home or Retirement Home:**

A facility in which no more than fifteen (15) persons not related to each other are housed and fed by persons paid for providing such services, and where nursing care and medical services are not normally provided within the facility.

### **Restaurant:**

Premises in which food is prepared and served to seated customers. While alcoholic beverages may also be served, the primary business of the establishment is the preparation of meals.

### **Retail:**

Sale of goods, wares, commodities or services to ultimate customers for direct consumption and not for resale.

### **Right-of-Way:**

The property subject to an easement permanently established for the passage of persons or vehicles.

### **Screening:**

A properly maintained combination of fences, rows of trees, hedges and other means to block the view and buffer noise generated by activities on a lot from other properties in the vicinity and from the street.

### **Sign:**

Any structure or part of a structure, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, graphics, marking, or representing an announcement, direction, or advertisement. Excluded from this definition are signs which are solely devoted to prohibiting trespassing, hunting or fishing.

### **Sign Area:**

The area of the surfaces within which all the elements of the sign displayed can be framed or outlined, but excluding structural members used only for support.

### **Sign, Illuminated:**

A sign which is lit directly or indirectly by light of a constant intensity.

### **Stable:**

Premises used primarily for the sale, care, boarding, and/or training of horses belonging to persons other than the property owner or tenant, or for trail rides, riding lessons, horse shows, riding demonstrations or other equestrian activities for compensation.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Story:**

That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and 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, Half:**

Any space partially within the roof framing, where the clear height of not more than fifty (50) percent of such space between the top of the floor beams and the structural ceiling level is seven foot (7') six inches (6") or more.

### **Street:**

A street is one of the following: an existing Town, County or State highway or street; a street shown on an approved subdivision final plat; a street shown on the Official Map of the Town; any other right-of-way legally designated for public use for passage of motor vehicle traffic.

### **Street Line:**

The boundary of the right-of-way of the public street or of the private lane, right-of-way, or easement, or of the flag lot access leg extended as indicated by dedication or deed of record.

### **Structure:**

Any combination of materials forming any construction, except where entirely underground so as to permit the use of the ground above the same as if no building was present; the term "structure" shall include the term "building" as well as the following:

- (a) Signs,
- (b) Fences,
- (c) Wall, other than retaining walls projecting above the ground not more than three (3) feet at the higher ground level and not more than six-and one-half (6½) feet at the lower ground level,
- (d) Radio and television receiving and transmitting towers and antennae, except for such antenna installed on the roof of a "building" and extending not more than twenty (20) feet above the highest level of the roof of such "building" and
- (e) Porches, outdoor bins, and other similar "structures".
- (f) Pools, tanks, and other containment vessels for liquid storage or use.

### **Swimming Pool:**

Any outdoor water containment vessel in or above the ground and open to the sky holding water to a depth greater than eighteen (18) inches, having a surface area greater than one hundred (100) square feet, and used or intended to be used for swimming or bathing. Ponds or lakes, either natural or artificial, are not swimming pools.

### **Tavern/Nightclub:**

A premises licensed under the laws of New York State for sale of alcoholic beverages and their consumption on the premises. Live entertainment may also be provided on a regular basis. The availability of food is incidental to the principal activity of selling alcoholic beverages.

### **Through Lot:**

An interior lot having frontage on two approximately parallel, or converging streets - not a corner lot.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Usable Open Space:**

All unenclosed portions of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than twenty-five (25) percent is roofed for shelter purposes only, the minimum dimension of which is forty (40) feet, and which is available and accessible to all occupants of the building or buildings on the said lot for purposes of active or passive outdoor recreation.

### **Use, Accessory:**

A use customarily incidental and supplemental and clearly subordinate and secondary to the principal use located on the same lot.

### **Use, Permitted:**

A use allowed as a matter of right in a district.

### **Use, Principal:**

The primary or predominant use of a lot or parcel.

### **Variance:**

A modification of the use and/or bulk regulations of this local law in an individual case where, due to specific facts and conditions relating to a particular property, literal application and strict enforcement would result in unnecessary hardship or practical difficulty that would deprive the owner of the reasonable use of the land or structures.

### **Variance, Area:**

A variance of the requirements of Article IV - Area and Bulk Regulations - to authorize the commencement on a particular lot of a permitted use due to practical difficulties which could not feasibly be established without relief from the dimensional requirements pertaining to the district.

### **Variance, Use:**

A variance of the requirements of Article III, Use Regulations, or Article VI, Supplementary Regulations, to allow the establishment of a use not permitted in the district without variance.

### **Town:**

The Town of Canajoharie, Montgomery County, New York.

### **Wholesale:**

Sale of relatively large quantities of goods, wares, commodities or services to retailers for resale and not for direct consumption.

### **Yard, Front:**

An unoccupied ground area, open to the sky, between the street line and a line drawn parallel thereto along the front wall of the building, extending from lot line to lot line.

### **Yard, Line:**

A line drawn parallel to a street or lot line at a distance there from equal to the respective yard dimension required by this local law.

### **Yard, Rear:**

An unoccupied ground area, open to the sky, between the rear lot line and a line drawn parallel thereto along the rear of the building, extending from lot line to lot line.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIII

### **Yard, Side:**

An unoccupied ground area, open to the sky, between any lot line other than a street or rear lot line, and a line drawn parallel thereto along the side of the buildings, between and not including any portion of the front and rear yards.

### **Yard, Required:**

Any yard measured between a line drawn parallel to a street or lot line at a distance therefrom equal to the respective yard dimension required by this local law.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIV

### ARTICLE XIV: AMENDMENTS

#### A. GENERAL

In accordance with Sections 264 and 265 of the Town Law, this local law or any part thereof, may be changed, amended, supplemented or repealed, from time to time, by the Town Board upon its own motion, upon public petition, or upon recommendation by the Planning Board or Board of Appeals.

#### B. PROCEDURE

The procedure for amending this local law shall be as follows:

- B.1. All petitions for any amendments to the text of this local law or to district boundaries designated on the official zoning map shall be filed with the Town Clerk in writing and in a form required by the Town Board.
- B.2. Proposed amendments are actions subject to SEQR. Prior to formal consideration and public hearing, the Town Board shall make a determination as to the type of action, lead agency status, and environmental significance or nonsignificance in accordance with Article 8 of the NYS Environmental Conservation Law.
- B.3. Unless the amendment proposed is initiated by the Town Planning Board, the Town Board shall refer all such proposals and all pertinent information to the Planning Board no less than forty five (45) days prior to the required public hearing for report and recommendations, to be considered by the Town Board prior to its public hearing. A full statement of the reasons behind the recommendations shall accompany the Planning Board's Report, specifically including:
  - B.3.1. For a proposed amendment to, or change in, the text of this local law:
    - B.3.1.1. Whether the change is consistent with the goals and principals embodied in the Town Master Plan, as may be in force and effect at the time, and/or in local law as to the particular districts concerned;
    - B.3.1.2. Which areas, land uses, buildings, and establishments in the Town will be directly affected by such change and in what way they will be affected;
    - B.3.1.3. The indirect implications of such change and its effect on other regulations; and
    - B.3.1.4. Whether such proposed amendment is consistent with the aims of the development policies of the Town, as enunciated in this local law, and with any Master Plan as prepared by the Planning Board.
  - B.3.2. For a proposed amendment involving a change in the Zoning Map:
    - B.3.2.1. Whether the uses permitted by the proposed change would be appropriate in the area concerned;



## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XIV

- B.3.2.2. Whether adequate public facilities and services, including schools, roads, water service, sewer service, and drainage facilities exist or can be reasonably expected to be created, to serve the needs of any additional uses likely to be constructed as a result of such change;
  - B.3.2.3. Whether the proposed change is in accord with any existing or proposed plans in the vicinity; and
  - B.3.2.4. The effect of the proposed amendment upon the growth of the Town as envisaged by the development policies of the Town.
- B.3.3. If the Planning Board fails to make a recommendation within forty-five (45) days of receiving the report, the Town Board may act without the Planning Board's report. The forty-five (45) day period may be extended by agreement of the Planning Board and the Town Board.
- B.4. By resolution adopted at a meeting of the Town Board, the Town Board shall fix the time and place of a public hearing on the proposed amendment, and cause notice to be given in accordance with provisions of Section 264 of the Town Law. All notices of public hearing shall specify the nature of any proposed amendment, the land or district affected, and the date when and the place where the public hearing will be held. At least ten (10) days notice of the time and place of such hearing shall be published in the official newspaper.
- B.5. All proposals within the criteria of Section 239 (l) and (m) of the General Municipal Law shall be referred by the Town Clerk to the Montgomery County Planning Department no less than forty five (45) days prior to the scheduled public hearing for report and recommendation to be considered by the Town prior to the public hearing, unless such requirement for review is modified by written agreement between the Town Board and the Montgomery County Planning Department.

If the Montgomery County Planning Department recommends modification or disapproval, the Town Board may act contrary to the recommendation only by a vote of a majority plus one of the entire Board and by adopting a resolution fully setting forth reasons for such contrary action.

### C. PROTEST BY OWNERS

Pursuant to Section 265 of Town Law, if a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged, by the owners of twenty percent (20%) or more of the area of land included in the proposed amendment, or the owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred (100) feet therefrom, or by owners of twenty percent (20%) or more of the area of land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, the amendment shall require the approval of at least three-fourths ( $\frac{3}{4}$ ) of the members of the Town Board.

### D. EFFECTIVE DATE

In accordance with the procedure set forth in Section 27 of Municipal Home Rule Law, this local law or any amendments thereto shall take effect immediately upon filing with the New York State Secretary of State, unless a different time shall be prescribed therein.

## ZONING LAW OF THE TOWN OF CANAJOHARIE: ARTICLE XV

### ARTICLE XV: INTERPRETATION AND APPLICATION

#### A. 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, shelter, 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 statute, local law, rule, regulation, or permit, or by any easement, or agreement, the provisions of this local law shall control.

#### B. SEPARABILITY

If the courts decide that any term, section or provision of this local law is unconstitutional or invalid, the decision shall not affect the validity of the local law as a whole or any part other than the part decided to be unconstitutional or invalid.

#### C. VIOLATIONS

Violations of this local law or of any rules, regulations or procedures established pursuant to this local law shall be subject to the provisions of applicable law, and to the provisions of Article X, Section D, of this Local Law.

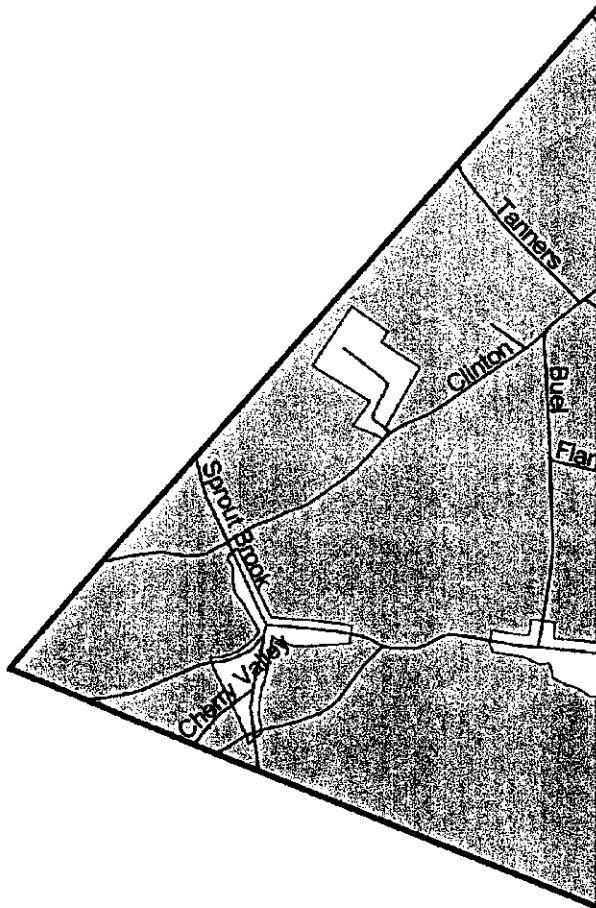
#### D. EFFECTIVE DATE

In accordance with the procedure set forth in Section 27 of the Municipal Home Rule Law, this local law or any amendments thereto shall take effect immediately upon filing with the New York State Secretary of State, unless a different time shall be prescribed therein.

#### E. REPEALER

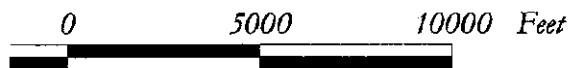
This local law shall supercede Local Law No. 3 of the year 1992, the Zoning Law of the Town of Canajoharie. All provisions of any other local law or ordinance which are inconsistent with the provisions of this local law are hereby repealed.

# Zoning Map Town of Canajoharie Montgomery County New York

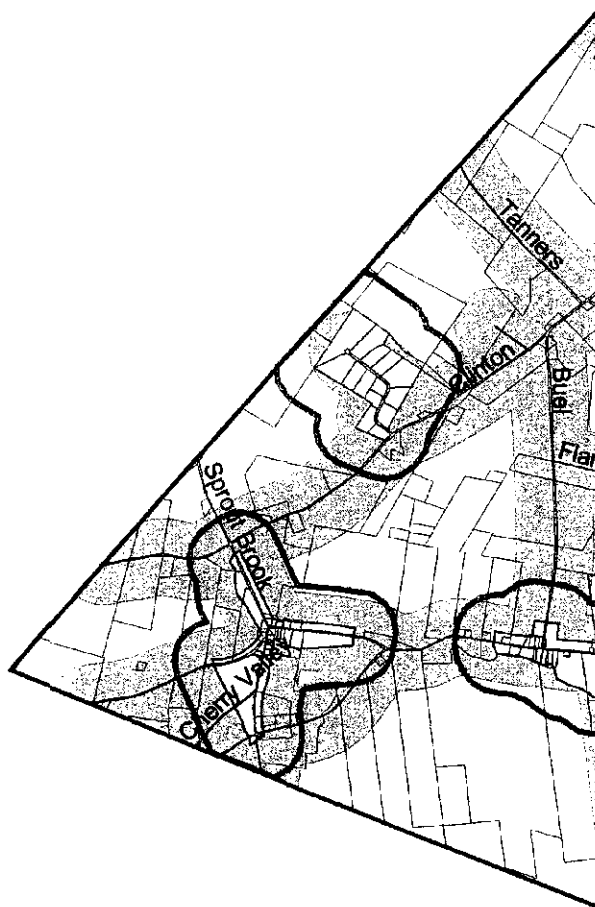


## Zoning Districts

- Agricultural/Rural Residential
- Residential
- Commercial
- Manufacturing



# *Annual Wireless Facility Overlay District Map Town of Canajoharie Montgomery County New York*



## *Key*

- Road Buffer Zone (1000 feet)
- Residential Zoning District Buffer Zone (1000 feet)
- Residential Zoning District



(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of \_\_\_\_\_ 2001 of the ~~(County)~~(City)(Town)(Village) of Canajoharie \_\_\_\_\_ was duly passed by the Town Board on April 5, 2001, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

(City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19 \_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19 \_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19 \_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19 \_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Wendy S. Williams  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

(Seal)

Date: April 16, 2001

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Montgomery

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Charles H. Clark  
Signature

Town Attorney  
Title

County  
City  
Town of Canajoharie  
Village

Date: April 16, 2001

# Zoning Map Town of Canajoharie Montgomery County New York



## Zoning Districts

- Agricultural/Rural Residential
- Residential
- Commercial
- Manufacturing

